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Addressing Ethical Commitments When Professionals Partner with Organizations

Donna T. Chen and Ann E. Mills*

I. INTRODUCTION

Professionals, whether doctors, nurses, engineers, lawyers, accountants, scientists, or others, define themselves, in part, by their ethical commitments. These ethical commitments are reflected in codes of ethics, charters, and other statements articulated by the professional organizations to which professionals belong and which represent the public face of professions.¹ Professional ethical commitments generally reflect values society endorses. For instance, society expects that doctors and nurses will put a patient's welfare before their own,² that engineers will ensure the products they design are safe,³ that lawyers will advocate for their clients to the best of their abilities,⁴ that journalists will seek truth and create fair and honest reports,⁵ and that accountants and scientists will approach their tasks with integrity so the financial statements⁶ or the research they produce can be trusted.⁷

Moreover, society entrusts the professions with the responsibility of sanctioning wayward members when necessary. Ideally, when professionals

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1. See, e.g., Am. Coll. of Physicians, Ethics and Professionalism, http://www.acponline.org/ethics/policy_statements.htm (last visited Apr. 7, 2008) (on file with the *McGeorge Law Review*) (posting a number of different charters and codes aimed at enhancing the professionalism of physicians); Ctr. for Nursing Advocacy, Codes of Ethics for Nurses, http://www.nursingadvocacy.org/research/codes_of_ethics.html (last visited Apr. 7, 2008) (on file with the *McGeorge Law Review*) (posting various nursing codes of ethics).

2. See, e.g., Am. Med. Ass'n, Principles of Medical Ethics, <http://www.ama-assn.org/ama/pub/category/2512.html> (last visited Apr. 7, 2008) [hereinafter AMA, Medical Ethics] (on file with the *McGeorge Law Review*); Am. Nurses Ass'n, Code of Ethics for Nurses with Interpretative Statements, http://nursingworld.org/ethics/code/protected_nwcoe813.htm (last visited Apr. 7, 2008) (on file with the *McGeorge Law Review*).

3. See, e.g., NAT'L SOC'Y OF PROF'L ENG'RS, CODE OF ETHICS FOR ENGINEERS (2007), available at <http://www.nspe.org/resources/pdfs/Ethics/CodeofEthics/Code-2007-July.pdf>.

4. See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-411 (2006), available at http://www.abanet.org/cpr/06_441.pdf.

5. See, e.g., SOC'Y OF PROF'L JOURNALISTS, CODE OF ETHICS (1996), available at <http://www.spj.org/ethicscode.asp>.

6. See, e.g., Am. Inst. of Certified Public Accountants, Code of Professional Conduct § 52-54, <http://www.aicpa.org/about/code/sec50.htm> (last visited Apr. 7, 2008) (on file with the *McGeorge Law Review*).

7. See, e.g., U.S. Dep't of Health & Human Servs., Office of Research Integrity, <http://ori.dhhs.gov> (last visited Apr. 7, 2008) (on file with the *McGeorge Law Review*).

ignore or violate widely agreed upon core professional ethical commitments, they are reprimanded by their professional societies. Some professional ethical obligations are further enforced through public laws and regulations.⁸ Other ethical commitments have engendered neither legal requirements nor the threat of professional sanction but rather encourage professionals to aspire to some higher good or virtue.⁹

In today's complex society, most professionals form partnerships of sorts with organizations. This allows both professionals and organizations to accomplish their goals, including fulfilling their ethical commitments. These partnership relationships take on many forms. For example, some physicians rely on hospitals to accomplish their goals; similarly, some journalists rely on media organizations to accomplish theirs. In turn, these organizations, like hospitals and newspapers, rely on professionals as a core resource in the delivery of their product or service. Short of relying on professionals as a resource for fulfilling core missions, most organizations, large or small, at some point will hire an accountant, an auditor, or a lawyer to perform some specific tasks. Some organizations, especially larger ones, will hire a variety of professionals—some core to their primary mission and some not. For instance, a large pharmaceutical company will hire or contract with scientists, lawyers, physicians, accountants, and auditors.

Most organizations or companies also make ethical commitments that reflect values society expects of organizations, depending in part on the products or services the organizations offer. For instance, society expects manufacturing companies to commit to achieving product safety, newspapers to commit to accurate reporting, and hospitals to commit to compassionate care. The ethical commitments of an organization are associated with the goals and values of the organization and are often publicly articulated in its mission and values statements, and reflected in its code of ethics.¹⁰

Neither professionals nor organizations are protected from ethical conflict by their publicly stated ethical commitments. A busy doctor knows that her bonus may be affected if she orders expensive diagnostic tests for her patient; a lawyer knows that successful advocacy means more time with a client, but also knows that her client does not have deep pockets; an accountant knows that she owes a fiduciary obligation to the firm for which she works and also knows that the financial statements she presents at the annual meeting will cause a drop in the value of the firm—all of these professionals face ethical conflict. But by appealing to a higher good or virtue, such as the welfare of the patient or client, or honesty and transparency, the ethical commitments professionals are expected to honor generally offer guidance when conflicts of interest or conflicts of

