Ethics in Emergency Medicine

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Disclosure

INTRODUCTION

Most physicians are trustworthy, honest, and ethical. All benefit from a deeper understanding of medical ethics because they often encounter situations in which a clear "right thing to do" does not exist. Ethical decisions must be made when strong reasons for and against a particular course of action are present.

Emergency physicians may feel that they do not have time to consider ethical dilemmas. During a busy clinical shift, time to ponder either diagnostic dilemmas or ethical dilemmas usually does not exist. How then, should emergency physicians handle difficult decisions that must be made in a limited time frame, often under considerable stress? They develop guidelines based on scientific or ethical principles that direct their handling of common difficult situations. For example, in cardiac arrest and trauma resuscitations, clear procedural guidelines exist. Because each clinical situation is different and often demands prompt decision-making, the clinician must adapt accepted guidelines to individual cases to give the most appropriate and ethical care.

Why develop a framework for ethical decision-making? Medicine is a dynamic field. Not only does human knowledge continue to grow and change, but new situations present themselves regularly. In addition, continually changing societal attitudes subsequently influence thinking about old problems. Issues such as medical futility and physician-assisted suicide are in the forefront of current societal thinking and require a
response from every practicing physician.

No substitute for clinical experience exists. One of the key tenants of ethical
decision-making is to apply rules created in the past to situations in the present. Observe
how these rules fit, and make adjustments as needed. A framework for ethical
decision-making can assist in delineating those issues that may need adjustment for a
new situation.

For excellent patient education resources, visit eMedicine's Public Health Center. Also,
see eMedicine's patient education articles Informed Consent and Patient Rights.

Glossary of Terms

Interpretation of terms used in discussions of medical ethics is as dynamic as other
changes in medicine. The following is a brief description of terms used in the discussion
of medical ethics consistent with the current interpretation by most authors:

Autonomy

Patients have the right to choose actions consistent with their values, goals, and life
plan, even if their choices are not in agreement with the wishes of family members or the
recommendation of the physician. Choices should be free from interference and control by
others.

Beneficence

Beneficence refers to acting in the best interests of the patients. This concept often is
confused with nonmaleficence, or "do no harm." Doing what is best for the patient often
involves serious risks.

Confidentiality

Respecting a patient's privacy and maintaining confidentiality allows people to seek
treatment and discuss their problems frankly.

Futility

The term futility may be used in several situations, including the following: The
intervention has no pathophysiologic rationale. Maximal treatment is failing. The
intervention has already failed. The intervention will not achieve the goals of care.

Informed Consent

Informed consent is the process by which a patient receives all pertinent information
necessary to make a rational autonomous choice. Disclosure standards, comprehension,
voluntary action (free of control of others), competence, and consent are the 5 elements
of informed consent.

Justice

Justice refers to fairness in the allocation of healthcare resources.

Veracity

Veracity is truth telling and honesty; recognize that it is not uncommon for healthcare
providers to misrepresent a situation without technically lying.

Assess the issues.
Assessing issues helps to clarify interests and to organize preferences. Ask the following questions:

What is the medical situation? This question is about emergency physicians’ goals as caregivers. What is the appropriate medical intervention? What is the benefit to the patient?

What are the patient's preferences? These may be ascertained by determining the patient's goals. Patients may choose to live their lives differently than their treating physician. For example, the possibility of losing use of the hands may cause a patient to refuse a neuropathy-inducing chemotherapy. Assessing the patient's values, needs, expectations, and competency; whether the patient is fully informed; and whether consent is voluntary is important.

What are the consequences of accepting or refusing the intervention? How will quality of life be affected (eg, maintain, restore, improve)? Will patients be able to pursue their own goals? What are the external issues involved?

Issues outside of medical fact that both appropriately and inappropriately impact the decision-making process include family and social pressures, economics, emotions, interpersonal conflict, legal issues, communication, and time pressure.

Name the dilemma.

Take the time to clearly identify the issues in conflict that have lead to the dilemma being addressed. Look over the glossary of terms for a list of basic ethical terms and issues.

Consider alternative courses of action.

List the alternative courses of action focusing on the pros and cons of each choice so that the decision is most consistent with medical opinion and the patient's values and goals.

Implement the action.

Once a plan of action is created, it must be implemented.

