Bioethics in the Psychiatric Hospital

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What is Bioethics?

- Application of Ethics to the fields of Medicine and Healthcare
- blends philosophy, theology, history, and law with medicine, nursing, health policy, and the medical humanities
- Modern technology and science coupled with theoretical philosophical tradition
History of Medical Ethics

• Most widely known: Hippocratic Oath (400 B.C.)
  • Homogenous, Shared Values/Beliefs, Simplicity
• Code of Hammurabi (2000 B.C.)
  • Standards of practice
  • Accountability
Perceptions on Ethics in Psychiatry

- Varied dramatically in field starting in 1982
- Stone: separation between practice and legal. Stay out of courtroom
- Applebaum – forensic psychiatrist shouldn’t follow general medical ethics due to their “expert” characteristics
- More Psychiatrist followed suit with their theories and opinions
- Essentially huge lack of consensus in the field.
AMA’s Code of Medical Ethics

Principles of Medical Ethics

1.00 - Introduction

2.00 - Opinions on Social Policy Issues

3.00 - Opinions on Interprofessional Relations

4.00 - Opinions on Hospital Relations

5.00 - Opinions on Confidentiality, Advertising, and Communications Media Relations

6.00 - Opinions on Fees and Charges

7.00 - Opinions on Physician Records

8.00 - Opinions on Practice Matters

9.00 - Opinions on Professional Rights and Responsibilities

10.00 - Opinions on the Patient-Physician Relationship
A few Bigger examples in our history

• Middle Ages executions
• Pre-Enlightenment Period – banishment from society, manacles and chains.
• 1880’s Psychosurgery
• 1920’s Insanity and surgical removal of body parts
• Psychiatry and Nazi abuses WWII; Eugenics
• 1960’s Ionia State Hospital – Michigan African Americans diagnosed with Schizophrenia because of Civil Rights Ideas
• 1961 Milgram Experiments
• 1980’s – Paxil
5 Sources of Ethical Dilemmas

• When standards conflict with each other
• When standards conflict with institutional demands
• When there are conflicting loyalties
• When good solutions seem unattainable
• When a professional finds it difficult to adhere to an ethical standard
What is an Ethical Dilemma?

• Ethics is a system of moral principles or values
• A dilemma occurs when a choice may need to be made that seems to conflict with one or more of those values
• Conflicts may arise from differences in values, communication, other circumstances
Issues intrinsic to Mental Health

- Competence vs. Capacity
- Threat of harm to others
- Threat of harm to self
- Involuntary treatment
- Legal system
- Conflict of Interest: Therapeutic alliance Dual professional Loyalties
Intro to Ethical Principles
Theories of ethics are either descriptive or normative.

Descriptive theories aim to define “what is”
Normative theories aim to define “what should be”
Teleological vs. Deontological

• Whether you are aware or not most Health Care Professionals frequently practice from these 2 distinct philosophical models
• Most use a combo of the above unknowingly
Deontological (Kant)

- Deontologist believe that values are absolutes and to deny them is unethical.
- We have a moral obligation to uphold our values
- Values Driven
- Thought of as Mandatory Ethics
- Most codes of ethics originally were Deontological in nature. Many are still structured in a Deontological format and style
Teleological

- Teleological practitioners examine consequences of the situation
- The rightness or wrongness of actions is based solely on the goodness or badness of their consequences
- Thought of as outcome based ethics.
Utilitarianism (Mills)

- An act is morally right if when compared with alternative acts it yields the greatest possible balance of good and least of bad.
Virtue Ethics

• Virtue = characteristic/disposition we desire in ourselves or others
• Aristotle: “person’s character is at the heart of moral deliberation”
• Avoids pitfalls of rules and principles altogether and emphasizes the “ideal situation”.
• “choosing the golden mean between the extremes”
The Virtuous Psychiatrist

- Beauchamp and Childress, 2001
  - Compassion, Discernment, Trustworthiness, Integrity and Conscientiousness
- Engelhardt, 1996
  - Tolerance, Liberality, Prudence
- Radden, 2002
  - Compassion, Humility, Fidelity, Trustworthiness, Respect for Confidentiality, Veracity, Prudence, Warmth, Sensitivity, Humility, Perseverance
Ethics of Care/Care Ethics

- Contemporary variant of Virtue Theory combined with psychology
- Emphasis on character and interpersonal relationship over "rules"
- Responding to the needs of others
- Emotional Bond
Principlism
Principlism

• Has become Dominant Western Paradigm in Medical Ethics
• Idea that widely help principles provide a good starting point for moral judgment and discussion
Principlism as we grow

• Some thought that regardless of background Principlism it is expansive enough to be shared by all individuals

• Our society gets more and more heterogeneous with a much wider diversity in values and beliefs
Prima Facie Duties

- W.D. Ross (d. 1971).
- Duty that is binding and obligatory unless overridden by another duty
- Source of Confusion
- Which duties override which?
- Who decides which “duties” are worthy of being Prima Facie?

