Behavioral Sciences

MD3

Behavioral Sciences

Ethics, Law, and Physician Behavior

Ethics, Law, and Physician Behaviour

Learning Objectives

- Demonstrate understanding of how important court cases have shaped medical care
- Demonstrate understanding of important elements of physician behaviour and how they can affect patient care
- Answer questions about unconscious interactions and how they can affect patient care

Ethics, Law, and Physician Behaviour

LEGAL ISSUES

Selected Important Court Cases

Ethics, Law, and Physician Behaviour

Karen Ann Quinlan: Substituted Judgment Standard

In the Quinlan case, Karen Ann was in a persistent vegetative state, being kept alive only by life support. Her father asked to have her life support terminated according to his understanding of what Karen Ann would want. The court found that "if Karen herself were miraculously lucid for an interval . . . and perceptive of her irreversible condition, she could effectively decide upon discontinuance of the life support apparatus, even if it meant the prospect of natural death."

• The court therefore allowed termination of life support—not because the father asked but because it held that the father's request was most likely the expression of Karen Ann's own wishes.

• Substituted judgment begins with the premise that decisions belong to the competent patient by virtue of the rights of autonomy and privacy.

• In this case, however, the patient is unable to decide and a decision-maker who is the best representative of her wishes must be substituted.

• In legal terms, the patient has the right to decide but is incompetent to do so. Therefore, the decision is made for the patient based on the best estimate of his or her subjective wishes. The key here is not who is the closest next of kin, but who is most likely to represent the patient's own wishes.

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Brother Fox (Eichner v. Dillon): Best Interest Standard

In its decision of Eichner v. Dillon, the New York Court of Appeals held that trying to determine what a never-competent patient would have decided is practically impossible. Obviously, it is difficult to ascertain the actual (subjective) wishes of incompetents. Therefore, if the patient has always been incompetent, or no one knows the patient well enough to render substituted judgment, the use of substituted judgment standard is questionable, at best.

Under these circumstances, decisions are made for the patient using the best interest standard, the object of which is to decide what a hypothetical “reasonable person” would decide after weighing the benefits and burdens of each course of action. The issue of who makes the decision is less important here. All persons applying the best interest standard should come to the same conclusions

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Infant Doe: Foregoing Lifesaving Surgery, Parents Withholding Treatment

As a rule, parents cannot withhold life- or limb-saving treatment from their children. Yet, in this exceptional case they did.

Baby Boy Doe was born with Down syndrome (trisomy 21) and with a tracheoesophageal fistula. The infant's parents were informed that surgery to correct his fistula would have "an even chance of success." Left untreated, the fistula would soon lead to the infant's death from starvation or pneumonia. The parents, who also had 2 healthy children, chose to withhold food and treatment and "let nature take its course."

Court action to remove the infant from his parents' custody (and permit the surgery) was sought by the county prosecutor. The court denied such action, and the Indiana Supreme Court declined to review the lower court's ruling. Infant Doe died at 6 days of age, as Indiana authorities were seeking intervention from the U.S. Supreme Court. Note that this case is simply an application of the best interest standard. The court agreed with the parents that the burdens of treatment far outweighed any expected benefits.

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Roe v. Wade (1973): The Patient Decides

Known to most people as the “abortion legalizing decision,” the importance of this case is not limited to its impact on abortion. Faced with a conflict between the rights of the mother and the rights of the putative unborn child, the court held that in the first trimester the mother’s rights are paramount and that states may, if they wish, have the mother’s rights remain paramount for the full term of the pregnancy.

• Because the mother gets to decide even in the face of threats to the fetus, by extension, all patients get to decide about their own bodies and the health care they receive.

• In the United States, the locus for decision-making about health care resides with the patient, not the physician.

Note that courts have held that a pregnant woman has the right to refuse care (e.g., blood transfusions) even if it places her unborn child at risk.

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Tarasoff Decision: Duty to Warn and Duty to Protect

A student visiting a counsellor at a counselling centre in California states that he is going to kill someone. When he leaves, the counsellor is concerned enough to call the police but takes no further action. The student subsequently kills the person he threatened. The court found the counsellor and the centre liable because they did not go far enough to warn and protect the potential victim.

- The counsellor should have called the police and then tried in every way possible to notify the potential victim of the potential danger.
- In similar situations, first try to detain the person making the threat. Next, call the police. Finally, notify and warn the potential victim. All three actions should be taken, or at least attempted.

