

FOURTH EDITION

# LEGAL <sup>AND</sup> ETHICAL ISSUES *for Health Professionals*

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*He has achieved success who has lived well, laughed often, and loved much; who has gained the respect of intelligent men and the love of little children; who has filled his niche and accomplished his task; who has left the world better than he found it, whether by an improved poppy, a perfect poem, or a rescued soul; who has never lacked appreciation of earth's beauty or failed to express it; who has always looked for the best in others and given them the best he [or she] had; whose life was an inspiration; whose memory a benediction.*

—Bessie Anderson Stanley





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## FOREWORD

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Good health is an essential and fundamental value that arguably supersedes everything else in our human existence. Thus it is critical to administer it in an ethical, legal, scientifically valid, and efficient manner. This is inherently complicated. Laws are subject to changes. There may even be contradictions among federal, state, and local laws and regulations. Codes of ethics vary among professional organizations, hospitals, and religions. Scientific advances can bring hope for a healthier, longer life but can pose ethical and logistical issues of availability and cost. The pace of change is faster than ever now because of the digital information explosion and promising new avenues of research in such areas as stem cell biology, genetics, nanotechnology, and so much more. It is an exciting time that offers humanity a happier, more optimistic future. The purpose of this *Fourth Edition* is to provide the reader with a reference tool, a framework of fundamentals, and a coherent starting point from which to advance into the future.

Health care is personal. It is perhaps the most personal of any service any of us will receive in our lifetime. We all need it and recognize its importance, and we need to know that our health care delivery system has ethical and legal integrity as well as scientific validity. Sometimes correct choices are not always obvious. There are gray areas. That is why health care administrators and providers need a resource such as this book to help clarify their responsibilities and to help guide them through the tough choices that inevitably occur. Intuition and good intentions are laudable but are not enough when it comes to health care. There are specific criteria that our society requires in this very sensitive area. Awareness of those criteria is crucial. That information, however, comes from a variety of sources that are not always readily accessible. This book concentrates much of that information into one convenient volume. It provides the reader with the proper foundation to make good decisions in the delivery of patient care. That is the ultimate goal of this book.

—John W. Pinnella, MD, DDS, FICS



## PREFACE

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*How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving, and tolerant of the weak and strong. Because someday in life you will have been all of these.*

—GEORGE WASHINGTON CARVER



### What's the One Thing You Would Invent If You Could?

A “decision-making” machine. You input your life dilemmas, and just like that, the right decision is displayed on a screen. The invention would save me so much time in torment.

*Caitlin Ghilarducci, O, The Oprah Magazine, August 2013*

*Legal and Ethical Issues for Health Professionals, Fourth Edition*, has been designed to assist the reader in a more comfortable transition from the didactics of the classroom to the practical application in the workplace. The *Fourth Edition* provides the reader with a clearer understanding of how the law and ethics are intertwined as they relate to health care dilemmas. The practical application of ethics in the health care setting is accomplished by interspersing the thoughts of great minds through *Quotes*; current health care events through *News Clippings*; patient, personal, provider, and organizational experiences through *Reality Checks*; and legal rulings and summaries through legal *Cases*. The book concludes with a *closet drama* that illustrates the real world of human behavior and ties together its contents in one case.

The reader will learn how to evaluate and distinguish between the rightness and wrongness of alternative courses of action when faced with complex ethical dilemmas. Ethics in the health care setting focuses on doing the right thing for both patients and caregivers. When people consider matters of ethics they often involve matters of freedom in regard to one's personal choices, judgments about human character, and obligations to others.

This book, as with the first three editions, starts with the premise that to act in an ethical manner means to engage in conduct according to accepted principles of right and wrong. The author's objective is to provide the reader with the background knowledge necessary to understand that ethical behavior begins with understanding that we have alternatives and choices to make about how we treat ourselves and how we treat others. To make good decisions, we must first understand that they will be only as good as our knowledge of what is "right" and what is "wrong."

A study titled "Does Ethics Education Influence the Moral Action of Practicing Nurses and Social Workers?," published in the *American Journal of Bioethics* in July 2008, showed that "ethics education has a significant positive influence on moral confidence, moral action, and use of ethics resources."<sup>1</sup>

This *Fourth Edition* is not an indictment of any profession or organization. It does, however, illustrate how a minority of people can often cast a dark shadow on all the good that is done by so many for so many. It is about learning how the system can fail and how we can so easily fix it simply through good people doing good things. The book is a call to arms to do good things, to stand out from the crowd, because acts of caring, compassion, and kindness often go unnoticed.

