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Abstract

A qualitative study with an exploratory, descriptive and documentary design that was conducted with the objective of identifying the elements to constitute a method for the analysis of accusations of and proceedings for professional ethics infringements. The method is based on underlying elements identified inductively during analysis of professional ethics hearings judged by and filed in the archives of the Regional Nursing Board of Santa Catarina, Brazil, between 1999 and 2007. The strategies developed were based on the results of an analysis of the findings of fact (occurrences/infractions, causes and outcomes) contained in the records of 128 professional ethics hearings and on the structural elements (statements, rules and practices) identified in five example professional ethics cases. The strategies suggested for evaluating accusations of ethics infringements and the procedures involved in deliberating on ethics hearings constitute a generic proposal that will require adaptation to the context of specific professional ethics accusations.

Keywords

Ethics commission, moral deliberation, nursing ethics

Introduction

The daily routines of health professionals expose them to moral conflicts that demand reflection, analysis of the situation and decision making. The decisions that are taken are steeped in subjective elements, beliefs, values, principles and technical knowledge and very often do not prove to be the best choices when such conflicts are assessed in the light of aspects other than those taken into consideration by the person who actually analyzed them.

In Brazil, failures of nursing ethics are often discussed between the person who caused the event, the person affected by it and the team leader. Such issues may also be referred for the attention of the Nursing Ethics Commission at the institution where the event took place, resulting in educational activities to avoid repeat occurrences, or they may even be referred to the Regional Nursing Board as accusations of ethics

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infringements. These accusations may then evolve into formal professional ethics hearings, if it is considered that ethics infractions have taken place.

Nursing ethics infractions are harmful events caused by nursing professionals and can be the result of a lack of respect for patients, for colleagues or for the workplace. These events, which can contribute to compromising the well-being of patients or of other health professionals or even lead to their harm, may also be the result of a lack of attention, or a lack of the dexterity, skill or technical knowledge needed to carry out a given nursing procedure.¹

Moral judgments must be validated by good reasons and an impartial consideration of the interests of all persons involved. To the greatest extent possible, emotions should be guided by rational arguments, which can be provided by opposing points of view. Morality is a question of consulting reason and, under all circumstances, the course of action that is correct morally is that for which the best reasons exist.²

Clinical bioethics has developed a series of methods for moral analysis that allow for rational, systematic and objective appraisal of the moral conflicts that arise in patient care, so that the decision taken will lead to the correct action. These models have been developed by European and North-American bioethicists, all of them offer roadmaps or methods for arriving at satisfactory results and they can be of great help to health professionals and Bioethics Committees, serving as a starting-point for training in the methodology of discussing cases.³

The discourse of professional ethics hearings is a privileged source of data for analyzing the moral content of problematic questions, judgments and deliberations involving professional practice. This content is legitimized in the actions and relationships of work and in the manner that decisions are deliberated upon and taken, all of which are active elements in the construction of a profession's moral identity. This article will present an analysis of this discourse that attempts to identify, among other features, the *Structural Elements* (statements, rules and practices) of this discourse, as being one expression of ethics in nursing practice. Structural elements are discursive elements; they are those components that shape a discourse and that include, are part of, or are founded on, tradition (that temporally support certain categories and resources), on logical and epistemological influences and on modes of communication.

In this context, the objective of this article is to work with data acquired by analyzing records of professional ethics cases heard by the Regional Nursing Board of Santa Catarina (COREN-SC – *Conselho Regional de Enfermagem de Santa Catarina*) from 1999 to 2007 to identify elements that will together provide the basis for a method for analyzing accusations of and proceedings for ethical infringements. This timeframe means that only those cases concluded by the end of data collection in October of 2009 were analyzed. The proposal of this article is to link the contributions of other methods of deliberation with the elements identified inductively through analysis of ethics proceedings.

