FOURTH EDITION

LEGAL AND ETHICAL ISSUES *for Health Professionals*

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He has achieved success who has lived well, laughed often, and loved much; who has gained the respect of intelligent men and the love of little children; who has filled his niche and accomplished his task; who has left the world better than he found it, whether by an improved poppy, a perfect poem, or a rescued soul; who has never lacked appreciation of earth's beauty or failed to express it; who has always looked for the best in others and given them the best he [or she] had; whose life was an inspiration; whose memory a benediction.

—Bessie Anderson Stanley

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FOREWORD

Good health is an essential and fundamental value that arguably supersedes everything else in our human existence. Thus it is critical to administer it in an ethical, legal, scientifically valid, and efficient manner. This is inherently complicated. Laws are subject to changes. There may even be contradictions among federal, state, and local laws and regulations. Codes of ethics vary among professional organizations, hospitals, and religions. Scientific advances can bring hope for a healthier, longer life but can pose ethical and logistical issues of availability and cost. The pace of change is faster than ever now because of the digital information explosion and promising new avenues of research in such areas as stem cell biology, genetics, nanotechnology, and so much more. It is an exciting time that offers humanity a happier, more optimistic future. The purpose of this *Fourth Edition* is to provide the reader with a reference tool, a framework of fundamentals, and a coherent starting point from which to advance into the future.

Health care is personal. It is perhaps the most personal of any service any of us will receive in our lifetime. We all need it and recognize its importance, and we need to know that our health care delivery system has ethical and legal integrity as well as scientific validity. Sometimes correct choices are not always obvious. There are gray areas. That is why health care administrators and providers need a resource such as this book to help clarify their responsibilities and to help guide them through the tough choices that inevitably occur. Intuition and good intentions are laudable but are not enough when it comes to health care. There are specific criteria that our society requires in this very sensitive area. Awareness of those criteria is crucial. That information, however, comes from a variety of sources that are not always readily accessible. This book concentrates much of that information into one convenient volume. It provides the reader with the proper foundation to make good decisions in the delivery of patient care. That is the ultimate goal of this book.

—John W. Pinnella, MD, DDS, FICS

PREFACE

How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving, and tolerant of the weak and strong. Because someday in life you will have been all of these.

—George Washington Carver

NEWS

What's the One Thing You Would Invent If You Could?

A "decision-making" machine. You input your life dilemmas, and just like that, the right decision is displayed on a screen. The invention would save me so much time in torment.

Caitlin Ghilarducci, O, The Oprah Magazine, *August 2013*

Legal and Ethical Issues for Health Professionals, Fourth Edition, has been designed to assist the reader in a more comfortable transition from the didactics of the classroom to the practical application in the workplace. The *Fourth Edition* provides the reader with a clearer understanding of how the law and ethics are intertwined as they relate to health care dilemmas. The practical application of ethics in the health care setting is accomplished by interspersing the thoughts of great minds through *Quotes*; current health care events through *News Clippings*; patient, personal, provider, and organizational experiences through *Reality Checks*; and legal rulings and summaries through legal *Cases*. The book concludes with a *closet drama* that illustrates the real world of human behavior and ties together its contents in one case.

The reader will learn how to evaluate and distinguish between the rightness and wrongness of alternative courses of action when faced with complex ethical dilemmas. Ethics in the health care setting focuses on doing the right thing for both patients and caregivers. When people consider matters of ethics they often involve matters of freedom in regard to one's personal choices, judgments about human character, and obligations to others.

This book, as with the first three editions, starts with the premise that to act in an ethical manner means to engage in conduct according to accepted principles of right and wrong. The author's objective is to provide the reader with the background knowledge necessary to understand that ethical behavior begins with understanding that we have alternatives and choices to make about how we treat ourselves and how we treat others. To make good decisions, we must first understand that they will be only as good as our knowledge of what is "right" and what is "wrong."

A study titled "Does Ethics Education Influence the Moral Action of Practicing Nurses and Social Workers?," published in the *American Journal of Bioethics* in July 2008, showed that "ethics education has a significant positive influence on moral confidence, moral action, and use of ethics resources."[1]

This *Fourth Edition* is not an indictment of any profession or organization. It does, however, illustrate how a minority of people can often cast a dark shadow on all the good that is done by so many for so many. It is about learning how the system can fail and how we can so easily fix it simply through good people doing good things. The book is a call to arms to do good things, to stand out from the crowd, because acts of caring, compassion, and kindness often go unnoticed.

The *Fourth Edition*, as with previous editions, has been designed to introduce the reader to various ethical–legal issues and should not be considered an in-depth or comprehensive review of a particular ethical–legal issue. We study ethics because we need to know right from wrong and maintain order in a society that would otherwise be lawless. Ethics distinguishes good from evil. Ethics and the law are inseparable, for it is ethics that describes our values and morality. An unethical person helps create a world of fear, distrust, and tyranny. It is the law that describes our commonly accepted principles of good behavior and provides punishment for those who fail to adhere to the laws of the land.

Cases containing a multitude of legal and ethical issues are included throughout the book. The reader will be asked a series of questions after each case, requiring legal and ethical logic in order to answer them. Caregivers who have a clear grasp of the ethical and legal concepts discussed in this book will be better prepared to make health care decisions that are ethically sound and legally correct. Presented here is a sampling of the wide range of questions that can be asked and discussed when analyzing an ethical dilemma.

1. What are the relevant ethical and legal issues in the case?
2. What could have been done to bring more clarity to the ethical dilemma?
3. How should the legal issues of the case be addressed?
4. How might one's professional code of ethics be violated in the case?
5. How might the principles of patient autonomy, beneficence, nonmaleficence, and justice affect the decision-making process when faced with an ethical dilemma with legal implications?
6. What are the issues that could affect those involved in the resolution of an ethical dilemma (e.g., family members, physicians, other caregivers including nurses, chaplains, and/or ethics committee members)?
7. If you were friendly with the patient, would it affect your ability to give an objective opinion?

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[1] Grady C., Danis M, Soeken KL, O'Donnell P., Taylor C., Farrar A., and Ulrich C. M. Does ethics education influence the moral action of practicing nurses and social workers? *American Journal of Bioethics*, 2008 Apr; 8(4): 4–11. http://www.ncbi.nlm.nih.gov/pubmed/18576241.

8. How can moral values, religious beliefs, education, and life experiences of both caregivers and patients complicate the resolution of health care dilemmas?
9. How can financial concerns affect the decision-making process?
10. How can corporate culture affect the decision-making process?

One of the most difficult things to come to terms with in the decision-making process is to know when the endless loop of asking questions must end and a decision has to be made.

Each life is like a novel. Filled with moments of happiness, sadness, crisis, defeat, and triumph. When the last page has been written, will you be happy or saddened by what you read?

—AUTHOR UNKNOWN

NEW TO THE *FOURTH EDITION*

The fourth edition of *Legal and Ethical Issues for Health Professionals* has been updated to expand discussion on difficult topics and includes a wide variety of current *News Clippings* and *Reality Checks*, which are real life events experienced by both patients and health care professionals in leadership positions in the health care industry. These experiences include those of the author, incorporating his observations from a unique background as a hospital administrator in a multihospital system, instructor, author, consultant, and joint commission surveyor who conducted surveys of more than 1,000 hospitals and outpatient facilities from Alaska to Puerto Rico.

In crafting this edition, some material has been relocated from one chapter to another in order to provide an improved learning experience. In some cases, materials that appear to be duplicative have been removed. As in any update, some sections have been updated to improve understanding and the flow of the text.

The author has made every attempt in this *Fourth Edition* to provide the student with the tools necessary for applying the law and ethics in the health care setting with the end goal of improving the professional's skills, performance, and decision-making processes.

The following is a summary of changes that have been made to improve the readability of the law and ethics content, which can be difficult topics for the reader to grasp owing to the need to learn new terminology, theories, and concepts that have substantial impact on each health care professional's daily tasks.

Changes to all chapters include revisions of the following features:

- Learning Objectives
- Chapter Reviews
- Review Questions

Chapter-specific changes are outlined in the following pages.

