Ethical Decision Making Application of a Problem-Solving Model

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Ethical decision making is a challenge to professionals, with an increase in the number of issues and situations that are increasingly complicated. Ethical decision-making skills are enhanced by studying cases and developing a strategy to face ethical issues. Practitioners do not always have complete control over the situations that confront them. When the welfare of the patient is compromised, the healthcare provider is increasingly challenged to manage the situation in the patient's best interest. A 4-step ethical decision-making model is presented including the Realm-Individual Process-Situation's process. A case involving rehabilitation professionals and limitations on care is presented and discussed by using the 4-step ethical decision-making framework. **Key words:** dilemma, distress, ethical decision making, RUG's levels

AKING DECISIONS is part of everyday living, whether it is deciding what to wear, what to make for dinner, or what type of vacation to plan. For the most part, these decisions are part of an automatic and therefore unconscious process. There are other decisions, particularly those related to professional practice, that are not automatic. We are often confronted with 2 equally appropriate choices. Kidder called this a right versus right dilemma. When evaluating the alternatives, both courses of action have positive and negative elements. Right versus right is an ethical dilemma, whereas right versus wrong is identified as a moral temptation. The individual knows the right thing to do, but for other reasons chooses the action that is wrong.1

All healthcare providers are struggling to establish ethical decision-making standards that provide guidance in a challenging prac-

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tice environment. The threats to ethical practice are from within each profession because of materialistic self-interest; they are from the outside, in terms of institutional or corporate profit and business motivation; and they are the result of scientific discoveries, such as the identification of DNA in 1956, that make some procedures possible that raise ethical issues of whether certain things should be done just because they are possible.

There is a wealth of literature on the subject of decision making. Within the corpus of this literature, the research indicates that professionals are inconsistent in ethical decision making.^{2,3} Worthley⁴ speaks of the science of decision making and refers to the human limitations that result in the inconsistencies that the professionals acknowledged in their decision-making skills.

Decision making is described by Brecke and Garcia⁵ as a course of action that ends uncertainty. The theory that they developed requires that the uncertainty associated with the decision must be brought to a level where the decision can be made with confidence. They also place considerable importance on the time that it takes to make a decision. The time line for decision making can range from a few seconds to several years. They developed

a decision-making process that consisted of 4 points, and it is related to this decisionmaking time line. Decisions are made at different points on the time line, but at any point where action is not taken, the decision will ultimately be made by default. Initially, the practitioners recognize that there is an opportunity to make a decision. The nature of the decision to be made becomes clearer, the decision makers determine what they will do, and they become committed to a course of action. The final point on this continuum is the default point where no intervention on the part of the practitioners will result in a course of action that they had limited or no input into.⁵ Choosing the default option, or permitting the default option to occur, can be potentially harmful to patients as failure to make a decision carries with it its own set of ethical concerns. Healthcare providers have a fiduciary responsibility to protect their patients from harm, and failure to make a decision can place the patients in a potentially harmful situation.

Ethical decision making is not the common types of decisions that we face on a daily basis. It is the level of decision making that is expected and demanded of professionals. Pellegrino⁶ identifies ethical decision making as the integration of ethical principles with "practical wisdom" enabling healthcare providers to make ethical judgments. Healthcare providers have specific standards and codes that guide practice, these are in the form of codes of ethics and professional practice standards.⁷ Codes of ethics are generally broadly written. They help identify issues, but they are not meant to serve as a methodology for decision making. To recognize an action and perform that action requires the acquisition of knowledge and skills in the art of ethical decision making.

There are many different templates for ethical decision-making practices such as the one offered by Kornblau and Starling.⁸ This template provides the practitioners with guidance for collecting information about the problem; the facts of the situation; the identification of interested parties; and the nature

of their interest, that is, whether it is professional, personal, business, economic, intellectual, and societal. The practitioners are then encouraged to determine whether an ethical question is involved and whether there is a violation of the code of ethics of their profession, or whether there is a potential affront to their moral, social, or religious values. This model also demands that any potential legal issue, such as malpractice or a practice act infringement, also be identified. The practitioners are encouraged to gather more information if it is needed to make an appropriate decision. This is the point where the healthcare provider is encouraged to brainstorm potential steps to take and then analyze the course of the chosen action.

