Crossing the Spectrum: Steps for Making Ethical Decisions

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by Frank J. Navran

Resolving ethical dilemmas is never an easy process, but you can take certain steps to simplify it. The author provides a framework for addressing ethical issues that is useful to both organizations and individuals responsible for dealing with ethical challenges.

We read and hear a good deal about ethics in the healthcare industry these days. The issues are as diverse as the field itself: human subject research, allocation of organs for transplant, medical decision making in a managed care environment, employee health and safety on the job, the influence of the pharmaceutical industry on doctors' choices, the impact of downsizing and cost controls on the quality of care, and, of course, patients' rights—including privacy and the use of patient information.

To add to the complexity, at times ethical issues are cloaked in new technology or embedded in the changing environment of managed care. How can we, as healthcare professionals, differentiate between issues of law and regulation, policy and procedure, professional conduct and ethics, biomedical ethics, organizational ethics, society and community expectations, and individual or personal ethics?

This article offers a scheme for recognizing the ethical component of an issue or decision, clarify the boundaries between the various ethics arenas, and suggest a method for addressing those issues that is consistent with the decision-making process most of us have been using all our lives. This approach integrates all the ethical arenas and is useful to both organizations and individuals responsible for dealing with ethical challenges.

What we will not be doing is "solving" the ethical challenges that you and your organization face. That task is left to you. We are merely discussing a framework for seeking solutions.

From Hippocrates to Managed Care: The Context

The issues described above exist in a context of significant historical and technological milestones.

Some credit Hippocrates with starting the medical ethics field with his admonition that physicians should "do no harm." Had he done a more thorough job of defining "harm," perhaps our lives would all be simpler today. But he didn't. He left it to the physician, the patient, and other interested parties—including the community and society—to define harm. (No doubt a wise and prudent choice on his part.)

The history of medicine is also rife with examples of ethical issues rising from technology and the concern that by using technology, a physician might be doing harm. Consider the philosophical and ethical debate over the use of early stethoscopes. Many thought that the technology was "distancing" the physician from the patient and might cause the physician to forgo other, more traditional and trusted methodologies—the old ear-to-the-chest technique.

Modern biomedical ethics is often said to have begun with the questions surrounding access to new technology— specifically access to dialysis. If only some of the patients needing dialysis could have access to the equipment, how should one meet the condition of doing no harm? What is the right, fair, and just way to allocate scarce resources?

To resolve such dilemmas, medical practitioners sought assistance in making these decisions in consultations with their peers. Organizations, such as hospitals—which often owned the technology—became engaged in the discussion, and ethics committees emerged. These committees became a resource to medical practitioners and institutions in creating guidelines and then interpreting them around a myriad of biomedical ethics issues, including those pertaining to medical information.

The ethics picture became more complex when government, a major purchaser of medical services through programs such as Medicaid, did two things. First, the US Sentencing Commission raised the institutional risk when 1991 federal sentencing guidelines increased fines for violations to as much as $290 million per offense. Second, in an effort to control the accelerating rise in medical costs, state and federal governments initiated an ongoing "search and destroy" mission to root out fraud, waste, and abuse in the reporting and payment of medical claims.

On top of this, we saw the rise in managed care, which added another layer of ethical questions when the management of care was viewed by some as conflicting with the management of costs. Who should make which decisions? Does the scheme by which a practitioner is compensated influence the medical decision he or she might make? Can one afford to raise ethical issues in a managed care environment?

Across the Ethics Spectrum

What we now face are increasingly complex ethical questions that, when addressed, must take into account:

• State, federal, and local laws and regulations

• Organizational policy and procedure

• Organizational principles and values

• Professional and individual values of the decision maker

• Expectations and demands of the local community and of broader society

One way to characterize the forces that are shaping ethical decision making in healthcare today is to arrange them on a continuum or spectrum. (See "The Ethics Spectrum,"page 34.)

"The Ethics Spectrum" illustrates the variety of forces or influences that the medical profession needs to consider when making ethically appropriate choices.

Guidance from Law and Regulation

Every healthcare institution and individual practitioner, professional, and employee must be attentive to law and regulation, and there is a seemingly never-ending list of laws and regulations to pay attention to. In general, these can be characterized as externally imposed rules for conducting both the practice of medicine and the business that surrounds that practice in all its forms. The reach of law and regulation extends beyond the institution and individual—often covering the relationships of those in healthcare with suppliers, agents, patients, and, of course, third-party payers.

