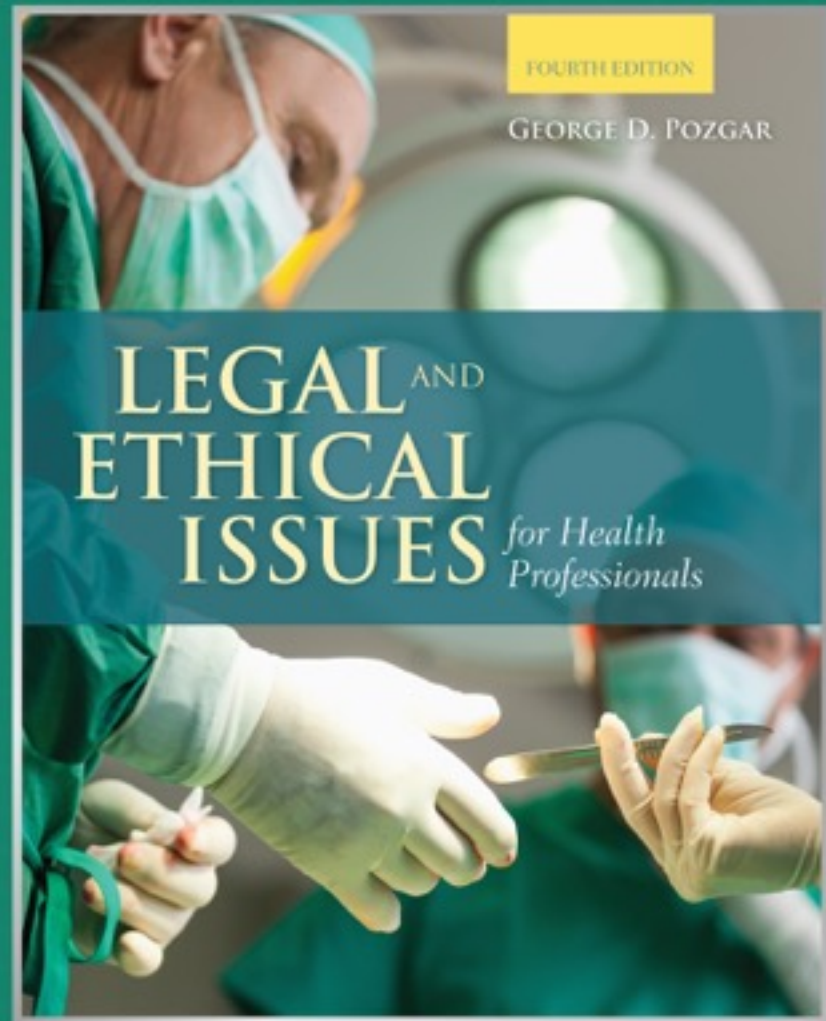


Chapter 9

Health Care Professionals

Legal–Ethical Issues



Learning Objectives – I

- Identify a variety of ethical and legal issues that arise in selected health care professions (e.g., nursing, emergency services, laboratory, pharmacy, radiology).
- Explain how practicing one's professional code of ethics can assist in resolving day-to-day issues that arise during patient care.

Learning Objectives – II

- Explain the difference between the certification and licensure of a health care professional.
- Identify helpful suggestions that help caregivers provide high-quality care.

Introduction – I

- Codes of ethics
 - Demand a high level of integrity, honesty, and responsibility.
 - Provide guidance to those faced with ethical dilemmas.
 - Created in response to actual or anticipated ethical conflicts.

Introduction – II

- Codes of ethics vary depending on risks associated with a particular profession.
 - Codes for *psychologists* define relationships with clients in greater depth due to personal one-to-one relationships.
 - *Lab technicians and technologists* have little or no direct contact with patients.
 - In code of ethics “pledge accuracy and reliability in performance of tests.”

Nurses

Ethical and Legal Issues – I

- The nurse is generally the one medical professional the patient sees more than any other.
- The nurse is in a position to monitor the patient's illness, response to medication, display of pain and discomfort, and general condition.
- Patient care, as well as the nurse's observations, should be recorded on a regular basis.

