PHYSICIAN ASSISTED DYING: DEFINING THE ETHICALLY AMBIGUOUS

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Abstract: In states where Physician Assisted Dying (PAD) is legal, physicians occasionally receive requests for this form of end-of-life care. Here, I describe the ethically ambiguous sphere and why PAD falls into it. I argue that, given the ethical ambiguity of PAD, physicians should consider patient autonomy as the highest value in the four principles approach and act as informers and educators.

INTRODUCTION

Physician Assisted Dying (PAD), or Physician Assisted Suicide (PAS), is legal in a few states. The most notable example of PAD legislation is in Oregon via the Death with Dignity Act of 1997. This act makes it legal for a physician to prescribe lethal medication to competent adult patients who have a terminal illness and are within six months of dying (Dahl and Levy 335-338; O'Brien, Madek, and Ferrera 329-365). In states where PAD is legal, doctors must decide how to respond to requests for more information on PAD. This decision can be difficult for three reasons: PAD is legal but not required, there is no agreement across society if PAD is ethical, and there is no consensus in the field of medical ethics about how doctors should respond. I argue that, for these three reasons, physicians in states where PAD is legal should honor patient autonomy by taking on the roles of informers and educators and by allowing the patients to decide which course of action they prefer.

First, I will discuss a hypothetical case published in the *AMA Journal of Ethics* titled "Physicians' Role in Physician-Assisted Suicide Discussions" (Johnston and Bascom). Second, I will introduce the ideals of the four principles approach: justice, beneficence, nonmaleficence, and autonomy (Beauchamp and Childress 417). Third, I will describe why a framework is needed to rank the four principles when two or more are in conflict. I will then describe three spheres of ethics: the unambiguously ethical, the unambiguously unethical, and the ethically ambiguous. In the following section, I will describe why PAD falls into the ethically ambiguous sphere. Next, I will describe why, given the ethical ambiguity of PAD, patient autonomy must be considered superior to maleficence, beneficence, and justice and why, in this sphere, doctors should take on the roles of informers and educators. I will then describe a probable objection and end with an analysis of what would have happened in the hypothetical case if Dr. Ferris had understood the relationship between the physician and the ethically ambiguous.

CASE SUMMARY

The *AMA* case presents a physician responding inadequately to a patient's request for more information on PAD. In the case, Dr. Ferris' patient asks to be prescribed life-ending medication. The patient, JohnathanWitlaw, is in the late stages of amyotrophic lateral sclerosis (ALS), a neurodegenerative disease. Mr. Witlaw only has a few months left to live, and during his final few weeks, he will likely experience a complete loss of mobility and the ability to communicate. Mr. Witlaw does not seem highly informed about the options available to him for end-of-life care, but Mr. Witlaw gives a few arguments for the decision to end his life and says he believes that in his circumstance, the request is "a sane one" (Johnston and Bascom). The conversation ends awkwardly when Dr. Ferris tells Mr. Whitlaw that although he cannot argue with any of his points, he believes it is against his duty as a physician to prescribe medication to end his patients' lives. Dr. Ferris should have begun by discussing other options for end of life care, and, if pressed, he should have directed Mr. Witlaw to someone else who could provide more information about PAD. Dr. Ferris failed to see the ethical ambiguity of PAD, and by

refusing his request and stopping the conversation, he effectively forced his personal belief about PAD onto Mr. Witlaw.

THE FOUR PRINCIPLES APPROACH

To understand why Dr. Ferris should have taken on the role of an informer, I will begin with the four principles approach, one of the main ethical guides used in medical ethics (Gillon 307-312). It is based on the four principles of beneficence, non-maleficence, autonomy, and justice. Beneficence is the act of doing good for the patient, and non-maleficence is the act of not causing further harm to the patient. Autonomy is the freedom a patient has to make a decision based on whatever value he or she wants. Justice is the philosophical consideration of deserts, i.e. what is fair or what a person deserves. The four principles approach weighs each of these principles in order to form an ethical decision.

The four principles approach is a common and well respected approach in medical ethics (Page 9-10). The four principles are useful as a starting point to develop an argument in medical ethics because of the generalizable nature of the principles, but problems arise when two or more of the principles are in apparent conflict with each other (Gillon 111-116). For example, in the hypothetical case there is a conflict between nonmaleficence and autonomy. The physician's desire not to cause physical harm to the patient is in conflict with the patient's desire not to suffer at the end of his life. When the principles are in conflict with each other in this way, there must further clarification to allow the broad principles to be useful in a particular situation (Beauchamp 3-5). In this circumstance, I propose that they must be ranked, and a decision must be made based on the highest principle. As I will show in the next section, the four principles should be ranked differently depending on which sphere the ethical problem falls into.

