

## Ethically Speaking



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## Definition of Ethics

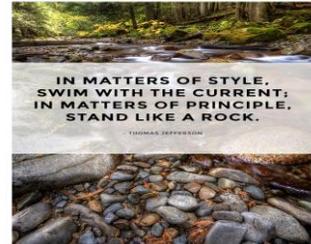
***"Moral principles that govern a person's or group's behavior"***

Ethics deals with "right and wrong" conduct - what we "ought" to do. It is a set of moral principles, and a code for behavior that governs an individual's actions with other individuals in a society. Ethics can differ between cultures.



Laws are not ethics. Laws are mandatory (societal rules) whereas ethics relates to morals.

Morality is what people believe is right and good, so therefore, ethics are a reflection of morality.



## Right and Wrong ?!

We are continually put in a position to determine what is right and wrong. For example: lying is morally wrong because it is not an appropriate way to act in society. So is cheating.

**Question...** should parents have the right to refuse their child's immunizations? Should health care workers be required to get the chicken pox or flu vaccine ?



Determining the right and wrong of any situation depends on the "facts" of the issue that you are facing. After reviewing the facts, you have to make a choice between right and wrong. Determining who you are obligated to.

## Physician Financial Transparency Reports (Sunshine Act)

"Requires manufacturers of drugs, medical devices and biologicals that participate in U.S. federal health care programs to report certain payments and items of value given to physicians and teaching hospitals. The Centers for Medicare & Medicaid Services (CMS) has been charged with implementing the Sunshine Act and has called it the **Open Payments Program**." (AMA)

As part of this program, manufacturers now are required to submit reports on payment, transfer and ownership information.



"Payments or other transfers of value" include the transfer of anything of value, although certain identified payments are excluded (such as those less than \$10/\$100 aggregate annual, certain educational materials, and in-kind items for charity care).

If the per person cost exceeds the minimum threshold amount (\$10 per event), companies must report the food and beverage as a payment or other transfer of value for each covered recipient who actually participates in the group meal.



Educational materials such as anatomic models that are ultimately intended to be used with patients are **excluded** from the reporting requirements. Overhead expenses, such as printing and time, are included in the educational materials exclusion so long as they are directly related to the development of the materials and the materials **directly benefit patients or are intended for patient use**. However, medical device and pharmaceutical companies must report the costs of educational materials provided to physicians for their own education that do not "directly" benefit patients.

Payments of less than \$10 are "incidental items". Payments of less than \$10 do not need to be reported unless total payments to the physician exceed **\$100 annually**.



"A field of applied ethics, the study of moral values and judgments as they apply to medicine."

Works with the tenets of: Autonomy, Justice, Beneficence and Non-maleficence.

## Autonomy

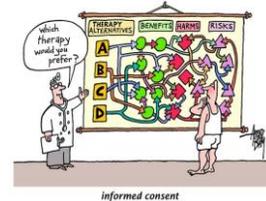
Respect for a patient's personal autonomy is one of the fundamental ethical principles in medicine. A respect that the patient has the capacity, **and the right**, to think, decide and act on their own behalf.

The ability of a **rational** individual to make an informed, **un-coerced decision**. Autonomy is often used as the basis for determining moral responsibility and accountability for one's own actions. Therefore, the decision making process must be free of coercion or coaxing. In order for a patient to make a fully informed decision, she/he must understand all risks and benefits of the procedure and the likelihood of success



## Informed Consent

Autonomy leads us into Informed Consent - which is a voluntary process. "No medical intervention done **for any purpose** - diagnostic, investigational, and, palliative (relieving pain or alleviating a problem without dealing with the underlying cause) or therapeutic should take place unless the patient has consented to it" (Hébert).



## Informed Consent

The failure to obtain informed consent is a form of **NEGLIGENCE** and can result in professional liability. Informed consent is more than getting a patient to "sign" a written consent form. It is defined as a **process of communication** between a **patient** and **physician** that results in the patient's authorization/agreement to undergo a specific **medical intervention**. (American Medical Association)



## Forms of Consent

**Informed consent** is the process by which the treating health care provider discloses information to a competent patient so that the patient may make a voluntary choice to accept or refuse treatment (Appelbaum, 2007) It is the legal, and ethical right, that the patient has to direct what happens to their body.



