



HEALTH CARE ETHICS

Critical Issues for the 21st Century

FOURTH EDITION

Eileen E. Morrison and Beth Furlong



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Edited by

Eileen E. Morrison, EdD, MPH, LPC, CHES

Professor, School of Health Administration
Texas State University, San Marcos
San Marcos, Texas

Beth Furlong, PhD, JD, RN

Associate Professor Emerita, Center for Health Policy and Ethics
Creighton University
Omaha, Nebraska



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World Headquarters

Jones & Bartlett Learning
5 Wall Street
Burlington, MA 01803
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info@jblearning.com
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Writing is always a collaboration. While writers have unique ways of seeing the world, they are influenced by their experiences, research, and education.

Therefore, I dedicate this edition of Health Care Ethics: Critical Issues for the 21st Century to all those who contributed to chapters in this work and those who supported me through its creation.

First, there is my immediate family, Grant, Kate, Emery Aidan, and Morigan Leigh, who listened and encouraged. There are also colleagues, relatives, and friends who provided feedback and a lift of spirit when I needed it. Finally, there is my publisher, Michael Brown; my coeditor, Beth Furlong; and my Jones & Bartlett Learning editor, Danielle Bessette. They each added much to the quality and integrity of this work.

–Eileen E. Morrison

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–Beth Furlong

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Contributors

Omolola Adepaju, PhD, MPH

Assistant Professor
School of Health Administration
College of Health Professions
Texas State University
San Marcos, TX

Karen J. Bawel-Brinkley, RN, PhD

Professor
School of Nursing
San Jose State University
San Jose, CA

Sidney Callahan, PhD

Distinguished Scholar
The Hastings Center
Garrison, NY

Kimberly A. Contreras, BSN, MSN, FNP, ACHPN

Director of Palliative Care
St. Vincent Anderson Regional Hospital
Anderson, IN

Dexter R. Freeman, DSW, LCSW

Director
Master of Social Work Program
Army Medical Department Center & School
Army-Fayetteville State University
Houston, TX

Janet Gardner-Ray, EdD

CEO
Country Home Healthcare, Inc.
Charlottesville, IN

Glenn C. Graber

Professor Emeritus
Department of Philosophy
The University of Tennessee
Knoxville, TN

Nicholas King, PhD

Assistant Professor
Biomedical Ethics Unit
McGill University Faculty of Medicine
Montreal, QC, Canada

**Scott Kruse, MBA, MSIT, MHA, PhD, FACHE, CPHIMS,
CSSGB, Security+, MCSE**

Assistant Professor and Graduate Programs
Director
School of Health Administration
College of Health Professions
Texas State University
San Marcos, TX

Christian Lieneck, PhD, FACMPE, FACHE, FAHM

Associate Professor
School of Health Administration
College of Health Professions
Texas State University
San Marcos, TX

Richard L. O'Brien, MD

University Professor Emeritus
Creighton University
Omaha, NB

Robert W. Sandstrom, PT, PhD

Professor and Faculty Associate
School of Pharmacy and Health Professions
Creighton University
Omaha, NB

Jim Summers, PhD

Professor Emeritus
School of Health Administration
College of Health Professions
Texas State University
San Marcos, TX

Carole Warshaw, MD

Director
National Center on Domestic Violence,
Trauma & Mental Health
Chicago, IL

Michael P. West, EdD, FACHE

Executive Director
University of Texas Arlington-Fort Worth
Campus
Fort Worth, TX

About the Editors

Eileen E. Morrison is a professor in the School of Health Administration at Texas State University, San Marcos, Texas, USA. Her educational background includes a doctorate from Vanderbilt University, Nashville, Tennessee, USA, and a master of public health degree from the University of Tennessee, Knoxville, Tennessee, USA. In addition, she holds an associate degree in logotherapy and a clinical degree in dental hygiene.

