Withdrawal of Life Sustaining Treatment: Ethical and Legal Implications

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Conflict of Interest Disclosure

Marci Bennett certifies that, to the best of her knowledge, no affiliation or relationship of a financial nature with a commercial interest organization has significantly affected her views on the subject on which she is presenting.

Objectives:

- Examine the literature on ethical, legal, and psychological implications for healthcare providers involved with withdrawal of life sustaining treatments.
- Differentiate the role of the critical care nurse, the physician and the Bioethics team when dealing with families making end of life decisions.
- Explore the personal impact of withdrawing life sustaining treatment on the various members of the healthcare team and the family.
A Question of Ethics

- A branch of philosophy focusing on the moral life
- Not absolute and do not have clear answers
- Laws are guided by societal norms and morals that define culture’s perception of right and wrong
- Ethics are generally the basis of right and wrong which guides the formation of societal law

Common Ethical Misperceptions

- Withdrawal of life sustaining treatment is patient abandonment
- Foregoing life sustaining treatment violates the principal of beneficence
- There is a difference between withholding and withdrawing life sustaining treatment
- It is unethical to administer sedatives/analgesics to dying patients
- It is easier to “withhold” treatment than it is to “withdraw” treatment

Ethical and Religious Directives for the Catholic Healthcare Services

- Directive 56: A person has a moral obligation to use ordinary or proportionate means of preserving his/her life.
  - That which offers reasonable hope of benefit and do not entail excessive burden or expense on the family or community
- Directive 57: A person may forgo extraordinary or disproportionate means of preserving life.
- Directive 58: There is an obligation to provide food and water including medically assisted.
  - Becomes morally optional when they cannot reasonably be expected to prolong life.
The Legal Cases on the “Right to Die”

- Karen Ann Quinlan; 1975
  - Unresponsive after drinking and sustained severe hypoxic brain injury
  - Parents petitioned by have ventilator removed
  - Court appointed guardian for Karen argued that the parents had no right to propose “euthanasia”
  - Parents lost in Superior Court but won in the New Jersey Supreme Court
  - Removed from ventilator but received artificial nutrition and hydration for 9 years before her death
- Karen’s Legacy:
  - Set precedent and established the creation of bioethics committees, advanced directives, and health care proxies

The Legal Cases on the “Right to Die”

- Nancy Cruzan: 1983
  - Car accident and sustained severe hypoxic brain injury
  - Parents requested removal of artificial nutrition but the hospital refused
  - Missouri trial court agreed with the parents but a Guardian ad litem appointed appealed along with the state
  - Supreme Court of Missouri reversed lower courts decision
    - Agreed she was in a “persistent vegetative state” but was neither dead within Missouri’s policy favoring preservation of life nor terminally ill
    - Conversation with housemate was an unreliable for the purpose of her intent thus insufficient to support her parents claim
- Nancy’s Legacy:
  - Missouri law now upholds healthcare directives (but not living wills) to instruct removal of medically assisted hydration and nutrition be removed after diagnosis of permanent or vegetative state

The Legal Cases on the “Right to Die”

- Nancy Cruzan: 1983 (cont)
  - The United States Supreme Court upholds the ruling
    - Due process was not violated that an incompetent person’s wishes be proved by clear and convincing evidence
    - 1990: After further witnesses satisfied Missouri courts that clear and convincing evidence of Nancy’s wishes did exist artificial nutrition was removed
- Nancy’s Legacy:
  - Missouri law now upholds healthcare directives (but not living wills) to instruct removal of medically assisted hydration and nutrition be removed after diagnosis of permanent or vegetative state
The Legal Cases on the “Right to Die”

- **Terry Schiavo**: 1990
  - Cardiac arrest from eating disorder and sustained severe hypoxic brain injury
  - In 2001 husband requests to stop artificial nutrition and enters lengthy court battles with Terry’s parents
  - The Florida Trial court agrees with husband which is upheld by Florida Second District Court of Appeal
  - Appeals to the Florida Supreme Court and the United States Supreme Court were denied
  - Feeding tube was removed in 2001 and 2003 and reinserted based on husband and parents disagreement on what was considered “clear and convincing evidence”

The Legal Cases on the “Right to Die” (cont)

- **Terry Schiavo**: 1990 (cont)
  - 2003 trial court ruling was affirmed by the Florida appeals court and denied a hearing by the Florida Supreme Court
  - Florida legislature created “Terri’s Law” to override the court’s decision
  - 2005 “Terri’s Law” was declared an unconstitutional violation of the separation of powers
  - March 2005 the feeding tube was removed for the 3rd time
  - U.S. Congress passed an “emergency measure” signed by the President in an effort to create a legal mandate
  - U.S. District Court of Florida denied the request and their ruling was upheld in appeals.