This type of study is part of a movement to advance beyond an essentialist concept of care that is limited to the technical competence of actions and that works towards a commitment to self-criticism and to a philosophy that exposes the caring professions to a dialogue with society as a whole.⁴

Theoretical background

For this study we sought inspiration in the work of Michel Foucault who proposed the concept of discourse as a group of statements of relative unity for which the conditions of existence can be defined. Their unity can be based on an object, a given form, linkage or style, on the permanence of certain concepts and also on the identity of certain themes.⁵

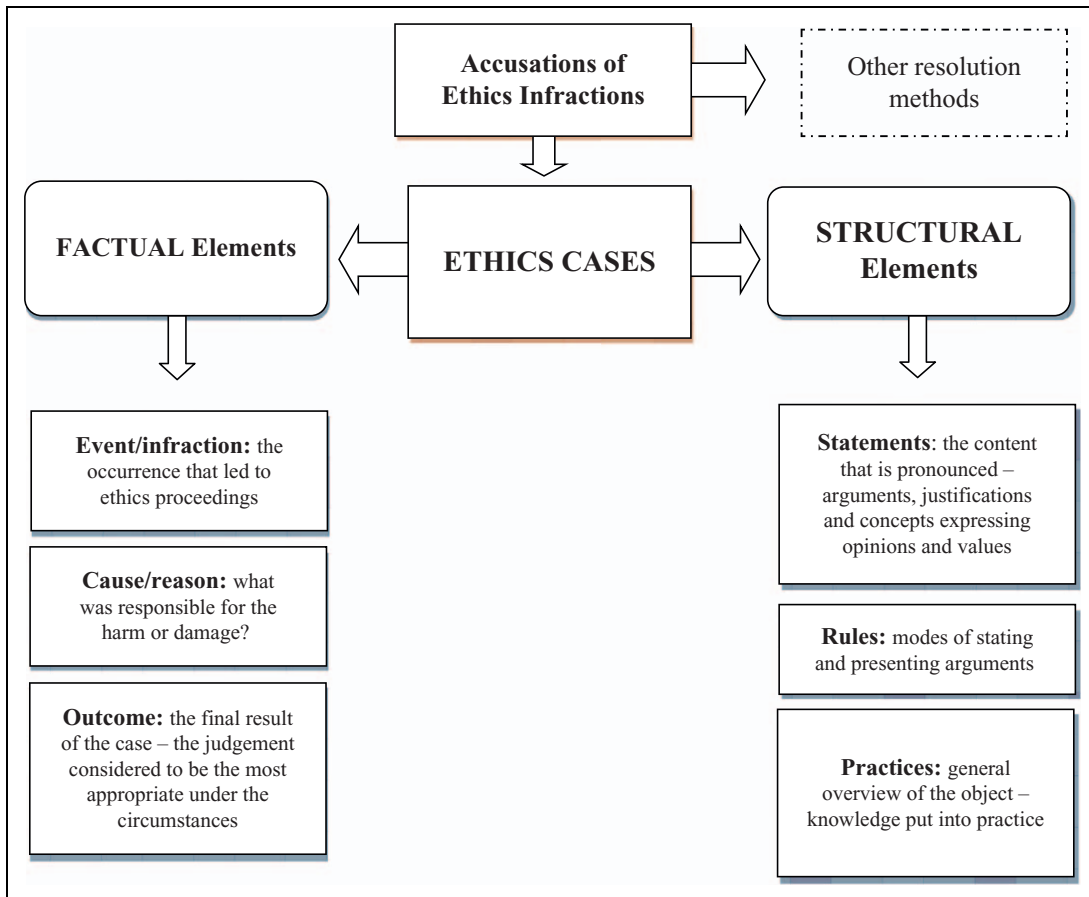


Figure 1. Schematic representation of the concepts explored in this study

The influence of this inspiration does not go so far as to imply the use of Foucault's archaeological or genealogical methods. Rather, we employed his concepts to make the statements, rules and practices explicit as the structural elements of the ethics cases being studied, in the sense that they are expressions of a discourse of professional ethics or of professionals' discursive practices that reveal the thinking, values and decisions that nursing professionals resort to when they analyze their own experiences or their problems in practice.

By *statements* we refer to the actual content uttered (i.e. the arguments, justifications and concepts that express values and judgments together with their grounds of justification). Within the category of *rules* the intention is to identify modes of utterance, of presentation of arguments and of logical constructions that come to be a precondition of the legitimacy of the content uttered. Finally, under the heading of *practices*, the aim is to achieve a synthesis that connects all elements and that provides a general overview of the object (ethics cases in general, rather than individual hearings) in its capacity to *speak to* and *speak about* nursing – basically its ability to become practice or to become knowledge put into practice.

Figure 1 above is a graphical illustration of the concepts explored in this study.

