

Law and Professional Issues in Nursing

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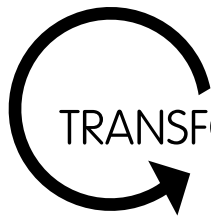
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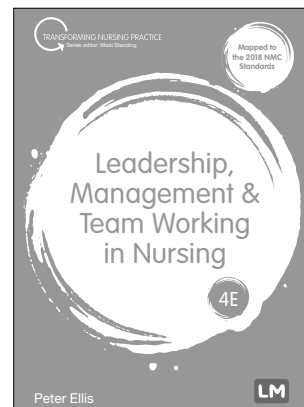
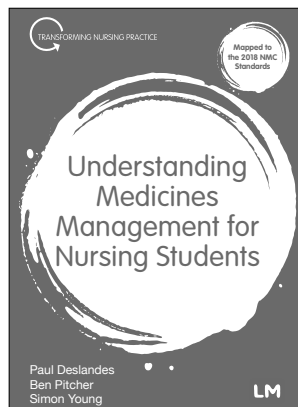
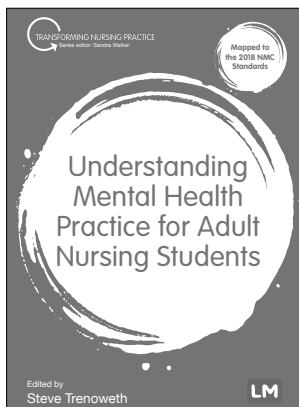
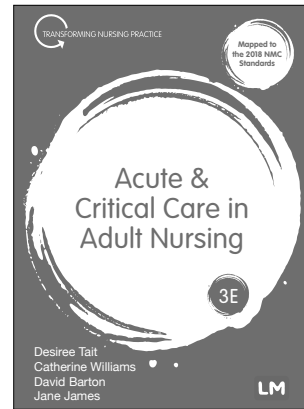
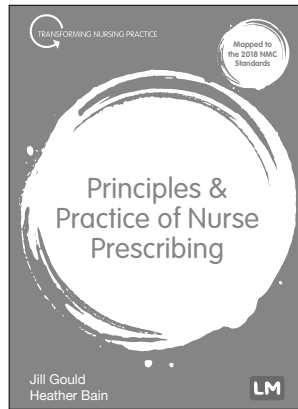
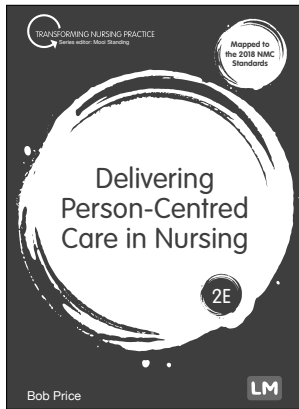
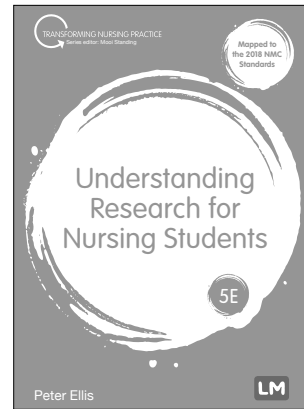
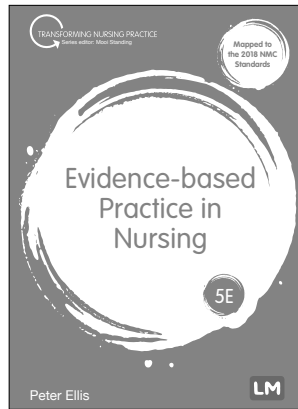
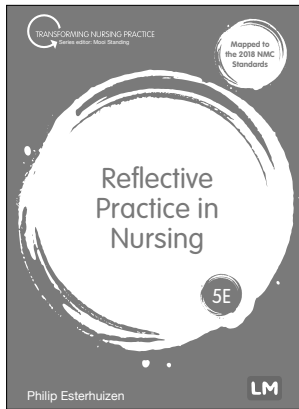
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Chapter 14 Health and safety

NMC Standards of Proficiency for Registered Nurses

This chapter will address the following platforms and proficiencies:

Platform 6: Improving safety and quality of care

At the point of registration, the registered nurse will be able to:

- 6.1 understand and apply the principles of health and safety legislation and regulations and maintain safe work and care environments
- 6.5 demonstrate the ability to accurately undertake risk assessments in a range of care settings, using a range of contemporary assessment and improvement tools
- 6.6 identify the need to make improvements and proactively respond to potential hazards that may affect the safety of people

Chapter aims

After reading this chapter, you will be able to:

- state why health and safety matters should concern nurses;
- outline the general duties owed by employers and employees under the Health and Safety at Work etc. Act 1974;
- describe the regulations governing specific health and safety requirements in the NHS;
- explain the process of health and safety management;
- discuss the requirements for the safe handling of loads; and
- define the term 'reasonably practicable' in relation to manual handling.

