WHEN INDIVIDUALS CHOOSE TO LIVE AT RISK

WHAT IS AN ETHICAL AND LEGAL APPROACH TO INTERVENTION?

Geriatrics Services Conference 16th Annual
Connect, Collaborate, Create
April 12, 2019   Vancouver, BC

Jenny Young, MSW, MA, Director of Ethics Services, Providence Health Care
Adjunct Professor, UBC Faculty of Medicine

Gerrit Clements, JD, Barrister and Solicitor
Adjunct Professor, Schools of Nursing, UVic. and UNBC

With thanks to: Bethan Everett, MBA, PhD, Ethicist, Vancouver Coastal Health
Clinical Professor, UBC Faculty of Medicine
LEARNING OBJECTIVES

• Describe components of complex situations when individuals choose to live at risk

• Discuss how these risk situations can be approached using an ethical perspective

• Determine which legal solution best fits the particular fact situation
OUTLINE

• What we are talking about

• Who we are talking about

• Complexities of these situations

• Ethical process of decision-making

• Legal considerations
WHAT IS LIVING AT RISK?

Acting in a way that has potential to negatively impact the person (risk to self) or others (risk to others) in physical, emotional, or psychological ways.
WHO ARE WE TALKING ABOUT?

• Yu Yan and community outings alone

• Stuart and eating when at risk of aspiration

• Susan who wants to return home from hospital although she is at medical risk

• Cameron who refuses home support to care for his wounds and help him bathe
WHY DO WE STRUGGLE WITH THESE SITUATIONS?

1. Respect for individual autonomy
2. Assessment is complex
3. Determining what is “too risky”
4. HCPs are trained to focus on safety
5. Harming patients is contrary to codes of ethics
6. Our own anxiety and biases
7. Concerns about legal issues
HOW MIGHT WE APPROACH THESE CASES AND COMPLEXITIES FROM AN ETHICAL PERSPECTIVE?

- Susan is 65 years old, in hospital
- Borderline intellectual functioning, hx of progressive cognitive decline
- Depressive disorder, anxiety
- Addison’s disease, epilepsy, GERD, 90 lbs
- 5 hospital admissions in 5 months
- Receives home support but partner interferes at times
- Partner dominates Susan
- Susan wants desperately to go home, team concerned
Starting with consideration of benefits of activity & how the patient’s wishes can be met, team assesses nature & risk of harm.

Is there a risk of harm serious and likely enough that it requires intervention to reduce risk to a tolerable level?

- No: Ongoing monitoring as required
- Yes: Identify all options to reduce risk to a tolerable level and choose the option for intervention that best meets the 5 ethical conditions

Is the patient/substitute decision-maker agreeable to the intervention?

- No **: Harm to others
  - Team makes decision and implements appropriate intervention
  - Patient decides. Health care providers are obligated to offer advice about how to reduce harm
  - Document and monitor
- Yes: Harm to self only
  - Team assesses patient’s capacity in respect to the risk activity
  - Capable
    - Document and monitor
  - Incapable
    - Team and substitute decision maker make decision and implement appropriate intervention

** Consider if the BC Mental Health Act or the BC Adult Guardianship Act is applicable

Reprinted with modifications and permission from the *British Columbia Medical Journal* (BCMJ 2018:60:6:316)
EVALUATING AND ASSESSING RISK OF HARM

• Personal biases and tolerance

• Nature of possible harm
  • Probability of possible harm
  • Severity of possible harm
## Risk of Harm Assessment Matrix

<table>
<thead>
<tr>
<th>Probability of harm</th>
<th>Severity of harm</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 = Rare</td>
<td>1= Insignificant</td>
</tr>
<tr>
<td>2 = Unlikely</td>
<td>2= Minor</td>
</tr>
<tr>
<td>3 = Moderate</td>
<td>3 = Moderate</td>
</tr>
<tr>
<td>4 = Likely</td>
<td>4 = Serious</td>
</tr>
<tr>
<td>5 = Certain</td>
<td>5= Catastrophic</td>
</tr>
</tbody>
</table>
Starting with consideration of benefits of activity & how the patient's wishes can be met, team assesses nature & risk of harm.

**Is there a risk of harm serious and likely enough that it requires intervention to reduce risk to a tolerable level?**

- **No**
  - **Team assesses patient's capacity in respect to the risk activity**
  - **Capable**
    - Patient decides. Health care providers are obligated to offer advice about how to reduce harm.
  - **Incapable**
    - Team makes decision and implements appropriate intervention.

