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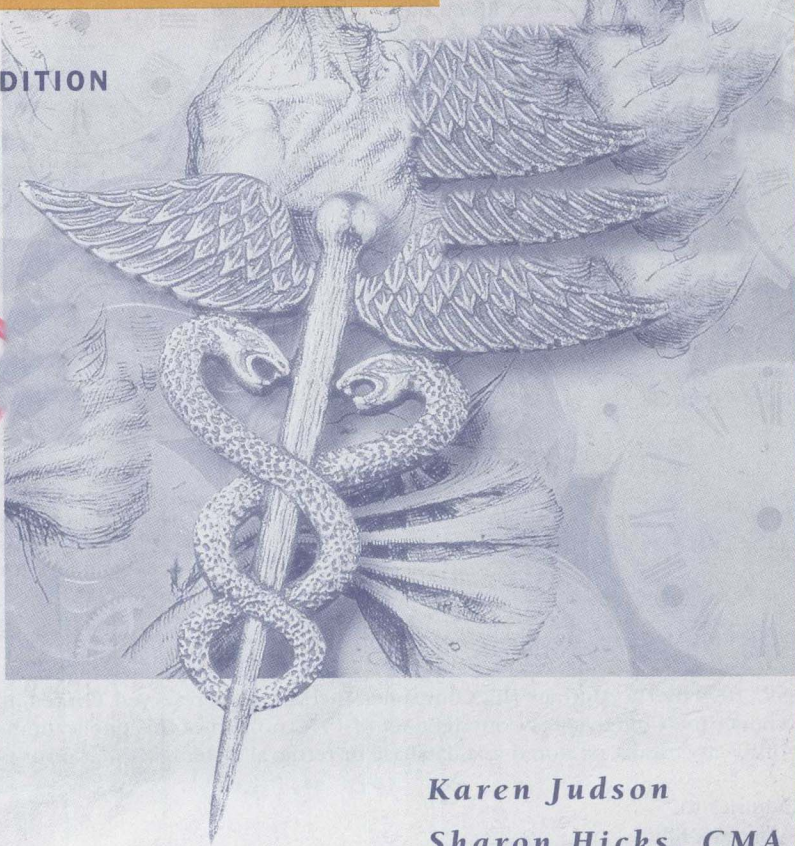
Karen Judson
Sharon Hicks, CMA

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To the Student

When you first considered preparing for a career as a health care practitioner, your primary objective may have been to help others. Perhaps you remembered a physician, a medical assistant, a nurse, or a physician's assistant, who put you at ease and made your health care visits less stressful or confusing. Perhaps you were drawn to the health care professions not only by a desire to perform a useful service, but also because career opportunities were excellent or because you excelled at and enjoyed high school science courses.

Whatever your reasons for enrolling in a course of study leading to a career as a health care practitioner, by now you have probably realized that the human element is inseparable from the scientific. It follows, as in any service where the lives and well-being of recipients are at stake, that complex legal, moral, and ethical issues will arise and must be resolved. This is especially true for health care practitioners.

Therefore, for your own welfare as a health care practitioner as well as for the welfare of the patients and employers you will serve, it is essential that you acquire a working knowledge of the laws and the ethical issues relevant to your choice of career. The laws for health care practitioners vary from state to state, but ethical guidelines are basically the same for all professions within the health care field.

Law and Ethics for Medical Careers, Second Edition, provides an overview of the laws and ethics relevant to medical careers that can help guide you through the legal and ethical questions you may reasonably expect to face as a health care practitioner.

Chapter Structure

Each chapter begins with a page that previews what you will be studying:

OBJECTIVES. These describe the basic knowledge that can be acquired by studying the chapter.

KEY TERMS. This is an alphabetic list of important vocabulary terms found in the chapter. Key terms are printed in bold-faced type and are defined in the margin of the page on which the term is introduced in the text.

Several pages of exercises are found at the end of each chapter that will help you review, apply, and build the knowledge related to the chapter material:

CHAPTER REVIEW. Questions that review facts given and cover points made in the text. Use these questions to test your comprehension of the material, then review appropriate sections of the text as necessary.

