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Medical Law and Ethics Notes Week 1: Introduction

Lecture

- This lecture comprised of identifying ethical issues in a film.
- Question: should the results of research conducted unethically be used?
  - There is an argument that it *should* because people suffered and this research can limit future suffering (their suffering should not be in vain).
  - Is there a role conflict between the conflict between the clinical role and the research role?
  - Dignity – how to treat a patient without denying them basic dignity.

Readings

- No readings for this week.
Medical Law and Ethics Notes Week 2: General and Medical Ethics

Lecture

- Course assessment:
  - Assignment: 20%
    - Role play
  - Law reform proposal:
    - Identify an area of law which they believe warrants reform.
  - Seminar presentation:
    - Likes themes in movies.
  - Recent development:
    - Journal of Bioethical Inquiry (JBI).
  - Optional research paper: 40%
    - 28th September 3000 words
  - Take-home exam:
    - 70% or 30%
  - Class participation: 10%
    - Active participation needed.

- Issue 1:
  - Should we permit whole genome sequencing of a human child
  - You know what they have a propensity for illness wise.
  - Choose whether or not to inform the child of this during their life.

- Issue 2: Body dysphoria:
  - Two forms. The more ‘common’ type consists of people believing a limb does not belong to them.
  - When amputation is refused, they’ll dismember themselves.
    - Argument against it is this is a psychological problem and so no surgery should be performed.
  - Extreme form is they believe they’ll never receive sexual gratification so long as that limb is still attached.
  - Not medically/physically indicated – a psychological condition.

- Issue 3:
  - Profoundly ill baby. Further treatment futile. Should treatment continue at request of family? Who should decide when to discontinue treatment? Family/next of kin/treating team.

- Issue 4:
  - Should we permit the sale of human tissue? Hair, blood, reproductive organs, non-vital organs. Or is there a line that should be drawn?

- Issue 5:
  - Should an adult be able to refuse life-saving medical treatment on religious grounds. For themselves or their child?

- Issue 6:
  - Should we allow the practice of guinea pigging? Paid to participate in risky medical research. Ethically and legally acceptable?

- How should the law respond to the ethical dilemmas thrown up by the practice of medicine?
  - Inextricably linked (Bernadette).
  - Supported by Kennedy and Grub (pioneers in this area)
• Common issues:
  o Respect for autonomy
  o Consent
  o Truth telling
  o Confidentiality
  o Respect for: persons, dignity and justice

• Rights v duties:
  o Doctors have duties and patients have rights
  o Doctors have rights and patients have duties.

• Don’t want an opinion piece.
  o Need to be able to argue why.
  o Basic broad brush statements not enough.
  o A rational explanation for your ought is required. Frame it within some sort of persuasive argument.

• Consequentialism:
  o Where we are going. What the outcome of an action is.
  o **Consequentialism**: or teleological ethics from the Greek work telos which means *ends*
    ▪ It considers the practical outcomes or ends of the decision
  o **Classical utilitarianism** – weighing up the happiness and suffering caused to all relevant parties by any particular decision
    ▪ Who is affected here? Who can benefit? Who can suffer?
  o Baby without a brain but with a brain stem – discovered late in the pregnancy but offered a termination (baby doesn’t live very long at all)
    ▪ Someone advised mother to go through with the pregnancy and donate the organs.
    ▪ C section to ensure the viability of the organs.
    ▪ Hospital said they couldn’t accept organs because the baby was not yet dead. (but would be)
      • Brain function tested by the brain stem – the only thing the baby had.
      • Denied.
  o Greatest good would be to allow the donation for the use of those organs in other babies in need.
    ▪ Parents would have closure, babies lives would have been saved
  o What counts as good?

• Rule based models:
  o Deontological approach: from the Greek *deon* which means duty
  o Which is the relevant duty or principle to apply? It is wrong to kill? Sanctity of All Human Life? Respect for persons?
  o Also intrinsicism – intrinsic rules.
    ▪ Things are in and of themselves intrinsically right or wrong.
    ▪ May be hard to find justification (‘this is just wrong’).