Nurses

Ethical and Legal Issues – II

- The nurse should comply promptly and accurately with the physician orders written in the record.
- Should the nurse have any doubt as to the appropriateness of a particular order, he or she is expected to verify with the physician the intent of the prescribed order.

Nursing Specialties – I

- Registered nurse
- Advance practice nurse
 - Nurse practitioner
 - Clinical nurse specialist
 - Nurse anesthetist
 - Nurse midwife

Nursing Specialties – II

- Special duty nurse
- Float nurse
- Agency personnel
- Nursing assistant
- Student nurse

Negligent Acts in Nursing – I

- Nurse assessments and diagnosis validity
- Ambiguous medication order
 - Wrong dosage of a medication
- Medicating the wrong patient

Negligent Acts in Nursing – II

- Failure to note an order change
- Failure to follow instructions
- Failure to report physician negligence

Negligent Acts in Nursing – III

- Failure to question patient discharge
- Failure to observe patient's changing condition
- Charting observations
- Failure to remove endotracheal tube

Chiropractors

- Required to exercise the same degree of care, judgment, and skill exercised by other reasonable chiropractors under like or similar circumstances.
- Same standard applies to all professionals.

Case Study:

Poor Judgment and Immoral Conduct

- Nebraska law holds that a license to practice a health care profession may be revoked when licensee is guilty of immoral conduct. Patients rely upon a chiropractor's honesty, integrity, sound professional judgment, and compliance with applicable governmental regulations.

Dentistry

- Dentists are expected to treat patients within their scope of practice.
- The performance of elective cosmetic procedures generally violates the statutory limits of the scope of dentistry.

Inappropriate Sexual Conduct – I

Dentist performs sexual acts on a patient while under conscious sedation.

Discuss the legal and ethical issues.

Inappropriate Sexual Conduct – II

Ethical and Legal Issues

- Legal issues
 - Criminal (sexual abuse)
- Ethical issues
 - Trust
 - Professional codes of ethics

Dental Hygienist

Administration of Nitrous Oxide – I

- Dentist allows dental hygienist to administer nitrous oxide to patients.
- A hearing panel found the dental hygienist guilty of administering nitrous oxide without being properly licensed.
- In addition, the hearing panel found that the hygienist had failed to accurately record in the patient's chart that she had administered nitrous oxide.

Administration of Nitrous Oxide – II

1. Describe how both ethical and legal issues are intertwined in this case.
2. Describe how the core values of a dental hygienist were violated in this case.

Dental Assistant

Patient Injured During Procedure

- Dental assistant, without being supervised by a dentist, placed a sharp object into the patient's mouth, cutting her tongue while taking impressions for dentures.
- Court of appeals held that the evidence presented was sufficient to infer without the aid of expert testimony that there was a breach of duty to the patient.

Dietary

- *Dietitians* are expected to practice dietetics based on scientific principles and current practice.
- Health care organizations need to improve integrating dietitians into the patient care team.
 - Reality Check: Patient's Diet Order Inappropriate
 - Case: Patient Suffers Malnutrition

Emergency Department

- Federal and state statutes impose a duty on hospitals to provide emergency care.
- Statutes require hospitals to provide some degree of emergency service.
- If the public is aware that a hospital furnishes emergency services and relies on that knowledge, the hospital has a duty to provide those services to the public.

Emergency Department *Case Reviews*

- Hospitals Liable for Failure to Respond
- On-Call Physician Fails to Respond
- Timely Response May Require a Phone Call
- Emergency Department Is Lifeline
- What Common Sense Made Evident

The ED and the Tick – I

Mrs. Smith had an autoimmune disease. To complicate her life, she had a tick embedded in her skin kicking its tiny legs in the middle of her back. It was Saturday night and there was nowhere to go but to the local hospital's emergency department.

The ED and the Tick – II

Upon entry to the emergency department there was a sign:

3 hour wait for triage

5 hour wait for a physician

Mrs. Smith was told that she would have to wait.

Discuss the concerns you have with this scenario.

