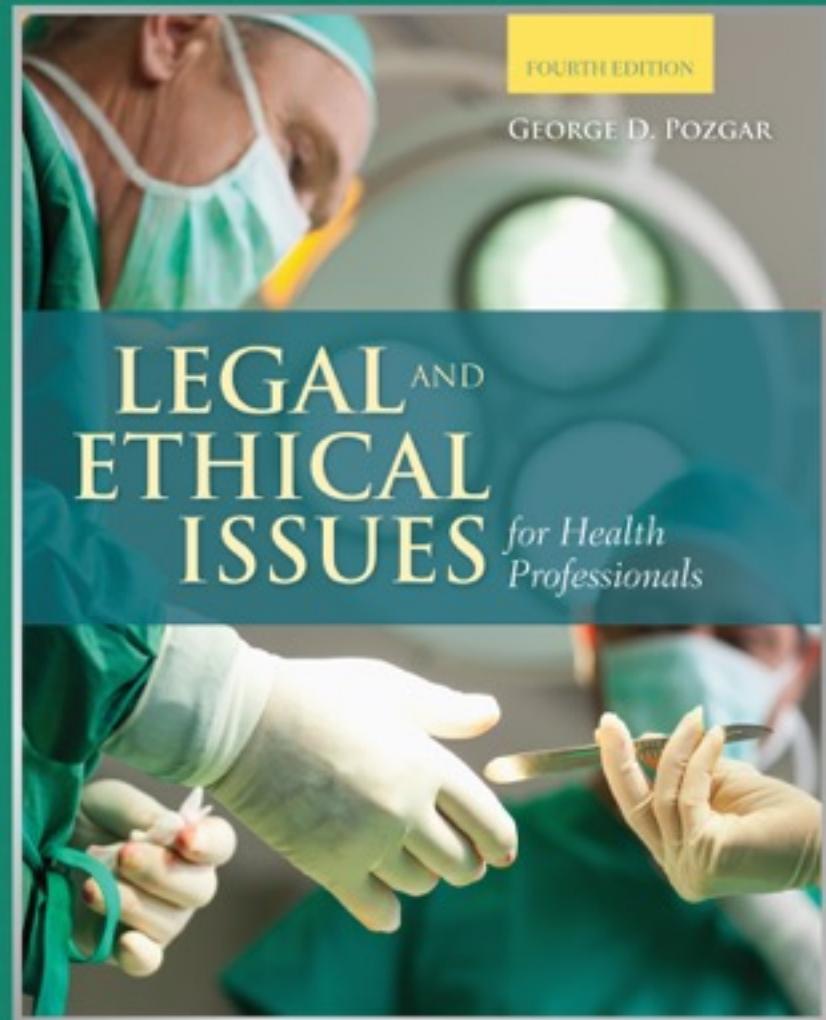


Chapter 10

Physician Ethical and Legal Issues



Learning Objectives

- Apply the *Hippocratic Oath* to modern codes of medical ethics.
- Understand how the law and ethics intertwine in patient care.
- Describe common medical errors and ethical issues relative to physician practice.
- Describe important guidelines for developing positive physician–patient relations.

The Hippocratic Oath

- An oath historically taken by physicians and other health care professionals swearing to practice medicine ethically. Physicians and other health care professionals swear to practice medicine ethically.

Code of Medical Ethics

- American Medical Association in the footsteps of Hippocrates describes the code of ethical conduct for physicians:
 - A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
 - A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.

Law and Ethics Intertwine

Abandonment – I

- The Thompsons were denied medical care by Scripps physicians because of certain physicians in the practice against whom the Thompsons filed a legal action.
- The court on an appeal found the Thompsons raised a triable issue of fact based upon the declaration of Dr. Goldstein, the Thompsons' expert.
- Dr. Goldstein declared Scripps breached the standard of care and its fiduciary duty by violating the AMA Code of Medical Ethics 1.3.10 and the Hippocratic Oath, because its policy is retaliatory and “promotes the self-interest of physicians over that of patients.” – *Scripps Clinic v. Superior Ct.*

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Law and Ethics Intertwine

Abandonment – II

- Unilateral termination of physician–patient relationship
 - By the physician without notice to the patient.
- Abandonment and the Hippocratic Oath
 - Physician must notify patient if he is withdrawing from case.
 - Hippocratic Oath provides
 - “The regimen I adopt shall be for the benefit of my patients . . . not for their hurt.”

