

Legal and Ethical Issues in Healthcare



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Outline:

- Importance for the healthcare professional to understand legal and ethical issues
- Laws vs ethics
- Theoretical base of ethical decisions and ethical principles
- Ethics in healthcare management (Examples from Jordan).
- Laws

**Importance
for the
healthcare
professional
to
understand
legal and
ethical issues**



**1. Knowledge of
legal
responsibilities**



**2. Limitations of
practice**



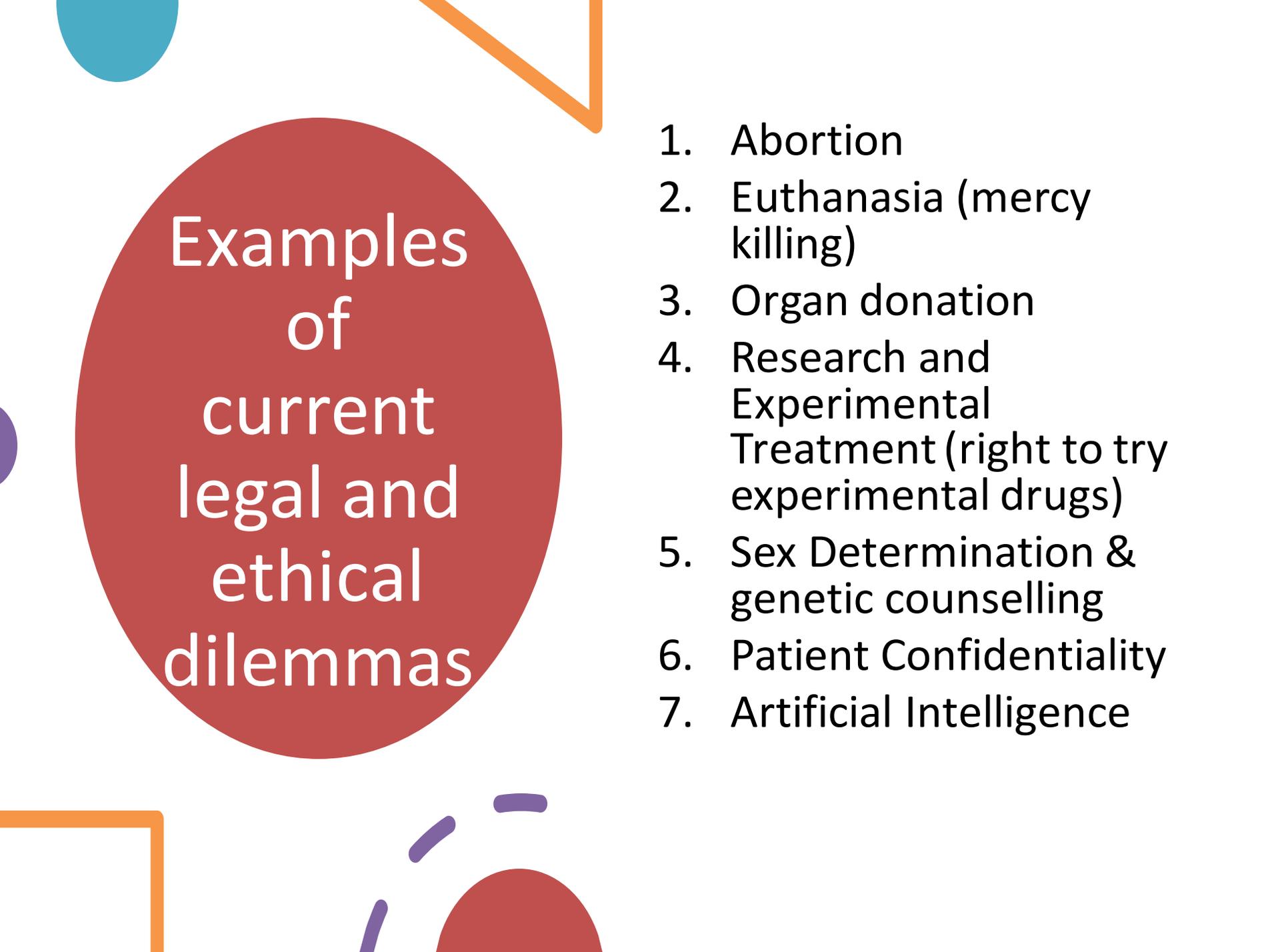
**3. Implications of
their actions**

**Importance
for the
healthcare
professional
to
understand
legal and
ethical
issues**

- 4. Protection of**
 - a. Healthcare professionals
 - b. Patients
 - c. Co-workers
 - d. Facility

**Importance
for the
healthcare
professional
to
understand
legal and
ethical
issues**

- 5. Ethical behavior ensures**
 - a. Quality patient care
 - b. Positive work relationships
 - c. Well-managed workplace



Examples of current legal and ethical dilemmas

1. Abortion
2. Euthanasia (mercy killing)
3. Organ donation
4. Research and Experimental Treatment (right to try experimental drugs)
5. Sex Determination & genetic counselling
6. Patient Confidentiality
7. Artificial Intelligence

Medical Law and Ethics

Law

A **law** is a rule of conduct or action.

