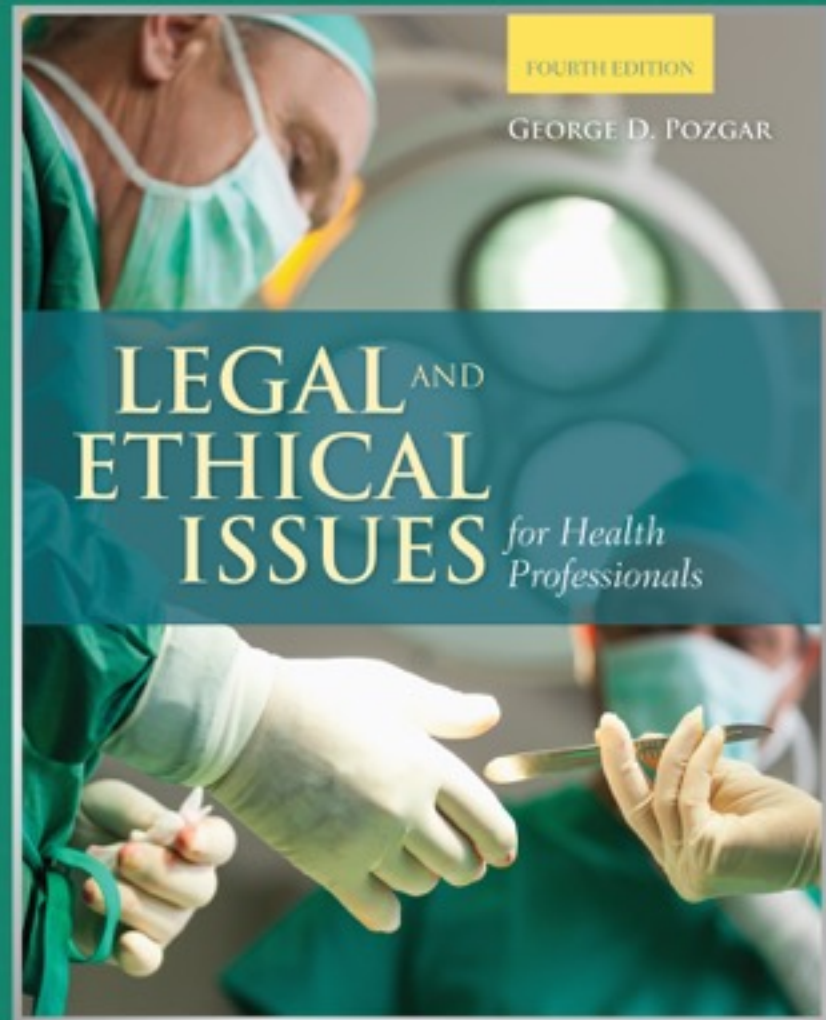


Chapter 8

Organizational Ethics and the Law



Learning Objectives

- Describe corporate structure.
- Describe a code of ethics for organizations.
- Discuss organizational misconduct.
- Explain *respondeat superior* and *corporate negligence*.
- Describe corporate duties and responsibilities.
- Describe strategies to restore organizational trust.

Corporate Authority

- Described under the law in which a corporation is chartered.
- Summarized in a corporation's articles of incorporation.

Kinds of Authority

- Express corporate authority
 - Delegated by statute
- Implied corporate authority
 - Corporate powers not specifically granted in articles of incorporation
- *Ultra vires* acts
 - Acting beyond its scope of authority

Organizational Code of Ethics

- Organizational ethics codes
 - Provide guidelines for behavior that help carry out an organization's mission, vision, and values.
 - Help to build trust.
 - Increase awareness of ethical issues, guide decision-making.
 - Encourage staff to seek advice and report misconduct when appropriate.

Unprofessional Conduct

- Trust and integrity lacking
 - Health care fraud schemes
- False advertisements
 - Unintentional, misleading advertisements
 - Bait and switch
- Concealing mistakes
 - Surgical procedure cover-up
 - Removal of wrong kidney
 - Appearance may not be reality

Truthfulness in Advertising

- Hospitals advertise their quality by how well a third party evaluates them.
 - Often by a brief and cursory 3-to-5-day visit
- Billboards even appeared in the recent past that they scored “100.”
- One young lady told me, “This hospital (in a small rural town) scored 100. They have the nerve to publish this. They killed my mom. I wouldn’t take my dog there.”

