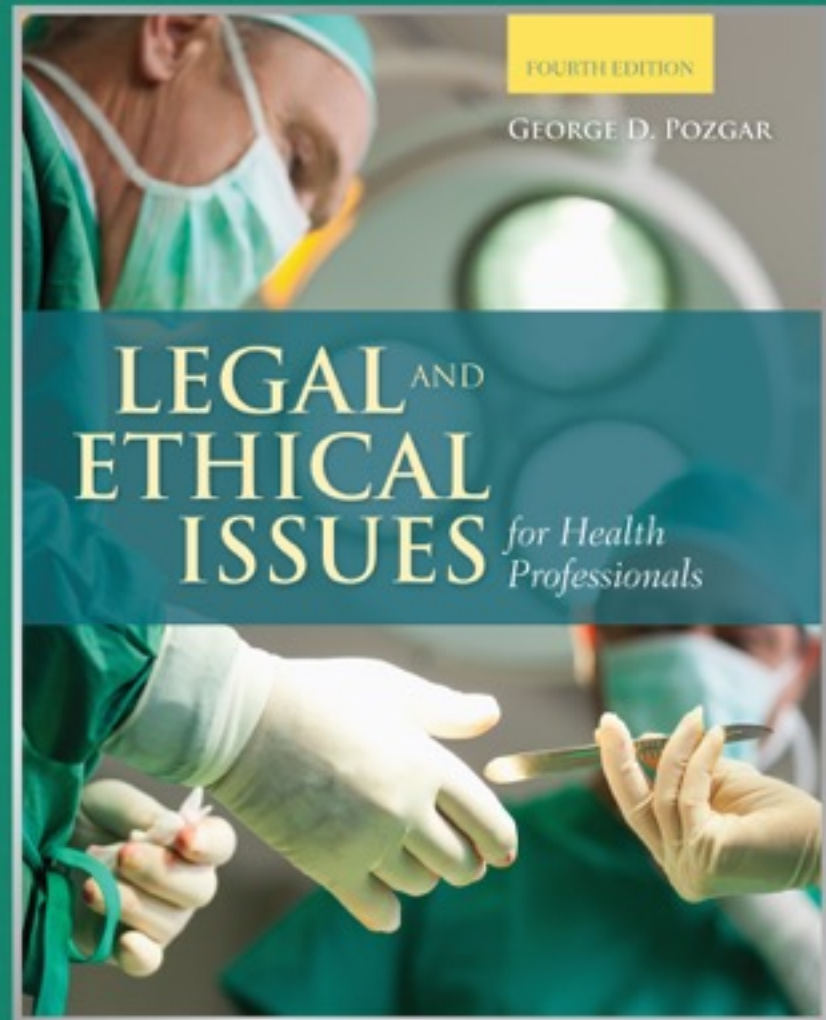


Chapter 7

Government Ethics and the Law



Learning Objectives – I

- Describe some of the reasons why there has been a loss of trust in government.
- Explain the purpose of various government committees on ethics.
- Discuss how public policy protects the rights of citizens.

Learning Objectives – II

- Describe federal laws designed to protect each individual's rights.
- Explain the concept of political malpractice.
- Understand the importance of ethics in public service.

Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the Revolution, never to violate in the least particular, the laws of the country; and never to tolerate their violation by others.

– Abraham Lincoln

Executive Branch
U.S. Office of Government Ethics

- OGE exercises leadership in executive branch to prevent conflicts of interest.
- Resolves those conflicts of interest.
- Fosters high ethical standards for employees.
- Strengthens public confidence in government business.

House of Representatives

Committee on Ethics

- Designated the “supervising ethics office” for the House of Representatives.
- Only standing committee of the House of Representatives with its membership divided evenly by party.

HR Committee on Ethics:

Common Ethical Issues – I

- Gifts from outside sources
- Gifts between employees
- Conflicting financial interests
- Remedies for financial conflicts of interest
- Impartiality in performing official duties
- Seeking other employment

HR Committee on Ethics:

Common Ethical Issues – II

- Misuse of position
 - Outside activities
 - Postemployment
 - Representation to government agencies and courts
 - Supplementation of salary
 - Financial disclosure

Senate Select Committee on Ethics

- Authorized to receive and investigate:
 - Allegations of improper conduct that may reflect upon the Senate
 - Violations of law
 - Violations of the Senate Code of Official Conduct
 - Violations of rules and regulations of the Senate
- Recommend disciplinary action.
- Recommend additional Senate rules or regulations to insure proper standards of conduct.
- Report violations of law to federal and state authorities.

Office of Congressional Ethics

- Independent, nonpartisan office.
- Governed by a board composed of private citizens.
- Provides more public review and insight into the ethical conduct of members of the House of Representatives.
- Mission:
 - To assist the House in upholding high standards of ethical conduct for its members, officers, and staff.

U.S. Judicial Code of Conduct

- Provides guidance for judges on issues of
 - Judicial integrity and independence
 - Judicial diligence and impartiality
 - Permissible extrajudicial activities
 - Avoidance of impropriety or even its appearance

Public Policy

- Principle of law that holds no one can lawfully do that which tends to be injurious to public

Sources of Public Policy

- Legislation.
- Administrative rules, regulations, or decisions.
- Judicial decisions.
- Professional code of ethics may contain an expression of public policy.

