



FIFTH EDITION

Medical Law and Ethics

Bonnie F. Fremgen

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BONNIE F. FREMGEN, Ph.D.

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Notice: The material in this textbook contains the most current information about the topic at the time of publication. This text is not meant to be used in lieu of qualified legal advice for situations that arise in either one's professional practice or personal life. An attorney should always be consulted for legal advice. Since laws for healthcare professionals vary from state to state, it is always wise to consult specific laws within one's state of practice.

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To my children, who have always been my inspiration for ethical behavior. And a special thanks to my husband for his continual support and help.

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Preface

The allied health professional has always been an important member of the medical team. This team awareness is even more critical in today's healthcare environment, because the physician no longer practices medicine alone. Therefore, the text discusses medical law and ethics as it relates to allied healthcare professionals, as well as the physician's duties and responsibilities.

Medical Law and Ethics is written in straightforward language that is aimed at the nonlawyer health professional who must be able to cope with multiple legal and ethical issues. This text is appropriate for those studying in a college or university who are working toward careers in the allied health field in a variety of settings, such as medical offices, hospitals, clinics, laboratories, rehabilitation facilities, and skilled-nursing facilities. Because most allied healthcare professionals work either with or for a physician, it is important to understand the physician's responsibilities and duties to the patient. Therefore, they are covered in this book. Included are examples of common legal and ethical issues that affect those working in the healthcare field. A wide range of pertinent topics are discussed, such as the legal system, professional liability and medical malpractice, public duties of the physician, the medical record, and ethical and bioethical issues. There is an in-depth discussion of the regulations affecting the healthcare professional, including up-to-date information about the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as the Patient Protection and Affordable Care Act of 2010 (PPACA). The intent is to help healthcare professionals to better understand our ethical obligation to ourselves, our patients, and our employers. A new addition to stimulate discussion is the Critical Thinking Exercise at the end of each chapter.

Many legal cases are sprinkled throughout the text to demonstrate the history of the law as it pertains to subjects such as patient confidentiality, managed care, federal regulations affecting the employee, death and dying, and abortion. In some examples, the cases may seem old, but because we as a country have a legal system based on case law, these laws are still pertinent today. A legal icon (scales of justice) appears in the margin to indicate legal case citations.

A special feature called *Med Tips* provides quick information about law and ethics. These brief scenarios and hints help to maintain interest in this vital subject. Each chapter includes glossary terms highlighted in bold on first reference, extensive end-of-chapter exercises, and one actual practice case. The appendices include a sample of codes of ethics that form a basis for current practice and legal case citations.

This text provides an overview of medical law and ethics. Practicing healthcare professionals should know the legal requirements in their own jurisdictions.

Finally, many educators have offered thoughtful comments as reviewers of this text. I am extremely grateful that they have shared their time and experience to help develop this textbook.

CHAPTER STRUCTURE

- ▶ **Learning Objectives.** These include an overview of the basic knowledge discussed within the chapter and can be used as a chapter review.
- ▶ **Key Terms.** Important vocabulary terms are listed alphabetically at the beginning of each chapter and printed in bold the first time they are defined in the text.
- ▶ **Introduction.** Each chapter begins with an introductory statement that reflects the topic of the chapter.
- ▶ **Review Challenge.** A selection of short answer, matching, and multiple-choice questions are included to test the student's knowledge of the chapter material.
- ▶ **Case Study.** The case studies are based on real-life occurrences and offer practical application of information discussed within the chapter. These are included to stimulate and draw upon the student's critical-thinking skills and problem-solving ability.
- ▶ **Critical Thinking Exercise.** These exercises at the end of each chapter challenge the student to answer the question "What would you do if ..." relating to many current healthcare and legal dilemmas in today's environment.
- ▶ **Bibliography.** These useful resources provide further information on the topics included within the chapter.

