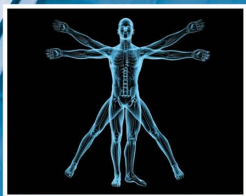


LAW & ETHICS

for Health Professions

NINTH EDITION



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Karen Judson | Carlene Harrison



Law & Ethics

for Health Professions

NINTH EDITION



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Karen Judson, BS
Carlene Harrison, EdD, CMA (AAMA)



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LAW & ETHICS FOR HEALTH PROFESSIONS, NINTH EDITION

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Karen Judson has taught college and high school sciences and grades kindergarten, one, and three. Judson has also worked as a laboratory and X-ray technician and completed 2 years of nursing while earning a degree in biology. Judson has also published numerous science and relationship articles and books for adult and young adult readers.

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Preface

Law and Ethics: For Health Professions explains how to navigate the numerous legal and ethical issues that health care professionals face every day. Topics are based upon real-world scenarios and dilemmas from a variety of health care practitioners. Through the presentation of Learning Outcomes, Key Terms, From the Perspective of . . . , Ethics Issues, Chapter Reviews, Case Studies, Internet Activities, Court Cases, and Videos, students learn about current legal and ethical problems and situations. In the ninth edition, material has been revised to reflect the current health care environment. As students progress through the text, they will get the opportunity to use critical thinking skills to learn how to resolve real-life situations and theoretical scenarios and to decide how legal and ethical issues are relevant to the health care profession in which they will practice.

New to the Ninth Edition

A number of updates have been made in the ninth edition to enrich the user's experience with the product, including revisions to most of the "From the Perspective Of ..." features in each chapter:

- Chapter 5, "Professional Liability," now includes the book's coverage of informed consent.
- Chapter 7, "Medical Records and Health Information Technology," provides more information about electronic health records and updated information about social media applications in health care.
- Chapter 10, "Workplace Legalities," contains the updated OSHA priorities.
- Chapter 11, "The Beginning of Life and Childhood," includes updated information about genetic testing.
- Chapter 13, "Stakeholders, Costs, and Patients' Rights," discusses the changing face of health care from a business perspective and includes a review of the basic types of insurance coverage. It also contains a discussion of patients' rights.
- All statistics and court cases have been updated, as well as content relevant to laws passed since the eighth edition.
- *Connect* has been updated to reflect updates in the chapters and feedback from customers. It contains all Check Your Progress questions, all end-of-chapter questions, additional Case Studies with related questions, and simple interactives.
- MHE Application-Based Activities are highly interactive, automatically graded online exercises that provide students a safe space to practice using problem-solving skills to apply their knowledge to realistic scenarios. Each scenario addresses key concepts and skills that students must use to work through and solve course specific problems, resulting in improved critical thinking and relevant workplace skills.
 - **Connect Law and Ethics for Health Professions Application-Based Activities: Video Cases**
 - Students watch different scenarios and are instructed on the different laws and ethical considerations that are relevant to those scenarios. Students apply their knowledge of the subject by answering periodic questions throughout each video.
 - For the 9th edition, 5 of the 13 videos contain brand-new scenarios.

For a detailed transition guide between the eighth and ninth editions of *Law & Ethics*, visit the Instructor Resources in *Connect*!

To the Student

As you study to become a health care provider, you have undoubtedly realized that patients are more than the sum of their medical problems. In fact, they are people with loved ones, professions, worries, hobbies, and daily routines that are probably much like your own. However, because patients' lives and well-being are at stake as they seek and receive health care, in addition to seeing each patient as an individual, you must carefully consider the complex legal, moral, and ethical issues that will arise as you practice your profession. And you must learn to resolve such issues in an acceptable manner.

Law & Ethics provides an overview of the laws and ethics you should know to help you give competent, compassionate care to patients that is also within acceptable legal and ethical boundaries. The text can also serve as a guide to help you resolve the many legal and ethical questions you may reasonably expect to face as a student and, later, as a health care provider.

To derive maximum benefit from *Law & Ethics*:

- Review the Learning Outcomes and Key Terms at the beginning of each chapter for an overview of the material included in the chapter.
- Complete all Check Your Progress questions as they appear in the chapter, and correct any incorrect answers.
- Review the legal cases to see how they apply to topics in the text, and try to determine why the court ruled as it did.
- Study the Ethics Issues at the end of each chapter, and answer the discussion questions.
- Complete the Review questions at the end of the chapter, correct any incorrect answers, and review the material again.

- Review the Case Studies, and use your critical thinking skills to answer the questions.
- Complete the Internet Activities at the end of the chapter to become familiar with online resources and to see what additional information you can find about selected topics.
- Complete the *Connect* assignments from your instructor, including any SmartBook modules assigned, as well as additional Case Studies and the Application-Based Activities (Video Cases).
- Study each chapter until you can answer correctly questions posed by the Learning Outcomes, Check Your Progress, and Review questions.

Instructor Resources

You can rely on the following materials to help you and your students work through the material in this book. All of the resources in the following table are available in the Instructor Resources under the Library tab in *Connect* (available only to instructors who are logged into *Connect*).

Supplement	Features
Instructor's Manual	Each chapter includes: <ul style="list-style-type: none"> • Learning Outcomes • Overview of PowerPoint Presentations • Teaching Points • Answer Keys for Check Your Progress and End-of-Chapter Questions
PowerPoint Presentations	<ul style="list-style-type: none"> • Key Concepts • Accessible
Electronic Test Bank	<ul style="list-style-type: none"> • Computerized and <i>Connect</i> • Word version • Questions are tagged with learning outcomes, level of difficulty, level of Bloom's taxonomy, feedback, topic, and the accrediting standards of ABHES and CAAHEP, where appropriate
Tools to Plan Course	<ul style="list-style-type: none"> • Transition Guide, by chapter, from <i>Law & Ethics</i>, 8e to 9e • Correlations by learning outcomes to ABHES and CAAHEP • Sample syllabi • Asset Map—a recap of the key instructor resources, as well as information on the content available through <i>Connect</i>

Want to learn more about this product? Attend one of our online webinars. To learn more about the webinars, please contact your McGraw-Hill Learning Technology Representative. To find your McGraw-Hill representative, go to www.mheducation.com and click "Get Support," select "Higher Ed," and then click the "GET STARTED" button under the "Find Your Sales Rep" section.

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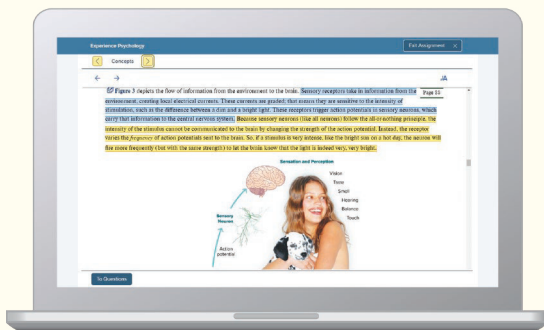
FOR INSTRUCTORS

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FOR STUDENTS

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"I really liked this app—it made it easy to study when you don't have your textbook in front of you."

- Jordan Cunningham,
Eastern Washington University



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The Connect Calendar and Reports tools keep you on track with the work you need to get done and your assignment scores. Life gets busy; Connect tools help you keep learning through it all.

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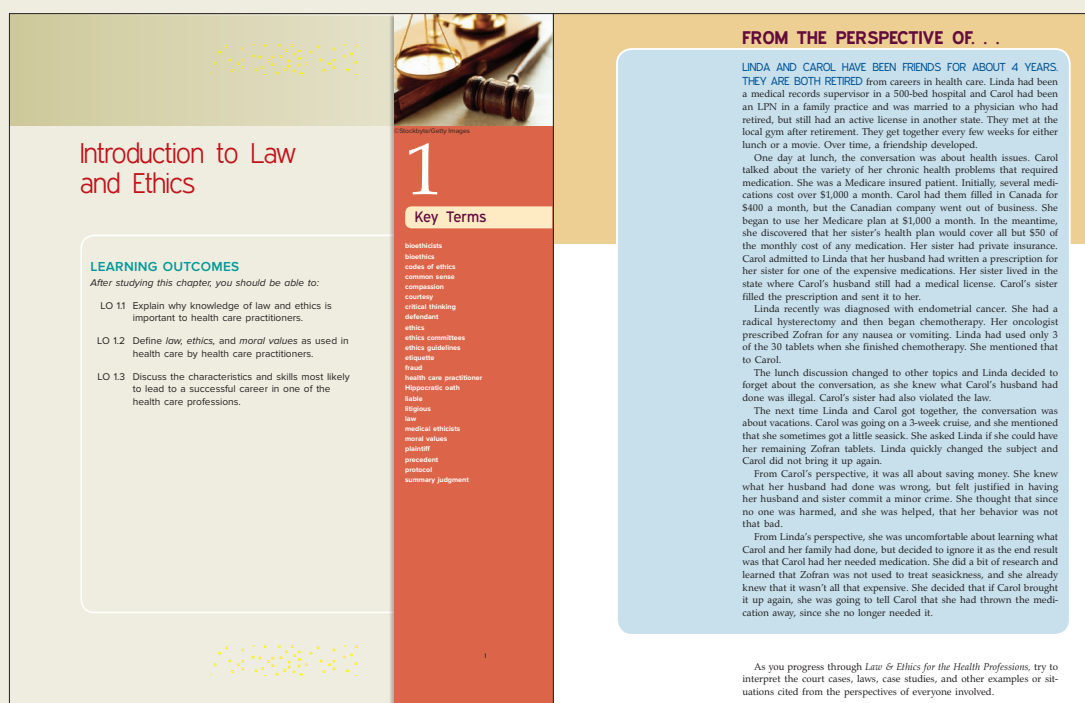
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Guided Tour

Chapter Openers

The **chapter opener** sets the stage for what will be learned in the chapter. **Key terms** are first introduced in the chapter opener so the student can see them all in one place; they are defined in the margins throughout the chapter for easy review, as well as in the glossary. **Learning Outcomes** are written to reflect the revised version of Bloom's taxonomy and to establish the key points the student should focus on in the chapter. In addition, major chapter heads are structured to reflect the Learning Outcomes, and the Learning Outcomes for easy reference. **From the Perspective of . . .** boxes illustrate real-life experiences related to the text. Each quotes health care providers as they encounter problems or situations relevant to the material about to be presented in the chapter.



The chapter opener for "Introduction to Law and Ethics" features a title at the top left. Below it, the "LEARNING OUTCOMES" section lists three objectives: LO 11 (explain why knowledge of law and ethics is important), LO 12 (define law, ethics, and moral values), and LO 13 (discuss characteristics and skills of health care professions). To the right, a "Key Terms" list includes bioethicists, bioethics, codes of ethics, common sense, compassion, courtesy, critical thinking, defendant, ethics, ethics committees, ethics guidelines, etiquette, fraud, health care practitioner, Hippocratic oath, liable, litigious, law, medical ethics, moral values, plaintiff, precedent, protocol, and summary judgment. An image of a gavel and scales is positioned above the key terms. On the far right, a "FROM THE PERSPECTIVE OF . . ." box contains a narrative about Linda and Carol, retired health care professionals, discussing health issues and medication. At the bottom right, a small note states: "As you progress through Law & Ethics for the Health Professions, try to interpret the court cases, laws, case studies, and other examples or situations cited from the perspectives of everyone involved."

COURT CASE 911 Operators Sued

In 2006, just before 6 p.m., a 5-year-old boy called 911. He told the 911 operator that his "mom has passed out." When the operator asked to speak to the boy's mother, he said, "She's not gonna talk." The operator scolded the boy and logged the call as a child's prank. Three hours later, the boy called 911 again. A different operator answered, and she also scolded the boy for playing a prank, but she did send a police officer to the boy's home. The officer discovered the boy's mother lying unresponsive on the floor and summoned emergency medical services. The EMS workers arrived 20 minutes later and determined that the woman was dead and had probably died within the past 2 hours.

The boy's older sister sued the two 911 operators on behalf of the dead woman's estate and on behalf of her son. The lawsuit alleged gross negligence causing a death and intentional infliction of emotional distress.

The 911 operators argued that they were entitled to government immunity, that they owed no duty to provide assistance to the woman who died, and that their failure to summon medical aid was not gross negligence.

A trial court and an appeals court found for the plaintiff, and the case was appealed to the Michigan Supreme Court, where in January 2012, the court denied further appeals.

Source: *Estate of Turner v. Nichols*, 807 NW2d 164, 490 Mich. 988 (2012).

Court Cases

Several **court cases** are presented in every chapter. Each summarizes a lawsuit that illustrates points made in the text and is meant to encourage students to consider the subject's relevance to their health care specialty. The legal citations at the end of each case indicate where to find the complete text for that case. "Landmark" cases are those that established an ongoing precedent.

Check Your Progress Questions

These questions appear at various points in the chapters to allow students to test their comprehension of the material they just read. These questions can also be answered in *Connect*.

Check Your Progress

1. Name two important reasons for studying law and ethics.
2. Which state laws apply specifically to the practice of medicine?
3. What purpose do laws serve?
4. How is the enforcement of laws made possible?
5. What factors influence the formation of one's personal set of ethics and values?
6. Define the term *moral values*.
7. Explain how one's moral values affect one's sense of ethics.