Chapter 1: Introduction to Ethics

New or expanded topics include the following:

- Morality and moral dilemmas
- Normative ethics
- CPR and paternalism in nursing homes
- Employment-related paternalism
- Nonmaleficence

- Autonomy
- Pillars of moral strength
- Fairness
- Cooperation and teamwork

The following *Reality Checks* have been added:

- "No Good Deed Goes Unpunished"
- "Maximizing Happiness and Reducing Suffering"
- "Duty Compromises Patient Care"
- "Bad Outcome, Good Intentions"
- "Spouse's Grief Leads to Withholding the Truth"
- "Patient Questions Physical Exam"
- "My Journey: How Lucky Am I?"
- "Community Hospital v. Respected Medical Center"

The following *Reality Check* has been revised or expanded:

- "Kill the Messenger"

The following *News Clippings* have been added:

- "Peninsula Child Psychiatrist William Ayres Sentenced to Eight Years for Molesting Patients"
- "The Fear Factor and Patient Satisfaction"
- "Health Costs Cut by Limiting Choices"
- "Cancer Doctor Allegedly Prescribed $35 Million Worth of Totally Unnecessary Chemotherapy"
- "Brooke Greenberg: 20-Year-Old 'Toddler's' Legacy of Hope and Love"
- "Syrian Rebels Combat al-Qaeda Force"
- "Surgeon Uses Ministry in Medical Practice"

CHAPTER 2: CONTEMPORARY ETHICAL DILEMMAS

New or expanded topics include the following:

- Noteworthy historical events
- Informed consent
- Artificial insemination
- Organ donations

The following *News Clippings* have been added:

- "Philadelphia Abortion Doctor Guilty of Murder in Late-Term Procedures"
- "PA Abortion Provider Convicted of Murder"
- "Moral Persuasion on Abortion"
- "Facebook Launches Organ Donation Campaign"

CHAPTER 3: END-OF-LIFE DILEMMAS

New or expanded topics include the following:

- Physician-assisted suicide
- Withholding and withdrawal of treatment
- Do-not-resuscitate orders

The following *News Clippings* have been added:

- "Brain-Dead Girl Jahi McMath Released from California Hospital"
- "Belgium Considering New Euthanasia Law for Kids"
- "California Gov. Signs Assisted Suicide Information Bill into Law"
- "Mass. Doctor-Assisted Suicide Measure Fails"

Chapter 4: Health Care Ethics Committee

New or expanded topics include the following:

- Committee structure
- Policy and procedure development
- Consultation and conflict resolution

Chapter 5: Development of Law

New or expanded topics include:

- Conflict of laws
- Department of Health and Human Services and Its structure

Chapter 6: Introduction to Law

New or expanded topics include the following:

- Duty to care
- Standard of care
- Breach of duty
- Injury/causation
- Causation/proximate cause
- Criminal law
- Grand jury indictment
- Health care fraud
- Investigation and prosecution of fraud
- Schemes to defraud
- Murder
- Contracts

The following *News Clippings* have been added:

- "$12 Million in Medicaid Funds Went to Deceased in Illinois"
- "Renewed Criticism for Google Over Drug Sites"
- "Mother With Terminal Cancer Can Retain Child Custody, Judge Holds"

Chapter 7: Government Ethics and the Law

New or expanded topics include the following:

- House of Representatives Committee on Ethics
- Senate Select Committee on Ethics
- Office of Congressional Ethics
- U.S. Judicial Code of Conduct
- Veterans Administration

The following *Reality Check* has been added:

- VA Hospital

The following *News Clippings* have been added:

- "VA, Heal Thyself, Agency Is Told at Hearing Filled with Pained Testimony"
- "Atlanta VA Exec Scores Bonuses While Audits Found Lapses"
- "Too trapped in a war to be at peace"

CHAPTER 8: ORGANIZATIONAL ETHICS AND THE LAW

New or expanded topics include:

- Implied corporate authority
- Code of ethics for organizations
- Trust and integrity
- Concealing mistakes
- Doctrine of *respondeat superior*
- Independent contractor
- Applicant job screening
- Credentialing, appointment, and privileging
- Complying with accreditation standards
- Accreditation and conflicts of interest
- Financial incentive schemes
- Effective communications builds trust

The following *Reality Checks* have been added:

- "Advertising Unintentionally Misleading"
- "Hospital's Challenge to Survive"
- "One Family's Experience"
- "Veterans' Care Unconscionably Delayed"

The following *Reality Checks* have been revised or expanded:

- "Discrimination: Behind Closed Doors"
- "Accreditation Is Serious Business"

The following *Cases* have been added:

- "Wrong Surgical Procedure Cover-Up"
- "Monitor Alarm Disconnected"

CHAPTER 9: HEALTH CARE PROFESSIONALS LEGAL-ETHICAL ISSUES

New, revised, or expanded topics include the following:

- Ethical and legal issues for nurses
- Float nurses
- Failure to follow instructions
- Diet orders
- Incidence and recognition of malnutrition
- Ethics and inaccurate lab results
- Expanding role of the pharmacist

- Billing fraud
- Resident neglect
- Ethical and legal issues affecting physician assistants
- Sexual harassment by psychologists
- Ethical and legal issues affecting radiology technologists
- Ethical and legal issues affecting respiratory therapists
- Ethical and legal issues affecting social workers

The following *Reality Checks* have been added:

- "Patient's Diet Order Inappropriate"
- "Patient's Nutritional Status Not Addressed"

The following *Case* has been revised:

- "Refusal to Perform HIV Testing"

Chapter 10: Physician Ethical and Legal Issues

New, revised, or expanded topics include the following:

- How the law and ethics intertwine in patient care
- Violations of the AMA Code of Ethics
- Compassion
- Trust and breaches of trust
- Justice
- Physician negligence
- Patient assessments
- Failure to respond to emergency call
- Family medical history
- Medical misdiagnosis
- Treatment
- Surgery
- Patient infections

The following *News Clippings* have been added:

- "Suddenly, unexpectedly, he grabs my shirt"
- "Bonded by Blood"
- "As Hands-On Doctoring Fades Away, Patients Lose"
- "Her Doctor Dismissed the Lump in Her Breast"
- "Joint Commission Alert: Preventing Retained Surgical Items"
- "Pregnant Woman Dies After Horrifying Medical Mixup"

Chapter 11: Employee Rights and Responsibilities

New, revised, or expanded topics include the following:

- Freedom from discrimination
- Equal Employment Opportunity Commission
- Refusal to Participate in Therapeutic Abortion Insubordinate
- Whistleblowing
- Safe environment
- Unemployment compensation
- Complying with hospital policy

- Sexual harassment
- Maintain professional competencies

The following *Reality Checks* have been added:

- "O.R. Becomes an Abusive Environment"
- "My Surgical Journey"
- "Failure to Comply with Hand Hygiene Guidelines"

The following *News Clippings* have been added:

- "Hospitals Crack Down on Tirades by Angry Doctors"
- "Drug Firm to Pay $2.2 Billion in Fraud Settlement"
- "Physician Whistle-Blowers Can Sue Hospitals Without Delay, Appeals Court Rules"
- "Whistleblower Lawsuit Alleges Florida Hospital Filed Millions in False Claims"
- "The Price Whistle-Blowers Pay for Secrets"
- "U.S. Cancer-Care Delivery is 'in Crisis': Report"

CHAPTER 12: PATIENT CONSENT

New, revised, or expanded topics include the following:

- Codes of ethics
- Parental consent
- Right to refuse treatment
- Refusal of treatment based on religious beliefs

The following *News Clippings* have been added:

- "Unreported Robot Surgery Injuries Open New Questions for FDA"
- "Are Teens Old Enough for Life/Death Decisions?"

CHAPTER 13: PATIENT ABUSE

New, revised, or expanded topics include the following:

- Child abuse
- Reporting abuse
- Senior abuse
- Reporting senior abuse

The following *Reality Check* has been added:

- "Child Abuse Can Be Elusive"

CHAPTER 14: PATIENT RIGHTS AND RESPONSIBILITIES

New, revised, or expanded topics include the following:

- Patient rights
- Right to know one's rights
- The Health Insurance Portability and Accountability Act (HIPAA)
- Right to ask questions
- Right to examination and treatment

- Right to emergency care
- Execute advance directives
- Right to trust caregivers
- Right to chaplaincy services
- Right to ethics consultation
- Right to informed consent
- Right to receive quality care
- Right to compassionate care
- Discharge orders
- Right to access lab reports
- Right to know hospital charges
- Maintain healthy lifestyle
- Provide full disclosure of medical history
- Report unexpected changes in health status
- Adhere to the agreed upon treatment plan
- Seek a second opinion
- Stay informed

The following *Reality Checks* have been added:

- "Accreditation Standards and Patient Right to Ask Questions"
- "My Question Disregarded"
- "Hospital Charges Not So Transparent"

The following *Case* has been added:

- "Release from Hospital Contraindicated"

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I am grateful to the very special people in the more than 1,000 hospitals and ambulatory sites from Alaska to Puerto Rico with whom I have consulted, surveyed, and provided education over many years. Their shared experiences have served to remind me of the importance of making this book valuable in the classroom as well as useful as a reference for practicing health care professionals.

To my students in health care law and ethics classes at the New School for Social Research, Molloy College, Long Island University–C.W. Post Campus, Saint Francis College, and Saint Joseph's College; my intern from Brown University; my resident in hospital administration from The George Washington University; and those I have instructed throughout the years at various seminars, I will always be indebted to you for your inspiration.

Many thanks are also extended to all those special people at the National Library of Medicine and the Library of Congress for their guidance over the years in locating research materials.

CHAPTER 1

INTRODUCTION TO ETHICS

I expect to pass through this world but once. Any good therefore that I can do, or any kindness I can show to any creature, let me do it now. Let me not defer it, for I shall not pass this way again.

