“Ethical Dilemmas in Healthcare—Case Studies and Lessons Learned”

Jon Burroughs, MD, MBA, FACHE, FAAPL
June 14, 2017
Case Study #1: A Possible Impairment

One of your senior partners who has been an invaluable mentor (he hired you originally), colleague, and friend has been showing subtle signs of forgetfulness and minor lapses when interpreting scans. You ask him if there is anything going on and he tells you that he has been a little tired lately and a little time off will do wonders. You let it go and several weeks later he misses an obvious mass on a lung scan that results in a delay in diagnosis and treatment of a pulmonary malignancy.

What are the issues here?
What may be early manifestations of a potential impairment? Subtle changes in.....

- Appearance
- Behavior
- Ability to socialize and communicate (e.g. isolation and defensiveness)
- Personality
- Routine (e.g. MIA)
- Health status
- Change in performance (may be subtle)
- Medication issues (wastage, under-medicated patients, discrepancies in PYXIS etc.)
What is the incidence of physician impairment? It depends!

**Similar** to non-physician age/sex/income matched controls:
- Nicotine and alcohol dependency
- Dementia
- Common organic ailments (diabetes, hypertension etc.)

**Higher** than non-physician age/sex/income matched controls:
- Opioid dependency (self-prescribing) and addictive behaviors (e.g. OCD, sex etc.)
- Depression and suicide
Is there evidence that cognitive function deteriorates with age? (Powell, “Profiles in Cognitive Aging”, 1994)

**Figure 4.2** Age related differences in MicroCog total score.
The Joint Commission’s Criteria for Privilege Eligibility:

“The hospital, based on recommendations by the organized medical staff and approval by the governing body, establishes criteria that determine a practitioner’s ability to provide patient care, treatment, and services within the scope of the privileges(s) requested. Evaluation of all of the following are included in the criteria:

- Evidence of physical ability to perform the requested privilege” (MS.06.01.05, A2)
The Joint Commission’s Criteria for Privilege Eligibility (cont.):

“An applicant submits a statement that no health problems exist that could affect his or her ability to perform the privileges requested.” (MS.06.01.05, A6)

“The applicant’s ability to perform privileges requested must be evaluated.....documented.....and confirmed. The request for an evaluation rests with the organized medical staff.” (Note to MS.06.01.05, A6)


**Ethical Issues:**

Patient Safety: Obligation to protect patients from potential and inadvertent ‘harm’

Physician Advocacy: What are the potential consequences of ‘looking the other way’?

Adherence to Professional Codes of Ethical Conduct for Leaders/Physicians (ACHE 2012, AMA 2004, ANA 2001 etc.)

Leadership’s role/responsibility: upholding the organization’s mission and ethical standards
Recommended Process for Age >65 or legitimate concerns raised

• Shorten reappointment cycle from two years to one year
• Request a ‘fitness for work’ evaluation annually (recommend that hospital pays and chooses appropriate expert)
• Modification or elimination of call burden
• Voluntary modification or maintenance in scope of privileges based upon results of ‘fitness for work’ evaluation and discussions between the physician and the professional health/advocacy committee or designee of the MEC
What is a ‘fitness for work’ evaluation?

• **Vocational**, not a physical exam based upon specific scope of privileges
• Requires **vocational** training and expertise
• Evaluates physical, psychiatric, cognitive, and psychosocial issues that may potentially undermine the performance of specified clinical privileges
• Addresses potential patient safety issues as well as potential accommodations and legal/regulatory issues
• Addresses potential conflicts of interest (who pays and to whom does the report go?)
Who does these evaluations?

• Vocational specialists (e.g. physiatrists, internists with additional training etc.)
• Independent organizations with/without affiliation with state medical board:
  – Physician Assessment and Continuing Education Program (PACE), San Diego, CA
  – Center for Personalized Education for Physicians (CPEP), Denver, CO
  – Drexel University, Philadelphia, PA
  – Vanderbilt University, Nashville, TN
What are Ethical Dilemmas?

“Complex situations that involve an apparent conflict between moral or value based imperatives in which to obey one would be to undermine or sacrifice another.”

“For every complex problem, there is a solution that is simple, direct and wrong.” ---HL Mencken

“The opposite of a deeply held truth is not a lie but another deeply held truth.” ---Neils Bohr
What are Moral or Value Based Imperatives?

- **The Law** (federal, state, local, bylaws, policies/procedures) and the values of: justice, equality, freedom, order
- **Science** and the values of: objectivity, knowledge, transparency, and accuracy
- **Economics** and the values of: profitability, efficiency, effectiveness, security, sustainability
- **Religion** and the values of: charity, fidelity, empathy/compassion, and the sanctity of life
- **Organization** and the values of mission/vision, teamwork, community benefit
What are Moral or Value Based Imperatives?

- **Professional Ethics** and the values of: service, self-sacrifice, competence, adherence to a professional code (professionalism), confidentiality, discretion
- **Social Ethics** and the values of: mutual cooperation/support, loyalty, fidelity, ‘greater good’ (tragedy of the commons), family
- **Personal Integrity** and the values of: inner harmony, self-respect, dignity, happiness
- **Morality** and the values of: autonomy, respect, trust, integrity, beneficence and non-maleficence, fairness, and legacy
What is a reasonable approach to address ethical dilemmas?

