NEWS & VIEWS

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Ethics Committee: Advising and Counseling Residents, Families, and Healthcare Providers with Clinical Ethics Decision-Making

By:
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A 75-year-old man died on May 13, 2019, in a Florida hospital. CPR was not performed in an effort to prevent his death because he had a Do Not Resuscitate (DNR) order in place. On the surface, this would seem to be an acceptable situation; however, the patient, his daughter, his psychiatrist, and his healthcare power of attorney did not want him to have a DNR order. The hospital recognized the guardian's legal position and honored the DNR.

The patient had capacity to make some decisions, but he had deficits regarding other decision-making ability, i.e., financial issues. Consequently, he had a court-appointed professional guardian to control his affairs. This guardian allegedly had a policy of establishing DNR orders for her custodial clients, and she had obtained a DNR order for this patient.

In another internationally publicized case, recent headlines read: "Doctors End Life Support for French Quadriplegic Vincent Lambert in Landmark Right-to-Die Case."

On May 30, 2019, after 42-year-old Vincent Lambert had spent 11 years in a vegetative state caused by injuries he received in a 2008 motorcycle incident, French doctors began taking him off life support. This case had been the center of a conflict between the man's devout Catholic parents, who had taken extraordinary measures to keep him alive in a vegetative state, and the wishes of his wife, doctors, and other family members who wanted to stop his nutrition and hydration as allowed by France's passive euthanasia law. This ethical dilemma literally tore the family apart.

These kinds of "end of life" dilemmas between a healthcare provider, a patient/resident, family members, and legal guardian gives a realistic picture of just one of the many clinical ethics' issues long-term post-acute-care facilities face on a daily basis.

An effective ethics committee can address clinical issues like the ones described above and offers a venue for dialogue between healthcare providers, residents, and families. An ethics committee also provides helpful education and training for staff, residents, and family members.

St. Michael's Hospital in Toronto has created the Center for Clinical Ethics website located at http://www.stmichaelshospital.com/programs/ethics/whatisce.php . On the first page is the following clear, concise explanation about clinical ethics:

Ethics is about right and wrong and the reasons that we give for our choices and actions. We explore the question: What ought we to do and why?

Clinical ethics promotes reflective practice and the making of "right" choices and decisions in the delivery of health-care.

It is not always clear what the "right" decision is in specific cases.
Different individuals (healthcare providers, patients, family members) will often disagree about what the "right" decision should be.

We consider "should" questions, such as these:

- "Should we get consent for a "No CPR" order?
- "When should you report a colleague's error?"
- "Should we hide medication in a patient's food?"
- "When should you follow the advance directive of a patient with anorexia?"

In seeking answers to these questions, clinical ethicists in collaboration with healthcare team members, patients, and family members examine basic ethical principles such as autonomy (the right for individuals to make choices about what happens to them), beneficence (the desire to do good), non-maleficence (the duty to prevent harm), and justice (fairness).

Bioethics is another term closely related to clinical ethics that encompasses healthcare management issues. This term is described by the Center for Practical Bioethics as being first introduced in 1971 to reference "the combination of biology and bioscience with humanistic knowledge."

With applications that cover the whole of life from birth to death, bioethics directly impacts healthcare providers and patients/residents.

Some of the most relevant bioethical and clinical issues facing healthcare providers are-

- End-of Life Care - Generally, involves the healthcare of persons with a "terminal condition that has become advanced, progressive, and incurable." There are a number of decisions involved and questions to be addressed about "palliative care, patients' right to self-determination, medical experimentation, the ethics and efficacy of extraordinary or hazardous medical interventions, and the ethics and efficacy even of continued routine care."

- Medical Resource Allocation - Should medical resources become limited or scarce making it difficult to meet all of the healthcare needs for the patients/residents being cared for, it can require some degree of rationing. An obvious example would be when a patient is moved from an intensive care unit (ICU) due to a limit in the number of units and a high number of more seriously ill patients needing ICU care. Another example involves the delegation of physician time and triage of which patients should be seen first and for what length of time.

- Eugenics - Modern advances in technology have made it possible to "improve genetic quality through selective reproduction, gene selection, and gene manipulation. The ethical question here is, just because more choice exists, does that mean it should be taken?"

- Euthanasia - The dictionary definition for euthanasia is "the act or practice of killing or permitting the death of hopelessly sick or injured individuals in a relatively painless way for reasons of mercy." While euthanasia is not legal in most states, assisted suicide/assisted death is legal in Washington, D.C., California, Colorado, Oregon, Vermont, Maine (starting January 1, 2020), New Jersey (starting August 1, 2019), Hawaii, and Washington. In Montana, the status is in dispute. In euthanasia, the individual does not directly end their life, but another person acts to bring about their death.

- Organ Donation - The ethical issues are complex and involve an inadequate supply of organs.

The State of New York's enactment of the Family Health Care Decisions Act (FHCDA) made it the first state to require nursing homes to establish or participate in an ethics committee. FHCDA provides a model for nursing homes in other states to follow regarding the design and implementation of their Ethics Committee.

The main role of the FHCDA ethics committee is to "resolve patient care disputes, provide ethics advice, and authorize decisions by family members or other surrogates to withdraw or withhold life-sustaining treatment in certain sensitive cases."

Healthcare facilities, Ethics Committee members, consultants, and participants are all protected from civil and criminal liability for the reasonable and good faith actions they take under the Act.
The FHCDA spells out the legal framework for making treatment decisions for incapacitated adults and specifies with a designated priority the list of persons eligible to make decisions about patients who lack decision-making capacity. Here is that prioritized list:

1. A guardian authorized to make healthcare decisions pursuant to Article 81 of the Mental Hygiene Law;
2. The spouse, if not legally separated from the patient, or the domestic partner;
3. A son or daughter 18 years of age or older;
4. A parent;
5. A brother or sister 18 years of age or older; or
6. A close friend.

An individual from the highest priority class on the list who is reasonably available, willing, and competent to decide will be authorized as a "surrogate" for treatment decisions. The specific guidelines for the person acting as the surrogate are also outlined in the law.

The role and responsibilities, membership, and procedures for the Ethics Committee are also spelled out.

Another resource that a facility's Ethics Committee may find helpful in guiding their oversight regarding healthcare choices has been created by the American Bar Association. It is titled, "Pathways to Health Care Decision-Making" and outlines what it considers to be the preferred ways to make healthcare choices.

The details can be viewed at:
https://www.americanbar.org/content/dam/aba/administrative/law_aging/2019-pathways-hcdm.pdf.

"Med-Net Compliance's NAB Approved Courses Provide Insight on How to Avoid Fraud Pitfalls"

Jo Ann Halberstadter, Esq

ADMINISTRATORS TAKE NOTE

Med-Net Compliance, LLC now offers two series of fraud modules with NAB/NCERS CEs on our website. Modules 1-8 offers 3 NAB CEs and modules 9-16 offer 3.75 CEs. All modules provide education on fraud, waste and abuse prevention and offer a combined total of 6.75 CEs for successful completion.

To review the NAB Approved courses visit our website:
https://www.mednetcompliance.com/med-net-academy/nab-approved-courses/

All 16 courses on fraud, waste and abuse were developed by Betty Frandsen,
our Vice President of Professional Development and her staff.

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