• Kant’s categorical imperative:
  o Only act as if that decision will be applied universally:
    ▪ Taking organs from the ^ baby that wasn’t legally dead > taking organs from anyone that isn’t legally dead.
    ▪ Take organs from anyone.
  o Animals possess no moral significance.
  o We must treat other humans always as an end and never as a means only.
Baby would have existed as a means to an end. No intrinsic worth. We need to respect her as she is a human and was technically alive. Although – No goals, aspirations, sentience.

- Sanctity of life v right to choose what is done to ones’ body:
  - Sanctity of life trumps autonomy.
  - Hierarchy of the basic, absolute foundational principles.
- Utilitarianism sometimes conflicts with rights.
- Law takes a minimalist perspective – promotes human autonomy.
- Ethics in medicine traditionally rule based rather than utilitarian:
  - Do not harm the patient (non-maleficence)
  - Do not intentionally kill the patient (sanctity of life)
  - Do good for the patient (beneficence)
  - Treat patients impartially (justice)
Readings
Textbook: Chapter 1 – Introduction to Medical Ethics

Ethical Theories

- Consequentialism (utilitarianism):
  - Moral rightness or wrongness depends upon consequences.
  - For utilitarianism, the relevant consequences have to do with welfare.
  - Bentham: utilitarianism focuses on maximizing pleasure and minimizing pain.
  - Mill reforms this view with the Greatest Happiness Principle: an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality.
    - Such an existence should be to the greatest extent possible, secured to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation.
  - Common features across varying theories of utilitarianism:
    - Comparative and maximizing: whether a given choice is right or wrong depends not just on how much welfare it would bring about, but on how much it would bring about compared to the available alternatives.
    - Impartial: Mill: as between his own happiness and that of others, utilitarianism requires one to be as strictly impartial as a disinterested and benevolent spectator.
    - Expected outcomes: what we should reasonably expect to happen as a result of our choice, rather than what actually happens as flukes and accidents can occur.
  - Rule utilitarianism:
    - Thinking about what rules or policies would produce the best outcomes.
    - We ought to determine the set of rules which would lead to the best consequences (in comparison to the other possible sets of rules) and then follow those.
    - In exceptional circumstances (where we don’t have a relevant policy or rule), we should still think about which act to perform, but much of the time we can simply aim to follow the best policy, rule or guideline.
  - At all times, the focus is on consequences.

- Deontology:
  - There are fundamental principles, grounded in our status as rational agents, that determine what we ought and ought not to do.
  - Consequences are completely irrelevant when determining whether a particular action is right or wrong.
  - Fundamentally believe there are certain rights and duties that arise from our status as rational agents.
  - Kant’s Categorical Imperative: consisted of several formulations
    - Universal Law formulation: act only according to that maximum by which you can at the same time will it become a universal law.
      - ‘If I am following a maxim that could not be similarly followed by all other rational agents, I am doing something morally wrong’.
    - Formulation of Humanity: do not treat others as mere instruments for fulfilling ones’ own goals and interests.
  - These duties and rights apply regardless of the consequences of following them – no lying, even if it would produce the most welfare.
  - Kant was an absolutist, holding that there were not exceptions (truthfully answer a murderer who asks you whether their intended victim is at home).
Modern deontologists agree there are some exceptions where the consequences would be disastrous.

- **Virtue ethics:**
  - Focuses primarily on character.
    - Question is not what I should do, but what kind of person should I be.
  - If a person is virtuous, the right action will follow.
  - Began with Aristotle.
  - Central concern of ethics should be with the development of virtuous character traits, such as honesty, generosity, courage, integrity and conscientiousness.
  - The right thing to do is what a virtuous person would do in the circumstances.

- It is perfectly acceptable to combine the insights of the above theories.

Beauchamp and Childress’s four principles of biomedical ethics

- An analytical framework intended to express general norms of the common morality that are a suitable starting point for biomedical ethics.