Introduction

From your very first day as a student nurse, your university and clinical placements/learning communities will be concerned for your safety and the safety of the patients you care for. In this chapter, you will explore the duties owed by healthcare employers and their staff under health and safety legislation. This chapter will consider the process of safety management, and in particular the requirements for the safe handling of loads. The chapter ends with a discussion of the human rights impact of health and safety laws.

Some 1.7 million people are employed by the NHS, with nearly 690,000 nurses employed in the UK in 2018 (Rolewicz and Palmer, 2019). NHS England alone employed 1.2 million staff with over 332,000 nurses, midwives and health visitors in 2021 (The King's Fund, 2022). Therefore, ensuring the health and safety of employees is essential to the efficient delivery of healthcare.

Activity 14.1 Team working

Risks at work

In a group, list the potential risks to your health and safety that you have encountered during clinical practice. When you have completed that list, make another list with the potential hazards faced by patients receiving healthcare.

Read below for further information. An outline answer is also given at the end of the chapter.

In 2020–21, the number of full-time equivalent days lost to sickness absences among NHS staff in England amounted to over 21 million days (Michas, 2022). As expected, there was a significant increase in sickness and absence due to the COVID-19 pandemic. In the month of April 2022 alone the NHS in England lost nearly 2.3 million full-time equivalent days to staff sickness (NHS Digital, 2022). Employing agency and bank staff cost the NHS in England £6.2 billion in 2019–20 (NHS Workforce Alliance, 2021).

Mental health conditions such as anxiety and depression, as well as musculoskeletal problems (MSK) such as chronic back pain, are the two main reasons for NHS staff sickness. MSK accounts for 40 per cent of all sickness/absences; in most cases, these become long-term absences (NHS Employers, 2022). In health and social work activities, there were an estimated 67,000 work-related cases of MSK in 2018–19 to 2020–21 (HSE, 2021). In the NHS staff survey 2021, over 38 per cent of staff stated that they had experienced MSK as a result of work activities in the previous 12 months (NHS Staff Survey, 2022). MSK may be caused by work-related injuries such as incorrect handling or not having or using the proper equipment. In some cases, equipment is not adjusted to suit the needs of individual healthcare workers.

NHS staff and other healthcare workers are also more likely to experience work-related violence than other workers. According to the 2021 NHS Staff Survey report, 14.3 per cent of staff stated that they had experienced at least one incident of physical violence from patients/service users, relatives or members of the public in the previous 12 months (NHS Staff Survey, 2022). This figure might be higher as many incidents are not reported. Slips and trips account for about 50 per cent of major injuries to NHS staff. Stress accounts for about 30 per cent of sickness/absence in the NHS, costing the service around £400 million per year. The NHS Staff Survey (2022) found that 46.8 per cent of NHS staff reported having felt unwell as a result of work-related stress and over 34 per cent of staff felt burnout because of their work.

In relation to the COVID-19 pandemic, the Health and Safety Executive (HSE) reported that about 52,000 workers in health and social work activities suffered with COVID-19 in 2020–21 as a result of exposure to coronavirus at work. The rate of self-reported COVID-19 believed to have been caused by exposure to coronavirus at work is around four times higher in workers in health and social care than in workers across all industries. Some work related ill health caused or made worse by the pandemic include musculoskeletal disorders, stress, depression and anxiety. The rate was highest among those in human health and social work activities (HSE, 2021).

Patients are also placed at risk of injury if appropriate safety measures are not taken. In 2021–22, there were 3,134 non-clinical claims and incidents reported. NHS Resolution paid £55.6 million in damages for non-clinical negligence claims and incidents in 2021–22 as part of its non-clinical negligence schemes, such as employer's and public liability (NHS Resolution, 2022).

The cost in human terms can be high. Mistakes and errors can compromise safety to the point where lives are put at risk, and sadly fatalities occur. The risk to patients includes medication errors, treatment errors, falls, violence, poorly maintained equipment, human error, fire and hospital-acquired infections.

Case study 14.1 NHS trust fined for failing to manage risks

An NHS trust in England was fined for breaching the Health and Safety at Work etc. Act 1974 following a prosecution brought by the HSE. The court heard that the trust failed to identify or address recognised risks in relation to fixed ligature points in its inpatient wards between 2004 and 2015. Mental health patients were exposed to unacceptable and avoidable risk at a time when they were most vulnerable. Eleven patients died during this timeframe whose deaths involved access to fixed ligature points. The trust pleaded guilty of breaching section 3(1) of Health and Safety at Work etc. Act 1974 and was fined £1,500,000 and ordered to pay costs of £86,222.23.

(HSE, 2021)

Case study 14.2 Care home company fined after resident choked to death

In 2019, a care home company was fined £640,000 after pleading guilty for breaching the Health and Safety at Work etc. Act 1974. The court in Scotland heard that a care home resident was given a piece of jam doughnut to eat. She had suffered a stroke and had been diagnosed with dementia. She was considered to be at a high risk of choking and was put on a 'minced and moist/fork mashable diet'. A jam doughnut was unsuitable for this kind of diet and should not have been given to her. She died as a result of choking on the doughnut. The HSE found that the staff member who gave out snacks had not been properly trained and was not aware of the food suitable for each diet.