Dr. Morrison has taught graduate and undergraduate courses in ethics and provided workshops to professionals, including those in medicine, nursing, clinical laboratory services, health information, and dentistry. She has also authored articles and chapters on ethics for a variety of publications. In addition, she is the author of *Ethics in Health Administration:*

A Practical Approach for Decision Makers (3rd ed.), published by Jones & Bartlett Learning, and a children's book called *The Adventures of Emery the Candy Man*.

Beth Furlong is an associate professor emerita and adjunct faculty in the Center for Health Policy and Ethics at Creighton University, Omaha, Nebraska, USA. Her academic background includes a diploma, BSN, and MS in nursing, an MA and PhD in political science, and a JD. Dr. Furlong has taught graduate ethics courses and provided continuing education unit (CEU) workshops for nurses on ethics issues. Her publications are in the areas of health policy, vulnerable populations, and ethics.

Preface

The history of health care is filled with change. For example, providers and systems have embraced changes that lead to cures for disease, new ways to care for patients, regulation, and funding. However, during the creation of this fourth edition of *Health Care Ethics: Critical Issues for the 21st Century*, the healthcare system has been in change overload. It must address changes from technology, the emphasis on patient-centered care, and fiscal challenges. It is also trying to address the truly unknown. For example, legislators continue to consider the appeal of the Patient Protection and Affordable Care Act of 2010, while others are debating its repair. Since healthcare funding, programs, and regulations are linked to

this legislation, the healthcare system will continue to engage in multilayers of contingency planning for survival and service.

Readers will also notice changes in this edition as its authors consider the implications of change with respect to their content areas. However, the fourth edition still reflects the organizational model that was used in previous editions. Therefore, the Greek temple image remains its organizational framework as a model for addressing ethics issues in health care (see Figure FM.1).

Like all buildings, this temple needs a firm foundation and ethics theory and principles serve this purpose. It also makes sense if one is going to be able to analyze the ethical

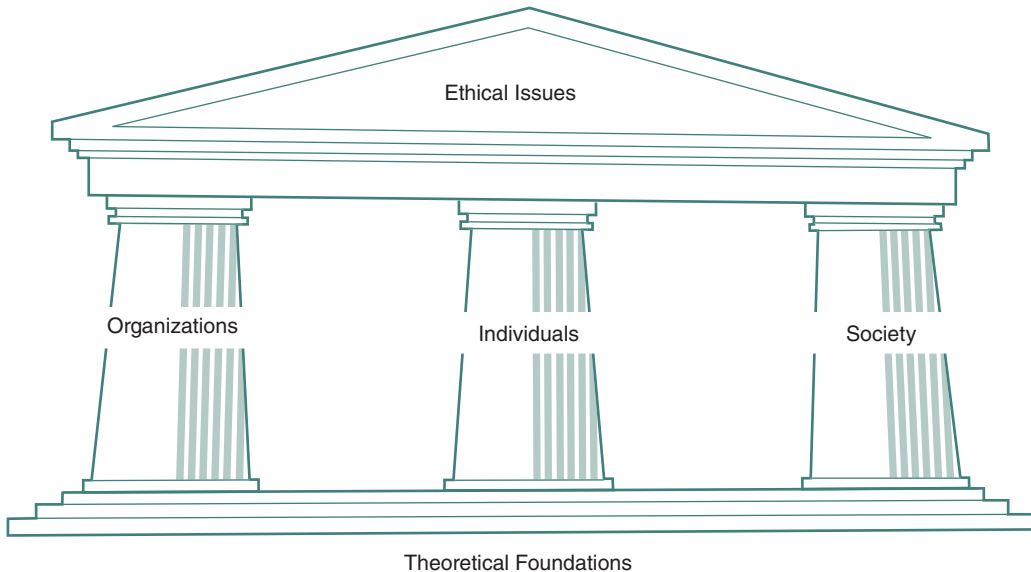


FIGURE FM.1 Healthcare Ethics Organizational Model.

implications of an issue. An appropriate analogy would be that a surgeon cannot be successful unless he or she understands human anatomy. Likewise, a student who wishes to analyze the ethics of a particular issue in health care must have knowledge of theories and principles of ethics. Dr. Summers provides a strong foundation for applying ethics in the chapters “Theory of Healthcare Ethics” and “Principles of Healthcare Ethics” of this edition.