Ethics, Law, and Physician Behaviour

Autonomy

Autonomy is the central principle for ethics in health care. The origins of the word autonomy are from the Greek words: “autos” and “nomos,” meaning selfrule or self-determination. In ethics, this translates to the principle that every competent individual has the right to make his or her own health care decisions without coercion or coaxing.

In medical practice, competent patients are required to provide informed consent for any treatment or procedure.

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Informed Consent

Informed consent is a complete discussion of proper information related to a treatment or procedure between a physician and patient, where the patient voluntarily agrees to the care plan and is free of coercion.

— Full, informed consent requires that the patient has received and understood 5 components of information:

— Nature of the procedure: What is the procedure or treatment?

— Purpose or rationale: Why the procedure is being performed? Or Why the drug is being administered?

— Risks of the treatment regimen

— Benefits of the treatment regimen

— Alternatives to the recommended treatment regimen

— Informed consent may be **written or oral**.

— Informed consent can be withdrawn at any time. It does not matter if the patient has signed all the necessary paperwork and is on the way to the operating room; he can decide to not have the procedure done for any reason.

The physician cannot discuss treatment options that are not approved.

For example, the physician should not discuss with the patient a homeopathic treatment option for cancer.

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A signed paper granting informed consent that the patient does not read or does not understand does NOT constitute informed consent:

- It is not simply enough for a physician to “give” the patient information.
- The patient needs to understand what he is being treating with, why the physician recommends this treatment, and the risks, benefits, and alternatives to treatment.
- The patient must understand all 5 components of information.

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There are 4 situations in which a physician does not need to obtain informed consent from a patient in order to perform a procedure or another treatment, i.e., there are special situations in which informed consent is not required.

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Emergency

— In an emergency, the physician should do what is in the best interest of the patient.

— If the patient is unconscious and needs a life-saving or limb-saving procedure, the procedure should be performed (consent is implied).

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Waiver is provided by patient

— The patient “waives” his right to receive information related to the treatment. In other words, the patient trusts that you will do what is in his best interest.

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Patient is incompetent

- Some patients do not have the capacity to provide informed consent:
- Are unconscious
- Have attempted suicide
- Are in a grossly psychotic or dysfunctional state
- Are intoxicated with drugs and/or alcohol
- Are in physical or mental state which prevents simple communication

— Incompetence is determined by a judge based on a physician's assessment of capacity.

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Therapeutic privilege

— The physician will deprive the patient of autonomy in the interest of health. In other words, if the physician truly believes the patient is not able to make good decisions for himself AND other physicians agree, the physician can treat without informed consent.

— The physician can invoke therapeutic privilege and move beneficence, nonmaleficence, and justice above patient autonomy.

Ethics, Law, and Physician Behaviour

Committed Patients

A committed mentally ill adult has the following legal rights:

- Must have treatment available

— Patient should be informed on a regular basis what treatment options are available

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Can refuse treatment

Patient with a severe form of schizophrenia still has the right to refuse to take antipsychotic medication (except when patients are a danger to themselves or others).

- Can request a legal hearing to determine sanity
- Competence is a legal matter; only a court can determine competence.
- Patient has the right to demand a trial to determine sanity.
- Loses only the civil liberty to “come and go”
- Patient does not have the right to leave.
- Patient can “choose” to take his medication; however, he cannot “choose” to leave.

Ethics, Law, and Physician Behaviour

Decision making standards

	What It Means	Who Makes the Determination
Capacity	An assessment of your decision-making ability	Physician
Competence	A legal assessment of your ability to make medical decisions for yourself	Judge
Sanity	A verdict on your ability to make decisions and be held accountable for the consequences of those decisions	Jury

Ethics, Law, and Physician Behaviour

Assume the patient is competent unless you have clear behavioural evidence that indicates otherwise.

- Competence is a legal issue.
- We do not determine competence on a medical basis.
- From an ethical and legal standpoint, all adult patients are considered competent unless specifically proven otherwise.
- Only a court of law can make that assessment.

Ethics, Law, and Physician Behaviour

Any physician—not just a psychiatrist—can determine whether a patient has the capacity to understand the medical issues (and related treatment) pertaining to his condition. The physician can determine whether there is an organic delirium affecting the patient's capacity to understand, i.e., caused by a medical condition such as alcohol/drug intoxication, meningitis, or a psychiatric disorder. The conclusions made by the physician will be based primarily on a neurological exam, as well as an assessment of the patient's comprehension, memory, judgment, and reasoning skills.

