Medical Ethics and Law in Radiologic Technology

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After completing this article, the reader should be able to:

- Identify the ethical theorists whose work is the foundation for modern health care ethics and explain their models.
- Outline health care providers’ ethical responsibilities and patients’ rights.
- Discuss civil rights laws and how they protect health care workers.
- Explain in broad terms how the U.S. legal system works and describe common causes of action against health care professionals.
- Summarize what radiologic technologists must know about professionalism, including guidelines for appropriate use of social media.

Medical ethics is, in its simplest form, a set of principles that guides practitioners in making informed choices about the delivery of medical care. Often, the term medical ethics is used interchangeably with bioethics; however, these terms are not synonymous. Bioethics is the study of ethical issues emerging in new situations, or possibilities brought about by scientific discoveries in biology or medicine. Medical ethics is a system of moral principles that apply individual, professional, and societal values and judgment to the practice of medicine. The fundamental principle that guides the practice of medical ethics, our personal and professional sense of right and wrong, is the foundation on which we base each decision in our daily interactions.

Ethical Foundations

The foundation of a radiologic technologist’s professional identity is the ability to make appropriate decisions regarding the health care he or she provides patients. These decisions are ethical choices that are an informed judgment about the “right” way to accomplish something. With each ethical decision, the technologist lays the foundation for consistent moral and ethical professional behaviors. This is the fundamental concept of ethical maturity, which is based on personal values and morals.

Personal values are the basic principles an individual uses to determine what he or she believes to be right. They help people determine the difference between right and wrong, or good vs bad when evaluating actions, ideas, or relationships. Values include honesty, integrity, compassion, courage, honor, responsibility, respect, and fairness.

Morals are manners, customs, or generally accepted standards of good or right conduct that reflect our personal values framed within a larger, external system of beliefs. The external system
Making choices that are predicated on action. As a result of the idea that virtue—and being virtuous—requires action and choice, Aristotle advanced the concept of practical wisdom, or phronesis. Phronesis is founded on the premise that individuals should be stronger than their impulses. When faced with decisions, people should apply reasoning and explore choices. They should use their ability to think rationally, assess choices as good or bad, and choose the best option for each situation. In health care and medicine, this is particularly important. Radiologic technologists must continually ask themselves, “What would someone with similar training in a comparable situation be expected to do?” This question is the fundamental basis for professional standards of care.

Saint Thomas Aquinas

Thomas of Aquin, or Thomas Aquinas, was born to a wealthy Sicilian family in 1225. He became a member of the Dominican Order of the Catholic Church in 1243 to continue his education with the major scholars of his day. Later, he became a philosopher, theologian, and teacher who wrote many books. He was canonized into sainthood in 1323, 50 years after his death. As an author, Aquinas’ most renowned work was the Summa Theologica. Although he died before finishing the text, Part Two of the work (Prima Secundae Summa Theologica) was dedicated entirely to ethics. This work laid the groundwork for the theory of natural law.

The theory of natural law has 2 key features. The first is that natural law is one component of divine providence. The second focuses on a human’s role as the recipient of natural law, which comprises the principles of practical rationality. These principles allow human action to be judged as either reasonable or unreasonable.

Practical rationality can be interpreted to mean that people will make decisions that are good for themselves and the people around them. For example, if people perform actions that have detrimental effects on themselves or others around them, they would be acting in contradiction to practical rationality. The principles of practical rationality are based on Aquinas’ idea of basic good. The concept of basic good simply means to respect others’ dignity and help them live within...
community. This concept is the fundamental basis of beneficence and nonmaleficence, which are terms used to describe the duty of care entrusted to health care workers.

Immanuel Kant

Immanuel Kant was born in Königsberg, Prussia, in 1724. He was a prolific scholar, studying mathematics, physics, logic, metaphysics, and natural law. On completion of his academic credentialing, he taught philosophy for more than 40 years. Kant believed that a person’s attributes are not good in and of themselves and that an individual could use any of the assets he or she possessed for good or evil. He also believed that individuals would typically act with goodwill; that is, they would use their gifts for good, even if the action provided no direct benefit to the actor, but because it was the right thing to do. According to Kant, doing the right thing is the moral duty of an individual as a productive member of society. The concept of duty-based ethic, first advanced by Kant, is known as deontological ethics.

Deontological ethics focuses on the duty of an individual to others and the rights of those recipient individuals. Typically, deontology involves ethical analyses based on a moral code and that hinge on obligation to a recipient (eg, a patient). Individuals who follow the deontological paradigm believe that the “highest virtue comes from doing what you are supposed to do”—either because you have to (eg, following the law), or because you agreed to.

A major challenge to deontological ethics is the concept of categorical imperative. Kant advanced the idea that universalization, or the ability to apply a decision equally to everyone, was fundamental to duty-based ethics. This means moral moral duties hinge on reasoning to determine one’s actions, and not personal feelings or needs. Simply, moral duty transcends a single person and his or her motives; rather, the categorical imperative mandates that unless a person could agree that an act should become universal law, he or she should not perform that act. Kant also said that people are to be treated only as ends, not as means.

In health care, the categorical imperative holds that there is value in all human beings, and they all deserve respect. This means every person in a similar circumstance deserves the same respect and treatment. In theory, this sounds fair, but goodwill and Kantian theory can be problematic for a health care administrator. To strictly follow Kant, each decision made by an administrator should be based on goodwill and not account for things such as profit or legal mandate; however, this is not possible. For example, when a researcher uses human subjects (perhaps to find a cure for cancer), the subjects are a means to an end, which negates their equal worth and fails to meet the categorical imperative. There is potential benefit to a much larger group from the knowledge gained in using human subjects for research, but it might not be the right course of action according to Kant’s theory.

John Stuart Mill

Many consider John Stuart Mill to be the most influential English-speaking philosopher of the 19th century. Mill disagreed with some moral theorists, including Kant, and wrote his own moral theory that focused on the idea of telos, or ends. Mill’s concept of utilitarianism, or consequentialism, is the ethical justification for many health care policies in the United States today.

Utilitarianism is the idea that a decision or action is ethically and morally sound if it provides the greatest benefit to the most people. Using this ethical framework makes difficult decisions easier in health care, where resources are typically scarce. Employing the utilitarian theory, decision making is simply a triage process, whereby the greatest good is sought even if it marginalizes certain individuals. Unfortunately, marginalization is the greatest concern with utilitarianism; because the individual is not the focus, it becomes possible to violate the rights or needs of individuals in the minority.