(HSE, 2022)

Case study 14.3 Nurse left on his own on a ward killed by a patient

A London trust was fined £28,000 and £14,000 costs at the Old Bailey following a prosecution brought by the HSE after a nurse was killed by a psychiatric patient. It was the first NHS trust to be prosecuted for neglect contributing to the death of an employee under section 2 of the Health and Safety at Work etc. Act 1974. The junior member of staff was working alone on a night shift, observing the patient in seclusion in an area not designed for containing patients. There were no clear procedures and no adequate measures in place to check on his safety. The nurse had not received sufficient training in handling violent patients and was not issued with a personal alarm.

The judge called the trust practices 'seriously unacceptable and incompetent'. The nurse suffered multiple injuries that resulted in the loss of his life.

(al Yafai, 2005)

Case study 14.4 Health trust fined over the stabbing of two nurses

An NHS trust was fined £300,000 plus costs of £28,000 following a prosecution brought by the HSE after two nurses were repeatedly stabbed by a patient at a mental health unit in 2016. The trust pleaded guilty to two charges of failing to ensure health and safety. The judge criticised the procedures that were meant to ensure that all knives were locked up and out of reach of patients as 'ad hoc and inadequate'.

(NHE, 2019)

Health and safety law

To prevent the avoidable loss of life and minimise the days lost to absence, the NHS as an employer has a legal duty to comply with the requirements relating to health and safety at work.

The Health and Safety at Work etc. Act 1974 is the basis of health and safety law in the UK. It sets out general duties that:

- employers have towards employees and members of the public using their service; and
- employees have to themselves and to each other.

Breaching or failing to comply with these duties are criminal offences.

The employer's general duty is set out in the Health and Safety at Work etc. Act 1974, section 2, and states that an employer has:

- a duty to ensure *so far as is reasonably practicable*, the health, safety and welfare at work of employees and any others who may be affected by the undertaking ...

The legal standard imposed by the Health and Safety at Work etc. Act 1974 is 'reasonably practicable' or 'so far as is reasonably practicable'. The standard implies a weighing up of the risk against the cost in terms of time, money or trouble of preventing or controlling the risk.

The duty of employees at work is set out in the Health and Safety at Work etc. Act 1974, section 7, which states that:

- it shall be the duty of every employee while at work:
 - to take reasonable care of their own health and safety and of any other person who may be affected by their acts or omissions; and
 - to co-operate with their employer so far as is necessary to enable that employer to meet their requirements with regard to any statutory provisions.

Activity 14.2 Critical thinking

Health and safety duties owed by employees

The Health and Safety at Work etc. Act 1974 places a duty on employees to take reasonable care of their own health and safety. List reasonable measures that a registered nurse could take to ensure their health and safety in the course of their work.

An outline answer is given at the end of the chapter.

The duty to report incidents

As well as a duty under the Health and Safety at Work etc. Act 1974, a registered nurse is also under a professional duty to act to identify and minimise risks to patients and clients (NMC, 2018a).

A nurse who raises an issue of health and safety with an employer, either directly or through a union, is entitled to protection from dismissal and victimisation under the Public Interest Disclosure Act 1998. Under the Act, each NHS employer has a duty to establish a procedure for employees to raise concerns where:

- a criminal offence has been, is being or is likely to be committed; or
- the health or safety of an individual has been, is being or is likely to be endangered.

Case study 14.5 Disclosures about health or safety of patients and staff

A senior district nurse was suspended and then dismissed after she informed management at an NHS trust that she intended to instigate formal whistleblowing procedures relating to patient care and staff issues. This was after she had raised several safeguarding concerns to management, including her team workload, employees' stress and sickness, and the need for retraining of healthcare assistants. She had also raised concerns to managers about patient's health and safety issues. She took her employer to an employment tribunal for unfair dismissal. The tribunal found all her concerns had sufficient factual content to indicate that the health or safety of patients and staff was being or was likely to be endangered. The tribunal found the nurse's dismissal to be unfair.

(Moss, 2020)

Health and safety regulations

The Health and Safety at Work etc. Act 1974 is supplemented by a wide range of secondary legislation in the form of regulations and orders that focus on specific areas of workplace health and safety, such as manual handling. Most of this secondary legislation begins in the form of an EU directive that must be implemented in the law of individual member states. The directives aim to harmonise workplace health and safety throughout all countries of the EU. Table 14.1 lists the main regulations that affect the health service and their employees.