It should be noted that a diagnosis such as schizophrenia by itself tells you little about a patient's competence. If the patient is diagnosed with schizophrenia and controlled on medication, the patient may very well be competent. So a diagnosis alone cannot render a patient incompetent.

Ethics, Law, and Physician Behaviour

Clear behavioural evidence of incompetence includes:

- An attempted suicide
- Gross impairment in reality (psychosis) and dysfunctionality and/or

physical or mental state preventing patient from having simple conversation Patients who attempt suicide, for example, may be admitted to the hospital against their will for psychiatric evaluation.

If, as the physician, you are unsure, you must assume the patient is competent.

The patient does not have to prove to you that he is competent. There must be clear evidence to assume that he is not. When patients are unable to make medical decisions for themselves, someone called a surrogate needs to make those decisions for them.

For a surrogate to decide, three conditions must be present:

- The patient must be incapacitated.
- The patient must not have made an advance directive.
- The surrogate must know what the patient would truly want if he were competent.

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Suppose a woman is unconscious as a result of a severe car accident. The surrogate will be asked, “What do you think the patient would want if she were conscious?” Based on the response, the patient will be appropriately treated, or treatment measures will be withdrawn.

When a surrogate decides for a patient, use the following criteria and in this order:

1. Subjective standard
2. Substituted judgment
3. Best interests standard

Ethics, Law, and Physician Behaviour

There is a set priority, i.e., an order, of who can serve as a surrogate. First is a person's spouse. Second is a person's adult children:

1. Spouse
2. Adult children
3. Parents
4. Adult siblings
5. Other relatives

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Suppose the patient mentioned earlier is determined to be “brain dead” as a result of the car accident, and it is determined that she had no advance directive.

Her spouse would be the first person asked about potentially terminating life support and allowing nature to take its course.

A subjective standard is based on the premise that a decision is being made based on the actual wishes of the patient. You should consider the following questions:

- Is there an actual intent or advance directive?
- What did the patient say in the past? Can that be verified?

Ethics, Law, and Physician Behaviour

Always follow the advance directives outlined in a living will or by a Health Care

Power of Attorney (HCPOA).

A substituted judgment begins with the premise that decisions belong to the competent patient by virtue of the rights of autonomy and privacy. You should consider the following questions:

- Who best represents the patient?
- What would the patient say if she were competent?

In both ethical and legal terms, the patient has the right to make medical decisions but is now unable to do so by virtue of incompetence. The key here is not to identify the closest next of kin, but to identify the person most likely to represent the patient's own wishes, i.e., the person who knows the patient best.

Ethics, Law, and Physician Behaviour

For a best interest standard, the primary objective is to decide what action a hypothetical “reasonable person” would take after weighing the benefits and burdens of a medical decision or course of action. The issue of who makes the decision is less important, as all those applying the principles of best interest standard should come to the same conclusion. You should consider the following question:

- Are these in the best interest of the patient and not in the best interest of the decision-maker?

Ethics, Law, and Physician Behaviour

Advance Directives

An advance directive is a set of instructions given by a patient in anticipation of the need for a medical decision in the event the patient becomes incompetent. There are three primary forms of advance directive:

Ethics, Law, and Physician Behaviour

An oral advance directive includes statements made by a patient prior to incapacitation.

— Problems can arise from variance and interpretation; e.g., was the patient properly informed before she became incapacitated? How specific was the directive?

— Good rule to follow: the more people who heard the oral directive, the more valid the directive.

Ethics, Law, and Physician Behaviour

A living will is a written advance directive detailing the treatment measures the patient would want to receive (or not receive) should decision-making capacity be lost.

— A family member cannot override patient's wishes; i.e., if the patient's living will indicate she does not want to be intubated in the event she becomes incapacitated but the patient's family requests intubation, the physician cannot intubate.

Ethics, Law, and Physician Behaviour

A medical power of attorney or HCPOA is a designated agent assigned by the patient to make medical decisions in the event she loses decision-

Making capacity.

— Assumption is that the agent fully understands the wishes of the patient and essentially “speaks with the patient’s voice.”

— The physician must follow the directives of this individual, irrespective of other family members’ wishes.

Ethics, Law, and Physician Behaviour

Do not resuscitate (DNR) orders are made by the patient or the surrogate. DNR refers only to cardiopulmonary resuscitation.

— In many instances, the physician may not be aware of DNR decisions.