Within the perspective adopted, our understanding of the content and procedural aspects of nursing board ethics hearings is not limited to a simple delineation of their causes and results, but also envelopes interconnected elements of theoretical and methodological interpretation that are of relevance to a critical examination of the references to which the profession resorts when justifying its moral deliberations. Furthermore, the approach also allows for the possibility that new references will emerge, both in the concrete sense of demands on decision making and of referral of cases and as part of a much-needed refinement of the educational function of Nursing Ethics Commissions (NEC) in healthcare institutions faced with the challenges of improving the ethical competence and training of nursing professionals.

In order to analyze discourse within Foucault's framework it is necessary to account for the historical relationships and concrete practices that are immersed within the discourse. The perspective assumes that there is nothing behind the curtains or beneath the floor, but that there are statements and relationships that the discourse itself sets in motion. This is an investigative method that does not describe what is behind texts and documents (i.e. what they mean), but what the conditions of existence are for a given discourse, statement or group of statements, investigating why a given singularity occurs in a particular place and not under other conditions.⁶

Methods

This was a qualitative study with an exploratory, descriptive and documentary design that was undertaken in conjunction with the Regional Nursing Board of Santa Catarina, Brazil, between June and October of 2009. A total of 128 nursing board ethics hearings, related to the period between 1999 and 2007 and concluded and filed in the archives, were taken as the instrument for a critical examination of the elements of professional discourse used to justify moral deliberations.

Once the research project had been approved by the Human Research Ethics Committee at the Universidade Federal de Santa Catarina, under Protocol no. 141/09 FR– 261865, data were collected in situ from the archives of the local authority (Florianópolis, Santa Catarina, Brazil), more specifically from the Ethics and Auditing Department, without removing any documents and in accordance with a Conditions of Data Use Agreement. All procedures were designed to comply with Brazilian guidelines and directives governing research involving human beings. The privacy and confidentiality of data was respected at all times and measures were taken to guarantee the anonymity of all of the people involved.

Data collection took a total of 200 hours between June and October of 2009. We analyzed 80 accusations that had been rejected and filed and 128 concluded professional ethics hearings. Convergence between the statements, rules and practices identified after analysis of five example cases led to the emergence of an empirical model of the analysis itself, an Analytical Model of the discourse in the nursing board ethics hearings, which in turn served as the basis for construction of a Deliberation Algorithm to guide analysis of accusations of and proceedings for ethical infringements.

Results and discussion

The five example cases, which were chosen to represent the professional discourse contained in the nursing ethics cases in terms of their structural elements, also illustrate the references to which the profession resorts in order to justify its moral deliberations. The example cases were selected according to the incidence of each type of accusation in the whole sample of ethics cases, as follows: 13.9% of the ethics cases mentioned an accusation of *professional ethical culpability*; 9.5% involved

Iatrogenic drug administration

Case Docket:

Description of accusation: Incorrect medication administered.

Accused: Nursing technician

Accuser: Hospital Nursing Ethics Commission

Accusation: A nursing technician administered a drug that she claims to have believed was the one prescribed by the treating physician. She administered a neuromuscular blocking agent that is used as a relaxant for short-duration anaesthesia instead of the hydrocortisone that had actually been prescribed. The patient suffered from sudden loss of consciousness, shortness of breath and muscle twitching, primarily around the chin. The patient received treatment promptly and recovered. The accused showed the treating team the label for the drug she had actually administered and stayed to help until the patient was transferred to another unit. She then went to the Nursing Station and cried for a long time; she was very upset. The patient did not wish to be involved in the hearing.

Outcome: Verbal warning for infraction of Articles 12 and 30 of the Nursing Professionals' Code of Ethics (CEPE *Código de Ética dos Profissionais de Enfermagem*, ratified by Federal Nursing Board Resolution 311/2007⁷): Art. 12 – Guarantee individuals, their families and the community nursing care free from harm caused by incompetence, negligence or carelessness. Art. 30 – Administering medication without knowledge of the drug's actions and without checking for the possibility of risks.

