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# **GOVERNANCE ETHICS IN HEALTHCARE ORGANIZATIONS**

Gerard Magill and Lawrence Prybil



# Governance Ethics in Healthcare Organizations

Drawing on the findings of a series of empirical studies undertaken with boards of directors and CEOs in the United States, this groundbreaking book develops a new paradigm to provide a structured analysis of ethical healthcare governance.

*Governance Ethics in Healthcare Organizations* begins by presenting a clear framework for ethical analysis, designed around basic features of ethics—who we are, how we function, and what we do—before discussing the paradigm in relation to clinical, organizational, and professional ethics. It goes on to apply this framework in areas that are pivotal for effective governance in healthcare: oversight structures for trustees and executives, community benefit, community health, patient care, patient safety, and conflicted collaborative arrangements.

This book is an important read for all those interested in healthcare management, corporate governance, and healthcare ethics, including academics, students, and practitioners.

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# 1 Ethics paradigm

## Introduction

This book discusses governance ethics in healthcare organizations to provide ethical guidance about trustee oversight. In addition to boards of directors and executives in healthcare, scholars, students, and professionals interested in the governance oversight of organizations will find the book to be enlightening. The analysis combines a theory perspective and an application perspective to develop a structured analysis of governance ethics.

The analysis explains that governance ethics is similar to already established fields in health ethics (clinical, organizational, and professional ethics). The general approach adopted by these established fields combines theoretical and applied perspectives to provide practical guidance. They guide their constituencies on specific issues, such as end of life care in clinical ethics, or financial propriety in organizational ethics, or conflicts of interest in professional ethics. In contrast, governance ethics deals with very different topics that relate to trustee oversight of healthcare organizations, such as with regard to patient safety or community health. Hence, governance ethics can be described as an emerging field in healthcare.

There is a considerable amount of literature on corporate governance.<sup>1</sup> This literature includes the relation among corporate governance, ethics (typically dealing with business ethics),<sup>2</sup> and corporate social responsibility.<sup>3</sup> However, very little has been published on the ethics of governance in healthcare organizations.<sup>4</sup> This significant gap in the literature is addressed by this book. To understand the importance of this discussion, it is helpful to consider the need for governance ethics, nationally and internationally.

## Need for governance ethics

Over recent decades, public confidence in healthcare organizations has declined significantly. This decline has led to vigorous efforts to improve trust in health care organizations, both public and private.<sup>5</sup> At the same time, significant growth of large healthcare systems has occurred. The number of multi-unit health systems, both governmental and private, has increased noticeably. Also, the proportion

## 2 *Ethics paradigm*

of community hospitals becoming part of health systems continues to expand steadily.<sup>6</sup> This growth has stressed the crucial role of finances in a changing health economy.<sup>7</sup> Not surprisingly, there has emerged a greater awareness of the need for more effective governance. This means that boards of directors and executives need to be more accountable in a manner that is evident to the populations they serve.<sup>8</sup> This constitutes a call for organizational transparency to the communities served by healthcare organizations.

Also, the extent of corporate fraud and abuse across the United States is well recognized. Such abuse has led to stricter government regulations. For example, the renowned Sarbanes-Oxley Act was passed with strict compliance requirements. The act sought several goals: to diminish fraudulent financial activity; to enhance the independence of external auditing; and to emphasize the need for better oversight by boards of directors.<sup>9</sup> This legislation applied only to for-profit corporations. Nonetheless, the legislation also reflected concerns about the effectiveness of nonprofit boards. Hence, the legislation prompted trustees to provide better governance leadership. The goal here is to nurture public trust in healthcare organizations.<sup>10</sup>

Public trust is in large measure related to the well-known disparities in healthcare access and affordability. These are exacerbated by the accompanying connection between quality and safety. Historically, these issues have haunted the United States,<sup>11</sup> and continue to do so today.<sup>12</sup> The loss of public trust in these sectors has been widespread and extensively documented.<sup>13</sup> This distrust was especially evident in nonprofit healthcare in relation to the tension between what is known as mission and margin. This tension refers to the organization's polarized commitment to serve its communities (mission) and the organization's financial success (margin).<sup>14</sup> For example, this tension challenges healthcare leaders to ensure the success of an organization such as with regard to ethical procurement and resourcing. However, the tension between mission and margin also requires healthcare leaders to care for employees such as with regard to remuneration across professional differences. This tension emphasizes that success should not be reduced merely to management or fiscal efficiencies. In turn, concern about this moral tension raised significant issues related to justice, such as meeting the community's health needs fairly and holding healthcare morally accountable.<sup>15</sup>

This widespread distrust created challenges for boards of directors in both for-profit and nonprofit sectors. These challenges highlight the need for effective governance that overlaps with but goes beyond compliance requirements. This need was especially the case in healthcare.<sup>16</sup> Moreover, this need for improvement was recognized in many different nations. This international awareness indicated the increasing focus on board function and trustee accountability in hospitals and healthcare systems globally.<sup>17</sup>

Over recent decades, continuous quality improvement became a characteristic of healthcare delivery. The time for continuous improvement of governance accountability in healthcare organizations has arrived. This accountability goes beyond the board's conventional responsibility for organizational oversight.