CASE STUDIES. Exercises that will allow you to practice your critical-thinking skills and use knowledge gained from reading the text to decide how to resolve the real-life situations or theoretical scenarios presented.

INTERNET ACTIVITIES. Exercises that are designed to increase your knowledge of topics related to chapter material and to gain expertise in using the Internet as a research tool. It is suggested that you keep a resource notebook to record additional, useful Web sites as they are found. If Web sites listed in the Internet Activities are no longer available or have been rearranged, conduct a subject search for a new Web site to answer the questions that follow each activity.

Special Text Features

The following special feature boxes are located throughout the text:

CHECK YOUR PROGRESS. Short quizzes that allow you to test your comprehension of the material just read. Answer the questions, correct answers to questions missed, and then reread appropriate sections of the text to be sure you understand the material.

VOICE OF EXPERIENCE. Features that illustrate real-life experiences that are related to the text material. If you have had similar experiences or know of others who have, share this knowledge in classroom discussions.

ON THE JOB. Features that quote real-life health care practitioners in various locations throughout the United States as they encounter problems or situations relevant to the material discussed in the text.

YOU BE THE JUDGE. Features that present case scenarios for your consideration, followed by critical-thinking questions. Study each situation and then answer the questions based upon material presented in the text and upon your own opinions.

FYI (FOR YOUR INFORMATION). Short features in the margins of the text that provide interesting supplementary information. These features are included to give you a variety of perspectives on issues discussed within the text.

COURT CASES. Real-life court cases that illustrate points made in the text. In each case, consider the relevance of the case to your chosen career area and note the verdict. The legal citations at the end of each court case indicate where you can find the complete text of a case for further study.

How to Use a Court Citation

The following steps describe how to interpret a court citation using the example, *Kober v. Dial*, 653 N.E.2d 524 (Ind. Ct. of App., July 26, 1995).

1. The italicized case name gives the names of the litigants, in this case, *Kober v. Dial*.
2. After the case name, the book is listed in which the case report may be found. Books containing case reports are called reporters. Each reporter covers a specific geographic area of the country and is named for that area.

Within the citation, the name of the reporter is usually abbreviated as indicated by the following examples of reporters and corresponding abbreviations: Northeast (N.E.) Reporter, New York Supplement (N.Y.S.), Northwest (N.W.) Reporter, Southern (So.) Reporter, Southwestern (S.W.) Reporter, Atlantic (A.) Reporter, Pacific (P.) Reporter. Sometimes the periods in citations are omitted as in NE, NYS, NW, and so on.

Since each reporter consists of many volumes, the case citation specifies the volume number of the reporter, a series number (when applicable), and the page number on which the case report begins. The book for the example case is 653 N.E.2d 524. This means that the case is reported in Volume 653 of the Northeast Reporter 2d series, beginning on page 524.

3. The state indicates where the case was tried; sometimes, the name of the court is also included in the citation. The example case was tried in an Indiana Court of Appeals.
4. The year (sometimes the complete date) indicates when the decision was made. The decision in *Kober v. Dial* was reached on July 26, 1995.

AAMA Role Delineation Study Areas of Competence (1997) Correlation Chart

Areas of Competence	Student Edition Chapters
CLINICAL	
<i>Patient Care</i>	
• Maintain medication and immunization records.	7
GENERAL (TRANSDISCIPLINARY)	
<i>Professionalism</i>	
• Project a professional manner and image.	1
• Adhere to ethical principles.	1, 10, 11
• Work as a team member.	2
• Adapt to change.	1
<i>Communication Skills</i>	
• Treat all patients with compassion and empathy.	1, 10, 11, 12
• Use professional telephone technique.	5
• Use effective and correct verbal and written communications.	5
• Serve as a liaison.	4, 5, 7
<i>Legal Concepts</i>	
• Maintain confidentiality.	1, 2, 5, 6, 7, 11
• Practice within the scope of education, training, and personal capabilities.	1, 2, 5
• Prepare and maintain medical records.	6, 7, 11
• Document accurately.	5, 6, 7, 11
• Use appropriate guidelines when releasing information.	7
• Follow employer's established policies dealing with the health care contract.	4
• Maintain and dispose of regulated substances in compliance with government guidelines.	9
• Comply with established risk management and safety procedures.	2, 9
• Recognize professional credentialing criteria.	2
• Participate in the development and maintenance of personnel, policy, and procedure manuals.	5, 9
<i>Instruction</i>	
• Locate community resources and disseminate information.	8
<i>Operational Functions</i>	
• Apply computer techniques to support office operations.	7