SPECIAL FEATURES

- ▶ **Med Tip.** Med Tips are placed at strategic points within the narrative to provide helpful hints and useful information to stimulate the student's interest in the topic.
- ▶ **Legal Case Citations.** Discipline-specific cases are used throughout the text to illustrate the topic under discussion. The cases reflect the many medical disciplines, including that of the physician, that come together in the care of the patient. While this book is not meant to be a law book, the cases cited in the book are meant to emphasize the importance of the law for the students.
- ▶ **Points to Ponder.** Thought-provoking questions give students an opportunity to evaluate how they might answer some of the tough, medically related ethical dilemmas in today's society. These questions can also be used for critical debate among students during a class activity.
- ▶ **Discussion Questions.** These end-of-chapter questions encourage a review of the chapter contents.
- ▶ **Put It into Practice.** These thought-provoking activities appear at the end of each chapter. They provide a clinical correlation with the topics discussed in the chapter and stimulate the student's own contemplation of legal and ethical issues that are apparent in everyday life.

- ▶ **Web Hunt.** This end-of-chapter Internet activity encourages the student to access the multitude of medical resources available through this medium.
- ▶ **Appendices.** Codes of Ethics are included in Appendix A; useful healthcare websites are listed online; the case citations used throughout the book are listed in Appendix B.
- ▶ **Additional Examination Review Questions.** These are included in the Instructor's Resource Manual.

Visit our new Resource Page to accompany *Medical Law and Ethics, 5th Ed.* (<http://www.pearsonhighered.com/healthprofessionsresources/>) for a collection of downloadable quizzes, and reference materials.

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This book would not have been possible without the assistance and guidance of many people. I am grateful to the editorial and production staffs at Pearson Education for their skill and patience with this project. I thank, Marlene Pratt Acquisitions Editor and, Faye Gemmellaro Program Manager, for their leadership and guidance with this project, and whose courtesy and thoroughness are greatly appreciated; Pat Walsh, whose calm presence is always available.

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Letter to the Student

It's a natural tendency to read some of the case examples in this book and think that they must be fictional as no well-trained healthcare professional would ever be so negligent. However, the short ethics cases at the beginning of each chapter, with the exception of the historical cases, are indeed real. All of these cases are drawn from the author's experience.

Throughout the book there are numerous examples of actual legal cases that usually resulted in suffering for patients, as well as for physicians and other healthcare professionals. The cases discussed are not meant to focus on particular healthcare disciplines, nor to exclude any disciplines. And these cases are not meant to frighten but, rather, to alert all of us to the potential risks to patients when healthcare professionals are not diligent about the care they provide. Do not memorize the case citations, but rather try to understand the circumstances and why the case was included in this book.

I have a great respect for *all* the disciplines mentioned in this book. My intent is to prepare students to promote good patient care, as well as to protect themselves and their employers from lawsuits.

For a successful start to your study of medical law and ethics, consider following the ABCs of classroom success: **A**ctively participate, **B**enefit from the experience, and **C**ommit to learning. It is necessary for you to attend class to truly benefit from your ethics education. So much happens in the classroom—especially the interaction between you and your classmates. The discussion portion of an ethics class is one of the most important components. You must be present to contribute. The text serves as an information source and as the first step in your education—the dynamics of classroom interaction between you, your instructor, and the other students is critical for success in learning.

Actively participate when you attend class. It is necessary to absorb what takes place during the class session. Listen carefully to what your instructor and fellow students say. If you don't share your ideas, experiences, and questions, then the rest of the class is losing what you have to offer. The dialogue about ethics that you have with your instructor and fellow classmates can be one of the most meaningful learning experiences.

Benefit from the experience and ideas of your peers (classmates). Listen to the opinions of others during class discussions. Pay particular attention to the opinions that differ from your own. As a member of the healthcare team, you will frequently hear opinions that differ from your own—both from your coworkers and your patients. You do not have to change your opinions or beliefs, but try to keep an open mind to the opinions of others.

Commit to learning by carefully reading and analyzing the textbook material. Look for new information and also for discussion points that both agree and disagree with your own perspective. Take this course seriously so that it is not a waste of your time. In fact, your ethics class can be one of the most important classes that you take! Communicate what you have learned. Your perspective is important for others to hear. Use your time wisely in class, share your ideas, and listen to the thoughts of others.