One of the most important parts of informed consent is that the patient has an opportunity to be an informed & involved participant in their health care decisions. The following should be discussed:

- The purpose of the procedure
- Alternatives to the procedure
- Risks, benefits, and "potentials" up to and including death, related to each procedure/treatment
- An assessment of the patient's understanding
- The patient's agreement on the procedure



## Do You Always Have To Have An Informed Consent ?

- If the patient does not have decision making capacity, (i.e. dementia), then a proxy, or surrogate, needs to be contacted
- **Poor** decision making capacity with inadequate time to find a proxy without harming the patient, such as a life threatening emergency where the patient is not conscious
- When the patient has waived consent.
- When a competent patient designates someone else to make treatment decisions for him or her (this can be a cultural issue where family members may culturally have the "right" to make decisions for others)



## When Is Permission Not Required?

- Disclosure required by law
- Public Health or Public Health Concerns (i.e. TB, HIV, chlamydia)
- Abuse, neglect or domestic violence
- Court proceedings
- Law Enforcement
- Workers' Compensation claims
- Coroners or Medical Examiner

**Stop TB**



## Informed Consent And Children

- Children do not have the decision making capacity to provide informed consent. Since consent, **by definition**, is given for an intervention for **oneself**, **parents cannot provide informed consent on behalf of their children**. Instead they can provide **informed permission** for treatment. For older children and adolescents, assent should always be sought in addition to the authorization of legal surrogates.
- The primary responsibility of the physician is the well being of the child. Therefore, if the parents decision puts the child at risk, then further action may need to be taken.



## When Is A Minor Considered An Adult ?

It is **never** acceptable to consent a minor for a medical or surgical procedure.

Consent must be received from the parents or the person responsible for the minor.

There are exceptions to this rule:

- \* minors legally treated as adults
- \* emancipated minors (paying their own bills)
- \* married minors
- \* minors who are parents or are pregnant
- \* minors in military service.



## IF YOU DO SOMETHING TO SOMEONE YOU HAVE TO HAVE A CONSENT SIGNED FIRST !



- Make sure that the patient is able to sign it (beware nursing home and minors).
- **Informed consent** means the patient had the opportunity to **ask the DOCTOR** questions prior to the procedure.
- Anyone under 18 - the parent must be present for "procedures"...make it a policy !

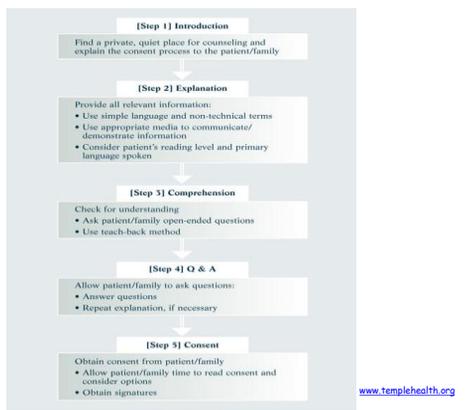
The physician providing/ performing the treatment / procedure (not a delegated representative) should disclose and discuss:

- The patient's diagnosis, if known
- The nature and purpose of a proposed treatment / procedure
- Risks and benefits of a proposed treatment / procedure
- Alternatives (regardless of their cost or the extent to which the treatment option is covered by health insurance)
- Risks and benefits of the alternative treatment / procedure
- Risks and benefits of not receiving or undergoing a treatment or procedure (Ethics in Medicine)



Patients have the right to refuse medical care. Their reasons can include religious reasons as well as any other personal reasons they choose, even if you consider their reasons to be frivolous or in poor judgment !

Patients who are legally competent have the legal right to refuse any or all treatment. This holds true even if the patient chooses to make a "bad decision" that may result in serious disability or even death !



## Justice

The idea that the burdens and benefits of new, and/or experimental treatments, must be distributed equally among all groups in society.

Requires that procedures uphold the spirit of existing laws and are fair to all people involved.

Four areas : fair distribution of scarce resources, competing needs, rights and obligations, and potential conflicts with established legislation. The concern focuses on who gets what treatment in healthcare, and who decides what treatments are administered. Is the decision based on need? Age? Prognosis? Financial ?



## Shipwreck

You are on a cruise, and the boat is sinking. Each lifeboat holds (8) people. Waiting to get in your boat - 10 people. You have been delineated to decide who goes and who stays behind.



## Who Do You Choose - And Why?

People you must decide from:

1. YOU
2. A (24) year old pregnant female.
3. A (70) year old pharmacist and his (65) year old wife
4. A nun
5. A soldier
6. A (50) year old teacher and her (52) year old artist husband
7. A college student studying music
8. A (10) year old boy



## Triage

Justice spawns the concept of "triage". Not everyone can be treated at the same time, so a decision must be made as to who is in most urgent need of care; who needs it now and who can wait until later.

How is this decision made? It needs to be made on the facts, and not on race, financial, creed, etc. reasons.



## Beneficence

Beneficence is action that is done for the **benefit of others**.

Beneficent actions can be taken to help prevent, or remove harms, or to improve the situation of others. Requires that any procedure be given with the *intent*

of **doing good** for the patient involved. Dictates that providers develop and maintain skills and knowledge and maintain their training, consider individual circumstances of all patients, and strive for the benefit of the patient. An example: vaccinations for the general population.