Patients have the right to expect that their healthcare providers are involving themselves in thoughtful deliberation of ethical issues, with a commitment to take reasonable and rationale action. These steps warrant the trust of the patients and society. Unethical, self-serving behaviors result in a loss of trust among patients and their families. According to Dove, 9 the loss of trust could be prevented with training programs that include the application of professional ethics to actual situations.

End-of-life issues, caregiver challenges, and right to choose plans of care often become intertwined with ethical issues, and the medical team, patients, and families find that they are confronted with having to make complex ethical decisions. This is confounded when the issues involve adults, one elderly and perhaps an adult spouse or a child who may have the same interests at heart but different manifestations of those interests.

There are many models for ethical decision making that help organize the thoughts of the individual. Some are quite simplistic. The tilt factor model looks at the choices confronting the individual, with pros and cons defined and with the factors that would change the decision indicated as tilt factors. This simple model does not truly guide the practitioners' actions; it does help frame the question. Another method of ethical decision making

that is becoming increasingly popular with rehabilitation providers is the Realm-Individual Process-Situation (RIPS) model.¹⁰ The RIPS model was developed by Swisher et al. It has 3 primary components: the realm, the individual process, and the type of ethical situation. The components of the RIPS model are outlined below.

The steps in ethical decision making that use the RIPS model give the individual the opportunity to recognize many of the components of the problem confronting the interdisciplinary team. This method essentially involves 4 steps (J. Nordrum, DScPT, oral communication, 2009). To better illustrate the ethical decision-making process, we will work through a case that involves issues of utilization.

CASE EXAMPLE

Mr Strongin is 82 years old and he has been in relatively good health. He does have high blood pressure, and 8 years ago, he had bypass surgery. He lives with his 79-year-old wife, in the 2-story home they have owned for more than 40 years. He is retired from an executive position at a large manufacturing company. His primary insurance is Medicare. Two weeks ago, he woke up in the middle of the night disoriented and fell as he tried to get out of bed to use the bathroom. His wife called 911, and he was taken to the hospital where it was determined that he had suffered a right cerebrovascular accident (CVA) with a resulting left hemiplegia. His course in the hospital was complicated by an unexplained fever. He has been fever free for 48 hours, and it was determined that he could be discharged to a subacute facility to begin his rehabilitation program. He is looking forward to starting rehabilitation but he is very tired and finding it difficult to tolerate the 30 minutes of therapy he is receiving in the hospital. He has only been out of bed for 20 minutes or so at a time and he was exhausted after that. He and his family are assured that he will continue to get stronger each day.

He is evaluated by physical therapy (PT), occupational therapy (OT), and speech. He is not found to have any speech deficits and no cognitive deficits other than mild confusion, which is steadily clearing. His entire program will consist of PT and OT. Following the evaluation he is placed on Tim's caseload for PT and Casey's caseload for OT. Mr Strongin is assigned a resource utilization group (RUG) rehab of very high level, and Tim and Casey plan his program around the required 500 minutes of therapy in the past 7 days required for this RUG level. He is to receive over an hour of service per day, 7 days a week. The first day Tim sees Mr Strongin, he is begging to return to his room after 15 minutes. His blood pressure dropped and he had tachycardia. He is diaphoretic and at the same time becoming increasingly lethargic. Tim returns Mr Strongin to his room recognizing that he will have to "make up the time" in the afternoon. Casey sees Mr Strongin after lunch, and though Mr Strongin wants to cooperate, he cannot do more than 20 minutes before he finds himself having difficulty keeping his head up. When Tim arrives to take Mr Strongin to PT in the afternoon, he finds him asleep and difficult to rouse. Tim and Casev confer at the end of the day and find that between them they saw Mr Strongin for 35 minutes. They report the situation to the rehabilitation supervisor, who reminds them of the importance of giving the full 500 minutes and to be sure to add the time on for the rest of the week. He reminds them if Mr Strongin cannot participate in therapy, he may have to be discharged from the subacute facility to a nursing home. Tim and Casey are concerned that Mr Strongin should not be at the "very high" RUG level, which is second to the highest level of therapy. They are concerned that if they push him to achieve the level he has been placed in, they could compromise his fragile medical condition. On the other hand, if he cannot do the program they have designed for him and he goes to a nursing home, there will be little chance of him doing well enough to ever go home. Tim and Casey are very uncomfortable with the situation they find themselves in. The

