

PART

1

**The Foundations of
Law and Ethics**



CHAPTER 1 Introduction to Law
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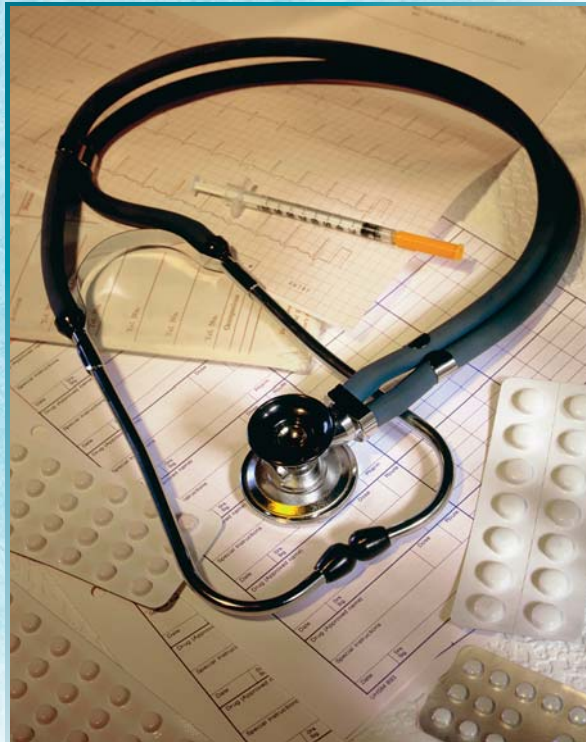
CHAPTER 1

Introduction to Law and Ethics

Learning Outcomes

After studying this chapter, you should be able to:

1. Explain why knowledge of law and ethics is important to health care practitioners.
2. Recognize the importance of professional codes of ethics.
3. Distinguish among law, ethics, bioethics, etiquette, and protocol.
4. Define *moral values* and explain how they relate to law, ethics, and etiquette.
5. Describe at least three bioethical issues of concern for your chosen profession.



Key Terms

American Medical Association Principles

bioethicists

bioethics

code of ethics

common sense

compassion

courtesy

critical thinking

defendant

ethics

ethics committees

ethics guidelines

etiquette

fraud

health care practitioners

Hippocratic oath

law

liable

litigious

medical ethicists

moral values

plaintiff

precedent

protocol

summary judgment



Voice of Experience

Patients Before Procedure

Barbara, an experienced certified medical assistant (CMA) in a medical office with a walk-in clinic, advises new employees in the reception area of the office to follow the medical office procedures whenever possible and prudent, but, above all, to use common sense in dealing with patients.

Barbara had told a new receptionist in the medical office to politely ask walk-in patients why they needed to see a doctor. An elderly man who was hard of hearing was obviously too embarrassed to reply, but the receptionist

persisted. When he finally shouted, "I can't pee," all heads in the busy waiting room turned toward the receptionist and the patient. The red-faced receptionist turned to arrange for the man to see a physician, but he quickly left the building. Barbara criticized the receptionist's patient-handling technique, but the crux of the matter was that the patient left without seeing a doctor for his medical problem.

"Patients' needs always trump office routine," Barbara emphasizes. "If we somehow hurt or hinder a patient while doggedly sticking to a set routine, we may have risked legal liability, but more important, we haven't done our job."

WHY STUDY LAW AND ETHICS?



health care practitioners Those who are trained to administer medical or health care to patients.



litigious Prone to engage in lawsuits.

There are two important reasons for you to study law and ethics:

- To help you function at the highest possible professional level, providing competent, compassionate health care to patients.
- To help you avoid legal entanglements that can threaten your ability to earn a living as a successful **health care practitioner**.

We live in a **litigious** society, where patients, relatives, and others are inclined to sue health care practitioners, health care facilities, manufacturers of medical equipment and products, and others when medical outcomes are not acceptable. This means that every person responsible for health care delivery is at risk of being involved in a health care-related lawsuit. It is important, therefore, for you to know the basics of law and ethics as they apply to health care, so you can recognize and avoid those situations that might not serve your patients well, or that might put you at risk of legal liability.

In addition to keeping you at your professional best and helping you to avoid litigation, knowledge of law and ethics can also help you gain perspective in the following three areas:

1. *The rights, responsibilities, and concerns of health care consumers.* Health care practitioners not only need to be concerned about how law and ethics impact their respective professions, but they must also understand how legal and ethical issues affect the patients they treat. With the increased complexity of medicine has come the desire of consumers to know more about their options and rights and more about the responsibilities of health care providers. Today's health care consumers are likely to consider themselves partners with health care practitioners in the healing process and to question fees and treatment modes. They may ask such questions as, Do I need to see a specialist? If so, which specialist can best treat my condition? Will I be given complete information about my condition? How much will medical treatment cost? Will a physician treat me if I have no health insurance?

In addition, as medical technology has advanced, patients have come to expect favorable outcomes from medical treatment, and when expectations are not met, lawsuits may result.

2. *The legal and ethical issues facing society, patients, and health care practitioners as the world changes.* Nearly every day the media report news events concerning individuals who face legal and ethical dilemmas over biological/medical issues. For example, a grief-stricken husband must give consent for an abortion in order to save the life of his critically ill and unconscious wife. Parents must argue in court their decision to terminate life-support measures for a daughter whose injured brain no longer functions. Patients with HIV/AIDS fight to retain their right to confidentiality.

While the situations that make news headlines often involve larger social issues, legal and ethical questions are resolved daily, on a smaller scale, each time a patient visits his or her physician, dentist, physical therapist, or other health care practitioner. Questions that must often be resolved include these: Who can legally give consent if the patient cannot? Can patients be assured of confidentiality, especially since telecommunication has become a way of life? Can a physician or other health care practitioner refuse to treat a patient? Who may legally examine a patient's medical records?

Rapid advances in medical technology have also influenced laws and ethics for health care practitioners. For example, recent court cases have debated these issues: Does the husband or the wife have ownership rights to a divorced couple's frozen embryos? Will a surrogate mother have legal visitation rights to the child she carried to term? Should modern technology be used to keep those patients alive who are diagnosed as brain-dead and have no hope of recovery? How should parenthood disputes be resolved for children resulting from reproductive technology?