## Non-Maleficence: "Do No Harm"

Ethical principle of doing no harm. Requires that a procedure does not harm the patient involved or others in society. In some cases, it is difficult for doctors to successfully apply the do no harm principle. Physicians should not provide ineffective treatments to patients as these offer risk with no possibility of benefit and thus have a chance of harming patients. Example: providing eye drops to a patient that is demanding them - but there will be no benefit provided by the drop when they have "pink eye".



Physicians must refrain from providing ineffective treatments or acting with malice toward patients. This principle, however, offers little useful guidance to physicians since many therapies also have serious risks. The pertinent ethical issue is whether the benefits outweigh the burdens. Many medications, procedures, and interventions can cause harm as well as benefit, therefore the principle of non-maleficence provides little concrete guidance in the care of patients unless it is balanced with the principle of beneficence.

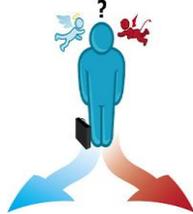


**Do No Harm**

## Hippocratic Oath

It requires a new physician to swear, upon a number of healing gods, to uphold specific ethical standard. It is a popular misconception that the phrase "First do no harm" is a part of the Hippocratic oath. In fact the phrase is believed to have originated with the 19<sup>th</sup> century surgeon Thomas Inman ☺

Example of an oath dilemma: If a doctor administers or facilitates in a lethal injection to a prisoner are they breaking the Hippocratic Oath ?



I swear by Apollo the physician, and Asclepius, and Hygieia and Panacea and all the gods and goddesses as my witnesses, that, according to my ability and judgment, I will keep this Oath and this contract:

To hold him who taught me this art equally dear to me as my parents, to be a partner in life with him, and to fulfill his needs when required; to look upon his offspring as equals to my own siblings, and to teach them this art, if they shall wish to learn it, without fee or contract; and that by the set rules, lectures, and every other mode of instruction, I will impart a knowledge of the art to my own sons, and those of my teachers, and to students bound by this contract and having sworn this Oath to the law of medicine, but to no others.

- I will use those dietary regimens which will benefit my patients according to my greatest ability and judgment, and I will do no harm or injustice to them.
- I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a pessary to cause an abortion.
- In purity and according to divine law will I carry out my life and my art.
- I will not use the knife, even upon those suffering from stones, but I will leave this to those who are trained in this craft.
- Into whatever homes I go, I will enter them for the benefit of the sick, avoiding any voluntary act of impropriety or corruption, including the seduction of women or men, whether they are free men or slaves.
- Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private.
- So long as I maintain this Oath faithfully and without corruption, may it be granted to me to partake of life fully and the practice of my art, gaining the respect of all men for all time. However, should I transgress this Oath and violate it, may the opposite be my fate.

## What Happens When You Make a Mistake ?

It is getting to be the end of a very busy clinic day. You are beat, and looking forward to clocking out soon. You are on your last patient. You pick up the dilating drop bottle, place the drops in the patient's eye, and realize it was

**Cyclogyl!**

What do you do ?



## Principles of Medical Ethics (AMA)

I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.



II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.

## Respect & Trust

The two easiest things for someone to lose. And the hardest things to get back.

III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.



V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.

VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.

VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.

IX. A physician shall support access to medical care for all people



## And, then....don't forget:

Duty and Obligation:

- \* General:
  - HIPAA
  - Emergency Room Treatment
- \* Individual
  - Patients, colleagues, co-workers, self
- \* Group
  - Profession
  - Society
  - Law



**Question:** You're patient is a prisoner. The prisoner does not want the guard in the room because he doesn't want to hear about his eye. Can the guard stay in the room or do you have to ask him to stand outside ?

**Question:** A patient's daughter comes every appointment with her mother. Three days after the appointment, the daughter calls to discuss her mom's eyes. You check the paperwork and the mother has not signed her daughter on her privacy forms. Can you talk with the daughter?



"Somehow your medical records got faxed to a complete stranger. He has no idea what's wrong with you either."

## Confidentiality

This is the basis for the doctor/patient relationship. You need the patient's consent to talk about the patient to someone else.

*When can you break this "rule" ?*

- When ordered by a court of law
- When there is a statutory requirement - public health issue (you have active TB)
- Malpractice suits
- When speaking to another provider to ensure the patient receives appropriate care

**NO**



**TALKING**

The obligation of confidentiality prohibits the health care provider from disclosing information about the patient's case to others without permission and encourages the providers and health care systems to take precautions to ensure that only authorized access occurs.