Table 1. Ethical decision making using the Realm-Individual Process-Situation model

| Realm | Individual process | Situation |
|--|--------------------|------------------|
| Step 1: Recognize and define the ethical issue | es | |
| Individual | Moral sensitivity | Issue or problem |
| Organizational/institutional | Moral judgment | Dilemma |
| Societal | Moral motivation | Distress |
| | Moral courage | Temptation |
| | Moral failure | Silence |

Step 2: Reflect

What are the relevant facts and contextual information?

Who are the major stakeholders?

What are the possible consequences (intended and unintended)?

What are the relevant laws, duties, obligations, and ethical principles?

What professional resources speak to this situation?

Are any of the 5 tests for right versus wrong situation positive (Legal Test, Stench Test, Front Page Test, Mom Test, and Professional Ethics Test)?

Step 3: Decide the right thing to do

Approach to resolve issues

Rule-based—follow the rules, duties, obligations, or ethical principles already in place

Ends-based—determine the consequences or outcomes of alternative actions and the good or harm that will result for all of the stakeholders

Care-based—resolve dilemmas according to relationships and concern for others

Step 4: Implement, evaluate, reassess

What did you as a professional learn from this situation?

What are your strengths and weaknesses in terms of the 4 individual processes?

Is there a need to plan professional activities to grow in moral sensitivity, judgment, motivation, or courage?

following day, they rearrange their schedules, switching a few patients to afford Mr Strongin more advantageous times of the day. He did a bit better but still could not make even 45 minutes of combined time. Tim and Casey are becoming more concerned. They approach their supervisor again and ask for a decrease in the RUG level for Mr Strongin and once again are essentially told to make it work. The lower "rehab high" category does not allow sufficient time to justify a subacute stay for this patient. From past experience, Tim and Casey recognize that "make it work" means that they need to provide the minutes of treatment. They cannot, however, in this case rationalize placing this patient at risk to "meet the minutes." They are concerned that their supervisors do not share their concern and feel that their professional values could easily be compromised as they balance their desire to act with nonmaleficence, not harming the patient while maintaining veracity, being truthful regarding the treatment rendered.

Through "Tim" and "Casey," we will work through this situation using a multifaceted decision-making model that combines the work of Kornblau and Starling⁸ and Kidder¹ and the RIPS model developed by Swisher et al.¹⁰ The following template developed by John Nordrum (personal communication, 2009) helps establish a logical sequence for integrating the RIPS model with the work of Kornblau and Starling and Kidder (Table 1).

STEP 1: RECOGNIZE AND DEFINE THE ETHICAL ISSUE

Realm

Into which realm does this case fall: individual, organizational/institutional, or

societal? This situation falls into the institutional realm. The care of the patient is being dictated by institutional policy. There is also a societal component here: because of the policies dictated by a third-party payer the care is largely determined on the basis of payment factors and not on the basis of factors that a professional must weigh, looking at treatment outcomes versus treatment options. In this case, it appears that reimbursement is driving practice, not practice driving reimbursement.

Individual process

What does the situation require of Tim and Casey? What individual process is most appropriate? There are 4 components to the individual process. For an ethical issue to be managed, all 4 components of the process must come into play at some point, but there is no temporal order to the manner in which the topics are handled. The 4 components are defined as follows.

Moral sensitivity

Moral sensitivity is recognizing that there is an issue and the awareness of the impact of that issue. Tim and Casey recognize that this is an ethical issue because they cannot rationalize the necessity to treat Mr Strongin at a level that he cannot tolerate, besides the fact that it will not be beneficial for him and that it has a high probability of being detrimental to him.

