# The bioethical relevance of the ethics of health care organisations

**Willem A Landman,** *BA, BA Hons, MA, DPhil, BA Hons, MA (Oxon), BProc (SA)*
*Ethics Institute of South Africa and Stellenbosch University, W Cape*
*willem@ethicsa.org*

Bioethics and organisational ethics* are applied ethics disciplines with different objects of investigation. Bioethics focuses on the moral aspects of caring for the health of individuals and populations, and organisational ethics on the moral aspects of organisations' strategies and operations. So these two disciplines converge insofar as they bring moral arguments to bear on applied normative or value issues.

Additionally, when organisational ethics impinges on ethical issues in, specifically, health care organisations – such as government health departments, pharmaceutical companies and private hospital groups – there is a more concerted convergence of bioethics and organisational ethics in that both are concerned with the ethics of health care and, consequently, of health.

## Organisational ethics raises bioethical issues

Institutions and organisations create internal practices and, to the extent that they engage with their external environments, also external practices that in turn bear upon the organisations' internal and external stakeholders. In health care organisations, such practices directly or indirectly affect *inter alia* access to health care and the distribution of limited health care resources.

The following three examples illustrate how health care organisations' internal and external practices raise bioethical concerns which have the potential directly or indirectly to compromise the delivery of health care, and consequently the health, of individuals and groups.

First: a number of pharmaceutical companies form a cartel to fix the prices of medical supplies to public hospitals; executives and senior managers of companies that ought to compete fairly in the marketplace collude to keep prices artificially high and at the same level, so immuring price determination from normal market forces. Taxpayers end up paying a premium for those supplies. In effect, these colluding pharmaceutical companies steal public resources that could have been utilised elsewhere in the public health care system for the benefit of those in need of health care and with a constitutional entitlement to such care.

Second: doctors demand kickbacks from pathology laboratories for referral of their business. Thus it happens that 10%, say, of the business generated by a referring doctor could be deposited by the pathologist into the doctor's account at a travel agency (for the annual family vacation overseas) or be placed in a brown envelope for collection from the pathologist's reception desk. Ultimately, this inflates the fees charged by pathologists, so defrauding health care funders of resources that could have been employed in the risk pool for the benefit of premium-paying clients. Again, unethical organisational conduct compromises the affordability of, and therefore access to, health care.

Third: the national Department of Health allows once well-functioning public hospitals to degenerate into largely dysfunctional institutions, where nurses treat patients unprofessionally and without respect, empathy and care. Bad organisational ethics in the executive arm of government – on national, provincial and institutional levels – adversely affects the delivery of health care to those who cannot afford to seek treatment in the private sector, which militates against effective and cost-efficient delivery of public health services.

These examples demonstrate the direct influence of organisational ethics on bioethical concerns because organisational ethics in health care organisations more or less directly, with more or less significant consequences, affects the equitability of access to health care resources and quality of delivery – which are key concerns of bioethics.[1]

## Ethics programmes

Ethics requires that organisations align their strategies and operations with ethical standards for what is good, right and fair. For this reason, corporate governance best practices (*inter alia*) require of health care organisations, as of all organisations, to implement organisational ethics management programmes ('ethics programmes').[2]

An effective ethics programme should help to detect, prevent, diminish and address unethical and unlawful conduct, via institutional systems, policies and procedures. In a health care organisation, an ethics programme would be aimed at conduct of the kind described in the three preceding examples and, to the extent that it is effective, have a beneficial effect on the equity and quality of health care delivery.

Responsibility and accountability for an organisational ethics management programme rests with the board of directors. Of course, individuals too are personally responsible and accountable for their own actions, but the board should set the parameters publicly for acceptable individual and collective conduct in the organisation and its external stakeholders, such as suppliers.

The process of governing and managing an organisation's ethics performance by means of an ethics programme rests on four pillars,† namely, assessing ethics risk; developing ethical standards; institutionalisation of ethics; and reporting on and disclosing ethical performance.

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*Some organisations are businesses; therefore business ethics is the component of organisational ethics that focuses on a particular class of organisations.

†This description of an ethics programme draws from the ethics chapter of the forthcoming (2008) *King Report on Corporate Governance for South Africa* ('King III'). It is a work in progress and not yet published.

## Assessing the organisation's ethics risks

Firstly, effective ethics management requires an assessment of the organisation's positive and negative risk. Positive risk refers to the beneficial opportunities that a strong ethics performance could open up for the organisation (e.g. building trust or a good reputation), whereas negative risk is the risk of damage that could result from unethical behaviour by the organisation or its stakeholders (e.g. exposure to fraud and corruption).

