



# Medical Law and Ethics

## Handout 1.1

### Introduction to Medical Law and Ethics

#### Part 1: Definitions, Medical Law, and Theories of Ethics

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#### Introduction

In the health and medical fields, professionals encounter dilemmas related to healthcare, and they must consider the common good of the patients during the decision making process. Due to advancements in the field of medicine and biotechnology, medical ethics and decision making have become increasingly complex.

The medical and health professions are governed by laws that play a role for both the practitioner and the patient. For example, a health professional (such as a doctor, nurse, pharmacist, etc.) cannot practice without their licenses in the state.

Medical ethics is a form of applied ethics (think of applied ethics as the large umbrella and medical ethics is under it). **Applied ethics** is the practical application of moral standards to the conduct of individuals involved in organizations. This basically states that the health professional has to adhere to certain ethical standards and rules of conduct when working with patients. The patient must benefit under a health professional's care.

In modern medical research, technology, and their advancements, **biomedical ethics (or bioethics)**, a branch of applied ethics, is a field that examines the moral dilemmas and issues related to these modern advancements. Issues such as cloning and stem cell research are examined differently by health professionals, religious organizations, and patients. As a result, laws and regulations ensure that correct procedures and standards are always applied.

In general, we believe that we can distinguish right from wrong. We know that there may not be clear cut answers to many situations which can make decision making difficult. In many medical malpractice cases, professionals do not usually make the right ethical decision as a result of high stress situations.

## **The primary duty of a healthcare professional is to promote good patient care and protect them from any harm.**

Our society has been increasingly **litigious** (more likely to sue), and patients and their families can carry out a lawsuit against healthcare professionals, hospitals, pharmaceutical companies, and manufacturers of medical equipment and products. As a result, it is important for healthcare professionals to have an understanding of law and ethics to minimize chances of being sued.

Medicine has always been a team effort of professionals including doctors, nurses, pharmacists, and behavioral health teams (to name a few). It is important for professionals to work together to better serve the patient and their families. However, an individual's decision may clash with another.

If a physician hands out an order that conflicts with a nurse or other allied health professional's beliefs, how should they handle it?

### **Ethics: Why study it?**

- Despite gray areas in ethics, we are expected to perform the right action when facing an ethical dilemma
- Examine the consequences. What will happen if we do something wrong?
- How can we integrate ethics and put our thoughts into action?

### **Medical Law**

#### Definition of law

- Laws are rules or actions prescribed by an authority such as the federal government and the court system that have a binding legal force
- Protects the rights of both healthcare employees and patients
- Addresses legal rights and obligations affecting the employees and patients
- Violations of laws include practicing without a license, inappropriate relations with a patient, and insurance fraud

**An illegal action may be ethical.** For example, breaking the speed limit to take a woman to the hospital for childbirth.

**An unethical action may be legal.** For example, if someone is having an emergency at the train station and an announcement is made requesting a doctor's assistance, a physician does not have a legal obligation to come forward (since they are not at work). However, it is considered unethical to let a civilian die without an available physician's help.

It becomes very complex trying to separate legality and ethics since each situation changes. An insurance company can deny coverage for surgery or medications. It may be unethical, but it is not illegal.

But in general, **an illegal act is usually unethical**. If a healthcare professional steals controlled substances and documents that they administered it to the patient, then that is illegal and unethical.

### Medicine and the Court System

Due to the complexity of the medical system, people rely on the laws and courts for assistance.

- Physicians practice “**defensive medicine**” where they will have tests and procedures (which may be unnecessary) performed on a patient so that in the event of a lawsuit, they can tell the courts that they did everything they could to help the patient.
- Tests and procedures may be uncomfortable for a patient and can cost a lot of money
- On the other end of the spectrum, physicians might avoid performing tests and procedures that are risky since they can be sued if the patient outcome is poor.

The law provides guidelines on appropriate versus inappropriate actions for situations. When the actions break the law, the individual or group gets punished. For court cases, unless a ruling is overturned in an appeals court, it establishes a precedent. A **precedent** is a ruling of an earlier case that is then applied to subsequent cases.

For example, if a court makes a decision regarding falsification of medical records, the court will apply the ruling for similar cases in the future involving falsification of medical records.

However, laws cannot cover every situation. For example, taking credit for someone else’s work or having romantic relationships between coworkers can’t be easily addressed by laws.

### Moral Decision-Making

- **The law requirements focus on the negative.** In this case, the laws handle punishment for committing robbery, murder, assault, etc.
- However, the law does not explicitly state a requirement to assist others.
- On the other hand, **the standards of morality are seen as positive.** In this case, moral standards state that we assist a handicapped person navigate to their destination or perform the Heimlich maneuver on a choking individual

## Medical Practice Acts

- Definition: **laws established in all fifty states that define the practice of medicine as well as requirements and methods for licensure in a particular state**
- They define what is considered unprofessional conduct in their specific state
- Although the laws vary among states, there are common actions considered unprofessional conduct among all states such as practicing without a license, physically abusing patients, felony convictions, and having an unlicensed person prescribe medications.