8. See, e.g., CAL. BUS. & PROF. CODE § 6068 (West 2007).

9. See, e.g., AMA, Medical Ethics, *supra* note 2.

10. See, e.g., Johnson & Johnson, Our Credo, http://www.jnj.com/our_company/our_credo/index.htm (last visited Apr. 15, 2008) (on file with the *McGeorge Law Review*).

commitment arise. Although conflicts of commitment usually cannot be avoided in daily practice, the busy professional must decide how to allocate time between competing commitments, such as when commitments to the patient and the hospital, or the client and the firm conflict. Nevertheless, professionals are expected to make these decisions with integrity.¹¹

Organizations also face conflicts of interest and commitment. The multiple goals and values organizations endorse contribute to these conflicts. For instance, one commitment of for-profit organizations is to maximize shareholder wealth,¹² but this commitment can conflict with other values, such as employee development.¹³ Consider that most hospitals commit to values associated with excellence as well as values associated with good stewardship of resources. These commitments can cause conflict for hospitals as they do for physicians.¹⁴ For instance, a hospitalized patient might require expensive diagnostic tests and treatment to receive excellent care, but reimbursement might cover only a fraction of the cost. Hospitals are not the only organizations prone to such conflicts; consider the controversy that can arise around a proposed news story that will reflect negatively on a newspaper's largest and most consistent advertiser. These particular examples illustrate the sorts of ethical conflicts that can occur between professionals and organizations, and among various professionals within an organization. It is physicians who order expensive tests and treatment regimens; it is journalists who uncover troublesome stories. But both healthcare organizations and news organizations must remain financially viable, and, in each kind of organization, managers are charged with, and frequently feel ethically committed to, maintaining that viability. Thus, situations like these can present significant ethical challenges to an organization and its professionals. The more varied the types of professionals that make up or partner with an organization, the greater the potential is for conflicts among their particular ethical commitments.

There is always one solution to a situation in which ethical commitments of professionals' conflict with one another or with the organizations in which they work: professionals can exit the troubling situation. At times, a specific situation may require the professional to exit if she is to retain her sense of professional integrity, but we must start with the assumption that this is not the optimal solution, particularly for professionals that are core to an organization's mission.

11. See generally Patricia Werhane & Jeffrey Doering, *Conflicts of Interest and Conflicts of Commitment*, 4 PROF. ETHICS 47 (1995) (discussing conflicts of interest and commitment).

12. See generally C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-First Century*, 51 U. KAN. L. REV. 77 (2002) (providing an excellent discussion on the controversial "shareholder primacy principle").

13. See generally ROBERT S. KAPLAN & DAVID P. NORTON, *THE BALANCED SCORECARD: TRANSLATING STRATEGY INTO ACTION* (1996) (elucidating the major goals of most organizations).

14. See generally Mark Repenshek, *Stewardship and Organizational Ethics: How Can Hospitals and Physicians Balance Scarce Resources, on One Hand, With Their Duty to Serve the Poor, on the Other?*, HEALTH PROGRESS, May-June 2004, at 31, 31-35, 56.

We assume, rather, that it is in the best interests of both the organization and the professionals it partners with, and indeed in the best interests of society at large, that these situations are resolved so that the professionals can retain their sense of professional ethical integrity and help the organization achieve its goals while upholding the values associated with those goals, which should be precisely why the organization partnered with its professionals in the first place.

Although it is common knowledge, especially after the scandals of the last decade, that some organizations pay no attention to their articulated ethical commitments,¹⁵ we, the authors, also assume—although this may be a controversial assumption—that the publicly articulated ethical commitments of most organizations are not simply window dressing. We assume that, in the same way that the articulated ethical commitments of professionals offer guidance to them, the organization likewise intends its articulated ethical commitments—its mission, values statements, and codes of ethics—to offer guidance to itself and its stakeholders, including its professional employees. But, if it is the case that organizations intend for their articulated ethical commitments to be meaningful to all stakeholders, what mechanisms are available to help translate these commitments into daily practice? What mechanisms are available when the professional or the organization faces competing ethical commitments and is unsure of the decision(s) that should be made? What mechanisms are available when professionals feel that their professional ethical commitments are at stake in a decision faced by the organization and that they should have a voice in that decision?

In what follows, we discuss how ethical conflict within organizations can occur among professionals or between professionals and the organization. We leave it to others to discuss the important issue of mismatch between personal ethical commitments and ethical commitments that derive from either professional or organizational affiliation. In Part II we discuss the conflicts that arise. In Part III we describe mechanisms commonly discussed in corporate ethics literature as being available to address situations characterized by conflicting ethical commitments, and we describe their short-comings. In Part IV we look at some of the recent changes in addressing ethical conflicts among professionals and the organizations they partner with in the healthcare industry, and in Part V we suggest that mechanisms proposed for that industry can be more widely applied in other industries. We conclude by noting that, despite incentives not to establish these kinds of programmatic activities, many firms in this post-Enron era are paying serious attention to their ethical commitments, so it may not be entirely unrealistic to hope that such activities will become more common.

15. See generally Ronald R. Sims & Johannes Brinkmann, *Enron Ethics (Or: Culture Matters More than Codes)*, 45 J. BUS. ETHICS 243 (2003).