–Stephen Grellet

LEARNING OBJECTIVES

Upon completion of this chapter, the reader will be able to:

- Explain what ethics is, its importance, and its application to ethical dilemmas.
- Describe the concepts of morality, codes of conduct, and moral judgments.
- Understand relevant ethical theories and principles.
- Describe virtue ethics and values and how they more clearly describe one's moral character.

- Understand how religious ethics can affect one's moral character.
- Explain the concept of situational ethics and how changes in circumstances can alter one's behavior.
- Understand the importance of reasoning in the decision-making process.

INTRODUCTION

Good can triumph over evil.

–Author Unknown

This chapter provides the reader with an overview of ethics, moral principles, virtues, and values. The intent here is not to burden the reader with the philosophical arguments surrounding ethical theories, morals, and principles; however, as with the study of any new subject, "words are the tools of thought." The reader who thoroughly absorbs and applies the content of the theories and principles of ethics discussed herein will have the tools necessary to empathize with and guide patients through the conflicts they will face when making difficult care decisions. Therefore, some new vocabulary is a necessary tool, as a building block for the reader to establish a foundation for applying the abstract theories and principles of ethics in order to make practical use of them.

Theories, principles, virtues, and values are a necessary beginning point for the study of ethics. Words are merely labels for ideas and best used for helping the reader to wire his or her mind to think through difficult dilemmas more easily. The directions on a map are of little value until we make the journey. So it is with ethics; we must begin to make the journey inward with a lot of hard mind work so that we can more easily make the right decisions when faced with ethical dilemmas. The learning process for ethics becomes a more enjoyable and rewarding journey as we grasp the ideas, build upon them, and practice all the good we learn by helping all the people we can as long as we can.

ETHICS

How we perceive right and wrong is influenced by what we feed on.

–Author Unknown

Ethics is the branch of philosophy that seeks to understand the nature, purposes, justification, and founding principles of moral rules and the systems they comprise. Ethics and morals are derivatives from the Greek and Latin terms (roots) for custom. The etymology of the words "ethics" and "morality" are derived from the roots "ethos" and "mos," which both convey a meaning describing customs or habits. This etymology supports the claims of anthropologist Ruth Benedict that all values are rooted in customs and habits of a culture because the words moral and ethics themselves were essentially created to describe these topics.[1]

Ethics deals with values relating to human conduct. It focuses on the rightness and wrongness of actions, as well as the goodness and badness of motives and ends. Ethics encompasses

the decision-making process of determining ultimate actions—what should I do and is it the right thing to do. It involves how individuals decide to live with one another within accepted boundaries and how they live in harmony with the environment as well as one another. Ethics is concerned with human conduct as it ought to be, as opposed to what it actually is.

Microethics involves an individual's view of what is right and wrong based on one's personal life teachings, tradition, and experiences. *Macroethics* involves a more global view of right and wrong. Although no person lives in a vacuum, solving ethical dilemmas involves consideration of ethical issues from both a micro and macro perspective.

Man's duty is to improve himself; to cultivate his mind; and, when he finds himself going astray, to bring the moral law to bear upon himself.

–Immanuel Kant

The term *ethics* is used in three distinct but related ways, signifying (1) *philosophical ethics*, which involves inquiry about ways of life and rules of conduct; (2) a *general pattern or way of life,* such as religious ethics (e.g., Judeo-Christian ethics); and (3) a *set of rules* of conduct or "moral code" (e.g., professional codes for ethical behavior).

The scope of health care ethics encompasses numerous issues, including the right to choose or refuse treatment and the right to limit the suffering one will endure. Incredible advances in technology and the resulting capability to extend life beyond what would be considered a reasonable quality of life have complicated the process of health care decision making. The scope of health care ethics is not limited to philosophical issues but embraces economic, medical, political, social, and legal dilemmas.

Bioethics addresses such difficult issues as the nature of life, the nature of death, what sort of life is worth living, what constitutes murder, how we should treat people who are especially vulnerable, and the responsibilities that we have to other human beings. It is about making better decisions when faced with diverse and complex circumstances.

Why Study Ethics?

We study ethics to help us make sound judgments, good decisions, and right choices; if not right choices, then better choices. To those in the health care industry, it is about anticipating and recognizing health care dilemmas and making good judgments and decisions based on universal values that work in unison with the laws of the land and our constitution. Where the law remains silent, we rely on the ability of caregivers to make sound judgments, guided by the Wisdom of Solomon to do good. Doing the right thing by applying the universal morals and values described in this text (e.g., the 10 Commandments) will help shield and protect all from harm.

MORALITY

The three hardest tasks in the world are neither physical feats nor intellectual achievements, but moral acts: to return love for hate, to include the excluded, and to say, "I was wrong."

–Sydney J. Harris

The following news clippings portray how a deficiency in the morality of society can lead to a betrayal of humanity. Lawlessness and heartless actions run rampant in a land void of courage and compassion. The reader who thoroughly absorbs, understands, and practices the virtues and values discussed in the pages that follow will spring forth hope in what often seems a desperate and hopeless world.

Vietnam—Terror of War

Fire rained down on civilians. Women and children ran screaming. Ut snapped pictures. A little girl ran toward him, arms outstretched, eyes shut in pain, clothes burned off by Napalm. She said, "Too hot, please help me!"

1973 Spot News, Newseum, *Washington, DC*

Ethiopian Famine (1985 Feature)

People searched everywhere for food. Some 30,000 tons of it, from the United States, had been held up by an Ethiopian government determined to starve the countryside into submission. And starve the people it did—half a million Ethiopians, many of them children so hungry their bodies actually consumed themselves.

I'll never forget the sounds of kids dying of starvation.

Newseum, *Washington, DC*

Waiting Game for Sudanese Child . . .

Carter's winning photo shows a heartbreaking scene of a starving child collapsed on the ground, struggling to get to a food center during a famine in the Sudan in 1993. In the background, a vulture stalks the emaciated child.

Carter was part of a group of four fearless photojournalists known as the "Bang Bang Club" who traveled throughout South Africa capturing the atrocities committed during apartheid.

Haunted by the horrific images from Sudan, Carter committed suicide in 1994 soon after receiving the award.

A Pulitzer-Winning Photographer's Suicide, National Public Radio, (NPR), *March 2, 2006*

Trek of tears describes many horrible historic events, from broken treaties with American Indians to an African Journey of horror, where people would flee together as a village to escape the barbaric slaughter of men, women, and children as the remainder of the world stood cowardly by watching the death and starvation of hundreds of thousands of people. Human atrocities committed by humans. Is it not time to stand up and be counted on to do what is right and leave all excuses behind for our complacency toward the genocide that continues throughout the world?

–GP

There are those who have been brainwashed into believing, in the name of religion, that if they blow themselves up in public places, killing innocent people, that they will be rewarded in the afterlife. This is not religion and it is not culture; it is evil people brainwashing young minds to do evil things.

–GP

Aim above morality. Be not simply good; be good for something.

–Henry David Thoreau

Morality describes a class of rules held by society to govern the conduct of its individual members. It implies the quality of being in accord with standards of right and good conduct. Morality is a code of conduct. It is a guide to behavior that all rational persons should put forward for governing their behavior. Morality requires us to reach a decision as to the rightness or wrongness of an action. *Morals* are ideas about what is right and what is wrong; for example, killing is wrong, whereas helping the poor is right, and causing pain is wrong, whereas easing pain is right. Morals are deeply ingrained in culture and religion and are often part of its identity. Morals should not be confused with religious or cultural habits or customs, such as wearing a religious garment (e.g., veil, turban). That which is considered morally right can vary from nation to nation, culture to culture, and religion to religion. In other words, there is no universal morality that is recognized by all people in all cultures at all times.

Code of Conduct

A *code of conduct* generally prescribes standards of conduct, states principles expressing responsibilities, and defines the rules expressing duties of professionals to whom they apply. Most members of a profession subscribe to certain "values" and moral standards written into a formal document called a code of ethics. Codes of conduct often require interpretation by caregivers as they apply to the specific circumstances surrounding each dilemma.

Michael D. Bayles, a famous author and teacher, describes the differences between standards, principles, and rules:

- *Standards* (e.g., honesty, respect for others, conscientiousness) are used to guide human conduct by stating desirable traits to be exhibited and undesirable ones (dishonesty, deceitfulness, self-interest) to be avoided.
- *Principles* describe responsibilities that do not specify what the required conduct should be. Professionals need to make a judgment about what is desirable in a particular situation based on accepted principles.
- *Rules* specify specific conduct; they do not allow for individual professional judgment.

Moral Judgments

Moral judgments are those judgments concerned with what an individual or group believes to be the right or proper behavior in a given situation. Making a moral judgment is being able to choose an option from among choices. It involves assessing another person's moral character based on how he or she conforms to the moral convictions established by the individual and/or group. A lack of conformity can result in moral disapproval and possibly ridicule of one's character.

Morality Legislated

When it is important that disagreements be settled, morality is often legislated. Law is distinguished from morality by having explicit rules and penalties, as well as officials who interpret the laws and apply penalties when laws are broken. There is often considerable overlap in the conduct governed by morality and that governed by law. Laws are created to set boundaries for societal behavior. They are enforced to ensure that the expected behavior happens.

