

Ethical Issues in Skilled Care

PADONA
April 5, 2019



Michael A. Gillette, Ph.D.
(434)384-5322 mgillette@bsvinc.com
<http://www.bsvinc.com>

Ethical Process

ETHICS AND DEMENTIA

“Act and Omission”

Ms. M is an 88-year-old resident who suffers from progressive dementia with periods of extreme agitation. She carries a diagnosis of dementia with delusions and non-psychotic brain syndrome. Ms. M’s condition has deteriorated over the years. She is non-ambulatory, non-communicative, unable to socialize in any way and disoriented. Ms. M has a DNR order and the family has made it clear that all life-prolonging care should be withheld. In addition to avoiding enteral feeding, the family has recently requested that dietary supplements such as Ensure be withheld. The attending wrote an order that all PO supplements such as Ensure and Health Shakes be withheld. In short, the family has requested that tasty but non-nutritious foods be substituted for the Ensure.

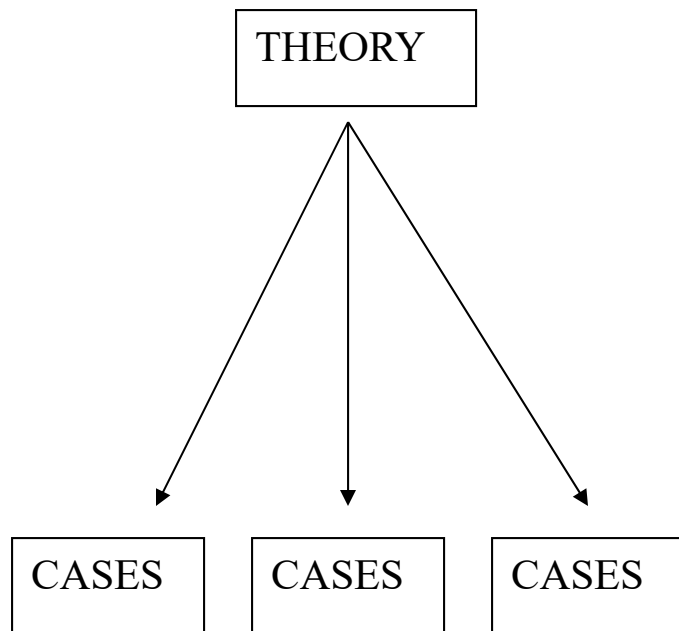


Methods of Doing Ethics

“Theory and Casuistry”

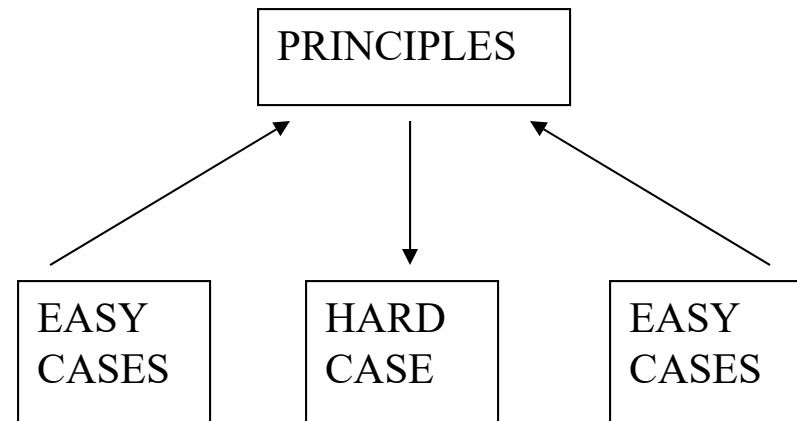
Theory

Top-Down



Casuistry

Bottom-Middle-Down



The Structure of Ethical Argument

The Process of Moral Reasoning

The Default Assumption

The Burden of Proof

Casuistic Exploration

Application to the Current Case



ETHICS AND DEMENTIA

“Act and Omission”

Ms. M is an 88-year-old resident who suffers from progressive dementia with periods of extreme agitation. She carries a diagnosis of dementia with delusions and non-psychotic brain syndrome. Ms. M’s condition has deteriorated over the years. She is non-ambulatory, non-communicative, unable to socialize in any way and disoriented. Ms. M has a DNR order and the family has made it clear that all life-prolonging care should be withheld. In addition to avoiding enteral feeding, the family has recently requested that dietary supplements such as Ensure be withheld. The attending wrote an order that all PO supplements such as Ensure and Health Shakes be withheld. In short, the family has requested that tasty but non-nutritious foods be substituted for the Ensure.



