

Medical Ethics

Name

Institutional Affiliation

1. Patients and competency- Why is it considered important to assuming patients are competent?

In most Western jurisdictions, legislation presumes that an adult, and at times children that meet particular criteria, are capable of determining their individual health care decisions; for instance, consent to a certain medical treatment or research trials. Therefore, “competency” is a legal concept that refers to the person having the potential or sufficient ability and legal qualifications to determine a specified fate. The goal of the “competency” framework is to provision ethical, moral and social guidelines within which these decisions must fall and healthcare choices are not excluded (Appelbaum, 2007). The framework optimizes personal freedom and independence, whilst ensuring all personal choices are within the paradigms of safety, acceptable behavior and practice. Why is it considered important in assuming patients are competent?

By assuming competency, patients are awarded autonomy and freedom of choice to managing medical treatments recommended by physicians. This lies within informed decision-making processes and pursuing individual democratic rights. Therefore, medical examiners are charged with the responsibility of disclosure which should include such information as the patient’s condition, nature of therapies, risks, benefits and alternative treatments (Appelbaum, 2007). On the other hand, Informed consent promotes the ethical dimension of medicine and is a fundamental conceptualization in bioethics. The ideal theorization of competence is mirrored in the standards and norms, and to the exceptions of the legality i.e. the individuals with reduced competence constitute the larger groups of the demography such as children, and people living with dementia among others. However, the individuals have rights too and deserve respect, even

when their “full” decisional competence is non-existent. Competence plays a core role considering the patient’s rights, fashioning the attitudes and perceptions of medical practitioners, and charged with the influence of appropriate treatment decision-making (Hiriscau & Reiter-Theil, 2015).

One of the most vexing issues facing doctors in ensuring medical treatment is when the capacity of an individual to make competent decisions is questionable. The practicality of assessing or evaluating an individual’s competence is quite a challenge. However, still, protection of the doctor naturally comes about when the patient with free choice makes a decision on a particular form of treatment. It has been established from research that most psychiatric consultation matters of competency as a result of the examiners wanting to “cover themselves” from the medical or legal perspectives. This underlies the fact that there may be adverse consequences in failing to ensure the capacity of an individual to making competent decisions. What might be the effect of not making the assumption of competence?

If an individual conducts a medical or surgical procedure without receiving any form of consent, he or she could be charged in court and this, could imply a criminal offence- crime of assault. The person could be sued for tort of trespassing to the individual with the possibility of infringing their constitutional rights. For a medical professional, the person could be sued for negligence by the patient and this, could lead to them losing their practice. Therefore, while “competence” is determined in court, it is the fiduciary duty of the physician to act within the limits and doctrines of informed consent (Kluge, 2008). It is the duty of the doctor to make sure the patients comprehend the implications of the chosen course of action. Any consent or refusal must be given voluntarily or the doctor will be faced with a case of fraud, instilling fear or coercion of a patient.

This point is shown in judgement following the case of Miss T, 20 years of age who was admitted to hospital at 34 weeks' gestation with Pneumonia (Panting, 2001). She was not a Jehovah witness believer but had been brought up as one. The patient declared that she did not want a blood transfusion and went into labor later in the day. During sedation, blood transfusion was considered necessary and was given to her during this state- she was no anticipation of the complication. The court refuted the earlier refusal for a blood transfusion terming it invalid. However, the court of appeal, on in-depth analysis, identified undue influence (Panting, 2001).

2. Kantian and the Practice of Abortion- How might a Kantian evaluate the practice of abortion?

Kantian ethics are founded on the acclamation of Immanuel Kant on the supreme principles of morality- the categorical imperative (Denis, 2007; Pascoe, 2019). The categorical imperative could be stated in diverse ways: - 1) the Universal Law Formula that individuals should only act on universal principle (apply to everyone) 2) the Principle of Humanity which states that in every actions undertaken, entities must be sure to treat all people (others and ourselves) as “ends” and never as “mere means (Denis, 2007).” From this, it can be deduced that it Kantian ethics, “persons” refer to beings with the capability or the capacity to assume judgements and follow or adapt to them. In this case, in order to act against them the “person” is required to resist variant urges, temptations and inclinations. Therefore, what is assumed to be a “person” is an entity that has reason and free will. From this, how might Kant evaluate the practice of abortion?

The Kantian philosophy does not regard a baby as a “full person.” The principle of Humanity, in accordance with Immanuel Kant, implies that only individuals with “dignity” can be treated as “ends.” In this case, other forms of being such as animals only have “use value” and

can be determined to be a mere means. For example, in testing new drugs, persons can be used only when they have given informed consent. However, Kantians in agreement, value the life of a person even when the loss of such a life would maximize the utility of the society. From this, it could be argued that the Kantian philosophy leans towards the acceptance of abortion. The Kantian account of bodily autonomy and consideration of a “person” as a rational being, can be used to defend the right of abortion at each and every stage of pregnancy. However, it can be argued that the state can set a particular point in pregnancy where the fetus is recognized as a “minimally acting human being,” at that, and beyond the limit, abortions is justified whilst maintain particular criteria.

However, from Kantian philosophy, Kant admits there are situations where there are unjust social conditions in place (Pascoe, 2019; Lonut, 2014). Therefore, a mother is caught between a difficult social order and restrictive laws. The argument does not underlie abortion being an awful act but it considers that what is at stake is not the action but the predicament the mother has found herself. In this case, if the mother considers an abortion, her actions would be criminal but this choice is forced by unjust circumstances. For example, an ill-gotten pregnancy will not only result in the ostracizing of the mother but even the baby (Pascoe, 2019). Therefore, Kantian ethics necessitates for societies and ethics to think about the woman as a rational being or agent who performs actions because they lack alternatives. Therefore, the woman, and not the penal code and unjust social order, must establish or determine the fate, or status of the unwanted pregnancy.

References

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