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Online Ethics Course

Topic 3: Ethical and legal frameworks

Intended learning outcomes

After completing the topic, learners should be able to:

1. Explain common terminology used in ethical and legal discourse
2. Describe principles of best practice in relation to ethical and legal standards

Ethical terminology

Utility – doing the best for the greatest number of people; having regard mainly for the consequences of an act, rather than the means

Deontology – doing something because it is morally right, focusing on means rather than ends (i.e., the *quality* of an act, not its outcome)

Teleology – finding the 'naturally right course of action' (e.g., one that is better than the available alternatives)

Terminology 2

***Medical* ethics** – a distinct branch of philosophy

It has no single definition but is primarily concerned with moral values and "questions concerning right and wrong conduct" (*Encl. of Bioethics,* 2014), *i.e., as applied to medicine*

Terminology 3

Professionalism: a concept that applies to a category of persons, their attributes and behaviours, in (and possibly out of) the workplace

Unprofessionalism: behaviors that do not conform to normative standards set by an independently regulated profession, such as medicine

[Ref. Worthington and Hays. *Practical Professionalism in Medicine: A global case-based workbook*. Radcliffe Publishing, 2013

Four principles

Four principles: a method widely used and described in textbooks; may be more useful for *theoretical* discussion than making actual clinical decisions

1. *Justice* – fairness, and many other applications
2. *Beneficence* – kindliness; doing good to a patient
3. *Non-maleficence* – essentially 'do no harm'
4. *Autonomy* – the right to self-determination (and a guiding ethical principle in patient care)

Other ethical theories

There is a large body of literature on ethical theory, not all of which is relevant to an introductory course

Besides *utilitarianism* (including consequentialism) and *deontology* (including theories of rights), you may find references made to *virtue ethics* and *ethical relativism* etc. [*See recommended readings*]

Professionalism

Professionalism is about ***relationships***

- ***Social*** relationships determine an individual's position within society
- ***Clinical*** relationships influence how doctors and patients interact
- ***Financial*** relationships can influence motivations and behaviours
- ***Inter-professional*** relationships determine how a doctor interacts with colleagues and adheres to ethical standards

Relationships

Ethics and law both concern themselves with social order and values

Each has a different function, but one sometimes borrows from the other

Legal opinions often refer to ethical standards, and ethical standards should take note of the law

Philosophical ethics

The study of ethics is a central part of the wider study of philosophy

In the West, ethics is mainly concerned with the analytic interpretation of an act; in the East, it is more about intrinsic properties of an act and ways of thinking

Most religions offer a moral code, but not all ethics is about religion (any more than religion is only about ethics)

Philosophical ethics cont.

Morals = ethics

The two terms are synonymous, although we generally talk about ethics (derived from the Greek) in relation to professional practice, rather than morals (as derived from Latin)

Morality and ethics include both public as well as private domains of thought

Famous ethicist / philosophers include:

Hippocrates; Plato; Aristotle; Confucius; T Aquinas; J Bentham; JS Mill; I Kant etc.

Culture and medical training

Respect for patient beliefs is fundamental; recognise if/when your own beliefs and values affect your judgment

Not everyone practises a religion, and not everyone studies ethics and law at medical school; the first is strictly *personal*, but the second ought to be *required*

Culture 2

Everyone has a cultural background, whatever their place of birth, colour, religion or ethnicity

This can be respected whilst still adhering to professional standards

If they conflict, duty of care and national and/or legal frameworks must come first

Culture 3

Ultimately, patient values matter most when decisions have to be made; however, doctors can express a view and recommend a treatment, even if the final decision is not theirs to make [see topic 2]

Values and beliefs

Ethics is primarily concerned with *values*, not beliefs, and ethical values sometimes conflict with religious belief

[*E.g., if religious teaching is against the artificial termination of pregnancy, that religion may oppose the use of assisted reproductive technology (ART), which relies on the experimentation and destruction of human embryos; therefore, ART is lawful in some jurisdictions and not others; see topic 7*]

Legal terminology

Principles of *negligence* are covered in Topic 9

Medical *error* is only negligent if it could easily have been avoided

Medical *harm* may result from medical error, but it can also result from an adverse reaction to normal treatment

Defensive medical practice may or may not be in the best interests of patients, depending on the underlying intention

Fitness to practise is what is assessed when determining whether or not a doctor or trainee should continue in training and/or treat patients

Terminology cont.

Tort law: a branch of common law, typically used in civil action (e.g., in cases of negligence)

Common law: the branch of law based on precedent rather than statute

Statute law: law determined by Act of Parliament / Act of State Legislature (i.e., by political process rather than the courts)

Analysis

It is not generally the role of doctors to do ***legal*** analysis – that requires specialist training and expertise, (e.g., to be an expert witness in court)

Ethical analysis, on the other hand, can and should be done by practising clinicians

Standards

Legal standards are minimal standards, below which anything is unacceptable

Ethical standards are sometimes seen as aspirational; however, the majority of the time they define what is in the best interests of patients and society and should be attainable

Law and ethics 1

Medico-legal terminology: language used to describe intersections between medicine and the law

Jurisprudence: a term used to describe the process of law, with many different applications, including administration of the courts, and the social and philosophical underpinnings of the law