Moral Dilemmas

Moral dilemmas in the health care setting often arise when values, rights, duties, and loyalties conflict. Caregivers often find that there appears to be no right or wrong answer when faced with the daunting task of deciding which decision path to follow. The best answer when attempting to resolve an ethical dilemma includes the known wishes of the patient and other pertinent information, such as a living will, that might be available when the patient is considered incompetent to make his or her own choices. The right answer is often elusive when the patient is in a coma and there are no known documents as to a patient's wishes and there are no living relatives. However, an understanding of the concepts presented here will help the caregiver in resolving complex ethical dilemmas.

ETHICAL THEORIES

Ethics, too, are nothing but reverence for life. This is what gives me the fundamental principle of morality, namely, that good consists in maintaining, promoting, and enhancing life, and that destroying, injuring, and limiting life are evil.

–Albert Schweitzer

Ethics seeks to understand and to determine how human actions can be judged as right or wrong. Ethical judgments can be made based on our own experiences or based upon the nature of or principles of reason.

Ethical theories and principles introduce order into the way people think about life. They are the foundations of ethical analysis and provide guidance in the decision-making process. Various theories present varying viewpoints that assist caregivers in making difficult decisions when faced with ethical dilemmas that affect the lives of others. The more commonly discussed ethical theories are presented here.

Metaethics is the study of the origin and meaning of ethical concepts. Metaethics seeks to understand ethical terms and theories and their application. "Metaethics explores as well the connection between values, reasons for action, and human motivation, asking how it is that moral standards might provide us with reasons to do or refrain from doing as it demands,

and it addresses many of the issues commonly bound up with the nature of freedom and its significance (or not) for moral responsibility."[2]

Normative Ethics

Normative ethics is prescriptive in that it attempts to determine what moral standards should be followed so that human behavior and conduct may be morally right. Normative ethics is primarily concerned with establishing standards or norms for conduct and is commonly associated with investigating how one ought to act. It involves the critical study of major moral precepts, such as what things are right, what things are good, and what things are genuine. One of the central questions of modern normative ethics is whether human actions are to be judged right or wrong solely according to their consequences.

The determination of a universal moral principle for all humanity is a formidable task and most likely not feasible due to the diversity of people and their cultures. However, there is a need to have a commonly held consensus as to right and wrong to avoid chaos. Thus, there are generally accepted moral standards around which laws are drafted.

Normative Ethics and Assisted Suicide

Oregon's Death with Dignity Act of 1997 allows terminally ill state residents to end their lives through the voluntary self-administration of a lethal dose of medications prescribed by a physician.[3] Although this act was voted upon by the Oregon state legislature and agreed upon by referendum, there are those who disagree with the law from a religious or moral standpoint. The Oregon act is controversial at best and has placed morality and the law in conflict. In the middle of the continuing controversy is the terminally ill patient who must make the ultimate decision of life versus death. It could be argued that it is morally wrong to take one's own life regardless of the law or it can be argued that ending one's life is a morally permissible right because the law provides the opportunity for terminally ill patients to make end-of-life decisions that include the right to self-administer a lethal dose of medications.

As there is a diversity of cultures, there is diversity of opinions as to the rightness and wrongness of the Oregon act. From a microethics point of view as it relates to the Oregon law, each individual must decide what is the right thing to do.

Normative ethics prescribes how people should act and descriptive ethics describes how people act. Both theories have application in the Oregon act. The controversial nature of physician-assisted suicide in the various states is but one of many health care dilemmas caregivers will experience during their careers (e.g., abortion, euthanasia).

Descriptive Ethics

Descriptive ethics, also known as comparative ethics, is the study of what people believe to be right and wrong and why they believe it. Descriptive ethics describes how people act, whereas normative ethics prescribes how people ought to act.

Applied Ethics

Applied ethics is "the philosophical search (within western philosophy) for right and wrong within controversial scenarios."[4] *Applied ethics* is the application of normative theories to practical moral problems, such as abortion, euthanasia, and assisted suicide.

Consequential Ethics

The end excuses any evil.

–Sophocles, *Electra* (c. 409 B.C.)

The *consequential theory* of ethics emphasizes that the morally right action is whatever action leads to the maximum balance of good over evil. From a contemporary standpoint, theories that judge actions by their consequences have been referred to as consequential ethics. Consequential ethical theories revolve around the premise that the rightness or wrongness of an action depends on the consequences or effects of an action. The theory of consequential ethics is based on the view that the value of an action derives solely from the value of its consequences. The consequentialist considers the morally right act or failure to act is one that will produce a good outcome. The goal of a consequentialist is to achieve the greatest good for the greatest number. It involves asking such questions as:

- What will be the effects of each course of action?
- Who will benefit?
- What action will cause the least harm?
- What action will lead to the greatest good?

These questions should be applied when answering the questions in the following *reality check*.

No Good Deed Goes Unpunished

Matt was assigned to survey "Community Medical Center" (CMC) in Minnesota with a team of three surveyors and one observer. He related to me his experience of surveying the children's dental clinic.

Following his tour of CMC's dental clinic, Matt reviewed with the clinic's staff the dental program, which served the city's underserved children. He also reviewed the care rendered several patients based on common and complex diagnoses, as well as the clinic's performance improvement activities. During the survey Dr. Seiden, the clinic director asked, "Are surveyors trained about the importance of dental care in disease prevention? As you know, dentistry is often a stepchild when it comes to allocation of scarce resources. Departments like surgery and radiology often receive the lion's share of funds." Matt responded by describing a film sponsored by the American Dental Association that was shown when he was in training to become a surveyor. The film presented a man whose dental care had been sorely neglected throughout his life and not been addressed prior to replacement of a heart valve. The patient developed a systemic infection following surgery, which led to deterioration of the heart valve and the patient's ultimate death. The film described the lessons learned and opportunities for performance improvement that included the need for a dental evaluation by a dentist prior to valve replacement. Dr. Seiden was pleased to learn that the importance of dentistry is included in surveyor training.

Following Matt's survey of the dental clinic, the staff relayed to him their concern that the clinic was going to be closed for lack of funds. Cheryl, the clinic manager, explained, "I sometimes feel the importance of the dental clinic to the underserved population is not well-understood." A bit emotional, Cheryl said, "Matt, have you surveyed other dental clinics?" Matt replied, "Yes, several well-funded clinics that come to mind were in Philadelphia and New York." Cheryl then asked, "Matt, do you have any ideas as to how we can save our clinic from closing?" Matt replied, "I have some time before lunch and I can share a few ideas with you." Cheryl replied, "The staff will be eager to listen." The staff proceeded to place several chairs in a semicircle and brainstormed with Matt a variety of ideas for saving the clinic. The staff discussed several fund-raising activities including a car wash by children to bring awareness to Any Town's dental clinic." Matt looked at his watch and said, "I need to get back to my survey team, but I want to leave you with one other thought to ponder that could be applicable to any department in the hospital. I was surveying a veteran's hospital physical therapy department and noticed on their bulletin board the staff's dream plan for renovation of their department. I asked the physical therapy staff about the plan. They related how their vision of a new physical therapy department had been sketched out and placed on their bulletin board. Several weeks later, a veteran who had been sitting in the waiting area became curious about their dream. After studying the board during his visits for therapy, he walked to the reception desk on his last visit and asked about their vision for physical therapy. They explained it was a $200,000 dream. Gary looked at the staff at the reception desk and said, "It is no longer a dream. I don't have much, but what I do have is enough to make your dream come true." And, so he did. Matt continued, "You see, if people know your dreams, something as small as a bulletin board can make all the difference." Dr. Seiden smiled and said, "I see where this is going, community awareness as to the need to fund the clinic. It's really not merely about a car wash, it's about a concept of how the hospital can save not only the dental clinic but other programs earmarked for closing." Matt smiled, as the staff regained hope. Dr. Seiden, seeing that Matt had little time for lunch, stood up, extended his hand and said, "Matt, you gave us hope when we believed there was none. Thank you so much. I will be sure to discuss this with administration."

Matt presented his observations the following morning to the organization's leadership, which included his round table discussion with the staff. He was however cut short in his presentation by the surveyor team leader, Brad, who later reported to Victor, Matt's manager, that Matt should not be discussing how to save a dental clinic by opening a car wash. Matt received a reprimand from Victor and was removed at the end of day 4 of a 5-day survey without explanation.

Anonymous

Discussion

1. Discuss Matt's approach to addressing the staff's concerns for saving the children's dental clinic.
2. If Matt's round table session led to saving the clinic, was Matt's reprimand worth the risk if he could have foreseen the resulting reprimand?
3. The goal of a consequentialist is to achieve the greatest good for the greatest number. Discuss how this applies in this *reality check*.

Utilitarian Ethics

Happiness often sneaks in a door you did not think was open.

