Ch. II-1 Principles of Ethics

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ISSUE: All health care professionals need to understand ethical principles. Why is this important?

WHAT IS ETHICS?

The term "ethics" is derived from the Greek term *ethos,* which means "custom" or "habit" and is a branch of philosophy, relating to the study of values and customs, or social norms as they relate to interactions of individuals and groups within society. Since individuals differ in beliefs or values, ethics provides a framework for the analysis and application of moral principles and a structure to harmonize disparate points of view. Because ethics is a branch of philosophy, it is as much about discourse-structured argumentation representing disparate points of view as it is about a set of guiding principles.

Clinical ethics, or medical ethics, is a form of applied ethics and represents the application of ethical concepts and principles to facilitate discourse and problem solving in highly complex clinical situations for which there are often no clear-cut answers, and for which decisions are frequently subject to retrospective scrutiny. Medical ethics provides the theoretical foundation, the structure and the context, with which healthcare providers can have meaningful discussions with patients, families, and amongst each other regarding deeply personal topics; weighing equally the differing points of view, without pre-judging, or arbitrarily imposing one's own values upon others. Topics frequently in discourse using a clinical ethical framework include: medical futility, withdrawal of life support, terminal sedation, research design and research subject protections, placebo therapy, triage and rationing, access to health-care, patient-centered health-care, apologies and disclosure of errors, and brain death.

MORAL PHILOSOPHY AND PRACTICAL WISDOM

Aristotle developed the notion of practical wisdom as a virtue of practical thought. Aristotelian ethical theory, rarely alluded to in modern ethical analyses, distinguishes "*sophia*" or that type of knowledge which pertains to universally accepted truths; from "*phronesis*" which represents a more complex form of ethical analysis. Aristotle defined *phronesis* as a capability to reflect, consider and decide between potential actions. Thus, the notion of *phronesis*, is a kind of practical wisdom, which cannot be taught, but rather is acquired through introspection, humility, and extensive real-world experience. Practical wisdom requires a perception of the relationships among people and things. Therefore, in the context of ethics, if human dignity is the final denominator, the ethical analysis must harmonize scientific facts with individuals' values and choices.

Health-care providers, individually and as a team, must be cognitively and emotionally prepared to communicate honestly and compassionately with each other, and subsequently with patients and their families, to best define realistic goals and expectations of treatment.

ETHICS AS A BASIS FOR DIFFICULT CONVERSATIONS

Traditionally, physicians made healthcare decisions on behalf of their patients in a unilateral paternalistic fashion. Under the value system of classical paternalism, the physician was universally perceived as competent, altruistic and sincere. A physician's decision was universally accepted since it was based in extensive knowledge, training, and experience believed to be far beyond the understanding of the typical layperson.

With the rise of patient autonomy, an individual-based analysis took hold and the weight of individuals' rights with respect to dignity and choice have taught providers to consider patients' preferences in an increasingly technologically complex delivery system. The goal of communication in medicine is the formation of a therapeutic alliance which facilitates shared decision-making. Many 'insurmountable ethics problems' can be solved though teamwork and honest communication.

THE ETHICS COMMITTEE

In some circumstances, an impasse is reached and simple communication cannot resolve a conflict; here, a hospital ethics committee, comprised of health-care professionals, clergy, and lay-people, may convene to give their opinion regarding a complex matter. However, providers seeking the guidance of ethics committees must realize that they are composed of outsiders with whom the patient or family has no relationship, can take a substantial period of time to review the facts and form a conclusion, and that ethics committee opinions are not binding.

ETHICS AND THE LAW

Laws apply to interactions between individuals, and between individuals and society. Lawyers are trained to simultaneously manage opposing points of view and are trained to develop arguments on behalf of the client whom they represent.

Laws are founded upon shared ethical and moral principles which are inherent in the U.S. Constitution and courts' determinations of whether certain actions are consistent with established social norms. Laws, like ethical concepts, form the structure and context, within which lawyers argue the merits of their clients' cases. The important relationship of professions with society suggests that professional values must be congruent with the societal values in which the professionals practice. Therefore, ethics is as integral to medicine as it is to law.

Ethical decision-making within the clinical context is potentially subject to public review in a judicial or quasi-judicial context. Therefore, clinical decisions citing ethical principles must be unbiased, carefully reasoned, and transparent; furthermore, the process by which controversial clinical ethical decisions are reached must be well-documented, because a subsequent public review is always a possibility.

Public points of view will change with time. Points of view which are currently widely shared may very well have been considered heretical at another time in history. Technological and scientific advances inevitably force changes in societal values over time. For example, critical care has altered the very definitions of 'life' and 'death.' Thus the applications of ethical principles are continuously subject to legal re-analysis and re-definition. Technology has redefined the way in which people die; instead of acute dying "events" and patterns of linear decline, technology has allowed resuscitation from the point of near-death and also intermittent rescues for people with slow decline due to chronic disease.

Medical malpractice litigation is closely linked to the perceptions of patients and families regarding openness of communication, team cohesiveness, disclosure of adverse events, and, therefore, impressions regarding the quality of care. Litigation is more likely to result when there is a significant discrepancy between a patient's or family's expectations and perceptions regarding the care that was rendered. In the absence of true medical negligence, patients and families most remember the respect, caring, and attentiveness ("ethical behavior") they perceived during the patient's care.