To identify factors that could impinge on ethics risks, one needs to identify specific beliefs, practices and conduct that affect the organisation's ethics performance, by engaging internal and external stakeholders via surveys, focus groups or individual interviews. An ethics risk assessment measures the presence and effectiveness of ethics systems, policies and procedures (such as the organisation's code of ethics, ethics training, or whistle-blowing hotline); stakeholders' perceptions (e.g. the lower employee hierarchies' views of the motives of top management in respect of ethics initiatives and interventions, or adherence to core ethical values); and specific risk factors (e.g. observed misconduct, pressure to perform at all costs, feelings of dissatisfaction).

A reliable organisational ethics risk profile could reveal, for example, ethics risks (such as legal action, substantial fines, or loss of reputation) associated with price fixing through cartel formation; or risks such as preventable suffering and death, or loss of public trust, resulting from mismanagement of public hospitals.

## Developing an organisation's ethical standards

The second pillar of an ethics programme requires that an organisation develops and formulates its ethical standards in the form of a code of ethics and more detailed ethics policies. The board would normally delegate this responsibility to management, but retains ultimate responsibility for this as well as for communicating the standards internally and externally.

Codes of ethics differ, depending on a number of variables such as the nature, size and history of the organisation, or whether the code is intended to address an immediate or major ethical crisis in the organisation. Consequently, a code may vary in purpose, format, content and tone.[3] Whatever the variables, a good organisational code of ethics would contain certain essential components.* Most importantly, it would balance values (aspirations) and rules (directives) so that they 'communicate' with each other.

Firstly, a good code is developed around three to five core ethical and operational values that underpin all conduct in and by the organisation and its stakeholders.

Secondly, it translates those values into conduct provisions or prescriptions to which all members of the organisation should adhere. The key aim is that values are given content by means of illustrative conduct provisions to which those values would give rise in practical settings. Conversely, a good code of ethics is more than a list of do's and don'ts because it grounds conduct provisions explicitly in their underlying rationale, namely: values. Examples are conduct provisions relating to declarations of conflicts of interest; giving and receiving of gifts; procurement; and use of the organisation's resources. If any of these areas of ethics risk requires more detailed ethics policies, such policies could be developed into independent documents to which the code refers at the appropriate places. The idea is to keep the code as a compact document – a kind of reference point of values, illustrative conduct provisions and more detailed ethics policies.

Preferably, a code should be personalised with a statement of commitment from the chairperson or CEO, committing the organisation's leadership to the code. The code needs to be understood by every internal and external stakeholder as setting the standards for their conduct in, on behalf of, or in dealing with, the organisation. In fact, it should be written with all the organisation's stakeholders in mind, and should also be made available to external stakeholders such as suppliers, since they would be equally expected to respect the organisation's values in their dealings with it.

A good code would also contain details of the organisation's misconduct-reporting avenues and practical advice on utilising them, as well as appropriate channels to seek clarity or advice on the meaning and interpretation of the code in novel situations that may pose ethical dilemmas.

The process of code development should be participatory, with the organisation's main stakeholders contributing to it. In this way, internal and external stakeholders are more likely to develop a sense of 'ownership' of the code.

Can a good code prevent the unethical activities described in the three examples above? An organisation that routinely, purposefully and transparently applies its code would create a culture in which its internal and external stakeholders consciously consider the ethics of their decisions before they act. Ethical conduct is not guaranteed, however, since individuals are ultimately free agents in their conduct and decision-making; an individual who chooses to defraud the organisation or enter into a corrupt relationship with a supplier will strive to find a way of doing so.

A good code of ethics in a pharmaceutical company would define cartel formation and collusion to fix drug prices, and explicitly prohibit these. Likewise, a pathology firm should explicitly prohibit accepting or soliciting kickbacks from referring doctors. And a public health care system built on ethical values (some of which are enshrined in the South African Constitution's Bill of Rights) would debate explicitly and on an ongoing basis the import of, for example, professionalism among nurses and other health care staff and the general standard of service delivery in the public sector.

In short, a code of ethics in and of itself cannot guarantee ethical conduct in an organisation but is an essential part of a coherent ethics programme designed to create an ethical organisational culture in which ethical conduct would predominate.

## Institutionalising good ethics in an organisation

The third pillar of an ethics programme should institutionalise the organisation's ethical standards, both strategically and operationally, in its culture, i.e. in the way things are done in the organisation.

* Examples of recently developed codes of ethics of South African companies that successfully balance values and rules are those by Grindrod Limited: *Code of Ethics: Investing in our Core Values* (www.grindrod.co.za); *Total South Africa: Total South Africa Code of Ethics* (www.total.co.za); Sappi Limited: *The Sappi Code of Ethics: Growing and Living Our Values* (www.sappi.com).

Strategically, the board is responsible for institutionalising the organisation's ethical standards. The board itself needs to have adequate ethics expertise by means of making appropriate appointments or through training and advice. The board needs to set ethics objectives and milestones that are integrated into the organisation's core objectives in such a way that ethics becomes an integral part (or constant dimension) of the organisation's identity (who we are) and the conduct of its stakeholders (how we do things).