–Author Unknown

The utilitarian theory of ethics involves the concept that the moral worth of an action is determined solely by its contribution to overall usefulness. It describes doing the greatest good for the most people. It is thus a form of consequential ethics, meaning that the moral worth of an action is determined by its outcome, and, thus, the ends justify the means. The utilitarian commonly holds that the proper course of an action is one that maximizes utility, commonly defined as maximizing happiness and reducing suffering, as noted in the following *reality check*.

Maximizing Happiness and Reducing Suffering

Daniel was the last of five interviews for the CEO's position at Anytown Medical Center. During the interview, a member of the finance committee asked, "Daniel, how would maximize an allocation of $100,000 to spend as you wished for improving patient care, aside from capital budget and construction projects?" Bishop Paul, the board chairman added, "Daniel, think about the question. I will give you five minutes to form an answer." Daniel responded, "Bishop Paul, I am ready now to answer your question." The trustees looked somewhat surprised, as Bishop Paul with a smile quickly responded, "You may proceed with your answer." Daniel replied, "An old Chinese proverb came to mind as quickly as the question was asked: 'Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.' You are interviewing me as CEO of your hospital. I see my job as assuring you that employees are thoroughly trained to care for the patients the hospital serves. I will maximize the value of each and every dollar by determining the staff skill sets that are lacking and retrain staff in the areas deficiencies are noted." Bishop Paul looked around the long oval table at the trustees, "This has been a long day and a grueling interview process for Daniel. Are there any other questions you would like to ask him." There was silence, as the trustees nodded their heads no. Bishop Paul looked at Daniel and thanked him for his interest in becoming the hospital's next CEO.

As Daniel began to leave the boardroom, Bishop Paul smiled and turned his swivel chair around as Daniel was walking towards the exit and asked, "Daniel, could you not leave the building just yet. If you could, just wait outside the room and have a seat in the doctors' lounge area." After about 20 minutes, a trustee went into the lounge where Daniel was sitting and asked him to return to the boardroom. As he entered the room, Bishop Paul stood up and looked at Daniel straight in his eyes and said, "Daniel, you were the last to be interviewed because you were on the 'short list' of candidates selected to be interviewed. Speaking for the board, your response to the last question was merely icing on the cake confirming our interest in you joining our staff. Both the Board of Trustees and members of the Medical Executive Committee unanimously have recommended you as our CEO, with which I unconditionally concur! Welcome to Anytown hospital." The trustees stood and clapped their hands. The bishop turned to the trustees and said, "Wow, that's a first."

Anonymous

Discussion

1. Discuss how Daniel's response to the trustee's question of how he would spend the $100,000 fits the utilitarian theory of ethics.
2. Did Daniel, metaphorically speaking, succeed in maximizing happiness in the eyes of the board? Discuss your answer.

Deontological Ethics

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.

–Immanuel Kant

Deontological ethics is commonly attributed to the German philosopher Immanuel Kant (1724–1804). Kant believed that although doing the right thing is good, it might not always lead to or increase the good and right thing sought after. It focuses on one's duties to others and others' rights. It includes telling the truth and keeping your promises. Deontology ethics is often referred to as duty-based ethics. It involves ethical analysis according to a moral code or rules, religious or secular. *Deon* is derived from the Greek word meaning "duty." Kant's theory differs from consequentialism in that consequences are not the determinant of what is right; therefore, doing the right thing may not always lead to an increase in what is good.

> Duty-based approaches are heavy on obligation, in the sense that a person who follows this ethical paradigm believes that the highest virtue comes from doing what you are supposed to do—either because you have to, e.g., following the law, or because you agreed to, e.g., following an employer's policies. It matters little whether the act leads to good consequences; what matters is "doing your duty."[5]

The following *reality check* illustrates how duty-based ethics focuses on the act and not the consequences of an act.

Duty Compromises Patient Care

At 33 years of age, I was the youngest administrator in New York State and was about to learn that adhering to company policy sometimes conflicts with the needs of the patient. In this case it was a 38-year-old employee who had been diagnosed with cancer. I remember the day well, even though it was more than 30 years ago. My secretary alerted me that Carol, a practical nurse and employee, had been admitted to the 3-North medical-surgical unit, where she worked. Without delay, I left my office and went to the nursing unit and inquired as to what room Carol was in. Beth, the unit's nurse manager, overheard my question. She walked up to me and asked, "Daniel, could I please talk to you for a moment before you visit with Carol?" I looked at her and nodded my head yes and without thought we both walked to her office. She closed the door and said, "As you know, we are self-insured and the health insurance program we have does not cover Carol's chemotherapy treatments. She cannot bear the cost. Is there anything you can do to help her?" I replied that I would make an inquiry with our human resources director to see what could be done.

Beth asked, "Would you mind if I went with you to Carol's room for a few minutes." Daniel compassionately replied, "Of course you can."

They walked to Carol's room. Her husband and children had just left. Beth stayed for a few minutes while Daniel remained behind chatting with Carol for a few moments and said he would be back to talk with her more.

Daniel went to speak with Christine, the human resources director for his hospital. There were two other hospitals in the multihospital system. He explained Carol's financial situation and her lack of funds for chemotherapy treatment. Christine replied, "Daniel, this is corporate policy that is applicable to all three hospitals with which we must comply." Following much discussion, Daniel said, "Christine, Carol is an employee and I realize there are conflicting duties here. One is to follow corporate policy or choose to do, as I see it, what is right for Carol. If you prefer, I can request an exception to the rule. To me, right trumps duty." Christine looked at Daniel and said, "Daniel, I will see what I can do. I have a good relationship with the corporate vice president for human resources. If anyone can make an exception, he can make it happen. I know you would do the same for me and any other employee."

Anonymous

Discussion

1. Discuss the potential long-term effect of granting an exception for Carol.
2. Do you believe that duty should be trumped by good? Discuss your answer.
3. Would you describe Daniel as consequentialist because he favors evaluating the outcome of an act rather than the act itself? Discuss your answer.
4. Discuss how deontological ethics in this case is in conflict with consequential thinking.

Nonconsequential Ethics

The *nonconsequential ethical theory* denies that the consequences of an action are the only criteria for determining the morality of an action. In this theory, the rightness or wrongness of an action is based on properties intrinsic to the action, not on its consequences. In other words, the nonconsequentialist believes right or wrong depends on the intention not the outcome.

Bad Outcome, Good Intentions

Chelsea was preparing to drape Mr. Smith's leg in OR 6 for surgery, when she was approached by Nicole, the nurse manager, asked, "Chelsea, please come to OR 3. We have an emergency there and urgently need your skills to assist the surgeon." Chelsea turned to Daniel, the surgical technician, and asked him to continue prepping Mr. Smith's leg for surgery. Daniel prepped the leg prior to the surgeon entering the room. The surgeon entered the room a few minutes later and asked, "Where is Chelsea?" Daniel replied, "She was called away for an emergency in OR 3. Karen will be in shortly to assist us."

Following surgery, Mr. Smith was transferred to the recovery room. While he was in the recovery room a nurse was looking at the patient's medical record as to the notes

regarding the patient's procedure during surgery. She noticed that surgery was conducted on the wrong leg.

Although there was heated discussion between the surgeon and nursing staff, each member of the staff had good intentions but the outcome was not so good. Nonconsequentialists believe that right or wrong depends on the intention. They generally focus more on deeds and whether those deeds are good or bad. In this case the intentions were good but the outcome was bad. It should be noted that nonconsequentialists do not always ignore the consequences. They accept the fact that sometimes good intentions can lead to bad outcomes. In summary nonconsequentialists focus more on character as to whether someone is a good person or not. Nonconsequentialists believe that right or wrong depends on the intention. Generally, the consequentialist will focus more on outcomes as to whether or not they are good or bad.

Discussion

1. Describe how the nonconsequential theory of ethics applies in this case.
2. What questions might the consequentialist raise after reviewing the facts of this case?

Ethical Relativism

The theory of *ethical relativism* holds that morality is relative to the norms of the culture in which an individual lives. In other words, right or wrong depends on the moral norms of the society in which it is practiced. A particular action by an individual may be morally right in one society or culture and wrong in another. What is acceptable in one society may not be considered as such in another. Slavery may be considered an acceptable practice in one society and unacceptable and unconscionable in another. The administration of blood may be acceptable as to one's religious beliefs and not acceptable to another within the same society. The legal rights of patients vary from state to state, as is well borne out, for example, by Oregon's Death with Dignity Act. Caregivers must be aware of cultural, religious, and legal issues that can affect the boundaries of what is acceptable and what is unacceptable practice, especially when delivering health care to persons with beliefs different from their own. As the various cultures of the world merge together in communities, the education and training of caregivers become more complex. The caregiver must not only grasp the clinical skills of his or her profession but also have a basic understanding of what is right and what is wrong from both a legal and ethical point of view. Although decision making is not always perfect, the knowledge gained from this text will aid the reader in making better decisions.

PRINCIPLES OF ETHICS

You cannot by tying an opinion to a man's tongue, make him the representative of that opinion; and at the close of any battle for principles, his name will be found neither among the dead, nor the wounded, but the missing.

