

# MEDICINE, LAW, PROFESSIONAL REGULATION AND ETHICS

— PART 2



## ETHICS & PROFESSIONALISM

Medical practice is probabilistic; it is an imperfect science, based on complex, vast yet evolving knowledge carried out in teams, and subject to communication lapses and individual biases. Each patient is also unique. Laws, regulations and practice guidelines cannot provide mechanical solutions, but provide a framework for sound decision-making in practice.

Healthcare professionals should deliver care that stands up to legal and professional regulatory scrutiny, and is of high ethical and conscionable standards. The application of ethical deliberation coupled with clinical competence assists in achieving this by providing a systematic objective method of analysis and reasoning.

Ethics articulates desirable conduct, ideals and virtues, delineating moral standards. Ethical deliberation employs philosophical ethical theories, as well as ethical principles and tools as part of the reasoning

process of coming to a sound medical decision. Ethical reasoning sometimes underpins decisions in law, and ethical deliberation can occasionally even result in revision of the law.

## PHILOSOPHICAL REASONING

Philosophical approaches in ethical reasoning include consequentialism, deontology and virtue ethics. Consequentialism is a school of thought that is “outcome based”, looking to achieve greatest good or happiness for the greatest number, and maximise “total benefit”, and not at the distribution of benefits and burdens. Utilitarianism is one form of this.

Deontology is, on the other hand “rule based”, where certain actions are considered “universal wrong” (for example, a human being must never be treated as a means to an end but as an end in itself), and not based on the consequence of the action.

Virtue ethics emphasises the role of one's character and the virtues

that one's character embodies as determining or evaluating what ethical behaviour is.

Decisions that have a higher policy level impact, for example, whether human organ trading or active euthanasia should be allowed, often benefit from deliberations based on such theories.

## ETHICAL GUIDELINES

Professional ethical guidelines, which for the medical profession is the Singapore Medical Council (SMC) Ethical Code and Ethical Guidelines, are strictly speaking more of a regulatory instrument that sets out minimum standards (rules as determined by the profession) for the profession. It is effectively intra-profession “pseudo-law”. While it is largely based on ethical reasoning, it is not ethics per se, but rather sets out the minimum standards expected of an ethical professional. They remain good professional aspirational statements, references and sources of ethical standards.

## CASUISTRY OR CASE-BASED REASONING

Practice-oriented tools for ethical deliberation are largely for day-to-day clinical decision-making. The

four principles approach<sup>1</sup> balances the principles of beneficence, non-maleficence, autonomy and justice to enhance clinical decision-making. In the four boxes approach,<sup>2</sup> the clinician is offered a framework of collecting and collating information into the four boxes, namely – medical indications (questions on medical beneficence), quality of life (questions on beneficence, non-maleficence and autonomy), patient preferences (questions on autonomy) and contextual features (questions on justice and fairness) are weighed up to facilitate sound clinical decision-making.

Case-based ethical deliberation requires a clear understanding of both medical and non-medical information for the issues to be properly weighed up in each individual case. Take the case of a moderately demented 70-year-old lady with fractured neck of femur for example. She expresses the wish to walk again, yet refuses any operation in the face of active persuasion. Important medical information relevant to this case include decision-making capacity, patient’s diagnoses, prognosis flowing from the different treatment options, baseline physical function and, if mentally competent, the baseline mental function.

In the face of an unwise decision in such a patient, it is appropriate to consider whether she lacks mental capacity to make this decision. Here, the 2-stage test which section 4 of the Mental Capacity Act (MCA) calls for should be applied. Is the person suffering from an impairment of, or disturbance in the functioning of the mind or brain? In this case, the answer is “yes” (dementia). The follow-on question is whether the impairment or disturbance causes the person to be unable to make a decision when she needs to.

This requires application of section 5(1)(a)-(d) of the MCA; whether she can understand information relevant to the decision, retain that information, use or weigh that information as part of the process of making the decision

and to communicate her decision (whether by talking, using sign language or any other means). If all the limbs for this particular decision are satisfied and she is mentally competent, the law is that her wishes must be respected.

If a four boxes approach is undertaken, and review of the contextual features shows that the patient worries that cost of surgery results in excessive financial strain for her main caregiver daughter, but further reveals a wealthy son whom she thought to be prodigal but is actually willing to pay “whatever it takes” for the welfare of his mother. The patient then becomes receptive to surgery and changes her mind. Her best interest is now achieved.

This simplified illustration demonstrates how a methodical ethical review of a case, where a superficial application of law might indicate a different course of action, results in a better outcome for the patient and the healthcare team.

**CONCLUDING REMARKS**

The practice of medicine today is highly regulated. We all need to acquire the knowledge and skills to enable strong professional accountability. A separate body of knowledge to that for clinical competence is required for ethical reasoning. Supervision and mentoring then help develop the skill to apply the appropriate ethical principles in problem-solving.

Deficits in ethical reasoning as well as understanding of the law and professional standards relevant to medical practice must be addressed to enable sound clinical decision-making. Decisions should be based on both clinical and ethical reasoning, while conforming to the law and ensuring legal and professional standards are met. The clinician needs a combination of knowledge in medicine, medical law and professional regulations, ethical analysis and judgment together with strong interpersonal and communication skills. ◆

*References*

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2. Jonsen AR, Siegler M, Winslade W. Clinical Ethics, 7th ed. McGraw-Hill Education, 2010.

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