— If DNR order is in place, cardiopulmonary resuscitation measures must be stopped as soon as the physician becomes aware of the order.

— All other treatment measures should be continued

Ethics, Law, and Physician Behaviour

Patient Confidentiality

Patient confidentiality is absolute. Physicians require patients to divulge private information, and in doing so are required to keep all discussions confidential.

Breach of trust can cause irreparable harm to the physician-patient relationship.

Ethics, Law, and Physician Behaviour

Physicians must strive to ensure that others cannot access patient information.

— Patient care must not be discussed with another health care provider in a public venue, where others can overhear the conversation (lunch

room, elevator).

— Patient's physical and electronic medical records must be protected.

— Health care provider owns the medical records, but patient must be given access or copy upon request.

• If you receive a court subpoena, show up in court but do not divulge information about your patient. When asked personal health information

questions about a patient, you should maintain patient confidentiality.

Ethics, Law, and Physician Behaviour

There a few exceptions to patient confidentiality.

- Duty to warn and to protect (Tarasoff case)

— If patient is a threat to self or others, the physician must break confidentiality.

— There is a duty (on the part of the physician) to warn and protect innocent people from harm that could be imposed by “your patient.”

- Specific threat to a specific person
- Suicide, homicide, and child/elder abuse
- Infectious diseases may need to be reported to public officials or an innocent third party
- Impaired drivers

Ethics, Law, and Physician Behaviour

Rules of privacy in healthcare

Situation	Appropriate Response
Questions from insurance company	Obtain a release from patient
Questions from patient's family	Requires explicit permission from patient
When to withhold information from patient	Never, i.e., under no circumstances (if concerned about negative reaction by patient, figure out a way to explain and mitigate negative outcome)

Ethics, Law, and Physician Behaviour

Treatment of Minors

Children age <18 years are minors and thus legally incompetent. Children cannot make health-related decisions for themselves, thus they cannot give “informed consent” to authorize a medical procedure/treatment. A parent or guardian must provide informed consent instead.

Ethics, Law, and Physician Behaviour

Emancipated minors, however, present some exceptions:

• If child is age >13 and taking care of self (i.e., living alone, responsible for all aspects of own life), he is essentially treated as an adult.

• Person age <18 who is married

— Child who marries age <18 is deemed competent to make own decisions.

— Pregnancy or birth does not always emancipate; differences from state to state make this unlikely to be tested on the exam.

• Person age <18 serving in the military

Ethics, Law, and Physician Behaviour

Partial emancipation is granted to minors in some cases:

- Substance and drug-abuse treatment
- Prenatal care
- Sexually transmitted diseases
- Birth control

For example, a 15-year-old girl could go to a physician's office for evaluation of an STD or to request birth control, and the physician must treat her. Furthermore, the physician must respect her confidentiality pertaining to these issues.

Ethics, Law, and Physician Behaviour

Withholding Treatment from Minors

Parents cannot withhold life- or limb-saving treatment from their children. If parents refuse permission to treat their child, then do the following:

- Immediate emergency: go ahead and treat
- Not emergency but still critical (e.g., juvenile diabetes): the child will be declared a ward of the court and the court grants permission
- Not life- or limb-threatening (e.g., minor stitches needed): listen to parents

Ethics, Law, and Physician Behaviour

Exam case scenarios

Situation	Who Provides Consent
A 17-year-old girl's parents are out of the country and the girl is staying with a babysitter	If a threat to health, the physician can treat under doctrine of *in locum parentis*
A 17-year-old girl who has been living on her own and taking care of herself	The girl herself
A 17-year-old girl who is married	The girl herself
A 16-year-old daughter refuses medication but her mother consents	The mother; write the prescription
The 16-year-old daughter consents to medication, but the mother refuses	The mother; do not write the prescription
The mother of a minor consents to medication but the father refuses	Consent from only 1 parent is required; write the prescription

Ethics, Law, and Physician Behaviour

Physician-Assisted Suicide

Assisted suicide is suicide committed by a person with the assistance of another person.

• You cannot assist patients to commit suicide. You can permit “competent” patients to die by withdrawing medical treatment (feeding tube, hydration) at their request. However, you cannot provide patients with the means to commit suicide themselves.

• Well-informed and competent patients have an almost absolute right to refuse any part (including the whole) of a medical treatment. Even though you may not understand the reasoning behind the decision, you must respect patients’ wishes.

