

FIFTH EDITION

LEGAL AND ETHICAL ISSUES

for Health Professionals

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LEGAL REVIEW

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I dedicate this book to healthcare professionals who have chosen to serve in the noblest of professions, the healing ministry.

You stood by the bedsides of many patients during times of loneliness and frustration. When they wanted to give up, you gave them hope and the strength to fight on.

You watched over them while they slept, eased their pain with words of kindness, and gave them sips of water when they could not drink.

You stood by their bedside when fears arose within their souls.


Thank you, treasured caregivers, for you have been their light during the darkest of nights.

It has been my honor to have stood by your side as you provided care to so many patients as I surveyed your hospitals and ambulatory care sites.


It has been my privilege to have stood by those who I have taught, and those who have taught me.

Forever Thankful


Epigraph

 *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**

 *Every mistake brings a teaching moment, an opportunity to learn.*

—**Nina Santucci**

 *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**

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Foreword

The goal of this book is to help clarify the legal and ethical issues that are essential in the delivery of health care. Health care is perhaps the most personal of services anyone will receive in their lifetime. Our society regulates it with specific criteria for its administration. Much of this foundational information is concentrated in this convenient resource for students that will also aid healthcare workers and administrators in making better decisions for patient care.

Scientific advances in such areas as genetics and stem cell biology, nanotechnology, robotic surgery, tissue transplantation, and so much more promise humanity the potential for a longer, healthier, more optimistic future. The explosion of information technology is resulting in an exponential increase of scientific knowledge. Reaping the benefits of these advances can pose complicated considerations of safety, efficacy, availability, and affordability. The challenge is to administer rapidly changing healthcare science in a legal and ethical manner.


Legal and ethical parameters are subject to change, variable interpretation, and even contradiction. Codes of ethics and regulations vary among professional organizations, hospitals, and religions. Federal, state,

and local laws may not be consistent. It can get complicated. Correct choices are not always obvious. Intuition and good intentions are not enough. That is why this book presents a coherent foundation of information from which to advance into the future. Making quality decisions in the administration of health care is the ultimate goal.

Dr. Pozgar has accumulated a wealth of information in this exhaustive review. The information presented here has been laboriously extracted from multiple sources and presented in logical order. Dr. Pozgar is perhaps the most relevant source, since he has had a lifetime of actual, real-world, practical experience as chief executive officer of a large hospital in a multi-hospital system, a Joint Commission hospital surveyor in literally hundreds of hospitals and ambulatory care sites, healthcare consultant in a wide variety of hospitals and medical centers, and a malpractice case reviewer for legal counsel. The result is this comprehensive text, which is a unique contribution to the improvement of patient care and which continues to be a classical reference work on the subject.

—John W. Pinnella, MD, DDS, FICS

Preface

 *Man's duty is to improve himself; to cultivate his mind; and, when he finds himself going astray, to bring the moral law to bear upon himself.*

—Immanuel Kant

NEWS *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, Fifth Edition, has been designed to encourage the reader to learn the often-dreaded subject of ethics and the law while enjoying the journey from the didactics of the classroom to the practical application in the workplace. The Fifth Edition provides the reader with a clearer understanding of how the law and ethics are interwoven as they relate to healthcare dilemmas. The practical application of ethics in the healthcare setting is accomplished by interspersing the thoughts of great minds through **Quotes**; current healthcare events through **News Clippings**; human behavior through **Reality Checks**; and legal rulings and summaries through legal **Cases**. The book concludes with a courtroom drama that illustrates the complexities of human behavior, while tying together the contents of the book 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 healthcare setting focuses on doing the right thing for both patients and caregivers. When caregivers consider matters of law and ethics, they often involve matters of freedom in regard to personal choices, values, judgments about human character, and obligations to others.

This book, as with the previous editions, begins and ends with the premise that to act in an ethical manner requires the reader to engage in conduct according to generally accepted principles of right and wrong. The author's objective is therefore to provide the reader with a formidable and meaningful understanding of ethics and the law as they relate to addressing many of the more common ethical dilemmas encountered in the delivery of patient care and how to apply that knowledge in the healthcare setting. A study published in the *American Journal of Bioethics*, in a July 2008 article entitled “An Urgent Call for Ethics Education,” describes the importance of ethics education and its influence on moral confidence and moral action.

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. There is a deluge of ethical issues in every aspect of human existence. Although cultural differences, politics, and religion influence who we are, it is all of life's experiences that affect who we will become.