Law and Ethics Intertwine

Compassion

- Compassionate physician example.
 - “Don’t let me die!” he says . . .
 - This scene will be a permanent meditation throughout the rest of my career.
- Physician lacks compassion.
 - Seriously ILL patient unable to schedule appointment.
- Staff affects physician practice image.

Angie's Pain – I

I have been with Angie, my wife, on many of her appointments. One such appointment I vividly remember was at the *John Hopkins Pain Center*, described by some as one of the top medical centers in the world. Here, after poking by several residents, the residents left the room. They later returned with their supervising attending physician. He stood over my Angie as she lay on the examination table. Looking down at her, he said, “We treat bone pain here.”

– Observation by Retired JC Surveyor

Angie's Pain – II

- Angie asked about a new treatment being offered at Duke.
- The attending and two residents stated they never heard of the new treatment and offered Angie other somewhat dangerous options, according to them, of which they were aware.

Angie's Pain – III

Discussion

1. Should the physicians have conducted research to determine if the Duke device might be helpful to Angie?
1. Explain your answer. What would you do, if you were Angie?

A Gruff Physician – I

Dr. Gruff, an autoimmune disease disorder specialist, asked Mrs. Smith to lie on the exam table so that she could exam her. With Dr. Gruff standing beside her at the exam table, Mrs. Smith reaches for Dr. Gruff's hand to help ease herself down on the table. Dr. Gruff pulls her hand away saying, "You don't need my help."

A Gruff Physician – II

Mrs. Smith's spouse watches but says nothing. The exam involved Dr. Gruff pressing lightly on Mrs. Smith's abdomen in three places. Mrs. Smith asked, "Can you check my fingers. They are blue-black and one is infected." Dr. Gruff replied, "I don't know what you expect me to do." The patient raising from the table attempted to grasp Dr. Gruff's hand again for assistance. Gruff pulled away saying, "You got down! You can get up!"

A Gruff Physician – III

Mr. Smith upon arriving home decides, unknown to his wife, to call Dr. Gruff regarding the cruel manner in which his wife was treated. Dr. Gruff said, “She doesn’t have to come back!” Mr. Smith replied, “that is my wife’s decision. I just wanted you to know how unprofessional I perceived your care was.”

– Observation by Retired JC Surveyor

A Gruff Physician – IV

- Legal issues

- Dr. Gruff should be disciplined because of the emotional distress she caused the patient.

- Ethical issues

- Beneficence
 - Professional codes of ethics

Law and Ethics Intertwine *Trust*

- Surgeons and medical center breach trust.
- Failure to read nurses' notes.
- Failure to refer for consultation.
- Falsification of records.
 - Postcardiac catheterization note written prior to procedure.

Law and Ethics Intertwine

- Justice
 - Care based on age.
- Respect for privacy
 - Physicians are ethically bound to maintain patient confidences.

Physician Negligence

Two Schools of Thought

- A physician is not liable for medical malpractice if he or she follows a course of treatment supported by reputable, respected, and reasonable medical experts.
- Adverse result following treatment is not in and of itself evidence of negligence.
- Reasonable for two physicians to have differing opinions on preferred method of treatment.

Patient Assessments – I

- The systematic collection and analysis of patient-specific data is necessary to determine patient care and treatment plans.
- The patient's plan of care is only as good as assessments conducted by the practitioners of the various disciplines.