## Ethics

- Definition: **the branch of philosophy related to morals, moral principles, and moral judgments**
- Focuses on actions that we “should do”; the common good is put above self interest
- **Morality**: the quality of being virtuous or practicing the right conduct
- **Amoral**: lacking or indifferent to moral standards

## Ethics and morality are used interchangeably.

- Ethics is a part of philosophy so it uses reason and logic to analyze problems to find solutions
- Through reason and logic, ethics generally help improve people’s welfare in a moral fashion.
- Ethics involves **people**, from healthcare professionals all the way to patients and their families
- Ethics focuses on the interests of others when deciding on a course of action. Everyone has a personal value system and ethical decisions examining issues such as abortion or euthanasia can be subjective. Unlike laws which form boundaries on what is legal and illegal, it is more difficult to categorize issues in ethical decision making.

**Medical ethics** focuses on moral conduct based on principles regulating the behavior of healthcare professionals (such as physicians, nurses, and other allied health members).

## Theories of Ethics

We will take a look at teleological and deontological ethical theories.

- **Teleological theory**: asserts that an action is right or wrong depending on whether it produces good or bad consequences (Example: utilitarianism)

- **Deontological ethical theory:** asserts that at least some actions are right or wrong and we have a duty to perform them or refrain from doing them without considering the consequences (example: duty-based ethics)

## Utilitarianism

- Definition: an ethical theory based on the principle of the greatest good for the greatest number
- Concerned with the final outcome on society as a whole
- Allocation of resources that will benefit the greatest number of people (**cost/benefit analysis:** ethical approach in which the benefit of the decision should outweigh the costs)
- A negative would be not everyone can be assisted. People who are less vocal and lack representation may not receive resources.
- The American Medicare System for individuals over 65 years old is an example of utilitarianism. The funds for medical care are limited and not everyone can receive the necessary benefits.
- Under utilitarianism, those who benefit the most will receive the care. For example, organ transplants. A person who won't live long (such as a terminally ill or elderly person) will not be the priority for a transplant .

## Rights-Based Ethics

- Definition: a natural rights ethical theory that places the primary emphasis on a person's individual rights
- States that rights belong to all people based on the virtue of being human
- In the case of organ transplants, a person who won't live long will have the same right to receive an available organ as someone who would have a longer lifespan.
- This protects an individual's rights, freedom, and privacy. Laws such as OSHA (Occupational Safety and Health Act) ensures the safety of individuals in the workplace
- A negative is that individualistic behavior focusing on protecting one's group or oneself can exclude others. (Unions protecting its members and ignoring non-union members)

## Duty-Based Ethics

- Definition: focuses on performing one's duty to various people and institutions
- Actions should be universal for all situations under certain circumstances (Example: respecting all patients and coworkers and providing the same unbiased consideration when assisting them; providing equal care for all patients)

- A negative is that duty can be hard to define. Although we have a duty to do what's right, if our employer tells us to do something that is unethical and we do not perform it, we violate our duty and responsibility to our employer.
- Although there are laws that help define legal and ethical rules, there is that gray area where it's hard to decide who determines the rules.

### **Justice-Based Ethics**

- Definition: based on the moral restraint of "the veil of ignorance"
- Provides a more democratic approach. In this case, the demographic information for issues such as determining who will receive an organ transplant will not be known. Everyone will have an equal chance of receiving the transplant or service.
- Provides equal footing for both advantaged and disadvantaged individuals so that everyone will have access to medical care
- A negative is that it is impossible to operate under this veil since the healthcare system is so large. Also, because of the random nature, it is not guaranteed that a disadvantaged person will receive the care
- Those who oppose this theory feel that healthy individuals should not have to pay for unhealthy individuals

### **Virtue-Based Ethics**

- Definition: a character trait based on a concern for the person
- This focuses on the good traits of a person such as integrity, trust, empathy, and respect.
- According to Aristotle, happiness is the goal of life.
- Healthcare professionals pursue this field to help others and have compassion for their well-being
- A negative is that individuals can be taken advantaged of as a result of being too nice and trusting

Although different professional associations have their own guidelines for professional conduct, the main standards focus on:

- Protecting the rights of the person
- Preventing any physical, mental, or emotional harm for patients and professionals alike
- Respecting an individual's beliefs and culture and not forcing them to act against them
- Ensuring that individuals are not forced to perform actions or make decisions that break the law

Part 2 of the handout will finish up on principles of interpersonal ethics, ethical models, and bioethics.

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