Governments enact laws to maintain order and public safety.

Criminal and civil laws apply to health care practitioners.



Ethics

Ethics is a standard of behavior.

Moral values serve as the basis for ethical conduct.

Family, culture, and society help form individual's moral values.

Ethical concepts

- **Ethics:** Standards of behavior developed as a result of your moral values
- The ability to distinguish right from wrong
Involves a commitment to do what is right, good, and proper
- Role of HA: Making decision of the right behaviour! Difficult in some cases!

Theoretical base of ethical decisions

1. Deontological decisions (*Deon = duty*):

- Based on a duty or moral obligation motivated by oath or other circumstance.
- Considers that it is the professional's duty to do everything possible for the patient, *regardless* of the possible outcomes.
- Actions determined by rightness or wrongness (virtue ethics)



Theoretical base of ethical decisions

2. Teleological decisions (Telos = goal/end):

- Based on the considerations for the outcome of the action
- “The end justifies the means.”
- Actions will vary depending on the situation (situational ethics)
- **The principle of *utility***, which states that an act must result in the greatest amount of good for the greatest number of people involved in a situation.
- Views the consequences of the action as valuable as the ability to perform the procedure.



Theoretical base of ethical decisions

Criticism

- **Deontology**

- Values are not universally shared
- Do not consequences matter?

- **Teleology**

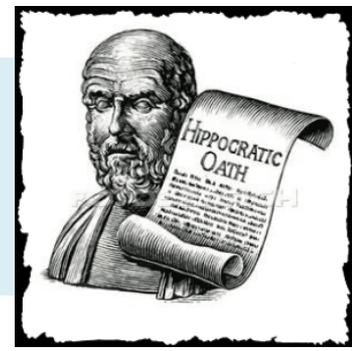
- Greatest good for the greatest number does not protect minority rights
- Not always possible to predict consequences accurately
- Your values may conflict with the action needed

Ethical Principles

1. Autonomy: The state of *being self-governing* or essentially respecting an *individual's right* to make decisions for themselves. It is more than a patient's constitutional right to refuse treatment.

- Includes respect for the patients' privacy and confidentiality.
- It includes each staff member's right to decide what is the right thing for him or her to do.
- Needs to provide enough information for them to make informed choices.
- Truth telling.
- Protection of persons with diminished or impaired autonomy.

Ethical Principles



2. Non-maleficence: The *absence of harm* or as it is attributed to the physician's oath to "do no harm." Maleficence is an action that is considered harmful or evil.

خريجو الطب في جامعة مؤتة يؤدون القسم الطبي (صور)

"Primum non nocere"
First, do no harm!
Hippocrates



Ethical principles

3. Beneficence: Beneficence refers to the state of *producing good acts*.

Acting always in the patients' best interest to *maximise benefits and minimise harm*.

This is affected by one's personal definition of what is "good."

However, there are general aspects of this principle that are common to most cultures and religions.

Ethical principles

4. Justice: Society as a whole believes the principle of justice means that *all people are treated fairly and equally.*

- It also means:
 - Duty to help others in serious need
 - The right to health care is a basic component of a just society (social justice).

Ethical principles

5. *Veracity*, the obligation to tell the truth.



6. *Fidelity*, the duty to do what one has promised.



Organizational ethics

- **Organizational ethics** is an emerging area in health care management.
- Health care organizations have focussed on the ethical issues faced by clinicians in the direct delivery of clinical care (i.e. clinical ethics) or by researchers in the conduct of clinical research (i.e. research ethics).
- Organizational ethics is more concerned with the ethical issues faced by managers and board members and the ethical consequences of organizational decisions and practices on patients, staff, and the community.

What organizational ethics issues are health care administrators facing?