Regulations	Scope
Management of Health and Safety at Work Regulations 1999	Set out how employers are required to assess risk in all work activities, implement control measures if required, provide information and training, and appoint competent persons.
Manual Handling Operations Regulations 1992	Cover the moving and handling of objects, either by hand or by bodily force.
Control of Substances Hazardous to Health Regulations 2002	Relate to the assessment of hazardous substances and biological agents, as well as the implementation of appropriate precautions.
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995	Require employers to notify certain types of injury, disease and dangerous occurrences to the Health and Safety Executive.
Personal Protective Equipment at Work Regulations 1992 (as amended)	Cover the provision of suitable and sufficient protective clothing and equipment, such as uniforms, gloves, and so on.
Workplace (Health, Safety and Welfare) Regulations 1992	Cover issues such as ventilation, temperature, flooring, workstations, and so on.
Health and Safety (Display Screen Equipment) Regulations 1992	Set out requirements for the use of visual display units, workstations, seating, and so on.
Provision and Use of Work Equipment Regulations 1998	Cover the safe use and maintenance of equipment, such as hoists.
Health and Safety (First Aid) Regulations 1981	Concern first aid requirements, such as the contents of first aid boxes and the number of trained first aid personnel.
Health and Safety (Safety Signs and Signals) Regulations 1996	Specify the minimum requirements for safety signs at work.
Fire Precautions (Workplaces) Regulations 1997	Require employers to assess the risk of fire in the workplace.
Hazardous Waste (England and Wales) Regulations 2005	Specify the requirements for the classification, segregation and disposal of waste, including that which is infectious and hazardous.

Table 14.1 Regulations relating to health and safety in the NHS

It is essential that employers and staff work together to ensure effective implementation of health and safety measures. This joint approach helps to promote and raise awareness among employers and staff, thereby creating a positive safety culture.

Involving staff in workplace health and safety is a legal requirement under the provisions of the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996, which require staff representatives to:

- consult with and be consulted by employers regarding:
 - the introduction of measures that may affect health and safety;
 - arrangements for appointing competent persons to assess risks; and
 - the provision of health and safety information and training;
- investigate hazards, accidents and complaints, and so on;
- make representation to the employer on health and safety matters;
- perform workplace inspections; and
- be given time off to perform their duties and undertake health and safety training.

Managing health and safety

The HSE requires workplace health and safety to be managed methodically to ensure that risks are minimised (HSE, 2006). This includes establishing a health and safety policy to provide information on the management of work-related risks. The policy will complement the trust's policies that relate to specific requirements, such as manual handling and the control of substances hazardous to health.

It also includes demonstrating that health and safety management is organised and functioning by reference to the four Cs:

1. Co-operation

- Good safety performance depends on everyone co-operating and safety is everybody's business.
- There is a legal requirement to consult with staff representatives on health and safety matters.

2. Communication

- Consultation with staff safety representatives.
- Performing workplace inspections at regular intervals, with written reports available for staff to view.
- Setting up a workplace safety committee.

3. Control

- There is a legal requirement to exercise control of health and safety to ensure compliance. If there is failure to comply with an identified safety rule, such as not disposing of clinical waste appropriately, and action is not taken to rectify the situation, both the employer and staff member break the law.

4. Competence

- Having the knowledge and skills needed to work without risk to yourself or to others who come into contact with your work.
- Managers must ensure that individuals for whom they are responsible have the appropriate skills and knowledge to work without risk to themselves or to others.

- Competence is a legal requirement imposed on employers through health and safety regulations. Training in health and safety measures is a mandatory component of a health service contract.

Activity 14.3 Team working

Health and safety training

In a group, discuss which elements of your nursing programme might be considered to be health and safety training (e.g. fire training, manual handling training, etc.). Make a list of the topics covered. Now compare that list with the list of hazards you identified in Activity 14.1. Does the training reflect the hazards you are likely to encounter?

An outline answer is given at the end of the chapter.

The HSE requirements also include:

- assessment and monitoring of risks:
 - assessment of the risks associated with performing workplace tasks and identification of any workplace precautions and risk control systems that may be required and their successful implementation; and
 - monitoring through inspections and risk assessments; and
- review and audit:
 - performance must be reviewed against an audit of documentation, such as workplace inspections, risk assessments, accident and incident reports, and attendance on health and safety training courses.

(HSE, 2006)

Workplace risk assessments

A risk assessment is the identification of hazards present in the workplace and an estimate of the risk associated with performing a task. A hazard is something that has the potential to cause harm and a risk is the likelihood of that hazard causing an accident or incident.

There is a legal duty to perform risk assessments under the provisions of the Management of Health and Safety at Work Regulations 1999.

Once a hazard has been identified, the likelihood of the risk occurring and the severity of harm must be considered. The law requires that risks should be reduced so far as is reasonably practicable. That means that the degree of risk should be balanced against the time, trouble, cost and physical difficulty of taking measures to avoid it.

Activity 14.4 Group working

Risk assessment: bed rails

Bed rails, also known as side rails or cot sides, are commonly used to prevent falls from bed. Although they are not suitable for everyone, they can be effective if used properly. However, bed rails sometimes don't prevent falls and can pose a risk to patient safety (HSE, 2021).

In groups, list the potential risks associated with using bed rails and how you would minimise the risks to prevent falls.

To assist you and to see what advice the HSE gives on the risks and safe use of bed rails, go to www.hse.gov.uk/healthservices/bed-rails.htm

As this is for your own observation and experience, there is no outline answer at the end of the chapter.

Now you have completed the task, read the tragic consequences of failing to carry out and implement a bed rails risk assessment.