The law is dynamic and often is revised as changes take place in society. For example, two of the newest laws affecting healthcare are the Healthcare Insurance Portability and Accountability Act (HIPPA) of 1996 and the Patient Protection and Affordable Care Act of 2010 (PPACA), also known as the Affordable Care Act. They have both had an impact on healthcare organizations as well as physician's offices. This textbook is not meant to be a study of the law, but rather to introduce students to the impact that law and ethics have on their professional lives.

Finally, our goal as teachers is to help our students learn how to judge themselves and their actions. Because you won't have us with you in the workplace, we want you to be able to evaluate your own actions in light of their ethical and legal impact on others.

How to Interpret Case Citations

Select legal cases are used in this textbook to illustrate various legal principles. At the end of each case summary is a citation, such as *Moon Lake Convalescent Center v. Margolis*, 433 N.E.2d 956 (Ill. App. Ct. 1989). This citation, similar to a street address, tells you where you can find this case among the many sets of reported cases (called *reporters*) in the library. Most case citations end with information in parentheses, such as (Ill. App. Ct. 1989), which tells you what court (the Illinois Appellate Court) decided the case and the year (1989) of the decision, but you do not need that information when you are simply trying to locate a particular case in the library. The small *v.* between the litigants' names stands for "versus." A case citation consists of

- ▶ The italicized case name—usually the name of the plaintiff and the defendant. In our example, *Moon Lake Convalescent Center* (defendant) and *Margolis* (plaintiff).
- ▶ The name of the reporter(s) where the case is published (Northeast Reporter, 2d series).
- ▶ The volume number(s) of the reporter(s) where the case is published (433).
- ▶ The page number of the volume where the case begins (956).
- ▶ The year the case was decided (1989).
- ▶ For federal Court of Appeals cases, a designation of the circuit; for federal District Court cases, the state and judicial district where the court is located; for state cases, an indication of the state if it is not apparent from the name of the reporter (Illinois Appellate Court).

Therefore, our example case between *Moon Lake Convalescent Center* and *Margolis* is found in volume 433 of the Northeast Reporter, 2d series, on page 956.

Abbreviations for other reporters (books) are:

- A (Atlantic Reporter)
- P (Pacific Reporter)
- U.S. (United States Reporter)
- F.Supp. (Federal Supplement)
- F (Federal Reporter)
- NE (Northeast Reporter)
- NW (Northwest Reporter)
- NYS (New York Supplement)
- So (Southern Reporter)
- SW (Southwestern Reporter)

Most reporters have been published in two or more series, such as 2d, meaning second series. The student should not be concerned with memorizing the names of the reporters. The abbreviations for them are found at the beginning of most of the legal research publications that we use. As you do research within your own state, you will become familiar with the abbreviations that are most commonly used. Legal research can be done through a law library or via the Internet from Lexis-Nexis, which is a subscription service used by law firms and libraries.



About the Author

Bonnie F. Fremgen, Ph.D., is a former associate dean of the Allied Health Program at Robert Morris College and was vice president of a hospital in suburban Chicago. She has taught medical law and ethics courses as well as clinical and administrative topics. She has broad interests and experiences in the healthcare field, including hospitals, nursing homes, and physicians' offices. She currently has two patents on a unique circulation-assisting wheelchair.

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Introduction to Medical Law, Ethics, and Bioethics

Learning Objectives

After completing this chapter, you will be able to:

1. Define the key terms.
2. Describe the similarities and differences between laws and ethics.
3. Discuss the reasons for studying law, ethics, and bioethics.
4. Describe how to apply the three decision-making models discussed in this chapter.
5. Explain why ethics is not *just* about the sincerity of one's beliefs, emotions, or religious viewpoints.