Sources of Public Policy

Veterans Administration

- House Committee on Veterans' Affairs
 - Reviews veteran programs.
 - Examines current laws.
 - Reports bills and amendments to strengthen existing laws concerning veterans and the Department of Veterans Affairs (VA).
 - Includes health care and disability compensation.
 - Headlines suggest failure in providing health care.

Laws Influence Ethical Principles:

Protecting Individual Rights – I

- XIV Amendment: U.S. Constitution
- Title VI: Civil Rights Act of 1964
- Sherman Antitrust Act of 1890
- Privacy Act of 1974
- HIPAA of 1996
- Emergency Medical Treatment and Active Labor Act of 1986

Laws Influence Ethical Principles:

Protecting Individual Rights – II

- Health Care Quality Improvement Act of 1986
- Agency for Healthcare Research and Quality
- Ethics in Patient Referral Act of 1989
- Patient Self-Determination Act of 1990
- Sarbanes-Oxley Act of 2002

XIV Amendment to U.S. Constitution

States

- Cannot deny any person equal protection of law.
- Shall not make or enforce any law, which shall abridge privileges or immunities of citizens.
- Shall not deprive any person of life, liberty, or property, without due process of law.
- Shall not deny to any person equal protection of laws.

Civil Rights Act – 1964

- Racial discrimination prohibited.
- DHHS program discrimination prohibited.

Sherman Anti-Trust Act – 1890

- Prescribes contracts in restraint of trade be declared illegal.
- Areas of concern for health care
 - Reduced market competition
 - Price fixing
 - Preferred provider arrangements
 - Exclusive contracts

Privacy Act – 1974

- Safeguards individual privacy.
- Provides individuals access to records.
- Establishes Privacy Protection Safety Commission.

Health Insurance Portability and Accountability Act

- Designed to protect the privacy, confidentiality, and security of patient information.
- Standards are applicable to all health information in all of its formats
 - Electronic
 - Paper
 - Verbal

Emergency Medical Treatment and Active Labor Act (EMTALA)

- Hospital emergency departments
 - Required to provide appropriate medical screening exam.
 - Forbidden to “dump” patients from one emergency department to another.

Text Case:

EMTALA Violated

- In *Burditt v. U.S. Department of Health and Human Services*, EMTALA was violated by a physician when he ordered a woman with dangerously high blood pressure (210/130) and in active labor with ruptured membranes transferred from the emergency department of one hospital to another hospital 170 miles away.

In *Burditt*

- What are the main issues in this case?
- What ethical theories, principles, and values are of concern? Describe them.

Health Care Quality Improvement Act

- Addressed need to improve quality of medical care.
 - Ability of incompetent physicians to move from state to state without disclosure of incompetence.
- Provides professional review bodies limited immunity from damages.
- Facilitates exchange of information among professionals conducting peer review.
- Protects physicians improperly subjected to disciplinary action.

Agency for Healthcare Research and Quality

- Researches ways to improve quality of health care
- Reduces health care costs.
- Broadens access to essential services.

Ethics in Patient Referral Act

- Prohibits physicians who have ownership interest or compensation arrangements with clinical lab from referring Medicare patients to that lab.
- Requires Medicare providers to report names and provider numbers of all physicians or their immediate relatives with ownership interests in a provider entity.

Patient Self-Determination Act – 1990

- Enacted so that patients are informed of their rights, including:
 - Right to execute advance directives.
 - Right to accept or refuse medical care.
- States required to provide description of state laws regarding advance directives to providers.
- Providers to ensure written policies and procedures regarding advance directives are established.

Sarbanes-Oxley Act of 2002 – I

The Sarbanes-Oxley Act was signed into law by President Bush on July 30, 2002 in response to the Enron debacle and high-profile cases of corporate financial mismanagement.

Sarbanes-Oxley Act of 2002 – II

Promoting Due Diligence

- SOX is not about regulation; it's about self-regulation.
- Selecting a leader with morals and core values.
- Examining incentives.
- Monitoring the organization's culture.
- Building a strong, knowledgeable governing body.
- Searching for conflicts of interest.
- Focusing attention on the right things.
- Having courage to speak out.

Sarbanes-Oxley Act of 2002 – III

Know Your Moral Values

- Be willing to stand up for them.
- Be prepared to pay the cost.

Sarbanes-Oxley Act of 2002 – IV

The “System”

Do not think lightly of evil, saying, “It will not come to me.” By the constant fall of water drops in a pitcher, a pitcher is filled, accumulating evil little by little, becomes full of evil.

– Buddha, The Dhammapada, verse 121

Hope remains that ethics will become something of value that is practiced both in the workplace and in one's personal life. It is more meaningful than a word to discuss, a book to read, or a course of study.

Political Malpractice

- Negligent or unethical conduct on part of an elected or appointed official.
- Four elements needed to establish proof:
 1. Duty to Care
 2. Breach of Duty
 3. Injury
 4. Causation
 - Foreseeability
 - Nonaction that seems to be harming the nation (e.g., veterans care)

REVIEW QUESTIONS

- Discuss how the various branches of government address ethical issues.
- Discuss how public policy protects individual rights (e.g., privacy and self-determination).

REVIEW QUESTIONS, cont'd

- Discuss the legal and ethical implications of the public policy acts presented here.
- Describe how the concept of “political malpractice” is similar to “medical malpractice” as discussed in this chapter.