Moral judgment

The individual considers the possible lines of action that can be taken and what the effect will be on all the involved parties. Tim and Casey recognize that while they are right in insisting that their patient should not be forced into more therapy than he can tolerate, they also know that if he cannot participate fully in the program at the level that has been set, he risks the possibility of being discharged early to a lower level of care or to a home and not being afforded the

benefit of the rehabilitation program that he needs. Tim and Casey are torn as they anticipate that Mr Strongin just needs some time to build up his endurance, but they cannot document treatment not rendered. Will their bonesty result in his loss of services?

Moral motivation

It is the force that compels the individual to consider possible courses of action. Casey and Tim are not willing to compromise their integrity nor willing to compromise their loyalty to their patient. They want him to get the services that he is entitled to but at the same time want to protect him. They are being met with the resistance of their supervisors, who only see the financial ramifications of Mr Strongin's lack of treatment. Tim and Casey are faced with falsifying minutes to protect his treatment program or treating him at a level that he cannot tolerate or risking early discharge by treating him to his tolerance and documenting appropriately. While they are supporting each other in their decision making, they do not feel that they are getting much support from their superiors.

Moral courage: Ego strength

It is the strength to take action to correct a wrong. It is interchangeable with moral character. Tim and Casey strongly feel that Mr Strongin should be given a lower RUG level, realistically a Rehab high level, until he can tolerate more therapy. Administration does not support this view, but Tim and Casey are very emphatic. They cite the literature supporting this more moderate approach and attempt to get their supervisor to understand their discomfort with the treatment protocol. The treatment plan put in place by administration compromises the autonomy that they are obligated to adhere to by the practice act for each of their disciplines.

Moral failure

It is a deficiency in any of the 4 components: the failure to recognize that an issue

exists, the inability to plan a course of action, the lack of motivation to take action, and the inability to follow through on the action. The supervisors and administration in the facility are subject to moral failure with deficiencies in multiple areas.

Situation

What type of an ethical situation is this: a problem, a distress, a dilemma, or a temptation or a silence?

An ethical problem

The practitioners are confronted with challenges or threats to their moral duties and values. It results in a need to reflect on a course of action.

An ethical distress

The focus is on the practitioners. The practitioners know what action they should be taking but there is a barrier in the way of doing what is right. The individuals experience some discomfort because they are prevented from being the kind of person they want to be or doing what they know is right.

An ethical dilemma

This type of problem involves 2 or more morally correct courses of action that cannot both be followed. In choosing one course of action over another, the practitioners are doing something right and wrong at the same time.

An ethical temptation

It involves 2 or more courses of action, one that is morally correct and the other that is morally incorrect. For reasons determined by the practitioners, they consciously choose the incorrect course of action.

Silence

The practitioners choose to ignore the problem and take no action. Tim and Casey

are faced with an ethical distress: They know the correct action they wish to take but they are unable to take that action because of institutional constraints.

STEP 2: REFLECT

This is the opportunity to gather the additional information necessary to make a decision.

What else do we need to know about the situation, the patient, and the family?

Who are the stakeholders in addition to Mr Strongin, the patient, and the healthcare practitioners, Tim and Casey. The following people were also stakeholders or potential stakeholders.

- The patient's wife,
- the institution and supervisor,
- other healthcare providers such as the OT.
- the insurance company,
- the licensing board charged with protecting the public, and
- the professional association/code of ethics.

What are the consequences of action?

Determining a plan of care is based on the assessment of the patient and available resources to treat the patient. In this situation, the assessment indicates the need for care, and the resources are available to the patient, but the rehabilitation professionals have their plan of care dictated by the institution/thirdparty reimbursement. The professionals find the care to be unreasonable and potentially harmful; however, if they refuse to perform the care as it is proposed, they may endanger the patient's access to care in this facility.

What are the consequences of inaction?

The members of the rehabilitation team understand that not questioning the care and attempting to provide what is required by the care-level parameters for this patient may place the patient in danger. He is not medically stable enough to manage the care at the level they are being forced to deliver it. In many cases, this is a time-sensitive issue as the patient may be ready in the future and would benefit from the care, but his level of recovery is insufficient to tolerate the care proposed. The rehabilitation professionals often find themselves caught between what they have determined is appropriate for the patient and external pressures regarding the delivery of the care.

