8 Legal Myths – Termination of Life Support Treatments

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Learning Objectives

- Understand the ethical principles involved in determining beneficial and nonbeneficial care.
- Define “capacity” to make decisions vs. “competence”.
- Discuss and understand the 8 legal myths regarding termination of life support treatments.
- Identify at least three ways in which to support caregiver decisions at the end of life.

Ethical Decision Making Skills

- Autonomy
  - Ability of the person to choose and act for one's self *free* from coercive influences
    - coercion from physician, nurses, consultant
    - coercion from family members
    - coercion from religious dogmas, interpretation
  - Ability to make decisions based upon our personal values and pertinent information, which will enhance our personal growth.

Ethical Decision Making Skills

- Respect for autonomy requires:
  - Honoring each person's values and viewpoints
  - Listening to the other person as they share their values, choices, and questions
  - Assess the person's capacity to make autonomous decisions.

Ethical Decision Making Skills

- Elements of Capacity to Make Decisions
  - Person appreciates that there are distinctive choices
  - Person is able to make choices
  - Person understands the relevant medical information – dx, prognosis, risk/benefit, alternative treatment choices, including refusal
  - Person appreciates the significance of the medical information in light of her own situation and how that influences her current treatment options

Ethical Decision Making Skills - Capacity

- Person appreciates the consequences of the decision
- Person's choice is stable over time and is consistent with the person's values/goals

- Self-determination:
  - Decision to accept or decline treatment rests with the patient
  - Right to refuse treatment is stronger than to demand treatment be provided.

Ethical Decision Making Skills

- If patient lacks capacity - -
  - Follow advance directive statements
  - Discover from DPOA-HC goals of patient
  - Discover from family members goals of patient
  - Act in patient's best interests
- Corollary Principle –
  - Responsibility and accountability of both the physician and patient to each other and larger society.
- Competence –
  - Legal definition of ability to make decisions on one's behalf

Beneficial And Nonbeneficial Care

- Beneficial Care
  - Care which is consistent with goals and values of the patient
  - Care which will provide benefit to the patient:
    - Enhance health and well-being of the patient
    - Provide cure
    - Provide comfort, relief from symptoms
    - Restore the patient to healthier condition
    - Not harm them or cause suffering
    - Not prolong dying process

Nonbeneficial Care

- Nonbeneficial Care - -
  - Does not meet any goals of the patient
  - Causes harm to the patient, e.g., burdensome side effects, death
  - Will not restore health or quality of life to the patient
  - Prolongs the dying process
  - Misuse of healthcare resources

Ethical Decision Making

- Justice – consider our individual decisions in context of the greater society
  - Each of us is an integral and interrelated part of society
  - What I choose and how I choose has an influence beyond my own personal sphere
  - Responsible for the health status of the community

Eight Legal Myths

- Anything that is not specifically permitted by law is prohibited
  - Courts have long recognized and prefer that decision be made between patients and their physicians
  - Courts do not want to legislate medical decisions
  - Impossible to anticipate every possible intricacy of human behavior
  - Legalism kills the spirit of moral conversations

Eight Legal Myths

- Termination of Life Support is Murder or Suicide
  - Patient's medical condition is cause of death
  - Intent is relief of suffering and to not prolong the dying process
  - Right to refuse medical treatment
- Physicians have no obligation (no duty) to provide care that the patient does not choose, or that is non-beneficial care.
- Legal surrogates, if authorized by the person or an A.D. are able to authorize stopping life support treatments.

8 Legal Myths

- Patient must be terminally ill for life support to be stopped
  - Courts began to recognize complexities of making treatment decisions in the 1980's.
    - Quinlan and Cruzan cases
    - Bouvia Case
    - Mark Ramsey Case
  - Distinction between curing the ill and comforting the dying
  - Quality vs.. quantity of life – patient's goals and values
- U.S. Supreme Court decision in Cruzan case
  - Competent patients have a right to refuse any treatment

8 Legal Myths

- It is permissible to terminate "extraordinary" treatments, but not "ordinary" treatments.
  - Patients are not obliged to accept "ordinary" or "usual' treatments.
  - Too many conflicting meanings of extraordinary and ordinary.
  - Better ethical framework –
    - Benefits vs.. burdens
    - A.D. to express patient's values and reasons

8 Legal Myths

- It is permissible to withhold treatments, but once started, it must be continued.
  - There is no legal requirement to continue nonbeneficial care or treatments.
  - Acknowledge that we are witnessing the natural course of this disease process.
  - Medications are chosen and titrated to provide comfort and relief of sx (pain, dyspnea).
  - There is no legal restrictions on the proper use of opiates, including high doses, for relief of suffering and intractable symptoms.