Evaluate the outcome.

An evaluation component is important in the overall process of solving ethical dilemmas, particularly when formulating plans to be utilized in future situations. During evaluation, include assessment of the actual outcome in regard to patient's goals, values, needs, and interaction with external pressures and issues.

Faced with a decision regarding their medical care, patients usually agree to at least one of the medically acceptable physician recommendations. Occasionally, patient preferences conflict with physician's recommendations and a potential ethical dilemma is born. For example, a patient with a potential life-threatening infection requiring intravenous antibiotics may demand to leave the hospital without any treatment. The provider must determine whether the patient has the capacity to make this medical decision to refuse care. The capacity to make medical decisions is distinct from the issue of competence. Capacity is a clinical determination addressing mental functions and a person's ability to make a decision. Competency is a legal definition addressing societal interest in restricting an individual's actions or right to make decisions if he or she cannot be held accountable for the consequences of his or her decisions and actions.

A patient is considered competent unless a legal determination of incompetence has been made in a court of law.

In the early 1980s, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research set forth guidelines for establishing decision-making capacity. They include the following:

- The patient must have a set of values and goals and the ability to make reasonably consistent choices.
- The patient must have the ability to give and receive information as well as have the conceptual skills to understand the information and the alternatives.
• The patient must have the ability to reason and deliberate about the choices and to compare the impact of alternative outcomes.

Emergency physicians face special challenges in trying to determine in a short amount of time whether someone they have just met is capable of making choices and whether those choices are consistent with the patient’s values and goals. In addition to the limited time available for data gathering, emergency department (ED) patients present special challenges due to medical issues, such as pain, altered mental status, or psychiatric illness, that limit their capacity to fully understand their choices. In general, a more stringent standard of capacity is applied to referrals of life-saving treatments than diagnoses of lesser morbidity. The patient must be able to adequately demonstrate understanding of the risks of refusal to give an informed refusal. The physician has an ethical duty to ensure that a patient truly understands the risks of leaving, which requires more than just having the patient sign an against medical advice (AMA) form. Every effort should be made to understand why a patient wishes to leave and attempts should be made to present a solution resulting in the optimal outcome for the patient.

A common scenario in the ED is the need to make critical decisions when the patient is clearly unable to do so. Questions regarding intubation, pressors, blood products, and other invasive procedures in patients who cannot communicate their choices are frequently left to decision makers designated by the patient or selected by providers or family to represent choices in line with the patient’s values. The governing principle is that these surrogate decision makers are expected to make choices based on the patient’s values, not their own values.

**SAMPLE CASE 1**

An 85-year-old Cantonese-speaking patient is brought to the ED by her family for shortness of breath. Her son translates and provides much of the history. The patient is tachypneic and hypoxic on room air, and the ED physician is considering intubation. The initial physical examination reveals moderate respiratory distress with decreased breath sounds on the right side. The son denies any medical problems, but says his mother has had fluid in her chest before that has needed to be drained. The patient keeps crying out during the examination, and the son reports she is pleading “help me!” A STAT chest radiograph shows a large right pleural effusion.

After the initial examination, the son pulls the physician aside and says his mother has a known diagnosis of metastatic colon cancer with a history of pleural effusions. She does not yet know of her diagnosis and lets her son make all her medical decisions. Her husband died of lung cancer last year, and the family feels the patient would have an undue burden knowing her diagnosis. She is being monitored by an oncologist, and the family has decided on supportive care instead of aggressive treatment. The son says his mother would not want to be intubated, although she has never signed any advance directives. He asks that the physician treat his mother for her symptoms, including a thoracentesis if needed, but not mention the word “cancer” in front of her as she knows what this word means from her multiple visits with her husband.

What should the ED physician do? Follow the framework for ethical decision making.

**Assess the issues.**

What is the medical situation? The patient has been brought by family members to the ED with worsening shortness of breath. Her condition is likely to worsen without acute intervention. She will need a thoracentesis to relieve her symptoms; however, this procedure requires informed consent. The emergency physician is considering intubation for respiratory distress, although the son is reporting she would not want to be put on mechanical ventilation. Unfortunately, the language barrier and cultural divide currently prevents communication with the patient.