3. *The impact of rising costs on the laws and ethics of health care delivery.* Rising costs, both of health care insurance and of medical treatment in general, lead to questions concerning access to health care services and allocation of medical treatment. For instance, should the uninsured or underinsured receive government help to pay for health insurance? And should everyone, regardless of age or lifestyle, have the same access to scarce medical commodities, such as organs for transplantation or highly expensive drugs?

Court Cases Illustrate Risk of Litigation

As you will see in the court cases used throughout this text, sometimes when a lawsuit is brought, the trial court or a higher court must first decide if the **plaintiff** has a legal reason to sue, or if the **defendant** is **liable**. When a court has ruled that there is a standing (reason) to sue and that a defendant can be held liable, the case may proceed to resolution. Often, once liability and a standing to sue have been established, the two sides agree on an out-of-court settlement. Depending on state law, an out-of-court settlement may not be published. For this reason, the final disposition of a case is not always available from published sources. The cases that have decided liability, however, are still case law, and such cases have been used in this text to illustrate specific points.

In addition, sometimes it takes time after the initial trial for a case to be settled. For example, perhaps a patient dies after surgery in 1998, and the family files a wrongful death suit soon after. The case may go through several appeals and finally be settled in 2001.



plaintiff The person bringing charges in a lawsuit.



defendant The person or party against whom criminal or civil charges are brought in a lawsuit.



liable Accountable under the law.



precedent Decisions made by judges in the various courts that become rule of law and apply to future cases, even though they were not enacted by a legislature; also known as case law.



summary judgment A decision made by a court in a lawsuit in response to a motion that pleads there is no basis for a trial.



fraud Dishonest or deceitful practices in depriving, or attempting to deprive, another of his or her rights.

It is also important to remember that while the final result of a case is important to the parties involved, from a legal standpoint the most important aspect of a court case is not the result, but whether or not the case represents good law and will be persuasive as other cases are decided.

While the most recent cases published have been sought for illustration in this text, sometimes a dated case (1995, 1985, 1970, etc.) is used because it established important **precedent**.

Court cases appear throughout each chapter of the text, to illustrate how the legal system has decided complaints brought by or against health care service providers and product manufacturers. Some of these cases involve **summary judgment**. Summary judgment is the legal term for a decision made by a court in a lawsuit in response to a motion that pleads there is no basis for a trial because there is no genuine issue of material fact. In other words, a motion for summary judgment states that one party is entitled to win as a matter of law. Summary judgment is available only in a civil action. (Chapter 3 distinguishes between criminal and civil actions.)

The following court cases illustrate that a wide variety of legal questions can arise for those engaged directly in providing health care services, whether in a hospital, in a medical office setting, or in an emergency situation. Health care equipment and product dealers and manufacturers can be held indirectly responsible for defective medical devices and products through charges of the following types:

- Breach of warranty.
- Statements made by the manufacturer about the device or product that are found to be untrue.
- Strict liability, for cases in which defective products threaten the personal safety of consumers.
- **Fraud** or intentional deceit. (Fraud is discussed in further detail in Chapter 3.)

The extent of liability for manufacturers of medical devices and products may be changing, however, since a 2008 U.S. Supreme Court decision held that makers of medical devices such as implantable defibrillators or breast implants are immune from liability for personal injuries as long as the Food and Drug Administration (FDA) approved the device before it was marketed and it meets the FDA's specifications. (See the *Medtronic Inc.* case below.)

Drugs and medical devices are regulated under separate federal laws; as of February 2008, the same immunity from liability had not yet been extended to drug manufacturers. However, the United States Supreme Court was scheduled to hear another FDA preemption case during its second session of 2008: *Warner-Lambert Co. v. Kent* a case involving certain Michigan residents who claimed injury by the diabetes drug Rezulin. In this case, the question before the Court was this: Does a federal law prohibiting fraudulent communications to government agencies preempt a state law permitting plaintiffs to sue for faulty products that would not have reached the market absent the fraud?

Examples of how drug manufacturers could be held legally responsible before any Supreme Court decision protecting them from liability were the many lawsuits recently filed against Merck & Company, a pharmaceutical firm that manufactured the drug Vioxx, once widely recommended for pain relief for arthritis sufferers. The drug was suspected of causing heart attacks and strokes in some patients, and from 1999, the year Vioxx went on the market, to 2007, Merck faced lawsuits from 47,000 plaintiffs, including patients, health providers, unions, and insurers. Many of the lawsuits

Court Case



Patient Sues Hospital

In August 1997, a patient admitted to a Louisiana medical center for the treatment of bronchitis and back pain called the nurses' station to ask for someone to fix the television set and the window blinds. In response, two maintenance workers came to the patient's room and removed the television set. The workers examined the blinds, but informed the patient they could not fix them. The workers then left, promising to replace the television set, but not commenting on the window blinds.

The patient continued to ask for someone to adjust the window blinds to keep out the sun. She said that when she was in pain, light was unpleasant to her. No one came to fix the blinds.

The patient eventually tried to close the blinds herself. Dressed in street clothes and sandals, she climbed on a recliner chair with lockable wheels located in her room, and reached high above her head in an attempt to turn the slats of the blinds. The patient fell off the chair and sustained an injury to her left shoulder, upper back, and cervical spine.

The patient then sued the medical center for the injuries she had suffered. An appeals court overturned a circuit court's decision to dismiss and sent the case back for further proceedings. The appeals court determined: "It is not unforeseeable that a patient experiencing discomfort due to bright light entering the room, and who has obtained no relief through repeated requests for aid, might decide to take matters into her own hands and attempt to close the broken blinds. Furthermore, because the top of the blinds is located above the easy reach of the average person, it is not unforeseeable that the patient would attempt to use a chair to reach the top of the blinds."

Lichti v. Schumpert Medical Center, 2000 LA.App.LEXIS 61 (Court of Appeal of Louisiana, Second Circuit, Jan. 26, 2000).