Law and ethics 2

If something is deemed unethical, it does not automatically follow that it is against the law; similarly, if something is unlawful, it may or may not be seen as unethical

[E.g., one could argue that it is an ethical duty to try and change a law that contravenes morality; however, that relies on subjective assessment, and could potentially give someone license to break the law]

Law and ethics 3

Law is often reactive to social change and is rarely proactive, especially in relation to medical technology

Social judgments (and ethical values) can be triggered by reactions to events; usually they evolve over time, independently of efforts to change the law

Law and ethics are intricately linked, but they are *not* the same thing; in medicine, however, one should not really be viewed without the other

Law and ethics 4

Law has areas of jurisdiction; some aspects of it apply to specific things (such as a profession) or places (such as a country or region)

[E.g., to say that something is always wrong, regardless of context presupposes a particular set of values, or else it refers to something universally condemned, such as murder; however, what constitutes murder could be controversial (such as the termination of pregnancy, or physician-assisted dying)]

Law and ethics 5

Social mores (custom) largely dictate what is thought to be acceptable, hence ethical

Since these change with time, ethical standards now are not the same as they were in the time of the ancient Greeks, or for instance, in line with values held in 18th century Germany at the time of Kant

The Hippocratic Oath, though widely used, is often replaced with something more relevant and up-to-date [see topic 1]

What is best practice?

This is normally determined by reference to particular codes of ethics

Guidance needs to be consistent with the law, taking into account a large number of variables

It does not tell a doctor or nurse what to; however, it may suggest that one course or action is more appropriate to take than another

Codes

Some codes are national or regional; e.g., Indian code of medical ethics, Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002

or

General Medical Council (UK), *Good Medical Practice, 2013*
http://www.gmc-uk.org/guidance/index.asp

Others are international and intended to be universal; e.g., World Medical Association *Medical Ethics Manual*
https://www.wma.net/what-we-do/education/medical-ethics-manual/

Applying the principles in practice

There is no substitute for exercising sound clinical reasoning and judgment, and each case must ultimately be decided on its merits

However, there is almost always more than one way to proceed; in complex cases it may be sensible to refer to published guidance (ethical, legal, and/or clinical)

Practical issues

If faced with an ethical dilemma, you need a way of finding a resolution; this often means thinking about which course of action would cause the least amount of harm, and weighing up the risks, burdens and benefits associated with a particular intervention

The following is based on a model that has been tried and tested:

Case analysis flow-chart

1. “Establish what is known about the case, and check to see if important information is missing
2. Check the family situation, including whether or not agreement exists within the family on what to do next
3. Identify ethical issues that arise with regard to decisions needing to be made

Cont.

4. Consider whether assumptions are being made (e.g., on cultural issues), and ensure that parties communicate with each other on a regular basis (i.e., doctor / patient, and doctor / colleagues)
5. Check to see if the patient has legal capacity, and remember to bring together the ethical and clinical components of the case

Cont.

6. Identify potential risks, burdens and benefits for each proposed course of action, weighing one in relation to the other and discussing them with the patient (and/or the family)
7. Check to see if alternative courses of action could be applicable to the case.
8. Consult clinical guidelines and/or seek legal advice before proceeding (especially in complex cases, and/or if the patient is a minor or lacks capacity)

Cont.

9. Consult with the multi-disciplinary / multi-professional team, and check to see if there is anything else that might have been overlooked
10. Once a decision has been made, proceed making full, contemporaneous notes (including about the consent).”

Ref. Worthington R. *Consent and decision-making at a crossroad*. Astrocyte, 2015

Reading suggestions

S Blackburn. *A very short introduction to ethics [open access]*

https://books.google.co.uk/books?id=tKBnw7BKe-UC&printsec=frontcover&dq=very+short+introduction+to+ethics&hl=en&sa=X&ved=0ahUKEwjxtdq8sp_JAhVDXhQKHd36CWcQ6AEIIDAA#v=onepage&q=very%20short%20introduction%20to%20ethics&f=false

T Hope. *Medical Ethics: A very short introduction [open access]*

https://books.google.co.uk/books?id=Mf_hSxTL70oC&printsec=frontcover&dq=very+short+introduction+to+ethics&hl=en&sa=X&ved=0ahUKEwjxtdq8sp_JAhVDXhQKHd36CWcQ6AEIMDAD#v=onepage&q=very%20short%20introduction%20to%20ethics&f=false

S Law & J Baggini. *30-second philosophies [open access]*

https://books.google.co.uk/books?id=TvXGTlZc5rgC&redir_esc=y

Stanford Encyclopedia of Philosophy [open access]

http://plato.stanford.edu/

B Jennings. *Bioethics (encyclopaedia) [library access – subscription needed]*

http://www.cengage.com/search/productOverview.do;jsessionid=03CE9196A3F24ED2599709043C5403A7?N=197&Ntk=P_EPI&Ntt=527527960152675942413371544928359201 38&Ntx=mode%2Bmatchallpartial

M Parker & D Dickinson. *The Cambridge Medical Ethics Workbook: Case Studies, Commentaries and Activities*. Cambridge University Press, 2010 [ISBN 0-521-78863]

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