Chapter Summary

Learning Outcome	Summary
LO 1.1 Explain why knowledge of law and ethics is important to health care practitioners.	<p>Why study law and ethics?</p> <ul style="list-style-type: none">• Health care practitioners who function at the highest possible levels have a working knowledge of law and ethics.• Knowing the law relevant to your profession can help you avoid legal entanglements that threaten your ability to earn a living. Court cases illustrate how health care practitioners, health care facilities, and drug and medical device manufacturers can be held accountable in a court of law.• A knowledge of law and ethics will also help familiarize you with the following areas:<ul style="list-style-type: none">• The rights, responsibilities, and concerns of health care consumers• The legal and ethical issues facing society, patients, and health care practitioners as the world changes• The impact of rising costs on the laws and ethics of health care delivery
LO 1.2 Define law, ethics, and moral values as used in health care by health care practitioners.	

Chapter 2 Review

Applying Knowledge

LO 2.1

1. What is another term for your personal concept of right and wrong?
 - a. Utilitarianism
 - b. Beneficence
 - c. Moral values

Ethics Issues Introduction to End-of-Chapter Ethics Discussions

Learning Outcomes for the Ethics Issues Feature at the End of Each Chapter

After studying the material in each chapter's Ethics Issues feature, you should be able to:

1. Discuss current ethical issues of concern to health care practitioners.
2. Compare ethical guidelines to the law as discussed in each chapter of the text.
3. Practice critical thinking skills as you consider medical, legal, and ethical issues for each situation presented.
4. Relate the ethical issues presented in the text to the health care profession you intend to practice.

Health care practitioners are bound by state and federal laws, but they are also bound by certain ethical standards—both personal standards and those set forth by professional codes of ethics and ethical guidelines and by bioethicists. Many professional organizations for health care practitioners employ an ethics consultant who is available to speak with organization members who need help with an ethical dilemma. "We serve as a third party who can stand outside a situation and facilitate communication," says Dr. Carmen Paradis, an ethics consultant with the Cleveland Clinic's Department of Bioethics. At the Cleveland Clinic, ethics consultations are available to health care practitioners, patients, family members, and others involved with patient decisions.

Medical facility ethics committees can also serve as consultants. In larger health care facilities, such committees usually deal with issues that are not available, members of an ethics committee.

Case Studies

Use your critical thinking skills to answer the questions that follow each case study.

LO 2.3

Susan, a nursing student, is arguing with her friend Linda, also a nursing student, over the benefits of getting a flu shot.

"I'm not getting a flu shot this year," Linda declares. "I paid \$14 for one last year, and I still got sick. I had a horrible sinus infection that kept me out of school for days."

people in the clinic—especially those who would be immunized against

Internet Activities

LO 2.3

Complete the activities and answer the questions that follow.

25. Locate the Web site for the organization representing the profession you plan to practice. Check the organization's code of ethics. Does the code conform to the seven principles of health care ethics? Explain your answer.
26. Visit the Web site for the National Center for Ethics in Health Care at www.ethics.va.gov. In the list of resource publications, click on any of the subjects listed. Which link did you choose? How might these resources prove useful to you?

End-of-Chapter Resources

The **Chapter Summary** is in a tabular, step-by-step format organized by Learning Outcomes to help with review of the material. **Ethics Issues** are issues and related discussion questions based on interviews conducted with ethics counselors within the professional organizations for health care providers, as well as with bioethics experts. Each **Chapter Review** includes Applying Knowledge questions that reinforce the concepts the students have just learned. These questions can be answered in *Connect*. **Case Studies** are scenarios with exercises that allow students to practice their critical thinking skills to decide how to resolve the real-life situations and theoretical scenarios presented. **Internet Activities** include exercises designed to increase students' knowledge of the chapter topics and help them gain more internet research expertise.

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Karen Judson

Thank you to the editorial team and production staff at McGraw-Hill and all the reviewers and sources who contributed their time and expertise to making the ninth edition of Law & Ethics for Health Professions the best ever. Thank you, too, Carlene, for your hard work on this ninth edition.

Carlene Harrison

A big thank you to Karen Judson for getting me started on this marvelous adventure called textbook writing over 14 years ago.

To our reviewers, your contributions really make a difference. The editorial and production staff at McGraw-Hill did a great job. And last, to my husband, Bill, your support and love keep me going.

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Suggestions have been received from faculty and students throughout the country. This is vital feedback that is relied on for product development. Each person who has offered comments and suggestions has our thanks. The efforts of many people are needed to develop and improve a product. Among these people are the reviewers and consultants who point out areas of concern, cite areas of strength, and make recommendations for change. In this regard, the following instructors provided feedback that was enormously helpful in preparing the book and related products.

9e Technical Editing/Accuracy Panel

A panel of instructors completed a technical edit and review of the content in the book page proofs to verify its accuracy.

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Digital Tool Development

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Albany State University

Introduction to Law and Ethics

LEARNING OUTCOMES

After studying this chapter, you should be able to:

- LO 1.1 Explain why knowledge of law and ethics is important to health care practitioners.
- LO 1.2 Define *law*, *ethics*, and *moral values* as used in health care by health care practitioners.
- LO 1.3 Discuss the characteristics and skills most likely to lead to a successful career in one of the health care professions.

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1

Key Terms

bioethicists
bioethics
codes of ethics
common sense
compassion
courtesy
critical thinking
defendant
ethics
ethics committees
ethics guidelines
etiquette
fraud
health care practitioner
Hippocratic oath
liable
litigious
law
medical ethicists
moral values
plaintiff
precedent
protocol
summary judgment

FROM THE PERSPECTIVE OF . . .

LINDA AND CAROL HAVE BEEN FRIENDS FOR ABOUT 4 YEARS. THEY ARE BOTH RETIRED from careers in health care. Linda had been a medical records supervisor in a 500-bed hospital and Carol had been an LPN in a family practice and was married to a physician who had retired, but still had an active license in another state. They met at the local gym after retirement. They get together every few weeks for either lunch or a movie. Over time, a friendship developed.

One day at lunch, the conversation was about health issues. Carol talked about the variety of her chronic health problems that required medication. She was a Medicare insured patient. Initially, several medications cost over \$1,000 a month. Carol had them filled in Canada for \$400 a month, but the Canadian company went out of business. She began to use her Medicare plan at \$1,000 a month. In the meantime, she discovered that her sister's health plan would cover all but \$50 of the monthly cost of any medication. Her sister had private insurance. Carol admitted to Linda that her husband had written a prescription for her sister for one of the expensive medications. Her sister lived in the state where Carol's husband still had a medical license. Carol's sister filled the prescription and sent it to her.

Linda recently was diagnosed with endometrial cancer. She had a radical hysterectomy and then began chemotherapy. Her oncologist prescribed Zofran for any nausea or vomiting. Linda had used only 3 of the 30 tablets when she finished chemotherapy. She mentioned that to Carol.

The lunch discussion changed to other topics and Linda decided to forget about the conversation, as she knew what Carol's husband had done was illegal. Carol's sister had also violated the law.

The next time Linda and Carol got together, the conversation was about vacations. Carol was going on a 3-week cruise, and she mentioned that she sometimes got a little seasick. She asked Linda if she could have her remaining Zofran tablets. Linda quickly changed the subject and Carol did not bring it up again.

From Carol's perspective, it was all about saving money. She knew what her husband had done was wrong, but felt justified in having her husband and sister commit a minor crime. She thought that since no one was harmed, and she was helped, that her behavior was not that bad.

From Linda's perspective, she was uncomfortable about learning what Carol and her family had done, but decided to ignore it as the end result was that Carol had her needed medication. She did a bit of research and learned that Zofran was not used to treat seasickness, and she already knew that it wasn't all that expensive. She decided that if Carol brought it up again, she was going to tell Carol that she had thrown the medication away, since she no longer needed it.

As you progress through *Law & Ethics for the Health Professions*, try to interpret the court cases, laws, case studies, and other examples or situations cited from the perspectives of everyone involved.

1.1 Why Study Law and Ethics?

There are two important reasons for you to study law and ethics:

- To help you function at the highest possible professional level, providing competent, compassionate health care to patients
- To help you avoid legal entanglements that can threaten your ability to earn a living as a successful **health care practitioner**

We live in a **litigious** society, in which patients, relatives, and others are inclined to sue health care practitioners, health care facilities, manufacturers of medical equipment and products, and others when medical outcomes are not acceptable. This means that every person responsible for health care delivery is at risk of being involved in a health care-related lawsuit. It is important, therefore, for you to know the basics of law and ethics as they apply to health care, so you can recognize and avoid those situations that might not serve your patients well or that might put you at risk of legal liability.

In addition to keeping you at your professional best and helping you avoid litigation, knowledge of law and ethics can also help you gain perspective in the following three areas:

1. *The rights, responsibilities, and concerns of health care consumers.* Health care practitioners not only need to be concerned about how law and ethics impact their respective professions but they must also understand how legal and ethical issues affect the patients they treat. With the increased complexity of medicine has come the desire of consumers to know more about their options and rights and more about the responsibilities of health care providers. Today's health care consumers are likely to consider themselves partners with health care practitioners in the healing process and to question fees and treatment modes. They may ask such questions as, Do I need to see a specialist? If so, which specialist can best treat my condition? Will I be given complete information about my condition? How much will medical treatment cost? Will a physician treat me if I have no health insurance?

In addition, as medical technology has advanced, patients have come to expect favorable outcomes from medical treatment, and when expectations are not met, lawsuits may result.

2. *The legal and ethical issues facing society, patients, and health care practitioners as the world changes.* Nearly every day the media report news events concerning individuals who face legal and ethical dilemmas over biological/medical issues. For example, a grief-stricken husband must give consent for an abortion in order to save the life of his critically ill and unconscious wife. Parents must argue in court their decision to terminate life-support measures for a daughter whose injured brain no longer functions. Patients with HIV/AIDS fight to retain their right to confidentiality.

While the situations that make news headlines often involve larger social issues, legal and ethical questions are resolved daily, on a smaller scale, each time a patient visits his or her physician, dentist, physical therapist, or other health care practitioner. Questions that must often be resolved include these: Who can legally give consent if the patient cannot? Can patients be assured of

health care practitioners

Those who are trained to administer medical or health care to patients.

litigious

Prone to engage in lawsuits.

confidentiality, especially since computer technology and online access have become a way of life? Can a physician or other health care practitioner refuse to treat a patient? Who may legally examine a patient's medical records?

Rapid advances in medical technology have also influenced laws and ethics for health care practitioners. For example, recent court cases have debated these issues: Does the husband or the wife have ownership rights to a divorced couple's frozen embryos? Will a surrogate mother have legal visitation rights to the child she carried to term? Should modern technology be used to keep those patients alive who are diagnosed as brain-dead and have no hope of recovery? How should parenthood disputes be resolved for children resulting from reproductive technology?

3. *The impact of rising costs on the laws and ethics of health care delivery.* Rising costs, both of health care insurance and of medical treatment in general, lead to questions concerning access to health care services and allocation of medical treatment. For instance, should the uninsured or underinsured receive government help to pay for health insurance? And should everyone, regardless of age or lifestyle, have the same access to scarce medical commodities such as organs for transplantation or very expensive drugs?

COURT CASES ILLUSTRATE RISK OF LITIGATION

As you will see in the court cases used throughout this text, sometimes when a lawsuit is brought, the trial court or a higher court must first decide if the **plaintiff** has a legal reason to sue, or if the **defendant** is **liable**. When a court has ruled that there is a standing (reason) to sue and that a defendant can be held liable, the case may proceed to resolution. Often, once liability and a standing to sue have been established, the two sides agree on an out-of-court settlement. Depending on state law, an out-of-court settlement may not be published. For this reason, the final disposition of a case is not always available from published sources. The published cases that have decided liability, however, are still case law, and such cases have been used in this text to illustrate specific points.

In addition, sometimes it takes time after the initial trial for a case to be settled. For example, perhaps a patient dies after surgery in 2018, and the family files a wrongful death suit soon after. The case may go through several appeals and finally be settled in 2022.

It is also important to remember that while the final result of a case is important to the parties involved, from a legal standpoint, the most important aspect of a court case is not the result but whether the case represents good law and will be persuasive as other cases are decided.

Although recent cases published have been sought for illustration in this text, sometimes a dated case (1995, 1970, 1980, 1991, etc.) is used because it established important **precedent**.

Court cases appear throughout each chapter of the text to illustrate how the legal system has resolved complaints brought by or against health care service providers and product manufacturers. Some of these cases involve summary judgment. **Summary judgment** is the legal term for a decision made by a court in a lawsuit in response to a motion that pleads there is no basis for a trial because there is no genuine issue of

plaintiff

The person bringing charges in a lawsuit.

defendant

The person or party against whom criminal or civil charges are brought in a lawsuit.

liable

Legally responsible or obligated.

precedent

Decisions made by judges in the various courts that become rule of law and apply to future cases, even though they were not enacted by a legislature; also known as case law.

summary judgment

A decision made by a court in a lawsuit in response to a motion that pleads there is no basis for a trial.