1. **Beneficence:**
   - Doing good and acting in the interests of others.
   - Doctors should aim to do a patient good. Promoting the patient’s welfare – not merely avoiding harm – embodies medicine’s goal, rationale and justification.
   - Contrast utilitarianism:
     - Utilitarianism is a general theory about the fundamental grounds of morality, whereas beneficence is a role responsibility for doctors.
     - Utilitarianism tells us to maximise the welfare of everyone affected by the decision, whereas beneficence tells us to aim for the good of a particular person/s.
       - Rule-utilitarianism justification: overall, the welfare of everyone affected (society) is likely to be maximised by having all doctors follow a more restrictive rule to promote the welfare of their patients.
   - Requires more than just knowing the medical facts; it also requires us to know something about the patient: their concerns and fears, what they value and care about, what they believe and how they understand the various options before them.
   - This does not mean beneficence requires the goal or aim should be pursued no matter what. The other three principles act as constraints that need to be considered when pursuing the patient’s good.

2. **Respect for autonomy:**
   - Autonomous choices are choices that reflect the person’s own decisions and preferences; they are choices free of interference by others.
     - It must be intentional, voluntary, and informed.
     - We generally presume that normal adults are autonomous, and that their choices are also autonomous, unless we have good reason to believe otherwise.
   - Seen as a deontological principle.
     - We are obliged to respect their rational agency, even if it prevents us from promoting their welfare.
       - It prohibits certain actions even if they are in the patient’s interests.
     - Doctors must also enable autonomous choice by providing relevant information and assistance in decision-making.
   - **Paternalism:**
     - Where someone acts beneficently but without considering the other person’s own preferences.
• Paternalistic action is not necessarily against the other person’s wishes, but is without consideration of those wishes.
  ▪ Presumptively unjustified – presumed unacceptable unless we have very good reasons to doubt that presumption
• Action is only paternalistic if it involves interference for the ‘interferee’s’ own good.
  ▪ If we are interfering with Person A’s choices in order to prevent harm to a third party, Person B, this is not paternalism, and it is much easier to justify (the idea that we can interfere with choices to prevent harm to a third party is known as the Harm Principle).
• Presumption against paternalism only applies if the person’s choices are in fact autonomous – interference is acceptable if the person is not autonomous. That is, the least restrictive alternative should always be preferred.

3. Non-maleficence:
  o Principle that states we should avoid doing harm.
  o Unclear whether this is a part of beneficence:
    ▪ If a doctor acts beneficently towards a patient, they are ipso facto not acting maleficently.
  o The potential for harms should be balanced against the good to the patient.

4. Justice:
  o Kerridge et al:
    ▪ Refers to standards and expectations which any society holds concerning relations between the members of that society; and the rights and services that are due to any member of that society.
    ▪ Distributive justice – our resources are finite and we cannot give everyone every possible benefit.
      ▪ Rule-utilitarianism: the outcome in terms of overall welfare would be worse if all doctors blindly maximised their patients’ interest – the strain on the healthcare system would be too great.
      ▪ Deontological point of view: the maxim ‘always advocate for your patients’ best interests without regard to considerations of justice’ can’t be consistently followed by all doctors – if they all tried, there would not be enough to go around.
      ▪ Virtue ethicist: doing the above is not indicative of practical wisdom and probably not a good character trait.
  o Also consider discrimination.

Ethical decision-making framework:
1. Identifying ad describing options
   a. What courses of actions are available
      i. Consider what the patient (and/or their family) requesting; what is medically indicated
   b. What are the intended and foreseeable outcomes from each of these options?
2. Reasons for particular options
   a. Using ethical theories and principles, consider what reasons exist in favour of each option:
      i. What are the doctor’s legal obligations
      ii. Beneficence: what is in the patient’s best interests, bearing in mind their own values, concerns and goals?
      iii. Respect for autonomy: what does the patient want?
      iv. Justice: what would be an equitable and fair use of resources?
      v. Utilitarianism: what would have the nest expected consequences for everyone affected (patient, family, community, physician)?