INTRODUCTION TO MAJOR ETHICAL APPEALS AND TO THE ETHICS WORK-UP USING THESE APPEALS

1. ETHICS WORK-UP—INTRODUCTION

A. The Ethics Work-Up is intended to stimulate moral and self-reflection and to provide intellectual structure and practical guidance to the responsible management of ethical challenges in clinical care.

B. Two types of ethics cases.

- **Consensus:** Those involving issues about which we have professional, ethical, and legal consensus that is evidence-based and well argued. The ethical challenge is to identify the consensus position, understand how it applies to the case at hand, and manage its implementation in an ethically responsible and professional manner.
- **Controversy:** Those involving issues about which there is genuine controversy regarding the appropriate course of action. The challenge in these cases is to identify the implications of the relevant ethical appeals for the case and to develop a well-reasoned, ethically-justified argument for a particular course of action.

2. ETHICS WORK-UP—IMPLEMENTATION

Step 1: Identify relevant facts of the case and any additional information you want to know.

Step 2: Identify the available alternative courses of action.

Step 3: Assess each available alternative from the perspective of the relevant ethical appeals.

a. Appeal to established legal, ethical, and professional standards.
b. Appeal to consequences.

c. Appeal to rights.
d. Appeal to virtues.
e. Appeal to other ethical considerations (where applicable).

- Justice (e.g., social justice and resource allocation).
- Special obligations in the professional role (e.g., physician advocacy and patient interests) and in the role of surrogate decision-maker (e.g. substituted judgment).
- Legitimate self-interests and personal commitments/obligations.
- General moral constraints.

Step 4: Provide an argument and a justified management plan for one of the alternative courses of action.

- State clear reasons based on assessment of the appeals for assigning priority to one course of action rather than another.
- State a clear critique of these reasons and respond to the critique.
- Provide a detailed management plan for implementing the course of action that you chose that includes several steps and back-up plans.

Step 5: Identify steps that might have been taken to prevent the ethical challenge(s) that arose in this case.

3. MAJOR ETHICAL APPEALS—INTRODUCTION

A. From the history of professional and philosophical ethics.

B. Designed to support comprehensive ethical analysis and decision-making concerning cases.

4. MAJOR ETHICAL APPEALS—BASIC TERMS AND CONCEPTS

Note: The following appeals are not listed in order of priority. All relevant appeals should be considered and balanced in a comprehensive ethical analysis of a case.

A. Established Legal, Ethical, and Professional Standards.

1. Identify any relevant legal, ethical, or professional consensus position(s).
2. Assess quality, for example: Are the standards supported by a review of the relevant evidence? A reasoned justification?
3. Identify implications for selection of a course of action.

B. Consequences should be identified for both short-term and long-term.

1. Evaluation of consequences in terms of the nature of those consequences:
    a. Serious and far-reaching – affect patient/others in many important area(s) of human endeavor.
    b. Irreversible – permanent and cannot be removed or ameliorated.
    c. Probable – how likely are these consequences to occur?

2. The higher on these three dimensions of judgment the consequences are, the stronger is the obligation to prevent them and to respond to them effectively when they occur.

3. In identifying consequences, all affected parties should be considered. In addition to the patient, the scope of affected parties can include the patient's family members (e.g., who may have to assume long-term care responsibilities), other patients (e.g., who may experience clinically risky delay of treatment), healthcare professionals (e.g., physical risk from a dangerous patient), healthcare organizations (e.g., financial injury to a hospital or payer), and society (e.g., promoting gender bias or even imbalance from sex selection).

C. Rights are justified claims against others (individuals or institutions) to act or not act in specified ways.

1. Decisional rights: In the usual therapeutic relationship, recognized through the concept of **informed consent**

a. The patient has the right to decide his or her preferred decision-making role, including extent of participation and pacing of information provided.
b. The patient has the right to information needed to participate meaningfully in the decision-making process.
c. The patient has the right, as the outcome of the decision-making process, to accept or to refuse an offered or recommended plan of care.
d. These decisional rights can be exercised by legally designated surrogate(s) of patients who are not able to make decisions for themselves by reason of legal minority, court adjudication, or clinical judgment of incapacity.

i. Children have the ethical, if not legal, right to participate in decisions commensurate with their developmental capacity (**pediatric assent**).
ii. Surrogate decision makers should make decisions according to:

(a) **Substituted judgment** standard: a decision based on reliable information about patient beliefs, values, and preferences.
(b) **Best interests** standard: in the absence of information required to implement substituted judgment, a decision based on protection of patient interests and promotion of patient wellbeing. This is the only standard available when the patient, because of minority or incapacity, has never been able to form beliefs, values, or preferences.

e. Related: Principle of **respect for persons**, translating into **respect for autonomy**, an obligation to acknowledge others' right to hold views, make choices, and take actions based on personal values and beliefs, so long as those actions do not inappropriately affect others.