The three main pillars of the temple model illustrate sections to organize the ethics issues faced in healthcare situations. Note that the center pillar represents individuals who are called patients in the healthcare system. This is because the healthcare system would not function unless there are patients who need care. The remaining two pillars represent issues relevant to healthcare organizations and society and reflect challenges to the future of healthcare organizations and their ability to care for patients.

Given the current environment in the healthcare system, the potential for chapters and their content was extensive. The challenge for the writers was to select example of topics that represent ethics challenges for the future and avoid a non-readable tome. While it was not possible to address each potential issue, topics were updated and expanded within a 16-chapter format. For example, under the “Critical Issues for Individuals” section, attention was given to the most vulnerable

patients. Therefore, there are chapters related to the moral status of embryos and infants and reproductive technology. To address patients at the other end of the life continuum, major revisions were made to the discussion of aging patients and the ethics of their care. The other pillars of healthcare organizations and society also include major revisions of existing chapters. New chapters that reflect current ethics issues in today’s environment have also been added. For example, there are chapters on the ethics of health information management and the ethics of epidemics.

Health care is truly in the epoch of change, but ethics will always matter. Even experts in ethics and health care cannot predict the future of health care with absolute certainty. However, this does not mean that ethics should not be part of making decisions amid a challenging environment. In fact, the ethics of what we do maybe even more important because health care is always held to a higher standard, even when it must meet unknown challenges.

However, Morrison and Furlong are optimistic that students will continue to ask themselves, “Is this the best ethical decision to make?” and “How do I know that this is the best?” as they progress through their careers. Patients, healthcare organizations, and the community rely on their answers so that health care can be patient-centered, cost-effective, and fiscally responsible. What a challenging combination to face in the epoch of change!



PART I

Foundations in Theory

Change is not new, but it appears to be the theme of the current era of health care. The Patient Protection and Affordable Care Act (ACA 2010) became a law in 2010 and created major changes in the health care system. Regardless of the outcome of its status, healthcare organizations will be expected to provide patient-centered care that complies with legislation, uses qualified and compassionate professionals, and is conducted with fiscal responsibility. In addition, the foundation of health care must also be centered in ethical policies and action.

To address necessary ethics-based decisions amid an environment of consistent change, you must have a foundation in ethics theory and principles. While some think that ethics is just about “doing the right thing,” in an epoch of change, one must justify decisions. In addition, the professionals employed in healthcare settings have ethics guidelines and duties encoded in their practices. Of course, patients expect healthcare providers and facilities to be concerned about their best interests, which include ethical behavior and practices. How can you justify your decisions in the practice or administration with an ethics rationale? The first section of this new edition of *Health Care Ethics: Critical Issues for the 21st Century* begins with two chapters that will provide this foundation.

The foundation in ethics theory and principles provided in the chapters “Theory of Healthcare Ethics” and “Principles of Healthcare Ethics” give you practical tools for analyzing ethics-related issues. In the chapter “Theory of Healthcare Ethics,” Dr. Summers presents a well-researched overview of the theories commonly used in healthcare ethics. He includes a model that illustrates the position of ethics in philosophy. Following that, he discusses theories that indirectly relate to healthcare, such as authority-based ethics, egoism, and ethical relativism. Then, he provides a thorough analysis of theories that are most commonly applied in healthcare practice. These include natural law, deontology, utilitarianism, and virtue ethics. In his discussions, he uses several examples to improve understanding concerning the application of these theories in professional practice.

In the chapter “Principles of Healthcare Ethics,” Summers continues his scholarly discussion of ethics by presenting the most commonly used ethics principles in health care. These principles are nonmaleficence, beneficence, autonomy, and justice. Because justice is the most complex of the four, he provides additional definitions of types of justice and includes information for making decisions about justice in healthcare practice. At the end of the

chapter, Summers also presents a decision-making model called the *reflective equilibrium model*. This model demonstrates the application of ethics theory and principles in the practice of making clinical and business decisions.