II. CONFLICT BETWEEN AND AMONG PROFESSIONALS AND THE ORGANIZATIONS WITH WHICH THEY PARTNER

One of the perennial problems organizations face is having to choose between competing commitments.¹⁶ This is certainly true of an organization's ethical commitments. Conflict among competing ethical commitments can arise internally and/or result from external causes. This distinction is important because an organization may have more influence over competing ethical commitments that arise from internal rather than external causes. For instance, conflict in ethical commitments may occur because choices about what capital expenditures the organization should undertake in order to realize its goals force the organization to prioritize its ethical commitment to one stakeholder over another. Or it may be that a tightened regulatory or competitive environment makes some products or services obsolete or too expensive to continue offering, thus placing the organization in the position of breaching a commitment to some stakeholders.¹⁷

Additionally, the choices organizations make in responding to competing commitments can impinge on the ethical commitments of professionals who partner with the organization. Consider the choices a pharmaceutical company must make in creating a research agenda. What population of patients will it choose to serve? Should the decision be based on market-share considerations or on other criteria? How should its scientists respond if the company's decisions are based purely on market-share considerations and involve only the creation of "me too" drugs and therapies, but the scientists were hired with the promise that they would be working to develop innovative treatments to fill unmet clinical needs? Or consider the capital investment choices a hospital must make. Should the hospital invest in equipment and personnel for which high reimbursement is guaranteed or in equipment and personnel that will better serve the needs of the community but are not likely to generate such high returns? How should the hospital's physicians respond if decisions are made on criteria that do not include community needs and undermine their ability to serve the needs of many of their patients in the community?

We do not deny that organizations make and should make such decisions on the basis of numerous factors, both internal and external. However, these decisions affect the roles and responsibilities of the organization's professionals, and so they affect professionals' ability to fulfill their own ethical commitments. How, then, should an organization move forward when such difficult decisions must be made? How can professionals have a voice in an organization's decision

16. See generally R. EDWARD FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH* (1984) (discussing how management can balance competing commitments and why it should consider these competing commitments in its decision-making).

17. We refer here to those breaches that involve ethical commitments, not merely contractual issues. We do also recognize that honoring contractual agreements in and of itself reflects an ethical commitment.

that impinges on their ethical commitments, and where can they turn when they feel their voice is not heard? What mechanisms are available to help both the organization and its professionals in such situations?

III. ADDRESSING ETHICAL COMMITMENTS AND CONFLICTS THROUGH CORPORATE COMPLIANCE PROGRAMS?

A. Background

A great deal of attention is being given to legal and regulatory organizational compliance programs, which are perceived by organizations as an effective means of managing employee behaviors.¹⁸ Compliance programs are mechanisms initially created and implemented internally by organizations to detect and prevent criminal conduct.¹⁹

Compliance programs have gained popularity since the adoption in 1991 of the Organizational Sentencing Guidelines, which state that organizations, unions, non-profits, trusts, governmental agencies, and other organizational types can be held liable for criminal misconduct.²⁰ Although organizations cannot be imprisoned, they can be fined or punished in some other way, such as being ordered to pay restitution. However, the Sentencing Guidelines also stipulate that fines may be reduced if the organization has in place an “effective” compliance program.²¹ Since the punishment for an organization’s wrong-doing can be substantial, it was thought that offering such an incentive would encourage organizations to self-regulate.²²

“Effective” compliance programs contain features outlined in the Guidelines, such as a corporate code of conduct, the involvement of a high ranking corporate compliance officer, hotlines, and the like.²³ In 2004, an amendment to the Guidelines further clarified the intent of these programs by stating that a compliance program will be considered effective only if it “promote[s] an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”²⁴

18. See CHRIS KELLY ET AL., DERIVING VALUE FROM CORPORATE VALUES 6 (2005), <http://extfile.bah.com/livelink/livelink/145534/?func=dOc.Fetch&nodeid=145534> (on file with the *McGeorge Law Review*). Ninety-three percent of the public financial leaders surveyed considered legal and regulatory compliance as “[c]onsiderably or [v]ery [e]ffective” in managing behaviors among employees. *Id.*

19. See generally Michael Viano & Jenny R. Arnold, *Corporate Criminal Liability*, 43 AM. CRIM. L. REV. 311 (2006) (discussing corporate compliance programs).

20. See U.S. SENTENCING GUIDELINES MANUAL § 8A1.1 (2007).

21. See *id.* §§ 8B2.1, 8C2.5.

22. See Diana E. Murphy, *The Federal Sentencing Guidelines for Organizations: A Decade of Promoting Compliance and Ethics*, 87 IOWA L. REV. 697, 710-11 (2002) (suggesting that the Sentencing Guidelines, by giving a reduction in sentence to a corporation that has an effective compliance program, has encouraged companies to adopt effective compliance systems). At the time the article was written, Judge Murphy was the chair of the U.S. Sentencing Commission. *Id.* at 697.

23. See U.S. SENTENCING GUIDELINES MANUAL § 8B2.1.

24. *Id.* § 8B2.1(a).

An organization, through its mission, goals, and constituent collective activities, creates an “organizational culture,” which can be “defined as a complex set of [shared] values, beliefs, assumptions, and symbols that define the way in which [an organization] conducts its business.”²⁵ Thus, the culture of an organization encompasses both behaviors and decision-making in the organization.