2. Non-decisional rights:

a. **Protection from harm**: right of those who are vulnerable to harm, including abuse or exploitation, to be protected from these violations. Involves attention to patient interests and may require physician advocacy.

b. **Privacy/confidentiality**: right to control access to one's body and to information by those not authorized to have access.

c. **Honesty**: right never to be hold anything false, to be told only what is true, and never to be misled.

d. **Respect**: the right to have one's individual worth and value acknowledged and to always be treated with dignity and due regard.

Note: rights are not necessarily absolute/unconstrained, and some may be waived.

D. Virtues are habits or traits of character that focus our attention on the interests of others and motivate us to protect and promote the interests of others by routinely fulfilling our obligations to them. The following virtues should shape the professional's character:

1. **Compassion** is the habit of recognizing when the patient or another is in pain, suffering or distress and acting to prevent and relieve pain, suffering, and distress.

2. **Courage** is the habit of distinguishing between what one ought to fear and what one ought not to fear, of ignoring what one ought not to fear, and, of not being excessively swayed by what one ought to fear.

3. **Self-sacrifice** is the habit of taking reasonable risks to one's self-interest (in time, convenience, health, and even life), in order to protect and promote the interests of patients.

4. Other virtues (**integrity**, **honesty**, and **respect**) are addressed elsewhere in this document.

E. Other Ethical Considerations (if applicable)

1. **Justice-based obligations and constraints.**

a. Justice creates an obligation to treat others fairly, equitably, and appropriately in light of what is due or owed to them. Because there is no consensus on which conception of justice should prevail in determining access to health care or **resource allocation,** the implications of adopting each of the following major conceptions should be considered.
Libertarian- everyone should receive health care benefits in proportion to what he or she has paid for.
Egalitarian- everyone should receive health care benefits in equal proportion to his or her medical needs.
Basic decent minimum- everyone should receive health care benefits in proportion to his or her basic medical needs but beyond that he or she should receive health care benefits in equal proportion to what he or she has paid for.
b. Sometimes one's ability to fulfill well-founded obligations is constrained by limited resources. Decisions about whether to accept those conditions should appeal to the principle of justice, taking into account factors such as need, likelihood of benefit, or time waiting for access to the resource.
c. Considerations of **social justice** draw attention to the broad distribution of benefits and burdens in society. Social justice is the catalyst for efforts to address the disproportionate burdens or disadvantages borne by members of certain social groups and problems such as discrimination, stigmatization, and marginalization.

2. **Special obligations in a professional role.**

a. Health care professionals have a fiduciary obligation to protect and promote the **wellbeing of the patient/patient interests.**

- This obligation can be expressed in terms of the ethical principles of **beneficence** and **nonmaleficence**.
- In the clinical setting, the ethical principles of beneficence and nonmaleficence obligate the professional to seek the greater

balance of clinical goods over clinical harms in the management of the patient (beware of "first do no harm" or "primum non nocere" invoked independently of the ethical principle of beneficience.

- This may at times require **physician advocacy**. Advocacy can range from simple behaviors such as refusing to laugh when a joke is made at a patient's expense to political involvement.

b. Health care professionals have an obligation to practice their profession to the highest intellectual and moral standards (**professional integrity**).

- Technical and ethical statements, as well as practice guidelines, produced by associations of professionals are an important source of such standards, especially when these statements are evidence based and ethically well argued. The individual contemplating violation of these standards bears the burden of proof. This burden should be met by argument based on the other ethical appeals.

c. Professionals should avoid **conflicts of interest** that could reasonably be expected to impair their competence or effectiveness. Other role tensions/conflicts should be either avoided or acknowledged and managed responsibly, depending on the strength of the justification for accepting the attendant risks.

d. Surrogate decision makers have an obligation to make decisions based on the substituted judgment standard and if not possible then the best interest standard.

3. **Balancing obligations to patients against legitimate personal interests and commitments.**

Legitimate self-interests of the professional can sometimes justifiably limit obligations, especially the virtue-based obligation of self-sacrifice, and include:

a. Preserving the conditions for practicing one's profession well.
b. Engaging in significant activities other than one's profession.
c. One's own health and life.
d. Faithfulness to one's own personal values, beliefs, and moral convictions, from both religious and non-religious sources (**personal integrity**).

Legitimate personal commitments: can also justifiably limit one's professional obligations and involve fulfilling obligations to individuals other than the patient/client (spouse, children, family, God), when they have not released one from those obligations.

4. **General moral constraints**

There are moral constraints that limit what is ethically permissible in medical practice, independent of the other ethical appeals. These moral constraints come in various forms and from many sources, both secular and religious. Sometimes these constraints are understood to be absolute (admitting of no exceptions) and sometimes they are treated as an important additional consideration that must be weighed against other competing ethical considerations. Because such general moral considerations may be controversial, appeal to them in the ethics work-up must include an explanation of their basis and rationale for their plausibility.

- Example of a secular moral constraint: Some people are opposed to germ-line human genetic engineering, even for medical benefit, because alteration of the human genome involves an impermissible alteration of human nature.
- Example of a religious moral constraint: Some people are opposed to forms of medical treatment that are prohibited in their religious tradition, e.g., elective surgery on the Sabbath by Seventh Day Adventists or blood products by Jehovah's Witnesses.

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