COURT CASE

Patients Sue Hospitals

In 2018, lawsuits against a variety of hospitals, physicians, lawyers, nursing homes, and even power companies that were moving through various courts included:

- A dermatologist posted videos of herself singing and dancing during cosmetic surgery. Four malpractice suits have already been settled, including one by a woman who suffered permanent brain damage following surgery. Several other lawsuits are expected to be filed in the coming months. Source: www.abajournal.com
- Frightened into surgery by a medical litigation law company, an Arkansas woman had surgery to remove vaginal mesh. She has filed a lawsuit against her former law firm and the litigation funding company that financed the operation as

she now has permanent incontinence. Source: www.abajournal.com

- In Florida, family members of nursing home patients who died during Hurricane Irma are suing nursing home administrators and staff for failing to evacuate the facility after the air conditioning crashed and the temperature spiked. The families are also suing Florida Power and Light for failing to prioritize nursing home power restoration. Source: www.miamiherald.com

(All of the above cases were still in litigation as the ninth edition of *Law & Ethics for Health Professions* was prepared for publication, but perhaps the underlying reasons for filing the lawsuits are already apparent to you.)

COURT CASE

911 Operators Sued

In 2006, just before 6 pm, a 5-year-old boy called 911. He told the 911 operator that his “mom has passed out.” When the operator asked to speak to the boy’s mother, he said, “She’s not gonna talk.” The operator scolded the boy and logged the call as a child’s prank. Three hours later, the boy called 911 again. A different operator answered, and she also scolded the boy for playing a prank, but she did send a police officer to the boy’s home. The officer discovered the boy’s mother lying unresponsive on the floor and summoned emergency medical services. The EMS workers arrived 20 minutes later and determined that the woman was dead and had probably died within the past 2 hours.

The boy’s older sister sued the two 911 operators on behalf of the dead woman’s estate and on behalf of her son. The lawsuit alleged gross negligence causing a death and intentional infliction of emotional distress.

The 911 operators argued that they were entitled to government immunity, that they owed no duty to provide assistance to the woman who died, and that their failure to summon medical aid was not gross negligence.

A trial court and an appeals court found for the plaintiff, and the case was appealed to the Michigan Supreme Court, where in January 2012, the court denied further appeals.

Source: *Estate of Turner v. Nichols*, 807 N.W.2d 164, 490 Mich. 988 (2012).

material fact. In other words, a motion for summary judgment states that one party is entitled to win as a matter of law. Summary judgment is available only in a civil action. (Chapter 4 distinguishes between criminal and civil actions.)

The following court cases illustrate that a wide variety of legal questions can arise for those engaged directly in providing health care services, whether in a hospital, in a medical office, or in an emergency situation. Health care equipment and product dealers and manufacturers

can be held indirectly responsible for defective medical devices and products through charges of the following types:

- Breach of warranty
- Statements made by the manufacturer about the device or product that are found to be untrue
- Strict liability, for cases in which defective products threaten the personal safety of consumers
- **Fraud** or intentional deceit (Fraud is discussed in further detail in Chapters 4 and 8.)

fraud

Dishonest or deceitful practices in depriving, or attempting to deprive, another of his or her rights.

LANDMARK COURT CASE

Supreme Court Shields Medical Devices from Lawsuits

An angioplasty was performed on a patient, Charles Riegel, in New York. During the procedure, the catheter used to dilate the patient's coronary artery failed, causing serious complications. The patient sued the catheter's manufacturer, Medtronic, Inc., under New York state law, charging negligence in design, manufacture, and labeling of the device, which had received Food and Drug Administration (FDA) approval in 1994. Medtronic argued that Riegel could not bring state law negligence claims because the company was preempted from liability under Section 360k(a) of the Medical Device Amendments (MDA) of the U.S. Food, Drug, and Cosmetic Act. State requirements are preempted under the MDA only to the extent that they are "different from, or in addition to" the requirements imposed by federal law. Thus, 360k(a) does not prevent a state from providing a damages remedy for claims premised on

a violation of FDA regulations; the state duties in such a case "parallel," rather than add to, federal requirements (*Lohr*, 518 U.S., at 495, 116 S.Ct. 2240).

The *Riegel* case reached the U.S. Supreme Court, where the question to be decided was this: Does Section 360k(a) of the Medical Device Amendments to the Food, Drug, and Cosmetic Act preempt state law claims seeking damages for injuries caused by medical devices that received premarket approval from the Food and Drug Administration?

In February 2008, the U.S. Supreme Court held in this case that makers of medical devices are immune from liability for personal injuries as long as the FDA approved the device before it was marketed and it meets the FDA's specifications.

Source: Appeals Court Case: *Riegel v. Medtronic, Inc.*, 451 F.3d 104 (2006); Supreme Court Case: *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 128 S.Ct. 999, 2008.

The extent of liability for manufacturers of medical devices and products may be changing, however, since a 2008 U.S. Supreme Court decision held that makers of medical devices such as implantable defibrillators or breast implants are immune from liability for personal injuries as long as the Food and Drug Administration (FDA) approved the device before it was marketed and it meets the FDA's specifications. (See the previous *Medtronic Inc.* case.)

Drugs and medical devices are regulated under separate federal laws, and an important issue in deciding drug injury cases is whether or not the drug manufacturer made false or misleading statements to win FDA approval. For example, the case *Warner-Lambert Co. v. Kent*, filed in 2006, involved a group of Michigan residents who claimed injury after taking Warner-Lambert's Rezulin diabetes drug. The case was brought under a Michigan tort reform law that said a drug company could be liable for product injury if it had misrepresented the product to win FDA approval. In this case, the question before the court was: Does a federal law prohibiting fraudulent communications to government agencies preempt a

Table 1-1 Damage Awards Can Be Substantial

- Drug: Talcum Powder (2018) A jury in Missouri found that Johnson and Johnson should pay 22 women a total of \$4.69 billion for causing ovarian cancer. There are over 9,000 more lawsuits involving other talc-based products in state and federal courts
- Drug: Juxtapid (2017) Aegerion Pharmaceuticals will pay more than \$35 million to settle criminal and civil charges related to the cholesterol drug Juxtapid. The sales staff continued to distribute samples as a general treatment for high cholesterol. Juxtapid was approved to treat just those patients who have a rare genetic disease call homozygous familial hypercholesterolemia.
- Drug: Epipen (2017) The Department of Justice brought charges against Mylan and Mylan, makers of the Epipen for classifying the Epipen as a generic drug. Mylan and Mylan did this to avoid paying Medicaid rebates. The company is paying \$465 million to settle allegations.

Source: www.drugwatch.com.

state law permitting plaintiffs to sue for faulty products that would not have reached the market absent the fraud?

A federal appeals court eventually heard the case and ruled that the Michigan “fraud on the FDA” law was preempted by a federal law that allowed the FDA itself to punish misrepresentations. This decision was appealed to the U.S. Supreme Court, and in a March 2008 decision, the Supreme Court affirmed the appeals court, thus leaving the previous state of the law unchanged and unclarified.

In this case, the people who sued the drug manufacturer were not allowed to collect damages. But when courts find that drugs are misrepresented so that developers can win FDA approval, drug manufacturers could be held legally responsible and forced to pay damages. Table 1-1 lists several settlements.

COURT CASE

Patient Sues over Drug-Labeling Issue

In 2000, Diana Levine, a Vermont woman in her fifties, sought medical help for migraine headaches. As part of the treatment, the anti-nausea drug Phenergan, made by Wyeth, was injected in her arm. An artery was accidentally damaged during the injection, gangrene set in, and Levine’s right arm was amputated. The amputation was devastating for Levine, a professional musician who had released 16 albums, and she filed a personal injury action against Wyeth in Vermont state court.

Levine asserted that Wyeth should have included a warning label describing the possible arterial injuries that could occur from negligent injection of the drug. Wyeth argued that because the warning label had been deemed acceptable by the FDA, a federal agency, any Vermont state regulations making the label insufficient were preempted by the federal approval. The Superior Court of Vermont found in favor of Levine and denied Wyeth’s motion for a

new trial. Levine was awarded \$7 million in damages for the amputation of her arm. The Supreme Court of Vermont affirmed this ruling on appeal, holding that the FDA requirements merely provide a floor, not a ceiling, for state regulation. Therefore, states are free to create more stringent labeling requirements than federal law provides.

The U.S. Supreme Court eventually heard the case and issued a decision in March 2009. Wyeth had argued that because the warning label had been accepted by the FDA, any Vermont state regulations making the label insufficient were preempted by the federal approval. The U.S. Supreme Court affirmed the Vermont Supreme Court, holding that federal law did not preempt Levine’s state law claim that Wyeth’s labeling of Phenergan failed to warn of the dangers of intravenous administration.

Source: *Wyeth v. Levine*, 555 U.S. 555, 173 L.Ed.2d 51 (2009).

Federal preemption—a doctrine that can bar injured consumers from suing in state court when the products that hurt them had met federal standards—has become an important concern in product liability law. One such case, *Wyeth v. Levine*, decided by the U.S. Supreme Court in 2009, will become precedent for future cases involving drug manufacturers and consumers.

1.2 Comparing Aspects of Law and Ethics

To understand the complexities of law and ethics, it is helpful to define and compare a few basic terms. Table 1-2 summarizes the terms described in the following sections.

LAW

law

Rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority.

A **law** is defined as a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority. Governments enact laws to keep society running smoothly and to control behavior that could threaten public safety. Laws are considered the minimum standard necessary to keep society functioning.

Table 1-2 Comparing Aspects of Law and Ethics

	Law	Ethics	Moral Values
Definition	Set of governing rules	Principles, standards, guide to conduct	Beliefs formed through the influence of family, culture, and society
Main purpose	To protect the public	To elevate the standard of competence	To serve as a guide for personal ethical conduct
Standards	Minimal—promotes smooth functioning of society	Builds values and ideals	Serves as a basis for forming a personal code of ethics
Penalties of violation	Civil or criminal liability. Upon conviction: fine, imprisonment, revocation of license, or other penalty as determined by courts	Suspension or eviction from medical society membership, as decided by peers	Difficulty in getting along with others
	Bioethics	Etiquette	Protocol
Definition	Discipline relating to ethics concerning biological research, especially as applied to medicine	Courtesy and manners	Rules of etiquette applicable to one's place of employment
Main purpose	To allow scientific progress in a manner that benefits society in all possible ways	To enable one to get along with others	To enable one to get along with others engaged in the same profession
Standards	Leads to the highest standards possible in applying research to medical care	Leads to pleasant interaction	Promotes smooth functioning of workplace routines
Penalties of violation	Can include all those listed under "Law," "Ethics," and "Etiquette"; as current standards are applied and as new laws and ethical standards evolve to govern medical research and development, penalties may change	Ostracism from chosen groups	Disapproval from one's professional colleagues; possible loss of business

Enforcement of laws is made possible by penalties for disobedience, which are decided by a court of law or are mandatory as written into the law. Penalties vary with the severity of the crime. Lawbreakers may be fined, imprisoned, or both. Sometimes lawbreakers are sentenced to probation. Other penalties appropriate to the crime may be handed down by the sentencing authority, as when offenders must perform a specified number of hours of volunteer community service or are ordered to repair public facilities they have damaged.

Many laws affect health care practitioners, including criminal and civil statutes as well as state practice acts. Every licensed health profession has some form of practice act at the state level. Licensed health care professionals convicted of violating criminal, civil, or medical practice laws may lose their licenses to practice. (Practice acts are discussed further in Chapter 3. Laws and the court system are discussed in more detail in Chapter 4.)

ETHICS

An illegal act by a health care practitioner is always unethical, but an unethical act is not necessarily illegal. **Ethics** are concerned with standards of behavior and the concept of right and wrong, over and above that which is legal in a given situation. **Moral values**—formed through the influence of the family, culture, and society—serve as the basis for ethical conduct.

The United States is a culturally diverse country, with many residents who have grown up within vastly different ethnic environments. For example, a Chinese student in the United States brings to his or her studies a unique set of religious and social experiences and moral concepts that will differ from that of a German, Japanese, Korean, French, Italian, or Canadian classmate. Therefore, moral values and ethical standards can differ for health care practitioners, as well as patients, in the same setting.

In the American cultural environment, however, acting morally toward another usually requires that you put yourself in that individual's place. For example, when you are a patient in a physician's office, how do you like to be treated? As a health care provider, can you give care to a person whose conduct or professed beliefs differ radically from your own? In an emergency, can you provide for the patient's welfare without reservation?

ethics

Standards of behavior, developed as a result of one's concept of right and wrong.

moral values

One's personal concept of right and wrong, formed through the influence of the family, culture, and society.

Check Your Progress

1. Name two important reasons for studying law and ethics.
2. Which state laws apply specifically to the practice of medicine?
3. What purpose do laws serve?
4. How is the enforcement of laws made possible?
5. What factors influence the formation of one's personal set of ethics and values?
6. Define the term *moral values*.
7. Explain how one's moral values affect one's sense of ethics.

CODES OF ETHICS AND ETHICS GUIDELINES

code of ethics

A list of principles intended to govern behavior—here, the behavior of those entrusted with providing care to the sick.

ethics guidelines

Publications that detail a wide variety of ethical situations that professionals (in this case, health care practitioners) might face in their work and offer principles for dealing with the situations in an ethical manner.