If an effective compliance program is one that, in fact, promotes an organizational culture that encourages ethical conduct, can it then serve as a mechanism by which ethical commitments of both professionals and organizations can be vetted and by which ethical conflicts can be resolved? There are good reasons to look to a compliance program for help with these issues, but there are also good reasons to suppose that compliance programs will be ineffective in that role.

B. Addressing the Ethics Needs of Professionals and Organizations

If an organization is serious about instituting a compliance program, then the organization will have to commit valuable resources to establish a truly effective corporate compliance program. A high level officer of the organization must be given explicit responsibility for the program, and persons with various skills, depending on the scope and purpose of the program, must be identified, hired, or appointed. Reporting functions must be agreed upon, procedures for detecting wrong-doing must be designed and instituted, education and training programs must be designed and implemented, and the program should have some means to evaluate itself. Moreover, enforcement authority must be agreed upon.

If a compliance program is in place, then resources have been devoted to the program.²⁶ If the compliance program already has a values orientation,²⁷ then its members may see the role that ethical values play in managing conflict. If this is the case, it may be relatively straightforward for the compliance program to broaden its mandate to accommodate conflicts that arise when professional ethical commitments conflict with organizational ethical commitments or when the ethical commitments of the organization’s various professionals conflict. But there are good reasons to believe that a compliance program is unlikely to be effective in this role.

25. Jay B. Barney, *Organizational Culture: Can It Be a Source of Sustained Competitive Advantage?*, 11 ACAD. MGMT. REV. 656, 657 (1986).

26. See generally Ann E. Mills & Edward M. Spencer, *Organization Ethics or Compliance: Which Will Articulate Values for the United States’ Healthcare System?*, 13 HEC FORUM 329 (2001) (providing a detailed discussion of why compliance programs could form the basis for a program designed to enhance the culture of an organization).

27. See generally Gary R. Weaver & Linda Klebe Treviño, *Compliance and Values Oriented Ethics Programs: Influences on Employees’ Attitudes and Behavior*, 9 BUS. ETHICS Q. 315 (1999) (noting that values based programs produce more employer desired outcomes than programs that are more focused on avoiding wrongdoing).

First, the more effective the compliance program is in detecting wrongdoing, the more likely it is that it will generate information that can be used against the organization either by the government or in civil suits.²⁸ This creates an incentive for those involved in compliance activities to avoid investigating or analyzing issues associated with conflict from any source. Clearly, this not only may keep compliance programs from being proactive, but it also may impair their ability to ensure compliance.

Second, these programs originated to detect and deter criminal wrongdoing and, thus, tend to be designed and implemented by legal personnel working in the area of compliance.²⁹ However, a legal focus is of limited help in resolving issues associated with competing ethical commitments.³⁰

Third, managers tend to have a bias towards “command and control” rather than a focus on internal motivations and values.³¹ The command and control approach links employee motivation to following the rules and avoiding sanctions, which are applied when they break the rules. An approach which focuses on internal motivations and values emphasizes the role employees’ ethical values play in motivating appropriate behavior, including professional ethical values. And although the change in the organizational sentencing guidelines mentioned above may seem to force management’s attention to values, the Sarbanes-Oxley Act of 2002,³² passed in response to the accounting scandals of the prior decade, is also mandatory for all Security and Exchange Commission registrants and may serve to counteract a values approach.³³ Because section 404 of the Act requires management to evaluate an organization’s internal controls,³⁴ it seems to reinforce management bias toward a command and control approach to motivation and behavior of organization employees.³⁵ These legal and managerial incentives against expanding the activities of a compliance program to issues related to ethical commitments (as opposed to legal ones) lead

28. This is referred to as the “litigation dilemma.” See RICHARD BEDNAR ET AL., U.S. SENTENCING COMM’N, REPORT OF THE AD HOC ADVISORY GROUP ON THE ORGANIZATIONAL SENTENCING GUIDELINES 6-7 (2003), http://www.ussc.gov/corp/advgrprpt/AG_FINAL.pdf (on file with the *McGeorge Law Review*).

29. Philip A. Wellner, Note, *Effective Compliance Programs and Corporate Criminal Prosecutions*, 27 CARDOZO L. REV. 497, 513-14 (2005).

30. Anthony V. Alfieri, *The Fall of Legal Ethics and the Rise of Risk Management*, 94 GEO. L.J. 1909, 1910 (2006). Alfieri argues that “the widespread adoption of risk management mechanisms (for example, in-house advisors and internal controls, outside consultants and external audits, conflicts of interest protocols, and continuing legal education training) actually diminishes the appreciation of the moral choices facing lawyers in practice and the other-regarding obligations of lawyers in society.” *Id.*

31. Tom R. Tyler, *Promoting Employee Policy Adherence and Rule Following in Work Settings: The Value of Self-Regulatory Approaches*, 70 BROOK. L. REV. 1287, 1289-91 (2005).

32. Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 15 and 18 U.S.C.).

33. See Tosha Huffman, *Section 404 of the Sarbanes-Oxley Act: Where the Knee Jerk Bruises Shareholders and Lifts the External Auditor*, 43 BRANDEIS L.J. 239, 240 (2004) (recommending the repeal of section 404).

34. 15 U.S.C.A. § 7262 (West 2007); see also Huffman, *supra* note 33, at 250.

