

The Protection of Values Must Be A Priority When Setting Policies

BY THOMAS F. SCHINDLER, PhD

Realities first; niceties later. Such an approach goes almost without saying. With all the problems and complexities connected with the changing healthcare environment—including limited time, energy, and resources—priorities must be established.

Often, it seems, however, that the realities given first attention are financial and legal matters. The niceties, attended to later, are matters involving mission and values.

But can legal matters be dealt with apart from mission and values? This question will be considered from the perspective of healthcare management ethics, looking at the values at stake, identifying value conflicts, and suggesting how to come to a decision and act.

VALUES AT STAKE

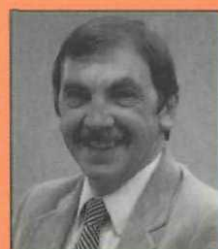
Do legal matters exist apart from and outside the realm of mission and values?

The answer is no.

Laws themselves are a codification of a society's values, a means by which a society establishes and promotes its commonly held beliefs and protects its citizens and institutions. At the same time, laws are not the only means to these ends. Laws do not—and cannot—cover all of a society's values and beliefs, nor all the ways that those values and beliefs affect people's lives.

In addition, although laws are vehicles for society's values, laws can be so narrowly interpreted that the realization of the values they seek to protect and promote can be minimized or even lost. Conversely, laws can be so broadly interpreted that they are used to justify inappropriate actions or that they trample or infringe on the rights of others.

Mission and values, then, interact with the legal sphere in a number of ways. Part of a healthcare organization's mission is to act responsibly toward society and to meet the social obligations codified in the law. But, in addition, such an organization has to attend to how well the values



*Fr. Schindler is
director of ethics,
Mercy Health
Services,
Farmington Hills,
MI. He is a
member of the
Catholic Health
Association's Task
Force on
Healthcare
Management
Ethics.*

the laws are seeking to uphold are being realized in the policies and programs it is considering. And the organization must ask whether other values are at stake—especially values important to the organization—besides those codified in the law.

To better understand this interaction between mission, values, and legal concerns, consider the following examples.

Patient Care Policies A number of values are at stake when patient care policies are being developed:

- The trust relationship between care givers and patients
- Respect for patient autonomy or self-determination
- Integrity in ensuring that a patient's decisions can be carried out by holding open the possibility of withholding or withdrawing treatment
- Compassion in providing appropriate pain and symptom management

The law, particularly the Patient Self-Determination Act and the *Cruzan* decision, can help Catholic healthcare institutions realize these values. But at the same time an organization can take an approach to the law that undercuts these values. For instance, when developing consent forms, more time can be spent in protecting the institution than ensuring that patients understand their options.

Unions When responding to union organizing or strikes, an organization must protect its security and stability so it can continue to fulfill its mission. But other values are at stake as well. For example, according to the Catholic tradition, workers have a right to a voice in what affects their ability to carry out their responsibilities. An organization must uphold this right by integrating protective measures into its structure. The right cannot be dependent merely on managers' goodwill. In addition, for an organization to be strong and effective, it needs a cooperative relationship built on trust between management and labor.

Nothing in the law is opposed to any of these values. In fact, the opposite is true: Means have been developed in the law to protect these values. But it is possible to use the law in a way that protects the organization but has the intent of breaking the union and takes a win-lose approach to negotiations.

Joint Ventures When organizations establish joint ventures, the self-interest of each is a legitimate concern, but so are other values.

For the joint venture to succeed, a spirit of trust and cooperation is needed. Simply pursuing self-interest does not by itself lead to success. In addition, healthcare organizations are stewards of a resource that belongs to the community as a whole. The pursuit of self-interest or even the best interests of the collaborating healthcare organizations does not automatically translate into what is in the community's best interests.

The law seeks to protect organizations, as well as to advance the good of society as a whole. Both values must be taken into account in working out legal matters. But steps are also needed to develop a spirit of trust and cooperation.

Ensuring Values Are Considered The values indicated above in situations involving patient care, employee relations, and joint ventures are not necessarily present in all such situations, nor are they the only values present. But, as these examples indicate, dealing with legal concerns does not require setting aside the values at stake. It is a way of making sure that the values of society and the common good are taken into account.