Situations like these have been referred to as the “tyranny of the majority.”

Martin Buber

Martin Buber was born in Vienna in 1878. Breaking from his traditional Jewish family, he began to study secular philosophy. Escaping from Nazi Germany in 1938, he ultimately assumed a professorship in anthropology and sociology at Hebrew University in Jerusalem.

Buber is most well known for his studies on how people relate to one another; specifically, he was interested in how people behaved with one another in either moral or immoral ways. Buber described a hierarchical
system that defined the relationships people had and how they moved from the lowest to the highest ethical levels. People begin at the “I-I” level, where they are an extension of someone else (e.g., a child who wants to emulate his or her parents). Individuals then progress to the “I-IT” relationship level. “I-IT” individuals are morally corrupt, because they remove individuality from the other person’s identity. For example, if a health care worker refers to a patient as “the 0900 barium enema,” instead of Mr Jones, he or she dehumanizes the patient and makes the patient an “it.”

Buber’s next level is the “I-YOU” relationship. In this type of relationship, each person is seen to possess individual talents that are equal to everyone else’s gifts. A fundamental premise of this relationship is that each person must be accepted and respected. The greatest moral relationship an individual can engage in is the “I-THOU” relationship. Buber thought that people in this type of relationship were capable of recognizing the differences in individuals and embracing those differences as having value. A person then makes a conscientious choice to consider an individual as special. Individuals categorized as special by someone entering an “I-THOU” relationship are treated as equals by putting their needs at a comparable level with one’s own.

Viktor Frankl
Born in Vienna in 1905, Viktor Frankl was a student of classical psychology from an early age. In 1944, Frankl and his family were sent to concentration camps. His family died while in the camps, but Frankl survived. While he was imprisoned, he tested his personal theories of human motivation and conscience. Frankl observed that, even though individuals were in a concentration camp and undergoing immense suffering, if they could maintain a sense of meaning and purpose, they retained their humanity. This observation gave rise to his lifelong work: the meaning of life.

Frankl focused his definition of a meaningful life on the sense of purpose he first observed during his imprisonment. According to Frankl, a sense of purpose led to an individual’s conscience, which allowed an individual to find meaning in situations; in turn, this meaning enabled an individual to make ethical choices not centered on selfish needs. Therefore, “a conscientious person is one who has moral integrity and a strict regard for doing what is considered the right thing to do.” It is important to remember that an individual’s conscience is finite because it does not possess absolute knowledge. Rather, a conscience attempts to determine the best action to take in a situation based on the moral and ethical foundations of the individual’s belief system. In theory, the conscience allows the individual to make decisions that are valued and avoid decisions that bring harm.

The concept of choosing is different from making a decision. Choosing is making an informed selection from a number of alternative choices. The term implies having a right or opportunity to choose. A decision implies having alternative possibilities or choices, and choosing a specific course of action after analyzing the choices. By defining decisions an individual makes as a choice, Frankl implies that each person is responsible for his or her choices. In the litigious world of health care, this has profound implications. Practitioners of all levels should not choose expediency when making decisions; rather, they should obtain as much data as possible and make decisions based on practical wisdom.

John Rawls
John Rawls was born in 1921 in Baltimore, Maryland, and studied moral philosophy. Rawls focused his theories on social justice and included the concepts of self-interest and fairness. He defined his theory through 2 principles: the liberty principle and the maximin principle.

For Rawls, the liberty principle indicated that all individuals should have the same basic rights in society. For example, if someone has a right to basic education, then everyone should have that right. Rawls proposed the idea that every person has a claim to the basic liberties of society; however, to be just, individuals also should address inequalities in society. Actions an individual might take to address societal inequality were addressed in his maximin principle. Rawls believed that everyone should address the inequalities in society because everyone has the potential, at some point, to be in a lesser position. That is not to say that Rawls felt everyone should have equal access to everything at the same time, merely that the opportunity for equal access would exist. For example, in an emergency department, individuals with less severe injuries wait so that patients with life-threatening injuries can be cared
for first. It is in the self-interest of less severely injured individuals to wait while people with greater needs are served first, because it is assumed that if they were in a life-threatening position, they would be first to receive treatment.22

Lawrence Kohlberg

Lawrence Kohlberg was born in Bronxville, New York, in 1927. After World War II, he helped smuggle Jewish people through the British blockade and into the Mandate of Palestine. He was arrested and served time in an internment camp in Cyprus, where he reflected on how individuals develop moral reasoning and ethical thinking. Later, as a doctoral student, Kohlberg defined an entirely new hierarchy of moral development founded on the observations he made while a prisoner.6,23,24

Kohlberg and his theories are especially important to health care administrators. The fundamental premise of his work was that all people do not have the same capacity for ethical reasoning. Kohlberg’s work allows administrators to analyze their own decisions and those of their employees. A secondary premise was the concept of societal authority. Society imbues health care administrators with a large degree of authority. This authority is paired with trust in the system. This trust implies that the administrator is acting with a high level of moral reasoning when making decisions; high-level moral reasoning, according to Kohlberg, would mean that administrators make decisions based on the needs of the patient as their primary responsibility. The needs of the organization, including profit, should be secondary to those of the patient.5 Successfully balancing profit vs patient well-being might be difficult for an administrator to accomplish. However, the administrator must recognize that profit and positive patient outcomes can be related. The profit could be direct (increased patient census as a result of good outcomes) or indirect (decrease in litigation as a result of good patient outcomes), but it will manifest itself in time.