Ethics and the law are interwoven. Ethics describes our values and morality—distinguishes good from evil. The law, on the other hand, describes our commonly accepted principles of good behavior and provides punishment for those who fail to adhere to these principles.

The cases presented here are not exhaustive for any one profession but often have application across all healthcare disciplines. Caregivers who have a clear grasp of the ethical and legal concepts discussed in this book will be better prepared to make healthcare 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 ethical dilemmas.

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, and 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?
8. How can moral values, religious beliefs, education, and life experiences of both caregivers and patients complicate the resolution of healthcare 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 within the decision-making process is to know when the endless loop of asking questions must end and a decision has to be made.

This *Fifth Edition* is not an indictment of any one profession or organization. It does, however, illustrate how a minority of people can often cast a dark shadow on the good that is done by so many for so many. Ethics is good people doing good things through acts of caring, compassion, and kindness.

It is comforting to know that some universities are helping to resolve the current healthcare financial crisis for those wishing to enter the field of medicine. The New York University School of Medicine, for example, is planning to offer free tuition to all current and future medical students. Robert I. Grossman, MD, the Saul J. Farber Dean of NYU School of Medicine and CEO of NYU Langone Health, stated: "This decision recognizes a moral imperative that must be addressed, as institutions place an increasing debt burden on young people who aspire to become physicians."¹ This same financial burden also exists for others with hopes of pursuing a health career. Ultimately, the hope is that more colleges and universities will follow suit by providing financial

assistance to help address the financial needs of students in other health professions.



The three hardest tasks in the world are neither physical feats nor intellectual achievements, but moral acts: to return love for hate, to include the excluded, and to say, "I was wrong."

—Sydney J. Harris

New to the *Fifth Edition*

The *Fifth 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 healthcare professionals in leadership positions in the healthcare 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.

The author has made every attempt in this *Fifth Edition* to provide the student with the tools necessary for applying the law and ethics in the healthcare 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 healthcare professional's daily tasks.

Chapter-specific changes are outlined in the following pages.

Chapter 1: Introduction to Ethics

New or expanded topics include:

- Meta-ethics
- Tuskegee Syphilis Experiment
- Code of Conduct
- Morality Legislated
- Physicians and Paternalism
- Justice and Government Spending
- Injustice for the Insured
- Teaching Doctors to Care
- Fidelity
- Freedom
- Honesty/Trustworthiness/Truth Telling

¹Alicia Ault, "NYU to Offer Free Tuition to All Current, Future Med Students," Medscape News (August 16, 2018). <https://www.medscape.com/viewarticle/900860>.

- Integrity
- Spiritual Health and Education
- Creating a Culture of Ethics
- Reasoning and the Decision-Making Process

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

- Paternalism and Breach of Confidentiality
- Man of Integrity

The following **News Clippings** have been added or revised:

- Abusing Assisted Suicide Laws
- WWII Veteran Calls for Help and Dies as Nurses Laugh, Video Shows
- Elderly Patient Hit by Motorcycle Dies in Japan After Being Rejected by 14 Hospitals
- Medical Errors Are Hard for Doctors to Admit

Chapter 2: Contemporary Ethical Dilemmas

New or expanded topics include:

- Informed Consent
- Unethical Experiments on Children
- Radiation Experiments: Human Subjects Unaware
- Hospital Allowed to Remove Life Support: Contrary to the Wishes of the Legal Guardian
- UK Supreme Court Denies Right to Treatment
- Texas Restrictions on Women's Rights
- Abortions after 20 Weeks Prohibited
- Law and Morality of Abortion—Conflicting Beliefs
- Surrogacy
- Altruism vs. Sale of Organs
- Research, Experimentation, and Clinical Trials
- Institutional Review Board
- The Cures Act

The following **News Clipping** has been added:

- House Passes Bill That Would Give Patients Access to Experimental Drugs

Chapter 3: End-of-Life Dilemmas

New or expanded topics include:

- Introduction
- Physician-Assisted Suicide
- Living Will
- Substituted Judgment
- Withholding and Withdrawal of Treatment
- A New Beginning and a Better Ending
- Administration on Aging

The following **News Clippings** have been added:

- Mom Wanted to Live on Her Own Forever
- Doctor Says Insurers Push Suicide Over Medical Care

Chapter 4: Healthcare Ethics Committee

New or expanded topics include:

- Policy and Procedure Development
- Autonomy and the Law Collide
- A Statement Explaining a Patient's Right to Transfer is Now Included

Chapter 5: Development of Law

New or expanded topics include:

- Public Law
- Administration on Aging
- National Institutes of Health
- Food and Drug Administration

The following **Reality Check** has been added:

- 50 and You Lived Your Life?

