

2972NRS HEALTH LAW AND ETHICS

SEMESTER 1, 2014

INTRODUCTION TO ETHICS

1

2972NRS Health Law and Ethics 2014

LECTURE OUTLINE

Introduction

- Some common terms
- Some common perceptions
- What is Ethics? ↔ What Ethics is not?
- Why study Ethics?

Theoretical

- Ethics in history ...some theories to guide us

Practical

- A case study of ethical decision making



ETHICS

- Bioethics – concerns moral, social and political problems that affect human well being
- Clinical ethics – concerns 'the consideration of ethical issues arising directly in the context of patient care' (Kerridge, Lowe and Stewart, 2009: 104).
- Research ethics – aims 'at ensuring the protection of participants in research' (Kerridge, Lowe and Stewart, 2009: 104)
- Nursing Ethics – the values and ethical principles underpinning the practice of nursing
- Medical Ethics – The values and ethics principles underpinning the practice of medicine.

ETHICS

- Ethics is often perceived in terms of a Code of Ethics or set of moral principles guiding right action in relation to "what one ought to do?"
- Often associated with the "big" dilemmas in life
- Often spoken of in terms of "means" and "ends"

WHAT ETHICS IS NOT

- Ethics is not religion
- Ethics is not law
- Ethics is not public opinion or consensus or 'gut-feeling'

(Kerridge et.al., 2009, p.7)

WHAT ETHICS IS NOT

- It is NOT a formula that sits on the sidelines waiting for those big dilemmas to enter our lives
- Nor is it an approval form which we "tick and flick" to the Human Research Ethics Committee for Ethics approval!
- Nor is it merely a code to which practitioners must abide!



SO, WHAT IS ETHICS?

- Ethics is an ongoing process which ultimately concerns **how we live our lives**

***"We are discussing no small matter,
but how we ought to live...."***

Socrates in Plato's Republic



WHY STUDY ETHICS?

- **How we live our lives** ultimately concerns considerations of "how ought **we** respond?" where the "we" is inclusive of all significant stakeholders, there are a number of possible outcomes and ways of responding (Isaacs & Massey, 1994: 2)
- And how we **respond** ultimately concerns the ways we use our power...for instance, over others, against others, for others or with others (Rollo May, 1972)

WHY STUDY ETHICS? CONT'D...



SO REALLY, WHY?

- Create an awareness of the perspectives of others
- Articulate the reasons for our individual and shared beliefs
- Assist us in drawing conclusions which appreciate and embrace both the perspective of the other *and* our own
- Develop skills in constructing reasoned responses



• Schwartz, Lisa., Preece, Paul and Hendry, Robert. (2002) Medical Ethics: a case based approach. WB Saunders.

PHILOSOPHY AND HISTORYWHAT HAVE THEY GOT TO DO WITH ETHICS!

- Philosophy – form of inquiry which concerns matters such as
 - human existence (ontology –the study of being)
 - human knowledge and reasoning
 - human beings and values
 - human beings and language
- History –
 - a continuous record of past events
 - the study of past events
 - past events



ETHICAL THEORIES

- Non-Consequentialist
 - Deontological – binding duty
 - Considers action to be right based on laws or rules regarding duties or obligations independent of their outcomes or consequences
- Immanuel Kant (1724 – 1804) – using pure reason one can deduce universal and binding rules which are used as a guide to a 'good life'.



ETHICAL THEORIES

- Consequentialist
 - Teleological – meaning end or goal
 - The rightness or wrongness of an action is based solely on the consequences of performing it
 - A teleologist will consider the consequences of telling the truth versus the consequences of lying and may find that lying is morally justified in specific circumstances.

ETHICAL THEORIES

- Utilitarianism
 - That the morally right action is the action that produces the best possible outcome as determined from a perspective that gives equal weighting to each party
 - Jeremy Bentham (1748 – 1832)
 - John Stuart Mill (1806 – 73)
 - Peter Singer (1946 -)



ETHICAL THEORIES

- Virtue Theories
 - Virtue ethics contains the notion that the rightness or wrongness of an action is derived from the underlying motive of the person making that action.
 - Aristotle (384 BC – 322 BC)



ETHICAL THEORIES

- Feminist Moral Theory and the Ethic of Care
 - Reject the overemphasis on individual rights, autonomy and rationality
 - Stresses the significance of values such as empathy, interdependence and caring
 - Emphasis on the importance of context and the relevance of politics and power to understanding ethics and health care.
- http://en.wikipedia.org/wiki/Heinz_dilemma
 - Kolberg and Carol Gilligan

WE NOW TURN TO....

- Considerations of questions such as:
 - Who or what has moral status?
 - Moral justification for alternative treatment options?
- Development of the principles approach

PRINCIPLISM

- Principle-based Ethics is an approach to ethics that specifies a number of rules or 'principles' to guide moral actions
- The most notable example of this approach was developed by American ethicists Tom Beauchamp and James Childress.