Health Care Providers’ Ethical Responsibilities

Beneficence and Nonmaleficence

Radiologic technologists, along with all health care professionals, are guided by a moral responsibility to deliver quality patient care. Regardless of whether the care is diagnostic or therapeutic, providers are guided by 2 overarching ethical principles that can be exhibited personally or institutionally: beneficence and nonmaleficence.25 These concepts are important considerations in patient care and are complementary to one another. Beneficence is the active process of helping someone, and nonmaleficence is the passive process of not harming a person while providing aid.26

Beneficence means helping patients to make their situation better. The desire to help people by doing healing work or being kind is common in health care workers. Compassion also is a strong motivator behind the actions of health care providers.4

The primary characteristic of a nonmalefient action is that it does not make a patient’s condition worse. Often, the interaction of beneficence and nonmaleficence is interpreted to mean that an action must have a greater benefit than risk.4,25 Imaging professionals, for example, weigh benefits and risks to determine whether their actions are nonmalefient. Towsley-Cook and Young discussed the example of balloon angioplasty, asking whether the benefit of opening an occluded vessel outweighs the risk of dislodging plaque and producing a myocardial infarction, stroke, or death. In an otherwise healthy patient, the answer is simple and usually yes; however, if a patient already is physiologically compromised (eg, suffering from respiratory or renal impairment), the decision is more difficult.26

The concepts of beneficence and nonmaleficence guide the moral responsibilities of health care providers and are closely aligned; however, they possess varying degrees of force. Nonmaleficence is more important. Radiologic technologists are interested in helping people, but they also must be cognizant of not harming them.26

Veracity and Confidentiality

Veracity and confidentiality are important to patients’ rights and the radiologic technologist’s obligations. Veracity is the alignment of one’s statements with fact or reality; and confidentiality is the ability to keep obligatory secrets such as patient information and health records.26

Veracity

Veracity is the principle of truth telling. In health care, the concept of veracity is at the core of establishing
trust with patients and their families. Often veracity needs to be tempered by a patient’s need to know certain information. The technologist must provide adequate information about an examination so the patient can make an informed decision. However, the technologist does not need to be exhaustive in discussing every possible adverse effect or alternative diagnostic procedure with patients unless they request the information. For example, technologists do not need to discuss the ramifications of latex allergies with a patient just because they are wearing latex-based examination gloves; a simple inquiry into whether the patient is allergic to latex generally is sufficient.\(^3,6,27\)

Telling a patient the truth before or during an examination allows the patient to make an informed decision about whether to proceed; however, patients might ask radiologic technologists to provide information that can come only from a physician. In this case, the technologist is not obligated to answer the question. For example, although a patient might ask about the outcome of his or her procedure, the radiologic technologist cannot ethically or legally provide that information. The technologist’s professional obligation to uphold a standard of practice outweighs the patient’s right to the truth. However, the technologist should direct the patient to his or her physician to receive the results of the study.\(^26\)

Confidentiality

Confidentiality is an ethical concern with legal ramifications that requires the radiologic technologist to keep obligatory secrets. Obligatory secrets arise from the fact that some intrinsic or extrinsic harm will come if the information is revealed. Obligatory secrets come in 3 types: natural secrets, promised secrets, and professional secrets. Natural secrets are information that would be harmful if shared. Promised secrets are those that an individual has sworn not to share. Professional secrets are those that, if revealed, are harmful to the patient and the professional. Professional secrets are the most binding type and often carry legal ramifications if confidentiality is breached.\(^26\)

According to George Pozgar, “[h]ealth care professionals who have access to medical records have a legal, ethical, and moral obligation to protect the confidentiality of the information in the records.” Pozgar’s explanation could be expanded to include any health care information a professional has access to, not only information contained within the medical record. Both confidentiality and invasion of privacy involve revelation of a patient’s private medical information. The difference is in who accesses the information and how. Breach of confidentiality occurs when an individual who has a legitimate need to know private information and is involved in the care of a patient shares privileged information with someone who has no need to know it. Invasion of privacy occurs when someone who does not need access to a patient’s medical record reviews it anyway.

A major provision of the Health Information Portability and Accountability Act of 1996 (HIPAA) is the protection of private patient information, particularly information that might lead to discrimination. All patient information must be safeguarded under the auspices of HIPAA; however, information that forms or could form the basis for discrimination is protected at a heightened level. Such information includes references to substance abuse, mental illness, sexually transmitted disease, and genetic information.\(^3,4,26-28\)

As with any ethical or legal issue in medicine, there are exceptions to patient confidentiality laws. Exceptions include cases where patients consent to the release of their information, cases of statutory disclosure (such as that brought on by court order), and when a duty to warn third parties exists, such as in the case of mandatory reporting or impending harm to a third party. In AIDS reporting a conflict exists between patient confidentiality and the duty to warn others of possible harm. The issue has become so pronounced that some states have passed legislation specifically dealing with patient privacy issues and AIDS. Radiologic technologists should check with their employers and their state legal code to determine what their specific responsibilities are regarding patients with AIDS and confidentiality issues.\(^3,26,27\)

Patients’ Rights

Autonomy

Autonomy is the right of individuals to make their own decisions. The concepts of beneficence and nonmaleficence extend to the care of every patient a radiologic technologist cares for, perhaps none more so than those whose ability to make their own decisions is questionable: elderly patients, patients with declining...
cognitive ability, and patients with an advanced level of dependency. When working with patients who fall into these categories and are incapable of making sound decisions, a medical professional might be tempted to make decisions that he or she believes are in a patient’s best interest. This form of beneficence is known as paternalism. When a health care worker chooses to make decisions on a patient’s behalf or falsely informs patients who are capable of making their own choices, it is known as medical paternalism. Medical paternalism often is undertaken unintentionally. For example, a medical professional might choose to withhold information or provide only selected information based on his or her own beliefs. Paternalism directly violates a patient’s autonomy.\(^7\,^{29,\,30}\)

The concept of autonomy has been repeatedly upheld in the court system beginning with the U.S. Supreme Court decision in *Union Pacific Railway Company v Botsford* (141 U.S. 250) in 1891. In this case, the court’s decision noted that:

> no right is held more sacred or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law.\(^3\,\)\(^1\,\)\(^\)\(^2\)

The concept of autonomy is not absolute; however, legal authority may waive it when an individual’s autonomy infringes on the right of another person.