Hippocratic oath

A pledge for physicians, influenced by the practices of the Greek physician Hippocrates.

While most individuals can rely on a well-developed personal value system, organizations for the health occupations also have formalized **codes of ethics** to govern behavior of members and to increase the level of competence and standards of care within the group. Included among these are the American Nurses Association Code for Nurses, American Medical Association Code of Medical Ethics, American Health Information Management Association Code of Ethics, American Society of Radiologic Technologists Code of Ethics, and the Code of Ethics of the American Association of Medical Assistants. Codes of ethics generally consist of a list of general principles and are often available to laypersons as well as members of health care practitioner organizations.

Many professional organizations for health care practitioners also publish more detailed **ethics guidelines**, usually in book form, for members. Generally, ethics guideline publications detail a wide variety of ethical situations that health care practitioners might face in their work and offer principles for dealing with the situations in an ethical manner. They are routinely available to members of health care organizations and are typically available to others for a fee.

One of the earliest medical codes of ethics, the code of Hammurabi, was written by the Babylonians around 2250 B.C.E. This document discussed the conduct expected of physicians at that time, including fees that could be charged.

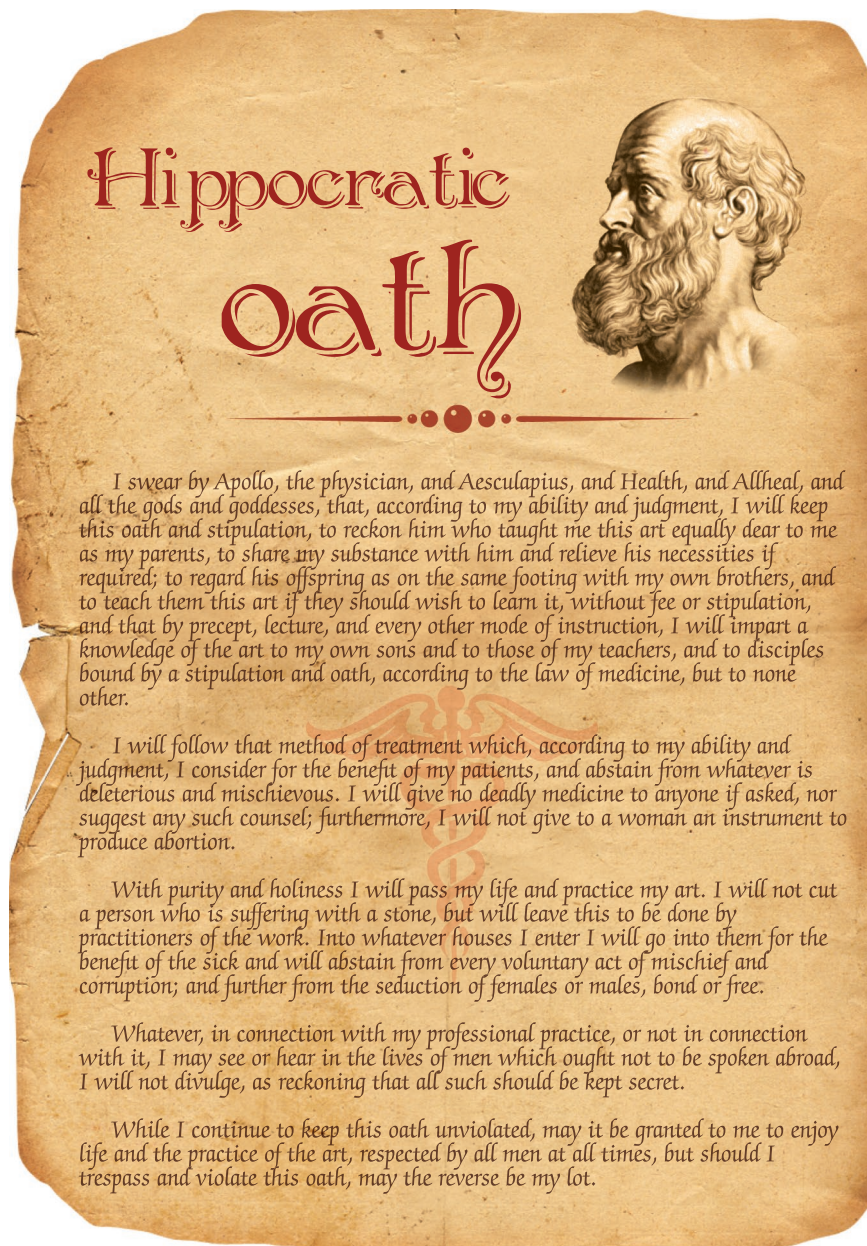
Sometime around 400 B.C.E., a pledge for physicians known as the **Hippocratic oath** was published. The oath was probably not actually written by Hippocrates, the Greek physician known as the Father of Medicine. Authorship has been attributed to one or more of his students and to the Pythagoreans, but scholars indicate it was probably derived from Hippocrates's writings (see Figure 1-1).

Percival's Medical Ethics, written by the English physician and philosopher Thomas Percival in 1803, superseded earlier codes to become the definitive guide for a physician's professional conduct. Earlier codes did not address concerns about experimental medicine, but according to Percival's code, physicians could try experimental treatments when all else failed, if such treatments served the public good.

When the American Medical Association met for the first time in Philadelphia in 1847, the group devised a code of ethics for members based on Percival's code. The resulting *American Medical Association Principles*, currently called the *American Medical Association Principles of Medical Ethics*, has been revised and updated periodically to keep pace with changing times. The current statements may be found at www.ama-assn.org/delivering-care/ama-code-medical-ethics. This Web site details the AMA's guidance on a variety of areas to include patient and physician actions, treatments and use of technologies and professional relationships, and self-regulation.

The AMA code is written for physicians but could also pertain to other health care professions. Another organization that has recently revised its code of ethics is the National Association for Healthcare Quality (NAHQ). The NAHQ has compiled a Code of Ethics for the Healthcare Quality Profession and Code of Conduct that was issued in April 2018. It identifies a variety of behaviors that may be appropriate for a variety

FIGURE 1-1
Hippocratic Oath



Source: Rijksmuseum, Amsterdam.

of health care professions. The Code is located at <https://nahq.org/about/code-of-ethics>.

Figure 1-2 is an example of a code of ethics from the American Association of Medical Assistants. Professional health care practitioners may look to their professional association for guidance when they are troubled by unethical behavior of other health care practitioners. They may also look to peers and supervisors. Illegal behavior must always be reported to the appropriate authorities.

BIOETHICS

Bioethics is a discipline dealing with the ethical implications of biological research methods and results, especially in medicine. As biological

bioethics

A discipline dealing with the ethical implications of biological research methods and results, especially in medicine.

FIGURE 1-2 Code of Ethics and Creed of the American Association of Medical Assistants (AAMA)

The Medical Assisting Code of Ethics of the AAMA sets forth principles of ethical and moral conduct as they relate to the medical profession and the particular practice of medical assisting.

Members of AAMA dedicated to the conscientious pursuit of their profession, and thus desiring to merit the high regard of the entire medical profession and the respect of the general public which they serve, do pledge themselves to strive always to:

- A. Render service with full respect for the dignity of humanity.
- B. Respect confidential information obtained through employment unless legally authorized or required by responsible performance of duty to divulge such information.
- C. Uphold the honor and high principles of the profession and accept its disciplines.
- D. Seek to continually improve the knowledge and skills of medical assistants for the benefit of patients and professional colleagues.
- E. Participate in additional service activities aimed toward improving the health and well-being of the community.

The Medical Assisting Creed of the AAMA sets forth medical assisting statements of belief:

- | | |
|------|--|
| I | I believe in the principles and purposes of the profession of medical assisting. |
| II | I endeavor to be more effective. |
| III | I aspire to render greater service. |
| IV | I protect the confidence entrusted to me. |
| V | I am dedicated to the care and well-being of all people. |
| VI | I am loyal to my employer. |
| VII | I am true to the ethics of my profession. |
| VIII | I am strengthened by compassion, courage and faith. |

Source: www.aama-ntl.org/about/overview.

research has led to unprecedented progress in medicine, medical practitioners have had to grapple with issues such as these:

- What ethics should guide biomedical research? Do individuals own all rights to their body cells, or should scientists own cells they have altered? Is human experimentation essential, or even permissible, to advance biomedical research?
- What ethics should guide organ transplants? Although organs suitable for transplant are in short supply, is the search for organs dehumanizing? Should certain categories of people have lower priority than others for organ transplants?

- What ethics should guide fetal tissue research? Some say such research, especially stem cell research, is moral because it offers hope to disease victims, while others argue that it is immoral.
- Do reproductive technologies offer hope to the childless, or are they unethical? Are the multiple births that sometimes result from taking fertility drugs an acceptable aspect of reproductive technology, or are those multiple births too risky for women and their fetuses and even immoral in an allegedly overpopulated world?
- Should animals be used in research?
- How ethical is genetic research? Should the government regulate it? Will genetic testing benefit those at risk for genetic disease, or will it lead to discrimination? Should cloning of human organs for transplantation be permitted? Should cloning of human beings ever be permitted?

Society is attempting to address these questions, but because the issues are complicated, many questions may never be completely resolved.

THE ROLE OF ETHICS COMMITTEES

Health care practitioners may be able to resolve the majority of the ethical issues they face in the workplace from their own intuitive sense of moral values and ethics. Some ethical dilemmas, however, are not so much a question of right or wrong, but more a question of “Which of these alternatives will do the most good and the least harm?” In these more ambiguous situations, health care practitioners may want to ask the advice of a medical ethicist or members of an institutional ethics committee.

Medical ethicists or **bioethicists** are specialists who consult with physicians, researchers, and others to help them make difficult decisions, such as whether to resuscitate brain-damaged premature infants or what ethics should govern privacy in genetic testing. Hospital or medical center **ethics committees** usually consist of physicians, nurses, social workers, clergy, a patient’s family, members of the community, and other individuals involved with the patient’s medical care. A medical ethicist may also sit on the ethics committee if such a specialist is available. When difficult decisions must be made, any one of the individuals involved in a patient’s medical care can ask for a consultation with the ethics committee. Larger hospitals have standing ethics committees, while smaller facilities may form ethics committees as needed.

When a case is referred to the ethics committee, the members meet and review the case. The committee does not make binding decisions but helps the physician, nurse, patient, patient’s family, and others clarify the issue and understand the medical facts of the case and the alternatives available to resolve the situation. Ethics committees may also help with conflict resolution among parties involved with a case. They do not, however, function as institutional review boards or morals police looking for health care workers who have committed unethical acts.

See Chapter 2 for a more detailed discussion of the processes involved in making ethical decisions.

medical ethicist or bioethicist

Specialists who consult with physicians, researchers, and others to help them make difficult ethical decisions regarding patient care.

ethics committee

Committee made up of individuals who are involved in a patient’s care, including health care practitioners, family members, clergy, and others, with the purpose of reviewing ethical issues in difficult cases.

etiquette

Standards of behavior considered to be good manners among members of a profession as they function as individuals in society.

protocol

A code prescribing correct behavior in a specific situation, such as a situation arising in a medical office.

ETIQUETTE

While professional codes of ethics focus on the protection of the patient and his or her right to appropriate, competent, and humane treatment, **etiquette** refers to standards of behavior that are considered good manners. Every culture has its own ideas of common courtesy. Behavior considered good manners in one culture may be bad manners in another. For example, in some Middle Eastern countries, it is extremely discourteous for one male acquaintance to ask another, “How is your wife?” In Western culture, such a question is well received. Similarly, within nearly every profession, there are recognized practices considered to be good manners for members.

Most health care facilities have their own policies concerning professional etiquette that staff members are expected to follow. Policy manuals written especially for the facility can serve as permanent records and as guidelines for employees in these matters.

By the same token, health care practitioners are expected to know **protocol**, standard rules of etiquette applicable specifically to their place of employment. For example, when another physician telephones, does the receptionist put the call through without delay? What is the protocol in the diagnostic testing office when the technicians get behind because of a late patient or a repair to an X-ray machine?

Within the health care environment, all health care practitioners are, of course, expected to treat patients with the same respect and courtesy afforded others in the course of day-to-day living. Politeness and appropriate attire are mandatory.

1.3 Qualities of Successful Health Care Practitioners

Successful health care practitioners have a knowledge of techniques and principles that includes an understanding of legal and ethical issues. They must also acquire a working knowledge of and tolerance for human nature and individual characteristics, since daily contact with a wide variety of individuals with a host of problems and concerns is a significant part of the work. Courtesy, compassion, and common sense are often cited as the “three Cs” most vital to the professional success of health care practitioners.

COURTESY

courtesy

The practice of good manners.

The simplest definition of **courtesy** is the practice of good manners. Most of us know how to practice good manners, but sometimes circumstances make us forget. Maybe we’re having a rotten day—we overslept and dressed in a hurry but were still late to work; the car didn’t start so we had to walk, making us even more late; we were rebuked at work for coming in late . . . and on and on. Perhaps we’re burned out, stressed out, or simply too busy to think. Regardless of a health care practitioner’s personal situation, however, patients have the right to expect courtesy and respect, including self-introduction. (“Hi, I’m Maggie, and I’ll be taking care of you” is one nursing assistant’s way of introducing herself to new patients in the skilled nursing care facility where she works.)