1. Resource allocation
2. Business development
3. Disagreement over treatment decisions
4. Access to care for the uninsured
5. Workplace ethics

Unethical practices (Literature from Jordan)

- **Examples of unethical practices reported by studies done in Jordan. Clinicians and Administrators highlighted the following concerns:**
 - 1. Hiring of unqualified workers to care for patients with complex problems.
 - 2. The request for commission and “split-fees”
 - 3. Unethical practice by families.
 - 4. providing unnecessary services
 - 5. Health professionals in private hospitals are obligated to their patients, they compromise their professional standards to please the owners.
 - 6. Private hospitals consider the cost of medical care and make decisions on behalf of patients; avoid taking care of financially-uncapable patients; admit the financially capable patients; and welcome short-term illnesses for profit.
 - 7. The huge number of patients affects the quality of ethical decisions.
 - 8. In the paediatrics department, no procedure can be performed without the consent of the father and there is huge ignorance of the mother’s role.
 - 9. The absence of comprehensive and clear strategies that health and medical foundations can rely on.

Ajlouni, M. T., Dawani, H. and Diab, S. M. (2015) ‘Home Health Care (HHC) Managers Perceptions About Challenges and Obstacles that Hinder HHC Services in Jordan’, *Global Journal of Health Science*, 7(4), pp. 121–129. doi: 10.5539/gjhs.v7n4p121.

Oun, S. S. Al and Smadi, Z. (2011) ‘Healthcare commercialisation in Jordan’s private hospitals: ethics versus profit’, *International Journal of Behavioural and Healthcare Research*, 2(4), p. 362. doi: 10.1504/ijbhr.2011.043417.

Obeidat, A., Komesaroff, P.A. The struggle for clinical ethics in Jordanian Hospitals. *Bioethical Inquiry* 16, 309–321 (2019).

<https://doi.org/10.1007/s11673-019-09928-y>

Legal concepts

- Law means body of rules to guide human action.
- Law is a system of rights & obligations which the state enforces.
- Law is the body of principles recognised by the state & the administration of justice.

Laws

1. Public (Criminal) Law: Protect the public as a whole from the harmful acts of others. Wrongs against a person, property or society.

- **Felonies** جنائي – carry a punishment of death or imprisonment in a state or federal prison. Examples: murder, rape, robbery, tax evasion, practicing medicine w/o license, misuse of narcotics, theft.
- **Misdemeanors** جنحة – less serious offenses that carry a punishment of fines or imprisonment in jail for up to a year.

2. Civil (Private) Laws: Concerns relationships between individuals and the protection of a person's rights. Generally carry a financial damage. Healthcare employees are most frequently involved in cases of civil law.

Laws

- Includes a general category of laws known as **torts** **الاضرار**
 - Torts are either:
 - **Intentional (willful)**
 - **Unintentional (accidental)**

Intentional Torts

Health care workers (Administrators) are required to report any signs or symptoms of intentional torts.

Assault

To cause another person to feel threatened.

Invasion of privacy

The intrusion into the personal life of another. Public disclosure of private information. Inappropriate exposure. Violating confidentiality.

Defamation of Character

Damaging a person's reputation by making a public statement. تشهير

Battery

An action that causes bodily harm to another. Even touching without permission (consent).

Fraud

intentional misrepresentation that may cause harm, loss, or collection of monies not legitimately due.

False Imprisonment

Intentional, unlawful restraint or confinement of a person.

Unintentional Torts

- ❑ Acts that are committed with no intent to cause harm but are done with a disregard for the consequences.
- ❑ The term *negligence* is used to describe such actions when health care practitioners fail to exercise ordinary care resulting in patient injury.
- ❑ *Malpractice* is the negligent delivery of professional services.

Claims

- **Malpractice claims** are lawsuits by a patient against a physician for errors in diagnosis or treatment.
- **Negligence cases** are those in which a person believes a medical professional's actions, or lack thereof, caused harm to the patient.

- **Examples of Negligence:**
 - Abandonment
 - Delayed treatment
- **Legal Terms used to classify Negligence**
 - **Malfeasance** (unlawful act or misconduct)
 - **Misfeasance** (lawful act done incorrectly)
 - **Nonfeasance** (failure to perform an act that is one's required duty or that is required by law)

The 4 Ds of Negligence

D	amages	Patients must prove that they suffered injury.
	erelict	Patients must show that the physician failed to comply with the standards of the profession.
	uty	Patients must show that a physician-patient relationship existed.
	irect Cause	Patients must show that any damages were a direct cause of a physician's <i>breach of duty</i> .

Patients must be able to prove **all 4 Ds** in order to move forward with a malpractice suit.

Contracts

A **contract** is a voluntary agreement between two parties in which specific promises are made for a consideration.