Nevertheless, people have an inviolable right to make decisions about their health care, even if it means the loss of the patient’s life. The right to autonomy also is inviolable in the face of disagreement by family members, so long as the individual is capable of making sound legal decisions. The Patient Self-Determination Act of 1990 made it the legal right of patients to make autonomous decisions relative to their health care. The act allows patients to accept or refuse medical treatment and to make their wishes known via advanced health care directives, which govern their care after they are no longer mentally or physically capable of making decisions on their own.\(^3\,\)\(^\)\(^2\,\)\(^7\)

Informed Consent

Radiologic technologists often must gain informed consent from patients. Therefore, the technologist must know the facts and statistics pertaining to the procedure and provide patients with knowledge that will make them truly informed.\(^26\) For consent to qualify as informed, the patient must understand the procedure completely and have all the information he or she needs to make an autonomous decision. The patient should sign an informed consent form that contains a list of the information the patient was given and the components in Box 1.\(^26\) The witness who signs the informed consent clause should be a third party not involved in the procedure.\(^27\)

Privacy

Health care providers have a legal and ethical responsibility to maintain patient privacy. Patients have a right to expect that their privacy will be maintained. Most patient bills of rights include privacy clauses, and hospitals are required to provide their privacy policies to patients, which often are included with HIPAA policy information. To safeguard a patient’s privacy, health care workers must avoid discussing patient information with anyone not associated with the patient’s care or obtain written permission from the patient or his or her advocate before doing so.\(^3\)

Respect for Diverse Populations

Diversity is the difference in individuals that arises from variance in ethnicity, age, sex, sexual orientation, marital status, or other characteristics that make an individual unique. Discrimination occurs when the way an individual is treated is altered based on a characteristic of diversity. Caring for diverse patient populations introduces many ethical challenges. Nevertheless, health care workers must provide equal quality of care for every patient.

Box 1

**Components of an Informed Consent Form**

1. Authorization clause that permits the examination or procedure to be conducted.
2. Disclosure clause explaining the procedure, risks, benefits, and possible alternatives.
3. Anesthesia clause, if anesthesia will be necessary.
4. No-guarantee clause for therapeutic procedures.
5. Tissue-disposal clause, if tissue will be removed.
6. Patient understanding clause.
7. Signature clause for the patient and a witness.
One challenge arises when caring for patients who are very young, elderly, or who have decreased mental capacity. These patients often require advocates, who might not have the same value system as their charge.\textsuperscript{16} When dealing with an advocate, the technologist must act in the patient’s best interest and not in the interest of the advocate.

Diversity in health care workers also must be respected, but to a degree. For example, they have an innate right, upheld by the law, to defer their participation in patient care. Refusal to participate in patient care typically centers on the provider’s cultural or religious beliefs and commonly is invoked during elective abortions or end-of-life decisions. A patient’s health must not be compromised because of a staff member’s right to refuse to treat him or her. However, if a patient’s health might be compromised by a health professional’s refusal to treat, the provider has a duty to treat the patient regardless of his or her personal beliefs. This duty has been upheld by the courts in the case of nurses who refused to participate in an emergency abortion on the grounds of religious beliefs. Because the procedure was emergent, the nurses had a duty to participate. When they did not, they were found to be negligent. This suggests that radiologic technologists are allowed to refuse care to patients, but there must be a demonstrable point of election on the part of the patient for the procedure. If the procedure is emergent, a health care worker’s personal beliefs are subjugated to the needs of the patient.\textsuperscript{1}

**Advanced Directives and Living Wills**

Death and dying are constant reminders to health professionals that not every patient situation has a positive outcome; however, it is the legal and ethical responsibility of health care professionals to act, within the law, in the patient’s best interest and in accordance with his or her wishes, even if those interests and wishes counter the health care worker’s ethical or moral standards.

Death generally is defined as the “cessation of respiration, heartbeat, and certain indications of central nervous system activity, such as respiration and pulsa- tion.”\textsuperscript{3} Seldom, even in trauma, is death instantaneous; rather, death is a process that a patient, his or her family, and the health care team experiences together. When a patient is dying, the health care team must continue to act in the patient’s best interest, and in accordance with the wishes of the patient or his or her advocate.\textsuperscript{3, 26}

In chronically ill patients, 2 forms of death usually occur: active or passive euthanasia. Active and passive euthanasia can be voluntary or involuntary. In most of the United States, active euthanasia, the act of administering medication or some manner of force to physically end an individual’s life, generally is illegal; however, passive euthanasia, the act of withholding life-saving measures (such as a ventilator or nutrition), is legal and a universally accepted practice. A patient or his or her advocate can make decisions about passive euthanasia.\textsuperscript{3, 26, 27}

A patient’s wishes often are made known through an advanced directive or living will. Living wills and advanced directives are legal and must be offered to every patient in the United States as a result of the Patient Self-Determination Act of 1990. The fundamental point of the act is that a person’s autonomy, including the right to refuse medical treatment, is not forfeited when physical or mental changes occur.\textsuperscript{4, 27}

Living wills help patients understand the definition of death and reveal their perception of what constitutes quality of life. The oldest and most commonly used definition of death is heart-lung death, which is the absence of heartbeat and respiration. A patient’s wish to not be placed on a ventilator, even in the presence of neurologic function, would be in accordance with the heart-lung definition of death. Quality of life is determined by the patient, and living wills allow patients to state unequivocally what should be done when that quality is no longer maintainable.\textsuperscript{3, 26, 27}

In 1968, the Harvard Medical School defined brain death as an unreceptive, unresponsive individual who is incapable of movement or independent breathing, has no reflexes, and a flat electroencephalograph. Although heart-lung function can be maintained after most of these criteria are met, an individual who wishes not to be supported artificially by mechanical means after complete loss of brain function is acting in accordance with the definition of brain death.\textsuperscript{3, 26, 28}

The most nebulous definition of death, but one commonly addressed in advanced directives, is the persistent vegetative state. Often called an irreversible coma, this state occurs only when higher brain function is lost. A patient still might be capable of self-sustained circulation and respiration as a result of a patent brainstem,
but higher-order cognitive function is absent. Patients in a persistent vegetative state might even be conscious, but they have no awareness of self or environment. Individuals who wish to have nutrition withheld when in this state are acting in accordance with the laws of passive euthanasia.\textsuperscript{3,26}

**Do Not Resuscitate Orders**

Do not resuscitate (DNR), or no-code, orders are treated differently from any other form of life-sustaining treatment and must be addressed separately from advanced directives and living wills. While a patient’s wish not to have resuscitation performed is addressed in a living will, this facet of the advanced directive has no legal standing. DNR orders are, in their strictest sense, a physician order that is written in accordance with a patient’s wishes provided orally or in writing to the physician.