The last step under the reflection phase refers to the standard proposed by Rushworth Kidder¹ in "How Good People Make Tough Choices: Resolving the Dilemmas of Ethical Living." Kidder proposed a 4-standard test. An additional standard was added because the Kidder Test was being applied to professional ethics and therefore a code of ethics/professional guidance check was added.

The adapted Kidder Test for right versus wrong?

1. Is it illegal?

Are there any potential laws broken?

What does the state practice act say about providing inappropriate care?

What does the practice act demand of the licensed professionals regarding their autonomy and their individual responsibility to make decisions that are not dictated or controlled by other sources.

Does the potential exist that the rehabilitation professionals are in a difficult situation regarding the care provided, if they cannot make the minutes required, and the care is being billed at that level? How closely do they come to billing in a potentially fraudulent manner?

2. The Stench Test

Does the situation feel right or does it stink?

The uncomfortable feeling that professionals have when their integrity is challenged results in a positive response to the Stench Test. The individuals know that the situation makes them feel uncomfortable, "it stinks." In good conscience, they cannot ignore it and pretend that the situation that is making feel uncomfortable either does not exist or is beyond their control.

3. The Front Page Test

Is the potential publicity something you would not like to have on the front page?

Healthcare providers are generally very proud of the work that they do. Publicity that lauds these good works are welcome by most professionals, but negative publicity is poorly received by the healthcare community as it reflects badly on all practitioners. Negative publicity also does considerable harm as it diminishes the public trust.

Imagine the headline in this situation: "Patient welfare compromised in a revenue enhancement scheme."

4. The Mom Test

The final Kidder Test looks at the background of the individuals, recognizing that much of our ethical decision making has strong foundations in our upbringing and it reflects on the value system of those who influenced us along the way. Kidder calls this the "Mom" Test, but it is broader than the values instilled by your mother. It incorporates not just the mom (parents) in your background but also those mentors, teachers, and colleagues who have influenced the value system of the professional. It integrates the personal integrity with the professional values that every healthcare professional brings to the situation.

If the action you are taking would not be acceptable to those that helped you develop your value system, you must consider other actions and weigh those against the values that you hold to be important. If this requires a change in behavior then you are faced with an ethical challenge to develop a course of action that is different and would be acceptable. In this case, continuing to treat this patient in spite of your concerns about their well-being would not be acceptable to pass the "Mom Test." Taking action to place the patient's needs above those of the institution would be more consistent with the values instilled in the professional.

5. The Professional Values Test

Kidder does not need the following professional component for his test of right versus wrong but it would be incomplete for a professional who is expected to adhere to a higher standard of ethical behavior than that which is expected of the general public.

What guidance do we get from professional documents?

All of the medical professionals involved with the care of this patient have guidance from their own code of ethics. Codes and other professional documents broadly help them to determine what their responsibility is to their patient. Though they might be worded slightly differently, there are certain foundational principles that are present in all codes that are applicable in this situation, such as the professional has a responsibility to provide the patient with care that is in his or her best interest. In addition, the healthcare provider must obey the law. In addition, certain professions have a set of core values that also provide professional guidance.

If the situation that the professional is examining does not pass the Kidder Test, there is no need to go any further; the question becomes whether the healthcare professional has the moral courage to follow through and take appropriate action The question is no

longer whether action should be taken. Action in this case must be taken to preserve professional integrity.

STEP 3: DECIDE THE RIGHT THING TO DO

Step 3 presumes that all the factual material has been investigated and the individual is now ready to make a decision. The adapted Kidder Test uses the factual information, testing it against the 5 standards of law, stench, front page, parent/mentor, and professional guidance.

If any of the Kidder tests are positive, we have determined that action must be taken. Even if the situation passes the Kidder Test, there may still be an ethical issue to consider; at that point the information you have gathered must be considered in view of 3 possible approaches. Relying on classical ethical decision-making approaches, one might choose a rule-based, an ends-based, or a carebased approach.

