

ETHICS III – IN THE WORKPLACE

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OBJECTIVES

- Review laws and liabilities
- The Respiratory Therapists role
- Review the PYTHON Principle
- Put it all together – AARC Provider Insurance

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RECAP EPISODE 1 AND 2

- In healthcare, ethical considerations are essential due to the vulnerability of patients and the potential impact of decisions on their well-being.
- **Beneficence:** The duty to act in the best interest of patients, promoting their well-being and health outcomes.
- **Nonmaleficence:** The obligation to avoid causing harm or injury to patients.
- **Autonomy:** Respecting patients' right to make their own decisions about their care and treatment.
- **Justice:** Fair distribution of healthcare resources and equitable access to care.
- **Confidentiality:** Safeguarding patient information and respecting privacy rights.

- Three step decision making model and the James Rest model for ethical decision making.
 - Is it legal, is it free of extremes, and how does it make you feel?
 - Gut feeling
- Ethics and law are different
- EMR can make these, seemingly fair, but abstract concepts even more cloudy, so cloudy in fact, they have their own laws and policy -> HIPAA, HITECH, etc.
- These modern-day changes come with some modern-day price tags as well –millions of dollars in fines in some cases.



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LAWS, POLICY, AND MORE LAWS

- Where do some of all these laws, policies, ethics come from?
- Constitutional Law – highest law in the country – ex. Mandatory health insurance
- Common Law – judicial branch – think roe vs wade – common law for privacy for ones reproductive health
- Administrative Law – think FDA, HIPAA
- Statutory Laws – like the Good Samaritan law, criminal (to society), or civil (to an individual) laws fall under this.

- Torts are wrongs to an individual, which can be intentional and unintentional
 - Intentional = assault and battery, fraud, false imprisonment, etc.
 - Unintentional requires four components to generally be prosecutable
 - Duty – agreeing to provide care
 - Breach of duty – failure to do so in the appropriate manner
 - Misfeasance, nonfeasance, malfeasance fall under this.
 - Causation – damages are closely related to the service
 - Damages – the actual injury or problem

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LAWS, POLICY, AND MORE LAWS

- Fair Labor Standards Act of 1938
 - Sets minimum wages, regulates overtime pay, child labor regulations
 - Certain provisions of this directly apply to healthcare
 - Equal Pay, FMLA, ACA →
 - Equal Employment Opportunity Commission
 - Civil Rights Act and ADA
 - Age and Pregnancy Discrimination in Employment
 - OSHA
- While the ACA primarily focuses on healthcare access and insurance coverage, there are a few areas where the ACA and FLSA intersect:
 - Employer-Sponsored Health Insurance: Under the ACA, employers with a certain number of employees may be required to offer affordable health insurance coverage to their full-time employees. This can overlap with the FLSA's definition of "full-time" employment for purposes of determining eligibility for overtime pay and other benefits.
 - Employer Responsibilities: Both the ACA and FLSA impose certain responsibilities on employers. The ACA mandates that large employers (usually those with 50 or more full-time equivalent employees) provide affordable health insurance options or face penalties. The FLSA establishes requirements regarding minimum wage, overtime pay, and child labor standards that employers must adhere to.
 - Workforce Impact: Changes in healthcare coverage and costs resulting from the ACA may indirectly affect employment practices and wages. Employers may adjust their workforce size or employee classifications in response to ACA requirements, which can impact FLSA compliance and wage structures.

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CIVIL RIGHTS ACT AND ADA

- The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, national origin, sex, and religion. Although it does not specifically address respiratory care, it provides a foundation for protecting individuals from discrimination in healthcare settings. This act ensures that individuals receiving respiratory care services are treated equally and without discrimination based on the protected characteristics mentioned.
- The ADA, enacted in 1990, is a comprehensive civil rights law that prohibits discrimination against individuals with disabilities in various areas of public life, including healthcare. The ADA has specific provisions that apply to respiratory care and ensure equal access to respiratory care services for individuals with disabilities.
- Overall, the Civil Rights Act and the Americans with Disabilities Act play a crucial role in protecting the rights of individuals with disabilities in the context of respiratory care. These acts ensure equal access, non-discrimination, and reasonable accommodations for individuals with disabilities to receive appropriate respiratory care services, and they promote inclusivity and equal treatment in the healthcare setting.

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OSHA

- OSHA (Occupational Safety and Health Administration) sets forth regulations and guidelines to ensure the safety and well-being of workers in various industries, including healthcare. In the context of respiratory care, there are several potential OSHA violations that healthcare facilities and respiratory care professionals should be aware of.