–E.P. Whipple (1819–1886)

An army of principles can penetrate where an army of soldiers cannot.

–Thomas Jefferson

Ethical principles are universal rules of conduct, derived from ethical theories that provide a practical basis for identifying what kinds of actions, intentions, and motives are valued. Ethical principles assist caregivers in making choices based on moral principles that have been identified as standards considered worthwhile in addressing health care–related ethical dilemmas. As noted by the principles discussed in the following sections, caregivers, in the study of ethics, will find that difficult decisions often involve choices between conflicting ethical principles.

Autonomy

No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestioned authority of law.

–Union Pacific Ry. Co. v. Botsford [141 U.S. 250, 251 (1891)]

The principle of *autonomy* involves recognizing the right of a person to make one's own decisions. "Auto" comes from a Greek word meaning "self" or the "individual." In this context, it means recognizing an individual's right to make his or her own decisions about what is best for him or herself. Autonomy is not an absolute principle. The autonomous actions of one person must not infringe upon the rights of another. The eminent Justice Benjamin Cardozo, in *Schloendorff v. Society of New York Hospital*, stated:

> Every human being of adult years and sound mind has a right to determine what shall be done with his own body and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages, except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained.[6]

Each person has a right to make his or her own decisions about health care. A patient has the right to refuse to receive health care even if it is beneficial to saving his or her life. Patients can refuse treatment, refuse to take medications, and refuse invasive procedures regardless of the benefits that may be derived from them. They have a right to have their decisions adhered to by family members who may disagree simply because they are unable to let go. Although patients have a right to make their own choices, they also have a concomitant right to know the risks, benefits, and alternatives to recommended procedures.

Autonomous decision making can be affected by one's disabilities, mental status, maturity, or incapacity to make decisions. Although the principle of autonomy may be inapplicable in certain cases, one's autonomous wishes may be carried out through an advance directive and/or an appointed health care agent in the event of one's inability to make decisions.

What happens when the right to autonomy conflicts with other moral principles, such as beneficence and justice? Conflict can arise, for example, when a patient refuses a blood transfusion considered necessary to save his or her life whereas the caregiver's principal obligation is to do no harm. What is the right thing to do when the spouse decides to have the physician withhold from his wife her true diagnosis?

Spouse's Grief Leads to Withholding the Truth

Annie, a 27-year-old woman with one child, began experiencing severe pain in her abdomen while visiting her family in May. After describing the excruciating pain to her husband Daniel, he scheduled Annie for an appointment with Dr. Sokol, a gastroenterologist, who ordered a series of tests. While conducting a barium scan, a radiologist at Community Hospital noted a small bowel obstruction. Dr. Sokol recommended surgery to which both Annie and Daniel agreed.

After the surgery, on July 7, Dr. Brown, the operating surgeon, paged Daniel over the hospital intercom as he walked down a corridor on the ground floor. Daniel, hearing the page, picked up a house phone and dialed zero for an operator. The operator inquired, "May I help you?" "Yes," Daniel replied. "I was just paged." The operator replied, "Oh, yes. Dr. Brown would like to talk to you. I will connect you with him. Hang on. Don't hang up." (Daniel's heart began to pound.) Dr. Brown asked, "Is this you, Daniel?" Daniel replied, "Yes, it is." Dr. Brown replied, "Well, surgery is over. Your wife is recovering nicely in the recovery room." Daniel was relieved but for a moment. "That's good." Daniel sensed Dr. Brown had more to say. Dr. Brown continued, "I am sorry to say that she has carcinoma of the colon." Daniel replied, "Did you get it all?" Dr. Brown reluctantly replied, "I am sorry, but the cancer has spread to her lymph nodes and surrounding organs." Daniel, with the tears in his eyes, asked, "Can I see her?" Dr. Brown replied, "She is in the recovery room." Before hanging up, Daniel told Dr. Brown, "Please do not tell Annie that she has cancer. I want her to always have hope." Dr. Brown agreed, "Don't worry, I won't tell her. You can tell her that she had a narrowing of the colon."

Daniel hung up the phone and proceeded to the recovery room. After entering the recovery room, he spotted his wife. His heart sank. Tubes seemed to be running out of every part of her body. He walked to her bedside. His immediate concern was to see her wake up and have the tubes pulled out so that he could take her home.

Later, in a hospital room, Annie asked Daniel, "What did the doctor find?" Daniel replied, "He found a narrowing of the colon." "Am I going to be okay?" "Yes, but it will take a while to recover." "Oh, that's good. I was so worried," said Annie. "You go home and get some rest." Daniel said, "I'll be back later," as Annie fell back to sleep.

Daniel left the hospital and went to see his friends, Jerry and Helen, who had invited him for dinner. As Daniel pulled up to Jerry and Helen's home, he got out of his car and just stood there, looking up a long stairway leading to Jerry and Helen's home. They were standing there looking down at Daniel. It was early evening. The sun was setting. A warm breeze was blowing, and Helen's eyes were watering. Those few moments seemed like a lifetime. Daniel discovered a new emotion, as he stood there speechless. He knew then that he was losing a part of himself. Things would never be the same.

Annie had one more surgery 2 months later in a futile attempt to extend her life. In November 2002, Annie was admitted to the hospital for the last time. Annie was so ill that even during her last moments she was unaware that she was dying. Dr. Brown entered the room and asked Daniel, "Can I see you for a few moments?" "Yes," Daniel replied. He followed Dr. Brown into the hallway. "Daniel, I can keep Annie alive for a few more days, or we can let her

go." Daniel, not responding, went back into the room. He was now alone with Annie. Shortly thereafter, a nurse walked into the room and gave Annie an injection. Daniel asked, "What did you give her?" The nurse replied, "Something to make her more comfortable." Annie had been asleep; she awoke, looked at Daniel, and said, "Could you please cancel my appointment to be sworn in as a citizen? I will have to reschedule. I don't think I will be well enough to go." Daniel replied, "Okay, try to get some rest." Annie closed her eyes, never to open them again.

Discussion

1. Do you agree with Daniel's decision not to tell Annie about the seriousness of her illness? Explain your answer.
2. Should the physician have spoken to Annie as to the seriousness of her illness regardless of Daniel's desire to give Annie hope and not a death sentence? Explain your answer.
3. Describe the ethical dilemmas in this case (e.g., how Annie's rights were violated).
4. Place yourself in Annie's shoes, the physician's shoes, and Daniel's shoes, and then discuss how the lives of each may have been different if the physician had informed Annie as to the seriousness of her illness.

This true life case raises numerous questions, often resulting in conflicts among ethics, the law, patient rights, and family wishes. From a professional ethics point of view, the American Medical Association provides in its *Principles of Medical Ethics* that:

> IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.[7]

Legally, pursuant to the Patient Self-Determination Act of 1990, patients have a right to make their own health care decisions, to accept or refuse medical treatment, and to execute an advance health care directive. Practically speaking, as discussion of this case illustrates, one shoe does not fit all. Both legal and ethical edicts have often served to raise an unending stream of questions that involve both the law and ethics. Although discussed later, a case here has been made for the need of a well-balanced ethics committee to help caregivers, patients, and family come to a consensus in the decision-making process.

Life or Death: The Right to Choose

A Jehovah's Witness executed a release requesting that no blood or its derivatives be administered during hospitalization. The Connecticut Superior Court determined that the hospital had no common law right or obligation to thrust unwanted medical care on the patient because she had been sufficiently informed of the consequences of the refusal to accept blood transfusions. She had competently and clearly declined that care. The hospital's interests were sufficiently protected by her informed choice, and neither it nor the trial court in this case was entitled to override that choice.

Beneficence

Beneficence describes the principle of doing good, demonstrating kindness, showing compassion, and helping others. In the health care setting, caregivers demonstrate beneficence

by providing benefits and balancing benefits against risks. Beneficence requires one to do good. Doing good requires knowledge of the beliefs, culture, values, and preferences of the patient—what one person may believe to be good for a patient may in reality be harmful. For example, a caregiver may decide to tell a patient frankly, "There is nothing else that I can do for you." This could be injurious to the patient if the patient really wants encouragement and information about care options from the caregiver. Compassion here requires the caregiver to tell the patient, "I am not aware of new treatments for your illness; however, I have some ideas about how I can help treat your symptoms and make you more comfortable. In addition, I will keep you informed as to any significant research that may be helpful in treating your disease processes."

Paternalism

Paternalism is a form of beneficence. People sometimes believe that they know what is best for another and make decisions that they believe are in that person's best interest. It may involve, for example, withholding information, believing that the person would be better off that way. Paternalism can occur due to one's age, cognitive ability, and level of dependency.

CPR and Paternalism in Nursing Homes

Some nursing homes have implemented facilitywide no CPR policies, as noted in the following Centers for Medicare and Medicaid Services Memorandum. Nursing home patients have a right to make their own care decisions. To eliminate that option in the nursing home sitting by having a policy of no resuscitation measures is a paternalistic approach to patient care and is a clear violation of patient rights and autonomous decision making. Such policies are unconditionally morally and legally wrong.