Guidance from Policy and Procedure

Policy and procedure are the internally imposed institutional equivalent of law and regulation. These are rules for conducting both the practice of medicine and the business that surrounds that practice in all its forms, imposed not by some external governmental agent, but by the organization itself. They address specific expectations and requirements for those doing the work of the organization. For employees, agents, suppliers, and others, policy and procedure require the same level of attention as law and regulation. They are just another set of rules.

Guidance from Organizational Principles and Values

More recently, institutions have begun to codify and articulate their fundamental organizational principles or values. These are self-descriptive statements that define actual or aspirational standards of personal, professional, and organizational conduct.

As is the case with law, regulation, and policy and procedure, organizational values become another standard against which to assess decisions and actions. These values are expressed both in business terms like "customer service/customer satisfaction," and in ethical terms such as integrity, honesty, and compassion.

Basic Steps to Decision Making

Among all the many existing different decision-making models, we can find certain commonalities. In every case, at least six elements are present:

1. Define the situation. Every decision-making technique requires the decision maker to clearly define the situation. Something has happened or been discovered that requires a decision to be made. The first step is to define that something.

2. Identify the options. A decision is a choice among alternatives. Decision making requires the available options to be identified. How many and the manner of identification can vary. But there have to be at least two options—and doing nothing is often one of them.

3. Evaluate the options. Not all options are equally attractive. Some may be faster, cheaper, easier, more durable, more aesthetically pleasing, or more ethical. The criteria for selection may vary with the nature of the situation and the needs, wants, desires, and resources of the decision maker.

4. Select the optimal option. This is the decision-making step. The decision maker, having defined the issue and evaluated the available alternatives, makes the choice.

5. Implement the decision. The process is not over when the decision is made. Nothing happens until it is implemented.

6. Evaluate the outcome. This step allows the decision maker to examine the consequences (intended and unintended) of the decision. This closes the loop and allows him or her to learn from the experience. This decision process ends, but depending on the outcome(s), it may be the very "issue" that triggers another decision.

Guidance from Personal/Professional Values

Individuals also operate from a set of principles and values that describe their own personal, professional, and aspirational standards of conduct. These can be professionally focused, such as patient well-being and privacy, or more broadly descriptive ethical terms, such as integrity, honesty, and compassion. While the language may be the same, organizational and personal and professional values may imply a different choice or behavior.

Guidance from Society and Community

Finally, both the individual and the healthcare institution operate within a society and community. Some of society's expectations are reflected in law and regulation, but much of what a society or community expects is not codified. Expectations regarding respect for the patient or patient's family, the practitioner's bedside manner, the responsiveness of the institution or practitioner to unusual circumstances or requirements, availability and accessibility of personnel, and desired treatment of information and data, may not be addressed by law or regulation—but the community, especially in a competitive healthcare environment, can make its wants and needs known.

The Generic Decision-making Process

A search of the management literature reveals dozens of decision-making models; yet within all that diversity there are certain commonalities. In every case, at least six elements are present. This minimalist model (see "Basic Steps to Decision Making") omits much of the detail, but it does appear to be truly generic, common to nearly all other models.

The Ethical Decision-making Process

What makes the generic decision-making process an ethical one is the assurance that ethical components of the issue are given consideration. The decision must produce an outcome that meets the standards of rightness, goodness, fairness, and justice.

The process alone does not guarantee an ethical outcome. Ultimately, only the decision maker can do that. Whether the outcome is an ethical one is a judgment subject to real and justifiable differences in perception.

The Ethics Spectrum

Guidance from Law and Regulation	Guidance from Policy and Procedure	Guidance from Organizational Principles and Values	Guidance from Personal/Professional Values
X	X	X	X

Guidance from Society and Community

The process simply guarantees that the decision maker took appropriate steps to explore whether or not there were ethical considerations, and if there were, that those considerations received the attention they warranted, just as all of the other decision criteria. Those steps can be characterized as "evaluating the ethics" of the situation, the options, and the outcomes.

When we evaluate something, we compare it to a standard. At three points in the generic decision-making process, our ethics spectrum suggests a set of five standards useful for determining if there are ethical considerations, what those ethical considerations might be, and how best to address those ethical considerations.

We can start with Step 1 of the process.

1. **Define the situation**. Using the five reference points on the ethics spectrum, we can ask five questions that will help us define the situation by revealing the ethical components present in a given situation, if any.

• **Guidance from law and regulation**—Does the current situation appear to violate either the letter or spirit of any applicable laws or regulations?

• **Guidance from policy and procedure**—Does the current situation appear to violate either the letter or spirit of any applicable policies or procedures?

• **Guidance from organizational principles and values**—Does the current situation appear to violate either the letter or spirit of any (explicit or implicit) organizational values or principles or fall short of values to which the institution aspires?