In the view of Brazilian law, the activities conducted by professionals working in healthcare institutions are considered risk activities because of the direct effects on individuals during administration of the chosen, and necessary, treatment. Nevertheless, despite the diversities and heterogeneity of the situations and despite the uncertainties that surround the work of health professionals, their actions create a risk to health or to life if they commit malpractice, compounded by inattention, carelessness or incompetence.⁸

When actions are taken without due observance of the principles of safety, the result may be iatrogenesis, which is defined as any healthcare procedure or treatment that leads to patient harm. The widening of the breadth of knowledge inherent to the practice of nursing, the fact that nursing actions are interdependent with doctors' actions, the increase in specific interventions and the nursing team's role in making it possible to fulfil many elements of medical prescriptions, all expose nursing professionals to the same risks as physicians in such situations.⁹

Iatrogenesis can be classified as active, being related to the risks caused by procedures or incorrect interpretation of information and characterizing imprudence or incompetence, or can be classified as the result of omission, being related to a health professional's failure to perform an action due to incorrectly assessing the risk of inaction, thereby characterizing negligence.¹⁰ Iatrogenic complications are a constant threat. Within the field of nursing, there is still a very long way to go and much effort and determination is needed to minimize the risks of care.

A number of factors are associated with the occurrence of iatrogenesis. Of note among these are the individual characteristics of the healthcare team members – lack of individual knowledge, lack of skill and competence, motivation or attitude, poor physical or mental health, inattention, distraction, stress and fatigue; the patients' characteristics and the number of interventions they need; factors related to teamwork, with

emphasis on communication; and factors related to the working environment, with emphasis on noise, physical working space, work overload and other factors.¹⁰

Drug administration is a complex activity that involves many different stages and professionals, from the physician's prescription, through dispensation by the pharmacist, to preparation, administration and patient observation (the last three tasks are all performed by the nursing team). In this context nursing professionals required to administer medication must act at all times with confidence and responsibility, ensuring the patient receives care without suffering harm caused by incompetence, negligence or imprudence.

Breakdown/failure of expected actions is manifest in concrete situations. Administration of drugs without observing the principles of safety, i.e. substitution of the correct medication for another with completely different effects (indications).

Potential errors should be analyzed and should be recorded as events (although separately from those errors that actually affected patients) in order to identify opportunities for preventing problems within the drug administration system before they take place. Identification of errors-in-potential should be a component of the hospital's routine quality control systems and improvement processes. Documenting cases in which people have prevented the occurrence of a drug administration error will help to identify deficiencies in the system and to reinforce the importance of control within the drug administration system.¹¹

The problem of human failure can be assessed from two different perspectives. The system-as-a-whole approach or the individual worker approach. When the individual worker approach is adopted, the focus is on individuals' errors, blaming them for forgetfulness, poor motivation, carelessness, negligence and imprudence, whereas, in contrast, the system-as-a-whole approach concentrates on the conditions in which individuals are working and attempting to construct defences to avert errors or attenuate their effects.¹² The individual components of a system must be well-adjusted for the whole to function correctly. Many of the errors committed by individual members of the nursing team are the result of a lack of a human resources policy that provides professional development, encourages teamwork and provides the appropriate conditions for workers to perform their roles.

When only the individual professional involved is considered to be responsible for a failure it is common to overlook the fact that they have a work overload that results in tiredness and inattention. This is why it is also necessary to review the organizational structure, the human resources policy and the objectives of the institution providing care.

In the particular ethics case presented here, the actions of the accused unfold within either *administrative* or *ethical* circumstances:

- *administrative circumstances:* patient safety; use of appropriate knowledge to conduct specific tasks, calling on training, experience and education; development and improvement of competencies.
- Competencies are a collection of human capacities such as knowledge, skills, behaviours and attitudes that explain high performance that is built on the foundation of people's intelligence and personalities; like an inventory of the resources they can call on. It is important to align competencies with the requirements of roles and positions.¹³ In order to ensure that the competencies of workers are in line with the functions that they perform, organizations must commit themselves to maintaining a professional development service that identifies individual workers' limitations and, which, as a consequence, is constantly bringing them up to date and training them further in order to contribute to reducing the occurrence of errors during professional practice. In the case discussed here, the nursing technician being accused stated that support from the institution had been lacking.
- *ethical circumstances:* commitment to healthcare; basing professional practice on technical, scientific and ethical knowledge. Article 12 of the Nursing Professionals' Code of Ethics, as ratified by Federal

Nursing Board Resolution 311/2007,⁷ states that it is the responsibility and duty of Nursing professionals to *Guarantee individuals, their families and the community nursing care free from harm caused by incompetence, negligence or carelessness*, while article 30 prohibits *Adminstrating medication without knowledge of the drug's actions and without checking for the possibility of risks*, both of which are applicable to this case.

