Practical Ethics
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.
The Process of Ethics (Casuistry)
The Eye Doctor
or
Reverse Engineering
Methods of Doing Ethics
“Theory and Casuistry”

Theory

Casuistry

Top-Down

Bottom-Middle-Down
Casuistry takes place in a three dimensional conceptual space involving multiple data points and is not restricted to two analogues.

We become wiser as we get older because our bank of experience is broader.

Think about Pong vs. a modern video game. As resolution improves, detail becomes visible.
The Structure of Ethical Argument
The Process of Moral Reasoning

The Default Assumption
The Burden of Proof
Casuistic Exploration
Application to the Current Case
Back To The Opening Case
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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)
Additional Case Studies
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).
Mr. C is a resident in assisted living who has requested to return to independent living. Staff indicate that Mr. C was admitted to assisted living based on concern surrounding his documented suicidal ideation and a desire to closely monitor his medication management, even though he did not meet UAI criteria for assisted living. It is unclear how Mr. C scores on the UAI currently but his physical function has not deteriorated since admission. However, Mr. C does have a history of depression and there is some concern that we will be less able to monitor his mental health status in independent living. The primary ethical issue is based, therefore, on whether or not depression, without associated losses of physical function, creates a legitimate basis for ruling out an individual for living independently.
Paternalism

• An intervention is ‘paternalistic’ whenever the justification for the restriction of an individual’s freedom is calculated to be in their own best interest.

• Justified paternalism requires that the intervention is consistent with the basic or religious values of the individual whose liberty is restricted.
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 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.
Distributive Justice

An intervention is justice-based whenever the justification for the restriction of an individual’s freedom is that it is calculated to protect a victim of the individual’s action other than him/herself.
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 Material
Diminished Capacity

Basic Assumptions

The two most important things to remember at the beginning of any interaction with a patient surrounding capacity issues are:

1) All adults should be presumed to have capacity until they are explicitly found to lack it,

2) An individual cannot be found to lack capacity simply because s/he carries a particular clinical diagnosis.
Diminished Capacity
The Definition of Capacity

In order for a patient to have diminished capacity, s/he must meet at least one of three criteria:

1) The inability to understand information about the decision that needs to be made (ARBs)

2) The inability to use the information, even if understood, to make a rational evaluation of the risks and benefits involved in the decision

3) The inability to communicate by any means
There is an important difference between a clinical finding on incapacity that can be documented by the attending physician, and a legal adjudication of incompetence.

A determination that a patient has diminished capacity can apply to a particular healthcare decision, a set of healthcare decisions, or all healthcare decisions.

It is essential that a clinician making a determination that a patient has diminished capacity be able to define the scope of the finding and its basis. A note must be set forth in writing to indicate something like “This patient is unable to make decisions of type X because of deficit Y.”
Diminished Capacity

Important Concepts

• Capacity is task specific, so incapacity must be assessed relative to the particular decisions at hand.

• Patients can maintain capacity in certain decisional areas while simultaneously lacking it in others.

• The amount of capacity necessary to make any particular decision is relative to the complexity of the decision and the risks associated with the decision. Therefore, clinicians should be very careful when assessing the inability of patients to make complicated high-risk choices and to verify that the patient lacks a sufficient level of capacity to take responsibility for those choices.