Key Terms

Amoral	Indigent	Principle of beneficence
Applied ethics	Integrity	Principle of justice
Bioethicists	Justice-based ethics	Principle of nonmaleficance
Bioethics	Laws	Quality assurance
Comparable worth	Litigious	Rights-based ethics
Compassion	Medical ethics	Sanctity of life
Cost/benefit analysis	Medical etiquette	Sexual harassment
Due process	Medical practice acts	Sympathy
Duty-based ethics	Morality	Tolerance
Empathy	Precedent	Utilitarianism
Ethics	Principle of autonomy	Virtue-based ethics
Fidelity		

THE CASE OF JEANETTE M. AND THE PHONE CALL

Jeanette, an 80-year-old widow, called her physician early one morning complaining of shortness of breath. She spoke to the office receptionist who asked if she was having any other difficulty. Jeanette said no. The receptionist said she would give the message to the doctor.

The doctor's office was extremely busy that October day giving out flu shots. The receptionist immediately became busy answering telephone calls and admitting a long line of patients waiting for their annual flu shot. The telephone message from Jeanette was left unnoticed on the front office desk for several hours and was then placed on the physician's desk with other messages.

Jeanette became so exhausted from her shortness of breath that she fell asleep. When she awoke in the afternoon she could not catch her breath. She called her neighbor and just said, "Help." Paramedics arrived at Jeanette's home shortly after the neighbor called 911 and found Jeanette to be unresponsive. She was taken to the local emergency room where she was diagnosed and treated for pneumonia and congestive heart failure. The emergency room staff tried to determine who her personal physician was, but Jeanette had no personal belongings or medical information with her. She never regained consciousness and died that evening.

When her neighbor went over to Jeanette's home that evening to feed the cat, she noticed the light on the phone's answering machine. The doctor had returned Jeanette's call at 5:00 P.M. She apologized for not calling sooner.

1. Do you believe that this case presents a legal or an ethical problem or both?
2. In your opinion, is *anyone* at fault for Jeanette's death?
3. Is the physician at fault? Is anyone on the physician's staff at fault?
4. What could have been done to prevent this problem?

I long to accomplish a great and noble task, but it is my chief duty to accomplish humble tasks as though they were great and noble. The world is moved along, not only by the mighty shoves of its heroes, but also by the aggregate of the tiny pushes of each honest worker.

—Helen Keller

Medical professionals encounter healthcare dilemmas that are not experienced by the general population. They are faced with individual choices that must, of necessity, always take into consideration the common good of all patients. Medical–ethical decisions have become increasingly complicated with the advancement of medical science and technology. The topics of medical law, ethics, and bioethics, while having very specific definitions, are interrelated. One cannot practice medicine in any setting without an understanding of the legal implications for both the practitioner and the patient. Medical ethics is an **applied ethics**, meaning that it is a practical application of moral standards that are meant to benefit the patient. Therefore, the medical practitioner must adhere to certain ethical standards and codes of conduct. **Bioethics**, a branch of applied ethics, is a field resulting from modern medical advances and research. Many medical practitioners, patients, and religious organizations believe that advances in bioethics, such as cloning, require close examination, control, and even legal constraints.

One teacher of medical law and ethics clearly stated that our primary goal is to teach students to think independently and become sensitive to the risks and issues that pervade the field. The ultimate goal in teaching this topic is to enable students to understand complex public healthcare policy from legal and ethical perspectives, regardless of personal beliefs. We want our students to be able to conduct themselves in a manner that is ethical, legal, and exemplary.

Introduction

WHY STUDY LAW, ETHICS, AND BIOETHICS?

Without a moral structure for their actions, people would be free to pursue their own self-interests. In many cases, people would behave in a moral fashion within the constraints and framework of their culture and religious beliefs. However, upon closer examination of living without the constraints and limitations imposed by moral standards and laws, a state of hostility may arise in which only the interests of the strong would prevail. The words *justice* and *injustice* would have little meaning. We all believe we know the difference between right and wrong. We may firmly believe that while some decisions are difficult to make, we would intuitively make the right decision. However, there is ample proof in medical malpractice cases that, in times of stress and crisis, people do not always make the correct ethical decisions. Because what is illegal is almost always unethical, it is important to have a basic understanding of the law as it applies to the medical world.

MED TIP

We must always remember that our primary duty is to promote good patient care and to protect our patients from harm.

