

Clinical ethics and law in health care system

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Citation: Gorea A. Clinical ethics and law in health care system. *Int J Eth Trauma Victimology* 2017; 3(1):24-28. doi: 10.18099/ijetv.v3i1.8793

Article history

Received: March 21, 2017
Received in revised form: May 11, 2017
Accepted: June 18, 2017
Available online: August 20, 2017

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Abstract

Different situations arise while treating the patients when there are ethical dilemmas to give one or other type of treatment or not to do anything. Sometimes doctors and nurses consider that what is good for the patient must be done because the patient does not understand the situation and consequences. This may lead to complete cure and patient usually goes back to home happily but sometimes a complication may occur and the patient may sue the health care providers. When such situations are analyzed then principles of ethics and law are considered to see if any of these have been violated or not to reach the conclusion. In this study principles of law and ethics of treatment have been discussed to reach the right conclusion; which will be helpful in situations where there are ethical dilemmas during the treatment.

Keywords: consent, ethics, laws, health care, ethical dilemmas

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Introduction

As the law ends, ethics begins its course. In the healthcare system, law and clinical ethics are disciplines that have related concepts with unique parameters and a separate focus (1). To better understand the role of law and ethics in healthcare and their overlapping responsibility and influence in the healthcare system, an analysis will discuss an ethical dilemma. Various relevant legal issues, ethical principles, and theories will be discussed. This study will first briefly define the concept of law and ethical conduct before observing the scenario and the moral dilemma created by it. Ethical decisions will be measured and finally, two different pathways to solve the dilemma will be scrutinized to assess their implications, legal and moral foundation.

The law in the Australian healthcare system is rules and regulations implemented by healthcare workers; it also incorporates criminal, contract law and torts (2). Such laws are mainly set to protect patients and provide the medical system with a conducive environment (3). The law provides the foundation for ethics and nurses are regulated in their professional work by the codes of ethics (Nursing and Midwifery board of Australia, 2008). Ethics in health care refers to the act of doing the right thing while delivering best possible health

care (4). Understanding and applying the ethical principles in nursing practice is essential to conduct oneself ethically right (4). There are four core principals in medical ethics which address various issues that arise during nursing practice; these are Autonomy, Beneficence, Nonmaleficence, and Justice (5). However, the application of these principals is not straightforward. Nurse's often found them in a conundrum as in some cases these principles overlap each other and nurses are forced to make a decision based on some principals while violating others (6). These principles will be discussed with the help of an example. This study discusses a patient, who got admitted to the Emergency Department (ED), after getting injured due to an accident while traveling in a bus. Following an assessment of the injuries, he was scheduled for surgery and immediately after the surgery; patient wanted to leave despite being persuaded otherwise by the Registered Nurse (RN) and the doctors on duty. His restlessness convinced the doctor that it might be due to pain and asked the RN to administer him morphine. Despite patient's insistence that he was not in pain and did not want morphine, the RN, with assistance from other nurses, went ahead and injected him morphine. However, during the injection, a struggle ensued and the needle broke off, which prompted further

surgery resulting in an additional two-week stay in the hospital. This study presented with the ethical dilemma of whether they should have let the patient go according to his wishes or keeping him safe by forcefully injecting him.

According to Allen (2012), an ethical dilemma is a situation where an individual must make the best decision, from a range of choices, for the course of action; and with all the decisions, there is always a breach of some ethical principles (7). Likewise, in this study, neither choice can be considered the 'right' choice as some ethical principles are breached with either decision. The ethical dilemma here is to not let him leave or act, or let him go or omit. In act and not letting him leave pathway, there are several considerations that need to be addressed such as autonomy, Deontology, mental capacity, consent, beneficence, nonmaleficence, Paternalism, and tort laws. When dealing with the ethical dilemmas, it is imperative to first establish if the patient has the ability to consent by conducting the capacity assessment. Capacity assessment involves consideration of medical illnesses, clinical assessment, and law and ethics (8). Lamont, Jeon and Chiarella also suggest that this assessment should not be considered a global assessment of the patient to have a mental capacity to make decisions or not but rather should only be relevant to the present patient only. They deduced that the patient must have four core abilities to be regarded as competent to consent. These are understanding of the treatment, appreciation of the information, sound reasoning for the treatment and clear expression of the choice. Doctors asked the patient to have morphine, which would help him to get rid of the pain, but patient stated that he is not in pain and therefore he does not require any pain killer. This statement supported that the patient had a clear understanding of the treatment and provided clear rational reasons for not wanting the treatment. It can be inferred that he had an appreciation for the treatment as he did not have any doubts about the truthfulness of the treatment (8). Lastly, he expressed clearly his choice of not having the recommended treatment. Hence, based on the criteria set out by Lamont, Jeon and Chiarella, the patient had the legal capacity and competence to provide consent to the treatment as he demonstrated to have all the four abilities (8).