Ethics, laws and physician behavior

Physician assisted Suicide

Ethics, Law, and Physician Behaviour

Good Samaritan Laws

Good Samaritan laws limit liability when physicians help in nonmedical settings. Suppose a physician is driving down a road when she comes upon a three-car accident. No one else has stopped to help. She now has a choice to make: should she stop or not? As a physician she is not required to stop; i.e., if she does not, no civil or criminal charges would be brought against her.

The motorist who has crashed in this scenario is a “person,” and not a “patient.” Physicians are not required to stop and help at the scene of an emergency. If they do stop, they are acting as Good Samaritans. As such, the Good Samaritan laws limit a physician’s liability, so long as certain conditions are met.

Ethics, Law, and Physician Behaviour

Actions are within the physician's competence.

— For example, every physician has been trained to administer CPR. If you have a medical bag with you, you could potentially administer some stitches. However, if the motorist was impaled with a large piece of wood, it is not likely you would be able to attend to the injury with your bag of medical supplies. Your focus would be to assess vital signs and keep the person calm while waiting for emergency services.

Ethics, Law, and Physician Behaviour

Only accepted procedures are performed.

— You would perform only standard of care procedures, not procedures that were considered alternative care or experiment

Ethics, Law, and Physician Behaviour

The physician remains at the scene after starting therapy, until relieved by competent personnel.

— If you stop to assist a person, you need to stay there and aid until the paramedics arrive.

— In most instances, after receiving a call from 911 the paramedics are at the site of the action within a few minutes. Once they arrive and acknowledge that they now have the situation “under control” you can leave. However, you cannot treat the “person” and leave; you need to wait.

— Preferably, join the ambulance and hand over the patient to another physician yourself.

Ethics, Law, and Physician Behaviour

No compensation changes hands.

— The person may offer you money or a gift as a “thank you” for stopping. You cannot accept any form of compensation.

— If you accept compensation (or even a token gift), you become liable for the care provided because your services as a physician have been employed and the “person” now becomes your “patient.”

Ethics, Law, and Physician Behaviour

Negligence

Negligence is an act or omission (failure to act) by a physician or medical professional that deviates from the accepted medical standard of care. Negligence is often used regarding a civic duty. It can be intentional or unintentional:

- Intentional: malpractice
- Unintentional: medical negligence

Ethics, Law, and Physician Behaviour

Impaired Physician

Remove from patient contact health care professionals who pose risk to patients. Types of risks include:

- Infectious disease (TB)
- Substance related disorders
- Depression (or other psychological issues)
- Incompetence

Insist that they take time off; contact their supervisors if necessary. The patient, not professional solidarity, comes first.

Ethics, Law, and Physician Behaviour

Abuse

Abuse is defined by tissue damage, neglect, sexual exploitation, and mental cruelty.

Ethics, Law, and Physician Behaviour

Child abuse is a mandatory reportable offense up to age 18. Failure to report is a criminal offense.

If a case is reported in error, you (the physician) are protected from legal liability. Your duty to protect the child comes first. First separate child from the parents (protect); then report.

- Most cases of physical abuse involve injury to soft tissues (bruises, burns, and lacerations); in some cases there are no signs at all.
- Clinical signs suggesting abuse of a child include broken bones in year one of life, STD, and bruises, burns, and lacerations with incongruent explanations.
- Pay attention to injury location: soft tissue injury of inaccessible parts of the extremities/trunk.
- Non-accidental burns have a particularly poor prognosis.
- Shaken baby syndrome: look for broken blood vessels in eyes.

Ethics, Law, and Physician Behaviour

Annual cases >2 million

Most common type Physical battery/neglect

Likely gender of victim Age <5: female Age >5: male

Likely gender of perpetrator Female

Mandatory reportable? Yes

Physician's response Protect and report

Comments Child sexual abuse is defined as sex experienced age <18 with someone 5 years older:

- >25% of adult women report being sexually abused as a child
- 50% of perpetrators are family members
- 50% of victims tell no one

Ethics, Law, and Physician Behaviour

Annual cases 5–10% in population

Most common type Neglect (most common with 50% of all reported cases); physical, psychological, or financial

Likely gender of victim 62 % females

Likely gender of perpetrator • Male or female, Caretaker is most likely source of abuse; spouses are often caretakers

Mandatory reportable? yes

Physician’s response Protect and report

Ethics, Law, and Physician Behaviour

Annual cases >4 million

Most common type Physical battery

Likely gender of victim Female

Likely gender of perpetrator Male

Mandatory reportable? No , Not mandatory.