- **Yes**
  - **Identify all options to reduce risk to a tolerable level and choose the option for intervention that best meets the ethical conditions**
  - **Is the patient/substitute decision-maker agreeable to the intervention?**
    - **Yes**
      - **Implement interventions**
    - **No**
      - **Harm to others**
        - **Team makes decision and implements appropriate intervention**
  - **Ongoing monitoring as required**

**Consider if the BC Mental Health Act or the BC Adult Guardianship Act is applicable**

Reprinted with modifications and permission from the British Columbia Medical Journal (BCMJ 2018:60:6:316)
ETHICAL CONDITIONS FOR INTERVENING AGAINST A PATIENT’S WISHES

• The intervention is effective
• It is the least intrusive of the effective options
• It does not cause greater harms than it seeks to prevent
• It is not discriminatory
• It is considered justifiable by the patient (if this is possible)
Starting with consideration of benefits of activity & how the patient’s wishes can be met, team assesses nature & risk of harm.

Is there a risk of harm serious and likely enough that it requires intervention to reduce risk to a tolerable level?

- Yes
  - Identify all options to reduce risk to a tolerable level and choose the option for intervention that best meets the 5 ethical conditions.
  - Is the patient/substitute decision-maker agreeable to the intervention?
    - Yes
      - Implement interventions
    - No
      - Harm to others
        - Team makes decision and implements appropriate intervention
      - Harm to self only
        - Team assesses patient’s capacity in respect to the risk activity
          - Capable
            - Patient decides. Health care providers are obligated to offer advice about how to reduce harm
          - Incapable
            - Team and substitute decision maker make decision and implement appropriate intervention

- No
  - Ongoing monitoring as required

** Consider if the BC Mental Health Act or the BC Adult Guardianship Act is applicable

Reprinted with modifications and permission from the *British Columbia Medical Journal* (BCMJ 2018:60:6:316)
ESTABLISHING CAPACITY

- Relates to the activity in question

**Individual**
- Must understand the nature, degree, and consequences of the risks
- Must understand that the consequences relate to the person themselves
- Must be able to demonstrate preferences
- Must act free of undue influences
Starting with consideration of benefits of activity & how the patient’s wishes can be met, team assesses nature & risk of harm.

Is there a risk of harm serious and likely enough that it requires intervention to reduce risk to a tolerable level?

- No → Ongoing monitoring as required
- Yes → Identify all options to reduce risk to a tolerable level and choose the option for intervention that best meets the 5 ethical conditions

Is the patient/substitute decision-maker agreeable to the intervention?

- No ** → Harm to others
- Yes → Implement interventions

Harm to others → Team makes decision and implements appropriate intervention

Harm to self only → Team assesses patient’s capacity in respect to the risk activity

- Capable → Patient decides. Health care providers are obligated to offer advice about how to reduce harm
- Incapable → Team and substitute decision maker make decision and implement appropriate intervention

** Consider if the BC Mental Health Act or the BC Adult Guardianship Act is applicable

Reprinted with modifications and permission from the British Columbia Medical Journal (BCMJ 2018:60:6:316)
ETHICS CONCLUSION

- Justification for interventions
- Legal risk considerations
- Documentation
- Possible outcomes
HOW EXISTING LEGISLATION RELATES TO THESE SITUATIONS
SUBSTITUTE DECISION MAKERS (SDM)

• What legislation allows the appointment of an SDM?
• What is the scope of their authority?
• Who appoints the SDM?
• What are the SDM’s duties?
• What are the options if no SDM can be appointed or none has been appointed?
RELEVANT LEGISLATION

- *Power of Attorney Act (EPOA)*
- *Representation Agreement Act (ss. 7 and 9 RA)*
- *Health Care (Consent) and Care Facility (Admission) Act (TSDM)*
- *Patients Property Act* (committee of person/estate); statutory property guardianship
ADVANCE DIRECTIVES (AD)

• Legal option for capable individual to make decisions in advance without need for SDM
IF NO SDM APPOINTED AND NO AD:

- *Mental Health Act*: do the four criteria under s. 22 apply?
- Does the decision to be made involve psychiatric treatment?
- Is facility admission, treatment and care possible under ‘extended leave’?
ABUSE OR (SELF)NEGLECT?

• Adult Guardianship Act:
• Is the adult unable to seek support and assistance?
• Support and assistance plan
• Support and assistance order
• S. 59: ‘emergency’
ETHICS REFERENCES

LEGAL REFERENCES

- *Health Care (Consent) and Care Facility (Admission) Act [RSBC 1996] chapter 181*


- *Patients Property Act [RSBC 1996] chapter 349*

- *Power of Attorney Act [RSBC 1996] chapter 370*

- *Representation Agreement Act [RSBC 1996] chapter 405*
THANK YOU AND QUESTIONS