Court Case



County Liable in Ambulance Delay

In 1991 an Indiana man suffered a heart attack while mowing the lawn. He took two nitroglycerin tablets while his wife called an ambulance. The emergency operator took the wife's call at 2:10 PM and said an ambulance would be dispatched. Seven minutes later the ambulance had not arrived, so the wife called a nearby fire station, where the local branch of the emergency medical squad was holding a meeting. An ambulance was sent immediately when this call was received, and it arrived at the patient's house in one minute.

The patient later learned that the emergency operator who had first been called had never dispatched an ambulance to his home. The chief deputy sheriff of the county explained that the officer taking emergency calls was inexperienced as a dispatcher. The officer had been the only one assigned to monitor the emergency line on that day because the sheriff's department was having its annual picnic.

The patient sued the county for negligence in operating the 911 emergency service. He claimed he had suffered permanent heart damage because of the operator's failure to promptly dispatch an ambulance.

The county moved for summary judgment based on the fact that it had no relationship with the man that created a duty of care to him. The trial court granted the motion, but an appellate court reversed the judgment. It held that the call to the emergency operator, in which the man's wife spoke of her husband's heart attack and the immediate need for an ambulance, was sufficient to establish knowledge that inaction could be harmful.

When the operator said an ambulance would be dispatched, he established that the county explicitly agreed to assist the patient. Accordingly, the court held, the county had assumed a private duty to the man and could be held liable for failure to dispatch an ambulance.

Koher v. Dial, 653 N.E.2d 524 (Ind. Ct. of App., July 26, 1995).

Court Case



Supreme Court Shields Medical Devices from Lawsuits

An angioplasty was performed on a patient, Charles Riegel, in New York. During the procedure, the catheter used to dilate the patient's coronary artery failed, causing serious complications. The patient sued the catheter's manufacturer, Medtronic Inc., under New York state law, charging negligence in design, manufacture, and labeling of the device, which had received FDA approval in 1994.

Medtronic argued that Riegel could not bring state law negligence claims, because the company was preempted from liability under Section 360k(a) of the Medical Device Amendments (MDA) of the U.S. Food, Drug, and Cosmetic Act.

The case reached the United States Supreme Court, where the question to be decided was this: Does Section 360k(a) of the Medical Device Amendments to the Food, Drug, and Cosmetic Act preempt state law claims seeking damages for injuries caused by medical devices that received premarket approval from the Food and Drug Administration?

In February 2008, the U.S. Supreme Court held that makers of medical devices are immune from liability for personal injuries as long as the Food and Drug Administration (FDA) approved the device before it was marketed and it meets the FDA's specifications.

Riegel v. Medtronic, Inc., 552 U.S. February 20, 2008.

alleged that Merck knew of the drug's potentially harmful side effects when the company placed the drug on the market.

In November 2007, Merck agreed to settle most of the lawsuits relating to Vioxx for a total of \$4.85 billion. The settlement was open to plaintiffs who filed cases before November 8, 2007, who could provide medical proof of their heart attack or stroke, and who could prove they had used at least 30 Vioxx pills within 14 days prior to their illness.

Merck anticipated that some plaintiffs would opt out of the settlement, continuing to fight the company on a case-by-case basis. The company projected that remaining claims could cost the firm between \$2 billion and \$3 billion.

COMPARING ASPECTS OF LAW AND ETHICS

In order to understand the complexities of law and ethics, it is helpful to define and compare a few basic terms. Table 1-1 summarizes the terms described in the following sections.



law Rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority.

Law

A **law** is defined as a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority. Governments enact laws to keep society running smoothly and to control behavior that could threaten public safety. Laws are considered the minimum standard necessary to keep society functioning.

Enforcement of laws is made possible by penalties for disobedience, which are decided by a court of law or are mandatory as written into the law. Penalties vary with the severity of the crime. Lawbreakers may be fined, imprisoned, or both. Sometimes lawbreakers are sentenced to probation.

TABLE 1-1 Comparing Aspects of Law and Ethics

	Law	Ethics	Moral Values
Definition	Set of governing rules	Principles, standards, guide to conduct	Beliefs formed through the influence of family, culture, and society
Main Purpose	To protect the public	To elevate the standard of competence	To serve as a guide for personal ethical conduct
Standards	Minimal—promotes smooth functioning of society	Builds values and ideals	Serves as a basis for forming a personal code of ethics
Penalties of Violation	Civil or criminal liability. Upon conviction: fine, imprisonment, revocation of license, or other penalty as determined by courts	Suspension or eviction from medical society membership, as decided by peers	Difficulty in getting along with others
	Bioethics	Etiquette	Protocol
Definition	Discipline relating to ethics concerning biological research, especially as applied to medicine	Courtesy and manners	Rules of etiquette applicable to one's place of employment
Main Purpose	To allow scientific progress in a manner that benefits society in all possible ways	To enable one to get along with others	To enable one to get along with others engaged in the same profession
Standards	Leads to highest standards possible in applying research to medical care	Leads to pleasant interaction	Promotes smooth functioning of workplace routines
Penalties for Violation	Can include all those listed under "Law," "Ethics," and "Etiquette"; as current standards are applied and as new laws and ethical standards evolve to govern medical research and development, penalties may change	Ostracism from chosen groups	Disapproval of one's professional colleagues; possible loss of business

Other penalties appropriate to the crime may be handed down by the sentencing authority, as when offenders must perform a specified number of hours of volunteer community service or are ordered to repair public facilities they have damaged.

Many laws affect health care practitioners, including criminal and civil statutes as well as state medical practice acts. Medical practice acts apply specifically to the practice of medicine in a certain state. Licensed health care professionals convicted of violating criminal, civil, or medical practice laws may lose their licenses to practice. (Medical practice acts are discussed further in Chapter 2. Laws and the court system are discussed in more detail in Chapter 3.)



ethics Standards of behavior, developed as a result of one's concept of right and wrong.



moral values One's personal concept of right and wrong, formed through the influence of the family, culture, and society.



code of ethics A list of principles intended to govern behavior—here, the behavior of those entrusted with providing care to the sick.

