

RSPT 1101

Application of the Law to Respiratory Care

Systems of Law

- **Public Law** - deals with relationships of private parties and the government
- **Private Law** - concerned with the recognition and enforcement of the rights and duties of private individuals and organizations

Public Law

- **Criminal Law** - deals with acts or offenses against the welfare or safety of the public
- **Administrative Law** - consists of the countless regulations set by agencies of the government

Private Law

- **Tort Law** - A tort is a civil wrong, other than a breach of contract committed against an individual or property, for which a court provides a remedy in the form of an action for damages. Causes for complaints may range from invasion of privacy to assault and battery.

Tort Law

- **Professional Negligence** is the failure to perform one's duties competently.
- Negligence may involve acts of commission or omission.

Types of Negligence

- **Malfeasance** - Execution of an unlawful or improper act
- **Misfeasance** - Improper performance of an act that causes injury
- **Nonfeasance** - Failure to perform and act when there is a duty to do so
- **Criminal Negligence** - Willful and reckless disregard for the safety of another
- **Malpractice** - Negligence or carelessness of a professional

The "Four Ds" of Negligence

- The practitioner owes a **duty** to the patient.
- The practitioner was **derelict** with that duty.
- **Damage** or harm came to the patient.
- The breach of duty was the **direct** cause of the damage.

Res Ipsa Loquitor

- Literally, "the thing speaks for itself"
- A legal principle invoked to show that the harm would not have occurred if those in control had used appropriate care
- An exception to the patient's burden of proof in claims of negligence

Conditions Required to Invoke *Res Ipsa Loquitor*

- Harm must be such that it would not have occurred without someone's negligence
- Action causing the harm must have been under defendant's control
- Injury did not result from any contributing negligence or voluntarily assumed risk on the part of the patient

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Malpractice

- **Criminal Malpractice** - assault and battery, euthanasia (criminal court)
- **Civil Malpractice** - negligence, practice below a reasonable standard (civil court)
- **Ethical Malpractice** - violations of professional ethics

Intentional Torts

- Wrong perpetrated by one who **intends** to break the law
- More serious than negligence because the defendant intended to commit the wrong

Intentional Torts

- Defamation of Character
- Invasion of Privacy
- Assault
- Battery

Breach of Contract

- Relatively rare malpractice claim
- Based on the theory that when a practitioner renders care, an implicit or explicit professional/patient "contract" is established

Other Legal Issues

- Informed Consent
- Durable Power of Attorney or Health Care Proxy
- Staffing

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Introduction to Medical Ethics

Questions...

- What are Ethics?
- Who has them?
- Do you?
- Who needs them?
- Must we learn them?
- Are they relevant today?
- Who decides?

...and more Questions...

What about...

- the patient's right to decide?
- "Living Wills" and Healthcare Proxies?
- terminal care for the terminally ill?
- euthanasia and assisted suicides?
- codes and DNRs?
- demands for futile treatment?

...and still more Questions.

- Is it ok to accept gratuities?
- Is it ok for physicians to own clinics and refer patients to them?
- Is it ok to falsify insurance papers to secure treatment the patient can't afford?
- Should a practitioner report a colleague who makes an error?
- Is it ok to accept finders' fees for referring patients?

Ethics and the Law

- In many instances, law serves the same functions as ethics
- Crucial differences exist between law and morality
- Acts may be legal and yet, unethical
- Some aspects of our personal and professional lives are not covered by law
- Different types of sanctions are imposed for infractions

It appears to me that in Ethics, as in all other philosophical studies, the difficulties and disadvantages, of which history is full, are mainly due to a very simple cause; namely to the attempt to answer questions, without first discovering precisely what questions it is to which you desire an answer.

G. E. Moore, Principia Ethica, 1903

Ethical decision making requires the therapist to search for an understanding of the patient's life rather than to make an evaluation of it.

Joan C. Rogers, PhD, OTR, FAOTA

What are Morals?

In general, morality is concerned with what people believe to be right and good conduct. It is transmitted from generation to generation, evolving and being reinterpreted for each age. This broad understanding of what is right and wrong in human conduct is taught to us by our families, religion, national culture and legal structure.

What are Ethics?

Ethics are that part of philosophy that deals with systematic approaches to questions of morality. They provide the intellectual framework that allows us to analyze and make decisions in regard to moral choices. Ethics offer a way of examining moral life and provide us with the foundation needed to answer difficult questions.

Four Fundamental Questions of Ethics

- What makes acts right?
- What kinds of acts are right?
- How do rules apply to specific cases?
- What ought to be done in specific cases?

As a field, biomedical ethics present a fundamental problem. As a branch of applied ethics, biomedical ethics becomes interesting and relevant only when it abandons the ephemeral realm of theory and abstract speculation and gets down to practical questions raised by real, everyday problems of health and illness.

Veatch and Flack, Case Studies in Allied Health Ethics, 1997

Basic Ethical Principles

- Confidentiality
- Autonomy
- Paternalism
- Veracity
- Beneficence
- Nonmaleficence
- Role Fidelity
- Justice

Confidentiality

- May be the most important aspect of the patient's trust
- Perception of non-confidentiality places a barrier between the patient and the practitioner

Confidentiality

AHA Patient's Bill of Rights Rule 5

The patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination and treatment are confidential and should be conducted discreetly. Those not directly involved in his care must have the permission of the patient to be present.

Rule 6

The patient has the right to expect that all communications and records pertaining to his care should be treated as confidential.

Autonomy

- From the Greek words *autos* (self) and *nomos* (governance)
- Form of personal liberty
- Produced the rules of "informed consent"
- May conflict with the principle of paternalism

Paternalism

- The belief that one should, on the basis of benefiting the patient, limit the patient's autonomy
- Based on a fiduciary responsibility - as healthcare providers, we know more than the patient and family and our decisions should be based on that knowledge

Paternalism

- Obviously, autonomy and beneficence conflict when the patient desires something the practitioner considers harmful
- The question then becomes, where is the line drawn?

Autonomy vs. Paternalism

1848 *Code of Ethics of the American Medical Association*, section 6

The obedience of a patient to the prescriptions of his physician should be prompt and implicit. He should never permit his own crude opinions....

AHA *Patient's Bill of Rights*, Rule 4

The patient has the right to refuse treatment to the extent permitted by law and to be informed of the medical consequences of his action.

Veracity

- Binds both the practitioner and the patient in an association of truth
- Practitioner/patient relationship
- Lack of veracity often hides behind "benevolent deception"
- Deception may lead to loss of credibility

Beneficence

- Suggests acts of mercy and charity
- Practitioner has duty to promote patient's health and welfare
- Restoration of life in the "human" or "biographical" sense
- When does beneficence become maleficence?

Nonmaleficence

- Ethical principle not to do harm - from Hippocratic Oath
- Seems to be similar to beneficence
- Distinction is based on positives and negatives
- Principle of "double effect"

Nonmaleficence

- One ought not to inflict harm

Beneficence

- One ought to prevent harm
- One ought to remove harm
- One ought to do or promote good

Role Fidelity

- Modern healthcare is a "team effort"
- Each specialty has a role or duty
- Role fidelity shapes the way practitioners respond to ethical questions
- Acceptable practices are prescribed in each specialty's Practice Act

Justice

- Problems arise in application
- Healthcare must deal with "distributive" justice
- Is healthcare a right?
- Fair and equal distribution