You can apply the information given in these two chapters to your understanding of the remaining chapters in this edition. You will find that having a solid grounding in theory and principles will allow you to have greater clarity in making ethics-based decisions in your own area of health care. Certainly, as Summers suggests, principles and theory should be an important part of your ethical decision-making throughout your practice of health care.



CHAPTER 1

Theory of Healthcare Ethics

Jim Summers

► Introduction

In this chapter, Dr. Summers provides a scholarly review of the main theories that apply to the ethics of healthcare situations. Why is knowledge of theory important to busy healthcare professionals? In this time of great change and challenge within the healthcare system, there is a need to apply ethics in all types of decision-making. To make this application successfully, one needs a foundation in ethics, in addition to data and evidence-based management tools, including those offered by advanced technologies. An understanding of ethics theory gives you the ability to make and defend ethics-based decisions that support both fiscal responsibilities and patient-centered care. While these kinds of decisions are difficult, without a foundation in ethics theory, they might prove impossible. Therefore, this chapter and the one that follows, on the principles of ethics, will serve as your ethics theory toolbox.

► Ethics and Health Care

From the earliest days of philosophy in ancient Greece, people have sought to apply reason in determining the right course of action for a particular situation and in explaining why it is right. Such discourse is the topic of normative ethics. In the 21st century, issues resulting from technological advances in medicine will provide challenges that will necessitate reasoning about the right course of action. In addition, healthcare resource allocations will become more vexing as new diseases threaten, global climate change continues apace, and ever more people around the world find their lives increasingly desperate. In the Patient Protection and Affordable Care Act of 2010 (ACA 2010) era, managers of healthcare organizations will find the resources to carry out their charge increasingly constrained by multiple levels of change, differences in payment structures, and labor shortages. A foundation in ethics theory and ethical decision-making tools can assist healthcare leaders in assessing the choices that they must make in these vexing circumstances.

With the current emphasis on patient-centered care, knowledge of ethics can also be valuable when working with healthcare professionals, patients and their families, and policy makers. In this sense, ethical understanding, particularly of alternative views, becomes a form of cultural

competence.¹ However, this chapter is limited to a discussion of normative ethics and metaethics. *Normative ethics* is the study of what is right and wrong; *metaethics* is the study of ethical concepts. Normative ethics examines ethics theories and their application to various disciplines, such as health care. In health care, ethical concepts derived from normative theories, such as autonomy, beneficence, justice, and nonmaleficence, often guide decision-making.²

As one might suspect, when normative ethics seeks to determine the moral views or rules that are appropriate or correct and to explain why they are correct, major disagreements in interpretation often result. These disagreements influence the application of views in many areas of moral inquiry, including health care, business, warfare, environmental protection, sports, and engineering. **FIGURE 1.1** lists the most common normative ethics theories to be considered in this chapter. Although no single theory has generated consensus in the ethics community, there is no cause for despair.

The best way to interpret these various ethics theories, some of which overlap, is to use the analogy of a toolbox.

Each of these theories provides tools that can assist with decision-making. One advantage of the toolbox approach is that you will not find it necessary to choose one ethics theory over another for all situations. You can choose the best theory for a task, according to the requirements of your role and the circumstances. Trained philosophers will find flaws with this approach, but the practical advantages will suffice to overcome these critiques.

All of the theories presented have a value in the toolbox, although like any tools, some are more valuable than others. For example, I can argue that virtue ethics has much value for healthcare applications. Before explaining why this chapter has chosen to present particular theories, a quick overview is in order.