- There is general recognition of the need for codes of ethics and for commitment to the principles that they embody. There is also an inherent responsibility to keep these codes relevant and up-to-date. Formal nursing education begins with a process of assimilation of the moral values and standards of nursing and should also reflect on the need for and commitment to ethical practices. Nurses must be able to work to resolve moral conflicts and to strive for the needs, interests and basic wellbeing of patients, families, the wider community and of the science and practice of nursing itself.¹⁴
- Ethical problems related to drug administration errors may need intervention from healthcare institutions' nursing ethics commissions, providing guidance to professionals involved in the event and cooperating with the professional development department in programs to update and capacitate the nursing team.¹⁵
- Failures of professional responsibility imply or demand investigations and pronouncements.

Who pronounces and what is the relationship between pronouncers. This case involved testimony from the nursing technician being accused, the nurse responsible for the unit in which the event occurred, a nursing auxiliary testifying for the accused, the nursing manager and the chairman of the institution's nursing ethics commission. There are hierarchical relationships between these pronouncers and each person defended their position within this hierarchy.

Before a sentence is handed down, an assessment is made of possible *mitigating or aggravating factors*. The professionals' discourse provided evidence that the following were considered to be factors mitigating the accused's conduct: the nursing technician had been subject to work overload (she was responsible for 10 internal medicine patients); she had accepted responsibility for her act and stayed at the patient's bedside providing care; the patient had recovered after the appropriate treatment had been given and did not suffer sequelae; the institution did not have a professional development policy; the accused had previously had a good professional record. The only aggravating factor identified was that the accused had not requested guidance from the nurse, who had been in the unit at the time, when in doubt about the patient's medication.

Structural elements of the case under analysis. Statements, rules and practices as an expression of discourse of professional ethics or of professional discursive practices.

Statements from the case. Change of medication without instructions from a doctor or nurse, leading to significant patient reaction – significant enough to require manual ventilation and oxygen. In this case iatrogenesis was associated with incompetence, since the nursing technician changed the drug and administered it in ignorance of its adverse reactions. The patient suffered significant adverse reactions and recovered after intervention by the medical and nursing teams. Despite being aware of what had happened, the patient did not wish to take part in any stage of the proceedings.

Rules from the case. The condition of legitimacy of the content uttered (the statement). The nursing technician did not consider the patient's safety when she changed the drug prescribed for one she had no knowledge of, without even asking the unit's nurse for advice. She infringed articles 12 and 30 of the Nursing Professionals' Code of Ethics.⁷

Practices. A synthesis that connects all of the elements together, providing a general illustration of the object (ethics cases), practice or knowledge put into practice. The following emerged as structural elements of the professional discourse: the failure in patient safety; the accused's technical unpreparedness for the role of drug administration; the failure to consider the nurse's role in managing and supervising nursing care. Work overload can lead to a mechanized style of practice and the absence of policies for managing risks and errors or of a professional development policy is related to technical failures and ethical problems within nursing care.

The statements, rules and practices of the professional discourse utilized within the nursing ethics cases are an expression of moral deliberation, related to a theoretical justification and a historical organization of nursing, and to its body of technical and scientific knowledge, its legislation, its professional code of ethics and its beliefs, values and principles.

Therefore, this study has identified the elements of a methodological framework for moral deliberation and/or for the systematization of the analysis of ethics infringement accusations and nursing board ethics hearings. The framework is constructed on the basis of the analytical model of the discourse recorded in the nursing board ethics hearings.

Moral deliberation takes place during ethics commission hearings whenever accusations or occurrences of nursing ethics infringement are analyzed. Federal nursing board resolution number 252 was passed on 2 April 2001, ratifying the Local Nursing Boards Ethics Disciplinary Procedure (*Código de Processo Ético das Autarquias Profissionais de Enfermagem*), which in turn sets out the process guidelines for ethics infringement proceedings and contains a systematized set of guidelines that regulate the way that regional nursing boards apply the Nursing Professionals' Code of Ethics (CEPE). The Ethics Disciplinary Procedure explicitly delineates all stages of the investigation of an ethics accusation including formal charges – if the CEPE has been infringed – the format of the proceedings and judgment in the first instance, the Federal nursing board appeals process and other issues related to prosecution of cases.

