A Legal Framework for Caring

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A Legal Framework for Caring

An introduction to law and ethics in health care

Lucy Fletcher and Paul Buka

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*For Brian and the Leonards
Carol, Sandy and Tinashe*

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Preface

During the late 1980s and 90s, there were many changes in the legal framework of health care in the UK that have had an effect on the delivery of care. A radical reform of the National Health Service (NHS) has taken place over the past decade, allied to an increasing emphasis on care in the community by a multidisciplinary team working in collaboration for the benefit of its clients. A knowledge of the law and its basis is a vital part of the background and everyday practice of those who deliver health care to client groups.

Every effort has been made to ensure that the law quoted at the date of writing is correct. It is important to emphasise that this book is not intended to take the place of qualified legal advice or of that of trade union officials representing their members within the workplace. This book is designed to raise awareness of the relevant legislation and act as an introduction to the huge range of excellent texts that are available at a more advanced level. Each chapter is concluded by a section devoted to references and further reading relevant to the material contained within the chapter.

To simplify the learning process, case law has not been discussed as each case is judged on its individual merits and only a few keynote court decisions have been mentioned in the text. These decisions have come to form part of the everyday reference to the law made by health care professionals, and a fuller understanding of the process by which they have been determined will repay the more advanced student. Some of the care situations outlined are evolving within the law, the subject of euthanasia and the making of an advance directive (living will) being examples, so can only be discussed within the context of the law at the time of writing. Four chapters are devoted to general issues, with five discussing the law in relation to specific client groups. Addressing specific client groups has led to some duplication, for example in consent to treatment and duty of care, but this has been done in order to allow each chapter to stand alone within its client group.

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The increasing use of technology in the workplace and an acknowledgement of the need for good record-keeping has resulted in further legal implications for those who deliver care. The rights of patients and their carers have now been identified, and the recognition by clients and their relatives of their rights with regard to health care have raised expectations of the expected standard of care. The right to complain about care and an increasing tendency to go to litigation are features of contemporary health care delivery to which the health care worker's only answer rests in the maintenance of full, accurate records.

Caring is closely linked to the related areas of morals and ethics, many of which affect both client and carer. This book concentrates on 'practical ethics', requiring the reader to link practice situations, that is, practical ethics, with the law within a caring situation. This takes the form of thinking points within each chapter related to the area under discussion, designed to stimulate thought and facilitate the transfer of theory to clinical practice. This approach is linked to the problem- and inquiry-based learning styles adopted within many educational courses at the present time. The thinking points have been extensively discussed by our students and colleagues in order to test their relevance, and their input was very valuable in the development of the book.

In order to ensure professional standards of practice and care, registered members of the multiprofessional caring team work within rules and codes of conduct developed by their professional bodies. The rules and codes form the yardstick for professional behaviour and standards both in the courts and for the professional bodies, and are briefly visited.

Changes, particularly in medical practice, have altered traditional patterns of accountability and responsibility, with consequent effects for all staff working with clients. The development of multidisciplinary care has resulted in a blurring of many of the former professional boundaries.

The importance of good communication and record-keeping is vital to permit effective co-ordination of the team members' work.

In this book, the terms 'health care worker' and 'health care professional' are used. 'Health care worker' relates to all those employed as paid carers, while 'health care professional' is used particularly in the context of the registered professional. The term 'client' has also been used unless the care setting is specifically within a hospital; this is to reflect the increasing emphasis on the care of all groups within the community.

Preface

Lucy Fletcher is a senior lecturer in nursing with a particular interest in the legal and ethical issues of care delivery.

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