We should also understand that we live in a **litigious** society in which people have become excessively inclined to sue healthcare practitioners. In addition, healthcare agencies, hospitals, nursing homes, and manufacturers of medical products and equipment are all at risk of being sued by patients and their families. In fact, in our society anyone can sue anyone else. Lawsuits take a great toll in terms of stress, time, and money for all parties involved. While being sued does not indicate guilt, nevertheless it can affect the reputation of a person or an institution even if judged to be innocent in a court of law.

MED TIP

A basic understanding of law and ethics can help protect you and your employer from being sued.

Another reason for studying ethics and the law is that people often convince themselves that what they are doing is not wrong. For example, plagiarism, which is using someone else's words or ideas, may be both unethical and illegal, depending on the circumstances. It's understandable that an author who has worked hard to write a book would not want another author to use his or her written material without permission and proper credit. In fact, lawsuits have been won when plagiarism is proven to have occurred. In this case, plagiarism is both illegal and unethical. But what happens when a student has someone else do his or her work? Or if students lift passages from another book and then claim the words as their own? Is this also illegal and unethical? It may be both.

A student entering the medical field is held to a high standard. Strong ethical values can begin with something as simple as turning in honest papers. There have been numerous examples of people lying on their job resume by embellishing duties and achievements on past jobs, stretching employment dates to cover gaps between jobs, inflating salaries, and even omitting criminal convictions. Many healthcare employers are sensitive to this problem and use consulting firms to perform background checks on potential employees. These examples illustrate current ethical, and even some illegal, acts.

Medicine is based on the professional skills of many persons, including physicians, nurses, physician assistants, medical assistants, radiology technicians, pharmacists, surgical technologists, phlebotomists, reimbursement specialists and coders, pharmacy technicians, and a multitude of other allied health professionals. The healthcare team, composed of these professionals, with the addition of healthcare administrators, often must decide on critical issues relating to patient needs. In some cases, the decisions of these professionals are at odds with one another. For example, when an obstetrician withholds resuscitation attempts on a severely handicapped newborn, such as one born without a brain (anencephalic), he or she may be acting in opposition to the law in many states and the ethics of many people. Does a nurse have an ethical responsibility to override this order if he or she believes it to be wrong? Is there a better way to handle such an ethical dilemma without the patient's suffering in the process? It is generally understood that nurses and other allied healthcare professionals carry out the orders of their employer/physician. However, as illustrated in the above case, in some situations, confusion arises about what is the right thing to do. In the Jeanette M. case at the beginning of the chapter, does the physician's receptionist have any responsibility for the physician's delay in returning the patient's call?

It is generally accepted that some behavior, such as killing, is always wrong. But even this issue has been in the news when, as Hurricane Katrina roared through New Orleans in 2005, several critically ill hospital patients who could not be moved, and

would certainly die, were allegedly given a lethal injection of morphine by a doctor and two nurses. In 2007 a grand jury determined not to indict the physician and cleared her of all accusations. There have been 194 Katrina-related claims filed by a Louisiana state agency that manages malpractice lawsuits. There is a concern, resulting from this case, that prosecutions against hospitals and medical staff could prevent doctors from helping in times of a disaster. As a result, two state laws were passed in 2008 protecting medical staff during states of emergency.

MED TIP

A study of law, ethics, and bioethics can assist the medical professional in making a sound decision based on reason and logic rather than on emotion or a “gut feeling.”

Ethics asks difficult questions, such as “How should we act?” and “How should we live?” The answers to such questions are often subjective and can change according to circumstances, so it is realistic to ask, “Why study ethics?” The short answer is that in spite of the many gray areas of ethics, we are expected to take the right action when confronted with an ethical dilemma. We must consider the consequences of wrongdoing. We must learn how to think about the ethics of an action and then how to translate those thoughts into action. So, even if the “right thing” isn’t always clear, we can prepare our minds to think about an action and to see how the experiences of others can influence our own actions. The important thing is to be able to think and then take action!

Of course, not all illegal or unethical cases end up with a lawsuit or in a court of law. However, brief descriptions of actual court cases are sprinkled throughout the book to illustrate the topics that are discussed in the chapter. These cases alert us to the variety of situations that have negatively affected the careers of physicians and healthcare professionals, as well as the patients who were harmed.