What are the patient’s preferences? Without an independent medical interpreter, knowing the answer to this question is impossible. The son is telling the physician that the family feels it is better for the patient to not know her diagnosis and is willing to act as a surrogate decision maker. The family presumably has a better understanding of the cultural and familial issues involved. How does the emergency physician know that the family is making decisions in accordance with the patient’s values and goals when he or she has just met the patient for the first time? Presumably, the patient has been seen and evaluated by an oncologist, who has had more time to deal with some of these critical issues and has decided not to pursue aggressive treatment. The emergency physician hopes the oncologist has made a wise choice based on compiling all available information.

Who will provide the consent? The son appears very involved in his mother’s care and he may be able to provide consent on his mother’s behalf. Without paperwork stating that his mother wants him to make all her medical decisions, what is necessary to secure this permission? The patient does not know her diagnosis, so explanation of the need for the procedure is not possible without telling the patient more information. How much information is necessary? If the decision is made to speak with the patient herself, is it possible to get informed consent for the procedure while respecting the wishes of the family not to disclose the primary diagnosis? Is the patient’s acute medical condition (hypoxia) interfering with her capacity to make significant medical decisions?

What are the legal ramifications? The emergency physician faces the challenge of potentially intubating a patient...
against her will or not intubating a patient based on preferences expressed by a family member without the patient providing written advanced directives. In addition, performing a thoracentesis in this situation may require consent.

What are the pragmatic issues? The emergency physician has very limited information during the brief interaction. Are other family members involved in the mother's care who feel she would want to be intubated? Perhaps if the patient knew she had cancer, she would refuse the thoracentesis, or perhaps she would be interested in aggressive treatment. Time is of the essence in the ED, and if the patient is in distress, there is little time to investigate all of the possibilities.

Name the dilemma.

This case involves autonomy, beneficence, informed consent, and veracity.

Consider alternative courses of action. Potential courses of action might include the following:

- Perform the thoracentesis as requested by the son with the son's consent.
- Find an interpreter and either confirm that the patient would want her son to make her medical decisions or discuss the case with the patient including her diagnosis. Alternatively, the physician may obtain consent for the procedure to “remove fluid from around her lungs” for symptomatic relief without disclose of the cause of the fluid accumulation.
- Attempt to contact the patient's oncologist to discuss the case further and confirm what the son has told the physician. This option may not be possible depending on the call schedule and time of day.
- Try bilevel positive airway pressure (BiPAP) as a noninvasive method to improve respiratory status.
- Intubate the patient, providing more time to pursue additional family members to provide input and allowing input from an intensivist as well as the patient's oncologist. Ethically, there is no distinction between withholding and withdrawing care. In fact, unless patients and providers are allowed to discontinue care, they may never try potentially life-saving interventions.

Implement the action.

After considering the alternatives and their likely outcomes, the physician must choose the path that he or she feels would lead to the outcome most desired by the patient.

Evaluate the outcome.

Strong arguments can be made both for and against multiple courses of action in this case. Many of the treatment decisions depend on choices made early in the case. The challenge for the emergency physician is to take limited information and systematically place it within an ethical framework in a short timeframe.

After taking action, the physician must see if the actual outcome was as predicted. The physician can use this information should a similar case arise in the future.

SAMPLE CASE 2

Ethical dilemmas in the ED frequently involve legal issues. Physicians often confuse the two, looking to the law for answers to an ethical question. Physicians must realize that ethics and the law are separate entities frequently resulting in conflicting recommendations.

Patient refusal and the law

Two city police officers bring a 28-year-old woman into the ED at 1 am. She is under arrest for suspicion of crack cocaine possession with intention to sell. The officers relate that crack dealers routinely position a woman a half block away to distribute crack to the buyer after the sale is made. At times, women who distribute drugs may hide small plastic bags of drugs in their vaginas after observing nearby police. While engaged in undercover operations in an area of high volume drug dealing, the arresting officers report that they saw this woman put her hands down her pants as they approached her for questioning.

The officers ask the ED physician to perform a vaginal examination and procure the suspected drugs. The woman says, "With all due respect, doctor, I am refusing your examination." Her vital signs are pulse 68, blood pressure 114/72, respirations 16, and temperature 37.1.

In anticipation of this refusal, the police have procured a search warrant directing a doctor or a nurse to examine the woman's vaginal cavity for contraband.
What should the ED physician do?

