The Hospital Ethics Committee: History, Functions, and Future

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Overview

- Ethics committees and consultants
- Goals, standards, and process
- Competencies of consultants
- Reasons for consultations and outcomes
- Guidelines for ethics consultation

Bernat JL. *Ethical Issues in Neurology, 3rd ed.* Lippincott W&W, 2008.

Evolution

- 1970s Medical-moral committees in Catholic hospitals
- 1976 *Quinlan* court in New Jersey
- 1970s Prognosis committees
- 1981 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research

Evolution

- Endorsed by AMA, AHA, ACP, etc.
- Maryland and New Jersey laws require an ethics committee
- Maryland Health Care Decisions Act requires dispute referral to EC
- JCAHO mandates a hospital mechanism to resolve ethical conflicts, but not HEC
- Mandatory EC in some AMCs for some cases

Romano ME et al. *Mayo Clin Proc* 2009; 84: 581-585

Structure

- Multidisciplinary composition by training and service
- Institutional placement: under hospital administration or medical staff
- Size varies with institutional size
- Most have closed meetings
- Special problems of rural hospitals

Functions: Education

- Educating committee members
  - Designated teaching sessions
- Educating other hospital staff members
  - Liaison members
  - Teaching conferences

Functions: Policy

- Policy review
- Policy drafting
  - Consent or refusal of therapy
  - DNR
  - Limitation of treatment
  - Palliative care

Frolic A et al. *Am J Bioethics* 2012; 12(11): 3-15

Functions: Clinical Consultation

- Recommendations are nonbinding ("ethics advisory committees")
- Outline ethically acceptable options
- Chairperson decides how to respond
- Who can request consultation?
- Medical record note is desirable

Weise KL, Daly BJ. *Am J Bioethics* 2014; 14(6): 34-41

Functions: Case Audit

- Quality assurance role of mandatory auditing of cases with ethical dimensions
- Committee should carefully consider the pros and cons of an auditing function
- We have chosen to avoid that role
  - Fear of discouraging consultations by appearing to be ethics police

Pitfalls and Limitations

- Potential benefit: safeguard interests of the patient and lead to improved care
- Potential risk: physician may abdicate patient decision making to committee
- Restrict role to exclude responsibility for patient care decisions
- Major value is in process, not product

Carrese JA. *J Clin Ethics* 2012; 23: 234-240

Pitfalls and Limitations

- Using second-hand information
- “Groupthink"
- Undue influence of persuasive members
- Domination by lawyers and risk management concerns
- Inaccessibility to patients
- Inaccessibility to staff

Carrese JA. *J Clin Ethics* 2012; 23: 234-240

Medicolegal Aspects

- May serve as a substitute for referral to court, except in certain circumstances:
  - Irreconcilable conflict between decision makers
  - Intractable conflict between the interest of the patient and the interest of the institution
  - Evidence that the surrogate is not deciding for the patient's interest
  - Neither surrogate nor advance directives

Pope TM. *J Clin Ethics* 2011; 22: 74093.

Clinical Ethics Consultation

Consultative advice upon request to provide information, analysis, or assistance for the resolution of a clinical-ethical conflict with the goal of optimizing patient care and furthering patient-centered medicine

Bernat JL. *Ethical Issues in Neurology, 3rd ed.* Lippincott W&W, 2008.

Ethics Consultations Models

- Whole committee
- Committee member as consultant
- Post-facto committee review
- Pure consultation without committee

Singer, et al. *J Clin Ethics* 1990;1:263-267.

Four Goals of Ethics Consultation

- Maximize benefit by fostering a fair decisional process honoring wishes of patients and their surrogates and respecting cultural values
- Facilitate resolution of conflicts with consideration of the interests and rights of those involved

Fletcher & Siegler. *J Clin Ethics* 1996;7:122-126.

Four Goals of Ethics Consultation

- Inform institutional policy development, quality improvement, and resource utilization, by understanding ethical problems and by promoting ethical standards
- Educate individuals in clinical ethics to assist them in resolving ethical problems

Fletcher & Siegler. *J Clin Ethics* 1996;7:122-126.

Clinical Ethics Consultant

- A professional with training and experience in clinical ethics whose assistance is sought at the bedside to help resolve ethical dilemmas arising in patient care.