Memorandum Summary

- **Initiation of CPR—**Prior to the arrival of emergency medical services (EMS), nursing homes must provide basic life support, including initiation of CPR, to a resident who experiences cardiac arrest (cessation of respirations and/or pulse) in accordance with that resident's advance directives or in the absence of advance directives or a Do Not Resuscitate (DNR) order. CPR-certified staff must be available at all times.
- **Facility CPR Policy—**Some nursing homes have implemented facilitywide no CPR policies. Facilities must not establish and implement facilitywide no CPR policies.
- **Surveyor Implications—**Surveyors should ascertain that facility policies related to emergency response require staff to initiate CPR as appropriate and that records do not reflect instances where CPR was not initiated by staff even though the resident requested CPR or had not formulated advance directives.[8]

Physicians and Paternalism

Medical paternalism involves making decisions for patients who are capable of making their own choices. Physicians often find themselves in situations where they can influence a patient's health care decision simply by selectively telling the patient what he or she prefers

based on personal beliefs. This directly violates patient autonomy. The problem of paternalism involves a conflict between the principles of autonomy and beneficence, each of which may be viewed and weighed differently, for example, by the physician and patient, physician and family member, or even the patient and a family member.

Employment-Related Paternalism

Employment-related paternalism at its best is a shared and cooperative style of management in which the employer recognizes and considers employee rights when making decisions in the workplace. Paternalism at its worst occurs when the employer's style of management becomes more authoritarian, sometimes arbitrary, and unpredictable, as noted in the *reality check* presented next. In this scenario the employer has complete discretion in making workplace decisions and the individual employee's freedom is subordinate to the employer's authority. Here the employer requires strict obedience to follow orders without question. The employer in this case lacks respect and consideration for the employee.

Paternalism and Breach of Confidentiality

Nina traveled with her husband, Dan, to a work assignment in Michigan. While visiting with her brother in Michigan, Nina believed that her potassium was low, which was a frequent occurrence with her for many years. Nina's brother suggested she could have her blood tested at a local blood drawing station. Dan later learned Nina's potassium was low.

Later that morning, while at work, Joan, Dan's colleague, called Bill, Dan's supervisor, to discuss Nina's health. Bill, however, had overslept and had not yet arrived at work. Joan decided to speak to the supervisor on call. After that conversation, Joan, being led by three staff members from the organization, tracked Dan down on several occasions that morning. On the first occasion, at approximately 10:15 A.M., Dan was surveying the organization's family practice center when Joan arrived. She rudely called Dan aside, excusing the organization's staff from the immediate area. Joan said, with surprise, "Dan, you are working?" Dan, even more surprised at the question, "Yes, I have been working." Joan replied, "Well, anyway, the corporate office wants to speak to you." Dan said he would call during lunch hour. Joan, somewhat agitated, walked away.

Joan again tracked Dan down with an entourage of the organization's staff at 11:30 A.M. She located Dan while he was in the organization's transfusion center. Again she rudely entered the conference room where Dan was discussing the care being rendered to a cancer patient. She once again asked in a stern tone of voice, "Could everyone please leave the room. I need to talk to Dan." The organization's staff left the room and the nurse said, "I finally reached Bill and he wants you to call him." Dan inquired, "Is he pulling me off this assignment?" The nurse replied, "Yes, he is. I spoke to Bill, and he has decided that out of concern for Nina you should be removed from this particular assignment. He wants you to call him." Dan replied, "I don't understand why you did this, calling Bill and continuously interrupting my work and sharing with others confidential information about my wife. I will

wrap up with the staff my review of this patient and call Bill." As Joan left the conference room Dan said, "I trusted you and you shared confidential information about my wife?" Joan, realizing that she had no right to share the information, quickly walked away.

Dan called Bill during his lunch break. During that call Bill said, "I am going to remove you from your assignment because I think your wife's health needs should be addressed, and this could be disruptive to the survey." Dan replied, "The only disruption has been the nurse tracking me down with staff from the organization and not conducting her work activities." Bill said, "My decision stands. You can opt to take vacation time for the remainder of the week."

Discussion

1. Discuss what examples of paternalism you have gleaned from this case.
2. Do you think Dan was treated fairly? Discuss your answer.
3. Discuss the issues of trust, confidentiality, and fairness as they relate to this case.

At present, our federal employment discrimination laws fail to provide uniform and consistent legal protection when an employer engages in applicant-specific paternalism—the practice of excluding an applicant merely to protect that person from job-related safety and/or health risks uniquely attributable to his or her federally protected characteristic(s). Under Title VII of the Civil Rights Act of 1964, the courts and the Equal Employment Opportunity Commission (EEOC) reject such paternalism, demanding that the applicant alone decide whether to pursue (and accept) a job that poses risks related to his or her sex, race, color, religion, or national origin.[9]

Can a Physician "Change His or Her Mind"?

Walls had a condition that caused his left eye to be out of alignment with his right eye. Walls discussed with Shreck, his physician, the possibility of surgery on his left eye to bring both eyes into alignment. Walls and Shreck agreed that the best approach to treating Walls was to attempt surgery on the left eye. Before surgery, Walls signed an authorization and consent form that included the following language:

- I hereby authorize Dr. Shreck . . . to perform the following procedure and/or alternative procedure necessary to treat my condition . . . of the left eye.
- I understand the reason for the procedure is to straighten my left eye to keep it from going to the left.
- It has been explained to me that conditions may arise during this procedure whereby a different procedure or an additional procedure may need to be performed, and I authorize my physician and his assistants to do what they feel is needed and necessary.

During surgery, Shreck encountered excessive scar tissue on the muscles of Walls's left eye and elected to adjust the muscles of the right eye instead. When Walls awoke from the anesthesia, he expressed anger at the fact that both of his eyes were bandaged. The next day,

Walls went to Shreck's office for a follow-up visit and adjustment of his sutures. Walls asked Shreck why he had operated on the right eye, and Shreck responded that "he reserved the right to change his mind" during surgery.

Walls filed a lawsuit. The trial court concluded that Walls had failed to establish that Shreck had violated any standard of care. It sustained Shreck's motion for directed verdict, and Walls appealed. The court stated that the consent form that had been signed indicated that there can be extenuating circumstances when the surgeon exceeds the scope of what was discussed presurgery. Walls claimed that it was his impression that Shreck was talking about surgeries in general.

Roussel, an ophthalmologist, had testified on behalf of Walls. Roussel stated that it was customary to discuss with patients the potential risks of a surgery, benefits, and the alternatives to surgery. Roussel testified that medical ethics requires informed consent.

Shreck claimed that he had obtained the patient's informed consent not from the form but from what he discussed with the patient in his office. The court found that the form itself does not give or deny permission for anything. Rather, it is evidence of the discussions that occurred and during which informed consent was obtained. Shreck therefore asserted that he obtained informed consent to operate on both eyes based on his office discussions with Walls.

Ordinarily, in a medical malpractice case, the plaintiff must prove the physician's negligence by expert testimony. One of the exceptions to the requirement of expert testimony is the situation whereby the evidence and the circumstances are such that the recognition of the alleged negligence may be presumed to be within the comprehension of laypersons. This exception is referred to as the "common knowledge exception."

The evidence showed that Shreck did not discuss with Walls that surgery might be required on both eyes during the same operation. There was evidence that Walls specifically told Shreck he did not want surgery performed on the right eye.

Expert testimony was not required to establish that Walls did not give express or implied consent for Shreck to operate on his right eye. Absent an emergency, it is common knowledge that a reasonably prudent health care provider would not operate on part of a patient's body if the patient told the health care provider not to do so.

On appeal, the trial court was found to have erred in directing a verdict in favor of Shreck. The evidence presented established that the standard of care in similar communities requires health care providers to obtain informed consent before performing surgery. In this case, the applicable standard of care required Shreck to obtain Walls's express or implied consent to perform surgery on his right eye.

[*Walls v. Shreck*, 658 N.W.2d 686 (2003)]

Ethical and Legal Issues

1. Discuss the conflicting ethical principles in this case.
2. Did the physician's actions in this case involve medical paternalism? Explain your answer.

Nonmaleficence

Nonmaleficence is an ethical principle that requires caregivers to avoid causing patients harm. It derives from the ancient maxim *primum non nocere*, translated from the Latin, "first, do no harm." Physicians today still swear by the code of Hippocrates, pledging to do no harm. Medical ethics require health care providers to "first, do no harm." A New Jersey court in *In re Conroy*,[10] found that "the physician's primary obligation is . . . First do no harm." Telling the truth, for example, can sometimes cause harm. If there is no cure for a patient's disease, you may have a dilemma. Do I tell the patient and possibly cause serious psychological harm, or do I give the patient what I consider to be false hopes? Is there a middle ground? If so, what is it? To avoid causing harm, alternatives may need to be considered in solving the ethical dilemma.

The caregiver, realizing that he or she cannot help a particular patient, attempts to avoid harming the patient. This is done as a caution against taking a serious risk with the patient or doing something that has no immediate or long-term benefits.