DNR orders must be in accordance with state law, which is fluid and changes occasionally. As such, these orders must be reviewed and updated. DNR orders simply state that, in the presence of a loss of spontaneous circulation, respiration, or both, a patient does not wish to have cardiopulmonary resuscitation performed on him or her. A technologist should always verify the presence or absence of a DNR order prior to performing any study, particularly those that have a higher risk of death, such as contrast-enhanced or interventional studies.\textsuperscript{3,26}

**Health Care Providers’ Rights as Employees**

The Civil Rights Act of 1964 was only the latest in several attempts to ensure civil rights that date back to the Civil Rights Act of 1866 and the 14th amendment of the Constitution.\textsuperscript{32} The Civil Rights Act of 1964 contains 10 sections or titles; title VII is the most relevant to health care workers, employers, and health care facilities.\textsuperscript{33,34}

Although Title VII applies only to employers who have more than 15 employees each business day for 20 contiguous weeks, it often is broadly applied to employment law in the United States. According to the United States Department of Justice Civil Rights Division, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e, et seq.), prohibits discrimination in employment on the basis of race, sex, national origin, and religion.\textsuperscript{35} The act states that it is illegal for an employer to:

- **fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual’s race, color, religion, sex, or national origin.**\textsuperscript{35}

Title VII essentially prohibits workplace harassment and discrimination.\textsuperscript{33,35}

However, it is still possible for an employer to refuse to hire an individual if the employer can demonstrate that the reasons are related to a bona fide occupational trait. That is, there must be some qualification that is absolutely necessary for the job to be completed successfully that the individual cannot meet. To meet the bona fide occupational qualification defense, an employer must demonstrate that all 3 of the following parameters are met:\textsuperscript{35}

- There must be a direct relationship between the trait and the ability to perform the job.
- The qualification must directly relate to the central mission of the employer’s business.
- There must be no alternative that is less restrictive or more reasonable.

Religion and customer (or patient) preferences are not reasons to allow an exception under the occupational qualification discrimination clause; however, exceptions are allowed to Native American groups, religious groups working in accordance with their religion, and nonprofit private member organizations.\textsuperscript{35}

Several supporting pieces of legislation and amendments to the Civil Rights Act of 1964 have been enacted since its original passage to prohibit employer discrimination against certain groups (see Table).

**The U.S. Legal System**

In the United States, law is divided into 2 broad categories: criminal law and civil law. The fundamental difference in the 2 types is the involvement of the government in litigation.

**Criminal Law**

In criminal law, the government brings a case against one or more defendants. Criminal law necessarily involves a breach of regulations or law that can be enforced by government action. The state or federal government can be the prosecuting authority,
depending on whether the infraction was against a state or federal law. Generally, only 2 criminal suits can be brought against health care workers: distribution of a controlled substance for profit and without a medically necessitated physician’s order and the commission of a crime on federal property, in the case of health care workers in federal facilities. 41

Civil Law

Civil law involves a suit brought by an individual against another individual or concerned party (eg, a hospital) to recover compensation for loss or damages. 41 Typically, civil lawsuits are handled by the state in which the loss occurred; however, if the dispute involved a question of federal law or parties who are residents of different states, then the case would be remanded to the federal courts. Questions of federal law might include civil rights violations or discrimination, for example. In the United States, civil lawsuits can arise from any loss or damage; if the loss or damage in a civil lawsuit arises from personal injury, then the action is called a tort. 41

Torts are common in health care. Compensation for an injury serves sound social policy; if someone suffers a loss, that person should be remunerated for the loss. In addition, legal issues involving truthfulness and confidentiality are known as quasi-intentional torts. Quasi-intentional torts resemble other torts but are not always unintentional. Quasi-intentional torts are based on issues that arise from something an individual said vs something they did. For example, defamation (libel or slander) is a common tort. One item that is not covered under tort law is a HIPAA violation, regardless of how the breach of privacy occurs.

Tort law is typically a matter of state common law. Unlike statutory law, which is derived from bills being passed into law, common law evolves as courts and judges are confronted with 41:

- New issues legally distinct from existing law.
- Cultural changes (eg, those created by emerging technologies).
- Changing social policy considerations.

Common law is a unique tradition within the United Kingdom and its former colonies, including the United States, in that there is no system of rules that can be applied to every potential situation. As a result, when faced with a new or unique tort case, a judge will evaluate the facts and write an opinion that compares and contrasts the current case to similar previous cases. A judge then decides which law is most applicable to the case, and a decision is added to the common law of the specific jurisdiction. Reported judicial decisions are law in every state; however, the law is unique to individual states and some variance between state common laws should be expected. 42

The Process of Lawsuits

In the United States, lawsuits follow a standard and prescribed progression. Most cases involving radiologic technologists are civil law proceedings, usually tort cases. The first action in a civil case is the filing of a complaint. During this phase, the plaintiff contacts a lawyer, who files a complaint and summons with the local court. The matter then becomes a lawsuit and litigation begins. The complaint and summons is served to the defendant by mail or in person. 3,16,26,43

The defendant, having been served a complaint and summons, has a specific time frame in which to file an answer to the court. Defendants typically retain a defense attorney, although they may choose to represent themselves. When individuals represent their own interests, they engage in a pro se or self defense. Regardless of whether a defendant is represented by an attorney, he or she must file an answer to the complaint and summons. The answer is a formal written response to the allegations set forth by the plaintiff in the complaint. The answer is the second phase of litigation and is filed with the same court where the original complaint was registered. 3,16,26,43,44

The third phase in litigation is the discovery phase. During discovery, the parties in the suit request information of one another and establish the facts of the case. The requests for information can be 3,16,26,43:

- Admissions – questions are asked and the opposing party either denies or admits facts.
- Interrogatories – parties provide detailed answers to questions concerning facts about the case.
- Production – one side asks the opposing party to provide relevant documents or exhibits.

The fourth phase involves filing supplemental motions. Motions are written requests asking the court to do something on behalf of one of the parties.

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involved. Typically, a judge decides a motion and provides his or her ruling in writing without a hearing; however, a formal hearing might be required to bring the parties together in court for the judge to render a decision. One common motion is a motion to compel, which usually is filed when a deadline is missed, such as a defendant’s failure to respond to discovery in a timely or factual manner. Another common motion is an entry default judgment, which occurs when a defendant fails to answer the complaint. In this case, a judge will review the complaint and, if approved, mandate a default judgment requiring the defendant to pay damages.  