Boards of directors now need to scrutinize themselves more closely than ever. This scrutiny must seek to ensure that an organization's mission, processes, and practices will enable the organization to perform at its peak.<sup>18</sup> As a result, the caliber of governance in healthcare organizations is under intense examination.<sup>19</sup> In particular, there is an acknowledgement of the need for research-based findings to support actionable knowledge that will enhance governance in hospitals and health systems.<sup>20</sup> Similarly, there is a growing recognition that trustees should develop a sophisticated ethical compass to help navigate potential compromises in healthcare institutions.<sup>21</sup>

Obviously, boards of directors with their institutional management teams have complex responsibilities. They are responsible for overseeing a complex array of structures, processes, outcomes, and external regulations. That oversight is necessary to continuously measure, monitor, and improve organizational performance. Board effectiveness lies at the core of governance in the fast-changing environment of healthcare. It is indispensable both to identify responsibilities and to design oversight mechanisms. Without these, trust of internal and external stakeholders will be eroded. This emphasis on a sustainable approach to accountability requires the utmost transparency.<sup>22</sup> That is, healthcare must be resilient in the face of so many challenges. There needs to be greater oversight by trustees and executives to demonstrate organizational accountability in a manner that is evident to the populations served.

The multiple board responsibilities of trustees range from specific fiduciary duties to broader ethical obligations. All of these responsibilities require accountability to the communities served. For example, this means providing access to crucial information about the cost, price, and quality of services to achieve value. Undoubtedly, there are puzzling variations in these data. These variations contribute to widespread public concern. Such concern deals as much with the efficiency of healthcare organizations as with the effectiveness of their leadership, including governance. Hence, healthcare organizations must be increasingly accountable to their communities. Accountability of trustees means defining expectations and establishing measurement and improvement metrics of governance. This study of governance ethics in healthcare organizations seeks to engage these issues.

## **The ethics paradigm**

The book aims to provide a structured analysis of governance ethics in healthcare organizations by presenting a new ethics paradigm that is applied to pivotal topics. The ethics paradigm provides an original framework for ethical analysis. Typically, books in the established fields of health ethics combine ethical theory with ethical principles to discuss practical topics. Discussions of ethical theory include approaches to ethics reasoning—such as deontology, utilitarianism, and communitarianism. Discussions of ethical principles include different ethical concepts—such as autonomy, beneficence, and justice. A very different approach is adopted in this book. Here, the ethics paradigm develops a more



4 Ethics paradigm

general approach that underlies ethical theories and principles, by providing a framework for an ethical analysis that does not require formal ethics training or expertise.

The framework of the paradigm guides ethical discourse by providing a structure that coalesces relevant data to interpret specific issues. The core structure of the ethics paradigm revolves around basic features of ethics: *who we are*, *how we function*, *what we do*. These features form a leitmotif throughout the study. The framework includes a focus on decision-making (concentrating on accountability vis-à-vis *how we function*). However, there is also a broader perspective that deals with stewardship (engaging identity vis-à-vis *who we are*) and quality (addressing best practices vis-à-vis *what we do*).

These basic features generate the three components of the ethics paradigm. Each component is related to specific governance contexts. The foundation component (*who we are*) operates within the context of engaging the healthcare environment. The process component (*how we function*) operates within the context of undertaking organizational oversight. The practice component (*what we do*) operates within the context of fostering organizational culture.

These basic features of ethics are indispensable for promoting leadership in governance: leadership regarding institutional identity (*who we are*); leadership regarding corporate accountability (*how we function*); and leadership regarding performance quality (*what we do*). In turn, these leadership features foster specific outcomes: the leadership focus on *identity* fosters outcomes regarding organizational stewardship of an institution’s mission; the leadership focus on *accountability* fosters outcomes regarding decision-making via participative deliberation; and the leadership focus on *quality* fosters outcomes regarding best practices for standards of conduct. Here is a diagram of the ethics paradigm (Table 1.1).

The ethics paradigm is applied throughout the book to discuss topics that are pivotal for governance ethics in healthcare organizations. It can be helpful at the outset to provide an overview of these applied topics.

Applied topics

The theory perspective of the book explains the ethics paradigm (Chapters 1–3). This is complemented by the applied perspective of the book (Chapters 4–9).

Table 1.1 Ethics paradigm

Components	Foundation component	Process component	Practice component
Context	Environment of healthcare	Organizational oversight	Organizational culture
Leadership	Identity: who we are	Accountability: how we function	Quality: what we do
Outcomes	Organizational stewardship of mission	Decision-making via participative deliberation	Best practices for standards of conduct

In these applied chapters, the ethics paradigm is applied to specific topics that are crucial for governance ethics. Typically, other studies around governance in healthcare organizations focus on finance issues. In contrast, this work focuses on issues related to the healthcare of patients and communities. Naturally, this focus recognizes that finance is an indispensable aspect of board stewardship.