Patient Assessments – II

- Failure to respond to emergency call
 - Physicians on call must respond.
 - Adequate assessments requires the presence of the physician.
- Family medical history
- Patient medical history
- Questionable medical history conducted

Patient Assessment Case:

ED Care – I

Mr. Doe arrived in the ED at 12:00 AM complaining to the desk clerk of right face and arm numbness that had persisted since the day before. The clerk asked Mr. Doe to have a seat in the waiting area and that a triage nurse would be with him shortly. At 12:31 AM, Mr. Doe was taken to a triage room. Mr. Doe's vital signs were taken. His blood pressure was 190 over 119. After being triaged Mr. Doe's was asked to have a seat in the waiting area until he was called for treatment.

Patient Assessment Case:

ED Care – II

At 1:09 AM, Mr. Doe was taken to a treatment room. At 1:40 AM, the ED physician ordered blood work and a CT scan. At 2:30 AM, Mr. Doe had his CT scan. At 3:10 AM, the nurse conducted a reassessment and noted that the patient's "speech was slightly slurred" with his mouth slightly off center. At 3:15 AM, Mr. Doe's CT results indicated suspicion for small infarcts.

Patient Assessment Case:

ED Care – III

The treating physician was interviewed as to the patient's presenting symptoms (e.g., right-sided numbness in face and arms), recorded vital signs (e.g., 190/119), and timeliness of care. The physician claimed that he was not concerned about any delay in the patient's treatment due to the patient's symptoms or vital signs.

Patient Assessment Case

ED Care – IV

The nurse stated that there was no stroke protocol for use of tPA. The physician stated there were very few strokes in his community and that the jury was still out on the value of tPA in treating ischemic strokes.

Hospital Explanation of Ebola Man Release Opens Questions

Dallas doctors apparently never saw a nurse's note that an emergency room patient with fever and pains had recently been in Africa, and he was released into the community while infected with deadly Ebola. It remains unclear why, despite the hospital's attempt at an explanation yesterday. Early in the day, Texas Health Presbyterian Hospital said in a statement that a nurse's notes on the infected patient, Thomas Eric Duncan, were contained in records that a physician wouldn't see. Last night, a spokesman for the institution said that wasn't so.

- Caroline Chen and Kelly Gilblom, *Bloomberg News*, October 3, 2014

Dangerous Emergency Room Procedure *Patient Handoff*

Scarier Than Ebola: Human Error

It's hard to say precisely how often this happens. A 2013 review of studies in the *Journal of Patient Safety* suggested medical errors cause somewhere between 210,000 and 400,000 deaths each year in the U.S. In a landmark report 15 years ago, the Institute of Medicine put the number between 44,000 and 98,000. Even the lower estimate would mean medical errors kill more Americans than car accidents do. "The moment when one clinician turns over care of a patient to another is particularly hazardous," says Marty Makary, a Johns Hopkins surgeon who has written on hospital safety. "The most dangerous procedure in American emergency rooms is a patient handoff," Makary says. Breakdowns in communication during patient handoffs "are endemic in American health care," he says.

– John Tozzi, *Bloomberg Businessweek*, October 3, 2014

Assessment

History and Physical

A hospital's rules required a history and physical (H&P) to be written within 24 hours of admission. No history had been completed. A jury might reasonably infer that if a history had been taken promptly, it might have helped in diagnosing the patient's condition.

How the Courts View Poorly Conducted H&Ps – I

- J.D. felt a severe headache. Paramedics took J.D.'s history, which included hypertension. His blood pressure was high, ranging from 200/120 to 170/130. At the hospital, J.D.'s vital signs were reassessed. His blood pressure was recorded at 170/130.
- Dr. M examined J.D. Dr. M sent J.D. for x-rays. J.D. was diagnosed with a pinched nerve. He told J.D. he was being discharged with a muscle relaxant and an anti-inflammatory painkiller. Dr. M did not know J.D.'s blood pressure when he treated him and did not review the ambulance records or the E.R. form.