35. David Hess, *A Business Ethics Perspective on Sarbanes-Oxley and the Organizational Sentencing Guidelines*, 105 MICH. L. REV. 1781, 1806 (2007).

us to conclude that compliance programs are unlikely to be an effective mechanism for identifying and addressing issues related to promoting ethics or resolving conflicts among differing ethical commitments.

IV. LESSONS LEARNED FROM THE HEALTHCARE INDUSTRY: INSTITUTIONALIZING AN EXPLICIT FOCUS ON ETHICS

Hospitals and other healthcare organizations seeking reimbursement from Medicare and Medicaid for healthcare services they deliver must be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).³⁶ In 1991, responding to the controversy and attention surrounding such issues as foregoing life sustaining treatment³⁷ and recognizing that patients and their families have legitimate moral standing in decisions concerning their care, as do other members of a patient's healthcare team in many cases, the JCAHO mandated that the organizations it accredits offer "various strategies, activities or processes" to examine ethical issues arising in the care of patients.³⁸ These early activities evolved into clinical ethics programs whose presence in today's healthcare organizations are almost ubiquitous, despite the resistance of some physicians who recognized them (and sometimes still see them) as a challenge to their prestige and authority. This challenge occurs, in part, because such programs insist that the perspectives of others be considered.³⁹ There is controversy over how well clinical ethics programs function,⁴⁰ but their existence testifies to the recognition of the importance of an explicit program committed to addressing ethical issues and facilitating the resolution of ethical conflicts as an important value in the way patient care is delivered, as well as the importance of including multiple perspectives when addressing ethical issues.

More recently, this explicit attention towards ethics has moved from the clinical realm to the organizational realm. Realizing that turmoil in the healthcare market was negatively affecting healthcare organizations' abilities to act ethically, and perhaps realizing that quality of care may be more than a simple

36. JCAHO's website states that its mission is "[t]o continuously improve the safety and quality of care provided to the public through the provision of health care accreditation and related services that support performance improvement in health care organizations." Joint Comm'n, About Us, <http://www.jointcommission.org/AboutUs/> (last visited Apr. 9, 2008) (on file with the *McGeorge Law Review*).

37. For example, the case of Karen Ann Quinlan who lapsed into a persistent vegetative state and whose parents fought to discontinue active care and allow her to die. See *In re Quinlan*, 355 A.2d 647 (N.J. 1976).

38. JOINT COMM'N ON ACCREDITATION OF HEALTHCARE ORGS., COMPREHENSIVE ACCREDITATION MANUAL FOR HOSPITALS R1-2 (2007) [hereinafter MANUAL FOR HOSPITALS].

39. See John C. Fletcher & Edward M. Spencer, *Ethics Services in Healthcare Organizations*, in FLETCHER'S INTRODUCTION TO CLINICAL ETHICS 310 (John C. Fletcher, Edward M. Spencer & Paul A. Lombardo eds., 3d ed. 2005).

40. See generally Ellen Fox et al., *Ethics Consultation in United States Hospitals: A National Survey*, AM J. BIOETHICS, Feb. 2007, at 13, 13-25 (discussing the controversy). The *American Journal of Bioethics* also provides numerous open commentaries on this issue.

resource issue,⁴¹ the JCAHO, in 1995, introduced a mandate that requires healthcare organizations to follow ethical behavior in their business and patient care practices. The JCAHO called this requirement “organization ethics.”⁴²

Since the business of healthcare delivery organizations is healthcare and, ultimately, many types of professionals play important roles in ensuring the delivery of this care, organization ethics is a directive that affects all of the functions, activities, and relationships of healthcare organizations and their stakeholders, including its professionals. This mandate compels, or should compel, attention to the mission and values of the organization and how they are implemented in daily practice and long-term planning, covering both content and process. Since healthcare professionals are so central to the delivery of healthcare, the mandate also draws attention to the ethical commitments of these professionals, as well as those of the organization that relies on them. Programs designed to fulfill the JCAHO’s organization ethics mandate should ultimately facilitate the resolution of conflicts among ethical commitments associated with professional and clinical practices, as well as with business practices. These programs are called “organization ethics programs.” The idea of an explicit organization ethics program holds promise for serving as a formal, explicit mechanism for recognizing the importance of organizational ethical commitments of healthcare organizations and for addressing organizational ethics conflicts, including those conflicts that arise because of conflicting professional ethical conflicts. Thus, it serves as the organizational correlate to the clinical ethics program, which serves as a mechanism for recognizing the importance of ethics in the clinical arena and for addressing ethical conflicts arising there.

The JCAHO recognized the need for something called organization ethics in healthcare delivery organizations, and organization ethics programs followed. We look more closely at the goals, effectiveness, and approach of organization ethics programs in healthcare delivery organizations to ascertain whether they ought to be developed in other industries. We suggest that with appropriate modifications, similar programs can be useful in other industries, and other types of organizations seeking to fulfill the recent mandates for attention to organizational ethics across a broader range of organizations.