The final phase of a lawsuit is the conclusion. During conclusion, the parties enter mediation, and a mediator determines an equitable means and method of payment. If the losing party fails to render compensation, the winning party can seek court interference to get payment. This interference can include garnishment of wages or other income. 

The Legal System and Health Care Professionals 

The range of legal issues facing health care professionals daily is virtually unlimited. The most common include negligence, malpractice, and breach of
confidentiality. All of these challenge radiologic technologists to act ethically and responsibly.

Negligence

Negligence is the most common tort in the United States. Negligence generally is unintentional and occurs through the commission or omission of an act that an individual who is considered reasonably prudent would or would not have done in a similar circumstance. Radiologic technologists have a duty to provide patients with reasonable care. When that duty is breached, medical negligence has occurred. When a case of medical negligence is brought against a healthcare professional, the plaintiff must unequivocally demonstrate that:

- There was a duty on the part of the radiologic technologist.
- The duty was breached.
- An injury occurred.
- The breach caused the injury.

The existence of a medical injury does not prove negligence, and although negligence and malpractice are used interchangeably, the terms vary in that malpractice is carelessness practiced on the part of a health professional.

A medical professional might be found indirectly negligent through the legal doctrines of respondeat superior and res ipsa loquitur. These are indirect negligence challenges that arise from communally negligent acts. Respondeat superior, Latin for “let the master answer,” means an employer is legally liable for its employees’ actions. In certain instances, this doctrine has been referred to as vicarious liability. Vicarious liability makes the employer responsible for torts committed by its employees. For an employer to be found liable under the premise of respondeat superior, a master-servant relationship must exist; typically, although not always, the master-servant relationship is defined as that of an employer-employee. Further, the negligent act must have been committed by the servant or employee within the scope of his or her employment. Res ipsa loquitur, a Latin expression meaning “let the thing speak for itself,” often is used as the basis for lawsuits that involve a team-centered patient care activity, such as surgery or interventional procedures. When res ipsa loquitur is invoked by a plaintiff, each individual involved in the procedure becomes a defendant because one of them was negligent.

Defamation

Defamation of character damages a person’s good standing and can be either written or spoken. Written defamation is libel, and spoken defamation is slander. Defaming communication must be false, published (including words spoken in public), and damaging to an individual’s reputation, business, or profession. In the strictest legal sense, statements that are true are not defamation; however, there are instances of defamation per se, which can be either libel per se or slander per se. These cases arise when the communication involves criminal activity (eg, sexual misconduct) or allegations that the individual might have a contagious or infectious disease. In the case of defamation per se, no specific damage to the individual need take place. For example, simply claiming that a physician is HIV positive or sexually molests their patients would be defamation per se; the physician does not need to demonstrate that any specific damage resulted from the claims, merely that they were made in order to find the accuser guilty. This is because the mere suggestion that someone has a specific disease or has committed certain acts damages their reputation.

While the truth is considered a qualified defense against charges of defamation, it has been shown to be a defense in most, but not all, cases. In the case of qualified privilege, the truth will always protect the individual. Qualified privilege protects those who have a legal responsibility to report elder or child abuse, or a concern about probable abuse. This defense shields the reporter from claims of defamation by the defendant so long as the report is made in good faith.

Although many employers suggest refraining from providing anything other than dates of employment when references are requested, they usually are protected if they provide more detailed information. State reference immunity laws vary widely, but in general, protection is extended when reporting truthfully about an individual in the case of prospective future employers contacting a current or former employer for a job reference. As long as employers are acting in good faith, they cannot be held liable for providing job-related information such as performance or the reason for termination.
if it is truthful. Even so, an unsolicited opinion about an employee should never be given.

**Fraud**

In general, fraud is a form of dishonesty that involves willful misrepresentation of a fact that causes harm or loss to an individual. Health care fraud typically takes several forms; for example, submitting a false insurance claim, charging varying rates depending on whether an individual is insured or not, claiming to have a degree or some other credential that one does not actually possess, or altering medical records in an attempt to cover up some wrongdoing. Regardless of the type of fraud an individual has perpetrated, penalties can be severe, ranging from the loss of right to bill insurance to imprisonment. To win a fraud claim, the plaintiff must show that:

- The defendant made an untrue statement, knew it to be untrue, and made it to mislead others.
- The injured party relied on the statement.
- Damages were incurred as a result of relying on the statement.

Typically the injured party is the plaintiff, except in cases involving guardians, powers of attorney, or estates. The injured party is always the individual who suffered the loss, while the plaintiff may bring suit on the injured party’s behalf.

**Professionalism**

Professionalism refers to a person’s behavior in the workplace. It is common to hear someone say a provider is “professional” or “acted professionally”; however, it is difficult to define professionalism concisely. Mitchell and Haroun describe professionalism as caring competence. Towsley-Cook and Young define professionalism as the actions of a person who possesses the ability to care for other humans and apply “the knowledge of a discipline, including its science, theory, practice, and art.” Adler and Carlton state that professionals make difficult choices while acting on the concepts of beneficence and nonmaleficence, and apply the virtues of caring and compassion. Perhaps the most concise definition was offered by Jonsen et al, who noted that professionalism in health care “demands placing the interest of patients above those of the [caregiver], setting and maintaining standards of competence and integrity, and providing expert advice to society on matters of health.” In short, “professionalism encourages placing care for the patient ahead of the business of medicine.”

If someone behaves in an unprofessional manner, depending on the action, the behavior could be in violation of professional standards of ethics. The violations could result in ethical or legal censure dependent upon the circumstances. Furthermore, he or she could be found in violation of civil or criminal law.

**Professional Etiquette**

While not always directly related to ethics, a health care worker’s professional etiquette can directly affect patient care and change patient outcomes. Creating a polite and welcoming atmosphere is important so patients feel they are in a caring environment. Although a health care worker might have differing values and morals, he or she must maintain a professional demeanor. Professional etiquette can be compromised if the health care worker lacks cultural and emotional intelligence. Rash judgments about a patient’s or coworker’s character based on outward appearance, language, or other personal characteristics are not professional behaviors. Failing to maintain professional etiquette when involved in patient care leads to a poor impression of the caregiver by the patient and might make the patient more inclined to notice other failures. Radiologic technologists should maintain their professionalism and practice professional etiquette (see Box 2).