The *Fourth Edition*, as with previous editions, has been designed to introduce the reader to various ethical–legal issues and should not be considered an in-depth or comprehensive review of a particular ethical–legal issue. We study ethics because we need to know right from wrong and maintain order in a society that would otherwise be lawless. Ethics distinguishes good from evil. Ethics and the law are inseparable, for it is ethics that describes our values and morality. An unethical person helps create a world of fear, distrust, and tyranny. It is the law that describes our commonly accepted principles of good behavior and provides punishment for those who fail to adhere to the laws of the land.

Cases containing a multitude of legal and ethical issues are included throughout the book. The reader will be asked a series of questions after each case, requiring legal and ethical logic in order to answer them. Caregivers who have a clear grasp of the ethical and legal concepts discussed in this book will be better prepared to make health care decisions that are ethically sound and legally correct. Presented here is a sampling of the wide range of questions that can be asked and discussed when analyzing an ethical dilemma.

1. What are the relevant ethical and legal issues in the case?
2. What could have been done to bring more clarity to the ethical dilemma?
3. How should the legal issues of the case be addressed?
4. How might one's professional code of ethics be violated in the case?
5. How might the principles of patient autonomy, beneficence, nonmaleficence, and justice affect the decision-making process when faced with an ethical dilemma with legal implications?
6. What are the issues that could affect those involved in the resolution of an ethical dilemma (e.g., family members, physicians, other caregivers including nurses, chaplains, and/or ethics committee members)?
7. If you were friendly with the patient, would it affect your ability to give an objective opinion?

<sup>1</sup> Grady C., Danis M, Soeken KL, O'Donnell P., Taylor C., Farrar A., and Ulrich C. M. Does ethics education influence the moral action of practicing nurses and social workers? *American Journal of Bioethics*, 2008 Apr; 8(4): 4–11. <http://www.ncbi.nlm.nih.gov/pubmed/18576241>.

8. How can moral values, religious beliefs, education, and life experiences of both caregivers and patients complicate the resolution of health care dilemmas?
9. How can financial concerns affect the decision-making process?
10. How can corporate culture affect the decision-making process?

One of the most difficult things to come to terms with in the decision-making process is to know when the endless loop of asking questions must end and a decision has to be made.



*Each life is like a novel. Filled with moments of happiness, sadness, crisis, defeat, and triumph. When the last page has been written, will you be happy or saddened by what you read?*

—AUTHOR UNKNOWN



## NEW TO THE *FOURTH EDITION*

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The fourth edition of *Legal and Ethical Issues for Health Professionals* has been updated to expand discussion on difficult topics and includes a wide variety of current *News Clippings* and *Reality Checks*, which are real life events experienced by both patients and health care professionals in leadership positions in the health care industry. These experiences include those of the author, incorporating his observations from a unique background as a hospital administrator in a multihospital system, instructor, author, consultant, and joint commission surveyor who conducted surveys of more than 1,000 hospitals and outpatient facilities from Alaska to Puerto Rico.

In crafting this edition, some material has been relocated from one chapter to another in order to provide an improved learning experience. In some cases, materials that appear to be duplicative have been removed. As in any update, some sections have been updated to improve understanding and the flow of the text.

The author has made every attempt in this *Fourth Edition* to provide the student with the tools necessary for applying the law and ethics in the health care setting with the end goal of improving the professional's skills, performance, and decision-making processes.

The following is a summary of changes that have been made to improve the readability of the law and ethics content, which can be difficult topics for the reader to grasp owing to the need to learn new terminology, theories, and concepts that have substantial impact on each health care professional's daily tasks.

Changes to all chapters include revisions of the following features:

- Learning Objectives
- Chapter Reviews
- Review Questions

Chapter-specific changes are outlined in the following pages.

## CHAPTER 1: INTRODUCTION TO ETHICS

New or expanded topics include the following:

- Morality and moral dilemmas
- Normative ethics
- CPR and paternalism in nursing homes
- Employment-related paternalism
- Nonmaleficence

- Autonomy
- Pillars of moral strength
- Fairness
- Cooperation and teamwork

The following *Reality Checks* have been added:

- “No Good Deed Goes Unpunished”
- “Maximizing Happiness and Reducing Suffering”
- “Duty Compromises Patient Care”
- “Bad Outcome, Good Intentions”
- “Spouse’s Grief Leads to Withholding the Truth”
- “Patient Questions Physical Exam”
- “My Journey: How Lucky Am I?”
- “Community Hospital v. Respected Medical Center”

The following *Reality Check* has been revised or expanded:

- “Kill the Messenger”