However, this model of assessing the patient's capacity to consent is not without criticism. Palmer and Harmell believe that this model is overly cognitive and does not attend to patient's values

and the impact of emotions, drugs, pain, fatigue, and shock (2016). It is important to identify these factors as they can greatly influence the capacity to consent (9). Jones discussed regarding the lack of capacity in patients with both stable and chronic medical and surgical conditions (2015). This is in congruence with this case as he just had surgery. The patient was also disoriented as he had wanted to go and attend a meeting. The medical team related his erratic and uncooperative behavior to the pain. Their diagnosis of acute delirium or confusion is in correspondence with the findings of Mattar, Chan and Childs (10). Martin rationalizes the paternalistic approach for the patients who lack the capacity and justifies it with the Hippocrates's oath, which supports the medical practitioner's decision to make whatever medical decision they believe is required. The medical team still needs to obtain consent, either from the patient (if he is deemed to be competent) or from the next of kin (if deemed incompetent to provide consent); unless the situation is life-threatening (11). Whichever pathways we choose, there are justifications for both the actions and inactions of the medical team; but, no matter what, there are still violations of ethical principle and laws. The same will be discussed in the perspective of the Act pathway.

The right to choose or decline a treatment is shielded by the principle of autonomy and treatment cannot be enforced unless the patient or a legally authorized representative (Next of kin in this case) provides some form of consent (9). The idea of autonomy is that the informed patient has the right to self-determination, and independence (12). Supplementary to the autonomy is the code of professional conduct for registered nurses in Australia and the international code of medical ethics. The seventh conduct statement tells that nurses must respect and advocate for the patient's desires (13). The international code of medical ethics states that that the medical professionals have the obligation to respect the wishes of the well-informed patient (14). The patient clearly expressed his desire not to be given the treatment advised by the doctors. In contrast, the medical team still proceeded to administer the treatment to the patient against his wishes and undoubtedly, violating the autonomy and codes of conduct.

When autonomy is overridden by the healthcare workers, it clears the way for the medical team to seek a paternalistic approach. Paternalistic approach implies that the medical team makes the decisions for the patients even when they have the

mental capacity to consent to the treatment (15). In this approach, it is expected that the patients will obey the choices made by the professionals despite the fact that they have overridden the autonomous rights of the patients (16). In this scenario, the doctors made the decision for the patient to have morphine for the presumed pain, taking the paternalistic approach and overriding his autonomy.

Another principle that is applicable here is the nonmaleficence. It refers to the act of doing no harm to the patient and is central to the nursing ethics (17). Non-maleficence in bioethics supports that the primary purpose of the health care workers is to not create further distress or harm (4). In this case scenario, the act of restraining and holding the patient caused distress to him. On top of that, the breaking of the needle caused injury to the patient resulting in additional surgery and extended stay at the hospital. This action clearly violated the principle of nonmaleficence. Another applicable theory here is Deontology. This theory is based on the duties or actions, rather than the consequences of those actions (18). The actions of the nursing staff support the theory of Deontology as they carried out their duty to administer medication; although, the consequences of the actions were detrimental to the patients. Apart from supporting the theory of Deontology, the medical staffs were also following the principle of Beneficence. The moral principle of beneficence supports the actions that promote good and nurses are obligated to carry out the actions that would benefit the patient (11). Nonetheless, Berman and team warned that such actions can also pose a risk of doing harm, unintentionally.

Preventing and limiting the patient's movement also has some legal implications. If autonomy and consent are violated in healthcare systems, it is often superseded by the tort laws (9). The tort laws applicable in this pathway are assault, battery, and false imprisonment; and these falls under the domain of intentional torts. Assault is an attempt or threat to touch another person without their consent or without any justification (11) (Berman et al., 2014). The doctor declared his wish to administer the medication without the patient's consent despite patient stated that he did not want any medication as he was not in pain. If the nursing staff threatened to inject him if he did not comply, it would be considered an assault. Hence, according to the tort law, both the nurses and the doctor could be liable for assault. Assaults precede Battery, and it is a willful act of simply touching or holding the other person against their permission