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CHAPTER

1

Introduction to Law and Ethics

Objectives

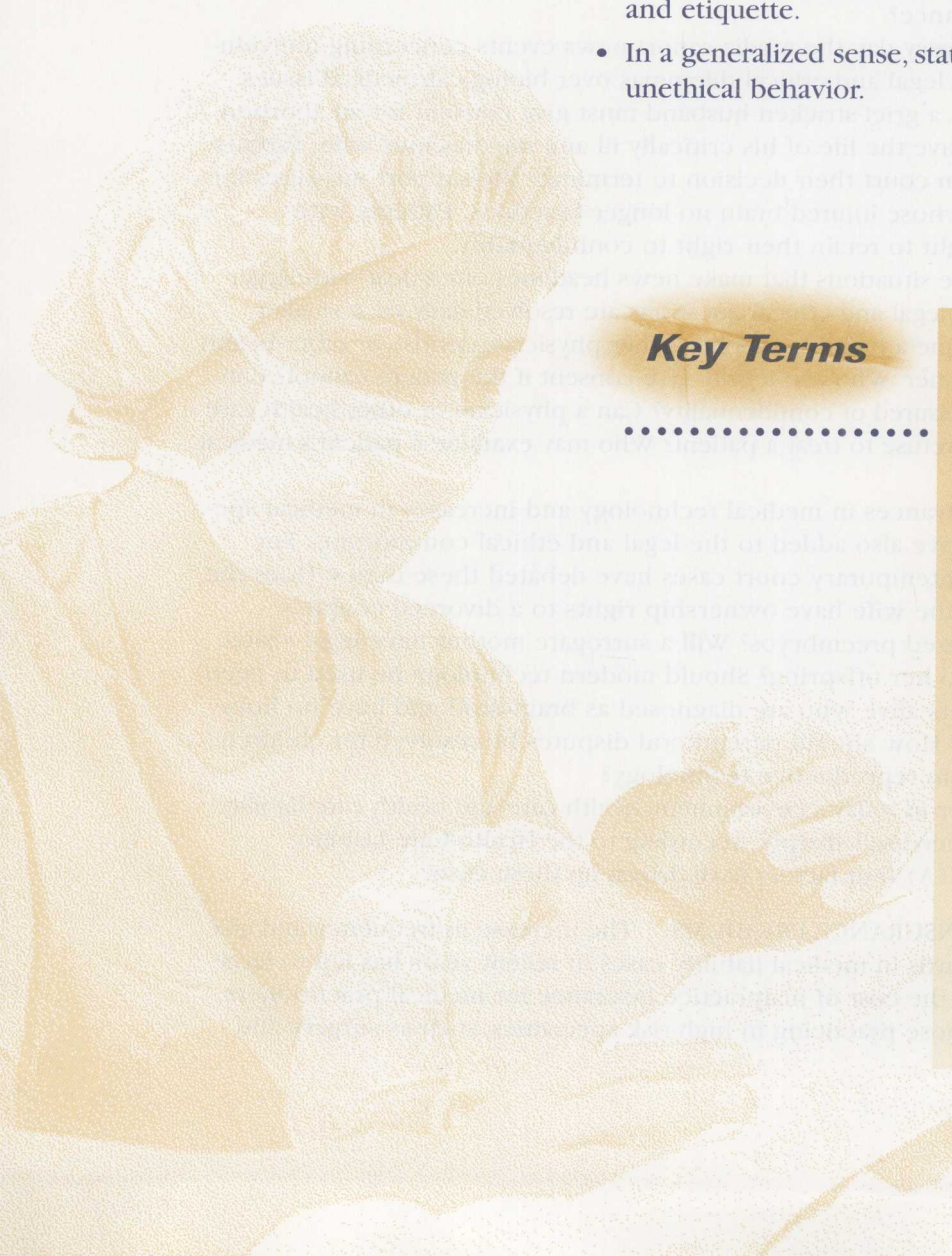
After studying this chapter, you should be able to:

- Explain why a knowledge of law and ethics is important to health care practitioners.
- Recognize the importance of professional codes of ethics.
- Distinguish among law, ethics, bioethics, etiquette, and protocol.
- Define *moral values*, and explain how they relate to law, ethics, and etiquette.
- In a generalized sense, state the consequences of illegal and unethical behavior.

Key Terms

.....

bioethics
defensive medicine
ethics
etiquette
fraud
health care practitioners
law
moral values
protocol
summary judgment



Why Study Law and Ethics?

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

Health care practitioners should study the laws and ethics that relate to their respective professions to help them function at the highest possible professional level. As today's world has become more complicated, so too have the practice of medicine and the laws governing that practice, making it necessary for all health care practitioners to be informed concerning their legal and ethical rights and responsibilities.

The study of law and ethics also brings into perspective the rights, responsibilities, and concerns of health care consumers. 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. 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?

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 deal with larger social issues, legal and ethical questions are resolved daily, on a smaller scale, each time a patient visits his or her physician, dentist, or other health care practitioner. Who can legally give consent if the patient cannot? Can patients be assured of confidentiality? Can a physician or other health care practitioner refuse to treat a patient? Who may examine a patient's medical records?

Rapid advances in medical technology and increases in medical specialization have also added to the legal and ethical conundrums. For example, contemporary court cases have debated these issues: Does the husband or the wife have ownership rights to a divorced couple's frozen fertilized preembryos? Will a surrogate mother have legal visitation rights to her offspring? 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?

Moreover, in today's environment, health care and health care liability costs have increased sharply. According to the Health Care Liability Alliance (HCLA), four factors have driven up these costs:

LIABILITY INSURANCE PREMIUMS. The increase in frequency and size of court awards in medical liability cases in recent years has led to large increases in the cost of malpractice insurance for medical practitioners, especially those practicing in high-risk specialties, such as surgery and obstetrics.

defensive medicine The practice of ordering and/or performing medical tests and procedures simply to protect against future liability and to construct for patients a medical record that documents the health care provider's judgment.

DEFENSIVE MEDICINE. **Defensive medicine** refers to the practice of ordering tests and procedures simply to protect against future liability and to construct for patients a medical record that documents the physician's judgment. This means that patients often undergo unnecessary tests and procedures merely to protect the health care provider from legal liability. It also means that a physician may elect not to order a high-risk procedure or one that is cost-prohibitive because of liability risk.

HEALTH PRODUCT AND SERVICE COSTS. Also adding to the rising price of health care are liability costs borne by drug companies, providers of blood services, and manufacturers and distributors of medical products.

MANAGED-CARE ORGANIZATIONS. Utilization review procedures used by managed-care systems that restrict payment for patient health care services may end in litigation, adding to the spiraling cost of health care.

Because rising costs, federal and state statutes, and ethical and moral standards affect daily decisions in the workplace, health care practitioners must have a working knowledge of those aspects of law and ethics that are relevant to health care.

As illustrated in the following three court cases, a wide variety of legal questions can arise for those engaged directly in providing health care services, whether in a medical office setting or in an emergency situation. Indirectly, sellers and manufacturers can be held legally responsible for defective medical devices and products through charges of breach of warranty; statements made by the manufacturer about the device or product that are found to be untrue; **fraud**, intentional deceit; and/or strict liability, for cases in which defective products threaten the personal safety of consumers. (Fraud is discussed in further detail in Chapter 3.)

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

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.

The cases on pages 4 and 5 involve summary judgment. **Summary judgment** is 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. Therefore, the motion states, one party is entitled to win as a matter of law. Summary judgment is available only in a civil action.

