Evolution + History

1. Evolution + History
2. Traditional roles
3. Growing power
4. Future directions
5. Challenges

Ethics Committee
Operation and Function: Current Challenges

Thaddeus Mason Pope, J.D., Ph.D.
2011 AMBI Clinical Ethics Conference
Albany, NY • November 18, 2011
Therapeutic abortion
Dialysis allocation
IRB
### Gatekeepers

#### Decision-makers

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Endanger . . . life of the pregnant woman

Seriously and permanently injure her health

Fetus . . . grave, permanent, and irremediable . . . defect

1960’s
1966

Surgeon General
William H. Stewart
Ancestors
Abortion
Dialysis
IRB

Ancestry to birth
THE PHYSICIAN'S DILEMMA
A DOCTOR'S VIEW: WHAT THE LAW SHOULD BE

Dr. Euras Tunc*

*It is a fairly recent phenomenon that we find ourselves discussing death with this kind of openness and it is, without question, long

[Image of a doctor]
“shall consult with the hospital’s ‘Ethics Committee’ . . . . If [it] agrees . . . life-support system . . . without any civil or criminal liability”

Help **screen** cases “contaminated by less than worthy motivations of family or physician”
RI.1.10
Develop and implement a “process to handle . . . ethical issues that are prone to conflict”

LD.04.02.03
The hospital has [and uses] a process that allows staff, patients, and families to address ethical issues or issues prone to conflict.

“An ethics committee or some alternate form of ethical consultation should be available . . .”
“Independent, multidisciplinary and pluralist ethics committees should be established, promoted and supported... to... provide advice on ethical problems in clinical settings”
Traditional Roles

Who does the HEC serve

Patients
Institution
Staff
Community

Education
Policies
Cases
Educate
Self
Staff
Community

Policies
DNAR
Informed consent ....

Cases
Capacity
Surrogate designation
Surrogate objection to reliance on prior wishes
Disagreement about major or LST for patient alone
Prospective
Retrospective

Proactive
Preventive
Growing Power

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De facto authority
Marie-Ève Laurin-Lefebvre sont personnels du 34 de la place de la somme de sa fille mineure, Pascale Mailhot, résidant et domicilié à Québec, bureau judiciaire de la Province de Québec.

États.

Sébastien Mailhot sont personnels du 34 de la place de la somme de sa fille mineure, Pascale Mailhot, résidant et domicilié à Québec, bureau judiciaire de la Province de Québec.

Demandeurs.

Centre Hospitalier de Laval, corporation, inscrit au registre de l'office en 1998, ayant son siège social à Laval, Québec, bureau judiciaire de la Province de Québec, bureau judiciaire de la Province de Québec.

Dr. Nathalie Girard, résident et domicilié au 1001, boulevard Valcartier, Valcartier, Québec, bureau judiciaire de la Province de Québec.

Hôpital de Montréal pour Enfants, corporation, inscrit au registre de l'office en 1998, ayant son siège social à Montréal, bureau judiciaire de la Province de Québec, bureau judiciaire de la Province de Québec.

Trésoriers.
“Lumping”
Resource barriers
Judicial deference

De jure
authority

HAWAI'I
North Pacific Ocean
“function . . . make decisions regarding ethical questions, including . . . life-sustaining therapy”

Haw. Rev. Code 663-1.7(a)

**Adjudicator**

**Gatekeeper**

**Adjudicator**
Disputes
Futility
Surrogate

Role 1:
Adjudicate
Futility Disputes

Texas
The Lone Star State
You may stop LST for any reason -- if your ethics committee agrees

“not civilly or criminally liable or subject to . . . disciplinary action”

1. 48hr notice
2. HEC meeting
3. Written decision
4. 10 days to transfer
5. Unilateral WH/WD
Step 1: Notice
HEC meeting

April 14, 2007
Ms. Rosa Gonzales
407 Nacian St.
Lockhart, Texas 78644

Dear Ms. Gonzales;

We, the physicians and other members of the healthcare team, appreciate you taking your time to attend the patient care conference regarding your son.

At the last conference, your son's physician discussed his brain condition and the poor prognosis for any further neurological improvement. As you know, the physicians involved in the care of your son have determined that the disease is irreversible and that to continue certain treatments will serve to prolong his suffering. You understand that you do not agree with this position and want the hospital to continue to provide all current treatments for your son.