The board should make it clear that failure to meet the organisation's ethical standards could undermine the pursuit of its other objectives, and would not be tolerated. The CEO, or designated board member, should be a visible link between the board's ethics expectations and the organisation's ethics programme. Finally, the board should provide resources for implementing an ethics programme.

Operationally, a typical ethics programme would consist of key components that take on different forms according to the organisation's size, resources, current ethics challenges, risk tolerance, and the like. An ethics programme should make provision for creating structures or offices with defined roles and responsibilities, such as a board portfolio responsible for governing the organisation's strategic commitment to ethical standards and objectives. There should be an ethics subcommittee of the board, or a commissioned ethics committee, in which all functions of the organisation are represented, thus establishing a close link between the board's ethics strategy and implementation of ethics throughout the organisation.

An ethics office, headed by an ethics officer, should initiate and co-ordinate operational aspects of the ethics programme within the parameters set by the board (strategic) and ethics committee (operational). The ethics officer would act as the operational custodian of the ethics management process. Depending on the organisation's size, an ethics officer may serve in a full-time or part-time capacity. The organisation's ethics office should be located where it would enjoy organisation-wide credibility and in such a way that ethics is not perceived as being confined to a particular function, office, or individual.

The ethics office assumes responsibility for ethics training in co-operation with the organisation's other training initiatives. Such training should be implemented at the time of employee induction as well as being ongoing. The code of ethics – more specifically, its values statement – should be the point of departure for interactive, case-based ethics training. The latter should include the purpose and mechanics of secure misconduct reporting and ethics advice channels. In addition, every training initiative on any policy or procedure should be integrated with the demands of ethical standards.

A whistle-blowing hotline (as opposed to an advice line) is a protected disclosure facility – a confidential or anonymous option for internal and external stakeholders to report ethical or legal misconduct.[4] Anonymity assures safe reporting and protection against victimisation. Whistle-blowing can be proactive (by preventing and deterring) as well as reactive (by detecting, investigating and resolving reported cases); it should be regarded as an option of last resort after exhausting available line-reporting channels or if there are overriding safety reasons against using those channels. Whistle-blowing may be regarded as undesirable for cultural or historical reasons, but these are outweighed by the need to prevent and detect misconduct in the interest of all stakeholders.

Institutionalising ethics in these and other ways – such as a coherent ethics communication strategy – is ultimately aimed at integrating ethical standards into an organisation's strategies and operations and building an ethical organisational culture. An organisation formally builds an ethical culture through structures of authority and responsibility, decision-making processes, selection (hiring) and promotion, performance management and review, and disciplinary procedures. It also develops an ethical culture informally through living norms, role modelling and mentoring, rituals, myths and stories, and the language it uses.

The institutionalisation of ethics cannot of course guarantee ethical conduct by everyone in the organisation at all times, but it can create a corporate culture that is conducive to ethical conduct and that in turn can benefit the organisation in terms of public trust and sound reputation. In addition, there is evidence of the following consequences of an effective ethics programme: improved perceptions of top management, less pressure to compromise ethical standards, less observed misconduct, more reporting of ethical misconduct, and more use made of values and principles taught in training to guide decisions and actions at work.[5]

Importantly, should ethical misconduct of the kind described in the three foregoing examples occur, it would be much easier for organisations to demonstrate publicly that such behaviour goes against both its stated and applied ethical standards. Therefore, the organisation would gain in credibility.

## Reporting and disclosing an organisation's ethics performance

The fourth and final pillar of an ethics programme is reporting and disclosure. The ethics office should monitor and report internally on the organisation's ethics performance and thus the quality of its ethics programme. The outcome should be used for benchmarking and instituting improvements.

Through its internal audit department, an organisation should perform an internal audit on the efficiency and effectiveness of its ethics systems, with the resulting report informing and updating risk management interventions.

Ideally, ethics performance should also be subjected to external reporting and auditing. The external report should then be verified according to generally accepted auditing practices for all reports provided by the board. Finally, the external ethics auditors should prepare an assurance statement. These documents should then be disclosed and presented to internal and external stakeholders.

## Conclusion

As institutions, organisations create internal and external practices that declare their identity (who they are) and conduct (how they do things). The board is strategically responsible for ensuring that an organisation's practices are ethical; it does so by delegating its responsibility to executive management. The board should further ensure that governance of the organisation's ethics is not reduced to a mere compliance exercise delegated to a unit or function (such as human resources or risk management). At all times, the board should retain control of and responsibility for the organisation's ethics. Only through the board's continued and visible commitment will the ethics programme be effective in contributing towards building and maintaining an ethical organisational culture.

The in-house and public ethics practices of a health care organisation impinge on its delivery of health care. An organisational culture of integrity contributes towards fairer distribution of health care resources by maximising the channelling of those resources towards health care, without any leeching by way of bribes, kickbacks, inefficiency and political corruption.

In fine, organisational ethics directly or indirectly affects a key bioethics concern: the equitable allocation of limited health care resources in both the public and private sectors.

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