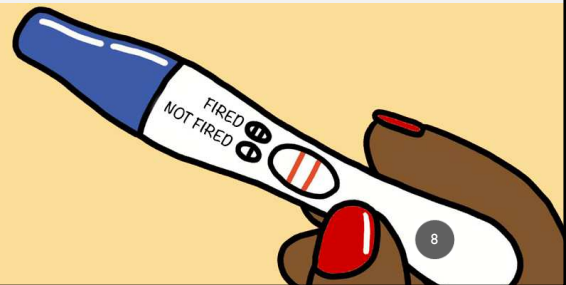
- Inadequate respiratory protection: Failure to provide appropriate respiratory protection, such as N95 masks or respirators, to healthcare workers exposed to airborne contaminants, infectious diseases, or hazardous chemicals.
- Improper fit-testing: Neglecting to perform fit-testing for respiratory protective equipment, which ensures proper fit and prevents leakage that may compromise the effectiveness of the equipment.
- Lack of training: Failing to provide comprehensive training to respiratory care professionals on the correct use, maintenance, and limitations of respiratory protective equipment.
- Insufficient hazard communication: Inadequate communication of respiratory hazards to healthcare workers, including not providing clear information on the risks associated with specific respiratory hazards and appropriate precautions.

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AGE AND PREGNANCY

- Coverage: The ADEA applies to employers with 20 or more employees, labor organizations, and employment agencies. It protects individuals who are 40 years of age or older from age-based discrimination in various employment-related matters.
- Prohibited actions: The ADEA prohibits discrimination against individuals who are 40 or older in any aspect of employment, including hiring, firing, promotions, compensation, benefits, job assignments, training, and terms or conditions of employment.

- Pregnancy Discrimination Act (PDA): In the United States, the Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. The PDA prohibits discrimination based on pregnancy, childbirth, or related medical conditions in employment. It covers employers with 15 or more employees, including state and local governments.
- FMLA – 12wks unpaid
- Some states and localities have their own laws that provide additional protections against pregnancy discrimination. These laws may have different coverage thresholds, broader accommodations, or extended leave entitlements.



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CASE STUDY

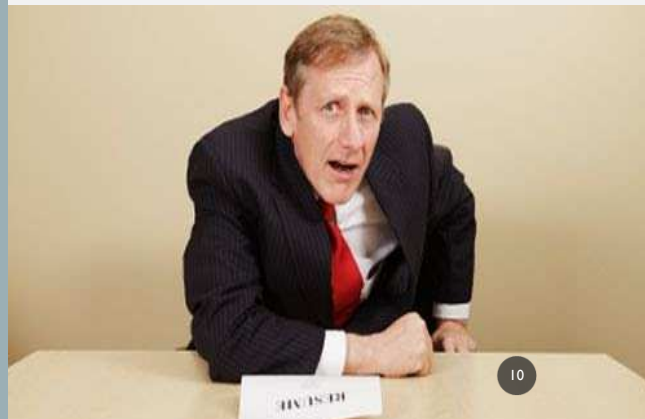
- A 58-year-old nurse, with over 30 years of experience, reported experiencing age discrimination at a renowned hospital. The nurse consistently received positive performance reviews throughout their career. However, upon reaching their late fifties, they began to notice a shift in their work environment. They were gradually excluded from important meetings, denied opportunities for professional development, and given fewer challenging assignments. The nurse's younger colleagues were often preferred for promotions and leadership roles, despite having less experience and qualifications.
- In this case, the nurse faced discrimination despite possessing extensive knowledge and experience. The hospital's actions may have violated legal provisions such as the Age Discrimination in Employment Act (ADEA), which prohibits employers from discriminating against individuals aged 40 or older. Legal consequences, including financial penalties, may be applicable if the nurse decides to pursue legal action.
- 3 Step decision making model

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TREAD LIGHTLY

- How do we ask demographical and other questions without bias when working with employees or potential employees?
- We ask some pretty personal questions but there are some things you can and cant ask, kind of
- EEOC has guidelines
- Citizenship – probably don't want a question on an application that asks " if presented with America or your homeland, which is _____, which does you allegiance lie?"
- However, we can ask if the employee is authorized to work in US.
- By the same token, it would not be appropriate to ask "you aint got the mental illness, do ya?"
- I can ask if the employee can perform the job duties, though. We can even ask them to demonstrate how they would perform a specific job duty.