- Fidelity
- Reparation
- Gratitude
- Non-injury
- Harm-prevention
- Beneficence
- Self Improvement
- Justice
5 Common Ethical Principles

- Autonomy
- Beneficence
- Nonmaleficence
- Justice
- Fidelity
The ‘Five Principles’ are intended as an aid to balance judgment, not a substitute for it.
Autonomy

- Foundational concept in western medicine
- Latin for “self rule”
- Requires two conditions: absence of controlling influence and capacity.
Respect for Autonomy

- Informed Consent
- Confidentiality
- Keeping Promises
- Truth Telling
Autonomy and Psychiatry

• Effect of Psychopathology upon autonomy
  • Reasoning, Communication ability, self interest may be impaired, self control
• Often narrowly focused (capacity only)

• Radden – To what extent is Autonomy applicable in Psychiatry?
Paternalism

- Common perception is opposite of autonomy is Paternalism
- Not all Paternalism is “bad” or “negative”
- Concept of “soft Paternalism”
  - We need to make difficult or unpopular decisions on behalf of our clients at times
  - Feels less “heavy handed”
Beneficence

- Actions that contribute to the welfare of others.
- Beneficence assumes a responsibility to improve and enhance the welfare of others.
- Beneficence is not simply the opposite of Nonmaleficence.
  - Do we always have a duty to help?
- Implied duty to help by virtue of doctor/patient relationship.
  - Are there limits to that level of service and duty?
  - Bouvia Case as an example.
Beneficence and Forensic Psychiatry

- Rarely Absolute
- Does “benefiting” patient entail making the patient feel better or behave better?
- Divided Loyalties
  - Balance requirements of the state
  - Community needs or requirements
  - Patient’s welfare
NonMaleficence

• “Primum non nocere” – First do no harm
• Where harm cannot be avoided we are obligated to minimize the harm we do
• Don’t increase the risk of harm to others
• Intentionality
• Negligence comes out of this – posing risk
Issues in Forensic Psychiatry

• Short term breaches in the interest of long term benefits to patient
• Non Maleficence to who(m)?
  • Patient
  • Other Patients
  • Profession
  • Hospital
  • State
  • Public
  • Legal System
  • PSRB
Doctrine of Double Effect

- Sometimes it is permissible to cause a harm as a side effect (or “double effect”) of bringing about a good result even though it would not be permissible to cause such a harm as a means to bringing about the same good end.
- 4 conditions
  - that the action in itself be good or at least indifferent;
  - that the good effect and not the Bad effect be intended;
  - that the good effect be produced by the action; not the Bad effect
  - that there good effect be sufficiently desirable to compensate for allowing the bad effect.
Justice

• Impose no unfair burdens
• Obligation to fair adjudication between competing claims
  • This is not just about resources or distribution of resources
• Don’t confuse Equality and Justice
  • “Justice is more than mere equality – people can be treated unjustly even if they are treated equally” – Aristotle
Equality  Equity  Justice

In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.

In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.

In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.
Justice and Forensic Psychiatry

- Difficult concept when patients are indefinitely “detained”
- Justice as fairness for patient vs for public
- Patient claims to liberty and autonomy that legal system evokes, access to care
Fidelity

- Fairly Wide Spectrum
- Competence and capability of performing the duties required of your professional role.
- That you adhere to a professional code of ethics.
- That you follow the policies and procedures of your organization and applicable laws.
- That you will honor agreements made with the patient.

**Fidelity is the most common source of ethical conflict**
Codes of Ethics

- Just the existence of a code of ethics doesn’t necessarily assure ethical behavior
- Lolas (2006) discusses how Codes are way to conceptualize an “ideal” behavior
  - “Codes usually express what the practitioners would like to be and not what they actually are”
Strengths and Weaknesses of Principlism

• No guidelines on how to deliberate
• Limits are not defined
• Patient focused. What about greater societal ethical issues?
• Is it culturally sensitive?
Case based reasoning, does not focus on rules and theories but rather on **practical decision-making in particular cases based on precedent**. So

- first the particular features of a case would be identified
- then a comparison would be made with other similar cases and prior experiences
- attempting to determine not only the similarities but also the differences.
Paradigm Cases

Casuistry seeks to order the circumstances of the case relative to the information involved.