Rule-based approach

People following the rule-based approach follow that which they think everybody else should follow. These are the rules, duties, and obligations already in place. 11 The procedures/techniques and methods are what would be considered the standard of care. It is not hard to conceive of an approach that would apply certain parameters to the care rendered for a patient that would clearly define certain limits. In addition, objective measurements will provide guidance that will help the individual recognize the ethical conundrum of attempting to overtreat a medically fragile patient so that they can qualify for the care they are not yet ready to benefit from. Guidance from standardized assessments, such as upper and lower limits for vital signs including blood pressure, heart rate, oxygen absorption, and reaction to exercise, provide objective measurements that are easily applied and interpreted.

Applying a rule-based approach to our patient situation would ensure that care would not be rendered to the patients if they could not tolerate the care. This approach does not protect the patients against care no longer being available to the patients because they cannot meet the standard.

Ends-based approach

Those using the ends-based approach do whatever produces the greatest good for the most people. The analysis of the action and the resulting outcomes looks at the good and harm for all of the stakeholders, not just the patient. An ends-based approach looks more at the general good for society and less at the individual's needs. This would be the least likely application in the situation we are confronted with.

Care-based approach

Those using the care-based approach follow the golden rule (ie, do unto others as you would have them do unto you). Situations are resolved according to relationships and concern for others. It is difficult for health-care providers to remove themselves from the situation completely; often, they can relate a personal experience or another patient care situation that reminds them how important it is to integrate the ethic of care into the entire patient care situation.

Regardless of how the conclusion was derived, step 3 gives encouragement to the rehabilitation professional to implement the decision that was made. They have reasonable evidence that this will resolve the issue. But implementing a plan does not conclude the ethical decision-making process. Each situation lends itself to an opportunity to learn more and to develop a reasonable plan to manage not only this situation but also future situations.

STEP 4: IMPLEMENT, EVALUATE, AND REASSESS

It is the responsibility of the professional to reflect on the course of action taken and to consider what steps might need to be taken to avoid this type of ethical situation in the future. The responsibility to modify behavior if necessary lies not only with the professional but also with the institution if it is indicated. In a situation such as the one involving Tim and Casey, it clearly points to the difficulty of implementing plans of care that are not under the purview of the treating practitioner. It is necessary on the part of the entire team working with a patient to make the treatment a collaborative effort. This includes the entire healthcare team and the patient and family to effect the most positive outcome. For the team to work as a cohesive unit, there has to be mutual understanding and respect for the unique contribution of each team member and the way in which that contribution can benefit the approach to the patient.¹³

Initially, the professional must do some self-reflection and answer the following questions:

 What was learned from the case involving Mr Strongin and his plan of care?

For Tim and Casey, they confirmed their professional responsibility to be autonomous practitioners. They also recognize the constraints they have while working in a setting that does not necessarily respect that professional responsibility.

2. What are the strengths and weaknesses of the practitioner regarding the individual processes? Does the individual exhibit moral sensitivity, judgment, motivation, and courage?

Tim and Casey exhibited moral sensitivity, judgment, and motivation. We do not know the outcome of this scenario as only the questions are posed; however, moral courage would require overt action on their part to provide the type of care they consider to be appropriate for this patient.

3. If the provider needs to develop one or all of these skills, what type of professional activities would help accomplish this? Ethical reasoning can be taught.¹⁴ The best method for teaching ethical decision-making skills is through case studies.¹⁵ Teaching ethics does diminish the uncertainty that is inherent in ethical decision making.¹⁶ Seeking the opportunity to further develop these skills is critical to sound decision-making tactics.

4. Was the outcome what was expected, were there any collateral damages from the situation?

When confronted with an ethical situation, we develop certain preconceived concepts about what may occur because of the situation. It is important to access the outcome and compare it to what we anticipated.

This is particularly important in view of the potential collateral damages, because they can be worse than the actual situation. Although every effort is made to reduce the effect of collateral damages when they do occur, preventing them would be less detrimental to all concerned. Knowledge of collateral damages may be enough to provide mechanisms to prevent them from occurring in the future.

If collateral damages cannot be prevented, there has to be an assessment similar to a risk-benefit ratio, to determine whether the collateral damage is worse than what would occur because of the ethical breech.¹⁷

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