Court Case



Surgery Judged Unreasonable Search

A New York trial court ruled that a request for authorization to surgically remove bullet fragments from a murder suspect's shoulder should be denied.

The defendant was charged with the murder of a security guard. When arrested, he was in possession of the murder weapon, and X rays showed bullet fragments in his left shoulder.

Denying the government's request to remove the fragments, the court held that the procedure would be an unreasonable search. Before the state may surgically search the body of a presumed innocent man, it must show by substantial evidence that the method is safe, has limited risk, will produce relevant evidence that can be obtained in no other way, and that there is no other substantial alternative evidence.

The court approved the taking of a blood sample.

People of the State of New York v. Richard, 548 N.Y.S.2d 369 (N.Y., Albany Co. Ct., Sept. 13, 1989).

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 P.M. and said an ambulance would be dispatched. Because the ambulance had not arrived, 7 minutes later 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 1 minute.

The patient later learned that the emergency operator who was first 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 dispatch an ambulance promptly.

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).

Comparing Aspects of Law and Ethics

In order to understand the complexities of law and ethics better, it is helpful to define and compare some basic related terms. Table 1-1 on page 8 summarizes the terms described in the following sections.

Law

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

A **law** is defined as a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority. Laws are enacted by government to keep society running smoothly and to control behavior that could threaten public safety. They 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. Other penalties, appropriate to the crime, may be handed down by the sentencing authority, as when offenders must perform a specified

Court Case



Heart Valve Defect Creates Cause of Action

A federal appellate court for Pennsylvania held that a patient who was implanted with a heart valve could recover damages for fraud and breach of express warranty from the manufacturer of the defective valve.

In 1982 the patient had surgery to replace a defective mitral valve in her heart with an artificial Shiley valve. The surgery was successful, and the valve functioned properly.

In the late 1980s the patient learned that strut fractures had occurred in about 1 percent of all implanted Shiley valves. In almost every case in which fractures occurred, the patient died. The patient sued the manufacturer of Shiley valves for negligent manufacture and design, strict product liability, breach of implied warranty, breach of express warranty, and fraud.

At trial, summary judgment was granted to the manufacturer, based on the Medical Devices Amendments of the Food, Drug and Cosmetics Act of 1938. A provision of the Food, Drug and Cosmetics Act of 1938 extended to the federal government control of “therapeutic devices.” The Medical Devices Amendments to the act were passed in 1976 to ensure the safety and effectiveness of medical devices, including diagnostic products. The amendments require manufacturers of medical devices to register with the Food and Drug Administration (FDA) and follow quality control procedures. Some products must have premarket approval by the FDA, while others must meet performance standards before marketing.

On appeal, the court ruled out the patient’s claims for negligent manufacture and design, strict product liability, and breach of implied warranty. However, the appeals court reversed the grant of summary judgment on the breach of express warranty and fraud claims. It held that genuine issues of material fact existed as to (1) whether the manufacturer was liable under the terms of its warranty for physical and emotional trauma occasioned by the need to take the valve from the patient, and (2) whether the manufacturer engaged in fraud when it misrepresented the performance level of the Shiley valve in its advertisements and letters to physicians.

Michael v. Shiley, Inc., 46 F.3d 1316 (C.A.3., Pa., Feb. 7, 1995).

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 license to practice. (Medical practice acts are discussed further in Chapter 2. Laws and the court system are discussed in detail in Chapter 3.)

Ethics

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.

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. Acting morally toward others requires putting yourself in their place. 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?

Check Your Progress

.....

1. What four interrelated factors have added to health care and health care liability costs?

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?

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 American Nurses' Association Code for Nurses, American Medical Association Principles of Medical Ethics, American Society of Radiologic Technologists Code of Ethics, and the Code of Ethics of the American Association of Medical Assistants. (The American Medical Association Principles of Medical Ethics and the Code of Ethics of the American Association of Medical Assistants are discussed in more detail in Chapter 10.)

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. 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 the loss of income and eventually the loss of a practice if, as a result of that behavior, patients choose another practitioner.

Bioethics

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

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:

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