Ethics of Health Care A Guide for Clinical Practice 4th edition Edge Solutions Manual

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Chapter 2: Human Value Development and the System of Public Law

GOALS AND OBJECTIVES

Goal

To explore common components of public law and evaluate how needs and values shape our decision making.

Objectives

Upon completion of this chapter, the reader should be able to:

1. Identify an action that would be consistent with each level of the Hierarchy of Needs.

Guidance:
Physiological—water, food, warmth, shelter, rest
Safety—rotating tires, staying in a job you do not like, concealing carry permits
Social—love and belonging needs, attending church, joining a club
Esteem—esteem needs take two forms: (a) a need for strength, achievement, mastery, and competence; (b) a need for reputation, status, recognition and appreciation. Fishing for compliments, a fancy and too expensive car, cosmetic surgery
Self-Actualization—finding your passion and purpose and being the best you.

Over time the basic five levels have been expanded to seven and eight stage models that include cognitive, aesthetic, and transcendence needs.

2. Differentiate between needs and values.

Guidance: In a sense, needs are satisfied for me while values are fulfilled by me. Under most situations our actions can be seen as attempting to satisfy a given set of needs. We eat when we are hungry. Our values are based on our world view of feelings, attitudes, and beliefs. When making a value decision, we ask ourselves, not what we ***would*** *do in a situation but what we* ***should*** *do.*

3. Explain the relationship between Hume's law and decision making.

Guidance: The is–ought problem often referred to as Hume's law, or Hume's guillotine, holds that many individuals make claims about what ought to be on the basis of statements about what is. Hume found that there seems to be a significant difference between positive statements (about what is) and prescriptive statements (about what ought to be), and that it is not obvious how one can coherently move from descriptive statements to prescriptive ones. The facts of the physical universe can tell us what is, but it is our values that guide us to understanding of what ought to be as it relates to human behavior.

4. Explain the five current generational value cohorts in terms of their major value shaping events and the effect of the events on the group's world view orientation.

Guidance: See pages 24–28 in the textbook for information about the five current generational value cohorts.

5. List the three value development stages and value orientations of the Kohlberg model.

Guidance: The three stages are preconventional, conventional, and postconventional. The preconventional stage occurs between ages 3 and 7, and is characterized by a focus on punishment/obedience and egotism (satisfying one's desires). The conventional stage occurs

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between ages 7 and 12. During this stage, the individual values pleasing others and respecting rules. The postconventional stage occurs at age 12 and above. Individuals in this stage value social contracts and personal conscience.

6. Outline the theoretical position of Carol Gilligan and the nature of the disagreement between Gilligan and Kohlberg found in her research.

Guidance: Carol Gilligan argued that Kohlberg's research methods were flawed and gender biased as his samples contained mostly male subjects. Her research describes a separate value development pathway for females that results in different highest values for each sex: "personal responsibility" for females and "legalistic equality" for males.

7. Explain why nihilism is not adequate for making health care decisions.

Guidance: Some in society subscribe to a philosophy of moral nihilism, which holds that there are no moral truths, no moral rules, no moral knowledge or responsibilities. Following this reasoning, nothing can truly be wrong or right in a moral sense, for the moral nihilist, morality, like religion, is a mere illusion. If you followed this reasoning to its conclusion, heinous acts such as murder or rape of children would not necessarily be wrong. This is fortunately a position that most health care providers would feel uncomfortable in accepting.

8. Explain why standpoint theory is an important consideration when making value decisions.

Guidance: Standpoint theory is a useful concept that helps avoid the problems of self-interest in deciding ethical issues. This theory holds that one should always try to adopt or listen to the standpoint of the most marginalized and vulnerable persons involved. This is similar to the "walk a mile in their shoes" advice.

9. Differentiate between moral systems and legal systems.

Guidance: Laws are absolute rules prescribed by government representatives, while morality has to do with personal views on what is right or wrong. There is a close relationship between the two in that laws often represent the overriding societal view on moral issues.

10. Differentiate between private and public law.

Guidance: Private law deals with the relationships between citizen and citizen or is concerned with the definition, regulation, and enforcement of rights in cases where both the parties involved are private citizens. Public law deals with the relationships between private parties and the government, and it is that branch of law that is concerned with the state in its political or sovereign capacity.

11. Explain the meaning of the "supremacy clause" in the Constitution.

Guidance: The clear meaning of Article VI of the Constitution is that the Constitution of the United States, federal law, and national treaties take precedence over the constitutions and laws of the states and local jurisdictions. This is further clarified by the "supremacy clause," which states that if any conflicts exist between federal and state laws, federal laws must govern.