Notwithstanding, there is no single document that contemplates the full complexity of nursing practice. This being so, when nursing ethics commissions (NEC) are analyzing accusations, they sometimes find it difficult to make decisions; whether because of the subjectivity of the situation, because of lack of experience in conducting such proceedings or because of proximity to work colleagues and embarrassment caused by an unwillingness to compromise oneself and harm a colleague's career. Notwithstanding, once an Ethics Inquiry has been set up to investigate an accusation, NECs must assess the findings of fact armed with the impartiality necessary to make a fair decision and provide a fair hearing. Although it is known that people are unable to disengage themselves from their personal ethical values and positions, when making decisions the arguments that surround the findings of fact must be considered in a rational manner.

Our results show that when analyzing an accusation of ethics infringement it is necessary to take certain steps to ensure a fair and impartial assessment, guided by ethical principles, technical and scientific knowledge, the moral values set out in the profession's Code of Ethics and the legislation regulating professional conduct, since to deliberate is to prioritize one course of action over a number of other options as being the most appropriate choice available.

The following proposed course of action has emerged from this study:

- Definition of the accusation: assess the accusation and its consequences
- Definition of the pronouncers (those involved and their job titles) and of the elements to be investigated (causes, reasons, context)
- Request further information if there is not enough information to form an opinion
- Determination of the existence of evidence (or lack of evidence) of an ethics infraction, with reference to the Nursing Professionals' Code of Ethics
- Referrals: **At the healthcare institutions' Nursing Ethics Commission (NEC):** (1) reject the accusation if the Nursing Professionals' Code of Ethics has not been infringed; (2) suggest

changes in behaviour in cases in which education and information are sufficient to achieve a change in professional conduct; or (3) if there is evidence of an infraction of the Nursing Professionals' Code of Ethics, refer the accusation together with all of the findings of fact, the inquiry records and the NEC's findings to the Regional Board for evaluation of the possibility of making a formal charge of professional ethics infringement and holding a hearing. **At the Regional Nursing Board Ethics Commission (BEC):** follow steps (1) and (2) of the previous proposal, or (3) request that disciplinary proceedings be started, if there is evidence of an infraction of the Nursing Professionals' Code of Ethics.

- Delineation of the circumstances of the event – context, mitigating factors, aggravating factors (This is needed for the Commission of Inquiry's investigations and by the registrar of the ethics hearing).
- Evaluation and discussion of possible choices (reasons for each choice), of the values and principles at stake (legitimization of values and rules, convictions related to the profession and the preservation of human dignity), the conflicting forces in action (protection of the vulnerable, respect for human beings) and their capacity to legitimize rational and just arguments (the decision taken is founded on standardizing and coherent values and principles and is characterized as the best option – as a commitment made).
- Group discussion and evaluation of the decision taken (the most appropriate choice), reconciling it with possible consequences and future demands (such as the requirements of interventions or educational efforts, whether intrinsic or extrinsic to those involved in the decision). In this step the objective is to achieve an overview of the complexity of the ethical failure or breakdown, transcending the local context of the case.

Figure 3 below is a schematic synthesis of the proposed model of strategies for evaluating accusations of ethics infringements and of the procedures surrounding deliberations in ethics cases. The model presented here has similarities with classical models of moral deliberation.^{16,17} The diagram represents a generic proposal that will require adaptation to the context of specific professional ethics accusations or charges and to whether cases are being heard by the institutional Nursing Ethics Commission, the Regional Nursing Board Ethics Commission or the Federal Nursing Board Ethics Commission, and also for a variety of practical applications.

Conclusions

Identification of the structural elements of this professional discourse reveals its underlying elements, the relationships of nursing practice in ethical, administrative, legal, social and historical circumstances, since interdiscursivity or polyphony can be detected in each discourse; i.e. there are many voices within the same discourse: the legitimacy of the discourse's declared content, its arguments, justifications, judgments and values. This analysis makes it possible to connect all of these elements together in an empirical analytical model whose interest does not only lie in its function of revealing the intricacies of moral deliberation processes, but also in its capacity to provide a general overview of the object of study (ethics cases) and its ability to *speak to* and *speak about* nursing and to become practice or knowledge put into practice.

In proposing deliberation strategies for the analysis of accusations of ethics infractions and of actual ethics cases, it is understood that the greater the extent to which these strategies are based on the findings of fact, on the causes of ethical infractions and errors and on the reasons why they took place and the circumstances in which they took place, the greater the ability of Nursing Ethics Committees to fulfil their role as entities representing the Regional Boards inside healthcare institutions, their educational and consultative functions and their role as regulators of nursing professionals' professional and ethical conduct.

