

THE ETHICS WORKUP

***Use this document to help organize and structure your case analysis. You should answer all relevant questions.**

The ability to workup the ethical aspects of a case is an essential part of clinical reasoning. The emphasis in the ethics workup is on a sensible progression from the facts of the case to a morally sound decision. An ethics workup (this one or a similar version) may be used by a variety of health professionals, such as physicians, nurses, social workers, etc. With some adjustments, it may also be used by lay persons. Using the five principal steps of the ethics workup, health professionals holding a variety of philosophical and religious positions regarding ethics can share a basic framework for thinking about and discussing morally troubling cases:

- 1. WHAT ARE THE FACTS?:** It is vitally important to clarify the facts of the case in order to anchor the decision. These facts are both medical and social. For example, both an estimate of prognosis and an understanding of the patient's home situation are often relevant to an ethical decision.

Persons involved (who?)
Diagnosis, prognosis, therapeutic options (what?)
Patient preferences, beliefs, values (what?)
Chronology of events, time constraints on decision (when?)
Medical setting (where?)
Reasons supporting claims, goals of current care (why?)

Nurses and social workers may be instrumental in ensuring that the patient/family and other nonmedical health professionals understand the medical facts and that the health care team understands pertinent nonmedical information about the patient and family.

- 2. WHAT IS THE ISSUE?** Is there a conflict at the personal, interpersonal, institutional or societal level? Is there a question that arises either at the level of thought or feeling? Does the question have a moral or ethical component? Why? (e.g., does it raise issues of rights, moral character, etc.). The issue may not be ethical, but rather a diagnostic problem or a simple miscommunication.
- 3. FRAME THE ISSUE:** Some health professionals will explore the issue using only one moral approach. Others will eclectically employ a variety of approaches. But no matter what one's underlying moral orientation, the ethical issue at stake in a given case can be framed in terms of several broad areas of concern, representing aspects of the case which may be in ethical conflict. It is therefore useful, if somewhat artificial, to dissect the case apart along the lines of the following areas of concern:

- a. **Identify the appropriate Decision maker(s).**

There are three rules of thumb for health care decision-making.

- Patients with intact **decision-making capacity** make their own decisions. Decisionmaking capacity entails the ability to 1) understand the information necessary to make this particular decision (task specific), 2) reason in accord with relatively consistent values, and 3) communicate a preference.
- Surrogates make health care decisions for incapacitated patients with a prior history of capacity by using the **substituted judgment standard**. To the extent that the patient's values and preferences are known they should direct decision-making. The surrogate asks, "what would the patient choose if able to make and communicate a preference?" not "What would I choose if the choice were mine?"
- Surrogates of patients who never possessed decision-making capacity: infants, small children and profoundly retarded adults, make decisions using **the best interests standard**. The surrogate asks, "Which option is most likely to benefit and to not harm the patient?" and considers relief of suffering, preservation and restoration of function, and the quality and extent of the life sustained

b. Apply the criteria to be used in reaching clinical decisions.

- 1) **The specific biomedical good of the patient:** One should ask, what will advance the biomedical good of the patient? What are the medical options and likely outcomes?

Determine the **effectiveness** of proposed interventions

[A treatment is effective to the degree that it reverses or ameliorates the natural progression of the disease]. ***This is an objective medical determination*** [to the degree that this is possible]

- 2) **The broader goods and interests of the patient:** One should ask, what broader aspects of the patient's good, i.e., the patient's dignity, religious faith, other valued beliefs, relationships, and the particular good of the patient's choice, are pertinent to the decision at hand?

Use a **benefit-burden analysis** to determine if the benefits of the proposed intervention outweigh the burdens. ***This is a subjective determination*** which can only be made by the patient or by those who know the patient well.