The following *News Clippings* have been added:

- “Peninsula Child Psychiatrist William Ayres Sentenced to Eight Years for Molesting Patients”
- “The Fear Factor and Patient Satisfaction”
- “Health Costs Cut by Limiting Choices”
- “Cancer Doctor Allegedly Prescribed \$35 Million Worth of Totally Unnecessary Chemotherapy”
- “Brooke Greenberg: 20-Year-Old ‘Toddler’s’ Legacy of Hope and Love”
- “Syrian Rebels Combat al-Qaeda Force”
- “Surgeon Uses Ministry in Medical Practice”

## CHAPTER 2: CONTEMPORARY ETHICAL DILEMMAS

New or expanded topics include the following:

- Noteworthy historical events
- Informed consent
- Artificial insemination
- Organ donations

The following *News Clippings* have been added:

- “Philadelphia Abortion Doctor Guilty of Murder in Late-Term Procedures”
- “PA Abortion Provider Convicted of Murder”
- “Moral Persuasion on Abortion”
- “Facebook Launches Organ Donation Campaign”

## CHAPTER 3: END-OF-LIFE DILEMMAS

New or expanded topics include the following:

- Physician-assisted suicide
- Withholding and withdrawal of treatment
- Do-not-resuscitate orders

The following *News Clippings* have been added:

- “Brain-Dead Girl Jahi McMath Released from California Hospital”
- “Belgium Considering New Euthanasia Law for Kids”
- “California Gov. Signs Assisted Suicide Information Bill into Law”
- “Mass. Doctor-Assisted Suicide Measure Fails”

## CHAPTER 4: HEALTH CARE ETHICS COMMITTEE

New or expanded topics include the following:

- Committee structure
- Policy and procedure development
- Consultation and conflict resolution

## CHAPTER 5: DEVELOPMENT OF LAW

New or expanded topics include:

- Conflict of laws
- Department of Health and Human Services and Its structure

## CHAPTER 6: INTRODUCTION TO LAW

New or expanded topics include the following:

- Duty to care
- Standard of care
- Breach of duty
- Injury/causation
- Causation/proximate cause
- Criminal law
- Grand jury indictment
- Health care fraud
- Investigation and prosecution of fraud
- Schemes to defraud
- Murder
- Contracts

The following *News Clippings* have been added:

- “\$12 Million in Medicaid Funds Went to Deceased in Illinois”
- “Renewed Criticism for Google Over Drug Sites”
- “Mother With Terminal Cancer Can Retain Child Custody, Judge Holds”

## CHAPTER 7: GOVERNMENT ETHICS AND THE LAW

New or expanded topics include the following:

- House of Representatives Committee on Ethics
- Senate Select Committee on Ethics
- Office of Congressional Ethics
- U.S. Judicial Code of Conduct
- Veterans Administration

The following *Reality Check* has been added:

- VA Hospital

The following *News Clippings* have been added:

- “VA, Heal Thyself, Agency Is Told at Hearing Filled with Pained Testimony”
- “Atlanta VA Exec Scores Bonuses While Audits Found Lapses”
- “Too trapped in a war to be at peace”

## CHAPTER 8: ORGANIZATIONAL ETHICS AND THE LAW

New or expanded topics include:

- Implied corporate authority
- Code of ethics for organizations
- Trust and integrity
- Concealing mistakes
- Doctrine of *respondeat superior*
- Independent contractor
- Applicant job screening
- Credentialing, appointment, and privileging
- Complying with accreditation standards
- Accreditation and conflicts of interest
- Financial incentive schemes
- Effective communications builds trust

The following *Reality Checks* have been added:

- “Advertising Unintentionally Misleading”
- “Hospital’s Challenge to Survive”
- “One Family’s Experience”
- “Veterans’ Care Unconscionably Delayed”

The following *Reality Checks* have been revised or expanded:

- “Discrimination: Behind Closed Doors”
- “Accreditation Is Serious Business”

The following *Cases* have been added:

- “Wrong Surgical Procedure Cover-Up”
- “Monitor Alarm Disconnected”

## CHAPTER 9: HEALTH CARE PROFESSIONALS LEGAL-ETHICAL ISSUES

New, revised, or expanded topics include the following:

- Ethical and legal issues for nurses
- Float nurses
- Failure to follow instructions
- Diet orders
- Incidence and recognition of malnutrition
- Ethics and inaccurate lab results
- Expanding role of the pharmacist

- Billing fraud
- Resident neglect
- Ethical and legal issues affecting physician assistants
- Sexual harassment by psychologists
- Ethical and legal issues affecting radiology technologists
- Ethical and legal issues affecting respiratory therapists
- Ethical and legal issues affecting social workers