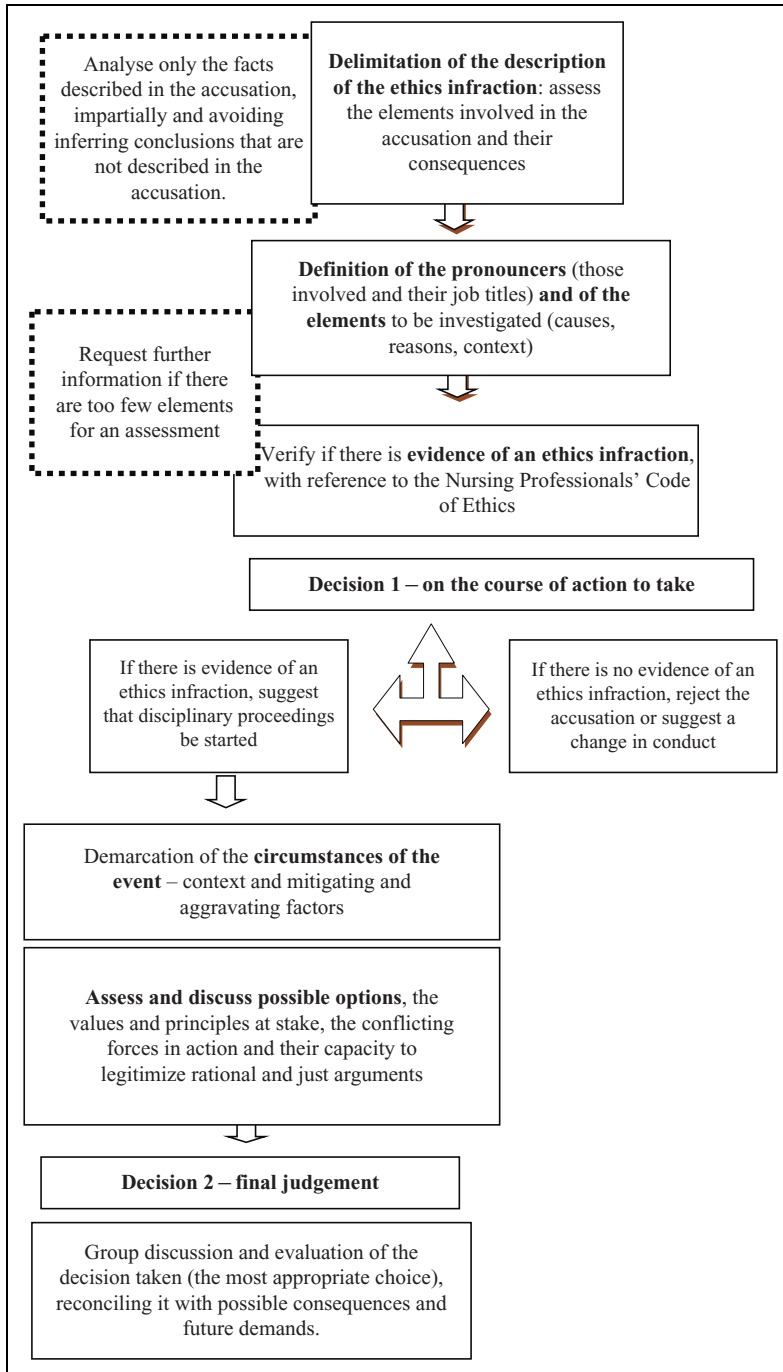


Figure 3. The elements of a methodological proposal for analysis of accusations of, and disciplinary proceedings for, ethical infringements

Methodological proposals, such as the one presented here, will only prove to be of utility if they have the effect of mobilizing new ways of thinking, new competencies and new individual and collective strategies for coping with or confronting ethical issues. Empirical research projects to investigate the concrete processes of moral deliberation are of fundamental importance to raising the visibility of the modes and nuances of moral deliberation in the face of problems as complex and diverse as those faced in the fields of practice. It is also important to reflect upon, and put into practice, models that have already been proposed, whether deductive or inductive, whether leaning towards theory or observation, in order to develop the capacity to link theory with practice, values with real circumstances and political agendas with pluralist positions. These challenges will yet demand major investments of academic, scientific, political and professional capital.

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Conflict of interest

The authors declare that there is no conflict of interest.

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