There are times when the doctor may feel inclined to share information, such as responding to a spouse, that the requirements to confidentiality may not be met. **If there is not explicit permission from the patient to share information with family member, it is generally not ethically justifiable to do so.** Except in cases where the spouse is at specific risk of harm directly related to the diagnosis, it remains the patient's, not the physician's, obligation to talk with the spouse or other family members.

There are times when physicians/staff will discuss a patient's care in an elevator or at lunch due to time constraints. Ultra care should be given to ensure that the patient cannot be identified in any way to anyone that might be "listening in" at another table.

Best practice:  
**DON'T DO IT !**



## Breach of Confidentiality

"A disclosure to a third party without the patient's consent or court order of private information that the provider has learned through the patient - physician relationship". (AMA 2012).

Patient confidentiality is protected under state law. If a patient's private information is disclosed without authorization and causes some type of harm to the patient, he or she could have a cause of action against the medical provider for malpractice or invasion of privacy.

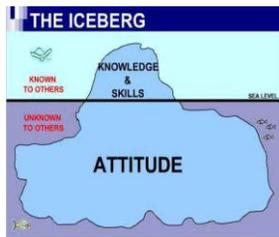


## What About Confidentiality and Children

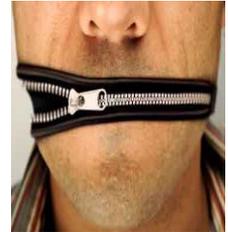
In many states minors may seek treatment without the permission of their parents for pregnancy, sexually transmitted infections, mental health concerns, and substance abuse. It is best to familiarize yourself with your state and local laws, as well as institutional policies, regarding adolescents.

## Ethical Challenges

**Attitude**  
 "A settled way of thinking or feeling about someone or something, typically one that is reflected in a person's behavior"



"Code of Silence": turning a blind eye to un-ethical, incompetent or impaired provider/co-worker. Medicine has developed a code of silence when it comes to mistakes where a patient has been "harmed" (physically, financially, emotional). While there are clear guidelines on reporting errors, a new report from the Office of the Inspector General of Health and Human Services suggests that problems are often ignored or swept under the rug.



### Abuse of Power:

- Bullying
- Threatening
- Forcing poor ethics on others
- Harassment: Workplaces carry a certain amount of stress where tempers can sometimes flare and feelings can sometimes be hurt. Episodes are rare and sporadic. When it becomes common place and threatening, then it needs to be reviewed and stopped.



### Inducements & Favoritism:

- Trips
- "Bribes" (to use a given products)
- Meals
- Gifts to some, but not all staff



## Example of Ethical Dilemmas

The **Samaritan's Dilemma** is in regards to the act of charity.

It's based on the idea that when presented with charity, in some location such as a soup kitchen, a person will act in one of two ways: use the charity to improve their situation, or coming to rely on charity as a means of survival.



The **Plank of Carneades** explores the idea of self defense in relation to murder.

Example: there are two shipwrecked sailors.

They both see a plank that can only support one of them and both of them swim towards it. Sailor A gets to the plank first. Sailor B, who is going to drown, pushes A off and away from the plank and is later saved by a rescue team.

This poses the question: should Sailor B be tried for murder? IF "B" had to kill "A" in order to live, couldn't that be considered self-defense?



## Good Samaritan Law

### Good Samaritan laws

offer legal protection to people who give *reasonable* assistance to those who are injured, ill, in peril (auto accident, burning house) ,or otherwise incapacitated. The protection is intended to reduce bystanders' hesitation to help because they fear being sued or prosecuted for unintentional injury or wrongful death



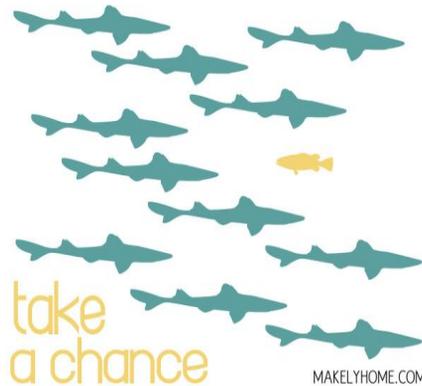
## Scope of Practice

Varies from state to state. Delineates "what" duties a person may perform while performing their job.

Performing outside these roles, even though they have been instructed by their doctor to do so, can be grounds for negligence directed ultimately at the doctor, but also, in some cases, on the employee.



- Have a clear understanding of the job responsibilities in regard to the scope of practice.
- These should be in a written form and should be updated periodically
- Never perform or attempt a procedure which you have not been trained for. IF asked by the doctor, advise this is out of your scope of practice.



take  
a chance

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- This is not only what the STATE says you can do, but also your insurance carrier and community standards.
- IF you make a mistake, report it immediately.
- Incident reports.



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