**Professional Ethics**

In general, the public expects professionals to act in a self-disciplined manner according to guidelines.
The ARRT established these standards to support its mission statement and aid in promoting its goals. The Code of Ethics is intended to “serve as a guide by which Certificate Holders and Candidates may evaluate their professional conduct as it relates to patients, healthcare consumers, employers, colleagues, and other members of the healthcare team.” The Code of Ethics helps radiologic technologists maintain a high level of ethical conduct (see Box 3).

The primary purpose of the ARRT Rules of Ethics is to “promote the protection, safety, and comfort of patients.” They are “mandatory and enforceable standards” that describe minimally acceptable conduct for any individual certified, or eligible for certification, by the ARRT. A violation of the Rules of Ethics can result in sanctions on the individual. In addition, the rules of professional organizations are provided by a professional organization. These guidelines are particularly important because of health care’s role in human life and well-being. A professional ethic is “the publicly displayed ethical conduct of a profession, usually embedded in a code of ethics.” Professional codes of ethics affirm an individual member of a given profession to be independent, autonomous, and a responsible decision maker. Ethical codes that govern health care in general, and radiography in particular, arise from specific ethical models and theories.

Standards of Ethics

As health care professionals, radiologic technologists are guided by occupation-specific principles of conduct contained within the ARRT Standards of Ethics, which comprises the Code of Ethics and the Rules of Ethics.

### Box 3

**The ARRT Code of Ethics**

The Code of Ethics forms the first part of the Standards of Ethics. The Code of Ethics shall serve as a guide by which Certificate Holders and Candidates may evaluate their professional conduct as it relates to patients, healthcare consumers, employers, colleagues, and other members of the healthcare team. The Code of Ethics is intended to assist Certificate Holders and Candidates in maintaining a high level of ethical conduct and in providing for the protection, safety, and comfort of patients. The Code of Ethics is aspirational.

1. The radiologic technologist acts in a professional manner, responds to patient needs, and supports colleagues and associates in providing quality patient care.
2. The radiologic technologist acts to advance the principal objective of the profession to provide services to humanity with full respect for the dignity of mankind.
3. The radiologic technologist delivers patient care and service unrestricted by the concerns of personal attributes or the nature of the disease or illness, and without discrimination on the basis of sex, race, creed, religion, or socio-economic status.
4. The radiologic technologist practices technology founded upon theoretical knowledge and concepts, uses equipment and accessories consistent with the purposes for which they were designed, and employs procedures and techniques appropriately.
5. The radiologic technologist assesses situations; exercises care, discretion, and judgment; assumes responsibility for professional decisions; and acts in the best interest of the patient.
6. The radiologic technologist acts as an agent through observation and communication to obtain pertinent information for the physician to aid in the diagnosis and treatment of the patient and recognizes that interpretation and diagnosis are outside the scope of practice for the profession.
7. The radiologic technologist uses equipment and accessories, employs techniques and procedures, performs services in accordance with an accepted standard of practice, and demonstrates expertise in minimizing radiation exposure to the patient, self, and other members of the healthcare team.
8. The radiologic technologist practices ethical conduct appropriate to the profession and protects the patient’s right to quality radiologic technology care.
9. The radiologic technologist respects confidences entrusted in the course of professional practice, respects the patient’s right to privacy, and reveals confidential information only as required by law or to protect the welfare of the individual or the community.
10. The radiologic technologist continually strives to improve knowledge and skills by participating in continuing education and professional activities, sharing knowledge with colleagues, and investigating new aspects of professional practice.

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Evidence are not as stringently upheld by the ARRT as they are by state or federal lawyers. For example, rule 10 states that a registered radiologic technologist is in violation of the Rules of Ethics if he or she engages in:

- any unethical conduct, including, but not limited to, conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established under this clause. 49

In contradiction to civil or criminal law, where there generally must be admissible proof of fraud or harm (injury), the ARRT does not require the technologist to have defrauded or caused injury; he or she just has to engage in conduct that might be likely to defraud or cause harm. 44, 49

### Social Media

The use of social media sites increases the potential for ethical compromise. Social media sites include Facebook, LinkedIn, Twitter, YouTube, wikis, blogs, or any social network or bookmarking site. In the United States, approximately 75% of adults with Internet access use social media and social networking sites. 50 The most popular is Facebook, with nearly 1.5 billion active users worldwide. About 80% of those users reside outside of the United States and Canada. 50, 51 The inappropriate use of social media can create severe ethical problems coupled with legal consequences. Broad ethical and legal issues can arise from social media use such as 52, 53:

- Breach of privacy or confidentiality.
- Failure to report privacy or confidentiality violations.
- Boundary violations.
- Lateral violence against employers.
- Communication against employers.
- The use of social media against employees or students by employers or faculty members.

Radiologic technologists must understand the ethical implications that can arise from inappropriate use of social media sites. Health care workers have an ethical responsibility to report breaches of patient privacy or confidentiality. Confidential information is protected by law and may only be shared with the patient’s consent. Privacy is the expectation the patient has to be treated with dignity and respect. It is important to remember that posting any information that might be linked to a specific patient is a direct violation of federal law and can result in disciplinary action. Similarly, health care providers must maintain appropriate boundaries with patients and their families; social or personal contact between professionals and patients should be limited, if not avoided completely. In addition, it is important to ensure boundaries are established between faculty and students, including clinical faculty members or employees at clinical sites. 54 Although communication against an employer generally is protected on social media, so long as it is not unlawful (eg, discriminatory statements based on protected class such as race, ethnicity, religion, sex, disability, or age), caution should be exercised when posting negative information about named individuals. Negative posts might be interpreted as bullying or cyberbullying, which is against most employment policies and illegal in many states. 52, 53

In addition, radiologic science educators and students should follow a set of guidelines on social media use to meet their ethical and professional responsibilities. Because social media use can affect a student’s professional standing, educators must stress that students maintain a positive image when they post online. Students should be cognizant of professionalism in electronic communications because faculty members and prospective employers might check social media sites. At a time when health care and medicine is still new to them, students might be tempted to post photos or commentary on “cool” or unique cases. However, educators should inform students about the effect unprofessional behaviors can have on their careers and counsel students against having a double standard for their online presence and professional image. For example, students should be cautioned against posting their photo in a professional setting doing something decidedly unprofessional. This includes acting in an unprofessional manner while attired as a health care professional (eg, wearing scrubs). 52 To avoid legal ramifications from social media activities 50, 51:

- Be responsible.
- Be authentic.
Use privacy settings to restrict public access.
Follow professional ethical standards, even in your personal capacity.