Singer, et al. *J Clin Ethics* 1990;1:263-267

Advantages of Ethics Consultant

- Respond to urgent requests rapidly
- More direct access to patient data
- Greater expertise in clinical ethics
- Educate house staff in clinical ethics
- Keep data available to conduct reviews and to perform empirical research

Singer, et al. *J Clin Ethics* 1990;1:263-267.

Roles of Ethics Consultant

- Patient advocate
- Professional colleague
- Case manager
- Negotiator, mediator, or arbitrator
- Educator

Winslade WJ. *J Clin Ethics* 2011; 22: 328-334.

Skills of Ethics Consultant

- Identify and analyze moral problems
- Use good clinical judgment
- Communicate effectively
- Negotiate, mediate, and arbitrate
- Teach
- Facilitate problem resolution

Kodish E et al. *Hastings Center Rep* 2013; 43(5): 26-36.

ASBH Core Competencies: Skills

- Ethical assessment skills
- Process skills
- Interpersonal skills

American Society for Bioethics and Humanities.

Core Competencies for Healthcare Ethics Consultation 2nd ed, 2011

Tarzian AJ. *Am J Bioethics* 2013; 13(2): 3-13

Core Competencies: Knowledge

- Ethical theory and bioethics
- Health care systems
- Clinical context
- Local hospital and its policies
- Beliefs of patient and staff
- Codes of professional conduct
- Relevant health law

Tarzian AJ. *Am J Bioethics* 2013; 13(2): 3-13

Core Competencies: Character

- Personal virtues of:
  - tolerance - patience
  - compassion - honesty
  - courage - prudence
  - humility - integrity

American Society for Bioethics and Humanities.

Core Competencies for Healthcare Ethics Consultation 2nd ed, 2011

Ethics Facilitation Approach

- Review medical record and relevant documents, such as advance directives
- Interview the patient and others
- Formulate the clinical-ethical problem by clarifying the ethical concepts
- Identify range of acceptable options
- Negotiate and implement a solution

Aulisio MP. *J Clin Ethics* 2011;22:345-353

Conflict Resolution

- Negotiation: third party serves as a partisan to advance one position
- Mediation: third party is neutral and facilitates a resolution: *usual role of ethics committee*
- Arbitration: neutral third party is empowered with the authority to decide which side should prevail

Orr & deLeon. *J Clin Ethics* 2000; 11:21-30.

Bergman EJ. *J Clin Ethics* 2013; 24: 11-24.

Reasons for Ethics Consultations

Cleveland Clinic Series (n = 441)

- ICU: 35%; wards 35%; outpatients 26%
- End-of life issues: 47%
- Most common questions:
  - Withdrawal of life-sustaining treatment
  - Futility
  - Patient autonomy and surrogacy
  - Disputes over patient treatment

Bruce CR et al. *J Clin Ethics* 2011;22: 151-164

Reasons for Ethics Consultations

Mayo Clinic Series (n = 255)

- Patient decision-making capacity 82%
- Staff disagreement with treatment 76%
- End-of-life quality of life issues 60%
- Goals of care/medical futility 54%
- Withholding/withdrawing treatment 52%

Swetz KM, et al. *Mayo Clin Proc* 2007;82:686-691.

Others Reasons for Consultations

- Resolve economic dilemmas
- Resolve medicolegal issues
  - Legal questions often are intertwined with questions about clinical ethics
  - One active service found that 30% of its requested ethics consultations involved medico-legal issues

Schiedermayer & LaPuma. *Arch Intern Med* 1989;149:1303-1305.
LaPuma, et al. *JAMA* 1988;260:808-811.

Reasons Not to Order Consultations

- “The physician should remain the primary decision maker and not defer medical decisions to a committee”
- “Ethical deliberation does not provide helpful answers to clinical problems”
- “Medical ethics is not useful”
- “Committee will give binding advice”

Davies & Hudson. *J Clin Ethics* 1999;10:116-125.

Consultation Outcomes: Old

- 90% found the consultation helpful in clarifying ethical issues, educating the team, increasing confidence in clinical decisions, and assisting management
- In only 36% were significant changes in patient management resulting from the consultant's suggestions

Orr & Moon. *J Fam Pract* 1993;36:49-53.

Consultation Outcomes: Old

- Community hospital consultations:
  - Terminating LST 74%
  - Resolving disagreements 46%
  - Assessing patient competence 30%
- Requesters rated the advice as helpful or very helpful in 86% of the cases

LaPuma, et al. *Am J Med* 1992;92:346-351.