The first step in the process of handling an ethical dilemma is to determine if a rule already exists for a similar situation. Are other patients brought to the ED by law enforcement officers for a diagnostic procedure against the patient's will in the interests of justice? Certainly, patients brought for legal blood draws while in custody for driving while intoxicated would fit this scenario. In these cases, if no danger to the patient and staff exists, the blood draw is performed. Is this situation different?

Follow the framework for ethical decision-making.

Assess the issues.

What is the medical situation? Does an indication for the examination exist? At the moment, the patient's vital signs do not indicate any toxicity from a sympathomimetic agent.

Should an examination be performed against the patient's will because a reliable observer noted potentially risky activity?

Would performing the procedure benefit the patient? If cocaine or crack is present in her body, she may become toxic and susceptible to a morbid outcome.

Is the examination risky? A pelvic examination may be painful, uncomfortable, and embarrassing but few health care professionals would find it risky. However, if the patient is not cooperative during the examination, injury may result. In addition, forcing an examination on a patient may be risky because she may be hesitant to seek care in the future as a result of this experience.

What are the patient's preferences? The patient clearly has expressed her opposition to receiving a pelvic examination. However, the patient may not have had time to assess her values and needs. How much time does she need?

Is she competent to make this decision while in custody? While incarcerated prisoners have lost many personal freedoms, they still are entitled to make medical decisions with regard to their own well being.

Are her expectations of medical care realistic? The physician should act in the patient's best interests and not be in partnership with law enforcement. In addition, if additional signs and symptoms develop, the patient should expect access to later medical care despite the current refusal of care.

Given her state of custody and duress, can her decisions be considered as voluntary: does this issue matter in this case? What are the consequences of her decision and the potential actions of emergency physicians? She may be at risk of physical harm if she has cocaine and it is not retrieved. Forcing an examination on her also may cause physical harm. Is emotional harm possible, as well?

Refusing to heed the patient's wishes would violate any present and future doctor-patient relationship. Does this relationship take precedence over all others, including a physician's duty to society and justice?

The ED physician may be in contempt of court with a refusal to follow the legal orders of a search warrant.

What are the pragmatic issues? The law appears to be the overriding pragmatic issue tempering our actions in this situation. No family is present to consult. Economics is not an issue, unless the contract for reimbursement between the ED and the Department of Corrections is scheduled for negotiation. Time pressures surface because law enforcement officials prefer to spend time on the street rather than waiting in the ED.

Name the dilemma.

Consider the concepts of autonomy, consent, beneficence, and nonmaleficence.

Consider alternative courses of action.

Alternative courses of action might include the following:

- Do nothing and discharge the patient.
- Talk to risk management.
- Perform the examination.
- Collect urine and send it for a toxicology screen.
- Perform ultrasonography to look for intravaginal foreign bodies.
- Obtain radiographs of the patient and look for foreign bodies.
Implement the action.

Follow through with a course of action.

Evaluate the outcome.

Consider what really happened. In the example above, police obtained a search warrant instructing the ED to search the woman’s vagina for illegal drugs. The patient continued to refuse any examination and her vital signs remained normal during her time in the ED.

The physician on duty believed the patient was competent to refuse the examination and decided to respect her autonomy. The physician did not believe that any exceptions mandating waiver of informed consent were present. He chose to observe the patient, hoping for a change in the patient's condition indicating a need to remove the offending agent. This situation never arose.

The judge suggested radiography or ultrasonography to detect any foreign body. The patient refused all imaging procedures. These procedures were considered invasive enough by the attending physician that he heeded the patient's wishes.

The judge suggested a toxicology screen, but the attending physician pointed out that this would be evidence of prior use but not possession in the vaginal cavity.

After several hours of research, the hospital attorney felt that the physician legally was required to obey the search warrant. However, the attending physician refused to examine the patient against her wishes.

After 12 hours of observation, the patient finally agreed to be examined. No illegal drugs were found.

Emergency physicians are faced with ethical dilemmas nearly every day. Most are solved through previous experience and sharing opinions with colleagues.

A framework for ethical decision-making is useful in gaining needed experience and in helping to formulate ideas and opinions that may be shared with patients, colleagues, and friends.

BIBLIOGRAPHY

NOTE:

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