Ethics

An illegal act by a health care practitioner is always unethical, but an unethical act is not necessarily illegal. **Ethics** are concerned with standards of behavior and the concept of right and wrong, over and above that which is legal in a given situation. **Moral values**—formed through the influence of the family, culture, and society—serve as the basis for ethical conduct.

The United States is a culturally diverse country, with many residents who have grown up within vastly different ethnic environments. For example, a Chinese student in the United States brings to his or her studies a unique set of religious and social experiences and moral concepts that will differ from that of a German, Japanese, Korean, French, Italian, or even Canadian classmate. Therefore, moral values and ethical standards can differ for health care practitioners, as well as patients, in the same setting.

In the American cultural environment, however, acting morally toward another usually requires that you put yourself in that individual's place. For example, when you are a patient in a physician's office, how do you like to be treated? As a health care provider, can you give care to a person whose conduct or professed beliefs differ radically from your own? In an emergency, can you provide for the patient's welfare without reservation?

Codes of Ethics and Ethics Guidelines

While most individuals can rely upon a well-developed personal value system, organizations for the health occupations also have formalized **codes of ethics** to govern behavior of members and to increase the level of competence and standards of care within the group. Included among these are the American Nurses' Association Code for Nurses, American Medical

CHECK YOUR PROGRESS

1. Name two important reasons for studying law and ethics.

2. Which state laws apply specifically to the practice of medicine?

3. What purpose do laws serve?

4. How is the enforcement of laws made possible?

5. What factors influence the formation of one's personal set of ethics and values?



ethics guidelines Publications that detail a wide variety of ethical situations that professionals (in this case, health care practitioners) might face in their work and offer principles for dealing with the situations in an ethical manner.



Hippocratic oath A pledge for physicians, developed by the Greek physician Hippocrates circa 400 B.C.E.

Association's Code of Medical Ethics, American Health Information Management Association's Code of Ethics, American Society of Radiologic Technologists Code of Ethics, and the Code of Ethics of the American Association of Medical Assistants. Codes of ethics generally consist of a list of general principles, and are often available to laypersons as well as members of health care practitioner organizations.

Many professional organizations for health care practitioners also publish more detailed **ethics guidelines**, usually in book form, for members. Generally, ethics guideline publications detail a wide variety of ethical situations that health care practitioners might face in their work and offer principles for dealing with the situations in an ethical manner. They are routinely available to members of health care organizations, and are typically available to others for a fee.

One of the earliest medical codes of ethics, the code of Hammurabi, was written by the Babylonians around 2250 B.C.E. This document discussed the conduct expected of physicians at that time, including fees that could be charged.

Sometime around 400 B.C.E., Hippocrates, the Greek physician known as the Father of Medicine, created the **Hippocratic oath**, a pledge for physicians that remains influential today (see Figure 1-1).

Percival's Medical Ethics, written by the English physician and philosopher Thomas Percival in 1803, superseded earlier codes to become the definitive guide for a physician's professional conduct. Earlier codes did not

I swear by Apollo, the physician, and Aesculapius, and Health, and Allheal, and all the gods and goddesses, that, according to my ability and judgment, I will keep this oath and stipulation, to reckon him who taught me this art equally dear to me as my parents, to share my substance with him and relieve his necessities if required; to regard his offspring as on the same footing with my own brothers, and to teach them this art if they should wish to learn it, without fee or stipulation, and that by precept, lecture, and every other mode of instruction, I will impart a knowledge of the art to my own sons and to those of my teachers, and to disciples bound by a stipulation and oath, according to the law of medicine, but to none other.

I will follow that method of treatment which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to anyone if asked, nor suggest any such counsel; furthermore, I will not give to a woman an instrument to produce abortion.

With purity and holiness I will pass my life and practice my art. I will not cut a person who is suffering with a stone, but will leave this to be done by practitioners of the work. Into whatever houses I enter I will go into them for the benefit of the sick and will abstain from every voluntary act of mischief and corruption; and further from the seduction of females or males, bond or free.

Whatever, in connection with my professional practice, or not in connection with it, I may see or hear in the lives of men which ought not to be spoken abroad, I will not divulge, as reckoning that all such should be kept secret.

While I continue to keep this oath unviolated, may it be granted to me to enjoy life and the practice of the art, respected by all men at all times, but should I trespass and violate this oath, may the reverse be my lot.

FIGURE 1-1 Hippocratic Oath



American Medical Association Principles A code of ethics for members of the American Medical Association, written in 1847. (American Medical Association, Council on Ethical and Judicial Affairs, *Codes of Medical Ethics*, 2002–2003 Edition, p. xiv.)

address concerns about experimental medicine, but according to Percival's code, physicians could try experimental treatments when all else failed, if such treatments served the public good.

When the American Medical Association met for the first time in Philadelphia in 1847, the group devised a code of ethics for members based upon Percival's code. The resulting **American Medical Association Principles**, currently called the *American Medical Association Principles of Medical Ethics*, have been revised and updated periodically to keep pace with changing times (see Figure 1-2). The *American Medical Association Principles of Medical Ethics* briefly summarizes the position of the American Medical Association (AMA) on ethical treatment of patients, while the more extensive *Code of Medical Ethics: Current Opinions with Annotations* provides more detailed coverage.

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and right.
- II. 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 who engage in fraud or deception, to appropriate entities.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, colleagues, and other health professionals and shall safeguard patient confidences and privacy within the constraints of the law.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide care.
- VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
- VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
- IX. A physician shall support access to medical care for all people.

FIGURE 1-2 American Medical Association *Principles of Medical Ethics*

Source: American Medical Association, *Code of Medical Ethics, Current Opinions with Annotations*, current issue.

The Code of Ethics of AAMA shall set forth principles of ethical and moral conduct as they relate to the medical profession and the particular practice of medical assisting.

Members of AAMA dedicated to the conscientious pursuit of their profession and thus desiring to merit the high regard of the entire medical profession and the respect of the general public which they serve, do pledge themselves to strive always to:

- A. render service with full respect for the dignity of humanity;
- B. respect confidential information obtained through employment unless legally authorized or required by responsible performance of duty to divulge such information;
- C. uphold the honor and high principles of the profession and accept its disciplines;
- D. seek to continually improve the knowledge and skills of medical assistants for the benefit of patients and professional colleagues;
- E. participate in additional service activities aimed toward improving the health and well-being of the community.