A. *The Goal of Organization Ethics Programs in Healthcare Delivery Organizations*

Earlier we referred to the idea of “organizational culture” as the complex set of shared values and beliefs that define the way in which an organization conducts its business. A central component of an organization’s culture is what

41. See Mark R. Chassin et al., *The Urgent Need to Improve Health Care Quality*, 280 JAMA 1000, 1001 (1998).

42. MANUAL FOR HOSPITALS, *supra* note 38, at R1-2.

some organizational theorists call the “ethical climate” of the organization.⁴³ The ethical climate of an organization is the functional analogue of the character of an individual. Just as a person’s character is a group of relatively stable traits connected with practical choice and action, so an organization’s ethical climate refers to the relatively stable shared perceptions and commitments that determine, among other things, how ethical issues should be addressed and what constitutes ethically acceptable behavior. Just as personal ethics affect what an individual will do when faced with moral dilemmas or competing ethical commitments, the corporate ethical climate guides what an organization and its constituents will do when faced with conflicting ethical commitments.

Obviously, one could create or perpetuate a negative as well as a positive ethical climate in any organization. Recognition of ethics as an important value is critical to any organization’s ability to create a positive ethical climate. Further, a positive ethical climate has at least two important characteristics. First, there is internal consistency, that is, the organizational culture is one in which both the goals of the organization, as they are actually practiced, and expectations for professional and managerial performance are consistent with the mission and values of the organization. Second, there is external accountability: the organizational culture embodies a set of values that reflect societal norms for what such an organization should value, how it should prioritize its mission, vision and goals, and how it and its professionals and managers should behave.

Healthcare is fundamentally an ethical enterprise. The goal of organization ethics activities in healthcare organizations is to produce a culture in which the business of healthcare is recognized as such and is carried out in an honest, decent, and proper manner. This requires organizational ethics programs to foster “a positive ethical climate where the organizational policies, activities, and self-evaluation mechanisms integrate business, clinical, and professional perspectives in consistent and positive” ventures that articulate, apply, and reinforce its mission in value-creating activities throughout the organization.⁴⁴ Because the ethical climate is a crucial component of organizational culture, the ethical climate will influence all behaviors, decisions, and relationships within the organization, not just those involving explicitly ethical issues. Just as clinical ethics activities, including consultation, education, research, and policy-making, inform the behaviors and clinical decision-making of clinicians, patients, and families, organization ethics activities, which also can encompass consultation, education, research, and policy-making activities, should inform the behaviors and decision-making of all stakeholders in the organization as to what the organization does and how it does it.

43. See generally EDWARD M. SPENCER, ANN E. MILLS, MARY V. RORTY & PATRICIA H. WERHANE, ORGANIZATION ETHICS IN HEALTH CARE (2000) (discussing the ethical climate of healthcare organizations and processes that can be used to achieve a positive ethical climate).

44. *Id.* at 6.

B. Envisioning Effective Organization Ethics Programs

Organization ethics activities in healthcare delivery organizations take different forms. Some healthcare systems have coupled organization ethics with clinical ethics in a single joint program,⁴⁵ and others have established a separate program.⁴⁶ In either format, the role of an organization ethics program is to articulate and promote the healthcare organization's mission and values—synthesized from its professional, clinical, and business ethics commitments—through its activities. Such a program would clearly benefit any organization that commits to ethics as an important value.

Although there are many issues to consider in starting or strengthening any organization ethics activity, we mention four that we believe to be necessary, though by no means sufficient, for creating a legitimate and effective organization ethics program. First, it must be openly endorsed by an organization's top leadership. Otherwise, in the same way that compliance programs can be looked upon cynically, an organization ethics program will be received cynically without this endorsement. Similarly, just as compliance programs are required to report to top leadership, an organization ethics program should report to top leadership, preferably at the board level. Second, one of the single most important reasons that programmatic activities fail is that sufficient resources have not been allocated to ensure that programmatic mandates can be achieved, including ensuring the program is visible within the organization. Third, an organization's leadership must determine the level of authority the program is to have. Is it intended to be advisory only, or should it have more decision-making authority? And should it have the authority to ensure enforcement of its decisions? The answers to these issues will be addressed differently by different organizations, but, in setting up such a program, they must be clearly addressed if the organization intends to have a legitimate program. The fourth issue fundamental to the effectiveness of an organization ethics program is its approach to ethical conflict. The approach the program takes to facilitating resolution of problems involving conflicting ethical commitments is critical to determining its success. And, to be blunt, an organization ethics program will not be effective if it does not take a "systems approach"—an approach that may be quite different from one aimed at capturing and eliminating individual wrongdoing.

45. See Julia Milner West & Earl D. White, II, *The Development of the Sentara Healthcare System's Ethics Program*, in *DEVELOPING ORGANIZATION ETHICS IN HEALTHCARE: A CASE-BASED APPROACH TO POLICY, PRACTICE, AND COMPLIANCE* 149 app. C (Ann E. Mills, Edward M. Spencer & Patricia H. Werhane eds., 2001) [hereinafter *DEVELOPING ORGANIZATION ETHICS*].

46. See Catherine Myser, Patricia Donohewer & Cathy Frank, *Making the Most of Disequilibrium: Bridging the Gap Between Clinical and Organizational Ethics in a Newly Merged Healthcare Organization*, reprinted in *DEVELOPING ORGANIZATION ETHICS*, *supra* note 45, at 157 app. D.