(11). This was evident in this case as the nurses and the assistant held down the patient, in order to inject him with morphine. Hence, the nurse and the assistant will be liable for committing battery even though the doctor gave the order for prescribing a certain medication. Moreover, as no consent was sought prior to the administration of medication, the nurse is clearly liable for battery. As the nursing team restrained the patient to administer morphine, they are also liable for false imprisonment. Bartley defines false imprisonment as unlawful detaining of the person against their will, which restricts their physical movement (19). In addition to the tort laws, the court can also charge the medical team for damages- harm and injury, suffered by the client. Staunton and Chiarella define the harm and injury as per the Civil Liability Act 2002 (NSW); harm means personal injury, damage to property and economic loss. Personal injury means impairment of physical and mental health and disease (5). According to this act, the team is liable for harm as patient got injured during the forceful administration of the medication and subsequently, had to stay in the hospital for another four weeks due to which he had to suffer economic loss. The team would also be legally responsible for the injury as Patient had a physical impairment due to the breakage of the needle.

In contrast to the acting pathway, is the omit pathway. The medical team could simply not act and omit their action. This decision will incorporate principles of autonomy, nonmaleficence, and tort laws. As discussed previously, the principle of autonomy gives the person the ability to make the decisions independently about the actions and thoughts. In order to comply with the principle of autonomy, the medical team should let the patient choose, whether he wishes to continue the treatment or not continue the treatment. Martin (2015) suggests that the principle of autonomy should also be protected even if the decision made by the patient appears to be unwise or irrational to the treating team. Additionally, by letting him go they are also following the principle of nonmaleficence; meaning they are not doing any harm by forcefully keeping him or restraining him. However, it can also be argued that by letting him go, they are being negligent. Negligence in healthcare is when a health professional fails to provide a reasonable care or provides care that is below the expected standard and results in injuries to the patient (20). It falls under tort laws and there are many components that prove negligence – breach of the duty of care, harm or injury, damages, causation,

and foreseeability (20) These laws will be applied to the case study to assess the legal implications in regards to the omitting pathway.

The duty of care is the legal, ethical professional obligation to the health professionals to offer reasonable care to the clients (11). According to the codes of ethics, codes of professional conduct, hospital or institutional policies and contract of employment, the nurses are legally and professionally bound to deliver care to the clients (20) (13). If the nursing team allows the patient to leave the hospital without providing postoperative care, then they are breaching their duty of care. Additionally, the medical team can anticipate or foresee that by letting the patient go, they are putting his health at greater risk; thus, by failing to follow the standard of care, they are putting themselves at risk of being charged for causation and foreseeability under the tort of negligence (Berman et al.). Unless some damage has occurred due to the negligence of a health professional, no case can be brought under the tort of negligence (21). Therefore, the patient may charge the medical team for damages for which he may be compensated (11). The purpose of the compensation, as discussed by Berman and team, is to assist the injured party financially in order to get back to the original condition as far as possible. Staunton and Chiarella (2012) throws light on the role of the doctrine of vicarious liability for cases related to compensation (5). The doctrine of vicarious liability puts the responsibility for compensating the injured party onto the employer than the employee.

It would also be appropriate to discuss the role of coroner here, in the event patient loses his life due to negligence. A coroner, a public officer, determines the reasons for death (11). The report and testimony presented to the courts by the coroner may act as a ground for disciplinary actions against the health care professionals and even nursing notes may form a part of the evidence (5). It is, therefore, essential to document all actions, practices, and procedure. High-quality documentation can safeguard nurses against some legal actions, where the existence of good quality nursing takes place (5). According to the Staunton and Chiarella (2012), there have been some instances where nurses were not only have been able to prove the care provided but also their credibility as a witness suffered as a consequence (5).

Conclusion

As per this study, there were both ethical and legal repercussions for the patient and the medical team. The purpose of this study was to discuss the ethical and legal principles associated with the ethical dilemma presented in the case study; to let Patient go just after the surgery or keep him there against his wishes. The principles of autonomy, Deontology, nonmaleficence, Paternalism, and tort laws are applicable when discussing the Medical's team decided to not let him leave. If the medical team decided to let patient act autonomously, then the principles of nonmaleficence and tort law of negligence need to be discussed. Apart from the theories and principles, it is also imperative to consider the policies and codes of the Nursing and Midwifery Board of Australia and the institution specific policies before making ethically and legally appropriate decision. As discussed, whichever option the medical team chooses, it is inevitable to not violate any of the principles and theories. Furthermore, to protect against the false claims of malpractice and damages, it is essential to maintain thorough documentations and records.

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