Creed

- I believe in the principles and purposes of the profession of medical assisting.
- I endeavor to be more effective.
- I aspire to render greater service.
- I protect the confidence entrusted to me.
- I am dedicated to the care and well-being of all people.
- I am loyal to my employer.
- I am true to the ethics of my profession.
- I am strengthened by compassion, courage, and faith.

FIGURE 1-3 Code of Ethics of the American Association of Medical Assistants (AAMA)

When members of professional associations such as the AMA and the AAMA are accused of unethical conduct, they are subject to peer council review and may be censured by the organization (see Figure 1-3). Although a professional group cannot revoke a member's license to practice, unethical members may be expelled from the group, suspended for a period of time, or ostracized by other members. Unethical behavior by a medical practitioner can result in loss of income and eventually the loss of a practice if, as a result of that behavior, patients choose another practitioner.



bioethics A discipline dealing with the ethical implications of biological research methods and results, especially in medicine.

Bioethics

Bioethics is a discipline dealing with the ethical implications of biological research methods and results, especially in medicine. As biological research has led to unprecedented progress in medicine, medical practitioners have had to grapple with issues such as these:

- What ethics should guide biomedical research? Do individuals own all rights to their body cells, or should scientists own cells they have altered?

Is human experimentation essential, or even permissible, to advance biomedical research?

- What ethics should guide organ transplants? Although organs suitable for transplant are in short supply, is the search for organs dehumanizing? Should certain categories of people have lower priority than others for organ transplants?
- What ethics should guide fetal tissue research? Some say such research, especially stem cell research, is moral because it offers hope to disease victims, while others argue that it is immoral.
- Do reproductive technologies offer hope to the childless, or are they unethical? Are the multiple births that sometimes result from taking fertility drugs an acceptable aspect of reproductive technology, or are those multiple births too risky for women and their fetuses and even immoral in an allegedly overpopulated world?
- Should animals ever be used in research?
- How ethical is genetic research? Should the government regulate it? Will genetic testing benefit those at risk for genetic disease, or will it lead to discrimination? Should the cloning of human organs for transplantation be permitted? Should cloning of human beings ever be permitted?

Society is attempting to address these questions, but because the issues are complicated, many questions may never be completely resolved.

The Role of Ethics Committees

Health care practitioners may be able to resolve the majority of the ethical issues they face in the workplace from their own intuitive sense of moral values and ethics. Some ethical dilemmas, however, are not so much a question of right or wrong but more a question like “which of these alternatives will do the most good and the least harm?” In these more ambiguous situations, health care practitioners may want to ask the advice of a medical ethicist or members of an institutional ethics committee.

Medical ethicists or **bioethicists** are specialists who consult with physicians, researchers, and others to help them make difficult decisions, such as whether to resuscitate brain-damaged premature infants or what ethics should govern privacy in genetic testing. Hospital or medical center **ethics committees** usually consist of physicians, nurses, social workers, clergy, a patient’s family, members of the community, and other individuals involved with the patient’s medical care. A medical ethicist may also sit on the ethics committee if such a specialist is available. When difficult decisions must be made, any one of the individuals involved in a patient’s medical care can ask for a consultation with the ethics committee. Larger hospitals have standing ethics committees, while smaller facilities may form ethics committees as needed.

When a case is referred to the ethics committee, the members meet and review the case. The committee does not make binding decisions, but helps the physician, nurse, patient, patient’s family, and others clarify the issue and understand the medical facts of the case and the alternatives available to resolve the situation. Ethics committees may also help with conflict resolution among parties involved with a case. They do not, however, function as institutional review boards or morals police looking for health care workers who have committed unethical acts.

Etiquette

While professional codes of ethics focus upon the protection of the patient and his or her right to appropriate, competent, and humane treatment,



medical ethicist or bioethicist

Specialists who consult with physicians, researchers, and others to help them make difficult ethical decisions regarding patient care.



Ethics committee

Committee made up of individuals who are involved in a patient’s care, including health care practitioners, family members, clergy, and others, with the purpose of reviewing ethical issues in difficult cases.



etiquette Standards of behavior considered to be good manners among members of a profession as they function as individuals in society.



protocol A code prescribing correct behavior in a specific situation, such as a situation arising in a medical office.

etiquette refers to standards of behavior that are considered good manners. Every culture has its own ideas of common courtesy. Behavior considered good manners in one culture may be bad manners in another. For example, in some Middle Eastern countries it is extremely discourteous for one male acquaintance to ask another, “How is your wife?” In Western culture, such a question is well received. Similarly, within nearly every profession, there are recognized practices considered to be good manners for members.

Most health care facilities have their own policies concerning professional etiquette that staff members are expected to follow. Policy manuals written especially for the facility can serve as permanent records and as guidelines for employees in these matters.

By the same token, health care practitioners are expected to know **protocol**, standard rules of etiquette applicable specifically to their place of employment. For example, when another physician telephones, does the receptionist put the call through without delay? Is a physician who is also a patient billed at the same rate as other patients who are not physicians?

Within the health care environment, all health care practitioners are, of course, expected to treat patients with the same respect and courtesy afforded others in the course of day-to-day living. Politeness and appropriate dress are mandatory.

QUALITIES OF SUCCESSFUL HEALTH CARE PRACTITIONERS

Successful health care practitioners have a knowledge of techniques and principles that includes an understanding of legal and ethical issues. They must also acquire a working knowledge of and tolerance for human nature and individual characteristics, since daily contact with a wide variety of individuals with a host of problems and concerns is a significant part of the work. Courtesy, compassion, and common sense are often cited as the “three Cs” most vital to the professional success of health care practitioners.



courtesy The practice of good manners.