Physician's response

- Counselling and information
- Provide the victim information about local shelters and counselling; abused spouses tend to identify with the aggressor and blame themselves for the abuse

Ethics, Law, and Physician Behaviour

PHYSICIAN BEHAVIOR

The primary reason for rejection of medical advice, changing physicians, and missed appointments is a lack of rapport between the patient and physician.

Failure of a patient to cooperate or even to keep appointments should be the result of physician insensitivity or seeming indifference.

The key is not the amount of time spent with a patient, but what is done during that time. A good rapport fosters adherence to treatment regimens and is positively associated with a reduction of malpractice suits.

Ethics, Law, and Physician Behaviour

Patient-Centered Interview

Nothing should be between you and your patient.

- Get rid of tables and computers.
- Ask family members to leave the room, unless patient requests unprompted that they stay.
- Ask questions focused on the patient's feelings and needs.
- Address patient's concerns.

Ethics, Law, and Physician Behaviour

Anything that increases communication is good.

- Take the time to talk with patient, even if others are waiting.
- Ask follow-up questions for clarification and try to understand patient's thinking; ask "why"; ask about personal issues beyond the disease: job, family, children.
- Be available (take calls and answer emails).
- Respond to the emotional as well as the factual content of questions from your patient.

Ethics, Law, and Physician Behaviour

Tell the patient everything, even if you have not been asked.

- Answer any question that is asked of you; if you only have partial information, let the patient know and provide the information you do have.
- Do not force a patient to hear bad news if he resists but inquire why so you can address the underlying fears as soon as possible.

Keep everything confidential.

- Information should flow through the patient to the family, not the reverse.

Ethics, Law, and Physician Behaviour

Consider the patient interview and history-taking an opportunity to develop a better relationship.

- Make eye contact; sit so you are at same eye level if possible.
- Work on a long-term relationship, not just short-term problems.
- Tell patient what you are doing before every physical manoeuvre

(defined touch).

Ethics, Law, and Physician Behaviour

Listen more; talk less.

- Hearing from patient is most important; allow patient to choose words to describe (do not ask leading questions).
- Allow silences while patients search for words.
- Listen for clues and pay attention to body language; you know what matters but patient won't.
- Ask what patient knows before explaining.
- Provide opportunity for patient to ask questions of you

Ethics, Law, and Physician Behaviour

Negotiate rather than order.

- Medical decisions are made by patient; the physician provides and explains the options.
- Treatment choices are the result of agreement.
- An agreement fosters adherence while instructions and commands do not.

Ethics, Law, and Physician Behaviour

Agree on the problem before moving to a solution.

• Informed consent requires the patient to fully understand what is wrong. Offering a correct treatment before the patient understands his condition is not the right approach.

• A patient may not articulate his problem clearly and might exhibit emotions without articulating an underlying problem at all.

— Ask questions to get details first before you offer solutions.

— Begin with open-ended questions, then move to closed-ended questions.

• Your patient's problem is your problem.

— Talk and think of solutions, not "an answer."

— Change your plan to deal with new information when it is presented.

Ethics, Law, and Physician Behaviour

Practice effective interview techniques.

- Open-ended questions allow broad range for answer; closed-ended questions limits answer to yes or no.
- Leading questions suggest a preferred answer.
- Direct questions seek information directly; avoid judgmental terms.
- Confrontation brings to the patient's attention some aspect of appearance or demeanour.
- Facilitation gets the patient to continue a thought, talk more, "tell me about that . . ."
- Redirection puts question back to the patient.

Ethics, Law, and Physician Behaviour

Physician-Patient Relationship

The physician-patient relationship is a partnership based on trust. In the setting of a productive alliance there are tremendous opportunities for clinical interventions that can significantly improve the patient's health and quality of life.

The key is what the ideal physician should do to build rapport, establish trust, and maintain trust.

Ethics, Law, and Physician Behaviour

Keep the physician–patient relationship within bounds. Intimate social contact with anyone who is or has been a patient is prohibited. AMA guidelines recommend no interpersonal relationship with a former patient “for at least two years.”

- Do not date parents of paediatric patients or children of geriatric patients.
- Do not treat friends or family.
- Do not prescribe treatment for colleagues unless a physician/patient relationship exists.
- If patients are inappropriate, gently but clearly let them know what acceptable behaviour would be.
- Decline any gift from a patient beyond a small token.
- Tell patients everything: as a physician you must always be honest and transparent; there should be no lies or omissions.
- Admit to mistakes.