Conclusion
For health care professionals, most litigation arises from breaching the standard of care or breaking applicable state or federal laws. Health care professionals must understand the threat of lawsuits and public or professional censure arising from unethical or illegal acts. They must stay abreast of changing laws and act in accordance with professional standards of conduct, including the duty to treat patients in their best interest while doing minimal harm. Radiologic technologists always should keep ethical principles in mind when dealing with patients, coworkers, and employers; this includes being truthful, respectful, and maintaining confidentiality and trust.

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Medical Ethics and Law in Radiologic Technology

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Read the preceding Directed Reading and choose the answer that is most correct based on the article.

1. Medical ethics is a:
   a. study of ethical issues emerging in new situations, or possibilities brought about by scientific discoveries in biology or medicine.
   b. set of biological principles that guide the practice of medicine.
   c. system of moral principles that apply individual, professional, and societal values and judgment to the practice of medicine.
   d. framework of the medical ethics system and the legal basis by which that system is governed.

2. Morals are manners, customs, or generally accepted standards of good or right conduct that reflect our personal values framed within a larger, external system of beliefs.
   a. true
   b. false

3. The work of _______ laid the groundwork for the theory of natural law.
   a. Aristotle
   b. Saint Thomas Aquinas
   c. Immanuel Kant
   d. John Stuart Mill

4. Which of the following applies to the theory of deontological ethics?
   1. It focuses on the duty of an individual to others and the rights of those recipient individuals.
   2. Decisions are ethically and morally sound if they provide the greatest benefit to the most people.
   3. The highest virtue comes from doing what you are supposed to do.
   a. 1 and 2
   b. 1 and 3
   c. 2 and 3
   d. 1, 2, and 3

continued on next page
5. Lawrence Kohlberg’s theories are especially important to administrators because they allow:
   a. administrators to analyze their own decisions and those of their employees.
   b. everyone to have equal access to everything at the same time.
   c. employees to find a sense of purpose.
   d. individuals to progress to the “I-YOU” relationship.

6. According to the article, which of the following overarching ethical principles guide health care providers?
   a. ethical and moral responsibility
   b. beneficence and nonmaleficence
   c. humanity and compassion
   d. trust and respect

7. _______ is the principle of truth telling.
   a. Confidentiality
   b. Obligatory honesty
   c. Qualified privilege
   d. Veracity

8. The Health Information Portability and Accountability Act (HIPAA) protects which of the following types of private patient information at a heightened level?
   1. substance abuse
   2. mental illness
   3. sexually transmitted diseases
   a. 1 and 2
   b. 1 and 3
   c. 2 and 3
   d. 1, 2, and 3

9. Which of the following refers to an individual’s right to make his or her own decisions?
   a. autonomy
   b. paternalism
   c. self-determination
   d. veracity

10. When a medical professional makes a decision for a patient that he or she believes is in the patient’s best interest, the medical professional is engaging in:
    a. paternalism.
    b. patient advocacy.
    c. self-determination.
    d. veracity.

11. An informed consent form should contain all of the following except a(n):
    a. authorization clause allowing performance of the examination or procedure.
    b. disclosure clause explaining the procedure.
    c. signature clause for the patient and a witness.
    d. guarantee clause for therapeutic procedures.

12. Health care providers have a right to defer their participation in patient care except when:
    a. cultural or religious beliefs are involved.
    b. it might be inconvenient to find another provider.
    c. a patient’s health might be compromised.
    d. the care involves an elective procedure.

13. Do not resuscitate (DNR) written orders are put in effect by ______ to prevent cardiopulmonary resuscitation from being performed.
    a. advanced directives
    b. living wills
    c. patients
    d. physicians

14. According to the article, Title VII of the Civil Rights Act of 1964:
    a. prohibits discrimination against people older than 40 years.
    b. requires accommodations for people with disabilities.
    c. prohibits discrimination in employment on the basis of race, sex, national origin, and religion.
    d. mandates that all job openings be posted publicly.
15. Employers **always** are required to allow individuals time off work, without consequence, for pregnancy-related health care.
   a. true
   b. false

16. In the United States, law is divided into which 2 broad categories?
   a. civil and health
   b. criminal and personal injury
   c. tort and malpractice
   d. criminal and civil

17. Criminal lawsuits are brought against one or more defendants by the:
   a. plaintiff.
   b. Department of Health.
   c. government.
   d. patient.

18. Which action is first in a civil case?
   a. the filing of a complaint
   b. discovery
   c. the filing of a motion
   d. answering a summons

19. The **most** common tort in the United States is:
   a. malpractice.
   b. negligence.
   c. assault.
   d. battery.

20. When each individual involved in the procedure becomes a defendant in a negligence case, ________ has been invoked.
   a. defendants et moritoria
   b. negligence per se
   c. res ipsa loquitur
   d. respondeat superior

21. If someone submits a false insurance claim, he or she has committed:
   a. breach of trust.
   b. defamation.
   c. fraud.
   d. libel.

22. According to one concise definition, professionalism includes:
   1. placing the interest of patients above those of the caregiver.
   2. setting and maintaining standards of competence and integrity.
   3. providing expert advice to society on matters of health.
   a. 1 and 2
   b. 1 and 3
   c. 2 and 3
   d. 1, 2, and 3

23. The American Registry of Radiologic Technologists (ARRT) ______ is (are) mandatory and enforceable.
   a. Code of Ethics
   b. Rules of Ethics
   c. review process
   d. policies and procedures

24. Ethical and legal issues that can arise from using social media include:
   1. breach of privacy or confidentiality.
   2. communication against employers.
   3. boundary violations.
   a. 1 and 2
   b. 1 and 3
   c. 2 and 3
   d. 1, 2, and 3

*continued on next page*
25. To avoid legal ramifications from social media activities, do all of the following except:
   a. use privacy settings to restrict public access.
   b. follow professional ethical standards, even in your personal capacity.
   c. use patient identification numbers instead of names.
   d. be authentic.