PRINCIPLES OF MEDICAL ETHICS

BENEFICIENCE

Beneficience means that providers should knowingly strive to always act in the best interest of each patient (*salus aegroti suprema lex*). Provider decision-making should reflect the highest level of fiduciary care for each patient, without regard to personal gain, societal interests, or the interests of the family.

The word "duty" has both ethical and legal implications. Beneficence is legally important when intent is questioned. The concept of duty inherent in beneficence also refers to a legal quasi-contractual obligation, the breach of which forms the basis for negligence and may be compensable. Based on the notion of "beneficence," must assume the duty to proceed with treatment in the absence of instructions to the contrary; consent for treatment is considered to be implied when a patient presents himself or herself for treatment.

Arguably, it is ethically more acceptable to err on the side of resuscitation for a patient whose wishes are not known, than to erroneously withhold treatment when a patient would have desired it.

The principle of beneficence is also manifest where patients or families demand

care which is clearly futile. Medical futile care occurs in ICUs every day. If healthcare professionals were to always act in the best interest of their patients, prolongation of suffering through therapies without benefits would not occur; however, medical futility is poorly defined. What may be futile at a community hospital may be beneficial care at a tertiary teaching center. In addition, the notion of medical futility has been publically conceptualized as a power struggle for decisional authority between physicians and patient-surrogates and can lead to rifts in communication and breakdown in shared decision-making.

NONMALEFICENCE

The principle of nonmaleficence is exemplified by the concept of "first, do no harm," or, *primum non nocere*. Harm may stem from omission or commission of an act that inflicts emotional or psychological distress, pain and suffering, or physical injury. Similar to beneficence, nonmaleficence becomes legally significant when the issue of intent is raised.

Certain interventions in medicine have risks that cannot be eliminated no matter how much care and attention is rendered. Interventions may be indicated for their quantifiable associated positive outcomes; however they may have intrinsic risks and the potential to also cause direct harm. Where a therapeutic intervention is prescribed intending to "do good" and an unavoidable but recognized harm may ensue, this is known as the "double effect." The best-recognized example of double effect occurs when an opiate is used to alleviate suffering in the dying patient while simultaneously hastening death. The intent of palliative sedation is not to hasten death but to provide dignity through relief of pain at the end of life – the legally relevant analysis is that of intent. Thus, palliative sedation is ethically acceptable whereas euthanasia and assisted suicide are not; the process is similar but the circumstances and therefore the intent are very dichotomous.

AUTONOMY

The principle of autonomy addresses the patient's right to choose (*voluntas aegroti suprema lex*) and to make informed, uncoerced, voluntary decisions. Autonomy refers to each individual's right to decision-making regarding his or her own personal self-determination. Historically, American culture has placed great importance on and has had a great respect for the principle of individual autonomy, a notion embodied in the Declaration of Independence, the US Constitution, and the Bill of Rights. Justice Benjamin Cardozo opined that that "every human being of adult years and sound mind has a right to determine what shall be done with his own body."

The principle of autonomy is exemplified in the right to refuse medical care. The United States Supreme Court ruled, in the cases of Quinlan, Cruzan, and Schiavo, that a competent person has a constitutionally protected liberty interest to refuse medical treatments. This line of cases led to the development of living wills, advance directives, and healthcare proxy designations which gained a heightened importance when people realized that in order to have their wishes regarding the use of life-sustaining treatment after they have lost decision-making capacity, their wishes needed to be communicated in advance, as clearly as possible. The principle of autonomy requires healthcare surrogates to use the principle of "substituted judgment," which requires the surrogate to base decisions for life-sustaining therapy as the patients would have made if they could do so.

Dignity is a generally accepted right of humanity and is based in the universal right to an expectation of personal respect. "Empathy" implies the provider's understanding of the emotional state of the patient; whereas sympathy merely describes the provider's internalized response to any an emotionally challenging situation. "Sympathy" represents an emotional reaction, whereas empathy implies a deeper level of communication and understanding.

JUSTICE

The ethical principle of justice can refer to either distribution or retribution. Distributive justice represents the universal principle that all persons be treated equally.

Paradoxically, justice may represent the antithesis of the principle of autonomy. Where autonomy dictates that the patient's interests are always foremost, the principle

of justice dictates that the provider must consider the fair allocation of resources without bias or discrimination.

Rationing refers to the allocation of scarce resources; the word is derived from the Latin 'ration', meaning 'to apply limitation in usage.' Rationing can take two forms: implicit rationing is based in subjective assessments of utility; whereas explicit rationing is transparent and is based in clearly defined and well-accepted criteria. Rationing of resources in healthcare addresses especially high-stakes outcomes and therefore the ethical assumptions and analyses are especially important.

Triage in emergencies and in critical care settings represents application of the principle of justice. Health maintenance organizations have an inherent profit incentive to ration care, which often represents a point of ethical conflict with health-care professionals. Mathematical models aimed at determining prognosis in the setting of a given severity of illness score are aimed at facilitating and justifying objective and transparent resource allocation.

The allocation of limited resources is also exemplified in everyday practice when drug shortages force rationing of critical medications; when public health officials assess the allocation of funds for critical access hospitals; policy decisions are made regarding government spending on health and welfare programs; when administrators weigh the trade-offs between quality and cost; and, in the allocation of organs for transplant. In order to maintain transparency and fairness, The United Network for Organ Sharing (UNOS) has developed policies to ration according to weighted organ-specific criteria and explicitly acknowledges that many will die without receiving an organ because of the need to ration organs.

SUGGESTED READING/REFERENCES

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