Hospitals and Corporate Negligence

Corporate negligence occurs when a corporation fails to perform those duties it owes directly to a patient or to anyone else to whom a duty may extend. If such a duty is breached and a patient is injured as a result of that breach, the corporation (e.g., hospital) can be liable for a patient's injuries under the theory of corporate negligence.

Benchmark *Darling* Case

The court in this case enunciated a “corporate negligence doctrine” under which hospitals have a duty, for example, to provide adequately trained medical and nursing staff.

– *Darling v. Charleston Community Memorial Hospital*

Respondeat Superior

- A legal doctrine holding employers liable for wrongful acts of their employees.
- Doctrine also referred to as *vicarious liability*.
- For liability to be imputed to the employer:
 - A master–servant relationship must exist between the employer and the employee.
 - Wrongful act of the employee must have occurred within the scope of his or her employment.

Independent Contractor

- *Independent contractor* is responsible for his or her own negligent acts.
- Relationship established when principal has no right of control over manner in which agent's work is to be performed.

Corporate Duties and Responsibilities – I

- Appointment of CEO
 - CEO challenges and responsibilities.
 - CEO Code of Ethics.
 - Maintain moral integrity.
- Screen job applicants.
 - Failure to perform background checks can have damaging results.

Corporate Duties and Responsibilities – II

- Credentialing, appointment, and privileging
 - Ensure competency.
 - False statements
 - Masquerading as a physician
- Discipline of physicians
 - Physicians reluctant to discipline physicians.
 - Physician privileges suspended.

Don't Let Hospitals Make You Sick

The problem is not that we have an epidemic of negligent doctors. Rather, it's that the health-care system has grown so complicated that there is a greater chance than ever of things falling through the cracks. . . .

– Dr. Ranit Mishori, *Parade Magazine*, 2009

Corporate Duties and Responsibilities – III

- Provide adequate staff.
- Provide adequate supplies and equipment.
- Allocate scarce resources.
- Comply with rules and regulations.
- Comply with accreditation standards.
- Provide timely treatment.

Corporate Duties and Responsibilities – IV

- Avoid conflicts of interest.
 - Situations in which a person has opportunity to promote self-interests that could have a detrimental effect on an organization with which he or she has a special relationship (e.g., as an employee or board member)

Corporate Duties and Responsibilities – V

- Provide a safe environment.
 - Preventing surgical errors
 - Runaway elevator
 - Prevention of falls
- Protect patients and staff from sexual assault.
 - Sexual assault in the recovery room

Decisions that Collide with Professional Ethics

The principles of autonomy, beneficence, and justice and the ability to practice what is right according to such principles often collide when organizations have to, for example, ration scarce resources. Such rationing may require managers to cut costs at the expense of quality.

Case Study:

A Life Needlessly Shortened

- Financial incentive schemes

“I am here primarily today to make a public confession. In the spring of 1987, as a physician, I denied a man a necessary operation that would have saved his life and thus caused his death. No person and no group has held me accountable for this, because in fact, what I did was I saved a company a half a million dollars for this.”

– Dr. Linda Peeno, before Congress

Failure to Disclose Financial Incentives

HMO failed to disclose financial incentive system it provided to its physicians to discourage referrals to specialists.

Discuss the legal and ethical issues.

Case Study:

Letter of Recommendation

A former employer who knew that another employee had committed offensive sexual acts gave a letter of recommendation that vouched for him without reservation. The employee, after being hired by the new employer, injured the student-plaintiff.

Discuss the legal and ethical issues.

Legal Issues – I

- Liability may be imposed if the recommendation letter amounts to an affirmative misrepresentation presenting a
 - (1) *foreseeable*, and
 - (2) *substantial risk of physical harm* to a third person.

Legal Issues – II

- The defendants could foresee that, had they not recommended the employee, the employer would not have hired him.
 - The defendants could foresee that the employer would read and rely on the defendants' letters of recommendation and that the employee after being hired by the new employer might molest or injure a student such as the plaintiff.
- *Randi W. v. Muroc Joint Unified School Dist.*, 14 Cal.4th 1066, 929 P.2d 582 (1997).