Family Authority

Parental authority over minor children is powerful, *but not absolute* :

- The burden of proof rests with those seeking to overrule parental authority.
- Parental authority does not empower a parent to be negligent in the care of a child.
- Parental authority does not empower a parent to be abusive in the care of a child.
- Parental authority does not empower a parent to demand that care providers offer sub-standard care.



Three Responses to Conflict Between Providers and Families

1. If it can not be shown that the family's choice is abusive, negligent, or inconsistent with the standard of care, the care must be provided.
2. If it can be shown that the family's choice is inconsistent with the standard of care, but not abusive or negligent, then care can be refused but transfer must be allowed.
3. If it can be shown that the family's choice is abusive or negligent, judicial relief is appropriate.



The Ethics of Patient Refusal

“The Limits of Provider Support”

Optimal Care

Sub-Optimal/Super-Standard Care

Sub-Standard Care

Staff never have an obligation to commit malpractice



The Ethics of Patient Refusal

Three Resolutions to Conflict

When care provider A and care recipient B are involved in a dispute whereby B refuses (or demands) care that A believes is (in) appropriate, three options are available.

- A May Give in to B's Demands (if A is unable to show that B's choice would involve negligence, abuse or sub-standard care)
- A May Forcibly Overrule B's Choice (if A can show that B's choice would require A to engage in negligence or abuse)
- A May Legitimately Refuse to Satisfy B's Demands, But B May Receive the Demanded Services Elsewhere (if A cannot show that B's choice would entail negligence or abuse, but A can show that B's choice would involve A in the provision of sub-standard care)



The Structure In Action

Clinical Ethics Case Studies

“Don’t Let Him Drink”

Mr. H is a 79-year-old long-term care resident who suffered a stroke resulting in left side hemiparesis and difficulty swallowing. According to a modified barium swallow, Mr. H can only safely tolerate a level two diet of thickened liquids. Mr. H objects to the dietary restrictions and currently receives a level three mechanical soft diet. Nevertheless, he desperately wants access to thin liquids, especially a morning cup of coffee, and to some other contraindicated foods. A mental health evaluation was performed and although it indicates a possibility of some underlying dementia, it clearly states that Mr. H is not at imminent risk of causing harm to self or others and that he is able to understand the alternatives, risks and benefits associated with eating potentially dangerous foods. Mr. H’s children indicate a desire that the resident’s diet be restricted, but Mr. H is adamant about his desire to eat at least certain types of food and drink that are not consistent with a limited diet. This ethics consult was requested to examine the ethical implications of restricting access to food for an individual who has capacity to make his own healthcare decisions.



Individual Choice

Basic Assumptions

- 1) What is the default assumption regarding an adult individual's right to direct his/her own healthcare?
- 2) Where does the burden of proof rest? Does the patient have to justify control, or do those who would intervene have to justify wresting control away from the individual?
- 3) What would it take to satisfy the burden of proof?



Individual Choice

The Burden of Proof

- 1) All other things being equal, individuals have an autonomy right to control their own care.
- 2) The burden of proof rests on the party that would restrict an individual's autonomy right.
- 3) The burden of proof can be satisfied in on the basis of only two classes of argument: prevention of harm to self (paternalism) and prevention of harm to others (distributive justice).



Requirements For Paternalism

Paternalistic interferences with clients' liberty of action are justified only when:

- The client lacks the capacity for autonomous choice regarding the relevant issue
- There is a clearly demonstrated clinical indication for the treatment or restriction under consideration
- The treatment or restriction under consideration is the least restrictive alternative that is reasonably available and capable of meeting the client's needs
- The benefits of the treatment under consideration outweigh the harms of the interference itself

Paternalistic interventions must attempt to advance the values of the individual whose freedom is restricted.



