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e-Ethics, 2000 April

Advocate Aurora Health

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A Surgeon's Disincentives: Business Conduct or Organizational Ethics?

An anonymous caller phones Partnership Health Care's business conduct hotline, upset that PHC's health plan no longer pays for assistant surgeons on some procedures. (Principal surgeons must pay out of pocket if they require assistance.) The caller believes the policy puts patients at risk and that financial disincentives cause a conflict of interest by rewarding surgeons for saving money. Should employers agree to protocols that might facilitate substandard care?

Substantive ethical concerns must be identified in this case and a determination made as to whether the caller's distress is justified. First, it should be asked if the caller's concerns are more appropriate for the Business Conduct Committee or an organizational ethics body. Business conduct programs address institutional compliance with state and federal laws about fraud and abuse, improper billing, discrimination, and sexual harassment. If PHC owns the surgical practice, and the health plan incentives encourage substandard care that could result in liability, the business conduct administrator should be involved. In this case, however, the administrator believes there is no liability and the concerns are appropriate for the system's ethics officer.

The issues here are different from traditional clinical ethical

**This newsletter is available
 on the cc:Mail system
 as a bulletin board called
 e-ethics. Watch for monthly
 postings.**

questions. Conflicts of interest, patient safety, and standards of care have obvious ramifications for clinical care, but managed care (which emphasizes cost controls and efficient care delivery) heightens attention to *organizational* responsibility for creating systems that provide the framework for individual decisions.

The caller's concerns raise moral issues within the purview of organizational ethics. Is PHC contracting with a plan that creates the conditions for substandard care? If PHC does not have an institutional body that can review organizational ethics, it should create one as an extension of its clinical ethics committee to determine whether the health plan's restriction of reimbursement for assistant surgeons is defensible. If outcomes data show that surgical assistance is unnecessary for some procedures and that patient safety is not compromised, then the plan is not immoral.

How can organizational ethics leaders learn of important issues?

Leaders must educate employees about both business conduct and organizational ethics and encourage them to come forward with concerns. Prompt referral in this case indicates good cooperation between PHC's business conduct and organizational ethics bodies, but PHC associates should know how to access their organizational ethics program directly and understand its function. Names and telephone numbers of program members should be circulated and the program's activities regularly publicized.

What response should PHC associates expect? The decisions an organizational ethics group makes may not always satisfy everyone, but prompt attention to inquiries is key to credibility. PHC should respond to questions in no more than one month. Responses might be published in a newsletter to preserve caller anonymity. Associates who agree to identify themselves could be invited to consultations. If there are recurring issues, associate feedback and in-service education should be provided.

The Declaration for Mental Health Treatment (DMHT), an advance directive, is a well-kept secret in Illinois. The DMHT is a specialized document, a sort of niche product among advance directives. Available since 1996, it permits patients to state their wishes in advance about certain forms of mental health treatment if such treatments are recommended and the patient cannot make the necessary decisions. (It should be remembered that mental illness by itself may not render a patient decisionally incapable, although a mentally ill patient may be decisionally incapable from causes other than mental illness.)

In a DMHT the patient gives specific instructions about mental health treatment, and may appoint another person (an attorney-in-fact) to make treatment decisions consistent with the patient's wishes. Specified treatments include psychotropic medications, electroconvulsive therapy, and involuntary commitment to a mental health treatment facility for up to seventeen days. The declaration's authority is limited and need not be followed if an emergency threatens the patient's life or health, or if a court order contradicts the patient's wishes.

The DMHT is different from other advance directives in that it is of limited duration and revocability. The DMHT expires after three years

unless the patient is incapacitated and receiving treatment at the scheduled time of expiration. Further, if the patient is incapacitated, he *cannot* revoke the DMHT. This is consistent with the DMHT's intent to protect patients from unwanted intrusions by others and from their own unwise decisions while ill.

Though rarely used, the DMHT is worth knowing about. Its authorizing legislation limits the powers of surrogate decision makers under Illinois' Health Care Surrogate Act. Mental health treatments addressed by the DMHT are specifically excluded from a surrogate's authority. Only a DMHT or Power of Attorney for Health Care can authorize an attorney-in-fact or agent, respectively, to make these treatment decisions. Further, under the Patient Self-Determination Act, a provider's obligation to ask patients if they have advance directives extends to the DMHT. Facility policies on implementing advance directives should include the DMHT. When patients are admitted for mental health treatment, they (or their representatives) should be asked if a DMHT exists. Although newly admitted patients may not be ready to discuss or learn about this directive, caregivers can offer basic education about the DMHT upon discharge. Patients concluding a treatment may welcome the information and find it useful for future reference.

Calendar of Events April

Ethics for Lunch

Call (708) 425-8000 for more information.

April 4

Lutheran General Hospital

April 12

Good Shepherd Hospital

April 21

Christ Hospital

April 13

Ethics Conference

Health Care Ethics, Public Policy and Judaism: Dialogue or Debate?
Time: 8:30 A.M.-3:30 P.M.

Cost: \$125

Presented by the Park Ridge Center. Will take place at Beth Emet The Free Synagogue, Evanston, IL. To register, or for more information, call Liz Maziarz at (312) 266-2222 ext. 262.

April 18

Religious Traditions and Health Care Ethics Series

Islam and Health Care Ethics

Time: 8:00-9:30 A.M.

Cost: \$25 (Includes breakfast)

Will take place at the Park Ridge Center. To register, or for more information, call Bernice Chantos at (312) 266-2222 ext. 255, fax (312) 266-6086, or e-mail bmc@prchfe.org.

April 28

Advocate Ethics Conference

Decoding Our Genetics Future

Time: 8:00-4:00 A.M.

at Drury Lane, Oakbrook Terrace

For information call (630) 990-5500

e-Ethics provides discussion of important ethical issues in clinical care and organizational life. In specific cases, fuller ethical analysis may be required, in addition to consideration of hospital policy and legal standards.

To list an event in this calendar, contact Mary Ann Clemens at (312) 266-2222 ext. 240 or mac@prchfe.org.

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