Ethics, Law, and Physician Behaviour

Remember your duty to the patient. Always place the interests of the patient first. Choose the patient's comfort and safety over yours or anyone else's. The goal is to serve the patient, not to worry about your legal protection.

• Ask about and know the patient's wishes.

— Make conversations positive.

— Patient cannot select inappropriate treatments, but you must discuss options that are available. Don't just say no to a patient's request.

— If a patient asks for an inappropriate medication that she heard advertised, explain why it is not indicated.

• Never "pass off" your patient to someone else. Refer to a specialist when something is beyond your expertise. You provide instruction in aspects of care, e.g., nutrition, use of medications.

• Be an advocate for the patient and try to get the patient what they need.

• Never refuse to treat a patient because she can no longer pay.

Ethics, Law, and Physician Behaviour

Foster patient adherence.

It is not enough for you to provide counsel/treatment and leave adherence to the patient. You must present information in ways that

will optimize patient adherence. For best adherence:

- Attend to the amount of information; explain its complexity.
- Note the patient's affective state.
- Explain why a treatment is being recommended.
- Stress the threat of non-adherence to health.
- Stress the effectiveness of the prescribed regimen; give instructions both orally and in writing.
- Arrange for periodic follow-up.
- Ask the patient to do less; a long list of instructions is detrimental to adherence.

In cases of non-adherence:

- Do not blame the patient.
- Check for patient dissatisfaction with the physician, misunderstood instructions, family interference, or inability to pay for medication.

Ethics, Law, and Physician Behaviour

Never abandon a patient.

Suppose a patient frequently comes to your office to complain about the office staff and your services. He even calls you on your cell phone to express discontent. You may be tempted to just dismiss the patient and let another physician deal with him. From an ethical standpoint, that would be patient abandonment.

• Make every effort to determine why the patient feels a certain way and then work to remedy the situation. Perhaps he has a psychiatric disorder that needs to be addressed.

• Never stop treatment on a patient due to lack of financial resources or treatment results. If a patient comes in with a medical complaint and he is past due on his medical bills, provide him with the same level of care and respect you would provide for any other patient.

• Do not ever threaten abandonment. If a patient is annoying or disruptive, you cannot say, “If you do not change your behaviour, I will be forced to dismiss you from my practice and you will need to seek medical attention elsewhere.”

Ethics, Law, and Physician Behaviour

Have empathy. Empathy is the capacity to place oneself in another's position. Empathy both acknowledges and validates a patient's feelings. Do not confuse it with sympathy, which is simply feeling bad for another person's suffering.

- Empathy: "I feel your pain. What can I do to help?"
- Sympathy: "I'm sorry for your pain."

Ethics, Law, and Physician Behaviour

Accommodate different cultures. Offer language assistance services (translator) to patients with limited English proficiency (a legal right). It will help to facilitate proper communication.

• Interpreters: spoken communication

• Translators: written communication

Respect patients' religious beliefs, even when you do not share them. The goal is to make the patient comfortable.

• Ask about patient's beliefs.

• Accommodate religious practices: participate when requested and if possible (although you are not required to do anything against your own religious/moral beliefs or anything that risks the patient's health).

— Suppose a patient requests you take an unsterile totem made of animal bone and bring it into surgery with you for good luck. You might accommodate the request by placing the item into a sealed plastic pouch and take it with you while keeping it far from the surgical field.

Ethics, Law, and Physician Behaviour

Accept benign “folk medicine” practices. Expect them.

Moxibustion: dried plants called moxa are burned on or near the body.

Coining: a form of dermabrasion therapy in which a heated coin is dragged along the skin.

Cupping: inverted cups are placed on the skin and suction is applied either by heat or vacuum; leaves circular marks.

Acupuncture: Thin needles are inserted into the body; due to the potential for medical complications and ramifications (such as contaminated or infected needles), this is not a benign practice.

— Explain medical diagnosis in a manner that can be understood by a patient, even if it is not technically precise.

— Offer to facilitate discussions or explain things to family members.

Ethics, Law, and Physician Behaviour

Deal with difficult patients. Treat difficult or suspicious patients in a friendly, open manner. An annoying or difficult patient is still your patient. You cannot ever threaten abandonment.

Ethics, Law, and Physician Behaviour

Treatment Issues

• Suppose a patient's course of action is against your medical recommendation (a common scenario). Remember, any medical treatment can be withdrawn at the patient's request.