Law and Ethics Intersect

Peninsula Child Psychiatrist William Ayres Sentenced to Eight Years for Molesting Patients

REDWOOD CITY—As one victim after another testified, calling William Ayres a monster and a serial child-abuser who robbed them of their innocence, the once-renowned child psychiatrist sat stoically Monday as a judge sentenced him to eight years in prison for molesting his former patients.

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Ayres used his work with boys having trouble at school, at home or with the law as a setting to abuse them, the victims said. His position of authority allowed him to deflect suspicions about his sexual interest in boys and keep parents from believing their sons' complaints, victims said.

Joshua Melvin, San Jose Mercury News, *August 27, 2013*[11]

The patients described in the news clipping were harmed because the physician who was trained to do good did wrong by taking advantage of the patients' weaknesses. The beneficent person does good and not harm (nonmaleficence). The law in the news clipping is clear. If a person with intent and action causes harm to the patient, that person will be punished.

One of the many lessons in the next *reality check* teaches the reader that one may have good intent but that intent can lead to a perceived wrong and thus be damaging to one's good character and possibly his or her career path.

Patient Questions Physical Exam

Dear Sir:
I was a patient on your short-term acute-care psychiatric unit. It was a voluntary admission as is with all patients on that unit. Dr. X was my psychiatrist. Although he was very good as a psychiatrist, I was somewhat disturbed in the way he conducted my physical examination. He had come to my room on the day of my admission and said that he needed to perform a physical exam. He had already conducted a thorough history of my physical ailments and thoroughly reviewed my family history as far back as I could remember.

We were in the room alone when he entered. He had a gown in his hand and asked me to put it on. He then walked out of the room and said he would be back in a few minutes, as soon as I was gowned. When he returned he began his physical examination. Early on in the exam he asked when I had my last breast examination. I told him that I was 28 and never had one. He said, "Well, I better do one." I thought it was a bit odd that he conducted the exam without a female nurse present. I became more concerned when he touched my breasts in what I considered a sensual manner. It was uncanny. It seemed to be a bit more than what I would've expected during a breast examination. He seemed to be caressing my breasts, as opposed to examining them. I don't know if this is a routine procedure, but I was very uncomfortable in the situation. I think it would be better if you considered having a female nurse present when conducting female examinations in a patient room on a psychiatric unit or on any other unit for that matter.

Thanks for listening to my concerns.

Anonymous

Administrator
I called Dr. X into my office and discussed the patient's concerns with him. He said this is what physicians are trained to do. "We are trained to conduct both history and physical examinations." He had brought with him a letter from one of his professional associations that stated psychiatrists are permitted to perform physical examinations on their patients. I asked him why he did not have someone in the room with him when he examined the patient. He stated, "I generally do but I was extremely busy and the staff was swamped with other patients. It was just a hectic day."

Discussion

1. Discuss how you would respond to the patient.
2. Describe how you would resolve this issue with the physician; assuming this was the first complaint that you had received regarding his care.
3. Explain what policy decisions you would implement.
4. Knowing that the physician is in a position of trust with his patient, discuss what action the physician should take to prevent complaints of this nature from recurring.

The intersection of "law" and "ethics" is clear. Deviation from either can lead to unsatisfactory outcomes for both physicians and patients. Although a caregiver may be trained to conduct a physical examination, the question may not be "can I do it" but "should I do it."

Nonmaleficence and Ending Life

The principle of nonmaleficence is defeated when a physician is placed in the position of ending life by removing respirators, giving lethal injections, or writing prescriptions for lethal doses of medication. Helping patients die violates the physician's duty to save lives. In the final analysis, there needs to be a distinction between killing patients and letting them die. It is clear that killing a patient is never justified.

Justice

Justice is the obligation to be fair in the distribution of benefits and risks. Justice demands that persons in similar circumstances be treated similarly. A person is treated justly when he or she receives what is due, is deserved, or can legitimately be claimed. Justice involves how people are treated when their interests compete with one another.

Distributive justice is a principle requiring that all persons be treated equally and fairly. No one person, for example, should get a disproportional share of society's resources or benefits. There are many ethical issues involved in the rationing of health care. This is often a result of limited or scarce resources, limited access as a result of geographic remoteness, or a patient's inability to pay for services combined with many physicians who are unwilling to accept patients who are perceived as "no-pays" with high risks for legal suits.

Senator Edward M. Kennedy, speaking on health care at the John F. Kennedy Presidential Library in Boston, Massachusetts on April 28, 2002, stated:

> It will be no surprise to this audience that I believe securing quality, affordable health insurance for every American is a matter of simple justice. Health care is not just another commodity. Good health is not a gift to be rationed based on ability to pay. The time is long overdue for America to join the rest of the industrialized world in recognizing this fundamental need.

Later, speaking at the Democratic National Convention on August 25, 2008, Kennedy said:

> And this is the cause of my life—new hope that we will break the old gridlock and guarantee that every American—North, South, East, West, young, old—will have decent, quality health care as a fundamental right and not a privilege.

Although Kennedy did not live to see the day his dream would come true, President Barack Obama signed into law the final piece of his administration's historic health care bill on March 23, 2010.

The costs of health care have bankrupted many, and research dollars have proven to be inadequate, yet many members of Congress elected to address the needs of the country have elected to continue their bipartisan bickering while they "enjoy" the lowest acceptance ratings

in the nation's history. They have, however, ensured that their health care needs are met with the best of care in the best facilities with the best doctors. They have taken care of themselves. Their pensions are intact, whereas many Americans have to face such dilemmas as which medications they will take and which they cannot afford. Many often have to decide between food and medications. Is this justice or theft of the nation's resources by the few incompetents who have been elected to protect the American people? Unfortunately, these problems continue to this day as Congress continues to wrangle over national health insurance.

Justice and Government Spending

He Won His Battle With Cancer. Thus, Why Are Millions of Americans Still Losing Theirs?

For an increasing number of cancer activists, researchers and patients, there is too much death and too much waiting for new drugs and therapies. They want a greater sense of urgency, a new approach that emphasizes translational research over basic research—turning knowledge into therapies and getting them to patients pronto. The problem is, that's not the way our sclerotic research paradigm—principally administered by the National Institutes of Health and the National Cancer Institute (NIH/NIC)—is set up. "The fact that we jump up and down when cancer deaths go from 562,000 to 561,000, that's ridiculous. That's not enough," says Lance Armstrong, the cyclist and cancer survivor turned activist, through his Lance Armstrong Foundation (LAF).

Time, *September 15, 2008*

Scarce resources are challenging to the principles of justice. Justice involves equality; nevertheless, equal access to health care, for example, across the United States does not exist. How should government allocate a trillion dollars? Consider the following questions:

- Should the money be distributed equally among families?
- Should the money be distributed equally among all citizens?
- Should the money be invested and saved for a rainy day?
- Should the money be used to improve educational programs, build libraries, build state-of-the-art hospitals, or fund afterschool programs for disadvantaged youths?
- Should the money include both savings for that rainy day and funding for the programs described previously?
- What would be the greater good for all?
- Should health care be rationed based on one's ability to pay?
- Should those individuals found to be ethically corrupt be condemned to poverty and stand in the same food lines as the poorest of Americans?

States Have Double Standards

It is no secret that states have had double standards over the years, one for health care organizations and one for physicians and investors, who often duplicated the financially more lucrative hospital services, while referring Medicaid patients and no-pays to hospital programs for care. As administrator of one hospital, allow me to give you a few examples.

1. A radiology group was able to purchase their own Computed Tomography (CT) scanner, while I had to jump through hoops to be able to purchase one.
2. A group of surgeons and private investors established a surgery center in direct competition with my hospital without scrutiny. At the same time, I was required to justify the hospital's proposed surgery center. The hospital was required to complete lengthy questionnaires and gather supporting documentation to justify construction and operation of an outpatient surgery center.
3. The hospital had to justify opening an outpatient rehabilitation program within the hospital in order to provide a continuum of care for patients needing physical therapy services. While I was busy justifying the need for an outpatient rehabilitation program, orthopedic surgeons were busy setting up their own outpatient programs to compete with the hospital.

I remember walking to my car one day after work and one of my orthopedic surgeons caught up to me and said, "You know Dan, I have made enough money in the 3 years that I have been on your staff to buy your hospital."

Discussion

1. Discuss the issues of justice as they apply to this scenario.
2. Discuss the issues of fairness and how physician competition with hospitals can affect the quality of patient care.

Injustice for the Insured

Even if you're insured, getting ill could bankrupt you. Hospitals are garnishing wages, putting liens on homes and having patients who can't pay arrested. It's enough to make you sick. Think You're Covered? Think Again.

–Sara Austin, *Self*, October 2004

Hospitals are receiving between $4 million and $60 million annually in charity funds in New York City alone, according to Elizabeth Benjamin, director of the health law unit of the Legal Aid Society of New York City; however, even the insured face injustice. In 2003, almost 1 million Americans declared bankruptcy because of medical issues, accounting for nearly half