Ethical Issues

- Do no harm.
- Truthfulness.

Letter of Recommendation, cont'd

- Mr. R's supervisor had received several reports alleging misconduct between Mr. R and some of the female residents in the Lee Allan nursing home. The supervisor was unable to verify them.
- Mr. R applied for a supervisory position with Parke County Nursing Home. Parke County was sent a preprinted reference form from Lee Allan. The form indicated Mr. R was eligible for rehire. The form reflected that Mr. R performed his job adequately.

Letter of Recommendation, cont'd

- The Parke County hired Mr. R in part on the basis of a favorable recommendation from Lee Allan. The claim here is that Mr. R assaulted a patient at Parke County. The plaintiff asserts that the former employer, Lee Allan, wrongly gave a favorable recommendation and thus should be liable for the injury.

Legal Issues – I

- Summary judgment was granted in favor of Lee Allan.
- The facts did not reflect that Lee Allan had any substantial information indicating that Mr. R had committed sexual misconduct with residents at Lee Allan.

Legal Issues – II

- Recommendations should not be filled with rumors and innuendo instead of facts. Without substantial evidence, employers would subject themselves to possible defamation litigation.
 - Declaring employers liable for negligence in providing employment references will lead to employer reluctance to provide information.
- *Passmore v. Multi-Management Svcs., Inc.*, 810 N.E.2d 1022 (Ind. 2004).

Ethical Issues

- Beneficence
- Justice
- Fairness

Case Study:

Surgical Site Infection

OR staff observe a 10-inch-by-2-inch tear in a surgical table mattress. It is 2:00 PM and the room has been prepared for Mrs. Smith's surgery. A surgical sheet is placed on the table. The sheet is worn and has several tears in it. Mrs. Smith is placed on the surgical table.

[Note: Prior to Mrs. Smith's surgery, a bowel resection was performed on the same table.]

Discuss the legal and ethical concerns.

Legal Issues

- Negligence?
- Consider the hospital's responsibility.
- Torn mattress is a known infection control concern.
 - Due to body fluid seepage into the mattress
 - Recurrent use of the mattress by various patient

Ethical Issues

- Nonmaleficence (First, to do no harm.)
- Professional codes of ethics (See next slide.)

Professional Ethics

- OR staff recognized that the mattress should have been taken out of service but failed to do so. It is common knowledge that body fluids that can seep into a mattress pad and provide a breeding ground for infections.

Describe how hospital policy should address this issue.

Case Study:

Defrauding the Government – I

The government filed an indictment against eleven individuals and four corporations. In the indictment, the government alleged a health care fraud scheme that involved several residential care facilities, thousands of claims. The government alleged that over at least five years fifteen defendants, in various conspiracies, defrauded the government by falsely certifying patients as homebound and submitting false claims to Medicare and Medicaid.

– *States v. Liveoak*, 377 F.3d 859 (C.A. 8, Mo. 2004)

Defrauding the Government – II

- Joinder of Medicare fraud was proper where the charges here were linked not only by common conspiracy members, but also by an overall scheme in which each conspiracy member participated to fraudulently charge the government for health care costs.

Legal and Ethical Issues

- Legal issues
 - Fraud
- Ethical issues
 - Trustworthiness

Effective Communications Builds Trust

- Effective communication spawns trust and builds a harmonious organization.
- All the players must work together and understand the role each plays.
- The better the teamwork, the better the care.
 - Breeds satisfied patients, families, and staff.

REVIEW QUESTIONS

- Discuss the governing body's decision-making authority.
- Explain what an *ultra vires act* is.
- Describe the important aspects of a code of ethics for organizations.
- Discuss the various forms of professional misconduct discussed here.

REVIEW QUESTIONS, cont'd

- Describe *corporate negligence*, *respondeat superior*, and *independent contractor*.
- Describe the duties and responsibilities of health care organizations and how the failure to adhere to those duties and responsibilities can result in both legal and ethical issues.
- Discuss how an organization's decisions can collide with professional ethics.
- Discuss importance of effective communications.