Chapter 6: Introduction to Law

New or expanded topics include:

- Standard of Care Set by Statute
- Causation/Proximate Cause
- Assault and Battery
- Indictment
- Health Care Fraud
- Medical Identity Theft
- Contracts
- Summons and Complaint
- Burden of Proof
- Closing Statements
- Judge's Charge to the Jury

The following **News Clipping** has been added:

- National Health Care Fraud Takedown Results in Charges Against Over 412 Individuals Responsible for \$1.3 Billion in Fraud Losses

Chapter 7: Government Ethics and the Law

New or expanded topics include:

- U.S. Office of Government Ethics
- U.S. Judicial Code of Ethical Conduct
- State Ethics Committees
- Ethics in Public Service

The following **News Clipping** has been added:

- Poll: Americans Have Highest Trust in Military, While Congress and Media Fall Last

Chapter 8: Organizational Ethics and the Law

New or expanded topics include:

- Fiduciary Responsibility
- Corporate Ethics
- Corporate Compliance Program
- Appointment of a CEO
- CEO Licensure
- CEO Responsibilities and Challenges
- Maintain Moral Integrity
- Provide Adequate Staff
- Provide Quality Patient Care
- Comply with Accreditation Standards
- Provide a Safe Environment
- Improving Organizational Performance and Ethics

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

- Ensuring Board Integrity
- Windows Wide Open

The following **News Clippings** have been added:

- Why So Many Doctors Kill Themselves
- Video of Md. Patient Put Out in Cold Stirs Fury

Chapter 9: Healthcare Professionals Legal-Ethical Issues

New or expanded topics include:

- Paramedics and First Responders
- Nurse Practitioner
- Chiropractor
- Dietary
- Emergency Department: *Timely Response Required*
- Laboratory
- Pharmacy: *Reducing Medication Errors*
- Psychology
- Radiology

The following **Reality Check** has been added:

- Abnormal Laboratory Results Not Addressed

The following **News Clipping** has been added:

- Short on Staff: Nursing Crisis Strains U.S. Hospitals

The following **Case** has been revised:

- Case: Poor Judgment

Chapter 10: Physician Ethical and Legal Issues

New or expanded topics include:

- Discharge and follow-up care

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

- Staff Lacks Compassion
- My Hopes for Help Crumble

The following **News Clippings** have been added:

- Doctors Perform Thousands of Unnecessary Surgeries
- Your Doctor Is Here and There
- Is U.S. Medicine Becoming Assembly Line Medicine?

Chapter 11: Employee Rights and Responsibilities

The following **Reality Checks** have been added:

- Dear Dr. XYZ
- Multidisciplinary Approach to Patient Care

Chapter 12: Patient Consent

The following **News Clippings** have been added:

- Surgery to Ease Pain Sounded Really Simple
- Eastern Shore Doctor Convicted of Criminal Charges in Stent Case

Chapter 13: Patient Abuse

New or expanded topics include:

- Abusers Abused
- Prevention of Senior Abuse

Chapter 14: Patient Rights and Responsibilities

New or expanded topics include:

- Right to Try Experimental Drugs

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

- Right to Complain
- Your Dad Is an Example of Why Healthcare Costs Are Excessively High
- Why Must I Fear?
- Over-Surveyed vs. Under-Surveyed

The following **News Clipping** has been added:

- Suddenly, Unexpectedly, He Grabs My Shirt. “Don’t Let Me Die!” He Says, Spraying Me with Blood.

Key Features

- **Quotes** The practical application of ethics in the healthcare setting is accomplished by interspersing the thoughts of great minds through Quotes
- **News Clippings** The legal and ethical issues of current healthcare events are reviewed and explored as News Clippings of actual published editorials
- **Reality Checks** Patient, personal, provider, and organizational experiences are shared through Reality Checks

- **Cases** Legal rulings and summaries are showcased through Case Law examples
- **Summary Case** The book concludes with a closet drama that illustrates the real world of human behavior and ties together its contents in one case

Instructor Resources

Qualified Instructors will receive a full suite of Instructor Resources, including the following:

- More than 250 Slides in PowerPoint format
- A Test Bank with chapter-by-chapter questions alone with a midterm and a final
- An Instructor’s Manual containing a summary, teaching tips, and suggested classroom activities

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