THREE SPHERES OF ETHICS

In order to narrow down how one should use the four principles in this situation, I propose three loosely defined spheres of ethics: the unambiguously ethical, the unambiguously *un*ethical, and the ethically

ambiguous. Within each sphere, autonomy occupies a different role in the hierarchy of the four principles. Within the sphere of the unambiguously ethical or the unambiguously unethical, autonomy cannot be ranked at the top of the four principles. Take the ethically unambiguous situation of a minor suffering from a potentially life-threatening but curable bacterial infection. This case falls into the sphere of the ethically unambiguous because it is non-controversial to say that the child should immediately be prescribed the relevant antibiotics. In this simple case, neither the autonomy of the minor nor his or her parents' autonomy is taken as the foremost value. Clearly both beneficence and justice outrank autonomy in this example and in other similarly intuitive examples. Healing the child and understanding that it is unfair to let a child suffer are more important than adhering to the subjective desires of the child or the parents.

Within the sphere of the unambiguously *un*ethical, autonomy should also not be taken as the foremost value. For example, take the case of a patient requesting opioids without any need for them. It is unambiguously unethical to prescribe opioids to a patient who does not need them because they are highly addictive and potentially lethal (Weiss and Rao 54). In this simple case, it is non-controversial to say that the patient's autonomy is outranked by values of non-maleficence and justice.

These two examples present situations that are unambiguous, either ethically or unethically. The spheres of the ethically unambiguous and unethically unambiguous are characterized by the agreement of society, medical ethics, and the law. In the example of the sick child, the intuitions of society, medical ethics, and the law all align. A physician is legally and ethically obligated by society and by the ethics of medicine to help the child (Harrison 99-114). In the example of the unambiguously unethical, public opinion, the field of medical ethics, and the law all agree that the harms to a society of loosely prescribing opioids outrank the autonomy of any one individual (King et al. 32). Both of these examples are in contrast to the sphere of the ethically ambiguous.

Ethical questions in the sphere of the ethically ambiguous are characterized by ambiguity across three domains. First, they are

ambiguous because they are legal but not required. Second, they are characterized by a lack of a societal consensus as determined by polls. Third, they are ambiguous because there is no clear consensus across the field of medical ethics on how a physician should behave. Doctors are often faced with navigating the sphere of the ethically ambiguous, and they must decide what to do when their preferred course of action is not what the patient wants. Take the example of a doctor whose patient refuses to receive a hip replacement despite the doctor's belief that doing so would increase his or her quality of life. There is no legal imperative, societal imperative, or any consensus in the field of medical ethics requiring a doctor to perform this surgery ("American College" 19-34). Given these three qualifications, we can deduce that such a case falls into the sphere of the ethically ambiguous and that the patient's autonomy outranks the other values.

PAD is, at present, ethically ambiguous for the three aforementioned reasons: it is legal but not required, public opinion on PAD is split, and there is no clear consensus across the field of medical ethics. This analysis assumes the physician is in a state where PAD is legal, such as Oregon. National polls reveal that support for PAD has been split since the 1990s (Emanuel et al. 79-90; White III 247-257), and within the field of medical ethics, there is, at present, no clear consensus on how physicians should handle PAD requests (Emanuel et al. 79; Dickinson et al. 43-52). Given the ethical ambiguity of PAD, the physician should take the role of the informer and educator and leave the decision to the patient. The physician should rank the value of autonomy as chief among the four principles.

PROBABLE OBJECTION

Some have suggested that a problem with ranking autonomy above the other values in the four principles approach is that it leads to moral relativism (Gillon 307-312). For example, one could imagine making the claim that PAD for non-terminal patients is ethically analogous to PAD for terminal patients because they can both be justified by citing patient autonomy. However, a closer look at PAD for non-terminal

patients reveals that it fails all three of the qualifications to be considered ethically ambiguous. It is illegal in every state in the United States (The Patients' Rights Council), polling data indicate that most Americans condemn suicide by non-terminal patients as immoral (Rottman, Kelemen, and Young 217-226), and the field of medical ethics condemns this practice (Nunes and Rego). PAD for non-terminal patients falls into the category of the unambiguously unethical, and in this domain, autonomy cannot and should not outrank the other three values. Autonomy should not always be ranked as the highest value in medicine, but if it is limited to the sphere of the ethically ambiguous, it can help to navigate away from the other extreme of moral imperialism (i.e. situations where physicians force their opinions on patients) (Gillon 307-312). Further, autonomy is central to the practice of ethical medicine and plays a part in almost every common theory in modern medical ethics (Cook et al. 1615-1620; Taylor 1-9). Any major critique of autonomy would therefore have to be significant in order to change the established role of autonomy in medicine.

CONCLUSION

In the case study previously mentioned, Dr. Ferris stops the conversation about PAD and effectively forces his belief about PAD on his patient. What Dr. Ferris has failed to realize is that PAD falls into the realm of the ethically ambiguous. The ethical ambiguity of PAD changes the ethical obligation of Dr. Ferris from informing his patient about *the* way forward to informing his patient about the *possible* ways forward. In other words, the autonomy of Mr. Witlaw is superior to the preferences of Dr. Ferris in the sphere of the ethically ambiguous. Dr. Ferris may voice his opinions about PAD, and he may even refer Mr. Witlaw to another physician, but he must ensure that that his patient's autonomy is respected above other principles.

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