• **Guidance from personal andprofessional values**—Does the current situation appear to violate either the letter or spirit of any (explicit or implicit) personal or professional values or principles?

• **Guidance from society and community**—Does the current situation appear to violate either the letter or spirit of any (explicit or implicit) values or principles held by the applicable community or by society at large?

One way to characterize these five questions and to ensure that ethics issues are brought to the surface and articulated is to employ an acronym: PLUSS.

• **P= Policy and procedures** (Are there policies and procedures that I should consider in this situation?)

• **L= Law and regulation** (Are there laws and regulations that I should consider in this situation?)

• **U= Universal organizational values** (What organizational values apply to all situations and decision makers?)

• **S= Self (**What guidance do my personal values provide in this case?)

• **S= Society** (How do community and society values and expectations apply to this situation?)

2. Identify the options. This is typically characterized as a creative step, which is encumbered and degraded by premature evaluation.

3. Evaluate the options. Once again, we can use the five PLUSS questions, slightly modified to ensure that we are evaluating the ethical appropriateness of the various options. Thus, we ask, "Given the issue, as defined above, for each option:"

• **P= Policy and procedures** (Are there policies and procedures that will apply if I select this option?)

• **L= Law and regulation** (Are there laws and regulations that will apply if I select this option?)

• **U= Universal organizational values** (What organizational values will apply if I select this option?)

• **S= Self** (What guidance do my personal values provide relative to this option?)

• **S= Society** (How do community and society values and expectations apply to this option?)

4. Select the optimal option. This is the decision-making step. The decision maker, having defined the issue and evaluated the available alternatives, makes the choice.

5. Implement the decision. Again, the process does not end when the decision is made. Until the decision is implemented, nothing happens.

6. Evaluate the outcome. This step allows the decision maker to examine the consequences (intended and unintended) of the decision. At this point, we have closed the loop and can learn from the experience. As noted before, the decision process ends here—but depending on the outcomes, another one may begin. Once again, the five PLUSS questions, in their initial form, are appropriate.

Making Ethical Healthcare Decisions

Some argue that healthcare decisions, whether patient specific or related to fields such as HIM, are fundamentally different from "regular" business or professional decisions.

For a decision to be considered ethical, it has to pass the five-question test detailed above. The resolution of the issue in question must typically satisfy law and regulation, policy and procedure, organizational, individual and societal standards of rightness, fairness, goodness, and justness.

But the PLUSS test elements are no substitute for good judgment. It is common enough for a decision to meet the letter of law and regulation and policy and procedure but fall short of being ethical. Coming in one dollar below a set standard maximum for giving or receiving gifts may meet the legal and policy requirement, but if the intent is to serve one's personal needs rather than those of the organization, it may still constitute a conflict of interest. That is why all five test questions are necessary.

One element of the PLUSS test is not inherently more important than another. Importance is relative and defined situationally —and all five questions must be satisfied. The question that you cannot satisfy may be the key to the ethical issue you face.

This decision-making model does not resolve the ethical dilemmas that started our interest in healthcare ethics in the first place. It does not tell who among several deserving candidates should get the scarce resource. It does not decide which of several competing treatments is most ethical when all cause both good and harm to some degree. It does not define how to safeguard the rights of patients and their families and who should have access to what information.

In short, the process is no substitute for your judgment. It does, however, provide a reminder of the breadth and depth of the questions we must address if we are to make the most ethical decisions.

It reminds us to consider the obligations imposed on us by others through law, regulation, policy, and procedure. It reminds us that we function in a context that has ethical expectations and requirements both in the limited community and the broader

society. Finally, it suggests that as mature, responsible adults we should keep our personal sense of what is right, fair, good, and just in the process.

In this discussion of healthcare ethics, we have examined a process to help you recognize ethical issues in the decisions you are asked to make. The ethical decision-making process will cause us to engage in definition of the issues—determination of the options and evaluation of outcomes that include reference to five fields of the ethics spectrum. It will facilitate our attention to the ethical issues that may be embedded in and otherwise subsumed by broader business issues.

But the greatest contribution is that we are creating a vocabulary to discuss ethical issues. We are forging tools for raising ethical issues, seeking advice and building consensus about what constitutes right and wrong, good and bad, fair and unfair and just and unjust in the work we do. By facilitating an open and continuing dialogue on healthcare ethics, we all stand to become more attuned to the ethical demands of the work we do and more able to deal with the ethical issues we face. Futhermore, we are legitimizing the discussion of healthcare ethics for all in the field—not just those allocating scarce resources or providing services that cause no harm.

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