The following *Reality Checks* have been added:

- “Patient’s Diet Order Inappropriate”
- “Patient’s Nutritional Status Not Addressed”

The following *Case* has been revised:

- “Refusal to Perform HIV Testing”

## CHAPTER 10: PHYSICIAN ETHICAL AND LEGAL ISSUES

New, revised, or expanded topics include the following:

- How the law and ethics intertwine in patient care
- Violations of the AMA Code of Ethics
- Compassion
- Trust and breaches of trust
- Justice
- Physician negligence
- Patient assessments
- Failure to respond to emergency call
- Family medical history
- Medical misdiagnosis
- Treatment
- Surgery
- Patient infections

The following *News Clippings* have been added:

- “Suddenly, unexpectedly, he grabs my shirt”
- “Bonded by Blood”
- “As Hands-On Doctoring Fades Away, Patients Lose”
- “Her Doctor Dismissed the Lump in Her Breast”
- “Joint Commission Alert: Preventing Retained Surgical Items”
- “Pregnant Woman Dies After Horrifying Medical Mixup”

## CHAPTER 11: EMPLOYEE RIGHTS AND RESPONSIBILITIES

New, revised, or expanded topics include the following:

- Freedom from discrimination
- Equal Employment Opportunity Commission
- Refusal to Participate in Therapeutic Abortion Insubordinate
- Whistleblowing
- Safe environment
- Unemployment compensation
- Complying with hospital policy

- Sexual harassment
- Maintain professional competencies

The following *Reality Checks* have been added:

- “O.R. Becomes an Abusive Environment”
- “My Surgical Journey”
- “Failure to Comply with Hand Hygiene Guidelines”

The following *News Clippings* have been added:

- “Hospitals Crack Down on Tirades by Angry Doctors”
- “Drug Firm to Pay \$2.2 Billion in Fraud Settlement”
- “Physician Whistle-Blowers Can Sue Hospitals Without Delay, Appeals Court Rules”
- “Whistleblower Lawsuit Alleges Florida Hospital Filed Millions in False Claims”
- “The Price Whistle-Blowers Pay for Secrets”
- “U.S. Cancer-Care Delivery is ‘in Crisis’: Report”

## CHAPTER 12: PATIENT CONSENT

New, revised, or expanded topics include the following:

- Codes of ethics
- Parental consent
- Right to refuse treatment
- Refusal of treatment based on religious beliefs

The following *News Clippings* have been added:

- “Unreported Robot Surgery Injuries Open New Questions for FDA”
- “Are Teens Old Enough for Life/Death Decisions?”

## CHAPTER 13: PATIENT ABUSE

New, revised, or expanded topics include the following:

- Child abuse
- Reporting abuse
- Senior abuse
- Reporting senior abuse

The following *Reality Check* has been added:

- “Child Abuse Can Be Elusive”

## CHAPTER 14: PATIENT RIGHTS AND RESPONSIBILITIES

New, revised, or expanded topics include the following:

- Patient rights
- Right to know one’s rights
- The Health Insurance Portability and Accountability Act (HIPAA)
- Right to ask questions
- Right to examination and treatment

- Right to emergency care
- Execute advance directives
- Right to trust caregivers
- Right to chaplaincy services
- Right to ethics consultation
- Right to informed consent
- Right to receive quality care
- Right to compassionate care
- Discharge orders
- Right to access lab reports
- Right to know hospital charges
- Maintain healthy lifestyle
- Provide full disclosure of medical history
- Report unexpected changes in health status
- Adhere to the agreed upon treatment plan
- Seek a second opinion
- Stay informed

The following *Reality Checks* have been added:

- “Accreditation Standards and Patient Right to Ask Questions”
- “My Question Disregarded”
- “Hospital Charges Not So Transparent”

The following *Case* has been added:

- “Release from Hospital Contraindicated”



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I am grateful to the very special people in the more than 1,000 hospitals and ambulatory sites from Alaska to Puerto Rico with whom I have consulted, surveyed, and provided education over many years. Their shared experiences have served to remind me of the importance of making this book valuable in the classroom as well as useful as a reference for practicing health care professionals.

To my students in health care law and ethics classes at the New School for Social Research, Molloy College, Long Island University—C.W. Post Campus, Saint Francis College, and Saint Joseph's College; my intern from Brown University; my resident in hospital administration from The George Washington University; and those I have instructed throughout the years at various seminars, I will always be indebted to you for your inspiration.

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