The Case of Futility Versus Medical Malpractice

- **Gillgunn**: 1989
  - 71 year old patient who had multiple medical problems and history of falls
    - Diabetes, coronary artery disease, and Parkinson’s
  - Patient fell at home and daughter delayed seeking medical care at her mother’s request for weeks
    - After hospitalization patient develops grand mal seizures and extensive hypoxic brain injury
  - Physicians removed patient from ventilator over the objection of the family’s designated spokesperson
    - Received approval from hospital’s bioethics committee and legal council
The Case of Futility Versus Medical Malpractice

- Gilgunn: 1989 (cont)
- Daughter sued for malpractice and the jury found in favor of the hospital and physician
  - Courts stated that even if the patient had chosen to have resuscitative measures the results would have been futile
- Courts almost uniformly order continued treatment when asked to resolve disputes between families who favor treatment and physicians who oppose
- Gilgunn case demonstrates better legal results in physicians refusing to provide nonbeneficial treatment consistent with professional standards

The Legal and Ethical Aspects

- Most patients who die in ICU’s in the United States do so during withholding/withdrawal of life support
- These practices are legally justified by the principles of:
  - Informed consent and informed refusal
- These practices are supported by the ethical principles of:
  - Autonomy: Patient has right to refuse or choose treatment
  - Beneficence: Act in the best interest of the patient
  - Non-maleficence: First do no harm
  - Justice: Distribution of scarce health resources

Hippocratic Oath: “Do No Harm”

- Physician’s moral dilemma over “withdrawing” treatment versus “withholding” treatment
- What is futile care?
  - An intervention that would be highly unlikely to result in a meaningful survival for the patient
- Multiple physician consultants and who addresses the “big picture”
- Nursing and other healthcare disciplines often have different views than physicians
- Physicians typically not the person to actually withdrawal life sustaining treatments
The Nightingale Pledge:
“Devote Myself to the Welfare of Those in My Care”

- “Caring” model of nursing
- Disagreements between nursing and physicians
- Main communicator with families
- Lack of educational curriculum and continuing professional education on end of life care
- Moral distress for nursing
  - Inability to influence decisions
  - Providing aggressive care to patients who are not benefiting from such care
  - Dealing with conflicts among family members
  - Terminating treatments

Principles of Withdrawing Life Support

- Remove life-sustaining treatments that are no longer desired or do not provide comfort to the patient
- Any treatment can be withheld or withdrawn
- When circumstances justify withholding or withdrawing “one” life sustaining treatment consider “all”
- Actions whose sole goal is to hasten death are morally and legally problematic

Principle of Double Effect

- Pain control is justified under this principle
  - Distinguishes effects are intended from those that are foreseeable though unintended
- Administration of narcotics in patients in whom ventilatory support is removed upholds this principle
  - The intention is to control the patient’s discomfort even if death may occur as a consequence of pain control
- Catholic Directive 61: Allows pain medicine even if indirectly shortens life
- Supreme Court: 1997 Gluckberg and Vacco distinguishes between assisted suicide and palliative care
Bioethics Consults:  
The Major Causes of Conflict

- Lack of effective communication  
  - Most important but least well accomplished
- Lack of emotional support  
  - Stress, guilt, and doubt about decisions
- Personal values and moral dilemmas  
  - Family and significant others, physicians, nursing, other healthcare team members

Bioethics Committees:  
A Benefit to Patients and Hospitals

- Allows physicians, nurses, healthcare team, and most importantly the patient/family to have a voice
- Takes the burden off the “bad guy” who is in dispute with decisions made by others
- Defines a detailed process for all parties and allows all parties voices to be heard
- Allows a medical and legal perspective to be heard

The Bioethicist “Ice Breaker” Questions

- Tell me about your loved one?
- What were they like?
- What were their dreams?
- What were their goals in life?
- Did they ever discuss the end of their life?
- What do you think they would want?
Bioethics Case Studies

- 25 year old with leukemia
  - Illegal alien
  - Less than a 1% chance of remission/survival
  - Medical bills in excess of $500,000
  - Do you continue treatment?

- Dialysis patient
  - Prolonged hospitalization for pneumonia
  - Acute renal failure with hemodynamic instability
  - Dialysis nurses morally in disagreement with family
  - Family and hospital attorneys involved with final decision

The Aftermath of Ethical Dilemmas

- Formal scheduled debriefing sessions
- Support from leadership to the staff
- Support from spiritual care and EAP
- Allow staff time to grieve
- Physicians response may appear to be different
- Unresolved moral distress can lead to stress, frustration, anger, sadness, helplessness, and decisions to leave healthcare
Withdrawal of Life Sustaining Treatment: Ethical or Legal??

- A challenging and difficult decision for all parties
- Advanced directives
- Living wills
- Healthcare representative
- Have you stated your wishes?
- Will your family be faced with the unknown if you don’t speak up now?

Questions and Discussion

- Thank you for allowing me this opportunity.
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