Randomized Study of Effects

- Ethics consultation in ICU:
  - Useful in resolving conflicts over LST
  - Reduced hospitalization by 3 days
  - Reduced ICU stays by 1.5 days
  - Reduced ventilator treatment by 1.7 days
- MD/RN satisfaction rate was 87%

Schneiderman LJ et al. *JAMA* 2003;290:1166-1172.

Consultation Dissatisfaction

- 3% of MD, 4% of RN, 13% of surrogates
- Surrogates: mistakes were covered up; felt badgered by physician; disagreed with plan
- Physicians: found process unhelpful; disagreed with treatment recommendations
- Nurses: disagreed with treatment recommendations

Schneiderman LJ et al. *Cambr Q Healthc Ethics* 2006;15:101-106.

Consistency of Advice

Survey study paradigm of PVS:

- Lack of agreement among ethics consultants reviewing the same cases
- Less consensus in recommendations than commonly believed
- The process may be at least as useful as the recommendations

Fox & Stocking. *JAMA* 1993;270:2578-2582.

Effect on Health Care Costs

- 20 of the 29 consultations lowered hospital costs by $300,000
- Led to reduced costs by fewer hospital days, avoided CPR, and avoided surgical and diagnostic procedures
- Costs of the ethics consultation service during the study period were $12,000

Heilscer, et al. *J Clin Ethics* 2000;11:31-38.

Preventive Ethics

- Conflicts harder to solve than prevent
- Apply principles of preventive medicine to clinical ethics
- Window of opportunity: timely intervention prevents problem
  - Early discussion of advance directives
- Liaison rounds in intensive care units

Forrow, et al. *J Clin Ethics* 1993;4:287-294.

Guidelines for Consultations

1. Ethics consultations must be offered in the framework of an institutional policy that defines the ethics committee's task to provide ethics consultation on request under certain conditions.

Fletcher JC. *Cambr Q Healthcare Ethics* 1993;2:426-434

Guidelines for Consultations

2. There should be an "open" policy as to who can request consultation, with a process to explore the context of the request and the degree to which other efforts to address the problem have reached an impasse.

Guidelines for Consultations

3. Policy must prohibit intimidation or punishment of anyone requesting ethics consultation.

Guidelines for Consultations

4. The patient's attending physician should be notified (if he or she is not the requestor), and the chair of the ethics committee, who has authority to mediate and continue the consultation process over an attending physician's refusal, should be involved.

Guidelines for Consultations

5. The patient or the incapacitated patient's surrogate should be notified (if he or she is not the requestor) and given an opportunity to consent to the consultation.

Guidelines for Consultations

6. If the consultation is refused by the patient or surrogate, it may not continue, and consultants may not access the patient's chart or room, as would be the case if consent were given.

Guidelines for Consultations

7. Patients or surrogates who refuse consultation must be reported to the chair of the committee who has the authority to provide resources for the clinical staff to discuss the type of ethical problem(s) involved without using the patient's chart and without identifying the patient.

Guidelines for Consultations

8. If health-care providers have data indicating that the consequences of continued refusal of consultation and/or ensuing conflict are harming the patient or violating professional standards of care, the chair of the committee may convene a small *ad hoc* group of ethic committee members and other consultants to attempt to resolve the conflict. Notification of the meeting and an opportunity to attend must be given to the patient or surrogate.

Guidelines for Consultations

9. All recommendations of ethics consultants or the ethics committee are advisory only; final responsibility for decisions and outcomes of cases rest with the primary decision makers, as defined by state law and/or required by the dynamics of the case.

Guidelines for Consultations

10. All ethics consultations that proceed with patient or surrogate consent should be recorded in the progress notes of the patient chart.

Guidelines for Consultations

11. All ethics consultations and *ad hoc* group meetings on controversial cases must be reported to the full committee in writing (with precautions as to confidentiality) on a regular basis.

Guidelines for Consultations

12. The committee should provide oversight and evaluation of ethics consultation activities, give training to consultants, develop a selection process for choosing consultants, and nominate them for membership on the clinical staff for privileges and terms as consultants.

Guidelines for Consultations

13. The clinical staff of the institution has the final responsibility of appointing, and setting terms of, ethics consultants.

Guidelines for Consultations

14. Patients should not be charged for ethics consultation, but the institution should support the costs of training and administration of the ethics committee's programs, including ethics consultation.

Fletcher JC. *Cambr Q Healthcare Ethics* 1993;2:426-434.

Summary

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