How the Courts View Poorly Conducted H&Ps – II

The next morning, J.D. was found unconscious on the floor. An ambulance crew responded and took J.D.'s blood pressure four times between 7:16 and 7:50 a.m. The readings were extremely high (e.g., 220/120). At the hospital, a neurosurgeon diagnosed a hemorrhagic stroke. Excess fluid in J.D.'s brain caused J.D. to lapse into a coma. The neurosurgeon believed that had he been called, he would have stopped bleeding by the time he arrived at the emergency room the first day.

How the Courts View Poorly Conducted H&Ps – III

- Dr. M was determined to have been "grossly negligent" because he "assessed, treated, and discharged J.D. without knowing his blood pressure," and because he "did not actively seek out information about the blood pressure and medical history that might have led him to the correct diagnosis."
- Dr. M's failure to ascertain and assess information about a patient in order to adequately prepare a patient history fell below the standard of care for an ED physician and constituted gross negligence.

– *Moheet v. State Board of Registration for the Healing Arts*,
No. WD63543 (Mo. Ct. App. 2004).

Poorly Conducted H&Ps – IV

Documentation Issues

- Hospital policy required that a history and physical examination be completed prior to patients undergoing surgery.
- Smith's attending physician drew a diagonal line from the top right to the bottom left of the history and physical form, indicating that patient had no history of disease.
- The nurse documented on the admission that the patient had a history of transischemic attacks, diabetes, and hypothyroidism.

Poorly Conducted H&Ps – V

Discussion

1. What are the potential legal issues of concern?
1. Discuss the ethical issues and principles violated in this case.

Unremarkable H&P – I

or Was It?

Mrs. Smith was admitted to the hospital with signs of an impending stroke. Her attending physician recorded in her history and physical examination that the family history was "unremarkable." The patient's mother actually died of a stroke and the father died of an MI.

Unremarkable H&P – II

or Was It?

Dr. Dee is required, according to medical staff policy, to conduct a history and physical examination (H&P) on all patients admitted to the hospital. Dr. Dee admitted Mrs. Smith to remove her gallbladder. The required H&P form had a diagonal line drawn through the H&P, which included patient and family history.

Unremarkable H&P – III

or Was It?

Upon questioning the physician as to the meaning of the diagonal line, Dr. Dee responded, “It should be obvious. There is no significant patient or family history.” Review of the nursing assessment indicated that the patient was diabetic and had high blood pressure.

Discuss the legal and ethical issues.

Unremarkable H&P – IV

Legal and Ethical Issues

- Legal issues
 - Falsification of records?
 - Malpractice concerns?
- Ethical issues
 - Falsification of records?
 - Truth telling

Failure to Refer for Consultation

- If preferred treatment is outside a physician's field of expertise, it is his or her duty to advise the patient.

Diagnosis – I

- Process of identifying a possible disease or disease process, thus providing the physician with treatment options.

Diagnosis – II

- As hands-on doctoring fades away, patients lose.
- Concern is growing that the elderly get too many medical tests.
- Her doctor dismissed the lump in her breast.
- My physician would not listen.
- Fractured skull, not intoxication.

Misdiagnosis – I

- Misdiagnosis may involve diagnosis and treatment of
 - A disease different from that which patient actually suffers
 - A disease the patient does not have
 - Symptoms but not the underlying disease
 - Delayed diagnosis often occurs in autoimmune diseases: e.g., lupus.

Misdiagnosis – II

Heart Attacks Undiagnosed

“One in 50 heart attack victims are mistakenly sent home by emergency room doctors... Connie Gustafson, who won her own battle with breast cancer, says her husband's fight to survive reminds her how vigilant you have to be in taking care of yourself in hospitals. The system is very precarious, and it is easy for mistakes to be made.”

– *USA TODAY*, October 25, 2006

Treatment – I

- Autonomy and informed consent
 - Physician's have a duty to
 - Disclose known and risks, benefits, and alternatives to proposed treatment.
 - Advise patients of treatment alternatives.
 - Provide the necessary medical facts.
 - Patient's role
 - Make treatment decisions based on understanding the risks and benefits of alternative treatments.

