

# Medical Ethics Today

The BMA's Handbook  
of Ethics and Law

British Medical Association  
Ethics Department

THIRD EDITION



BMA 

 WILEY-BLACKWELL

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# Medical Ethics Today The BMA's Handbook of Ethics and Law

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Third Edition

Project Manager

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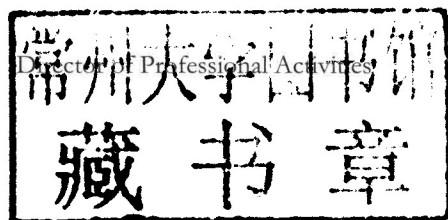
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Third Edition

Information about major developments since the publication of this book may be obtained from the BMA's website or by contacting:

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# Directives and conventions

Page numbers are shown in **bold**

Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the member states relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use **586, 607**

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use **575, 787**

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time **23, 864, 877**

Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells **313, 333**

Directive 2004/24/EC of the European Parliament and of the Council of 31 March 2004, amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use **787**

Directive 2008/142/EC of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare **782, 840**

European Convention for the Protection of Human Rights and Fundamental Freedoms **110, 112, 132, 146, 191, 197, 269, 273, 279, 280, 317, 318, 444, 470, 612, 671, 676, 698, 704, 706, 709, 831, 839**

United Nations Convention on the Rights of the Child 1989 **146, 726**

United Nations Convention on the Rights of Persons with Disabilities 2006 **95**

United Nations International Covenant on Civil and Political Rights 1966 **8, 650**

United Nations International Covenant on Economic, Social and Cultural Rights 1966 **8**

United Nations Universal Declaration of Human Rights 1948 **8**

# Where to find legal references online

All UK legislation since 1988, and some from before that date, is available on the Government's legislation website at: [www.legislation.gov.uk](http://www.legislation.gov.uk). Some statutory instruments are also available on this site.

Selected judgments from UK Courts, the European Court of Human Rights and the European Court of Justice are available from the British and Irish Legal Information Institute at: [www.bailii.org](http://www.bailii.org)

Selected legal judgments, including Supreme Court judgments, are available on the Court Service website at: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

House of Lords' judgments delivered between 14 November 1996 and 31 July 2009 are available on the House of Lords website at: [www.publications.parliament.uk](http://www.publications.parliament.uk) (Thereafter see the Court Service website for judgments from the Supreme Court.)

In addition, a number of commercial companies provide online access to legal judgments.



# Medical Ethics Committee

A publication from the BMA's Medical Ethics Committee (MEC). The following people were members of the MEC for one or both of the two committee sessions this book was in preparation.

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# Preface to the third edition

This is the BMA's handbook of ethical advice. It reflects the fact that doctors in England, Scotland, Wales and Northern Ireland work in separate healthcare systems with different administrative arrangements and, in some cases, different legislation. The period within which the book was drafted (2010–2011) saw proposals for considerable NHS change and, at the time of writing, it is not clear how these will develop. Our aim throughout is to provide advice which is practical and relevant to doctors' daily lives and so, while recognising this is a time of flux and some uncertainty, the book sets out the law and best practice at the time of drafting. It also flags up, where possible, the likely direction of future change. More information is available on the BMA's website and we have identified, in each chapter, other sources of ethical and medico-legal guidance.

The very first BMA ethics handbook appeared in 1949. Every subsequent version has increased the detail and practical orientation of the advice, including relevant aspects of law. This is the third update of the version called *Medical Ethics Today*, first published in 1993. Since then, much has changed within the profession and society. New challenges, or new twists on old dilemmas, have arisen. Some reflect developments within the health service, such as the challenge to ensure equity for patients as NHS services undergo radical change. Some echo the altered expectations of doctors and patients as healthcare is increasingly seen from a consumerist perspective, within which its role is partly about furthering patients' personal goals, through cosmetic and lifestyle aids. Other dilemmas highlight apparent differences of views between many doctors and their patients on issues such as students' reliance on drugs to enhance cognitive functioning or requests for assisted dying.

Most issues in this book are not entirely new but some broad attitudinal changes in society and the profession need to be reflected, as well as the practical changes since the last edition. Doctors now have to prove their competence in medicine and decision making through revalidation at more stages of their careers. They are exhorted to combine traditional professional values with an ability to meet expanding patient expectations. In the past, doctors based their decisions on conscience, intuition, received wisdom and codes of practice. Now they need to use reason, analysis and knowledge of the law. They should be able to explain and justify their decisions to patients, colleagues, the media, regulators and the courts. An awareness of ethics is central to this process and also important in doctors' appraisal and revalidation. This book is designed to provide that background knowledge.

Through its confidential advice service for its members, the BMA remains aware of the changing ethical dilemmas confronting the profession. BMA policy on controversial subjects is thrashed out in debate at the annual representatives meeting (ARM) by members' representatives. Briefings and background data to the discussions are provided by the BMA's Medical Ethics Committee (MEC): a multidisciplinary group combining clinical, legal, philosophical, ethical and theological expertise. All BMA ethics publications are reviewed by MEC members, other BMA committees and a supervisory Board of Professional Activities. These bodies supply expert analysis, practical experience and intellectual rigour. BMA guidance and discussion papers have been quoted approvingly by courts, Parliament and policy-making bodies.

Among general trends since the previous version of this book, the courts have continued to increase their role in resolving medical cases. Such precedent judgments provide useful

guidance, much of which is included throughout the book. Devolution has introduced many variations in practice and guidance throughout the UK. Its impact on statute law and quasi-law, such as NHS circulars and executive letters, is also reflected here. Charting trends which develop differently in the devolved nations, however, inevitably leads to some repetition in sections of the book dealing with issues, such as mental capacity.

Patients and the public generally are better informed than in the past about their rights and choices in medicine. More sources of information are open to them. The emphasis on patient choice has continued to increase and more recognition is demanded for the views of marginalised populations. Older people are demographically more important and feature more in terms of resource allocation, service planning and research. Patient confidentiality – a staple of professional codes since Hippocrates – has frequently been revisited and redefined in recent years to meet the needs of the electronic age and the ever growing requirement for data for research and administrative purposes. There is more awareness of cultural and religious diversity – among patient populations and also among health professionals.

Issues of rationing and commercialisation of the health service are ever more challenging in the midst of organisational change. Public health ethics increasingly commands attention, including debate about whether patients should be penalised for rejecting immunisation, for example, or offered rewards for taking positive steps to improve their health. Cross-border healthcare is a growing phenomenon which can raise some difficult ethical and practical issues as some patients choose to bypass UK rules and travel abroad for services such as assisted dying or fertility treatment using anonymous or paid gamete donors.

Most of the ethical issues discussed in the following chapters have arisen in enquiries submitted to the BMA by its members. They need a prompt workable solution for an immediate case and so much of the book focuses on practical responses to common questions but reference to philosophy and law is essential as background. Abortion, embryo research and euthanasia, for example, raise weighty moral issues that should be explored even though the actual procedures are regulated by law so that most questions about what is permissible can be answered briefly. Even superficially simple queries, such as how much information to give a patient, or whether children can choose treatment for themselves, cannot be answered fully without mentioning how legal cases and ethical discussions influence medical practice and vice versa.

Although ethics is more firmly embedded now in medical education and today's doctors and students are probably more familiar than previous generations with the principles, applying them to changing circumstances can be challenging. In addition to the guidance provided here, the BMA provides an advice line for members who wish to talk through specific problems and a range of detailed guidance notes on law and ethics on its website at: [www.bma.org.uk/ethics](http://www.bma.org.uk/ethics).

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