- 3) **The goods and interests of other parties:** Health professionals must also be attentive to the goods and interests of others, e.g., in the distribution of resources. One should ask, what are the concerns of other parties (family, health care professionals, health care institution, law, society, etc.) and what differences do they make, morally, in the decisions that need to be made about this case? In deciding about an individual case, however, these concerns should generally not be given as much importance as that afforded the good of the individual patient whom health professionals have pledged to serve.

The physician explains the medical options to the patient/surrogates *and if indicated makes a recommendation.* The patient/surrogate makes an uncoerced, informed decision. Limits to patient/surrogate autonomy include the bounds of rational medicine/nursing/social work, the probability of direct harm to identifiable third parties, and violation of the consciences of involved health care professionals. In problematic cases the interdisciplinary team may meet to ensure consistency in their recommendations to the patient/surrogate(s).

c. Establish the health care professionals' moral/professional obligations.

Each health care professional must decide what she/he owes the patient, herself/himself, the health care team, the health care institution, and other third parties. Conflicts may present.

4. IDENTIFY AND WEIGH ALTERNATIVE COURSES OF ACTION AND THEN DECIDE: In clinical ethics, as in all other aspects of clinical care, a decision must be made. There is no simple formula. The answer will require clinical judgment, practical wisdom, and moral argument. The health care professional must ask herself/himself, "What should I do? Where can I get help?" She/he must analyze the data, reflect on it morally, and draw a conclusion. She/he must be prepared to explain her decision and the moral reasons for it. Sources of justification include:

- a. The nature of the health care professional-patient relationship; compatibility of recommended course of action with aims of profession [internal morality of profession].**
- b. Approaches to ethical inquiry:** principle-based ethics, virtue-based ethics, casuistry, feminist/caring/existentialist ethics, theological ethics
- c. Ethically relevant considerations:**
 - 1) Balancing benefits and harms in the care of patients**
 - 2) Disclosure, informed consent, and shared decision making**
 - 3) The norms of family life**
 - 4) The relationships between clinicians and patients**
 - 5) The professional integrity of clinicians**
 - 6) Cost-effectiveness and allocation**
 - 7) Issues of cultural and religious variation**
 - 8) Considerations of power (Fletcher, Brody, Miller & Spencer)**
- d. Grounding and source of ethics:** philosophical (based in reason), theological (based in faith), socio-cultural (based in custom)

5. CRITIQUE: It is important to be able to critique the decision that has been made by considering its major

objections and then either responding adequately to them or changing one's decision. The health care professional should also seek her/his colleagues' input when time permits. Some cases can even be taken to an ethics committee for further reflection. Retrospective analysis is also useful in preparing "for the next time" such a situation is encountered.

6. PREVENTIVE ETHICS: It is also important to the extent that the case represents recurring challenges/ problems, that analysis focus on *how individuals, the system and society need to change* to prevent the recurrence of the problem. There is often a natural link between clinical and organizational ethics.

7. DEFICIENT MORAL AGENCY AND MORAL DISTRESS: If you find yourself or your team unable to do what you believe is the morally right thing to do, it may be because of deficient moral agency, moral distress (external variables prevent your doing the ethically right thing), or some combination of the above. At this point careful reflection is needed to resolve what ethically defensible options are available.

METHODOLOGY FOR VALUES-CONFLICT RESOLUTION

**The below points can help you think through key ethical questions in the above case workup.*

Recognizing and Acknowledging the Conflict or Uncertainty

While this step of the process seems self-evident, it is often the source of unresolved conflicts. Participants may deny the actual conflict or uncertainty and reject the idea that there are *legitimate* competing ethical principles and values. Resolutions begin by recognizing that others hold legitimate values and have ethical traditions that must be respected and taken into account. Once this step is made, the conflicts become evident and can be acknowledged publicly--regardless of the specific resolution each stakeholder initially finds preferable.