FOUR GENERAL PRINCIPLES OF PRINCIPILISM

- Autonomy
- Beneficence
- Non-maleficence
- Justice – this principle 'suggests that goods that are available should be fairly distributed'
 - (Kerridge et.al., 2009, p. 79)

AUTONOMY

- Self-determination
- Independence
- Free-will

People 'should be allowed to be self governing and make decisions for themselves'

(Kerridge et.al., 2009, p 79)



BENEFICENCE

- Active well-doing, conduct aimed at the good and well being of others
- Generally requires positive action but does not require a health care professional to do something beyond the "call of duty".



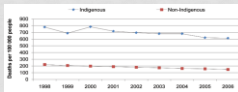
NONMALEFICENCE

- 'health workers (and others) should avoid doing harm' (Kerridge, et.al., 2009)
- Above all do no harm
- Just about all medical care causes some degree of harm – need to balance against the benefits obtained



JUSTICE

- Suggests concepts such as fairness, rightness and equity.
- *Distributive* justice and the allocation of health care resources



• *Avoidable mortality rates, 0–74 year olds, Queensland, WA, SA and the NT*
2009 Report from the Steering Committee for the review of Government Service provision.

VERACITY & CONFIDENTIALITY

- Veracity
 - Strongly associated with autonomy, since for patients to make autonomous decisions they must be in possession of all the facts
- Confidentiality
 - Patients allow access to a great deal of private information because they are actively seeking help and trust that confidentiality will be maintained

• <http://www.youtube.com/watch?v=1&feature=endscreen&v=synj804JdIQ>

TIME FOR A BREAK!



THE UNIVERSAL DECLARATION

- United Nations Educational, Scientific and Cultural Organisation (UNESCO)
 - UNESCO's mission is to contribute to the building of peace, the eradication of poverty, sustainable development and intercultural dialogue through education, the sciences, culture, communication and information.
- 195 Member States
 - Australia was one of the founding members (1945)

THE UNIVERSAL DECLARATION

- Universal Declaration on Bioethics and Human Rights
 - International Bioethics Committee Report (2003)
 - Bioethics covers
 - Issues at the beginning and end of life
 - Donation of human organs, tissues, cells and gametes
 - The scientific, epidemiological, diagnostic and therapeutic uses of genes
 - Embryonic stem cell research
 - PGD, predictive medicine and gene therapy
 - Transgenic technology and GMO

• <http://sydney.edu.au/news/84.htm#newsstoryid=1223>

THE UNIVERSAL DECLARATION

- Historically, texts such as the Hippocratic Oath defined the principles and concepts on which bioethics is predicated
- Need to blend this with the values enshrined in the *Universal Declaration of Human Rights* (1948)

THE UNIVERSAL DECLARATION

- In the past UNESCO has adopted two declarations in the field of bioethics:
 - the *Universal Declaration on the Human Genome and Human Rights* (1997) and
 - the *International Declaration on Human Genetic Data* (2003).

These declarations had focused on the specialized area of genetics and genomics. The new declaration covered bioethics more broadly.

THE UNIVERSAL DECLARATION

- Structure of the Declaration
 - Preamble
 - General Provisions
 - Articles 3 – 17: constitute the principles
 - Articles 18-21: application of the principles
 - Articles 22 – 25: Promotion of the Declaration
 - Articles 26-28: Final Provisions

THE UNIVERSAL DECLARATION

- Innovations in the Declaration
 - Article 14
 - Social Responsibility and Health
 - Article 17
 - Protection of the environment, the biosphere and biodiversity

THE UNIVERSAL DECLARATION

- Ramifications
 - Articles are non-binding, but they represent an important starting point for member states when considering issues of bioethics



ETHICAL DILEMMAS

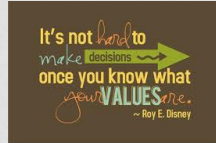
- Arise because of conflict between the rightness or wrongness of the actions and the goodness or badness of the consequences of the actions.

• http://www.youtube.com/watch?v=K4GAQIGId_Q

ETHICAL REASONING

- We have identified that there are different theoretical stances that one may take when addressing an ethical problem. The stance that you take will depend upon:

- Values
- Duties



VALUES

- Values are qualities that we are important
 - They can be identified amongst all people and societies
 - They may emanate from
 - Religion
 - Traditions
 - History etc...



DUTIES

- By understanding or analysing our values, we can begin to define our duties
- Some things should be done, and others avoided.
 - If you value honesty, then a corresponding duty would be "do not lie."
- When a conflict of values arises, our duty is to identify and choose the approach that promotes positive values.



