



Duty of Care

Duty of care is a legal obligation imposed upon us as healthcare practitioners. Duty of care is relevant to negligence within healthcare and arises when a healthcare practitioner owes a patient a duty of care and fails to act in a way that accords with competent professional practice, where such a breach directly causes damage to the patient (*Civil Liability Act 2002 (NSW) s 50*). Healthcare practitioners also have a duty to provide information to patients about the risks of having or not having treatments when those risks are material to the patient, as set out *Rogers v Whitaker (1992) 175 CLR 479 at 490*. However, research within the Australian context suggests that clinical staff misuse “duty of care” as justification for treatment without consent, treatment overriding objections, and restrictive practices (Lamont, Stewart, Chiarella, 2020).

References for research highlighted in duty of care:

Lamont, S., Stewart, C., & Chiarella, M. (2020). The misuse of “duty of care” as justification for non-consensual coercive treatment. *International journal of law and psychiatry*, 71, 101598.

Lamont S, Stewart C, Chiarella M (2016). Documentation of capacity assessment and subsequent consent in patients identified with delirium. *Journal of Bioethical Inquiry*, 13(4), 547-555.

Lamont S, Stewart C, Chiarella M. (2017). Capacity and consent: Knowledge and practice of legal and healthcare standards. *Nursing Ethics*, Published January 2017.