Legal and Ethical Issues

- Legal issues
 - 3 hour wait for triage: What is the concern for other patients who may be delayed and have a life-threatening event (e.g., MI, CVA, abdominal aneurysm) occur while waiting for triage?
- Ethical issues
 - Compassion

Paramedics

- States have enacted legislation that provides civil immunity to *paramedics* who render emergency lifesaving services.
 - *Morena v. South Hills Health Systems*: Paramedics were not negligent in transporting a victim of a shooting to the nearest available hospital, rather than to another hospital located 5 or 6 miles farther away.
 - *Riffe v. Vereb Ambulance Service, Inc.*: A patient was administered 44 times the normal dosage of lidocaine. The court held that the liability of medical technicians could not be imputed to the hospital.

Laboratory

- Utilizes screening tests of blood, urine, or other substances to help diagnose disease, better understand the disease process, and monitor levels of therapeutic drugs.

Medical Technologists

- Protect the welfare of patients and the tests conducted above all else.
- Avoid dishonest, unethical conduct or behavior.

Functions Of Modern Lab – I

- Monitors therapeutic ranges.
- Measures blood levels for toxicity.
- Places and monitors instrumentation on patient units.
- Provides education and training for nursing staff (e.g., glucose monitoring).
- Provides info as to nutritional status of patients.

Functions Of Modern Lab – II

- Provides valuable data used in research studies.
- Provides data on most effective and economical antibiotic for treating patients.
- Serves in a consultative role for physicians.
- Provides important data as to therapeutic levels of various drugs.

Lab Technologists

Case: *Ethics and Inaccurate Lab Reports*

Lab technologists, aware that testing of several hundred patients for HIV were incorrect, reported the inaccurate results as accurate. Ten percent of the patients were told that they were HIV positive. Follow-up testing revealed only one HIV-positive patient.

Discuss the legal and ethical issues.

Testing Manipulated

1. Describe a laboratory technician's professional responsibility to report accurate laboratory tests.
2. Should a laboratory technician report less than accurate laboratory reports if required to do so by his or her supervisor? Explain your answer.

Legal and Ethical Issues

- Legal issues
 - Fraud
- Ethical issues
 - Nonmaleficence (first, to do no harm)
 - Truthfulness
 - Professional codes of ethics

Refusal to Perform HIV Testing

- The Court of Appeals of Indiana, in *Stepp v. Review Board of the Indiana Employment Security Division*, held that the technician was dismissed for just cause and that the laboratory did not waive its right to compel employees to perform assigned tasks.

Medical Assistant

- Unlicensed person who provides administrative, clerical, and/or technical support to licensed practitioner.
- Employment of medical assistants is expected to grow due in part to:
 - Technological advances in medicine
 - A growing and aging population

Medical Assistants

Code of Ethics

- Render service with full respect for the dignity of humanity.
- Respect confidential information.
- Uphold the honor and high principles of the profession.
- Seek to continually improve knowledge and skills of medical assistants.

Passing the Buck – I

Mrs. Smith, an acutely ill patient in pain, arrives for a scheduled CT scan at a hospital outpatient center to rule out a stroke. The physician's order, which had been faxed to the center, did not specify if the scan was to be performed without contrast. The medical assistant said to Mrs. Smith, "You will have to have your physician rewrite your prescription before we can perform the exam."

Passing the Buck – II

Mrs. Smith was distressed. The medical assistant then said, “He can fax it to us!” The medical assistant, pointing to a phone said, “There is a phone over there. The fax number is on the wall.” Mr. Smith said he would make the call.

Discuss the legal and ethical issues.

Legal and Ethical Issues

- Legal issues
 - Potential negligence issues?
 - Subjecting the patient to unnecessary stress could aggravate her medical problems.
- Ethical issues
 - Beneficence (to do good)
 - Professional codes of ethics
 - Compassion?

Medical Records

- Health care organizations are required to maintain a medical record for each patient.
- Medical records must be complete, accurate, current, readily accessible, and systematically organized.

Medical Records

Code of Ethics

- Place service before material gain.
- Preserve and protect medical records.
- Refuse to participate in or conceal unethical practices or procedures.
- Preserve confidential nature of professional determinations made by the staff committees.
- Strive to advance knowledge and practice of medical record administration.

Purpose of the Medical Record – I

- Provides a planning tool for patient care.
- Records the course of a patient's treatment and the changes in a patient's condition.
- Documents the communications between the practitioner responsible for the patient and other health care professional who contributes to the patient's care.