ETHICAL DECISION MAKING

- Modified from: Kerridge, Ian H & Lowe, Michael, & Stewart, Cameron, (2013). *Ethics and law for the health professions* (4th).
- Clearly state the problem**
 - Conflicts appear when a decision should be taken, and it is difficult to identify the best course of action.
 - Gather all of the facts
 - Our perception of the facts may be influenced by our education, cultural background, personal expertise and experience.

ETHICAL DECISION MAKING

- Identify the ethical problems**
 - Chose the main problem
- Obtain more or better information**
- Identify the values at stake**
- Identify the different possible course of action**
 - Our duties
 - It may be helpful to reflect on similar cases

ETHICAL DECISION MAKING

- Consider**
 - Application of the law
 - Ask, would I behave in this way if it was generally known that I had done so?
- Make the Decision**
 - Communicate it
- Evaluate**
 - Requires reflection
 - Would you make the same decision again?



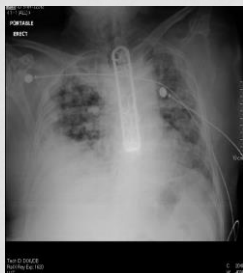
ETHICAL DECISION MAKING

- Robert, 59 year old male
- Brought to Emergency Department by ambulance
- Breathless and blue for two days
- Confused and weak
- Assessed and deemed to need more care than available on a medical ward
 - oxygen alone not enough, additional support for breathing required.
- ICU admission requested

ETHICAL DECISION MAKING

- 2 yrs ago – diagnosed with bone cancer. Arm amputated
- 1 yr ago – cancer spread. Shoulder and much of his spine surgically removed.
- 9 months ago – major blood clot in the lung
- 6 months ago – more metastases in spine: spine collapsed causing paraplegia
- 4 months ago – home, but bed-bound and in constant pain

ROBERT'S X-RAY



ETHICAL DECISION MAKING

- Robert's wishes
 - Consistently wanted very aggressive treatment
 - Has declined palliative care every admission, even when told cancer was "terminal" 6 months ago
 - Wife aware of Robert's wishes and has kept vigil to ensure all possible treatments given with each admission

ETHICAL DECISION MAKING

- Robert's Familial and Social History
 - Robert's wife Brenda was his main carer.
 - Robert's son and daughter-in-law had been killed in a car crash 4 yrs earlier
 - Robert and Brenda guardians and primary carers of their surviving grandchild now aged 6.
 - Robert was a public servant but retired due to ill-health

ETHICAL DECISION MAKING

- Robert's Progress
 - Admitted to ICU and given partial and limited support
 - Didn't wake up when medications stopped
 - Slight improvement at first – not sustained
 - An ethical decision needs to be made

ETHICAL DECISION MAKING

- Robert had to be put on life support or he would die within hours
- Brenda was adamant that this should be done
- Brenda said that Robert clearly would have wanted that, and that the financial security of the family was at stake.

ETHICAL DECISION MAKING

- Robert's family financial situation
 - Robert due to receive lump sum of \$540,000 and pension when 60 yrs old (now 9 days away)
 - If he dies before that, gets 5/8 pension and no lump sum.
 - Verified with lawyers on 3 occasions – no compassionate option

ETHICAL DECISION MAKING

- Clearly state the problem
 - Robert has to be put on life support or he will die within hours
 - Brenda is adamant that this should be done
 - Brenda said that Robert clearly would have wanted that, and that the financial security of the family was at stake.

ETHICAL DECISION MAKING

A decision has to be made – should “life” be prolonged for non-medical reasons?



ETHICAL DECISION MAKING

- What facts are available?
 - Consider medical aspects of the case
 - Info from patient, family members and significant others
 - Literature search



ETHICAL DECISION MAKING

- Where are the ethical conflicts?
 - Which is the main one?
- What values are at stake?
 - Pts, Family, Drs, Nurses, Society
- What are the possible outcomes? Our duties
- Considerations
 - Applicable law
 - General consensus

ETHICAL DECISION MAKING

- Make the decision
 - Clearly state the ethical decision, justify it, enact it and evaluate it.
 - "an unexamined life is not worth living" *Socrates, in Plato, Dialogues, Apology*
Greek philosopher in Athens (469 BC - 399 BC)



DEALING WITH DISAGREEMENTS

- Specification
 - Make our general rules more specific
- Obtain information
 - More or Better
- Stake holder analysis
 - Reflect upon the values, needs and perspective of all relevant stakeholders

CONCLUSION



REFERENCES

- Kerridge, I., Lowe, M., Stewart, C., (2009). *Ethics and law for the health professions*. (3rd Ed.) Sydney: The Federation Press.
- Beauchamp, T., Childress, J., (2001) *Principles of biomedical ethics*. (5th Ed) New York: Oxford University Press.