The applied topics begin with a discussion of governance structure for trustees. The subsequent topics consider major issues regarding effective governance in healthcare organizations: community benefit, community health, patient care, and patient safety. These topics are pivotal for governance ethics because they have contributed in no small measure to undermining public confidence in healthcare organizations, both private and public. In turn, these topics lead to an over-arching ethical problem for healthcare governance that deals with conflicted collaborative arrangements: how to distinguish wrongful complicity from legitimate cooperation with activities in other organizations. The discussion ends with a brief concluding chapter on how this approach to governance ethics can foster virtuous organizations in healthcare. Discourse on virtue ethics explains that individuals can become virtuous by connecting moral character, practical wisdom, and laudable actions. Similarly, the ethics paradigm enables an organization to become virtuous by connecting moral character (via the concept of *identity, who we are*), practical wisdom (via the concept of *accountability, how we function*), and action (via the concept of *quality, what we do*). In these applied chapters, the ethics paradigm is applied to identify hallmarks for governance ethics in healthcare organizations. These hallmarks are accompanied with specific ethical imperatives for boards of directors and executives. These hallmarks and accompanying ethical imperatives, along with the topics engaged in each chapter, are listed regularly, to identify them clearly in the analysis.

The topics that are discussed in the book arose from landmark research reports that have shaped the field.<sup>23</sup> In particular, reports by one of the co-authors of this book (with many other accompanying publications) provide critical data for the ethical analysis.<sup>24</sup> The reports were undertaken with boards of directors and CEOs. The focus was on assessing and improving governance performance. The process provided unprecedented access to many large health systems. This access refers to the information provided by the boards of directors and CEOs of these health systems. The research addressed their governance oversight. For example, one report engaged 14 of the 15 largest health systems in the United States.<sup>25</sup> The information derived from these reports indicates the priority issues identified by these trustees and CEOs for governance of their organizations.

## Conclusion

This book on governance ethics in healthcare organizations deals with an emerging field that contrasts yet is consistent with the established fields of clinical, organizational, and professional ethics. Specifically, the ethics paradigm is connected with these established fields to examine governance ethics.

The originality of this study is twofold. Its first contribution lies in the way it constructs the ethics paradigm to demonstrate a consistency of ethics discourse in the well-established fields of clinical, organizational, and professional ethics in healthcare. All too often, these fields are perceived to be sufficiently different as to forgo a foundational consistency between them. Its second contribution rests in the way it presents the relatively new field of governance ethics as being consistent with these already established ethics fields in healthcare. Hence, throughout the study, the alignment between these various fields is emphasized to apply the ethics paradigm to governance ethics, thereby unpacking the accompanying moral imperatives that emerge from the topics discussed.

The book is designed to enlighten trustees and executives as well as to provide guidance for scholars, students, and professionals in healthcare. The authors hope that the ethical analysis will be of special interest internationally to boards of directors and executives in healthcare to enhance governance oversight of their organizations.

## Notes

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- 23 The American Hospital Association provides excellent resources for effective governance that are regularly updated, such as on its websites: American Hospital Association, Great Boards at, <http://greatboards.org>; American Hospital Association, Center for Healthcare Governance at, [www.americanguovernance.com](http://www.americanguovernance.com)
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## 2 Clinical and organizational ethics

### Introduction

The analysis of governance ethics in healthcare organizations in this book is both theoretical and applied. The goal is to foster greater board oversight, focusing on the need for continuous evaluation and evidence-based improvements. This chapter engages the theoretical perspective to explain how the ethics paradigm (that is later applied to governance ethics) is aligned with clinical ethics and organizational ethics. The discussion begins with clinical ethics, which is the more usual landscape for discourse in healthcare.

### Clinical ethics

Society could not function well across the spectrum of its interests, conflicts, and dilemmas without a sense of common morality as a foundation for practical decisions, such as about conscientious objection.<sup>1</sup> Common morality might be described as a general awareness that binds ethically serious people across cultures,<sup>2</sup> with human rights providing an obvious example.<sup>3</sup> But this awareness does not mean there is readily accessible agreement when discussing specific issues. Indeed, there is no uniformity about how to describe this basic sense of morality, especially when seeking shared solutions to build consensus.<sup>4</sup> Hence, various accounts of morality are provided by different ethical theories, which, in turn, develop ethical principles to guide reasoning and decision-making. These theories and principles are manifest extensively in clinical ethics.

### *Ethical theories and principles*

There are many theories that shape the debate about ethics in healthcare. Utilitarianism is the ethical theory that ascertains whether an action is right or wrong based upon its consequences. Consequentialism is a related theory. Utility and consequences are central concepts in these approaches. Deontology or deontological ethics is the theory that ascertains whether an action is right or wrong based upon universal maxims that apply to all cases of the same kind, independent of consequences. Duty is a central concept in this approach. Liberal Individualism

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