When disagreements of this nature arise, Texas law allows hospitals to call the hospital ethics committee meeting to review whether certain treatments are medically appropriate. A meeting has been called for the Satx Faculty of Hospitals Pediatric Ethics Committee to consider Eulibiio Gonzalez's case. This meeting will be held on February 14, 2007 at 09:00 a.m. in the 3rd floor boardroom at Brackenridge Hospital of Austin. The physicians providing care for your son, as well as the ethics committee members will attend the meeting. Under Texas law you have the right to attend and participate in this meeting. While that is not legally required, we strongly encourage you to be present for this discussion. You will be given the opportunity to ask questions regarding your son's care and to provide input into the committee's decision-making process.

Step 2: HEC Meeting
Step 3: HEC written decision

The Ethics Committee further recommends that

- The treatment plan for the patient be modified to allow only comfort measures (such as hydration, pain control and other interventions designed to decrease the patient’s suffering).
- New complications that develop should not be treated, except with additional palliative measures, as appropriate.
- The patient’s code status be changed to a DNR.
- Appropriate spiritual and pastoral care resources should be provided to Emilio’s mother and family members.

In summary, the consulted members of the Ethics Committee concur with the recommendation by the Attending Physician and patient care team to withdraw aggressive care measures, including use of the ventilator, and to allow palliative care only. The Attending Physician, with the help of the Children’s Hospital of Austin, will continue to assist the patient’s family in trying to find a physician and facility willing to provide the requisite treatment. The family may wish to contact providers of their choice to get help in arranging a transfer.

Step 4: Attempt transfer

Step 5: Unilateral withdrawal

No transfer Withdraw 11th day
WHEREAS, it is still common for physicians who feel non-beneficial or futile treatments are being provided or considered to feel threatened by legal action by the patient’s family or other surrogates, and thus continue to provide such care against their best medical judgment; and
RESOLUTION 1 - 2004
(read about the action taken on this resolution)

Subject: Futility of Care

Introduced by: Michael Kowzoff, MD and the Medical Society of Milwaukee County

RESOLVED, That the Wisconsin Medical Society, concurrent with a recommendation of the American Medical Association, Medical Futility in End-of-Life Care policy E.2.027, supports the passage of state legislation which establishes a legally sanctioned extra-judicial process for resolving disputes regarding futile care, modeled after the Texas Advanced Directives Act of 1999.
Role 2: Adjudicate Surrogate Disputes
Spouse
Adult child
Parent
Adult sibling
“A physician who acts in accordance with the recommendation of the committee is not subject to civil or criminal liability or to discipline . . . .”

16 Del. Code 2507(b)(7)
Role 3:
Gatekeeper for “un-befriended”
Physician alone

S.B. 579 (2011)

Court-appointed Guardian
SDMC Regulations

Attending = surrogate

HEC = check

“If [no] surrogate . . . is reasonably available. . . physician may make health care decisions . . . after . . . consults with and obtains the recommendations . . . institution's ethics mechanism”

Tenn. Code Ann. 68-11-1706(c)(5)
Role 4: Gatekeeper for LST Decisions
“In any proceedings related to withdrawal life-sustaining medical treatment, the department shall require a written opinion from the ethics committee of the hospital at which the child is a patient...”
Mandatory - optional

Disagree capacity 2994-c(3)(d)
MD object 2994-d(1), -(h)(6)
Surrogate object 2994-f(2)

“Recommendations and advice by the ethics review committee shall be advisory and nonbinding, except”

N.Y. Pub. Health Code 2994-m(2)(c)
Stop LST (other than CPR) in LTC
MD objects to surrogate decision to stop CANH
Emancipated minor decision to stop LST

Competence of ethics committees

Power, authority
Expected evolution

Actual evolution

Due process

Power, authority
HEC do more
More risk of error

Minimize
4 risks
1. Corruption

self-interest
2. Bias

disparaging to certain class

Solution: Composition
“Ethics Committee, as an institution, is an ill-defined, amorphous body”

In re Eichner
426 N.Y.S.2d 517 (N.Y.A.D., 1980)

At least 5 members
3 health or social service
1 MD
1 RN
1 no relationship to hospital
No person connected to case

Broader Quorum
3. Carelessness

ill-considered
ill-supported

Refuse to credit EC

In re Gianelli
834 N.Y.S.2d 623 (Supreme Court, Nassau County, 2007)

Solution:
Training
“demonstrated an interest in or commitment to patient’s rights or to the medical, public health, or social needs of those who are ill.”

4. Arbitrariness

Abuse of process norms like notice
Solution: Procedures

Presentation by persons connected with case, who may be accompanied by advisor

Notification to patient and others
   Pending case
   Information about ERC
   Committee response

Questions
Select Bibliography 1


Select Bibliography 2

GUIDANCE FOR HEALTHCARE ETHICS COMMITTEES (Micah D. Hester & Toby Schonfeld eds., Cambridge University Press forthcoming 2012).

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