Ethics in Long-Term Care

“Killing Him With Kindness”

Mr. B is an 83-year-old patient on skilled care. Mr. B suffers from pyriform carcinoma, Diabetes and PVD. He has a history of aspiration pneumonia and he was admitted for treatment of malnutrition. Mr. B’s wife has been staying with him and has set up a lawn chair in his room upon which she sleeps. On numerous occasions that have been well documented, Mrs. B has engaged in actions that, although calculated to benefit the patient, have created substantial risk of harm. Mrs. B has taken out the patient’s sterile trach tube, altered the settings on his gastrostomy tube feedings, covered his trach to the point of compromising his airway, poured water into his trach, adjusted and replaced dressings on wounds and applied topical medications on her own. Staff are concerned that although Mrs. B means well, her continued presence on the unit is not in the patient’s best interest. This ethics consult was requested to discuss the appropriate manner by which risks to this patient should be controlled.



Requirements For Justice

Justice-based interferences with clients' liberty of action are justified only when:

- The client behaves in some manner that places others at risk
and
- Those placed at risk have not provided valid consent to be placed at risk (either by choice or incapacity)
and either
- The risk of harm to others is more significant than the harm generated by restricting the client's freedom and is not protected by an identified right (deterrence)
or
- The client forfeits his/her right to liberty by transgressing a clearly defined social expectation (punishment)



Additional Case Studies

Family Control

“I Want My Shot”

Ms. E is an 85-year-old resident who has a diagnosis of dementia but is oriented X3, lucid, able to converse on complex subjects and scored a 27 out of 29 on a recent mini-mental status exam. Ms. E recently requested an influenza inoculation and clearly indicates that she understands that this is a special injection for the current swine flu outbreak and that she will also want to receive the seasonal swine flu inoculation when the time is appropriate. Ms. E admits to no clinical contraindications for receiving the vaccine. She indicates that she has always received flu shots and secured them for her children, and that she wants this flu shot now. Ms. E's daughter, who is listed as her responsible party but who does not carry a durable power of attorney for healthcare, does not want the facility to provide the injection on the grounds that this treatment would only prolong Ms. E's life and that pneumonia is not a bad way to die. Ms. E insists that this decision should be hers alone and that she does not understand why her daughter would not want to her to receive the inoculation.



Ethics and Dementia

“The Silver Fox”

Mr. S is an 82-year-old gentleman who presented in his primary care physician's office requesting that his Foley Catheter be removed. When asked why he wanted the Foley removed, Mr. S replied that he "wanted to have sex". The attending believes that Mr. S could tolerate the removal of his catheter for a short period of time, and agrees that Mr. S has the right to engage in a sexual encounter if he desires to do so.

The attending asks Mr. S with whom he intends to have sex and Mr. S replies that "there are any number of women on the third floor who would be happy to oblige". The attending knows that Mr. S is correct in his assumption, but she also knows that the third floor of the nursing home where Mr. S resides is the Alzheimer's unit. Many of the women on that unit are married, but don't remember that information. Furthermore, they are women who would not have consented to a casual sexual relationship prior to onset of their illness, but they have lost many of their inhibitions secondary to their dementia.



Pain and the Standard of Care

“I Don’t Want to Knock Her Out”

Ms. F is an 84-year-old hospice participant who carries a diagnosis of dementia and is being treated for an unstable femur fracture. Ms. F is in the end-stage of a deteriorating condition and the family has decided not to provide aggressive life-prolonging care. She exhibits significant signs of physical discomfort and the attending prescribed morphine to cover her pain. Ms. F’s son, who carries durable power of attorney for healthcare, refuses to allow the use of morphine because he is concerned that it will cause a substantial sedating effect.



Withholding Treatment

To Treat or Not To Treat...

Mr. J is a 40-year-old patient with schizoaffective disorder, dementia NOS and has a history of poly-substance abuse. Mr. J became progressively more disoriented and is now being treated with Aricept. The Aricept is achieving marked results and has improved Mr. J's alertness and orientation, to the point where he is able to act on his delusions. Is it ethically better to treat Mr. J with Aricept, which increases his autonomy, or to withhold Aricept so that, although clearly less oriented, Mr. J will not engage in confrontational behavior and will experience reduced agitation?