MED TIP

The reason we want to do the ethical thing is *not* because we could be named in a lawsuit but because we would not want poor care for anyone, including our family and ourselves.

While studying ethics, ask yourself the following questions. Do you know what you would do in each of the following situations? Do you know whether you are exposing yourself to a lawsuit?

- ▶ A fellow student says, “Sure, I stole this book from the bookstore, but the tuition is so high that I figured the school owed me at least one book.” What do you do? (Chapter 1, “Introduction to Medical Law, Ethics, and Bioethics”)
- ▶ An orderly working in a skilled-nursing facility is left alone in the dining room in charge of a group of elderly residents who are finishing their dinner. One of the residents does not want to eat but wishes to go back to his own room, which he cannot find by himself. The orderly has been instructed never to leave patients alone. Because he cannot leave the dining room full of patients, nor can he allow the one elderly resident to find his own room, the orderly locks the dining room door. The elderly resident claims he has been falsely imprisoned. Is he correct? (Chapter 2, “The Legal System”)

- ▶ You are drawing a specimen of blood from Emma Helm, who says that she doesn't like having blood drawn. In fact, she tells you that the sight of blood makes her "queasy." While you are taking her blood specimen, she faints and hits her head against the side of a cabinet. Are you liable for Emma's injury? If you are not liable, do you know who is? (Chapter 3, "Essentials of the Legal System for Healthcare Professionals")
- ▶ You are a recently hired registered nurse working in the office of an internist. You have agreed to answer the phone calls in a physician's office while the receptionist is having lunch. A patient calls and says he must have a prescription refill order for blood pressure medication called in right away to his pharmacy, because he is leaving town in 30 minutes. He says that he has been on the medication for four years and that he is a personal friend of the physician. No one except you is in the office at this time. What do you do? (Chapter 4, "Working in Today's Healthcare Environment")
- ▶ Terry O'Rourke, a 25-year-old female patient of Dr. Williams, refuses to take her medication to control diabetes and is not following her dietary plan to control her disease. After repeated attempts to help this patient, Dr. Williams has decided that she can no longer provide care for Terry. The office staff has been advised not to schedule Terry for any more appointments. Is there an ethical or legal concern (or both) regarding this situation? Is there anything else that either Dr. Williams or her staff should do to sever the patient relationship with Terry? (Chapter 5, "The Physician–Patient Relationship")
- ▶ You drop a sterile packet of gauze on the floor. The inside of the packet is still considered sterile; however, the policy in your office is to re-sterilize anything that drops on the floor. This is the last sterile packet on the shelf. The chances are very slight that any infection would result from using the gauze within the packet. What do you do? (Chapter 6, "Professional Liability and Medical Malpractice")
- ▶ The pharmaceutical salesperson has just brought in a supply of nonprescription vitamin samples for the physicians in your practice to dispense to their patients. All the other staff members take samples home for their families' personal use. They tell you to do the same, since the samples will become outdated before the physicians can use all of them. It would save you money. What do you do? Is it legal? Is it ethical? (Chapter 7, "Public Duties of the Healthcare Professional")
- ▶ You feel a slight prick on your sterile glove as you assist Dr. Brown on a minor surgical procedure. Dr. Brown has a quick temper, and he will become angry if you delay the surgical procedure while you change gloves. As there was just a slight prick and the patient's wound is not infected, will it hurt to wear the gloves during the procedure? Who is at fault if the patient develops a wound infection? Is this a legal and/or ethical issue? (Chapter 8, "Workplace Law and Ethics")
- ▶ Demi Daniels calls to ask you to change her diagnosis in her medical record from R/O (rule out) bladder infection to "bladder infection" because her insurance will not pay for an R/O diagnosis. In fact, she tested negative for an infection, but the physician placed her on antibiotics anyway. What do you do? Is this legal? Is it ethical? (Chapter 9, "The Medical Record")
- ▶ A physician from another office steps into your office and asks to see the chart of a neighbor whom he believes may have an infectious disease. He states that the neighbor is a good friend and that she will not mind if he reviews her medical chart. Is it legal for you to give the chart to this physician? (Chapter 10, "Patient Confidentiality and HIPAA")