1. Bring key stakeholders together (e.g. ethics committee with invitees)
2. Name the context for the dilemma (history, elements of the problem, specific issues, existing rules/policies/laws etc.)
3. Name the dilemma (what values are in conflict?)
4. Clarify (define) and weigh the relative importance of the conflict values (patient needs v. professional needs)
5. Choose options to resolve the dilemma and receive feedback
6. Choose and finalize a resolution with rationale
Which are these are potential ethical dilemmas?

• Family members insist on providing ‘futile care’ to a beloved family member
• A patient with a life threatening acute MI would like to sign out AMA due to inability to pay his medical bill
• A colleague is unable to perform up to professional standards and he is protected and enabled by his partners
• A physician has a private vendor relationship and is an equity investor and does not want to abide by the medical staff’s choice of supplies/vendors
• A member of the governing body who is bidding on a hospital contract would like access to the competing bids
Which are these are potential ethical dilemmas?

• The treasurer of the governing board is managing the hospital’s endowment fund through the financial services company that employs him
• An employed physician group receives ‘kickback’ incentives for increased admissions and referrals to the hospital
• A physician self-refers to a family invested laboratory or imaging center
• A hard to recruit specialist receives compensation that is above the 95%tile MGMA

In other words, ethical dilemmas are everywhere!
Case Study #2: Patient Safety

An oncology center of excellence realizes that several dozen patients recently received radiation doses in excess of what had been prescribed due to a mis-calibration of the linear accelerator. The technologist responsible for the calibration procedure has been asked to resign. The physicians and management do not feel comfortable informing the patients of this ‘error’ due to fears of: medical malpractice and institutional liability exposure, the unknown potential impact of this inadvertent radiation exposure, the terminal nature of most of these patients, the potential loss of confidence of the community, and the excessive anxiety that this may provoke.

What would you do?
Ethical Issues:

- Professional ethical standards (physicians and management)
- Patients’ right to know
- Legal obligations
- Potential discrimination
AHA’s The Patient Care Partnership (2003):

“If anything unexpected and significant happens during your hospital stay, you will be told what happened, and any resulting changes in your call will be discussed with you.”

“Transparency is not only the right thing to do, but also the pragmatic thing to do.” (Toby Cosgrove, MD, CEO of The Cleveland Clinic)

“When patient-first priorities break down, quality, safety, coordination, satisfaction, and profit all decline.” (Murphy, 2013)
AHA’s The Patient Care Partnership (2003):

“If anything unexpected and significant happens during your hospital stay, you will be told what happened, and any resulting changes in your call will be discussed with you.”

“Transparency is not only the right thing to do, but also the pragmatic thing to do.” (Toby Cosgrove, MD, CEO of The Cleveland Clinic)

“When patient-first priorities break down, quality, safety, coordination, satisfaction, and profit all decline.” (Murphy, 2013)
Case #3: Potential Discrimination?

A baby is admitted to the NICU and the baby’s father (who states that he is a white supremacist with a swastika tattoo on his arm) asks the nursing director to ensure that his baby is not cared for by any non-Caucasian nurse.

A black woman is admitted to the emergency department stating that she has been raped by a white man who claimed to be a white supremacist and asks to not be examined by any man and particularly not a Caucasian one.

What are the issues here?
Ethical Issues:

• Patient rights

• Ethical responsibilities to employees and staff

• Professional code of ethics

• Hospital policies and federal law (Title VII of the Civil Rights Act as amended in 1990)

• Community values
Absolutism v. Relativism:

A. Honoring racial preferences violates antidiscrimination laws and is morally wrong.

B. In general, honoring prejudicial preferences is morally unjustifiable; however, there may be times when grudgingly acceding to a patient’s strongly held preference is preferable to forcing caregivers on them who might exacerbate their health condition (e.g. rape or violence).

Recent legal cases:
Nursing homes forbidden to make staffing decisions based upon residents’ racial preferences (7th Circuit Court of Appeals, 2010)
Case #4: Issues of Self-Interest

Your CEO has handpicked board members who support her beliefs and provide services to her (e.g. construction, banking, investment, legal) personally at low or no cost. In addition, she takes her family on board retreats under the hospital’s auspices and utilizes her executive assistants to run errands for her throughout a good part of the day. You recently find out that both she and her CFO have negotiated significantly higher than average compensation packages that they have been able to maintain by taking individual board members and their families on retreats/junkets to luxury resorts. You realize that if you bring any of these issues to the board’s attention, it will cost you your job and any potential professional reference going forward.
Ethical Issues:

• Conflicts of interest

• Professional standards of ethical conduct and practice

• Utilization of organizational resources

• Legal issues (IRS rules, anti-kickback, corporate compliance etc.

• Fiduciary obligation of management and board members
“End of the Story”:

#1: A Possible Impairment

#2: Patient Safety

#3: Potential Discrimination

#4: Issues of Self Interest
“Lessons Learned”:

1. Deal with ethical issues proactively (pay now or pay later with interest) with an active interdisciplinary ethics committee

2. Be willing to deal with the ‘hard issues’ (or the courts and community will do it for you)

3. The successful resolution of ethical issues makes good clinical and business sense!
Questions, Discussion, and Wrap Up
Thank You for Joining Us!

Jon Burroughs, MD, MBA, FACHE, FAAPL
jburroughs@burroughshealthcare.com;
603-733-8156