- *Authority-based theories* can be faith-based, such as Christian, Muslim, Jewish, Hindu, or Buddhist ethics. They can also be purely ideological, such as those based on the writings of Karl Marx (1818–1883) or on capitalism. Essentially, authority-based theories determine the right thing to do on the basis of what an authority has said. In some cultures, the authority is simply “that is what the elders taught me” or “that is what we have always done.” The job of the ethicist is to determine what that authority would decree for the situation at hand.
- *Natural law theory*, as considered here, uses the tradition of St. Thomas Aquinas (1224–1274) as the starting point of interpretation. The key idea behind natural law is that nature has order both rationally and in accordance with God’s wisdom or providence. The right thing to do is that which is in accord with the providentially ordered nature of the world. In health care, natural law theories are important because of the influence of the Roman Catholic Church and the extent to which the Church draws on Aquinas as an early writer in the field of ethics.

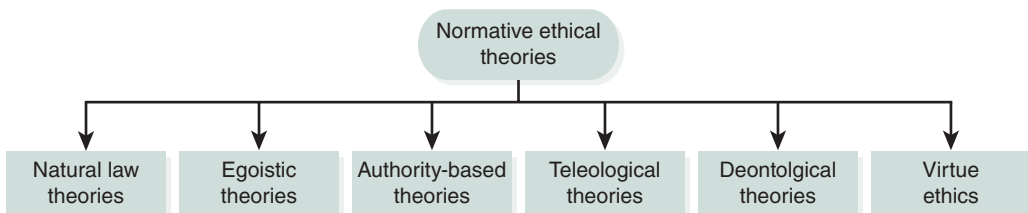


FIGURE 1.1 Normative ethics theories.

Several important debates, such as those surrounding abortion, euthanasia, and social justice, draw on concepts with roots in natural law theory.

- *Teleological theories* consider the ethics of a decision to be dependent on the consequences of the action. Thus, these theories are called *consequentialism*. The basic idea is to maximize the good of a situation. The originators of one such theory, Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873), called this maximization of good *utility*; thus, the name of their theory is *utilitarianism*.
- *Deontological theories* find their origins in the work of Immanuel Kant (1724–1804). The term *deon* is from Greek and means “duty.” Thus, deontology could be called the science of determining our duties. Most authors place Kant in extreme opposition to consequentialism, because he argued that the consequences themselves are not relevant in determining what is right. Thus, doing the right thing might not always lead to an increase in the good.³ More contemporary deontologists, including John Rawls (1921–2007) and Robert Nozick (1938–2002), reached anti-theoretical conclusions about what our duties might be.
- *Virtue ethics* has the longest tenure among all of these views, except for authority-based theories. Its roots can be traced to Plato (427–347 BCE) and Aristotle (384–322 BCE). The key idea behind virtue ethics is to find the proper end for humans and then to seek that end. In this sense, people seek their perfection or excellence. Virtue ethics comes into play as people seek to live virtuous lives, developing their potential for excellence to the best of their abilities. Thus, virtue ethics addresses issues any thinking person should consider, such as “What sort of person should I be?” and “How should we live together?” Virtue ethics can contribute to several of the other theories in

a positive way, particularly in the understanding of professional ethics and in the training necessary to produce ethical professionals.

- *Egoistic theories* argue that what is right is that which maximizes a person’s self-interest. Such theories are of considerable interest in contemporary society because of their relationship to capitalism. However, the ethical approach of all healthcare professions is to put the interests of the patient above the practitioner’s personal interests. Even when patients are not directly involved, such as with healthcare managers, the role is a *fiduciary relationship*, meaning that patients can trust that their interests come before those of the practitioners. Egoistic theories are at odds with the value systems of nearly all healthcare practitioners.

► Ethical Relativism

Before exploring any of these ethics theory tools in depth, it is first necessary to confront the relativist argument, which denies that ethics really means anything. Those who deal with ethical issues, whether in everyday life or in practice, will inevitably hear the phrase “It is all relative.” Given that the purpose of this text is to help healthcare professionals deal with real-world ethical issues, it is important to determine what this phrase means and what the appropriate course of action is. Philosophers have not developed a satisfactory ethics theory that covers every situation. In fact, they are expert at finding flaws in any theory; thus, no theory will be infallible. In addition, different cultures and different groups have varying opinions about what is right and wrong and how to behave in certain situations.⁴

Does the fact that people’s views differ mean that any view is acceptable? This appears to be the meaning of such statements as “It is all relative.” In that sense, deciding that something is right or wrong, or good or

bad, has no more significance than choices of style or culinary preferences. Thus, ethical decision-making and practice is a matter of aesthetics or preferences, with no foundation on which to ground it. This view makes a normative claim that there is no real right, wrong, good, or bad.