Case study 14.6 Man died after getting head trapped between bed rails and a mattress

A man died after getting his head trapped between bed rails and a mattress in a hospital after he was admitted with chronic lung disease. An alarm was immediately raised when he was found, he was freed, but he died from a cardiac arrest. The hospital admitted in court that its failures exposed the man to a significant risk of avoidable harm. The hospital was fined £533,334.

(CQC, 2022)

On identifying a risk, steps must be taken to minimise it by:

- elimination of the hazard at source – if this is not possible, the hazard must be reduced;
- taking action, if the hazard has to be reduced, to control the risk by introducing workplace precautions, such as alarms, training and information, safety cabinets, ventilation systems, and so on; and
- putting in place, once workplace precautions have been introduced, a system to monitor compliance with those precautions.

For example, the Control of Substances Hazardous to Health Regulations (COSHH) 2002 seeks to control exposure to hazardous substances that arise from work under an employer's control. Hazardous substances can take many forms, including chemicals

Health and safety

and pathogens, and include bacteria and viruses such as the SARS-CoV-2 virus (HSE, 2022).

The regulations require that exposure of employees to substances hazardous to health is either prevented or, where this is not reasonably practicable, adequately controlled (COSHH 2002, regulation 7(1)).

Employers must therefore, where reasonably practicable, eliminate completely the use or production of substances hazardous to health in the workplace by changing the method of work, modifying the process or substituting a non-hazardous substance.

Where prevention of exposure to substances hazardous to health is not reasonably practicable, employers must adequately control exposure.

Case study 14.7 Latex allergy

In *Dugmore v Swansea NHS Trust* [2002], a nurse was awarded £345,000 from her employing trust for injuries caused by hazardous substances. The nurse was forced to abandon her career due to an allergy to latex, and gave up nursing in 1997 after experiencing asthma, skin problems and anaphylactic attacks after exposure to latex.

The trust was liable because, although it took the step of providing the nurse with latex-free products, other staff on the ward continued to use latex products, and this was enough to trigger an allergic reaction.

Personal Protective Equipment at Work Regulations 1992 (as amended)

Personal protective equipment (PPE) is regulated by the Personal Protective Equipment at Work Regulations 1992 (as amended). PPE is defined as:

all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects the person against one or more risks to that person's health or safety, and any addition or accessory designed to meet that objective.

(Personal Protective Equipment at Work Regulations 1992)

PPE is designed to protect the person from harmful substances or infectious agents such as the SARS-CoV-2 virus (coronavirus). Employers have a duty under the Health and Safety at Work etc. Act 1974 to ensure that risk assessments are carried out and measures put in place to reduce the risk of harm. Where an employer finds PPE to be necessary, for example because of exposure to coronavirus in a healthcare setting, they

must provide the PPE free of charge. Employees also have a duty to use PPE at work when necessary.

The type of PPE to be used will depend on the risk assessment of the environment and procedures being undertaken. For example respiratory protective equipment (RPE), such as FFP3 and FFP2 masks, must be used where a risk assessment or national guidance indicate their use. Fit-testing checks must be undertaken to ensure an adequate seal to the wearer's face for adequate protection.

The 1992 regulations were amended (Personal Protective Equipment at Work (Amendment) Regulations 2022) to extend the duties in respect of PPE to a wider group of workers from 6 April 2022. These are workers who undertake casual or irregular work and have a contract for service as opposed to a contract of employment.

HSE inspectors include assessment of PPE as part of their inspections. They can take a range of enforcement action from verbal or written advice to enforcement notices, and prosecution in serious cases.

Case study 14.8 NHS trust fined for breaching respiratory protective equipment (RPE) face fit test

An NHS trust was found to have breached regulations regarding RPE face fit testing following an investigation by the HSE. It followed the death of a radiographer from COVID-19 in April 2020. The investigation found that not everyone wearing RPE had received adequate face fit testing to ensure an adequate seal to the wearer's face. The trust was given formal written advice by the HSE.

(HSE, 2021)

Activity 14.5 Use of personal protective equipment (PPE) in a clinical setting/learning community

While on clinical placement or in a learning community, list the various types of PPE you have used or observed others using. Write down what each piece of PPE is being used for and how they are used. There is no answer at the end of this chapter as it is an exercise about your own observation. You can get more information about PPE at the following websites:

How to control risks at work: personal protective equipment – www.hse.gov.uk/toolbox

Essential advice and information to help ensure you have the right PPE in your work setting – www.rcn.org.uk/advice

Healthcare sharps injuries

Sharps injuries are a well-known risk in the health and social care sector. A survey of 7,151 RCN members found that 63 per cent of respondents had received at least one sharp injury during their careers (Gallagher, 2021). Sharps contaminated with an infected patient's blood can transmit more than 20 diseases, including hepatitis B, hepatitis C and human immunodeficiency virus (HIV). Because of this transmission risk, sharps injuries can cause worry and stress to the many thousands who receive them.

Sharps is the collective name for needles, blades and other medical instruments that are necessary for healthcare and cause injury by cutting or pricking the skin. Where a sharp instrument injures a person by penetrating the skin, this is called a percutaneous injury.