12. List four forms of public law.

Guidance: Generally, public law consists in the following forms:

- *Constitutional*
- *Administrative*
- *Criminal*
- *International*

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13. State the important differences between criminal law and civil law in regard to required level of evidence and forms of punishment.

Guidance: Criminal law prohibits conduct deemed to be injurious to the public order and provides for punishment of those found to have engaged in prohibited practices. It should be noted that an act can have both private (civil law) and criminal (public law) ramifications. The important differences between criminal and civil law can be seen in the level of proof required between the two case types and the reparations required. The level of proof in civil cases is less rigorous and the reparation called for is monetary rather than punitive.

14. Formulate examples of statutory and administrative law.

Guidance: Laws created by legislative bodies are known as statutory law. Examples of statutory law, at the national level, might be the creation of such agencies as the Occupational Safety and Health Administration (OSHA). When legislative bodies create agencies such as OSHA, they delegate to the agency the power to formulate rules and regulations necessary to carry out the legislative intent of their enactment. Administrative laws are rules, regulations, orders, and decisions created by administrative agencies to implement their powers and duties.

LEGAL CASE, CASE STUDY, AND IN THE NEWS FEATURES

Case Study: A Right to Be Wrong?

Guidance: This case looks at several problems, not the least of which is the current celebrity culture, where low information celebrities exercise a powerful influence on public thinking. In this case, the role of the health care provider is that of an educator. A useful class discussion may analyze how we can overcome problems with refusals to vaccinate without infringing on individual rights to choose. Although we might admire Cuba in essentially making the decision for its citizens, that is not within our traditions of personal liberty. We can, however, have reasonable rules that protect other people's children by requiring vaccinations as part of the admission process in public schools. While we could adopt policies like Cuba for the sake of public health, we would still need to leave exemptions for constitutional protections.

Case Study: Different Cultures—Different Values

Guidance: We are a nation of immigrants and being respectful and tolerant of differences is necessary. The question here is whether this case goes beyond our ability to accept the differences. Female Genital Mutilation (FGM) has no patient benefit and has serious complications. So a "different strokes for different folks" would not seem to be appropriate. A class discussion as to what could be done in this case would be useful. A, B, D, E, and F would not seem appropriate responses. There are no good choices, and one would certainly want to find another solution that would not require social services removing the child from the home.

As for the scarification request for the young man, this appears to be on a whole different level of concern. In many ways it is not different from the body piercing and tattooing that is common practice in our culture. While I would not recommend it be done in a hospital, it would seem that other nonmedical institutions could perform the service.

Case Study: A Matter of Freedom

Guidance: This case study provides a good opportunity to examine professional autonomy and health provider's rights to personal conscience. In discussing and responding to these questions, students should understand conscience clauses, which are legal clauses that permit pharmacists, physicians, and/or other providers of health care not to provide certain medical services for reasons of religion or conscience. Whatever the decision, the patients cannot be abandoned or endangered. In that some of these questions are currently being worked out in our court system, it is unclear where the lines will be drawn.

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*In regards to "day after pills", the most recent scientific study on Levonorgestrel, the essential component of the "*morning-after pill*" or "emergency contraceptive," confirms that the drug does indeed have a third effect on users, which consists in preventing the implantation of a fertilized ovum in the womb of the mother. As with almost all issues about abortions, there is disagreement as to whether this is an abortifacient.*

REVIEW EXERCISES

A. Generational theorists hold that certain significant emotional events shape generational cohorts (approximately a 20-year time period) in such a way that they create a unified world view or shared value patterns. Consider the silent or traditionalist cohort, the group that was value programmed in the 1930s and 1940s. The significant events of that generation were the Depression, World War II, extended family structures, and the rise of America as a world power. Describe how you think these events might have created a common value structure toward the following:

a. Patriotism
b. Value of work
c. Family member roles
d. Cooperative action

Students' answers will vary.

B. Visualize an imaginary time and place in which children are brought up in a situation where these circumstances are common: single-parent families, poverty, street gangs, no meaningful work, violent streets where people drive by and kill strangers, inadequate schools, and popular media that panders to a nightmarish mixture of sexuality, violence, and consumerism. Write a value statement for this imaginary group in regard to patriotism, value of work, family roles, and cooperative action. Start each statement with "A person should …"
In that this is asking what an individual thinks, there is no single right answer.