Courtesy

The simplest definition of **courtesy** is the practice of good manners. Most of us know how to practice good manners, but sometimes circumstances make us forget. Maybe we’re having a rotten day—we overslept and dressed in a hurry but were still late to work; the car didn’t start so we had to walk, making us even more late; we were rebuked at work for coming in late . . . and on and on. Perhaps we’re burned out, stressed out, or simply too busy to think. Regardless of a health care practitioner’s personal situation, however, patients have the right to expect courtesy and respect, including self introduction. (“Hi, I’m Maggie and I’ll be taking care of you,” is one nursing assistant’s way of introducing herself to new patients in the nursing home where she works.)

Think back to experiences you have had with health care practitioners. Did the receptionist in a medical office greet you pleasantly, or did he or she make you feel as though you were an unwelcome intruder? Did the laboratory technician or phlebotomist who drew your blood for testing put you at ease or make you more anxious than you already were? If you were hospitalized, did health care practitioners carefully explain procedures and treatments before performing them, or were you left wondering what was



FIGURE 1-4 Empathy is a stronger emotion than sympathy

happening to you? Chances are that you know from your own experiences how important common courtesy can be to a patient.



compassion The identification with and understanding of another's situation, feelings, and motives.

Compassion

Compassion is empathy—the identification with and understanding of another's situation, feelings, and motives (Figure 1-4). In other words, compassion is temporarily putting oneself in another's shoes. It should not be confused with sympathy, which is feeling sorry for another person's plight—typically a less deeply felt emotion than compassion. While “I know how you feel” is not usually the best phrase to utter to a patient (it too often earns the retort, “No, you don’t”), compassion means that you are sincerely attempting to know how the patient feels.



common sense Sound practical judgment.

Common Sense

Common sense is simply sound practical judgment. It is somewhat difficult to define, because it can have different meanings for different people, but it generally means that you can see which solution or action makes good sense in a given situation. For example, if you were a nursing assistant and a gasping, panicked patient told you he was having trouble breathing, common sense would tell you to immediately seek help. You wouldn't simply enter the patient's complaint in his medical chart and wait for a physician or a nurse to see the notation. Likewise, if a patient spilled something on the floor, common sense would tell you to wipe it up (even if you were not a member of the housekeeping staff) before someone stepped in it and possibly slipped and fell. While it's not always immediately obvious that someone has common sense, it usually doesn't take long to recognize its absence in an individual.

Additional capabilities that are helpful to those who choose to work in the health care field include those that are listed below under the headings, “People Skills” and “Technical Skills.”



FIGURE 1-5 The health care practitioner taking the girl's vital signs has put her at ease

People Skills

People skills are those traits and capabilities that allow you to get along well with others and to relate well to patients or clients in a health care setting. They include such attributes as the following:

- A relaxed attitude when meeting new people.
- An understanding of and empathy for others.
- Good communication skills, including writing, speaking, and listening.
- Patience in dealing with others and the ability to work as a member of a health care team (see Figure 1-5).
- Tact.
- The ability to impart information clearly and accurately.
- The ability to keep information confidential.
- The ability to leave private concerns at home.
- Trustworthiness and a sense of responsibility.

Technical Skills

Technical skills include those abilities you have acquired in your course of study, including but not limited to the following:

- Computer literacy.
- Proficiency in English, science, and mathematics.
- A willingness to learn new skills and techniques.
- An aptitude for working with the hands.
- Ability to document well.
- Ability to think critically.

Critical Thinking Skills

When faced with a problem, most of us worry a lot before we finally begin working through the problem effectively, which means using fewer emotions



critical thinking The ability to think analytically, using fewer emotions and more rationality.

and more rational thinking skills. As a health care practitioner, you will be expected to approach a problem at work in a manner that lets you act as ethically, legally, and helpfully as possible. Sometimes solutions to problems must also be found as quickly as possible, but solutions must always be within the scope of your training, licensure, and capabilities. This problem-solving process is called **critical thinking**. Here is a five-step aid for approaching a problem using critical thinking:

- 1. Identify and clarify the problem.** It's impossible to solve a problem unless you know the exact nature of the problem. For example, imagine that patients in a medical office have frequently complained that the wait to see physicians is too long, and several have protested loudly and angrily that their time "is valuable too." Rhea is the waiting room receptionist and the person who faces angry patients first, so she would like to solve this problem as quickly as possible. Rhea has recognized that a problem exists, of course, but her apologies to patients have been temporary fixes, and the situation continues.
- 2. Gather information.** In the above situation, Rhea begins to gather information. She first checks to see exactly why patients have been kept waiting, and considers the following questions: Are all the physicians simply oversleeping and beginning the day behind schedule? (Not likely, but an easy solution if this were the case would be to buy the physicians new alarm clocks.) Are the physicians often delayed in surgery or because of hospital rounds? Is the clinic understaffed? How long, on average, has each patient who has complained been left waiting beyond his or her appointment time?
- 3. Evaluate the evidence.** Rhea evaluates the answers she has gathered to the above questions and determines that too many patients are, indeed, waiting too long beyond appointment times to see their physicians. The next step in the critical thinking process is to consider all possible ways to solve the problem.
- 4. Consider alternatives and implications.** Rhea has determined that the evidence supports the fact that a problem exists and begins to formulate alternatives by asking herself these questions: Could the waiting room be better supplied with current reading material or perhaps television sets and a children's corner, so that patients both with and without children are less likely to complain about waiting? Is the waiting room cheery and comfortable, so waiting does not seem interminable? What solution would best serve the goals of physicians, other medical office personnel, and patients? Rhea must consider costs of, objections to, and all others' opinions of each alternative she considers.
- 5. Choose and implement the best alternative.** Rhea selects an alternative and implements it. As a medical office receptionist, she cannot act alone, but she has brought the problem to the attention of those who can help, and her suggestions have been heard. As a result of Rhea's research, acceptable solutions to patients' complaints that they are forced to wait too long to see physicians might include the following:
 - Patients are asked to remind receptionists when they have been waiting over 15 minutes so receptionists can check to see what is causing the delay.
 - Additional personnel are hired to see patients.
 - The waiting room is stocked with current news publications, television sets, and/or a child play center for patient comfort while waiting.

Critical thinking is not easy, but, like any skill, it improves with practice.

The health care practitioner who demonstrates the above qualities, coupled with a working knowledge of law and ethics, is most likely to find success and job satisfaction in his or her chosen profession.