The HSE recommends that if you receive a sharps injury, you should:

- encourage the wound to gently bleed, ideally holding it under running water;
- wash the wound using running water and plenty of soap;
- avoid scrubbing the wound while you are washing it;
- be sure not to suck the wound;
- dry the wound and cover it with a waterproof plaster or dressing;
- seek urgent medical advice from your occupational health service as effective prophylaxis is available; and
- report the injury to your employer.

The main risk from a sharps injury is the potential exposure to infections such as blood-borne viruses from a blade or needle sharp contaminated with blood or a bodily fluid from a patient. The blood-borne viruses of most concern are:

- hepatitis B (HBV);
- hepatitis C (HCV); and
- human immunodeficiency virus (HIV).

Health and Safety (Sharp Instruments in Healthcare) Regulations 2013

In common with other health and safety risks, the law applies as it does to other risks from work activities. However, to minimise the risk of injury from sharps, the EU introduced Council Directive 2010/32/EU on the prevention of sharps injuries in the hospital and healthcare sector. Many of the requirements contained in the directive already formed part of health and safety law in the UK. The remaining requirements were implemented in the Health and Safety (Sharp Instruments in Healthcare) Regulations 2013.

The regulations apply only to employers, contractors and workers in the healthcare sector. NHS trusts and boards, independent healthcare businesses and other employers whose main activity is the management, organisation and provision of healthcare will be subject to the regulations.

Activity 14.6 Research

Complying with the Health and Safety (Sharp Instruments in Healthcare) Regulations 2013

The HSE has produced a health services information sheet on the Health and Safety (Sharp Instruments in Healthcare) Regulations 2013 to provide guidance on how to comply with the regulations.

Download the information sheet from: www.hse.gov.uk/pubns/hsis7.pdf

In groups, consider how far the placement areas you have worked in have complied with the requirements of the regulations, and what – if anything – they need to do to improve compliance with the 2013 regulations.

As this is for your own observation and experience, there is no outline answer at the end of the chapter.

Health and Safety Executive inspection initiative

The HSE, as the organisation that polices health and safety laws in the UK, completed an inspection initiative aimed at gauging compliance with regulations seeking to prevent injuries from healthcare sharps in the NHS. Inspections were conducted in 40 NHS organisations across England, Scotland and Wales (HSE, 2016).

The main focus of the HSE inspection initiative was to gather evidence to assess compliance with the Health and Safety (Sharp Instruments in Healthcare) Regulations 2013 (HSE, 2016). Of the 40 organisations inspected, some 34 were in breach of the 2013 regulations. These breaches were mainly in relation to the requirement for the safe use and disposal of sharps under regulation 5, information and training under regulation 6, and arrangements in the event of an injury under regulation 7.

Breaches in relation to the use and disposal of medical sharps included the following:

- A general failure to use safer sharps where reasonably practicable, or inconsistent use of safer sharps across the organisation. Initial reviews of sharps were often undertaken, but this was not followed through over time or across the organisation, or employees were not represented on the steering group.
- Some cases where inspectors found no sharps prevention strategy in place or organisations had failed to provide needles with safety mechanisms that were readily available, such as hollow-bore hypodermic needles. There was still

widespread use of non-safe devices, including scalpels, winged IV cannulas and other sharps.

- Evidence of non-safe and safe sharps being stored together, leading to confusion for staff, who were unsure which item to use.
- The need for better communication with procurement to ensure that only safer sharps were purchased and available, where reasonably practicable.
- A number of instances where the sharps bins were at a low level and within reach of children, the temporary closures not being used, and sharps bins not located at point of use.
- Used needles observed were left on a trolley or tray rather than being disposed of in a sharps bin.

Reporting accidents and incidents

Reporting accidents and incidents at work is an essential component of monitoring the effectiveness of health and safety measures, as well as preventing the recurrence of an incident. In addition to local NHS trust accident reporting procedures, there is a legal requirement to report certain categories of accidents that occur within the workplace to the HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

Accidents at work are only reportable if they arise out of, or in connection with, work. There are different categories of accidents, including:

- **Death or major injuries:** when a member of staff or a patient is killed or suffers a major injury (including injuries sustained as a result of physical violence) while working.
- **Injuries that last over three days:** when accidents (including acts of physical violence) result in the injured person being away from work or unable to perform their normal duties for more than three days (including non-working days).
- **Diseases:** where a doctor notifies the trust in writing that an employee is suffering from a disease specified in regulations and linked with a workplace activity.

Reportable diseases include:

- occupational dermatitis;
- occupational asthma or respiratory sensitisation as a result of exposure to chemical substances;
- infections such as hepatitis, tuberculosis, legionella and tetanus; and
- infections reliably attributable to working with biological agents – exposure to blood or body fluids or any potentially infective material.

Dangerous occurrences

Dangerous occurrences or near misses must also be reported. These are events that may not result in a reportable injury, but have the potential to do significant harm. In the health service, reportable occurrences would include:

- collapse, overturning or failure of load-bearing parts of lifts and lifting equipment, such as a hoist;
- explosion, collapse or bursting of any closed vessel or associated pipework, such as an autoclave;
- electrical short circuit or overload causing fire or explosion;
- explosion or fire causing suspension of normal work for over 24 hours; and
- accidental release of any substance that may damage health.