— A feeding tube is a medical treatment and can be withdrawn at the patient's request.

— A competent person can refuse even lifesaving hydration and nutrition.

— You are not obligated to provide medical treatment that is inappropriate; in fact it is your duty to refuse to provide such care even when the patient demands it.

— In other words; a patient can refuse care, but cannot demand inappropriate care.

Ethics, Law, and Physician Behaviour

• You cannot ethically act to facilitate a patient's death, but you may administer care to provide relief to a terminal patient, even if such care may hasten demise (providing pain medication for example).

— Passive: allowing patient to die

— Active: killing patient

— Active euthanasia: administering lethal medication with the purpose of ending life (illegal in the United States)

— Assisted suicide: providing a patient the means with which to take his own life (legal in some states in the United States)

Ethics, Law, and Physician Behaviour

- You decide when the patient is dead.

— You are obligated to continue treatment at the behest of patients and their surrogate, even if they surmise from a patient's lack of improvement that such treatment is futile.

— If you determine that the patient is dead, then treatment must stop.

— Any physician can decide/declare a time of death for a patient and the courts (or a judge) will officially declare a patient to be dead. For example, if a patient is brought to the emergency department following a severe car accident and "dies" in the emergency room, the physician will "decide" the actual time of death. The physician will fill out the necessary paperwork and a judge will "declare" that the patient is dead.

Ethics, Law, and Physician Behaviour

Angry Patients

An irate patient requires care just as much a pleasant patient. The rule of thumb to diffuse the situation.

• Validate your patient's feelings and find ways to hand him back control of the situation: "If I had to walk up four flights of stairs with my leg in a cast, I'd be upset. Now that you are here, what would you like to do?"

Ethics, Law, and Physician Behaviour

Reluctant Patients

When a patient seems hesitant to share information, an assurance of confidentiality might be helpful.

• Silence is effective. A few moments of silence might be uncomfortable, but it allows the patient an opportunity to collect her thoughts and reinforces that you are there to listen to her problem.

Ethics, Law, and Physician Behaviour

Sick role

The sick role is a “limited and conditional” set of expectations that are attached to individual persons socially when they are defined as being “sick.” These expectations are held dependent on both the nature and severity of the condition.

Ethics, Law, and Physician Behaviour

Rights

- Person is exempt from normal responsibilities: can stay home from work and not do chores around the house.
- Person is not to blame for illness: anyone can get the flu and there is no “fault.”

Ethics, Law, and Physician Behaviour

Obligations

- Person is obligated to get well: should rest, drink fluids, try to eat.
- Person is obligated to seek competent help: for the flu a patient may not be required to go to the doctor; however, some employers require a "doctor's note" upon return to work.

Ethics, Law, and Physician Behaviour

UNCONSCIOUS INTERACTIONS

Patients and physicians may unconsciously react to each other. These are not defense mechanisms, although they may seem to function similarly. These reactions can be classified as transference and countertransference

Ethics, Law, and Physician Behaviour

Transference: patient may unconsciously transfer thoughts onto physician:

- Unconscious
- Thoughts or attitudes are typically of a parent or significant other
- Patient identifies within the physician similar traits that lead the association and transference
- Transference may be positive (cause you to unaccountably like someone) or negative (cause you to unaccountably dislike someone)
- Likelihood of transference is not related to the duration of treatment.

Ethics, Law, and Physician Behaviour

Countertransference: physician may unconsciously transfer thoughts onto patient:

- Affects attitude of the physician toward patient
- May be positive (physician wants to help an elderly patient because she reminds him of his parent)
- May be negative (physician unaccountably dislikes a patient)

Ethics, Law, and Physician Behaviour

1. A patient refuses lifesaving treatment on religious grounds

DO not treat

Ethics, Law, and Physician Behaviour

A wife refuses to consent to emergency lifesaving treatment for her unconscious husband, citing religious grounds

- Treat the woman's husband; this is no time to assess substituted judgment.

Ethics, Law, and Physician Behaviour

A wife produces a card stating her unconscious husband's wish to not be treated on religious grounds.

Do not treat the woman's husband.

Ethics, Law, and Physician Behaviour

A mother refuses to consent to emergency lifesaving treatment for her daughter on religious grounds.

Treat the woman’s daughter.

Ethics, Law, and Physician Behaviour

A child's life is at risk, but the risk is not immediate

Court will take guardianship.

Ethics, Law, and Physician Behaviour

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