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PENALTIES, DISCIPLINE, AND MITIGATION

- **Fines:** Employers found in violation of workplace laws may be subject to fines imposed by the enforcing agency or court. The amount of fines can vary depending on the nature and severity of the violation.
- **Back Wages:** Violations related to minimum wage, overtime, or unpaid wages may require employers to pay affected employees the wages they were unlawfully denied. This can include back pay for hours worked but not properly compensated.
- **Liquidated Damages:** In some cases, employees may be entitled to liquidated damages, which are an additional monetary award equal to the amount of back wages owed. Liquidated damages are often awarded in cases involving willful or intentional violations.
- **Civil Lawsuits:** Employees may choose to file civil lawsuits against employers for workplace law violations. If the lawsuit is successful, the employer may be required to pay compensatory damages (e.g., for emotional distress, lost wages), punitive damages (if applicable), and attorney fees.
- **Injunctions:** Courts can issue injunctions that require employers to cease certain unlawful practices or take specific actions to rectify violations.
- **License Suspension or Revocation:** In some industries, such as healthcare or professional services, violating workplace laws can lead to the suspension or revocation of licenses necessary to operate.

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PENALTIES, DISCIPLINE, AND MITIGATION

- How might one go about disciplining an employee for violations or breaches?
- **Corrective Actions:** Employers may be required to take corrective actions to address violations, such as implementing new policies, conducting training programs, or making workplace modifications.
- **Progressive Discipline Model (PDM)**
 - Informal counseling or verbal warning
 - Written warning
 - Suspension or demotion
 - termination
- It aims to provide employees with opportunities to improve their behavior or performance while also ensuring that consequences escalate if the issues persist.
- **Mitigation,** in the context of health policy violations, refers to the process of reducing or minimizing the negative consequences or penalties resulting from a violation. When a health policy violation occurs, whether it involves non-compliance with regulations, improper procedures, or other breaches, mitigation strategies aim to address the violation, rectify any harm caused, and prevent future occurrences.

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PDM

- **Identification:** The first step in mitigation is identifying the specific health policy violation that has taken place. This may involve conducting investigations, audits, or assessments to gather evidence and understand the extent and nature of the violation.
- **Assessment of Impact:** Once the violation is identified, a thorough assessment of the impact is conducted. This involves evaluating the potential harm caused to individuals, the organization, or the public, considering factors such as patient safety, quality of care, financial implications, and reputational damage.
- **Corrective Measures:** Mitigation efforts focus on implementing corrective measures to address the violation. This may involve developing and implementing new policies, procedures, or protocols to prevent similar violations in the future. Corrective measures may also include training programs, education initiatives, or additional oversight to ensure compliance.
- **Remediation:** Mitigation involves remediation efforts aimed at rectifying the harm caused by the violation. This can include actions such as providing restitution or compensation to affected individuals, offering support or counseling services, or taking steps to rectify any adverse outcomes resulting from the violation.

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- **Scenario:** Sarah is an employee who has been consistently late for work over the past few months.
- **Informal Counseling:** Sarah's supervisor, John, notices her tardiness and decides to have an informal conversation with her. John expresses concern about Sarah's punctuality, discusses the impact it has on the team and the company, and emphasizes the importance of being on time.
- **Written Warning:** Sarah's tardiness persists even after the verbal warning. John decides to escalate the discipline and issues a written warning. In the written warning, he outlines the dates and times of her late arrivals, explains the previous verbal warning, restates the expectations, and informs Sarah that further disciplinary action may be taken if the issue persists. Sarah acknowledges the warning by signing the document.
- **Performance Improvement Plan (PIP):** Despite the written warning, Sarah's tardiness does not improve. John initiates a performance improvement plan (PIP). In the PIP, he outlines specific performance goals, such as arriving on time for the next 90 days, and establishes regular check-ins to monitor progress. John provides Sarah with support, such as suggestions for time management techniques or flexible scheduling options if applicable.
- **Suspension:** Unfortunately, Sarah fails to meet the performance goals outlined in the PIP, and her tardiness continues. As a result, John decides to impose a two-day suspension without pay to emphasize the seriousness of the issue and provide an opportunity for reflection. He communicates the suspension to Sarah, stating the reason and duration, and informs her of the consequences of further tardiness.
- **Termination:** Despite the suspension, Sarah's tardiness persists. Recognizing that her behavior is not improving and has a negative impact on the team and productivity, John makes the difficult decision to terminate Sarah's employment. He follows company policies and procedures, conducts an exit interview, and provides Sarah with a termination letter documenting the reasons for the termination.