Treatment – II

- Medications
 - Thousands of brand and generic drugs in use.
 - Med errors leading cause of patient injuries.
- Negligent administration of medications
 - Wrong medication, wrong patient, wrong dose, wrong route, and wrong site.

Treatment – III

- Surgery
 - Preventing retained surgical items
 - The pain of wrong-site surgery
 - Pregnant woman dies after horrifying medical mixup

Treatment – IV

- Surgical options not discussed
 - A lumpectomy has the same survival rate as a mastectomy. The surgeon performs a total mastectomy and does not discuss other options with Mrs. Smith.

Discuss the legal and ethical issues.

Treatment – V

- Legal issues
 - Informed consent
- Ethical issues
 - Truthfulness

Treatment – VI

Failure to Read Nursing Notes

- Surgeon breached his duty of care owed to the patient by failing to read the nurse's notes. Testimony convinced the court that the surgeon chose not to review the nurses' observations. The surgeon's failure to review nursing notes exacerbated an already critical condition and *deprived the patient of a chance of survival.*

Treatment – VII

- Aggravation of patient's condition
 - Aggravation of a preexisting condition through negligence may cause a physician to be liable for malpractice.
 - If the original injury is aggravated, liability will be imposed only for the aggravation, rather than for both the original injury & its aggravation.

Treatment – VIII

- Patient contracts infection
 - *Nosocomial infection*: hospital-acquired infections are a leading cause of injury and unnecessary death.
 - Infections have been linked to unsanitary conditions in the environment and poor practices (e.g., handwashing technique).
 - Centers for Disease Control and Prevention estimates nearly two million patients annually get a nosocomial infection.

Treatment – IX

Failure to Attend Delivery

The plaintiff in *Lucchesi v. Stimmell* brought an action against a physician for intentional infliction of emotional distress, claiming the physician failed to be present during unsuccessful attempts to deliver her premature fetus and that he failed to disclose to her that the fetus was decapitated during attempts to achieve delivery.

Discuss the legal and ethical issues.

Treatment – X

Failure to Attend Delivery, cont'd

- The judge instructed the jury that it could conclude that the physician had been guilty of extreme and outrageous conduct for staying at home and leaving the delivery in the hands of a first-year intern and a third-year resident, neither were experienced in breech births.

Treatment – XI

Failure to Attend Delivery, cont'd

- Legal and ethical issues
 - Professional code of ethics
 - Conscientiousness

Treatment – XII

Mastectomy without Biopsy

Dr. Surge found a lump in Mrs. Smith's breast. He is sure the lump is cancerous and admits Mrs. Smith to Community Hospital, a remote hospital in North Dakota, to undergo a mastectomy. The hospital has no pathologist. Dr. Surge performs the mastectomy without first performing a less-invasive biopsy, as required by hospital policy.

Treatment – XIII

Mastectomy without Biopsy, cont'd

As per hospital policy, the tissue removed was sent to a university hospital 300 miles away for microscopic review by a pathologist. Final diagnosis indicated that the tumor was benign.

Discuss the legal and ethical issues.

Treatment – XIV

Mastectomy without Biopsy, cont'd

- Legal issues
 - Malpractice by the physician
 - Negligence of the hospital
- Ethical issues
 - Nonmaleficence
 - Professional codes of ethics

Physician–Patient Relationship

- It has long been recognized that the health and well-being of the patient depends on a collaborative effort between the physician and the patient. The physician must support the dignity of all persons and respect their uniqueness.

REVIEW QUESTIONS

- Describe how the *Hippocratic Oath* and modern codes of medical ethics apply to the practice of medicine.
- Explain how the law and ethics intertwine in patient care.

REVIEW QUESTIONS, cont'd

- Describe common medical errors relative to physician practice involving assessment, diagnosis, and treatment.
- Discuss common guidelines that would be helpful in improving the physician–patient relationship.