C. In this case, make your decision first using legalistic equality (male pathway) using rules and principles and then make the decision using responsibility and relationships (female pathway) as the highest value.

The case involves a man, his wife, his mother, and his son. The family is out in a boat and the man is needed to hold the tiller to keep the boat steady. A great wind comes in and the boat begins to founder. It becomes obvious someone must leave the boat and drown to save the life of the others. The answer cannot be the man as he is needed to hold the tiller or all must perish, which of the others (the mother, son, or wife) should be sacrificed?
In the United States the answer will usually be the mother, given her obligations as a mother and her longer life. In some other nations, the rationale is anyone but the mother, given that in this world one only has one mother.

D. List two examples each for the following:

a. Criminal law
b. Statutory law
c. Administrative law

Some examples of felonies (criminal law) include murder, manslaughter, drug trafficking, robbery, and arson. Statutory laws include the Affordable Care Act and OSHA. Administrative laws include rules that flow from agencies such as the Affordable Care Act and OSHA.

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E. When the *Titanic* sank, the men generally stood aside and women and children were allowed to take the life rafts. The captain did not survive and went down with the ship. More recently, the cruise ship *Costa Concordia* ran aground and sank. The captain claims to have somehow stumbled and fell into a life raft and was one of the first to reach safety. Not to say he was lying, but let us assume for discussion that he was: What level of the Hierarchy of Needs might he have been acting from? The captain was in his early 50s. What generational cohort would he represent? How might this explain his choice?
If he was 50, he would be a late baby boomer. Students might reference parts of the text, such as the statement baby boomers "lived in a time of conspicuous consumption and are often thought of as the 'Me Generation.'" On the Hierarchy of Needs it would seem the captain was acting on the basic need for survival.

F. Write a paragraph regarding the gender difference in value development noted in the works of Kohlberg and Gilligan. Do you think this is a natural difference or one caused by the roles women have been assigned by our culture? Do you feel our cultural movement toward gender equality will erase the difference in the decision-making process?
The paragraph should include Gilligan's criticism on Kohlberg's research. She thought his research was gender biased because there were mostly boys in the sample. Students should also reference Gilligan's description of a separate value development pathway for females that results in different highest values for each sex—"legalistic equality" for males and "responsibility and compassion" for females.

G. Currently in the news there are discussions about "Sanctuary Cities," who refuse to implement federal laws in regard to illegal immigration, and the state of Colorado, which has legalized recreational marijuana. Neither of these two decisions is in agreement with federal law—what would the supremacy clause of the Constitution say should happen?
The Supremacy Clause declares federal laws to have jurisdictional authority over state laws in the event there is conflict between laws established by the two governing bodies.

H. Had O. J. Simpson been convicted criminally for the murder of his wife, he might have received the death penalty. However, he was not convicted criminally for the crime but was later found guilty under civil law in a second trial. What was the form of punishment given as a result of being found guilty under civil law?
Civil law requires a lesser standard of evidence and the penalty is usually monetary.

I. When a legislature creates an agency such as OSHA, what type of law is it? When the news agency writes rules and regulations to carry out its function, what is that form of law?
When a legislature creates an agency such as OSHA, it is considered statutory law. When the agency writes rules and regulations to carry out its function, it is considered administrative law.

J. Medicare is a popular although very expensive program that provides health care services for the elderly. It is commonly believed that stronger controls are needed to curb waste and fraud and abuse of the system. Medical fraud likely consumes 10 percent of Medicare's $500 billion annual budget. As an example, in the spring of 2015 the Department of Justice announced the arrest of 243 people and charged them with stealing $217 million from Medicare. Among the arrested were nearly 50 "doctors, nurses, pharmacy owners, and other medical professionals," who fraudulently billed the government for therapy sessions and prescriptions. One physician allegedly prescribed $23 million for medically unnecessary power wheelchairs; another is accused of handing out addictive narcotics in exchange for his patients' personal information to generate further false billings. Many of these patients

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became addicted, which forced them to continue the scheme. Although Medicare fraud accounts for only a tiny fraction of the budget, these health care providers arrested for ripping off the system were not only stealing from the tax payers, their arrests shape the way the public views our professions. Unlike problems of etiquette and ethics, cases like these cannot be seen as honest mistakes or differences of opinion. They are crimes.

a. Is this a matter of public or private law?

b. Explain whether you think this will be handled as a felony or misdemeanor case.

Criminal law (a form of public law) prohibits conduct deemed to be injurious to the public order and provides for punishment of those found to have engaged in prohibited practices. This would be at the level of a felony.

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