One could equally say that there is no truth in science, because scientists disagree about the facts and can prove nothing, only falsify it by experiment.⁵ However, the intrinsic lack of final certainty in the empirical sciences does not render them simply subjective. As one commentator on the rapid changes in scientific knowledge put it, these changes reveal “the extraordinary intellectual and imaginative yields that a self-critical, self-evaluating, self-testing, experimental search for understanding can generate over time.”⁶ Why should we expect any less of ethics?

Sometimes, there is a claim made that because there are many perspectives, there cannot be a universal truth about ethics. Therefore, we are essentially on our own. Hugh LaFollette argued that the lack of an agreed-upon standard or the inability to generalize an ethics theory does not render ethical reasoning valueless.⁷ Rather, the purpose of ethics theories is to help people decide the right course of action when faced with troubling decisions. Some ethics theories work better in some situations than in others. The theories themselves provide standards, akin to grammar and spelling rules, as to making decisions and supporting them with a particular theory.

Thus, even though ethics might not produce the final answers, we still must make decisions. Ethics theories and principles are tools to help us in that necessary endeavor. The lack of absoluteness in ethics theory also does not eliminate rationality. Often, we simply must apply our rationality without knowing whether we are correct. The better our understanding is of ethics, the more likely it is that the decision we reach will be appropriate. The ability to reach the appropriate decision is especially important in the field of health care,

where our decisions affect the health, well-being, and even the lives of our patients.

► Ethics Theories

Let us begin to examine the tools in the toolbox, not only knowing that we are fallible, but also knowing that we are rational.⁸ The first tool has little application to healthcare ethics; however, it is widely believed and therefore needs to be addressed. It involves the idea of egoism in ethics.

Egoism

Egoism operates from the premise that people either should (a normative claim) seek to advance solely their self-interests or (psychologically) this is actually what people do. The normative version, *ethical egoism*, sets as its goal the benefit, pleasure, or greatest good of the self alone.⁹ In modern times, the writings of Ayn Rand¹⁰ and her theory of *objectivism*¹¹ have popularized the idea of ethical egoism. For example, Rand said, “The pursuit of his own rational self-interest and of his own happiness is the highest moral purpose of his life.”¹² This is a normative statement and a reasonable description of ethical egoism.

Although this theory has importance to the larger study of ethics, it is less important in healthcare ethics because the healing ethic itself requires a sublimation of self-interests to those of the patient. A healthcare professional who fails to do this is essentially not a healthcare professional. No codes of ethics in the healthcare professions declare the interests of the person in the professional role to be superior to those of the patient.

Healthcare professionals who do not understand the need to sublimate their own interests to those of the patient or their role have not yet become true healthcare professionals. An understanding of the need to sublimate one’s own interests for the sake of the patient is essential in providing patient-centered care,

which has become a key emphasis in health-care delivery.

Although occasionally healthcare professionals do not put the patient's best interests first, it is not a goal of the profession to put one's self ahead of the client or patient. A realist might complain, "Yet this is the way most people behave!" Although that may be true, the fact that many people engage in a particular kind of behavior does not make it into an ethics theory. Ethical egoism constitutes more of an ethical problem than anything else. Most people who think of an ethics theory consider it something that is binding on people. However, ethical egoism is not binding on anyone else beyond self-interest. It is not binding on all (i.e., normative) and, thus, does not meet the criteria of a true ethics theory but is simply a description of human behavior. Indeed, to care for someone else above your self-interest, as required by codes of ethics in health care, is antithetical to the human behavior of truly pursuing only your self-interest. Later, we shall see how Rawls uses the idea that people pursue their self-interests to develop a theory of a just society in which solidarity seems to be the outcome, as opposed to the extreme individualism ethical egoism typically suggests.