Manual handling

Musculoskeletal injury, particularly back injury, is one of the most common causes of incapacity among nurses. The charity BackCare (2011) estimates that some 3,600 nurses have to retire each year because of back injuries, with a further 80,000 estimated to have hurt their backs. The HSE showed that, from 1992 to 1995, some 14,000 manual handling accidents were reported in the NHS, with 60 per cent of these involving the handling of patients (HSE, 2002). The National Audit Office found that back injury forms one-third of all reported injuries in the NHS and claimed that only 42 per cent of back injury is actually reported (NAO, 2003). From 1 April 2009 to 31 March 2019, NHS Resolution was notified of 4,733 claims relating to manual handling. It settled 2008 claims and paid £57.1 million in damages. Back injuries accounted for 45 per cent of the claims (NHS Resolution, 2020).

Reducing the risk of injury

The Management of Health and Safety at Work Regulations 1999 require employers to make an assessment of the risks to the health and safety of their employees and others they have contact with at work. The regulations further require that protective and preventative measures be put in place to avoid such risks.

The Manual Handling Operations Regulations 1992 deal specifically with the manual handling of loads. Regulation 2(1) defines manual handling as:

any transporting or supporting of a load (including the lifting, putting down, pushing, pulling, carrying or moving thereof) by hand or by bodily force. A load is defined as including any person and any animal.

It is clear that the scope of the regulations includes the lifting and moving of patients by nursing staff.

The Manual Handling Operations Regulations 1992, regulation 4, places a duty on employers to avoid hazardous manual handling operations so far as is reasonably practicable. Where this cannot be avoided, the regulation requires an assessment of the manual handling operation and that steps be taken to reduce the risk of injury to the lowest level that is reasonably practicable. Particular consideration should be given to

the provision of mechanical assistance, such as hoists, but where this is not reasonably practicable, employers should explore improvements to the task, the load and the working environment.

Both the general duty to protect the health and safety of employees and the specific duty to reduce risks to health due to the manual handling of loads apply to the NHS, and the NHS and primary care trusts have felt the heavy cost of breaching that duty.

Case study 14.9 Compensation for breaching a statutory duty, causing back injury

In *Knott v Newham Healthcare Trust* [2003], the Court of Appeal upheld an order for the award of £414,000 to a nurse who had injured her back due to the trust's inadequate arrangements for lifting. The court found that no real steps had been taken to reduce risk of injury and that the trust was in breach of its statutory duty under the Manual Handling Operations Regulations 1992.

The high cost of awards, and similarly high legal costs, have reinforced the duty of NHS trusts to protect the health and safety of their employees.

No-lift policies

The great majority of trusts now implement manual handling procedures through a no-lift policy. Tracy and Ruzsala (1996) suggest that the no-lift policy is the only means of reducing injury when handling patients. This view is echoed by the RCN, which in its *Code of Practice for Patient Handling* argues that hazardous manual handling should be eliminated in all but exceptional or life-threatening situations (RCN, 2002). NHS trusts and unions representing staff in the health service see the use of a no-lift policy as the key tool in reducing manual handling injuries. Instead of lifting manually, these policies require that the great majority of patient lifting is achieved by mechanical means.

Activity 14.7 Evidence-based practice and research

No-lift policies

Before reading this section, read the manual handling policy of the NHS trust that you attend for clinical practice. Note the requirements of the policy. Does it allow any form of lifting or moving of patients by manual means?

An outline answer is given at the end of the chapter.

The meaning of 'reasonably practicable'

Despite the liability NHS trusts face under statutory health and safety provisions, the duty is not absolute. The Health and Safety at Work etc. Act 1974 and its regulations only require the duty to be carried out so far as is reasonably practicable.

The meaning of this phrase was considered by the Court of Appeal in *Edwards v National Coal Board* [1949]. Lord Justice Asquith held that 'reasonably practicable' did not mean physically possible. NHS trusts are not required to spend all their funds on ensuring the safety of staff. Rather, there is a narrower requirement to balance the likelihood of the risk occurring against the cost in terms of money, time and trouble in averting the risk. In manual handling terms, this has generally been considered to be balancing the risk of injury to staff against the cost and availability of suitable equipment. The rights and preferences of patients were considered secondary to the primary duty of protecting the health and safety of staff. Under no-lift policies, patients would not be moved or lifted if manual handling was assessed as hazardous and suitable equipment was not available.

Activity 14.8 Evidence-based practice and research

The East Sussex case

To assist you in applying the legal concepts introduced in the next section of the chapter, download and read *R (on the application of A and Others) v East Sussex County Council and Another* [2003] from www.bailii.org/ew/cases/EWHC/Admin/2003/167.html

In a group, discuss the facts of the case and whether you agree with the outcome of the case.

An outline answer is given at the end of the chapter.

Since the introduction of the Human Rights Act 1998, however, the High Court has revisited the interpretation of 'reasonably practicable', and now requires the rights of patients to be considered when assessing moving and handling needs.

