

Ethical and legal issues in mental health

Definition of Terms

Ethics - the science that deals with the rightness and wrongness of actions.

Moral behaviour - conduct that results from serious critical thinking about how individuals ought to treat others; such as respect for autonomy, freedom, justice, honesty, and confidentiality.

Values - ideas or concepts that give meaning to the individual's life.

A **right** - a valid, legally recognized claim or entitlement, encompassing both freedoms from government interference or discriminatory treatment and entitlement to a benefit or service.

Ethical considerations

Theoretical Perspectives

An ethical theory - a moral principle or a set of moral principles that can be used in assessing what is morally right or morally wrong hence provide guidelines for ethical decision making.

- ? Kantianism
- ? Utilitarianism
- ? Christian ethics
- ? Natural law theories
- ? Ethical egoism

? Kantianism (Deontology)

Suggests that decisions and actions are bound by a sense of duty.

It is not the consequences or end results that make an action right or wrong; rather it is the principle or motivation on which the action is based that is the morally decisive factor.

Example "I make this choice because it is morally right and my duty to do so" (not because of consideration for a possible outcome).

? Utilitarianism - “the greatest-happiness principle.”

It is an ethical theory that promotes actions based on the end results that produce the most good (happiness) for the most people

The second principle of utilitarianism is “the end justifies the means.”

An ethical decision based on the utilitarian view would look at the results of the decision.

Action is taken based on the results that produced the most good (happiness) for the most people.

? Christian ethics

Do unto others as you would have them do unto you; alternatively, do not do unto others what you would not have them do unto you.

The imperative demand of Christian ethics is to treat others as moral equals and to recognize the equality of other persons by permitting them to act as we do when they occupy a position similar to ours.

? Natural law theories

Do good and avoid evil; evil acts are never condoned, even if they are intended to advance the noblest of ends

? Ethical egoism

Decisions are based on what is best for the individual making the decision.

An individual's actions are determined by what is to his or her own advantage.

The action may not be best for anyone else involved, but consideration is only for the individual making the decision.

Ethical Principles

Ethical principles are fundamental guidelines that influence decision-making.

The ethical principles of autonomy, beneficence, nonmaleficence, veracity, and justice are helpful and used frequently by health care workers to assist with ethical decision-making.

Autonomy – emphasizes the status of persons as autonomous moral agents whose rights to determine their destinies should always be respected

This presumes that individuals are always capable of making independent choices for themselves.

Children, comatose individuals, and the seriously mentally ill are examples of clients who are incapable of making informed choices.

Beneficence

Refers to one's duty to benefit or promote the good of others (the duty to promote good)

Health care workers act in their clients' interests are beneficent, provided their actions really do serve the client's best interest.

Nurses serve as advocates to protect client's rights and interests

Non-maleficence

Abstaining from negative acts toward another; includes acting carefully to avoid harm. (the duty to do no harm).

The requirement is that health care providers do no harm to their clients, either intentionally or unintentionally (Aiken, 2004).

An example- administering chemotherapy to a cancer patient, knowing it will prolong his or her life, but create "harm" (side effects) in the short term.

Justice

The “justice as fairness” principle.

Based on the notion of a hypothetical social contract between free, equal, and rational persons

The concept of justice reflects a duty to treat all individuals equally and fairly.

When applied to health care, this principle suggests that all resources within the society (including health care services) ought to be distributed evenly without respect to socioeconomic status.

Veracity

Refers to one’s duty to be truthful always

The principle of veracity refers to one’s duty to always be truthful.

Aiken (2004) states, “Veracity requires that the health care provider tell the truth and not intentionally deceive or mislead clients.”

There are times when limitations must be placed on this principle, such as when the truth would knowingly produce harm or interfere with the recovery process.

Legal Considerations

The mental health act provides legal aspects concerning mental health facilities, processes of admission and discharge, patient’s rights, supervision and evaluation of mental health among others

Review The Mental Health Act chap 248 (due for revision as a result of devolution of health services)

The Kenya Board of Mental Health

A chairman, who shall be the Director of Medical Services or a Deputy Director of Medical Services appointed by the Minister;

1 Medical practitioner with specialization and experience in mental health care appointed by the Minister;

1 Clinical officer with training and experience in mental health care appointed by the Minister;

1 nurse with training and experience in mental health care appointed by the Minister;

The Commissioner for Social Services his nominee appointed by the Minister;

The Director of Education or his nominee appointed by the Minister;

A representative of each of the provinces of Kenya being persons resident in the provinces, appointed by the Minister;

The Deputy Director of Mental Health;

The Chief Nursing Officer.

Functions of the Board

To coordinate mental health activities in Kenya.

To advise the government on the state of mental health and mental health care facilities.

To inspect mental health care hospitals to ensure that they meet the prescribed standards.

To approve the establishment of mental health care hospitals.

To assist when necessary in the administration of mental health hospitals.

To receive and investigate any matters referred to it by a patient or relative of a patient concerning the treatment of the patient at a mental health hospital and,

where necessary, to take or recommend to the minister any remedial action.

To advise the government on the care of the persons suffering from mental sub-normality without a mental disorder.

To initiate and organize community or family-based programmes for the care of persons suffering from mental disorders.

Admission and Discharge Criteria

Voluntary Patients

Any person who has attained the apparent age of sixteen years, decides to voluntarily submit themselves to treatment for mental disorder, and who makes to the 'person in charge' a written application in duplicate in the form prescribed, may

be perceived as a voluntary patient into a mental hospital.

The person fills form **MOH 613**, in duplicate.

Any person who has not attained the apparent age of sixteen years and whose parent or guardian desires to submit them for treatment for mental disorder, may if the guardian or parent makes to the 'person in charge of a mental institution, a written application in duplicate in the prescribed forms, be perceived as a voluntary patient.

In such cases forms, **MOH 637** in duplicate should be filled and signed by the guardian or the parent.

Involuntary Patients

Involuntary patients are those who are incapable of expressing themselves as willing or unwilling to receive treatment. They require the forms MOH 614 to be filled in duplicate by the husband, wife or relative of the patient, indicating the reasons why they are applying for admission.

Any person applying on behalf of another person should state the reasons why a relative could not make the application and specify their connection with the patient.

The patient is admitted for a period of not more than 6 months. The 'person in charge' can prolong this period by six more months provided the total period does not exceed twelve months. **A**

MOH 615 form should be filled by the doctor indicating why he thinks that the patient can benefit from the treatment.

Both the **MOH 614** and **MOH 615** forms must reach the hospital within 14 days of the date they were signed, otherwise, they become invalid.

Emergency/Forensic/Criminal patients

A police officer, chief or assistant chief can arrest any person who is found to be dangerous to themselves or others, and take them to a mental hospital for treatment within 24 hours.

The patient should be reviewed after 72 hours and can be discharged if found to be of sound mind. If found to be of unsound mind, the patient