Authority-Based Ethics Theories

Most teaching of ethics ignores religion-based ethics theories, much to the chagrin of those with deep religious convictions. A major problem with these theories is determining which authority is the correct one. Authority-based approaches, whether based on a religion, the traditions or elders of a culture, or an ideology, such as communism or capitalism, have flaws relative to the criteria needed to qualify as a normative ethics theory. Each of the authority-based approaches, to be an ethics theory, must claim to be normative relative to everyone. Because many of these authority-based approaches conflict, there is no way to sort them out other than by an appeal to reason. Not only do we have the problem of sorting through the

ethical approaches, but also arguments inevitably arise concerning the religion itself and its truth claims. If two religions both claim to be inerrant, it is difficult to find a way to agree on which of the opposing inerrant authorities is correct.

In spite of the philosophical issues arising from the use of religion in healthcare ethics, it is important for healthcare providers to understand the role of religions and spirituality in healthcare delivery. For example, all religions provide explanations of the cause or the meaning of disease and suffering. Many theologies also encourage believers to take steps to remove or ameliorate causes of disease and suffering. Over the millennia, some of these religions have even formalized their positions by becoming involved with healthcare delivery by providing inpatient and hospital care.

In addition, patients often have religious views that help them understand and cope with their conditions. Understanding a person's faith can help the clinician and health administrator provide health care that is more patient-focused.¹³ For some patients, an ethical issue may arise if their faith or lack of faith is neither recognized nor respected. This failure to address or respect the faith needs of patients also conflicts with the tenets of patient-centered care.

Beyond direct patient care, a second reason to understand the authority-based philosophies common in the healthcare environment is their effect on healthcare policy. The role of authority-based ethical positions appears to be gaining importance in the 21st century. Effective working within the health policy arena, whether at the institutional, local, regional, state, federal, or international level, requires an understanding of the influence of the religious views of those involved in the debates and negotiations. This knowledge can only serve to strengthen your ability to reason with them. In other words, it is important to understand the "common" morality of those engaged in the debate. The greater the diversity in beliefs and reasoning, the more important the need

for understanding what those beliefs and reasoning might be.

Religion also plays an important role in the creation of healthcare policy, because religions have provided a multiplicity of philosophical answers to questions about the nature and truth of the world. They also provide guidance on that how we should act in the world. They explain what is right or wrong and why it is right or wrong. They also help people define their identities, roles in the world, and relationships to one another. In addition, religions help us understand the nature of the world and our place in it.

Thus, as a tool, understanding authority-based philosophical systems has value because it can help in the treatment of patients. It also increases your understanding regarding the positions of persons who may be involved in debates over healthcare issues, such as resource allocations, or clinical issues such as abortion. In addition, it is important to understand authority-based philosophical systems relative to yourself. As a healthcare professional, your role requires that you do not impose your religious views on patients. At the same time, it is not part of the role for you to accept the imposition of another's religious values, even those of a patient.

These complex issues relate to professional ethics and are not part of the scope of this chapter. However, it does seem incumbent on all healthcare professionals to evaluate their own faith and to recognize the extent to which they might impose it on others. From the earliest tradition of Hippocrates, the charge was to heal the illness and the patient. More recently, the Declaration of Geneva from the World Medical Association stated that members of the medical profession would agree to the following statement: "I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient."¹⁴ In addition, patient-centered care requires that healthcare professionals avoid judging patients

and treat them as individuals with a caring and concerned manner. Let us now turn our attention to the oldest non-authority-based ethics theory—virtue ethics.

Virtue Ethics

Virtue ethics traces its roots most especially to Aristotle (384–322 BCE). Aristotle sought to explain the highest good for humans. Bringing the potential of that good to actualization requires significant character development. This concept of character development falls into the area of virtue ethics because its goal is the development of those virtues in the person and the populace.