- ▶ A well-known baseball Hall of Fame fielder received a liver transplant in 1995. It took only two days for his hospital's transplant team to locate an organ donor for this national hero when his own liver was failing due to cirrhosis and hepatitis. The patient was a recovering alcoholic who also had a small cancerous growth that was not believed to be life-threatening. Because there are relatively few liver donor organs available, there were mixed feelings about speeding up the process for a famous person. He subsequently died a few years later from cancer. What are the ethics of giving a scarce liver to a recovering alcoholic? What are your thoughts about the statement "People should not be punished just because they are celebrities?" (Chapter 11, "Ethical and Bioethical Issues in Medicine")
- ▶ Your neighbor's 18-year-old unmarried daughter has just given birth to a baby boy. The neighbor is concerned that neither she nor her daughter can take care of this baby. She asks you what you can suggest. Is it a violation of ethics to tell her about the Safe Harbor Law? (Chapter 12, "Ethical Issues Relating to Life")
- ▶ An elderly widow is rushed to the hospital in the middle of the night with a massive heart attack. She is in need of an emergency treatment which requires the services of a special surgical team. It takes almost two hours to gather the entire team back together as they have all left for the day. This patient has a good chance of recovering if the procedure is done within six hours after the heart attack occurs. But, as soon as the surgical team is together and the operating room is ready, another patient, a 45-year-old woman, is brought into the emergency room in need of the same procedure to save her life. It is agreed that the 45-year-old woman will receive the treatment first, but the procedure takes longer than expected. This procedure could not be performed on the widow because the six-hour "window of opportunity" to do the procedure had passed. The younger woman lives, and the elderly widow dies the next day. Is the decision on who will receive the procedure first an ethical or legal one, or both? (Chapter 13, "Death and Dying")
- ▶ A 40-year-old homeless man comes into a neighborhood clinic and asks how he can sign up for a new medical plan that a friend told him about. He said he doesn't have any insurance and doesn't know what to do. The clinic receptionist hands him a form for the new Affordable Care Act and tells him to fill it out. He says he will do it "at home" and bring it back. He throws the form away as he walks out of the clinic. What can be done to help this man? What do you think was the main reason he threw away the form for Affordable Care? (Chapter 14, "Future Trends in Healthcare") These situations, and others like them, are addressed throughout this book.

MEDICAL 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. Medical law addresses legal rights and obligations that affect patients and protect individual rights, including those of health-care employees. For example, practicing medicine without a license, Medicaid fraud, and patient rape are violations of medical laws that are always illegal and immoral or unethical.

It is easy to become confused when studying law and ethics, because, while the two are different, they often overlap. Some illegal actions may be quite ethical—for example, exceeding the speed limit when rushing an injured child to the hospital. Of course, many unethical actions may not be illegal, such as cheating on a test. Law and ethics exist in

everyday life and, thus, are difficult to separate. An insurance company denying payment for a life-saving heart transplant on a 70-year-old male is not illegal in most cases, but it may well be unethical.

MED TIP

In general, an illegal act, or one that is against the law, is always unethical. However, an unethical act may not be illegal. For instance, a physician traveling on a plane does not have a legal obligation to come forward when an announcement is made requesting a doctor to assist with an emergency. But it may be an unethical action if the passenger dies without the help of an available doctor.

There is a greater reliance on laws and the court system, as our society and medical system have become more complex. In fact, some physicians have been practicing a form of medicine called “defensive medicine.” This means that they may order unnecessary tests and procedures in order to protect themselves from a lawsuit; because then they can say “I did everything that I could to treat the patient.” This type of preventive medicine is not only costly but also may put the patient through needless and uncomfortable tests and procedures. In some cases, physicians may even avoid ordering tests or procedures that may carry a risk for the patient because they do not want to take a chance that a lawsuit may result if the patient outcome is poor.