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RT ROLE AND SCOPE

- Compliance
- Adhere to professional standards and guidelines
- Documentation and record keeping
- Patient advocacy
- Continued education and professional development
- Risk management and quality improvement

- It's important to note that the scope of practice for respiratory therapists may be regulated by professional associations, state licensing boards, or national regulatory bodies. Respiratory therapists must adhere to the legal and regulatory requirements in their jurisdiction and practice within the boundaries of their training, competence, and authority.
- SOP Principles
 - Competence
 - Accountability
 - CE
 - Delegation
 - Emergency Situations


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PYTHON

- When dealing with all of these laws, stipulations, etc., it is important to be preventative
- Protect
- Yourself
- Think
- Honestly
- Observe
- Naturally

- Protect Yourself – one of the best ways to do this is through extremely thorough documentation.
 - Remember FLOAT: factual, legible, objective, accurate, and timely
- Another way of proactively protecting yourself is through purchasing professional insurance
 - AARC Partners with Pro Liability to bring RTs affordable yet comprehensive professional liability insurance
 - Limits vary by profession up to \$1 million per occurrence/\$3 million aggregate.
 - The policy includes legal representation for covered incidents. This means you have an attorney assigned to you to represent your interests – not the interests of others such as your employer. The legal fees and expenses are in addition to your professional liability policy limits, which is a key benefit to you as this means legal fees and expenses do not erode your liability limits.



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PYTHON

- Think Honestly – Really, I want you to think fraud.
- This comes back full fold. Episode 1 addresses the “promise”
- In no way should you ever promise a patient anything – mainly because you cannot tell the future. “yea, I promise ill get your ice in 5 minutes...code blue, rapid, mechanical failure, doc wants to talk for some reason
- Best practice? Buddy, I will do my best! Lol
- This also applies to whistleblowing – if you see something unethical, are you telling the truth by not saying anything?

- Observe Naturally – we all sometimes get lost in the day to day, the motions – right?
- Even then we can still notice something out of place.
- Big thinking here – Joint Commission, Health Dpt., etc. If you cant following law and policy for your patients, which is kind of a smack in the face to your license and patient, you are obligated to follow for, what could lead to fines and imprisonment.
- Ex1 dirt equipment
- Ex 2 pt keep coughing during meals.



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CASE STUDY

- In a hospital's respiratory therapy department, a patient is admitted with severe respiratory distress. The patient has a history of chronic obstructive pulmonary disease (COPD) and requires continuous monitoring and respiratory support. The respiratory therapist assigned to the patient's care notices a decline in the patient's oxygen saturation levels but fails to take immediate action or document the observation. As a result, the patient's condition deteriorates, leading to a critical event and subsequent litigation against the hospital.

- Where did the failure occur?
- Continuous monitoring
- Recognition of distress
- Documenting this distress
- Communicating this distress
- Intervening
- Follow up

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HOW DOES THIS HELP RT

- **Regulatory Compliance:** Health law and policy provide the legal framework within which respiratory therapists must operate. They establish standards, regulations, and guidelines that respiratory therapists must comply with to ensure patient safety, quality of care, and ethical practice.
- **Scope of Practice:** Health law and policy define the scope of practice for respiratory therapists, outlining the specific procedures, treatments, and interventions they are authorized to perform. This ensures that respiratory therapists work within their areas of expertise and do not exceed their authorized responsibilities.
- **Licensure and Certification:** Health law and policy often require respiratory therapists to obtain and maintain appropriate licensure or certification. This ensures that practitioners meet certain educational, training, and competency standards, providing assurance to patients and employers of their qualifications and abilities.
- **Patient Safety and Quality of Care:** Health law and policy prioritize patient safety and the provision of high-quality care. They establish standards for infection control, medication administration, equipment maintenance, and other critical aspects of respiratory therapy practice. Compliance with these standards helps ensure that patients receive safe and effective care.
- **Ethical Considerations:** Health law and policy incorporate ethical principles that guide respiratory therapists' conduct, such as patient confidentiality, informed consent, and respect for patient autonomy. Adhering to these principles ensures that respiratory therapists maintain the highest ethical standards in their interactions with patients and other healthcare professionals.

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RECAP

- There are laws on laws, built into policy that then becomes law, etc.
- These laws are here to protect you and your patients.
- Shame we have to have them, but its all for the good.
- OSHA is your friend, believe it or not.
- Penalties and punishments can range from a few bucks a slap on the wrist to taking your livelihood and placing you in a nice unkept jail cell.
- You cant just ask anything to anyone – there are "norms" for this.
- If punishment is needed – follow the progressive discipline model
- Like OSHA – your scope if your guiding light. Be aware that this is different with every state, especially for RT.
- Following the PYTHON method can save your license, and it aids in a well rounded practice
- All of this applies to you – the respiratory therapist.
- Healthcare requires us to read between, on, and around the lines. Stay on guard.

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