Purpose of the Medical Record – II

- Assists in protecting the legal interests of the patient, the organization, and the practitioner.
- Provides a database for use in statistical reporting, continuing education, and research.
- Provides information necessary for third-party billing and regulatory agencies.

Pharmacy – I

- Practice of pharmacy essentially includes medication:
 - Preparation
 - Compounding
 - Dispensing
 - Retail

Pharmacy – II

- Dispensing and administration of drugs
- Drug substitution
- Expanding role of the pharmacist
- Duty to monitor patient's medications

Pharmacy – III

- Warning patients about potential for overdose
- Refusal to honor questionable prescription
- Billing fraud

Case Study:

Administration of Wrong Medication

Mrs. Jones was administered the wrong medication. As a result, the patient suffers a serious reaction. The nurse executive instructs the staff nurse, “Don’t tell anyone.”

Discuss the legal and ethical issues.

Legal and Ethical Issues

- Legal issues
 - Negligence
- Ethical issues
 - Autonomy
 - Truthfulness
- Regulatory issues
 - Joint Commission standards require reporting of mistakes made during the care of a patient.

Physical Therapy

- *Physical therapy* is the art and science of preventing and treating neuromuscular or musculoskeletal disabilities through the evaluation of an individual's disability and rehabilitation potential.

Treatment Modalities

- Physical exercise
- Heat
- Cold
- Electricity
- Water
- Light
- Neuromuscular procedures

Case Study:

Misinterpreting Physician's Orders

Physical Therapists' Code of Ethics, Principle 3.4, states: "any alteration of a program or extension of services beyond the program should be undertaken in consultation with the referring practitioner."

Because resistive exercises were not set forth in the original prescription, Boulet stated that consultation with the physician was necessary before the plaintiff could be advanced to that level.

Case Study:

Resident Neglect

- Physical therapist charged with resident neglect for refusing to allow an 82-year-old nursing facility resident to go to the bathroom before starting his therapy treatment session.
- Court held that evidence supported resident neglect.

Physical Therapy

Patient Care Questions – I

- What records have you seen?
- Have you discussed my treatment plan with my physician?
- What were my physician's specific orders?
- May I see the orders?

Physical Therapy

Patient Care Questions – II

- What precautions have you been asked to follow with me?
- Have you seen my imaging studies?
- Has anyone discussed them with you?

Physician's Assistant – I

- Extension of physician practices.
- Licensed to practice medicine under a physician's supervision.
- PA practice regulated differently in different states.

Physician's Assistant – II

- PAs responsible for negligent acts.
- Employer of a PA can be held liable for PA's negligent acts on basis of *respondeat superior*.
- A physician may delegate to a PA:
 - Suturing minor wounds
 - Administering injections
 - Performing routine history, physical exams

Physician May Not Delegate

- A task when regulations specify that the physician must perform it personally or when the delegation is prohibited under state law or by the facility's own policies.

Psychologists' Code of Ethics – I

- **10.07 Therapy with Former Sexual Partners**

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

Psychologists' Code of Ethics – II

- **10.08 Sexual Intimacies with Former Therapy Clients/Patients**
 - a) Psychologists do not engage in sexual intimacies with former clients/patients for at least 2 years after cessation or termination of therapy.
 - b) Psychologists do not engage in sexual intimacies with former clients/patients even after a 2-year interval except in the most unusual circumstance.

Psychologist Case Studies

- Unethical Conduct
- Sexual Harassment
- Reporting Child Abuse

Psychologist *Improprieties with Clients*

The Board of Psychologist Examiners revoked a psychologist's license for sexual improprieties. The psychologist argued that therapy had terminated before the sexual relationships began.

What did the Court of Appeals decide? Why?

Court of Appeals

- Evidence supported the board conclusion that the psychologist had violated an ethical standard in caring for her patients.
- When a psychologist's personal interests intrude into practitioner–client relationship, the practitioner is obliged to seek objectivity through a third party.

Radiology

Code of Ethics

The *radiologic technologist* assesses situations; exercises care, discretion, and judgment; assumes responsibility for professional decisions; and acts in the best interest of the patient.