First accounts of this approach date back to Cicero and then to Jesuits (Penance/Confession)
The Jonsen 4 box Method

- **Medical Indications** - All clinical encounters include a diagnosis, prognosis, and treatment options, and include an assessment of goals of care
- **Patient Preferences** - The patient’s preferences and values are central in determining the best and most respectful course of treatment.
- **Quality of Life** - The objective of all clinical encounters is to improve, or at least address, quality of life for the patient, as experienced by the patient.
- **Contextual Features** - All clinical encounters occur in a wider social context beyond physician and patient, to include family, the law, culture, hospital policy, insurance companies and other financial issues, and so forth.
## Medical Considerations (The Principles of Beneficence & Nonmaleficence)

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>2. What are the goals of treatment?</td>
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<td>3. In what circumstances are medical treatments not indicated?</td>
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<td>4. What are the probabilities of success of various treatment options?</td>
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## Patient Preferences (Autonomy)

<table>
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<tr>
<th>Question</th>
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<tbody>
<tr>
<td>1. Has the patient been informed of benefits and risks, understand this information, and given consent?</td>
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<tr>
<td>2. Is the patient mentally capable and legally competent, and is there evidence of incapacity?</td>
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<tr>
<td>3. If mentally capable, what preferences about treatment is the patient stating?</td>
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<tr>
<td>4. If incapacitated, has the patient expressed prior preferences?</td>
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<tr>
<td>5. Who is the appropriate surrogate to make decisions for the incapacitated patient?</td>
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## Quality of Life (The Principles of Beneficence, Nonmaleficence & Autonomy)

<table>
<thead>
<tr>
<th>Question</th>
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<tbody>
<tr>
<td>1. What are the prospects, with or without treatment, for a return to normal life, and what physical, mental, and social deficits might the patient experience even if treatment succeeds?</td>
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<td>2. On what grounds can anyone judge that some quality of life would be undesirable for a patient who cannot make or express such a judgment?</td>
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<td>3. Are there biases that might prejudice the provider’s evaluation of the patient’s quality of life?</td>
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<td>4. What ethical issues arise concerning improving or enhancing a patient’s quality of life?</td>
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<td>5. Do quality-of-life assessments raise any questions regarding changes in treatment plans, such as forgoing life-sustaining treatment?</td>
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<td>6. What are plans and rationale to forgo life-sustaining treatment?</td>
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## Contextual Features (Justice & Fidelity)

<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>1. Are there professional, personal or business interests that might create conflicts of interest in the clinical treatment of patients?</td>
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<tr>
<td>2. Are there parties other than clinicians and patients, such as family members, who have an interest in clinical decisions?</td>
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<td>3. What are the limits imposed on patient confidentiality by the legitimate interests of third parties?</td>
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<tr>
<td>4. Are there financial factors that create conflicts of interest in clinical decisions?</td>
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<tr>
<td>5. Are there problems of allocation of scarce health resources that might affect clinical decisions?</td>
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<td>6. Are there religious issues that might affect clinical decisions?</td>
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<td>7. What are the legal issues that might affect clinical decisions?</td>
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<td>8. Are there considerations of clinical research and education that might affect clinical decisions?</td>
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<tr>
<td>9. Are there issues of public health and safety that affect clinical decisions?</td>
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Four Box Method and Psychiatric Ethics Committees

• Medical Indications through Contextual Features reads more like a case formulation
• Contextual Features is often the most critical to psychiatry and ethics but is usually the least considered
• Set of questions recommended intended for medical/acute hospital settings.
Step beyond 4 boxes

- Jonsen then applies a taxonomic procedure to the cases of relevance to the current case at hand.
- “lining up” by rank in order from most paradigmatic to least similar.
Strengths and Weaknesses

- Lining up of cases is often overlooked
- Lacks a theoretical foundation
- Paradigm Case may or may not have been ethical
- Psychiatry has a lack of paradigm cases compared with general medicine
LESSER KNOWN THEORIES OF BIOETHICS

UTUBEITERIANISM:
POST THE VIDEO. LET THE WEB DECIDE.

CANINE CONSEQUENTIALISM:
GREATEST GOOD FOR THE GREATEST NUMBER OF DOGS.

ME NOM ANAHLOGY:
SING MIND-NUMBING SONG FROM THE MUPPET SHOW UNTIL PROBLEM IS FORGOTTEN.

PRINCIPALISM:
CONSULT CHILDHOOD AUTHORITY FIGURES. LET THEM FIGURE IT OUT IF THEY'RE SO SMART.

W.W.J.D.D.:
BASE ALL DECISIONS ON EPISODES OF SCRUBS.

INDUCTIVE REDUCTIONISM:
MAKE LIGHT OF THE PROBLEM SO IT SEEMS LESS IMPORTANT.
Bioethical Dilemma’s

In a Psychiatric Hospital
Dual Role

- Is there a prima facie conflict between “role of treater” and “role of evaluator?”