CHECK YOUR PROGRESS

6. Tell how each of the following characteristics relates to law and ethics in the health care professions:

The ability to be a good communicator and listener.

The ability to keep information confidential.

The ability to impart information clearly and accurately.

The ability to think critically.

Ethics Issues




Introduction to End-of-Chapter Ethics Discussions

Learning Outcomes for the Ethical Issues Feature at the End of Each Chapter

After studying the material in each chapter's Ethical Issues feature you should be able to:

1. Discuss current ethical issues of concern to health care practitioners.
2. Compare ethical guidelines to the law as discussed in each chapter of the text.
3. Practice critical thinking skills as you consider medical, legal, and ethical issues for each situation presented.
4. Relate the ethical issues presented in the text to the health care profession you intend to practice.



Health care practitioners are bound by state and federal laws, but they are also bound by certain ethical standards—both personal standards and those set forth by professional codes of ethics and ethical guidelines, and by bioethicists. Many professional organizations for health care practitioners employ an ethics consultant who is available to speak with organization members who need help with an ethical dilemma. “We serve as a third party who can stand outside a situation and facilitate communication,” says Dr. Carmen Paradis, an ethics consultant with the Cleveland Clinic’s Department of Bioethics. At the Cleveland Clinic, ethics consultations are available to health care practitioners, patients, family members, and others involved with patient decisions.

Medical facility ethics committees can also serve as consultants. In larger health care facilities such committees usually deal with institutional matters, but in smaller communities where ethics consultants may not be available, members of an ethics committee may also function as ethics consultants.

Keep in mind as you read the Ethical Issues feature for each chapter that ethical guidelines are not law, but deal solely with ethical conduct for health care practitioners. Most guidelines published for professional health care practitioner organizations emphasize this difference. For example, as stated in *Guidelines for Ethical Conduct for the Physician Assistant Profession*, “Generally, the law delineates the minimum standard of acceptable behavior in our society. Acceptable ethical behavior is usually less clearly defined than law and often places greater demands on an individual. . . .

“Ethical guidelines for health care practitioners are not meant to be used in courts of law as legal standards to which practitioners will be held. Ethical guidelines are, rather, meant to guide health care practitioners and to encourage them to think about their individual actions in certain situations.”

The ethical guidelines for various health care professions have several points in common, but first and foremost is that health care practitioners are obligated to provide the best care possible for every patient, and to protect the safety and welfare of every patient.

State and federal law may differ somewhat from an ethical principle. For example, a state’s law may not require physicians to routinely inquire about physical, sexual, and psychological abuse as part of a patient’s medical history, but the physician may feel an ethical duty to his or her patients to do so.

Furthermore, the fact that a health care practitioner who has been charged with illegal conduct is acquitted or exonerated does not necessarily mean that the health care practitioner acted ethically.

The term *ethical* as used here refers to matters involving the following:

1. Moral principles or practices.
2. Matters of social policy involving issues of morality in the practice of medicine.

The term *unethical* refers to professional conduct that fails to conform to these moral standards or policies.

The ethics issues raised are from the real-life experiences of a variety of health care practitioners and are recounted throughout the text to raise awareness of the ethical dilemmas many practitioners face daily, and to stimulate discussion.

Ethics Issues



Introduction to Law and Ethics

ETHICS ISSUE 1: A physician assistant in a medical practice with several physicians contacts his professional association, the American Academy of Physician Assistants (AAPA), to report that he is being pressured to sign a document stating that he agrees with the use of expired medications in the ACLS (crash cart) drug box. He knows the practice is an attempt to save money, but he feels uncomfortable signing such a document and, in fact, calls the issue a “job breaker.” The PA’s state laws do not specifically prohibit this practice, but he strongly suspects it is unethical.

DISCUSSION QUESTIONS

1. Might a legal issue arise if a code went badly and there were a question about the use of outdated medications? Explain your answer.

2. In your opinion, is it ethical for the medical practice to use outdated medications? Is it ethical to require the PA to sign a document affirming his agreement with the practice? Explain your answers.

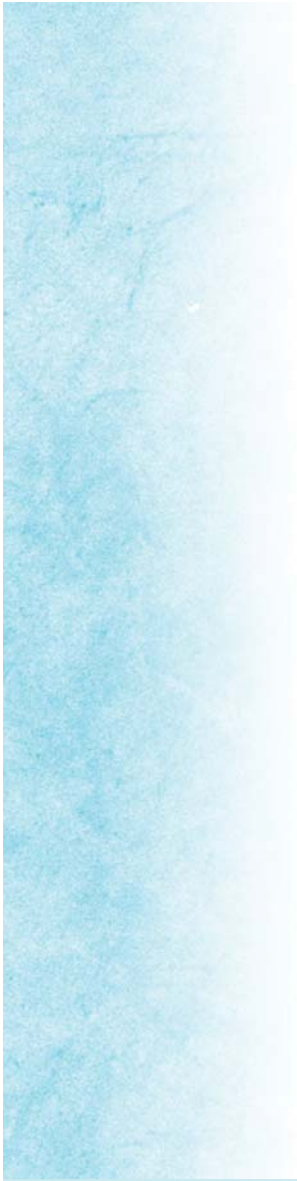
ETHICS ISSUE 2: A registered nurse calls her professional organization’s ethics consultant to ask for resources she can present to her employing medical clinic to support her intention to quit working with a physician she feels is providing sloppy and possibly dangerous care.

DISCUSSION QUESTIONS

1. What is the most important principle for the nurse to consider here?

2. In your opinion, are there legal issues inherent in this situation, as well as ethical issues? Explain your answer.

ETHICS ISSUE 3: A physician assistant is planning a trip abroad with a medical relief agency. The physician who was to be his supervisor cancels at the last minute. Should he go alone, the PA asks, when he will have no physician supervisor? (The destination country has no physician assistants and, therefore, no laws regarding their practice.)



DISCUSSION QUESTION

1. While it will not be illegal, in the destination country, for the PA to complete the medical relief mission on his own, will it be ethical? Explain your answer.