Think back to experiences you have had with health care practitioners. Did the receptionist in a medical office greet you pleasantly, or did he or she make you feel as though you were an unwelcome intruder? Did the laboratory technician or phlebotomist who drew your blood for testing put you at ease or make you more anxious than you already were? If you were hospitalized, did health care practitioners carefully explain procedures and treatments before performing them, or were you left wondering what was happening to you? Chances are that you know from your own experiences how important common courtesy can be to a patient.

COMPASSION

Compassion is empathy—the identification with and understanding of another’s situation, feelings, and motives. In other words, compassion is temporarily putting oneself in another’s shoes. It should not be confused with sympathy, which is feeling sorry for another person’s plight—typically a less deeply felt emotion than compassion. While “I know how you feel” is not usually the best phrase to utter to a patient (it too often earns the retort, “No, you don’t”), compassion means that you are sincerely attempting to know how the patient feels.

compassion

The identification with and understanding of another’s situation, feelings, and motives.

COMMON SENSE

Common sense is simply sound practical judgment. It is somewhat difficult to define because it can have different meanings for different people, but it generally means that you can see which solution or action makes good sense in a given situation. For example, if you were a nursing assistant and a gasping, panicked patient told you he was having trouble breathing, common sense would tell you to immediately seek help. You wouldn’t simply enter the patient’s complaint in his medical chart and wait for a physician or a nurse to see the notation. Likewise, if a patient spilled something on the floor, common sense would tell you to wipe it up (even if you were not a member of the housekeeping staff) before someone stepped in it and possibly slipped and fell. While it’s not always immediately obvious that someone has common sense, it usually doesn’t take long to recognize its absence in an individual.

common sense

Sound practical judgment.

Additional capabilities that are helpful to those who choose to work in the health care field include those that are listed in the following sections “People Skills” and “Technical Skills.”

PEOPLE SKILLS

People skills are those traits and capabilities that allow you to get along well with others and to relate well to patients or clients in a health care setting. They include such attributes as the following:

- A relaxed attitude when meeting new people
- An understanding of and empathy for others
- Good communication skills, including writing, speaking, and listening
- Patience in dealing with others and the ability to work as a member of a health care team
- Tact, or sensitivity when dealing with others or with difficult issues

- The ability to impart information clearly and accurately
- The ability to keep information confidential
- The ability to leave private concerns at home
- Trustworthiness and a sense of responsibility

TECHNICAL SKILLS

Technical skills include those abilities you have acquired in your course of study, including but not limited to the following:

- Computer literacy
- Proficiency in English, science, and mathematics
- A willingness to learn new skills and techniques
- An aptitude for working with the hands
- Ability to document well
- Ability to think critically

CRITICAL THINKING SKILLS

When faced with a problem, most of us worry a lot before we finally begin working through the problem effectively, which means using fewer emotions and more rational thinking skills. As a health care practitioner, you will be expected to approach a problem at work in a manner that lets you act as ethically, legally, and helpfully as possible. Sometimes solutions to problems must also be found as quickly as possible, but solutions must always be within the scope of your training, licensure, and capabilities. This problem-solving process is called **critical thinking**. Here is a five-step aid for approaching a problem using critical thinking:

critical thinking

The ability to think analytically, using fewer emotions and more rationality.

1. **Identify and clarify the problem.** It's impossible to solve a problem unless you know the exact nature of the problem. For example, imagine that patients in a medical office have frequently complained that the wait to see physicians is too long, and several have protested loudly and angrily that their time "is valuable too." Rhea is the waiting room receptionist and the person who faces angry patients first, so she would like to solve this problem as quickly as possible. Rhea has recognized that a problem exists, of course, but her apologies to patients have been temporary fixes, and the situation continues.
2. **Gather information.** In the previous situation, Rhea begins to gather information. She first checks to see exactly why patients have been kept waiting and considers the following questions: Are all the physicians simply oversleeping and beginning the day behind schedule? (Not likely, but an easy solution if this were the case would be to buy the physicians new alarm clocks.) Are the physicians often delayed in surgery or because of hospital rounds? Is the clinic understaffed? How long, on average, has each patient who has complained been waiting beyond his or her appointment time?
3. **Evaluate the evidence.** Rhea evaluates the answers she has gathered to the earlier questions and determines that too many patients are, indeed, waiting too long beyond appointment times to see their physicians. The next step in the critical thinking process is to consider all possible ways to solve the problem.

4. **Consider alternatives and implications.** Rhea has determined that the evidence supports the fact that a problem exists and begins to formulate alternatives by asking herself these questions: Could the waiting room be better supplied with current reading material or perhaps television sets and a children's corner, so that patients both with and without children are less likely to complain about waiting? Is the waiting room cheery and comfortable, so waiting does not seem interminable? What solution would best serve the goals of physicians, other medical office personnel, and patients? Should Rhea look more closely at how patients are scheduled and discuss possible changes with the office manager or supervisor? Rhea must consider costs of, objections to, and all others' opinions of each alternative she considers.
5. **Choose and implement the best alternative.** Rhea selects an alternative and implements it. As a medical office receptionist, she cannot act alone, but she has brought the problem to the attention of those who can help, and her suggestions have been heard. As a result of Rhea's research, acceptable solutions to patients' complaints that they are forced to wait too long to see physicians might include the following:
- While there is a sign-in sheet at the front desk, the sheet does not ask patients what time they arrived or their appointment time. A new sign-in sheet should be created that provides patient arrival and appointment times so that Rhea or other front office staff can monitor wait time issues. This should be done before Rhea makes any recommendations about changing appointment times.
 - Additional personnel are hired to see patients.
 - The waiting room is stocked with current news publications, television sets, and/or a child play center for patient comfort while waiting.

Critical thinking is not easy, but, like any skill, it improves with practice.

Check Your Progress

8. Describe how each of the following characteristics relates to law and ethics in the health care professions:
- The ability to be a good communicator and listener
 - The ability to keep information confidential
 - The ability to impart information clearly and accurately
 - The ability to think critically
9. List and discuss each of the steps helpful to developing critical thinking skills.
10. Explain how you, as a health care practitioner, would use the critical thinking steps listed previously to reach a solution to the following problem: A patient from a different culture believes he has been cursed with a "liver demon" and will die unless the organ is surgically removed.

DETERMINING IF A DECISION IS ETHICAL

While considering the legality of a certain act, health care practitioners must also consider ethical implications. According to many ethics experts, the following questions can help you determine if an act you have decided on via critical thinking skills is ethical:

- If you perform this act, have you followed relevant laws and kept within your employing organization's policy?
- Will this act promote a win-win situation for as many of the involved individuals as possible?
- How would you feel if this act were to be publicized in the newspapers or other media?
- Would you want your family members to know?
- If you perform this act, can you look at yourself in a mirror?

The health care practitioner who demonstrates these qualities and skills, coupled with a working knowledge of law and ethics, is most likely to find success and job satisfaction in his or her chosen profession.

Chapter Summary

Learning Outcome	Summary
<p>LO 1.1 Explain why knowledge of law and ethics is important to health care practitioners.</p> <p>LO 1.2 Define <i>law</i>, <i>ethics</i>, and <i>moral values</i> as used in health care by health care practitioners.</p> <p>LO 1.3 Discuss the characteristics and skills most likely to lead to a successful career in one of the health care professions.</p>	<p>Why study law and ethics?</p> <ul style="list-style-type: none"> • Health care practitioners who function at the highest possible levels have a working knowledge of law and ethics. • Knowing the law relevant to your profession can help you avoid legal entanglements that threaten your ability to earn a living. Court cases illustrate how health care practitioners, health care facilities, and drug and medical device manufacturers can be held accountable in a court of law. • A knowledge of law and ethics will also help familiarize you with the following areas: <ul style="list-style-type: none"> • The rights, responsibilities, and concerns of health care consumers • The legal and ethical issues facing society, patients, and health care practitioners as the world changes • The impact of rising costs on the laws and ethics of health care delivery <p>What are the basic aspects of law and ethics, and how do they compare?</p> <ul style="list-style-type: none"> • Laws are considered the minimum standard necessary to keep society functioning. Many laws govern the health care professions, including criminal and civil statutes and medical practice acts. • Ethics are principles and standards that govern behavior. Most health care professions have a code of ethics members are expected to follow. • Bioethics is the discipline dealing with the ethical implications of biological research methods and results, especially in medicine. • Moral values define one's personal concept of right and wrong. • Etiquette refers to manners and courtesy. • Protocol is a code prescribing correct behavior in a specific situation, such as in a medical office. <p>What characteristics and skills will most likely help a health care practitioner achieve success?</p> <ul style="list-style-type: none"> • People skills, such as listening to others and communicating well, are an asset to health care practitioners. • Technical skills, including a basic knowledge of computers, and a foundation in science and math are necessary to achieve an education in the health care sciences. • Critical thinking skills are required for you to correctly assess a situation and provide the proper response. Solving problems through critical thinking involves: <ol style="list-style-type: none"> 1. Identifying and clarifying the problem 2. Gathering information 3. Evaluating the evidence 4. Considering alternatives and implications 5. Choosing and implementing the best alternative <p>What questions can help you determine if a decision is ethical?</p> <ol style="list-style-type: none"> 1. If you perform this act, have you followed relevant laws and kept within your employing organization's policy? 2. Will this act promote a win-win situation for as many of the involved individuals as possible? 3. How would you feel if this act were to be publicized in the newspapers or other media? 4. Would you want your family members to know? 5. If you perform this act, can you look at yourself in a mirror?

Chapter 1 Review

Applying Knowledge

LO 1.1

1. List three areas where health care practitioners can gain insight through studying law and ethics.
2. Define *summary judgment*.

LO 1.2

3. Define *bioethics*.
4. Define *law*.
5. Define *ethics*.
6. How is unethical behavior punished?
7. Define *etiquette*.
8. How are violations of etiquette handled?
9. What is the purpose of a professional code of ethics?
10. Name five bioethical issues of concern in today's society.
11. What duties might a medical ethicist perform?
12. Decisions made by judges in the various courts and used as a guide for future decisions are called what?
13. Written codes of ethics for health care practitioners
 - a. Evolved primarily to serve as moral guidelines for those who provided care to the sick
 - b. Are legally binding
 - c. Did not exist in ancient times
 - d. None of these
14. What Greek physician is known as the Father of Medicine?
 - a. Hippocrates
 - b. Percival
 - c. Hammurabi
 - d. Socrates
15. Name the pledge for physicians that remains influential today.
 - a. Code of Hammurabi
 - b. Babylonian Ethics Code
 - c. Hippocratic oath
 - d. None of these
16. What ethics code superseded earlier codes to become the definitive guide for a physician's professional conduct?
 - a. Code of Hammurabi
 - b. Percival's Medical Ethics
 - c. Hippocratic oath
 - d. Babylonian Ethics Code

17. Unethical behavior is always
 - a. Illegal
 - b. Punishable by legal means
 - c. Unacceptable
 - d. None of these
18. Unlawful acts are always
 - a. Unacceptable
 - b. Unethical
 - c. Punishable by legal means
 - d. All of these
19. Violation of a professional organization's formalized code of ethics
 - a. Always leads to prosecution in a court of law
 - b. Is ignored if one's membership dues in the organization are paid
 - c. Can lead to expulsion from the organization
 - d. None of these
20. Law is
 - a. The minimum standard necessary to keep society functioning smoothly
 - b. Ignored if transgressions are ethical, rather than legal
 - c. Seldom enforced by controlling authorities
 - d. None of these
21. Conviction of a crime
 - a. Cannot result in loss of license unless ethical violations also exist
 - b. Is always punishable by imprisonment
 - c. Always results in expulsion from a professional organization
 - d. Can result in loss of license
22. The basis for ethical conduct includes
 - a. Morals
 - b. Culture
 - c. Family
 - d. All of these
23. What is bioethics concerned with?
 - a. Health care law
 - b. Etiquette in medical facilities
 - c. The ethical implications of biological research methods and results
 - d. None of these

LO 1.3

24. Critical thinking skills include
 - a. Assessing the ethics of a situation
 - b. First clearly defining a problem
 - c. Determining the legal implications of a situation
 - d. None of these

25. A medical assistant greets a patient and states “I am Jonathan and I will be your medical assistant today.” This is an example of
- Empathy
 - Trustworthiness
 - Common sense
 - Courtesy

Ethics Issues Introduction to End-of-Chapter Ethics Discussions

Learning Outcomes for the Ethics Issues Feature at the End of Each Chapter

After studying the material in each chapter’s Ethics Issues feature, you should be able to:

- Discuss current ethical issues of concern to health care practitioners.
- Compare ethical guidelines to the law as discussed in each chapter of the text.
- Practice critical thinking skills as you consider medical, legal, and ethical issues for each situation presented.
- Relate the ethical issues presented in the text to the health care profession you intend to practice.