8 Legal Myths

- Stopping tube feeding is legally different from stopping other treatments.
  - Every appellate court case, Cruzan U.S. Supreme Court case,AMA, Am Acad of Neurology, ANA, AAFP, AAHPM all agree that art nutrition and hydration is a medical treatment and can be refused by a competent patient.
  - Emotional symbolism of food.
  - Treatment decision in context of the disease process or the dying processes.

8 Legal Myths

- Termination of Life Support requires going to Court.
  - Judicial action is not required.
  - Many states (including Maryland), have statutes that specifically authorize the physician select a surrogate decision maker from among close family members.
  - Can use the family member who is at the bedside vs.. the older child who is in CA.
  - Courts have deferred to the customary practice of decision making by physicians and the patient with capacity to make decisions.
  - Prudent to go to court when
    - there is insoluble disagreement between the family and the treating team.
    - Conflict of interest between surrogate and the patient.

8 Legal Myths

- Living Will are not legal
  - Can be oral or written
  - Needs to be authenticated by patient or surrogate
  - Needs to be clearly written
  - Needs to be written with the advice and knowledge of primary treating physicians
  - Combine with trusted person as DPOA-HC
  - Review it regularly and amend it as needed

An Approach to discussing treatment choices

- Choose an appropriate setting for the discussion.
- Make arrangements for all appropriate persons to be in attendance.
- Briefly outline the purpose of the conference as you understand it. Ask for other agenda items.
- Elicit from family members their understanding of patient's dx, tx, and prognosis.
- With input from other nurses, physicians, etc, add any key points that the family omitted or did not know. Seek agreement from all at meeting regarding the "true facts" of patient's conditions.

Treatment Discussions

- Discuss beneficial treatment options
  - Comfort care and withdrawal of life support
  - Time limited trials of treatments
  - Maximal life support treatments
- Time limited trials
  - Need goals of care.
  - Need to know that if goals are not achieved, then life sustaining treatments will be discontinued.
  - Be sure that plan of care is one that the nurses, resp therapists and physicians are willing to provide.

Treatment Discussions

- Elicit from family their understanding of the patient's values, treatment goals, context of care.
- "What do you think are the benefits of continuing "x" treatment?"
- "Have other relatives been in a similar situation?" "What did this patient think about that situation?"
- As clear preference emerges – gather consensus for treatment approach and choices.

Treatment Discussions

- If disagreements occur - -
  - Label the viewpoint
  - Assess whether or not a compromise or resolution can happen
    - “We have a disagreement about what form of care for “X” is best under these circumstances. I know that you both love “X” very much. Do you see any way that we can come to a better understanding of what is “best” for “X” and provide care that is dignified, loving, and provides the care you want for “X”?”

Treatment Discussions

- Throughout the meeting - -
  - Acknowledge how difficult it can be to have such discussions
  - Offer appropriate emotional support
  - Share with them that they are helping the medical and nursing staff by sharing what the patient's choices would be in this situation
  - Acknowledge that they are showing their love for the patient in a very practical and caring manner

  - MOST IMPORTANTLY –
    - The family did not themselves choose to shorten loved one's life or withdraw "care"…
    - They helped the care team understand the patient's values and choices for care. The patient chose the treatment choices.

Summary

- Discussed the ethical principles needed to frame the conversation regarding beneficial and non beneficial care.
- Defined capacity for decision making in contrast to competence.
- Discussed the 8 legal myths . . .
- Shared a conversational framework for discussion of withdrawal or withholding LST's with patients and family members.