The law provides a yardstick by which to measure our actions, and it punishes us when our actions break the laws. Many of the actions punishable by law are considered morally wrong, such as rape, murder, and theft. The problem with measuring our actions using only the law, and not considering the ethical aspects of an issue, is that the law allows many actions that are morally offensive, such as lying and manipulating people. Laws against actions such as adultery, which most people agree is immoral, exist, but they are rarely enforced. Some situations involving interpersonal relationships between coworkers, such as taking credit for someone else’s work, are difficult to address with laws. Other work issues such as lying on job applications, padding expense accounts, and making unreasonable demands on coworkers are usually handled on the job and are typically not regulated by laws.

A further caution about relying on the law for moral decision-making: the requirements of the law often tend to be negative. The standards of morality, on the other hand, are often seen to be positive. The law forbids us to harm, rob, or defame others; but in most states it does not require us to help people. Morality would tell us to give aid to the drowning victim even if the law does not mandate that we do so.

Many people believe that something is wrong, or unethical, only if the law forbids it. Conversely, they reason that if the law says it’s all right, then it is also ethical. Unfortunately, these people believe that until the law tells them otherwise, they have no ethical responsibility beyond the law. Finally, laws are often reactive and may lag behind the moral standards of society; slavery is the most obvious example. Sexual harassment and racial discrimination existed as moral problems long before laws were enacted to suppress this behavior.

There are a multitude of laws, including criminal and civil statutes (laws enacted by state and federal legislatures) as well as state medical practice acts that affect healthcare professionals. **Medical practice acts**, established in all 50 states by statute, apply specifically to the way medicine is practiced in a particular state. These acts define the meaning of the “practice of medicine” as well as requirements and methods for licensure. They

also define what constitutes unprofessional conduct in that particular state. While the laws vary from state to state, the more common items of unprofessional conduct include the following:

- ▶ Practicing medicine without a license
- ▶ Impaired ability to practice medicine due to addiction or mental illness
- ▶ Conviction of a felony
- ▶ Insufficient record keeping
- ▶ Allowing an unlicensed person to practice medicine
- ▶ Physical abuse of patients
- ▶ Prescribing drugs in excessive amounts

As we study law and ethics as they relate to medicine, we will frequently use court cases to illustrate points. For our purposes it is not necessary to memorize the specifics of a lawsuit, such as the legal citation, that has been decided in a court of law. But it is important to keep in mind that unless a decided case is overturned in an appeals court, it is considered to have established a **precedent**. This means that the decision of the case acts as a model for any future cases in which the facts are the same.

ETHICS

Medical law addresses rights and obligations that affect patients and protects one's rights; ethics also addresses issues that affect patients and their rights. **Ethics** is the branch of philosophy related to morals, moral principles, and moral judgments. A more practical explanation from ethics experts tells us that ethical behavior is that which puts the common good above self interest. Ethics is concerned with the obligation of what we "should" or "ought to" do. **Morality** is the quality of being virtuous or practicing the right conduct. A person is said to be **amoral** if he or she is lacking or indifferent to moral standards. However, the terms *ethics* and *morality* are used interchangeably by many people. Ethics, as part of philosophy, uses reason and logic to analyze problems and find solutions. Ethics, in general, is concerned with the actions and practices that are directed at improving the welfare of people in a moral way. Thus, the study of ethics forces us to use reason and logic to answer difficult questions concerning life, death, and everything in between. In modern terms, we use words such as *right*, *wrong*, *good*, and *bad* when making ethical judgments. In other cases, people refer to issues or actions that are *just* and *unjust* or *fair* and *unfair*. **Medical ethics** concerns questions specifically related to the practice of medicine. This branch of ethics is based on principles regulating the behavior of healthcare professionals, including practitioners such as physicians, nurses, and other allied health professionals. It also applies to patients, relatives, and the community-at-large.

MED TIP

Ethics always involves people. This includes patients, caregivers, healthcare professionals, and the general public.

Ethics is meant to take the past into account, but also to look to the future and ask, "What should I do now?" Unfortunately, using moral views based only on those of parents and peers can lead to radical subjectivism that can make ethical discussion