Health care practitioners are bound by state and federal laws, but they are also bound by certain ethical standards—both personal standards and those set forth by professional codes of ethics and ethical guidelines and by bioethicists. Many professional organizations for health care practitioners employ an ethics consultant who is available to speak with organization members who need help with an ethical dilemma. “We serve as a third party who can stand outside a situation and facilitate communication,” says Dr. Carmen Paradis, an ethics consultant with the Cleveland Clinic’s Department of Bioethics. At the Cleveland Clinic, ethics consultations are available to health care practitioners, patients, family members, and others involved with patient decisions.

Medical facility ethics committees can also serve as consultants. In larger health care facilities, such committees usually deal with institutional matters, but in smaller communities where ethics consultants may not be available, members of an ethics committee may also function as ethics consultants.

Keep in mind as you read the Ethics Issues feature for each chapter that ethical guidelines are not law but deal solely with ethical conduct for health care practitioners. Most guidelines published for professional health care practitioner organizations emphasize this difference. For example, as stated in *Guidelines for Ethical Conduct for the Physician Assistant Profession*:

Physician Assistants are expected to behave both legally and morally. They should know and understand the laws governing their practice. Likewise, they should understand the ethical responsibilities of being a health care professional. Legal requirements and ethical expectations will not always be in agreement. Generally speaking, the law describes minimum standards of acceptable behavior, and ethical principles delineate the highest moral standards of behavior.

Source: www.aapa.org/wp-content/uploads/2017/02/16-EthicalConduct.pdf, ©American Academy of PAs.

The ethical guidelines for various health care professions have several points in common, but first and foremost is that health care practitioners are obligated to provide the best care possible for every patient and to protect the safety, privacy, and welfare of every patient.

State and federal laws may differ somewhat from an ethical principle. For example, a state’s law may not require physicians to routinely inquire about physical, sexual, and psychological abuse as part of a patient’s medical history, but the physician may feel an ethical duty to his or her patients to do so.

Furthermore, the fact that a health care practitioner who has been charged with illegal conduct is acquitted or exonerated does not necessarily mean that the health care practitioner acted ethically.

The term *ethical* as used here refers to matters involving the following:

- Moral principles or practices
- Matters of social policy involving issues of morality in the practice of medicine

The term *unethical* refers to professional conduct that fails to conform to these moral standards or policies.

The ethical issues raised are from the real-life experiences of a variety of health care practitioners and are recounted throughout the text to raise awareness of the ethical dilemmas many practitioners face daily and to stimulate discussion.

Use your critical thinking skills to answer the questions that follow each ethics issue.

Ethics ISSUE 1:

A physician assistant (PA) in a medical practice with several physicians contacts his professional association, the American Academy of Physician Assistants (AAPA), to report that one of his employing physicians often recommends chiropractic treatment for patients with persistent back pain issues that have resisted medical solutions. The PA knows it is legal to refer a patient for chiropractic treatments, but he adamantly opposes the practice, considering it “bogus medicine.” The physician declines to discuss the matter.

Discussion Questions

26. In your opinion, how might the situation be resolved?
27. Is it ethical for the PA to continue working for the physician when their opinions differ so widely on this issue?

Ethics ISSUE 2:

A registered nurse calls her professional organization’s ethics consultant to ask for resources she can present to her employing medical clinic to support her intention to quit working with a physician she feels is providing sloppy and possibly dangerous care.

Discussion Questions

28. What is the most important principle for the nurse to consider here?
29. In your opinion, are there legal issues inherent in this situation, as well as ethical issues? Explain your answer.

Ethics ISSUE 3:

A PA has been helping treat a patient awaiting a heart transplant. The patient is depressed and says he no longer wants to live. The PA is doubtful that the patient will cooperate in the demanding regimen required for post-transplantation patients.

Discussion Question

30. Is it ethical for the PA to discuss the patient’s depression with the patient’s family? Should the PA find out if the patient has been treated for depression before the heart issues?

Ethics ISSUE 4:

Family members of a certified medical assistant employed by a medical clinic in a small community often ask the CMA (AAMA) for medical advice. Two of her family members have asked her to bring antibiotic samples home for them.

Discussion Question

31. In your opinion, would it be ethical or legal for the CMA (AAMA) to give medical advice to her own family members? To bring drug samples home for them? Explain your answers.

Ethics ISSUE 5:

A radiology technician practicing in a small community is interested in dating a person he has seen as a patient.

Discussion Question

32. In your opinion, would it be ethical for the radiology technician to date one of his patients? Would it be ethical for him to date a coworker? Explain your answers.

Case Studies

LO 1.2

Use your critical thinking skills to answer the questions that follow each case study. Indicate whether each situation is a question of law, ethics, protocol, or etiquette.

You are employed as an assistant in an ophthalmologist's office. Your neighbor asks you to find out for him how much another patient was charged for an eye examination at the eye clinic that employs you. Your neighbor also asks you how much the patient was charged for his prescription eyeglasses (the eye clinic also sells lenses and frames).

33. Can you answer either of your neighbor's questions? Explain your answer.

A physician employs you as a medical assistant. Another physician comes into the medical office where you work and asks to speak with your physician/employer.

34. Should you seat the physician in the waiting room, or show her to your employer's private office? Why?

You are employed as a licensed practical nurse (LPN) in a small town. (In California and Texas, the term for this profession is *licensed vocational nurse*, abbreviated as LVN.) A woman visits the clinic where you work, complaining of a rash on her body. She says she recently came in contact with a child who had the same symptoms, and she asks, "What did this child see the doctor for, and what was the diagnosis?" She explains that she needs to know so that she can be immunized, if necessary. You explain that you cannot give out this information, but another LPN overhears, pulls the child's chart, and gives the woman the information she requested.

35. Did both LPNs in this scenario act ethically and responsibly? Explain your answer.

LO 1.3

A physician admitted an elderly patient to the hospital, where she was treated for an irregular heartbeat and chest pain. The patient was competent to make her own decisions about a course of treatment, but her opinionated and outspoken daughter repeatedly second-guessed the physician's recommendations with medical information she had obtained from the internet.

36. In your opinion, what responsibilities, if any, does a physician or other health care practitioner have toward difficult family members or other third parties who interfere with a patient's medical care?

37. What might the physician in this situation have said to the patient's daughter to help resolve the situation?

Internet Activities

LO 1.1 and LO 1.2

Complete the activities and answer the questions that follow.

38. Use a search engine to conduct a search for Web sites on the internet concerned with bioethics. Name two of those sites you think are reliable sources of information. Explain your choices. How does each site define the term *bioethics*?

39. Locate the Web site for the organization that represents the health care profession you intend to practice. Does the site provide guidance on ethics? If so, how? Does the site link to other sites concerning ethics? If so, list three ethics links, and then explore these links.

40. Visit this Web site sponsored by the National Institutes of Health: <https://oir.nih.gov/sourcebook/ethical-conduct/responsible-conduct-research-training/annual-review-ethics-case-studies>. Pick a case study from the list and review it. Do you agree or disagree with the conclusions reached about the issue? Explain your answer.

Making Ethical Decisions

LEARNING OUTCOMES

After studying this chapter, you should be able to:

- LO 2.1 Describe and compare need and value development theories.
- LO 2.2 Identify the major principles of contemporary consequence-oriented, duty-oriented, and virtue ethics reasoning.
- LO 2.3 Define the basic principles of health care ethics.



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2

Key Terms

autonomy
beneficence
categorical imperative
confidentiality
deontological or duty-oriented theory
fidelity
health disparity
health equity
justice
needs-based motivation
nonmaleficence
principle of utility
social determinants of health
teleological or consequence-oriented theory
utilitarianism
veracity
virtue ethics

FROM THE PERSPECTIVE OF . . .

TOM AND BILL ARE RADIOLOGY TECHNICIANS at a 300-bed hospital in a large metropolitan area. Tom has been employed by the hospital for 10 years, and Bill is a recent graduate from radiology technician school and has been on the job for 4 months. Their supervisor, Anna, has been with the hospital for 20 years, moving up the ranks from radiology technician to manager of the department. Because they are short staffed, Anna has been helping the staff complete the required X-rays throughout the day.

One afternoon, Bill notices that Anna is late coming back from lunch. He doesn't give it a second thought because Anna is the boss and often has lunch meetings. However, while working with her that afternoon, Bill realizes that he smells alcohol on Anna's breath. He decides not to say anything. Several days later, Bill once again smells alcohol when around Anna.

Bill decides to talk with Tom about the problem. Tom confirms that he has noticed the problem also. Tom advises Bill not to say anything and offers three pieces of advice. First, Anna's behavior is not Bill's problem. Second, Anna is a supervisor, and it is difficult to understand the pressure she is under. For his final piece of advice, Tom reminds Bill that the last person hired is often the first person fired.

From Bill's perspective, he has seen a clear violation of hospital policy on the part of his supervisor.

From Tom's perspective, he has already decided he doesn't want to get involved in what could be a messy situation. The department is already short staffed, and if Anna were fired, that would mean he would have to work even harder until a new manager was found.

From Anna's perspective, she may not realize that she has a problem with alcohol. Even if she does realize that she has a problem, she may believe that the problem is not serious or she would never be fired because she has been with the hospital for so long.

Ethical decision making requires you to tap into your values, morals, and sense of fair play, so that you can be comfortable with the decisions you implement and so that your decisions do not harm others. Study the following theories for further understanding of your own decision-making process.

2.1 Value Development Theories

In Chapter 1, the differences between law, ethics, and etiquette were briefly discussed. *Ethics* was defined as standards of behavior developed as a result of one's concept of right and wrong. One's personal concept of right and wrong, called *moral values*, is formed through the influence of the family, culture, and society. Because each individual experiences different family, cultural, and societal influences, like Tom and Bill in the opening scenario, individuals may see the same situation yet determine different methods to handle the problem.

Psychologists, philosophers, and social scientists all study human behavior. Many subscribe to the idea that human behavior is a reflection of our attention to our needs or to our values. A classic work by Abraham Maslow, *Motivation and Personality*, first published in 1954, identified a hierarchy of

needs that motivates our actions (see Figure 2-1). According to Maslow's theory, there are five stages of need that influence our behavior. We must satisfy each need in order, and the resulting progression is called a *hierarchy*. Maslow defined needs 1 to 3 as *deficiency*, or D-needs. Needs 4 and 5 are growth needs, also known as *being*, or B-needs.

1. The need for *basic life*—food and shelter
2. The need for a *safe and secure environment*
3. The need to *belong and to be loved*
4. The need for *esteem*, where status, responsibility, and recognition are important
5. The need for *self-actualization*, for personal growth and fulfillment

Originally, Maslow believed that the needs followed a strict order, but in his later years, he allowed for the possibility that some people may not require meeting all the D-needs before moving on to the B-needs.

FIGURE 2-1 Maslow's Hierarchy of Needs Pyramid



Source: (bottom left): ©BananaStock/age fotostock (bottom right): ©Plush Studios/Brand X Pictures/Getty Images (top right): ©Stockbyte/Getty Images (top left): ©Mark Scott/Getty Images.

needs-based motivation

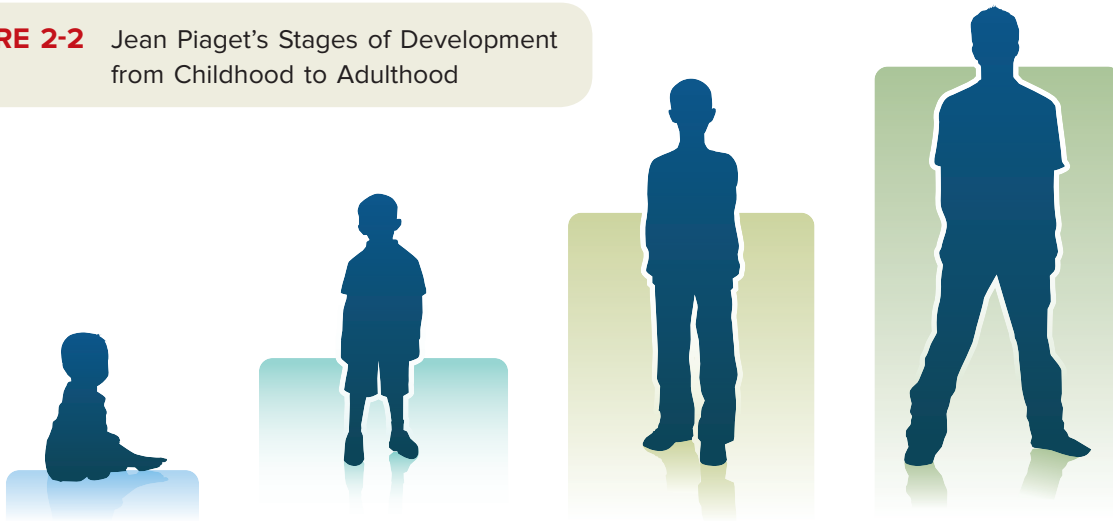
The theory that human behavior is based on specific human needs that must often be met in a specific order. Abraham Maslow is the best-known psychologist for this theory.

Maslow's theory may help us understand what motivates people, but it does not always help us determine how we developed the values that guide us in ethical decision making.