4 Elements of a Contract

Agreement



Consideration

Contractual Capacity (competency)

Legal Subject Matter

Contracts

Types of Contracts

- **Expressed Contracts**

- Clearly stated in written or spoken words
- A payment contract is an example

- **Implied Contracts**

- Actions or conduct of the parties, rather than words, create the contract
- Examples: A patient rolling up his/her sleeve to receive an injection, A patient filling in a questionnaire.

Other legal health documents

Living Wills

(Advance Directives)

A legal document stating types of treatment the patient does and does not want in an event of terminal illness, unconsciousness, or comatose state.

Patients with living wills are asked to name someone that will make decisions on their behalf (***durable power of attorney***) if they are unable to do so.

A legal document that states a person's wish to donate one or more organs as a donation. Even total body anatomical donations are made.

Uniform Donor Card

A case from Jordan

- September 2017.
- A new born with malformations needed operation
- The operation required the father's consent.
- The father refused to give consent because of issues with the mother.
- Operations could not be done (administrators decision)
- The newborn passed away.

ولفت جهشان أيضا إلى المادة 62 من قانون العقوبات والتي تنص على أنه "لا يعد الفعل الذي يجيزه القانون جريمة. ويجيز القانون العمليات الجراحية والعلاجات الطبية المنطبقة على أصول الفن، شرط أن تجرى برضا العليل أو رضا ممثليه الشرعيين أو في حالات الضرورة الماسة".

وحول تعريف مصطلح "حالات الضرورة الماسة"، يوضح جهشان أنه يعني "إذا لم يتدخل الطبيب لحظيا تحصل الوفاة" مثل النزف الدموي الحاد بسبب طعن سكين بالصدر أو حادث سير أو تمزق الرحم إثر ولادة منزلية متعسرة إلخ...".

وبحسب جهشان، فإن "حالات الضرورة الماسة" غير متوفرة في حالة الرضيع (قيس)، لأن الخطر الكامن "المتوقع خلال أيام وليس خلال اللحظة".

وأكد أنه في حالة (قيس) كانت موافقة ولي الأمر حتمية لأنها تتعلق بنقل الطفل إلى مستشفى آخر تتوفر لديه إمكانيات إجراء العملية.

لكنه أضاف مستدركا، بالقول "كان من المفروض أن تقوم جهة حكومية بذلك بالنيابة عن ولي الأمر (الأب) الذي تخلى عن ابنه"، بحيث يكون لهذه الجهة مرجعية قانونية بالحماية الاجتماعية للأطفال"، والمقصود هنا "وزارة التنمية الاجتماعية" بتطبيق المادة 31 من قانون الأحداث التي نص البند التاسع منها على "يعتبر محتاجا إلى الحماية أو الرعاية من كان معرضاً لخطر جسيم إذا بقي في أسرته".

ولفت جهشان إلى أن قانون الأحداث يسمح بإجراء الحماية عاجلا وعلى مدار الساعة عن طريق مكاتب الخدمة الاجتماعية في إدارة حماية الأسرة أو مديريات التنمية الاجتماعية، "وعقب هذا الإجراء تصبح وزارة التنمية الاجتماعية المسؤولة المباشرة عن إجراءات علاج الطفل وتقديم الرعاية الطبية له".

ودعا جهشان إلى التعامل مع حالات "الإهمال بتقديم الرعاية الطبية" للطفل، عن طريق إيجاد مرجعية تشاركية للقطاعات الطبية والاجتماعية والقانونية، لتحديد جذور المشكلة، بالاستناد لمبادئ المصلحة الفضلى للطفل.

RIGHTS

A patient has the right to:

1. Considerate and respectful care
2. Obtain complete, current information concerning diagnosis, treatment, and prognosis
3. Receive information necessary to give informed consent prior to the start of any procedure or treatment
4. Refuse treatment to the extent permitted under law
5. Privacy concerning a medical-care program
6. Confidential treatment of all communications and records
7. Reasonable response to a request for services
8. Obtain information regarding any relationship of the hospital to other health care and educational institutions
9. Be advised of and have the right to refuse to participate in any research project
10. Expect reasonable continuity of care
11. Examine bills and receive an explanation of all charges
12. Be informed of any hospital rules or regulations

Responsibilities

- **Patient Responsibilities**

The collaborative nature of health care requires that patients and/or their families participate in their care.

1. Provide information about past medical history.
2. Participate in decision-making.
3. Ask for information and/or clarification if they do not fully understand.
4. Follow the physician's order for treatment
5. Inform providers if they anticipate problems in following prescribed treatment.

• THANK YOU