Duty to the patient

At common law, patients are owed a duty of care that requires health professionals meet the needs of their patients in accordance with a standard accepted by a responsible body of professional opinion and which stands up to logical analysis (*Bolitho v City and Hackney HA* [1998]). Meeting this duty may require the manual handling of patients even where there is a risk of injury.

The common law duty of care requires that a person whose job includes lifting people accepts a greater risk than those whose handling duty is restricted to inanimate objects. When working in healthcare settings, the care of patients gives rise to an inherent need for some manual handling to take place.

Case study 14.10 No compensation for back injury sustained at work

In *King v Sussex Ambulance NHS Trust* [2002], an ambulance man failed in his claim for compensation for an injured back caused by lifting a patient downstairs with a colleague. The Court of Appeal held that the method to be adopted when moving and handling a person had to be appropriate. In judging what is appropriate, the court requires that account be taken of the circumstances of the case having regard not only to the medical needs of the patient, but also to their wishes and feelings.

In this case, the Court of Appeal was clear that the ambulance trust's duty to the patient required that she be removed to hospital. The limited availability of suitable equipment meant there was little the trust could do other than allow the manual lifting of the patient down the stairs. This was a hazardous lift and a career-ending injury occurred. The court held, however, that there was no breach of the Manual Handling Operations Regulations 1992 or negligence on behalf of the trust.

Chapter summary

- Some 1.7 million people are employed by the NHS, and ensuring the health and safety of employees is essential to the efficient delivery of healthcare.
- The Health and Safety Executive estimates that absence in the NHS costs some £1 billion annually.
- Patients are placed at risk of injury if appropriate safety measures are not taken.
- The basis of health and safety law in the UK is the Health and Safety at Work etc. Act 1974.
- An employer has a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees and any others who may be affected by the undertaking.
- An employee, while at work, has a duty to take reasonable care of their own health and safety and that of any other person who may be affected by their acts or omissions.
- The Health and Safety at Work etc. Act 1974 is supplemented by a wide range of secondary legislation in the form of regulations that focus on specific areas of workplace health and safety (see Table 14.1, page 342).
- Employers and staff must work together to ensure effective implementation of health and safety measures.
- The Health and Safety Executive requires workplace health and safety to be managed methodically to ensure that risks are minimised.

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- There is a legal duty to perform risk assessments under the provisions of the Management of Health and Safety at Work Regulations 1999.
- The Control of Substances Hazardous to Health Regulations 2002 control exposure to hazardous substances that arise out of work.
- It is a legal requirement to report certain accidents that occur in the workplace to the Health and Safety Executive under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.
- Musculoskeletal injury, particularly back injury, is one of the most common causes of incapacity among nurses.
- The Manual Handling Operations Regulations 1992 deal specifically with the manual handling of loads.
- There will be circumstances where the risk to the patient, if not lifted, will override the nurse's ordinary health and safety concerns, even where manual handling would be considered hazardous.
- In the case of hazardous handling situations, manual handling will be the exception rather than the rule.

Activities: brief outline answers

Activity 14.1 Team working (page 337)

Nurses

Your list should include:

- musculoskeletal disorders;
- stress;
- violence; and
- slips and trips.

Patients

Your list should include:

- medication errors;
- treatment errors;
- falls;
- violence;
- poorly maintained equipment;
- human error;
- fire; and
- hospital-acquired infections.

Activity 14.2 Critical thinking (page 340)

Your list should include:

- wearing appropriate personal protective equipment;
- regular attendance at health and safety training;

Health and safety

- complying with health and safety policies for the NHS trust;
- reporting hazards and incidents promptly;
- seeking assistance when necessary; and
- working with the employer to improve health and safety.

Activity 14.3 Team working (page 344)

Your list detailing the training you have received should coincide with the main hazards faced by NHS staff as identified by the HSE. Training should therefore include moving and handling loads, fire training, prevention of violence, and breakaway training and managing stress.

Activity 14.7 Evidence-based practice and research (page 352)

To be lawful, a no-lift policy should allow lifting or moving by manual means where the life of a patient is at risk, where a patient is likely to face inhuman or degrading treatment, or where it is necessary to maintain dignity or contact with the community.

Activity 14.8 Evidence-based practice and research (page 353)

The case is an interesting analysis of health and safety in nursing and of no-lift policies in particular. It does raise questions about the rights of the nurse compared with the rights of the patient. Should you be required to put yourself at risk of injury to preserve the human rights of a patient?

Further reading

For a fuller discussion of the health and safety risks to staff, we recommend:

National Audit Office (NAO) (2003) *A Safer Place to Work: Improving the Management of Health and Safety Risks to Staff in NHS Trusts*. London: NAO.

Useful websites

www.npsa.org.uk The National Patient Safety Agency leads and contributes to improved, safe patient care by informing, supporting and influencing the health sector.

www.hse.gov.uk The Health and Safety Executive's role is to prevent death, injury and ill health to those at work and those affected by work activities, including in the health service. It provides a wide range of information about health and safety on its website.

https://press.hse.gov.uk For information about health and safety issues/incidents investigated by the HSE, prosecutions, statistics and other information.