V. A "SYSTEMS APPROACH" TO ETHICS IN ORGANIZATIONS

We said earlier that in order to be legitimate, clinical ethics programs must take a multi-perspective approach to clinical ethics conflicts. In other words, they must develop a mechanism to ensure that the voices of important stakeholders are heard. This is because the perspective of patients and their families, as well as other clinicians, have legitimate moral standing in clinical decision-making. In the same way that clinical ethics programs must take a multi-perspective approach to facilitate decision-making, organization ethics programs also must take a multi-perspective approach to facilitate decision-making because ethical conflict necessarily involves competing perspectives. However, a multi-perspective approach is just one part of a much broader approach to decision-making. We call this broader approach a "systems approach."

A systems approach to improving the delivery of healthcare has been recommended by the Institute of Medicine (IOM).⁴⁷ The IOM's advocacy of a systems approach to improving quality in the healthcare delivery system stems from the recognition that healthcare is rarely delivered by individuals.⁴⁸ Rather, healthcare is delivered by individuals creating systems through which care is delivered.⁴⁹ In fact, most organizations reflect several levels of systems: systems composed of collections of micro-systems.⁵⁰ Ideally, these micro-systems consist of persons working together or in tandem to achieve an organization's goals.⁵¹ For instance, a patient in a hospital interacts with various micro-systems, such as the team in a critical care unit, a micro-system composed of doctors, nurses, nursing aides, nutritionists, and perhaps social workers, physical therapists, and chaplains, all working together to deliver care to the patient.⁵² Moreover, micro-systems interact with one another. For instance, once a critical care patient has achieved a certain level of medical stability, she will be transferred to another micro-system, such as a non-urgent medical unit. At this point, all her records will be transferred to the medical unit, and her doctors, nurses, and other caregivers will exchange information about her. And the patient will interact with a new micro-system. Thus, focusing on individuals will neither uncover nor adequately address their real needs unless attention is also paid to the systems created. In a similar way, a systems approach to ethics is critical.

47. See generally COMM. ON QUALITY OF HEALTH CARE IN AM., INST. OF MED., CROSSING THE QUALITY CHASM: A NEW HEALTH SYSTEM FOR THE 21ST CENTURY (2001).

48. *Id.* at 43-46.

49. *Id.*

50. *Id.* at 63-64 (discussing systems and their connections and interactions).

51. *Id.* at 118 (outlining the outcomes that each component in the healthcare system will strive for in the future).

52. See generally Donna T. Chen, Patricia H. Werhane & Ann E. Mills, *Role of Organization Ethics in Critical Care Medicine*, 35 CRITICAL CARE MED. S11 (2007) (discussing how a system's approach is helpful in managing clinical and organization ethics dilemmas).

Just as in healthcare organizations, organizations in other industries also can be viewed as individuals creating multiple levels of systems to achieve certain goals. Organizations may have micro-systems that are called billing, marketing and sales, product development, or auditing and accounting, among others. These micro-systems and their interactions, either within the micro-system itself or between micro-systems, can also be the root cause of an ethical conflict. For instance, an engineer in a product development micro-system may experience ethical conflict if a problem concerning product safety is minimized by others in the micro-system in which she works. Alternatively, the engineer could experience ethical conflict because safety issues are minimized by a sales and marketing micro-system with which the product development micro-system interacts.

Earlier we said that ethical conflict could arise internally or externally. While an organization might have little influence over ethical conflict arising from external causes, it has more influence over conflict arising internally. But often organizations do not pay sufficient attention to the internal organizational effect that micro-systems have on each other. Consider, for example, our earlier example of the type of internal conflict that can arise if a healthcare organization decides to purchase capital equipment that would lead to higher reimbursement rather than capital equipment more suited to a community's needs. If we view the conflict through a system's lens, we can see how a decision made in one micro-system (financing) of an organization might affect those people working in another micro-system of an organization (clinical care). And the effect of the decision may be to prevent clinicians from fulfilling what they consider an important professional ethical commitment or obligation. Therefore, in trying to facilitate a solution to a problem which involves conflicting ethical commitments, it is useful to look not only at the perspectives of those individual persons involved in the conflict but also to broaden the approach to include the characteristics of the micro-systems and/or the environment in which the conflict is occurring. Moreover, it might be necessary to further explore how decisions made in one micro-system affect other micro-systems. In order to take this approach, we suggest that when confronted with an ethical conflict, organization ethics programs should address a series of questions that reflect a systems approach to conflict resolution. For example, as part of the process for working through a conflict between organization activities and professional ethics commitments, the following questions could be addressed:

- What are the relevant mission and values of the organization at stake? What are the relevant professional ethical commitments at stake?

- Is this conflict arising because of the external environment? If yes, ask:

How could the mission and values of the organization be affected, and how could the organization and the professionals respond to mitigate any negative effect on its mission and values?

Similarly, how could professional ethical commitments be affected, and how could the organization and the professional respond to mitigate any negative effect on these commitments?

