

SECTEUR DE LA SANTÉ

XX A New Code of Professional Conduct for Healthcare Ethics & Compliance Professionals



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Nombre de professions sont encadrées par la loi au vu de leur service rendu à l'intérêt général et public. Elles ont ainsi développé pour la plupart des codes professionnels qui reconnaissent cette contribution et permettent de la réconcilier avec leurs autres obligations. Dans cette même idée, l'association internationale Ethics vient de publier sur son site un code de conduite professionnelle pour les acteurs d'éthique et conformité opérant dans le domaine de la santé. Ce secteur est en effet très engagé dans l'intérêt public qu'il s'agisse de son rôle vis-à-vis des patients ou du système de santé. Cette démarche pourrait être la première pierre pour la reconnaissance officielle future de cette profession.

ETHICS, The Code of Conduct is live! December 4, 2020:
<http://www.ethicspros.com/portfolio/the-code-of-conduct-is-live/>

1. Introduction and Background

Many professions (such as lawyers and architects) are regulated by the law based on the recognition of the essential roles that they play in society and the necessity that they operate in the public interest. These regulated professions have professional codes that take into account such public interest responsibilities and attempt to balance them with the interests of the members of the profession, the organizations that they belong to and public that they serve. In 2019, the ETHICS Association started developing a code - the "Code of Professional Conduct for Healthcare Ethics & Compliance Professionals" (the "Code") - for precisely that purpose: the recognition of Healthcare Ethics & Compliance Professionals ("HEC Professionals") as members of a profession which operate in the public interest (i.e., the interest of patients, healthcare systems, society, and the environment), hence paving the way for their eventual inclusion as members of a profession regulated by the law.

Ndlr: ETHICS is the international Association of HealthCare Ethics & Compliance Professionals, see www.ethicspros.com.

The final version of the Code was approved by the General Assembly of the Association in December 2020. Before the Code's release, the Association (which is both a think-tank and a professional society) had already developed a number of tools and position papers in the field of healthcare compliance.

2. A Non-Binding Professional Code Aiming to Be the North Star for the Evolving Ethical Standards Expected from HEC professionals

The Code is non-binding and international in scope. It uses, as a starting point, pre-existing codes for HEC Professionals (such as the HCCA¹ code) and pushes things forward by including previously uncodified areas of responsibility. It intentionally expands the boundaries of the vision we have for our profession by embodying the "militant" spirit of HEC Professionals as proactive agents for change. The ETHICS Association recognizes that the significant changes affecting our society and global businesses have had a direct impact on the role of HEC Professionals, triggering the need for a code which will inspire them to embody higher ethical standards and enable them to face today's and tomorrow's ethical challenges and dilemmas.

1 Health Care Compliance Association.

On this basis, the Code hopes to support new generations of HEC Professionals to thrive and play a positive role for change in a society that increasingly emphasizes social and environmental justice. A business world where the transition from shareholder business models to stakeholder business models is well underway. It is important for HEC Professionals to appreciate that in this transition, we have a key role to play not just in terms of risk management but also as business leaders actively participating in the co-creation and implementation of business objectives that fully take into account the interests of stakeholders and, in particular, of patients. For this reason, the Code highlights that the work of HEC Professionals is based on the premise that the public interest and the long-term interests of business organizations are not in opposition. It is our professional duty to ensure that this alignment is always in place and, when it is not possible, that the public interest must prevail. With this perspective in mind, these are the key messages and standards contained in the Code.

3. Duties to the Public Interest

The first section of the Code focuses on our duties to promote and protect the public interest. It includes the duty to conduct our activities in an independent manner in the public interest, applying the highest ethical standards and respecting the law as well as the duty not to initiate, support or participate in non-compliant activities. In addition, the Code requires HEC Professionals to be transparent, assertive and vocal when conducting their activities to ensure that we are fully heard in the various contexts in which we operate. The section ends with a very important provision on the duty to escalate and act upon non-compliant activities. To that effect, Article 1.6 of the Code provides that “[i]f in the course of their activities, HEC Professionals become aware of non-compliant activities that, in their sound judgement, may negatively impact [the public interest], they must not consent to such non-compliant activities and (...) do whatever is needed to mitigate the related risk. They must escalate such non-compliant activities to the highest level of their employer and, if the issues continue to be unresolved, they must contemplate as a last resort resigning (...). They must also consider reporting the matter to the competent authorities, where appropriate”.

4. Duties to the Profession

The second section of the Code focuses on our duties to the healthcare ethics and compliance profession. In particular, the Code highlights the duty for HEC Professionals to embody integrity and act as role model, both in their professional and personal capacities. Perhaps one of the most innovative provision of the Code is the duty for HEC Professionals to endorse respectful, fair, and equal treatment as well as human rights and diversity, striving to proactively eliminate incidental and systemic inequalities and biases in all aspects of their activities. The Code also requires HEC Professionals to acquire and continuously improve the knowledge, skills and capabilities needed to perform their activities competently. They must continuously foster their own professional and personal development; they must look after less experienced healthcare compliance professionals through constant training and mentoring and they must strive to network and share experiences and best practices

with their peers within the industry. Healthcare ethics and compliance can be a very challenging and lonely profession and, for this purpose, the Code promotes key ethical concepts such as self-care and mutual support for team members and peers in the industry.

5. Duties to the Employer

The third section of the Code focuses on our duties to the organizations that employ us. HEC Professionals are accountable to promote, with passion and inspiration, a culture of ethics, accountability and ownership of compliance by all employees. We must design and run compliance programs that protect our organizations from the risk of breaches, that translate laws into operational guidance, that generate competitive advantage and that enable our organizations to make the right choices in the public interest and in their long-term interests.

HEC Professionals must conduct activities as strategic leaders, change managers and solution-oriented advisors that understand the market specificities, the regulatory environment and, most importantly, the strategies and tactics of their organization. This is essential if they want to remain relevant and credible and be seen as capable of co-creating, not just reviewing and advising *a posteriori* on, key business objectives. To this effect, the Code pushes HEC Professionals to strive for our function to be part of management teams.

The Code further requires HEC Professionals to collaborate with HR on employee management, as well as on investigations to ensure fair and unbiased process, whatever the grade, level of seniority or revenue-generating contribution of those involved.

Strict standards on conflicts of interest are another key element of the Code, especially as relates to monitoring or investigating activities HEC Professionals have approved or advised on, or when personal or professional proximity to colleagues may interfere with the unbiased exercise of their professional duties.

The Code ends with a very important provision on escalation and resources. According to Article 3.15, “[i]f in the course of their activities, HEC Professionals are not provided sufficient, accurate or truthful information or the bare minimum resources to perform their duties effectively and appropriately by industry standards, they must escalate the issue to the highest level of [their organization]. If the issue continues to be unresolved, they must contemplate resigning and informing the highest level of their employer (...) of the reasons of their resignation”.

6. Conclusion

In conclusion, the Code emphasizes the strategic role that HEC Professionals play in ensuring that the healthcare industry creates and implements its strategies with the highest standards of ethics and integrity and endeavours to inspire all HEC Professionals to reach ever better outcomes in the effectiveness of the ethics and compliance programs they deploy, embodying positive change and ensuring alignment between the public interest and the long-term interests of the organizations they serve.