Aristotle's ethics derived from both his physics and his metaphysics. He viewed everything in existence as moving from potentiality to actuality. This is an organic view of the world, in the sense that an acorn seeks to become an oak tree. Thus, your full actuality is potentially within you. As your highest good, your potential actuality is already inherent because it is part of your nature; it only needs development, nurture, and perfecting. This idea is still part of the common morality.

Finding Our Highest Good

Just what did Aristotle conclude was our final cause or our highest good? The term Aristotle uses for this is *eudaimonia*. The typical translation is "happiness." However, this translation is inadequate, and many scholars have suggested enhancements. Many writers prefer to use the translation "flourishing." Because any organic entity can flourish, such as a cactus, so the term is not an adequate synonym.

The major complaint about translating *eudaimonia* as "happiness" is that our modern view of happiness would render it subjective. No one can know whether you are happy or you aren't; you are the final arbiter. Aristotle thought *eudaimonia* applied only to humans because it required rationality that goes beyond mere happiness. In addition, Aristotle's *eudaimonia*

includes a strong moral component that is lacking from our modern understanding of happiness. In this sense, “happiness” would necessarily include doing the right thing, that is, being virtuous. Others could readily judge whether you were living a virtuous or “happy” life by observing your actions.

For Aristotle, happiness is not a disposition, as in “he is a happy sort.” *Eudaimonia* is an activity. Indeed, children and other animals unable to engage self-consciously in rational and virtuous activities cannot yet be in the state translated as Aristotle’s “happy.”¹⁵ Because it is commonplace to describe children as being “happy,” this is clearly not an adequate translation. Given these translation problems, I shall use the term *eudaimonia* rather than its translations of “happiness” or “flourishing.” Essentially, you can understand *eudaimonia* best as a perfection of character nurtured by engaging in virtuous acts over a life of experience.

The most important element of *eudaimonia* is the consideration of what it takes to be a person of good character. Such a person seeks to develop excellence in himself or herself. Because Aristotle recognized the essential social and political nature of humans, developing individual excellence would also have to include consideration of how we should live together.

Developing a Professional as a Person of Character

Consider what it takes to develop a competent and ethical healthcare professional. The process involves a course of study at an accredited university taught by persons with credentials and experience in the field. It also includes various field experiences, such as clerkships, internships, and residencies or clinical experiences with patients. Part of the education includes coming to an understanding of what behaviors are appropriate for the role, which is the definition of *professional socialization*.

For all healthcare professions, the educational process includes a substantial dose of the healing ethic by specific instruction or by

observation of role models. The most fundamental idea behind this healing ethic teaches healthcare professionals to sublimate their self-interests to the needs of the patient. This education also includes recognition of the idea that the healing ethic means first doing no harm and second that whatever actions are done should provide a benefit.¹⁶

An Example of Professional Socialization: The Character of a Physician

The goal of professional education and socialization is to produce healthcare professionals of high character. Many professional ethics codes describe the character traits that define high character, or what could be called virtues.¹⁷ For example, the 2016 American Medical Association statement of the principles of medical ethics notes that the principles are “standards of conduct which define the essentials of honorable behavior for the physician.”¹⁸ Essentially, the principles define the appropriate character traits or virtues for a physician.

Relative to virtue ethics, these traits or virtues combine to create not only a good physician but also a person of good character. Like Aristotle’s person of virtue, engaging in the activities of *eudaimonia* produces practical wisdom. “Moral virtue comes about as a result of habit.”¹⁹ The virtues come into being in us because “we are adapted by nature to receive them, and they are made perfect by habit.”²⁰

Not only is practice required, but the moral component is essential, too. Good physicians are not merely technically competent; they are persons of good character. How do we know this? Their actions coalesce to reveal integrity in all levels of their practice. In addition, a physician or any other person of good character does not undertake to do what is right simply to appear ethical. In a modern sense, the properly socialized physicians have internalized the ethical expectations of their profession. To do the right thing is part of their identities.²¹