- If no, and the conflict is arising internally, ask:
 - What is the micro-system in which an ethical conflict is occurring? What is the purpose of the micro-system? How does this purpose take into consideration the ethical commitments of the organization and the professionals involved? Are the roles and responsibilities of the professionals in the micro-system being affected?
 - Are the interactions of the micro-system consistent with the organization's values? If not, what are the interactions of the micro-system, and how are they inconsistent with the organization's values?
 - Are these interactions consistent with the values of the professionals working within the micro-system? If not, what are the interactions of those people in the micro-system, and how are they inconsistent with the values of the professionals working in that micro-system?
 - Are the outcomes being produced by the micro-system consistent with the organization's mission and values? If not, what are the outcomes, and how are they inconsistent with the organization's mission and values? Are resources sufficient to ensure outcomes consistent with the organization's mission and values?
 - Are the outcomes being produced by the micro-system consistent with the outcomes that are compatible with the ethical commitments of the professionals working in the micro-system? If not, what are the outcomes of the micro-system, and how are they incompatible with the ethical commitments of professionals working in the micro-system?
 - Are decisions and interactions of other micro-systems affecting this micro-system? Are the decisions and interactions of this micro-system affecting other micro-systems? If yes, are these decisions and interactions compatible with the organization's mission and values?

One way of ensuring that such an approach can be taken by the organization ethics program is to include members whose roles in the organization represent important micro-systems, as well as the diverse professional ethical commitments represented in the organization. For instance, the organization ethics program of a manufacturing firm should include engineers as well as operation managers, and a news organization should include journalists as well as administrators in its organization ethics program.

VI. CONCLUSION

The activities of an organization ethics program involve articulating, interpreting, and promoting public statements of the organization's ethical commitments, including its mission and values statements and code of conduct. This ensures the organization is in a position to help the organization's leadership prioritize conflicting ethical commitments when difficult decisions must be made in an organizational context.

Professionals and groups that represent them within the organization are guided by specific standards of practice and seek to retain various prerogatives of access to practice, discipline, task allocation, and self-regulation. The more important professionals are to the organization's primary activities and reputation, the closer the articulated ethical commitments of the organization should be to those of its professionals and, thus, the more important it is to ensure that the perspectives of the organization's professionals are represented when there are ethical conflicts, especially ones affecting the ethical commitments of both the organization and its professionals. Examples include conflicts involving an organization's decisions, structures, strategies, policies, or contracts which members of professional groups judge to be threats to their ethical practice, situations in which professional standards are not met or managerial prerogatives are not exercised responsibly, as well as issues that arise because of the competing ethical commitments among professionals or between professionals and the organization. If taken seriously, an organization ethics program is the logical site for resolving issues associated with conflicting ethical commitments among the organization's professionals or between professionals and the organization.

The idea of a formal ethics program within which ethical reflection and deliberation can occur, that is separate from other core activities of an organization, yet which critically informs those activities, has been promoted, debated, and, in part, institutionalized in the healthcare delivery industry. Such programs are widely institutionalized in the area of clinical ethics and are being implemented in the organization ethics realm as well. Organization ethics programs were conceived as a way of realigning the ethical commitments of professionals and of the organizations within which they work so that the traditional mission and values of healthcare could be reflected in daily practice. Because professionals are a core resource for healthcare organizations,

organization ethics within healthcare necessarily pays attention to the role of professionals in the organization and offers guidance when professionals and their organizations face conflicting ethical commitments. Just as with clinical ethics programs, the ultimate acceptability of organization ethics programs will depend on how much ethics is valued and whether these programs add to the organization. Nevertheless, regulatory insistence on their existence forces an organization's leaders and managers to face the fact that working through ethical conflicts and deliberating over ethical commitments should have an important structural presence, and it should include perspectives of important stakeholders. Of course, moving in this direction challenges the perceived and, in some cases, real authority and decision-making traditions that many organizations' leaders and managers are used to, just as clinical ethics programs challenge the authority and decision-making traditions of physicians. But this challenge is exactly why these programs are needed.

How likely is organization ethics to be embraced by other industries? There are certainly good reasons for organizations in other industries to pause before embracing these sorts of activities. Program activities can be costly, and organization leaders naturally hesitate to set up activities that may challenge or appear to challenge their decision-making authority. Moreover, there is the legitimate concern that these activities may divert attention and resources from other core activities of the organization. But recent surveys and studies indicate that organizations are paying more attention to the role of ethical values in organizational life.⁵³ Moreover, most empirical studies on the topic suggest a positive link between an organization's core values that reflect ethical commitments and the organization's success, financially and otherwise.⁵⁴ So even though incentives are against the establishment of such activities, once organizations understand that empirical evidence suggests a link between the importance of core values to the organization and the success of an organization in achieving its mission, the hope organizations will pay more attention to these issues may not be entirely unrealistic.

53. See generally KELLY ET AL., *supra* note 18.

54. See generally JIM COLLINS & JERRY I. PORRAS, *BUILT TO LAST: SUCCESSFUL HABITS OF VISIONARY COMPANIES* (1994); Joshua Margolis et al., *Bus. Roundtable Inst. for Corporate Ethics, Building the Business Case for Ethics* (2006), http://www.darden.edu/corporate-ethics/pdf/business_case.pdf (on file with the *McGeorge Law Review*); Joshua D. Margolis & James P. Walsh, *Misery Loves Companies: Rethinking Social Initiatives by Business*, 48 ADMIN. SCI. Q. 268 (2003). Each of these sources provides empirical studies assessing the relationship between corporate financial performance and attention to core values and ethical commitments, many expressed in the form of various corporate social performance measures.

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