Case Study:
Failure to Restrain Causes Patient Fall

- Jury found the hospital negligent for leaving the plaintiff unattended or failing to restrain her, which proximately caused her fall and injury.
 - Ethical and legal issues
 - Code of ethics: failure to assess and address patient needs
 - Negligence: resulted in patient injury

Respiratory Care

- Respiratory care involves the treatment, management, diagnostic testing, and control of patients with cardiopulmonary deficits.
- *Respiratory therapist* (RT) is a person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care.
 - As with other health care professions, respiratory RTs are expected to comply with their professional code of ethics.

Respiratory Therapists – I

- Ethical and legal issues that confront respiratory therapists in the workplace.
 - Failure to restock “code cart”
 - Resulted in brain death.
 - Evidence presented at trial established hospital’s breach of duty in not having code cart properly restocked resulting in a 3-minute delay in intubation.

Social Work

- *Social workers* in the hospital setting assist patients and families with:
 - Psychosocial issues
 - Obtaining insurance coverage
 - Making difficult care decisions
 - Assisting the patient and family in planning for postdischarge care

Caseworker Fired after Baby Dies

A District of Columbia social worker was fired Tuesday following the death of a baby who was reported as neglected, city officials said. The city's Child and Family Service Agency received a call about the 6-month-old boy in March, but the social worker assigned to the case never visited the child, interim Attorney General Peter Nickles said.

– Nikita Stewart, *The Washington Post*, July 8, 2008

Social Workers Underutilized

- It has been a low priority with hospitals to hire an effective team of social workers, adequately staffed to address the myriad of issues that need to be addressed in the delivery of patient care.
- Dwindling allocation of hospital resources has served only to make hiring of social workers a lower priority for health care organizations.

Health Care Professionals Certification

- *Certification* of health care professionals is the recognition by a governmental or professional association that an individual's expertise meets the standards of that group.

Health Care Professionals Licensing

- *Licensure* can be defined as the process by which some competent authority grants permission to a qualified individual or entity to perform certain specified activities that would be illegal without a license.

Helpful Advice – I

- Break down the barriers between departments and work as a team.
- Abide by the ethical code of one's profession.
- Do not criticize the professional skills of others.
- Maintain complete medical records.
- Provide each patient with medical care comparable with national standards.

Helpful Advice – II

- Seek the aid of professional medical consultants when indicated.
- Obtain informed consent for diagnostic and therapeutic procedures.
- Inform the patient of the risks, benefits, and alternatives to proposed procedures.
- Practice the specialty in which you have been trained.

Helpful Advice – III

- Participate in continuing education programs.
- Keep patient information confidential.
- Check patient equipment regularly and monitor it for safe use.
- When terminating a professional relationship, give adequate written notice to the patient.

Helpful Advice – IV

- Authenticate all telephone orders.
- Obtain a qualified substitute when you will be absent from your practice.
- Be a good listener, and allow each patient sufficient time to express fears and anxieties.
- Develop and implement an interdisciplinary plan of care for each patient.

Helpful Advice – V

- Safely administer patient medications.
- Closely monitor each patient's response to treatment.
- Provide education and teaching to patients.
- Foster a sense of trust and feeling of significance.

Helpful Advice – VI

- Communicate with the patient and other caregivers.
- Provide cost-effective care without sacrificing quality.

REVIEW QUESTIONS

- Describe how ethics and the law have an impact on the various health care professions discussed in this chapter.
- Discuss the ethical and legal implications of practicing outside one's scope of practice.
- Discuss the circumstances under which a hospital has a duty to provide emergency services to the public?

REVIEW QUESTIONS, cont'd

- Are sexual improprieties acceptable with clients as long as they do not take place during treatment? Explain your answer.
- Consider under what circumstances a professional's legal responsibilities may overlap with his or her ethical duties.
- Describe how and why the scope of practice for various professionals (e.g., nurses and pharmacists) is changing.

REVIEW QUESTIONS, cont'd

- Discuss what action a caregiver should take, if any, if a physician's written orders appear questionable.
- Describe a professional's responsibilities when a patient's condition takes a turn for the worse.
- Describe the difference between the certification and licensing of a health care professional.