VALUE CONFLICTS

Once the values at stake have been identified they may be found to be in conflict with one another. Circumstances can arise in which it is impossible, for example, to fully achieve both the good of the organization and workers' right to a voice, or the best interests of collaborating healthcare facilities and the good of the community. Two steps are involved in addressing such situations:

- Identify which specific values seem to be in conflict.
- Determine if there is indeed a conflict.

This second step is necessary because what at first glance appears to be a conflict may, on closer

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look, prove not to be so. Further analysis may reveal options that allow all the values to be pursued fully.

For instance, the legal options offered may be based on an understanding that something not explicitly permitted by the law is prohibited. Since the law cannot—and should not—address all aspects of life, such an approach is too narrow. Further options can exist. Although these options may not explicitly be covered in the law, they are by no means illegal or even necessarily risky.

Alan Meisel provides an example of this: "Just because there may be no legislation or judicial precedent in a particular state specifically permitting the termination of life support does not mean that it is illegal to do so" ("Legal Myths about Terminating Life Support," *Archives of Internal Medicine*, August 1991, p. 1,497).

MAKING A DECISION

Once the value conflict has been identified, the stage is set for reaching a decision. This involves weighing the values in conflict and then deciding on the option that best realizes the more important values without forgetting those judged less important. In especially difficult circumstances it may not be a matter so much of trying to achieve the greatest good possible, as of pursuing the least evil.

Such decisions are situation specific. It is not possible to determine in advance which values will outweigh others. This means that no value automatically trumps other values. Nor should the fact that a particular option involves legal risk automatically take it out of consideration. The legal risk of following the option should be weighed against the risk to other values if it is not followed.

This may sound like organizational suicide. After all, placing the organization at legal risk threatens its stability and security. An organization cannot pursue its mission and values if it no longer exists. (Realities first; niceties later.)

But an organization is no less at risk if it forgets its other values. Over the long term, it must weigh the value of stability and security in relation to the other values that define it.

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ACTING ON THE DECISION

Once a decision has been reached, an organization must take appropriate actions to put it into effect. In addition to implementing a particular decision, the organization should take more broad-reaching steps to ensure that legal considerations in general are integrated into and viewed in light of its mission and values. Toward that end, the following suggestions may be helpful.

Hiring Counsel When hiring legal counsel, include among the criteria that the individual or firm hired has to:

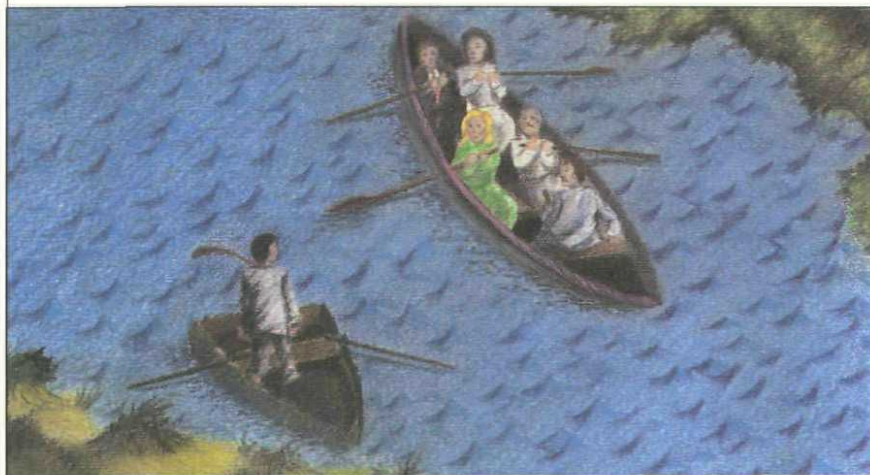
- Be aware of and comfortable with the organization's values and mission
- Be willing to take the mission and values into account in offering opinions and suggestions
- Understand that at times legal risk may be outweighed by other risks to mission and values

Clarifying Values Make clear throughout the organization that:

- In addressing the legal dimension of issues, it is important to understand the values the law seeks to promote.
- It is essential to determine whether other values important to the organization are involved.
- The presence of legal risk does not by itself remove options from consideration.

Developing Policy In developing a policy or other documents, the first draft should be based on the mission and values of the organization. Only then should legal counsel review it with the goal of determining how the values being pursued can be protected and achieved legally and of ensuring society's values codified in the law are addressed. □

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