Many psychologists believe that individuals move from **needs-based motivation** to a personal value system that develops from childhood. When we are born, we have no values. The value system we develop as we grow and mature is dependent on the cultural framework in which we live. If one grows up in an Asian culture, for example, honoring ancestors and tradition may emerge as prominent values; growing up in a Western culture, such as in the United States, may encourage one to place more value on materialism.

A variety of theories exist about how we develop values. Most focus on our stages of development from childhood to adulthood. One of the most famous researchers in this area is Jean Piaget (see Figure 2-2). By observing children at play, Piaget described four levels of moral development.

FIGURE 2-2 Jean Piaget's Stages of Development from Childhood to Adulthood



1 The first stage occurs from birth to age 2 and is called the *sensorimotor* stage, during which the child is totally self-centered. Children at this stage of development explore the world with their five senses, and cannot yet see from another's point of view.

2 As infants grow, they develop an awareness of things and people even if not in their direct sight, leading to the second stage, called the *preoperational* or egocentric stage, which extends from ages 2 to 7. During this time period, the child views the world from his or her own perspective. For example, when playing a game, the child is not particularly concerned with rules of play; the focus is on fun, not rules.

3 The third stage of Piaget's theory is called the *concrete operational* stage, extending from ages 7 to 12. In this stage, children tend to see things as either right or wrong, and to see adults as powerful and controlling.

4 Finally, during the *formal operational* stage, children develop abstract thought and begin to understand that there may be different degrees of wrongdoing. For example, children in earlier stages of development, when asked why telling a lie is wrong, may simply reply "because it's bad" whereas children in the formal operational stage can explain "because a lie isn't true." During this stage and through adulthood, intentions, such as lying (I intend to deceive you) and stealing (I intend to take that object) are central to decisions made.

Lawrence Kohlberg modified and expanded Piaget's work, laying the groundwork for modern studies on moral development. Consistent with Piaget, he proposed that children form ways of thinking through their experiences that include understandings of moral concepts such as justice, rights, equality, and human welfare. Kohlberg differed from Piaget in that he followed the development of moral judgment beyond the ages studied by Piaget, and he determined that the process of attaining moral maturity took longer and was more gradual than Piaget had proposed.

Kohlberg suggested that moral reasoning can best be understood as sequenced in six stages, grouped into three major levels:

1. Kohlberg's first major level is called *pre-conventional morality*. In the early stages of this level, children from ages 2 to 7 are egocentric, as in Piaget's first stage, and they accept the authority of others. In the second stage of pre-conventional morality, children begin to recognize that there may be more than just one view as to what is right or wrong. They begin to look at their own self-interest and begin to see advantages in the exchanging of favors.
2. The second level in Kohlberg's theory is called *conventional morality*. This level, with two stages, is when children ages 7 to 12 begin to conform to societal expectations as established by parents and social groups. The first stage in this level is sometimes referred to as "good boy/good girl" in which children focus on following the expected social conventions and demonstrating good intentions. In the second stage, children become more aware of doing one's duty. The focus is on the rules and respect for authority.
3. *Post-conventional morality* (ages 12 and above) is the last level of Kohlberg's moral development theory. There are two stages to this level:
 - a. The first stage of post-conventional morality focuses on the social contract and individual rights. A social contract is accepted when people freely enter into work for the benefit of all and for a pleasant society. During this stage, individuals explore how to balance individual rights and a fair society for all.
 - b. The second stage of post-conventional morality is called universal principles. In this stage, the individual makes a personal commitment to such universal principles as social justice, equal rights, and respect for the dignity of all people and realizes that conventional norms and conventions are necessary to uphold society. If there is a conflict between these values and the social contract, the individual follows his or her basic principles. Kohlberg believed that few individuals reached this stage as it requires a firm commitment to social justice and possible civil disobedience. For example, Martin Luther King, Jr. is sometimes cited as an example of stage 6. He believed that nonviolent civil disobedience was appropriate when the law was unjust. He was also willing to accept the penalties for his actions.

Kohlberg's theory has recently been criticized, since much of his data was gathered from observing young males. As a result, he revised his scoring methods to account for gender bias.

Check Your Progress

A pharmacist/researcher has invented a drug that is very effective against a certain type of cancer. He determines that he will sell the drug for \$3,000 a treatment. The drug is effective only if it is taken once every week. Harry's young wife is dying from this specific type of cancer. Harry sells everything he can and borrows money from anyone who will lend it to him but cannot come up with enough money to pay for the drug. He approaches the pharmacist asking if the pharmacist will agree to payments or a lower fee. The pharmacist refuses, stating that he had worked very hard for many years to develop the drug and was entitled to profit from it. Harry decides to break into the pharmacy and steal the drug. (This dilemma was outlined in Kohlberg's writings and used as an example of how different levels of moral reasoning could be identified.)

1. Using Kohlberg's levels of pre-conventional, conventional, and post-conventional moral reasoning, complete the following table by filling in the moral reasoning.

Level	In Favor of Stealing the Drug	Against Stealing the Drug
Pre-conventional—reward and punishment		
Conventional—please others and maintain a good society		
Post-conventional—moral principles broader than any society		

2.2 Value Choices Theories

Maslow, Piaget, and Kohlberg devised theories to help explain how we develop our values, but their theories do not tell us why moral individuals often come to different conclusions based on reasoning. Tom and Bill, the radiology technicians presented in the chapter's opening scenario, illustrate how two moral individuals can reach different solutions for a problem they both face.

As health care practitioners, we know how to perform the tasks required in doing our jobs. That is, we know the right way to take a patient's history, give an injection, take an x-ray, draw blood, or bill the insurance company for the services provided. We know what is right or wrong in performing each medical procedure. That part of the job is straightforward.

Our values, however—our concepts of right or wrong, good or evil as related to our behavior—can be subjective. Universal ethics—problems such as abortion, stem cell research, and euthanasia—are discussed in later chapters, but it is the everyday problems like Bill and Tom faced that are frustrating. They frustrate us because individuals often come to different conclusions, and thus actions, based on their personal beliefs. When faced with a difficult problem, some of us will draw conclusions based on formal religious beliefs or philosophies, while others will place more emphasis on weighing the outcomes of actions, and still others will rely heavily on past experience.

Because no professional code of ethics can address every situation found in health care, we may often find ourselves facing a problem that

has no perfect and specific right or wrong solution. Moral people may agree to differ; therefore, it is important to determine a common framework for examining our value decisions.

At least three frameworks or theories exist in the literature that determine how value choices are made: teleological or consequence-oriented theory, deontological or duty-oriented theory, and virtue ethics.

TELEOLOGICAL OR CONSEQUENCE-ORIENTED THEORY

Teleological or consequence-oriented theory judges the rightness of a decision based on the outcome or predicted outcome of the decision. **Utilitarianism** is the most well known of these theories. In *act-utilitarianism*, a person makes value decisions based on results that will produce the greatest balance of good over evil, everyone considered. In *rule-utilitarianism*, a person makes value decisions based on a rule that if generally followed would produce the greatest balance of good over evil, everyone considered (Mappes and Degrazia, 2006). In Tom and Bill's problem at the beginning of the chapter, Tom is perhaps using act-utilitarianism to decide that nothing should be done as there has been no harm done and by reporting Anna, harm may occur. Bill, on the other hand, may be using rule-utilitarianism because he knows there is a rule against drinking alcohol during work hours and intoxicated employees are potential safety hazards.

Whether one uses act- or rule-utilitarianism, the process is the same. Once the person has described the problem and determined possible solutions, the solution will be based on which solution is best for all concerned. Often when describing utilitarianism, writers indicate that the solution that provides happiness or a net increase in pleasure over pain for those involved should be selected.

Supporters of the utilitarian theory have created a **principle of utility**. The principle of utility requires that the rule used to make the decision be a rule that brings about positive results when generalized to a wide variety of situations. There are, however, no absolute truths in utilitarianism.

teleological or consequence-oriented theory

Decision-making theory that judges the rightness or wrongness based on the outcomes or predicted outcomes.

utilitarianism

A consequence-oriented theory that states that decisions should be made by determining what results will produce the best outcome for the most people.

principle of utility

Used in utilitarianism; requires that the rule used in making a decision must bring about positive results when generalized to a wide variety of situations.

DEONTOLOGICAL OR DUTY-ORIENTED THEORY

Deontological or duty-oriented theory focuses on the essential rightness or wrongness of an act, not the consequences of the act. Immanuel Kant (1724–1804) is considered the father of duty-oriented theory. He defined the **categorical imperative** as the guiding principle for all decision making. This principle means that there are no exceptions (categorical) from the rule (imperative). The right action is one based on a determined principle, regardless of outcome. The rule may come from religious or other beliefs, but it is a rule not to be ignored under any circumstances. A priest who maintains the absolute confidentiality of confession even if he knows harm has come to or will come to another human being is an example of using duty-oriented decision making.

Kant argued that people may never be used as a means to an end. The Golden Rule ("do unto others as you would have them do unto you") is often cited in support of duty-oriented theory. Duty-oriented theories provide a foundation for rules of morality and for the idea of individual rights. However, critics of Kant find some of his ideas difficult to use in real life. For example, Kant argues that it is not permissible to lie or

deontological or duty-oriented theory

Decision-making theory that states that the rightness or wrongness of the act depends on its intrinsic nature and not the outcome of the act.

categorical imperative

A rule that is considered universal law binding on everyone and requiring action.

break a promise in an effort to save a third party from harm. These absolutes may create problems. For example, if a person promises to write a letter of recommendation for someone but has to stretch the truth in order to write a favorable recommendation, does not writing the letter make the person immoral? A terminally ill patient asks a nurse questions about physician-assisted death and asks that the nurse not say anything to the family about his questions. When the family asks if the patient has asked about euthanasia, should the nurse tell the truth, even if the patient has asked that his questions be kept confidential?

VIRTUE ETHICS

virtue ethics

Refers to the theory that people who have moral virtues will make the right decisions.

Rather than focusing on decision making or reasoning to arrive at a right action, **virtue ethics** focuses on the traits, characteristics, and virtues that a moral person should have. Virtue ethicists believe that someone who has appropriate moral virtues such as practical wisdom (common sense), a sense of justice, and courage will make the right decision. Ethicists who support this idea began with Aristotle (384 B.C.E.), but Alasdair MacIntyre (1929–present) is the most well-known ethicist to write about virtue ethics. MacIntyre argued that our practice of medicine has traditions and standards of practice that apply to every health care practitioner—whether one is a technician, medical assistant, physician, nurse, coder, or other professional. He stated that if we examine our actions in our roles as health care practitioners, we will see that we often follow the dictates of an idealized role. We ask ourselves, What would a perfect medical assistant (or physician or nurse) do in this situation? In virtue ethics, the loyalty to the role we play helps us make our decision. We look to what has been done in the past, assuming that it represents the right answer.

Check Your Progress

The following questions involve making a decision. Answer each question with a *yes* or a *no*. Identify whether you arrived at your answer by consequence-oriented theory, duty-oriented theory, or virtue ethics.

2. Would it be acceptable to “stretch the truth” on insurance papers so that patients could get the care needed that they could not afford under their current insurance policy?
3. Is it acceptable to date a patient? Is it acceptable for a medical assistant or other staff member to date a physician?
4. A patient asks you, a nurse practitioner, about a physician in the community. You think that particular physician is rude and doesn’t care about his patients. Should you tell the patient who is asking about the physician what you think?
5. Would a surgical assistant with strong pro-life views be wrong in refusing to take part in a therapeutic abortion for a patient?
6. The radiology technician you work with has just done a chest x-ray on the wrong person. The patient was not hurt. Do you have to report the error to your manager?
7. A pharmacist believes that a prescription for a patient will do little to improve the patient’s medical condition and may actually be contraindicated for the patient’s problem. Does the pharmacist have a responsibility to talk with the physician?

FIGURE 2-3 Ethical Problem-Solving Steps

I	Describe the problem. Identify the principles involved. Who will be affected by the decision? Who is ultimately in charge of making the decision?
II	Collect the facts. Be sure to differentiate between fact and opinion. Are there any legal problems? Has the problem been solved before? What documentation exists?
III	List the options—as many as possible.
IV	Evaluate the potential options from step 3. Who benefits by the decision? Who does not benefit? What principles are maintained? What principles may need to be sacrificed? Are you going to use utilitarianism, duty-oriented theory, or virtue ethics?
V	Make your decision and act.
VI	After a certain amount of time, assess the results.

Like the other theories, virtue ethics has its critics. First, the past may not provide the right answer. As an example, the role of nurses or medical assistants even 10 years ago is different than their roles today. Previously, virtues for nurses included always following the physician's orders and never questioning authority. Today, such virtues for nurses have been replaced with patient advocacy and education roles. Additionally, there are new situations coming up every day in health care that have never been an issue before, such as the possibility of cloning human organs for transplant and 3-D printing of human organs such as skin, so there is no established tradition. Last, practitioners may find themselves with conflicting roles. For example, in the case at the beginning of the chapter, Bill wants to be a team player, but he also may need to report Anna for violation of hospital policy.

Making ethical decisions is not easy, regardless of what model you choose to use. But whatever ethical framework is used, there are several steps that are common to them all. Figure 2-3 lists six steps to consider.