PREREQUISITE: moral sensitivity and responsibility

Gathering Information

In this step of the process participants attempt to learn all they can about the conflict itself. What is the source of the conflict and related uncertainties? What is at stake? What information is needed to facilitate resolution of the conflict? Who are the stakeholders and what are their values and interests? During the data gathering phase it is essential to distinguish *factual judgments* from *individual or collective perceptions* which may or may not be true.

PREREQUISITE: intellectual humility, openness, respect

Identifying the Stakeholders

Who are the stakeholders in the decision? That is, who will be affected by it, either through responsibility for making decisions or implementing the decision, or experiencing the outcomes of its implementation?

Identifying the Stakeholders= Interests

Each stakeholder should talk freely about his or her perspective on the issue in question. [N.B. It is important for all stakeholders to be present at the table and to have a voice. Examples abound of discrepancies between perceived and actual values/interests of particular individuals and groups.] The aim of this phase is to have people talk freely and fully, without contradiction or analysis, so that all the relevant perspectives and data get put on the table.

Articulating and Ranking Values

Begin by articulating, and listing, the cherished values of each stakeholder group. Rank these so that the most important values of each stakeholder are known to the group at large. **Use some process to reach consensus about the core values which then ought to direct the resolution** of the problem at hand.

PREREQUISITE: respect and trust

Achieving agreement on a decision will depend in large part on the extent to which the

participants in the discussion have gained an appreciation of and respect for the concerns and values of the varying perspectives they represent. Ideally, they come to respect for and trust in one another as honest, decent, well-motivated persons, and not as members of hostile Ainterest groups.⁶

Identifying the Issue

First, the group, after hearing the different perspectives, tries to define the disputed issue or issues as precisely as possible and identify the reasons for or root causes of the problem. The aim here is for the group to understand the problem as accurately as possible.

Second, the group reflects on the various explanations for the problem that have been offered, tests them for their relative adequacy, and sees which best fits the data gathered in the first phase of the discussion. The aim of this phase is for all stakeholders to reach a common judgment on the best explanation of the issue, which will also involve the overcoming of partial ignorance or personal bias.

PREREQUISITE: intellectual clarity

Generating Possible Courses of Action

Crafting a response to the issue involves the identification of various plans of actions which are then critiqued in light of the most cherished values of the full group.

PREREQUISITE: critical thinking and creativity

Making the Decision

Ideally a consensus is reached and a decision is made on the basis of a relatively adequate understanding of all the dimensions of the problem and a generous concern for, not necessarily all, but the most cherished among the values of each of the stakeholder representatives.

PREREQUISITE: responsibility and accountability

What is to be done if a group of representatives cannot reach consensus and is deadlocked in opposing positions?

- X Redo steps above to make sure participants genuinely understand and empathize with the cherished values of each, so that they may be able to set in priority ranking the most compelling concerns in order to reach consensus.
- X Strive anew to creatively and imaginatively design a new course of action in which all the required values are promoted.
- X Ask the opposing parties if their disagreement is non-negotiable, i.e., is a matter of serious violation of conscience, or whether they could move ahead with the majority=s plan of action, even though it is not their preference.
- X Check past history to see if there is precedent for one or other of the opposed positions, and how, and how satisfactorily, the issue was resolved at that time.
- X The group might be asked to agree on one of the opposed views on the condition

- that those who disagree would not be obliged to implement it themselves--if this is organizationally possible.
- X If time is not of the essence, the decision can be deferred to give opportunity for further thought and reflection.

Implementing and Evaluating the Decision

Once the decision is made about a possible course of action it is important to discern how best to implement the decision given the interests and values at stake. Likewise, there should be some advance discussion about how best to evaluate the consequences of the selected course of action. The aim of this evaluation is to critique the adequacy of the process used to generate the resolution of this issue in order to facilitate future decision making.

PREREQUISITE: responsibility and accountability

This methodology is adapted from materials from the Woodstock Theological Center, Washington, DC and the Health Policy and Bioethics Consultation Group, Berkeley, CA