ETHICS ISSUE 4: Family members of a certified medical assistant (CMA) employed by a medical clinic in a small community often ask the CMA for medical advice. Two of her family members have asked her to bring antibiotic samples home for them.

DISCUSSION QUESTION

1. In your opinion, would it be ethical for the CMA to give medical advice to her own family members? To bring drug samples home for them? Explain your answers.

ETHICS ISSUE 5: A radiology technician practicing in a small community is interested in dating a person he has seen as a patient.

DISCUSSION QUESTION

1. In your opinion, would it be ethical for the patient to date one of his patients? Would it be ethical for him to date a coworker? Explain your answers.



Go to www.mhhe.com/judson5e to practice your case review skills. Then read on for more information.

CHAPTER
1

REVIEW

Applying Knowledge

Answer the following questions in the spaces provided.

1. List three areas where health care practitioners can gain insight through studying law and ethics.

2. Define *summary judgment*.

3. Define *bioethics*.

4. Define *law*.

5. Define *ethics*.

6. How is unethical behavior punished?

7. Define *etiquette*.

8. How are violations of etiquette handled?

9. What is the purpose of a professional code of ethics?

10. Name five bioethical issues of concern in today's society.

11. What duties might a medical ethicist perform?

12. Decisions made by judges in the various courts and used as a guide for future decisions are called

Circle the correct answer for each of the following multiple-choice questions.

13. Written codes of ethics for health care practitioners:

- a. Evolved primarily to serve as moral guidelines for those who provided care to the sick
- b. Are legally binding
- c. Did not exist in ancient times
- d. None of the above

14. A Greek physician who is known as the Father of Medicine:

- a. Hippocrates
- b. Percival
- c. Hammurabi
- d. Socrates

15. A pledge for physicians that remains influential today:

- a. Code of Hammurabi
- b. Babylonian Ethics Code
- c. Hippocratic oath
- d. None of the above

16. This ethics code superseded earlier codes to become the definitive guide for a physician's professional conduct:

- a. Code of Hammurabi
- b. Percival's Medical Ethics
- c. Hippocratic oath
- d. Babylonian Ethics Code

17. Unethical behavior is always:

- a. Illegal
- b. Punishable by legal means
- c. Unacceptable
- d. None of the above

18. Unlawful acts are always:

- a. Unacceptable
- b. Unethical
- c. Punishable by legal means
- d. All of the above

19. Violation of a professional organization's formalized code of ethics:

- a. Always leads to prosecution in a court of law
- b. Is ignored if one's membership dues in the organization are paid
- c. Can lead to expulsion from the organization
- d. None of the above

20. Law is:
 - a. The minimum standard necessary to keep society functioning smoothly
 - b. Ignored if transgressions are ethical, rather than legal
 - c. Seldom enforced by controlling authorities
 - d. None of the above
21. Conviction of a crime:
 - a. Cannot result in loss of license unless ethical violations also exist
 - b. Is always punishable by imprisonment
 - c. Always results in expulsion from a professional organization
 - d. Can result in loss of license
22. The basis for ethical conduct includes:
 - a. One's morals
 - b. One's culture
 - c. One's family
 - d. All of the above
23. Sellers and manufacturers can be held legally responsible for defective medical devices and products through charges of:
 - a. Fraud
 - b. Breach of warranty
 - c. Misrepresentation of the product through untrue statements made by the manufacturer or seller
 - d. All of the above
24. Bioethics is concerned with:
 - a. Health care law
 - b. Etiquette in medical facilities
 - c. The ethical implications of biological research methods and results
 - d. None of the above
25. Critical thinking skills include:
 - a. Assessing the ethics of a situation
 - b. First clearly defining a problem
 - c. Determining the legal implications of a situation
 - d. None of the above

Case Study

Use your critical thinking skills to answer the questions that follow each of the case studies. Indicate whether each situation is a question of law, ethics, protocol, or etiquette.

You are employed as an assistant in an ophthalmologist's office. Your neighbor asks you to find out for him how much another patient was charged for an eye examination at the eye clinic that employs you. Your neighbor also asks you how much the patient was charged for his prescription eyeglasses (the eye clinic also sells lenses and frames).

26. Can you answer either of your neighbor's questions? Explain your answer.

A physician employs you as a medical assistant. Another physician comes into the medical office where you work and asks to speak with your physician/employer.

27. Should you seat the physician in the waiting room, or show her to your employer's private office? Why?

You are employed as a licensed practical nurse (LPN) in a small town. (In California and Texas, the term for this profession is “licensed vocational nurse”—abbreviated as LVN.) A woman visits the clinic where you work, complaining of a rash on her body. She says she recently came in contact with a child who had the same symptoms, and she asks, “What did this child see the doctor for, and what was the diagnosis?” She explains that she needs to know, so that she can be immunized if necessary. You explain that you cannot give out this information, but another LPN overhears, pulls the child’s chart, and gives the woman the information she requested.

28. Did both LPNs in this scenario act ethically and responsibly? Explain your answer.

A physician admitted an elderly patient to the hospital, where she was treated for an irregular heartbeat and chest pain. The patient was competent to make her own decisions about a course of treatment, but her opinionated and outspoken daughter repeatedly second-guessed the physician’s recommendations with medical information she had obtained from the Internet.

29. In your opinion, what responsibilities, if any, does a physician or other health care practitioner have toward difficult family members or other third parties who interfere with a patient’s medical care?

30. What might the physician in the above situation have said to her patient’s daughter to help resolve the situation?

Internet Activities

Complete the activities and answer the questions that follow.

31. Use a search engine to conduct a search for Web sites on the Internet concerned with bioethics. Name two of those sites you think are reliable sources of information. Explain your choices. How does each site define the term *bioethics*?

32. Locate the Web site for the organization that represents the health care profession you intend to practice. Does the site provide guidance on ethics? If so, how? Does the site link to other sites concerning ethics? If so, list three ethics links; then explore these links.

33. Visit the Web site sponsored by the National Institutes of Health called “Bioethics Resources” (<http://bioethics.od.nih.gov/casestudies.html>). Scroll down to case studies. Pick a case study and review it. Do you agree or disagree with the conclusions reached about the issue? Explain your answer.