- Ethics and the Law: Ethics tells us what we should do. The law tells us what we cannot do.

- Is there a different set of ethics for Forensic Psychiatrists? How does that affect hospital clinical care?

- Professionals are cast into two roles as expert witness and clinical practitioner.
Capacity vs. Competency

- Often used interchangeably
- In addition Psychiatrists/Psychologists and Ethicists often have different meanings for these terms
- Diagnostic approach to assess is different
Competence

• Legal determination
• Requires
  • Ability to reason and deliberate
  • To be able to appreciate ones circumstances
  • Understand information presented
  • Communicate a choice
  • Understand any potential ramifications from said choice
Capacity

• Continuous quality that can be present to greater or lesser extents depending on a person's circumstances or status

• Competence is an all or nothing and does not vary like capacity
Professional views of capacity

**Bioethicists**
- Does the patient understand his/her medical condition, risks and benefits of the intervention proposed and consequences of refusing?
- Can the patient weigh the burdens vs. benefits of the proposed intervention?
- Can the patient express his/her health care values

**Psychiatry/Psychology**
- MMSE or other standardized tests
- Is patient a danger to self or others?
- Is patient holdable under law?
- Can the patient manage ADL’s?
Informed Consent and Informed Refusal

- Adult patients with psychotic disorders are not automatically or always incompetent
- Research has shown that most patients with mental illness in inpatient units have the capacity to make treatment decisions similar to persons with medical illnesses (Pinals, 2009).
- A patient with a severe mental disorder may be incompetent in some aspects but competent to decide upon a particular treatment in other aspects.
Legal Aspects of Informed Consent

- Voluntariness – patient must make treatment related choices of his/her own free will without coercion
- Disclosure – a person requires certain information to make a rational decision to be able to accept or reject treatment
- Capacity – remember adults are presumed competent unless adjudicated otherwise however a competent individual may or may not have capacity.
What are the exceptions to informed consent?

• Emergencies
• Incompetence
• Waivers
• Therapeutic Privilege
Sell v. United States, 2003

- Charles Sell, Dentist, long history mental illness
- Hospitalizations began in 1982
- Court and Legal Issues 1997
- Found incompetent to stand trial, refused medications, medical staff pursued permission to administer medication against his will
- 6-3 vote US Supreme court (2003)—government can involuntarily administer antipsychotic medications to a MI defendant allowing him/her to stand trial
Let’s talk Tarasoff

• One of few Paradigm Cases in Psychiatry
• History
• Duty to Warn is actually Duty to Protect
• Oregon is considered “Permissive” rather than Mandatory
• ORS 179.505
• In field of mental health it is difficult to make predictions of client violence
"Now, try to keep a straight face."
What is an Ethics Committee

• All accredited hospitals are required to have a mechanism to handle ethical concerns. This usually takes the form of a hospital ethics committee.

• Committee is a group of professionals of various disciplines who help to clarify difficult decisions and discuss ethical aspects of patient care.

• Committee role is advisory not prescriptive.

• It is not administrative or disciplinary or to highlight what has been “done wrong”.

3 core tasks

• Provide a forum to discuss and achieve consensus on an ethical issue that is respectful of the rights and responsibilities of all involved parties. Review any cases referred to the committee that present ethical concerns and make recommendations regarding ethical practice.

• Advise policy-makers as needed regarding the ethical considerations of hospital policies.

• Provide education regarding health care ethics to staff, patients, family members, and community members.
Perceptions of Ethics Committee’s

- March 2004 *Journal of General Internal Medicine*
  - 72% of nearly 350 internists believed they learned something from an ethics consult they experienced
  - 86% said they likely would ask for help again.

- Doctors’ perceptions captured of why don’t refer:
  - “Ethics Police”
  - Physician feels displaced
  - Time
  - Pride
<table>
<thead>
<tr>
<th>Beds</th>
<th>Offering consultation</th>
<th>Median number of cases</th>
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</thead>
<tbody>
<tr>
<td>1-99</td>
<td>65%</td>
<td>1</td>
</tr>
<tr>
<td>100-199</td>
<td>92%</td>
<td>3</td>
</tr>
<tr>
<td>200-299</td>
<td>97%</td>
<td>6</td>
</tr>
<tr>
<td>300-399</td>
<td>97%</td>
<td>10</td>
</tr>
<tr>
<td>400-499</td>
<td>100%</td>
<td>12</td>
</tr>
<tr>
<td>500-plus</td>
<td>100%</td>
<td>15</td>
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Benefits of Ethics Committee Referral

• Ethicists and Committee’s help you think about options, other ways of formulating the concern and ways to negotiate compromise

• Focused time for ethical reflection and discussion without disruption
Do you know how to contact your committee?