2.3 Principles of Health Care Ethics

Several codes of ethics were quoted in Chapter 1. Each code, such as the AAMA Code or the AMA Code, addresses a specific profession, but there are common elements in all health care professional ethics codes. Health care ethicists agree that there are four ethical principles that are accepted as universal principles for all health care providers. Those four are autonomy, beneficence, nonmaleficence, and justice. However, confidentiality, role fidelity, and veracity are also found in many codes of ethics. All seven are defined below.

1. AUTONOMY OR SELF-DETERMINATION

The word **autonomy** comes from the Greek words *auto* (self) and *nomos* (governance). It is generally understood as the capacity to be one's own person, to make decisions based on one's own reasons and motives, not

autonomy

The capacity to be one's own person and make one's own decisions without being manipulated by external forces.

LANDMARK COURT CASE

Physician Charged in Assisted Suicide Case

In the late 1980s to early 1990s, Jack Kevorkian, a physician in Michigan, began helping terminally ill patients commit suicide. Janet Adkins, newly diagnosed with Alzheimer's disease, was Kevorkian's first public assisted suicide in 1989. Kevorkian was charged with murder, but the Oakland County District Court dropped charges on December 13, 1990, after a 2-day preliminary hearing. The court ruled that Kevorkian did not break any law by helping Adkins commit suicide because there was, at that time, no Michigan law outlawing suicide or the medical assistance of it.

Prominent issues in the case were:

- Whether Adkins was in fact giving informed consent
- The fact that Kevorkian did not have an established professional relationship with Adkins
- The fact that Adkins was not terminally ill (facing death within 6 months)
- The issue of whether or not a person actually possesses the right to die
- The limits of autonomy

Source: *People v. Dr. Kevorkian*, No. 90-20157 52nd Dist. Ct. Mich. (1991); 534 N.W.2d. 172 (1995). Jack Kevorkian, nicknamed "Dr. Death," eventually claimed to have assisted with 130 suicides. In 1999, he was convicted of second-degree manslaughter, for which he served 8 years of a 10-to-25-year sentence. Kevorkian was released from prison in 2007, and allegedly remained unrepentant until his death on June 3, 2011.

manipulated or dictated to by external forces. Autonomous decisions are characterized by:

- Competency—a person must be competent to make his or her own decision.
- The ability to act on the decision.
- Respect for the autonomy of others.

Chapter 7 discusses informed consent, which derives from the principle of autonomy, as applied to health care. Paternalism, substituting the medical provider's opinion of what is "best" for the patient for the patient's own determination of his or her best interests, often threatens the concept of autonomy in health care. Because patients may disagree with medical providers about what is best and may not know or understand viable alternatives, informed consent is vital to preserving a health care consumer's autonomy.

Right-to-die cases, as discussed in Chapter 12, deal with a person's autonomy in making critical decisions.

The court case outlined in "Physician Charged in Assisted Suicide" is a landmark case that dealt with a patient's autonomy, as well as the issues of informed consent and the right to die.

2. BENEFICENCE

beneficence

Acts performed by a health care practitioner to help people stay healthy or recover from illness.

Although most dictionaries define **beneficence** as acts of charity and mercy, beneficence means more for the health care provider. Regardless of specialty, health care practitioners perform acts to help people stay healthy or recover from an illness. In fact, their first duty is to promote health for the patient above all other considerations. Modern medicine, however, has given rise to questions about the futility of care when discussing beneficence. For example, is it more beneficial for a patient in

his nineties who is hospitalized after suffering a series of debilitating strokes to be maintained on a ventilator and drugs during his last days or to be allowed to die in comfort?

3. NONMALEFICENCE

Nonmaleficence, as paraphrased from the Hippocratic oath, means the duty to “do no harm.” Technology has made this a difficult principle to follow, since many modern-day drugs and treatments have the potential to heal but also have serious side effects. A common example given when discussing nonmaleficence is the administration of morphine to reduce pain. Morphine is a powerful painkiller, but it also suppresses respiration. When administering morphine, the provider’s intent, of course, is to reduce pain, not to stop the patient’s breathing. Accordingly, under the principle of double effect, secondary effects, such as reduced respiration or any other harmful outcome, must never be the intended result of medical treatment. The benefit to the patient must always outweigh the harm.

nonmaleficence

The duty to do no harm.

4. JUSTICE

Justice, defined as what is due an individual, seems simple when applied to the U.S. health care system, but it is often complicated. Many would argue, for example, that everyone is entitled to health care, regardless of the ability to pay for the care. Others argue that the distribution of scarce resources and the expense of providing them do not allow us to provide all care for all patients. Still others argue that people must take responsibility for their actions before assuming they can have justice. For example, should a lifelong smoker who refuses to quit and develops emphysema and continues to smoke be entitled to all available health care, regardless of cost? Should a motorcycle owner who refuses to wear a helmet while riding his or her motorcycle or an automobile driver who refuses to wear a seat belt be entitled to all available health care in the event of an accident, regardless of cost?

justice

Providing to an individual what is his or her due.

In order to answer these questions, it is important to know what prevents an individual from receiving justice as it pertains to health care. Public health research has shown that people struggle to be healthy if they lack any one of the following conditions: shelter, food, income, education, a stable environment, sustainable resources, social justice and equity. These are referred to as the **social determinants of health**.

social determinants of health

Living conditions that affect health, such as shelter, food, income, education, a stable environment, sustainable resources, social justice and equity.

The terms **health disparity** and **health equity** are also used in discussions of social determinants of health. These terms denote those groups of people who are members of socially disadvantaged racial/ethnic groups and economically disadvantaged people within any racial/ethnic group, who lack any of the conditions listed above as social determinants of health.

health disparity

A particular type of health difference that is closely linked with economic, social, or environmental disadvantage.

Not all health differences are health disparities. For example, the term is not used in reference to any disparity in health, such as poorer health among the elderly as compared with young adults, or the higher rate of injuries among professional athletes than in the general population. Healthy People 2020 defined a health disparity as: “...a particular type of health difference that is closely linked with economic, social, or environmental disadvantage. Health disparities adversely affect groups of people who have systematically experienced greater social or economic obstacles to health based on their racial or ethnic group, religion,

health equity

Striving for the highest possible standard of health for all people and giving special attention to the needs of those at greatest risk of poor health, based on social conditions.

socioeconomic status, gender, age, mental health...or other characteristics historically linked to discrimination or exclusion.”

Source: HealthyPeople.gov. Disparities [cited 2012 Nov. 20] Available from: www.healthypeople.gov/2020/about/disparitiesAbout.aspx.
Additional Source: www.ncbi.nlm.nih.gov/pmc/articles/PMC3863701.

Health equity refers to striving for the highest possible standard of health for all people and giving special attention to the needs of those at greatest risk of poor health, based on social conditions. In other words, for justice to exist, no one should be denied the possibility to be healthy for belonging to a group that has historically been economically/socially disadvantaged.

5. CONFIDENTIALITY

The Health Insurance Portability and Accountability Act (HIPAA), discussed in detail in Chapter 8, mandates privacy and **confidentiality** of medical records, but health care practitioners who take care to maintain confidentiality at all times are equally as effective as laws. Health care practitioners mindful of protecting privacy and confidentiality, for example,

confidentiality

The act of holding information in confidence, not to be released to unauthorized individuals.

COURT CASE

Unauthorized Disclosure of Medical Information Results in a \$1.8 Million Award

As customers at the pharmacy, we expect our protected health information to be secure. However, the acts of a pharmacist in Indiana resulted in a \$1.8 million award to a woman whose records were reviewed and given away by a pharmacist.

The plaintiff was engaged in an off-and-on relationship with a man. She became pregnant and delivered a son. The man also discovered that he had contracted genital herpes.

While the man was involved with the plaintiff, he also became involved with a pharmacist. She was employed by a large drugstore chain. The man told the pharmacist that she had been exposed to genital herpes. Upon her return to work, the pharmacist looked up the plaintiff's prescription profile to see if she could find any information about the plaintiff's sexually transmitted disease. The pharmacist checked a second time the next day. She printed out the prescription records of the plaintiff and gave them to the man.

The man contacted the plaintiff and told her that he had a copy of her prescription records and accused her of failing to renew her birth control pills. The plaintiff contacted the corporate headquarters of the drugstore chain. The drugstore chain had the pharmacist go through additional training about patient privacy.

The plaintiff then filed suit against both the drugstore chain and the pharmacist alleging negligence/professional malpractice, invasion of privacy/public disclosure of private facts, and invasion of privacy/intrusion against the pharmacist and alleging the drugstore chain was responsible under *respondeat superior* as the pharmacists' employer. Additional claims against the drugstore chain included negligent training, negligent supervision, negligent retention, and negligence/professional malpractice. The claims were all based on state law. There was no mention of HIPAA, a federal law regarding privacy. *Respondeat superior* is Latin for “let the master answer,” and you will learn more about this principle in Chapter 5.

A jury returned a verdict for the plaintiff for \$1.8 million. The jury determined that the man was 20 percent responsible for the damages and the drugstore chain and the pharmacist were jointly responsible for the remaining 80 percent of damages. The drugstore chain appealed the verdict, but the Indiana Court of Appeals affirmed the verdict. The case was taken to the Indiana Supreme Court. The court declined to hear the case.

Source: *Walgreen Co. v. Abigail E. Hinchey*, Indiana Court of Appeals, Cause No. 49A02-1311-CT-950 2015.

do not conduct conversations about patients in the hospital hallway, in the medical office break room, or with an acquaintance. They also take care to protect computerized medical information, as detailed in Chapter 7, and when patients ask that information be kept from concerned relatives, such requests are honored.

Health care practitioners are in the most likely position to violate confidentiality rules, but others who have access to protected health care information, as defined under HIPAA, may also violate confidentiality, as in the case of unauthorized disclosure outlined in the “Unauthorized Disclosure of Medical Information Results” court case.

Compensatory justice, a concept that applies to medical malpractice lawsuits, refers to an individual’s right to seek monetary compensation in the form of damages for a wrong done. Compensatory justice is discussed in more detail in Chapters 5 and 6. The act of seeking compensatory justice—of suing for damages for medical malpractice—has become an important part of health care today.

6. ROLE FIDELITY

All health care practitioners have a specific scope of practice for which they are licensed, certified, or registered and from which the law says they may not deviate, as discussed in Chapters 3 and 5.

In addition to the laws that affect scope of practice, it is a basic ethical principle that a practitioner must be true to (have **fidelity** to) his or her role. For example, a medical assistant should not diagnose a patient’s condition, and a nursing assistant should not administer an intravenous drug to a patient, since such acts are not within the scope of practice for either profession.

fidelity

Being faithful to the scope of practice for your profession.

7. VERACITY

Veracity, or truth telling, has always had an ambiguous place in the health care practitioner’s world. Because medical providers want to do what is best for the patient, they may not always tell the whole truth. For example, consider the use of placebos—biologically inert substances that will do no harm but are sometimes given to patients under the guise of therapeutic treatment. Many studies have proven that if patients believe they are taking a drug that will help them, even if they are taking a placebo, their conditions may improve. In other cases, medical providers take a paternalistic view about truth telling, determining that what the patients don’t know won’t hurt them.

veracity

Truth telling.

Health care ethics are drawn from the same pool of basic ethical principles that might be listed for any profession, but the nature of health care provides a unique focus. Primarily because a person’s health is paramount to his or her living a successful and satisfying life, health care practitioners are routinely challenged to make sound decisions—concerning not only the appropriate medical care for each patient’s condition but also the patient’s future health and well-being and sometimes the health and well-being of the patient’s family. In our changing world, the use of technology, scarce resources, and the ever-increasing cost of health care all require that health care practitioners constantly strive to provide the best possible care for patients.

Check Your Progress

For each of the following actions, name a principle of health care ethics that was followed or violated, adding whether the principle was followed or violated.

8. A nurse tells a patient faced with the dilemma of deciding for or against debilitating surgery what he thinks is “best” for her.
9. A patient’s medical malpractice lawsuit against a physician is dismissed in court because her health maintenance organization employer lost the patient’s medical records.
10. A physician who knows one of his patients always wants to hear the truth tells him treatment for his cancer has not cured him of the disease and he has less than a year to live.
11. An 85-year-old woman suffering from congestive heart failure is semiconscious and has been placed on a ventilator. Upon admission to the hospital, she filed a living will with the hospital detailing her end-of-life requests and signed a do-not-resuscitate (DNR) order. She is not expected to live beyond a matter of days, but her two daughters arrive from out of state and insist on overriding her DNR request. “Do everything to keep her alive,” both daughters insist. The attending physician does not agree with the daughters but cannot dissuade them and is obligated to comply.
12. A nurse’s physician/employer asks her to dress the burn on a patient’s hand after debriding the wound. The nurse knows the correct procedure for dressing the burn, but she finds gloves uncomfortable and fails to wear them. The patient’s burn later becomes infected.
13. A medical assistant believes her mother has a thyroid condition, so she steals samples of the appropriate medication from the clinic where she works and takes them home for her mother.
14. A medical coder who works for a group of physicians knows, through her access to patients’ medical records, that Melanie, a single friend, is pregnant. When another friend asks her why Melanie is seeing a doctor, she refuses to admit even that Melanie is a patient of one of her physicians/employers.