Age, Equity and Discrimination

Providing Ethical Care in an Aging Population

Outline

- Sample Cases: Old & New
- “Futile” Care
- Age-Based Rationing
- Framework for Decisions
- Summary

It is not enough to have the courage of your convictions. You must also have the courage to have your convictions challenged.

Christopher Phillips

Please let me die

- You are a 25-year old affected by extensive muscular atrophy caused by a rare condition - Guillain-Barré syndrome. Prior to the onset of the disease, you were extremely active and healthy. According to expert medical opinion, it is extremely unlikely that you will ever recover or improve from the present condition.

- Because the muscles you use for breathing have deteriorated, you are dependent on a respirator to receive oxygen. You are lucid, rational, and not clinically depressed. You have chosen not to continue to live this way, and would like to be taken off the respirator.

- What is the legal and moral status of your request? Would the situation be viewed differently if you were 75 years of age?

- Nancy B Case, Quebec Superior Court, 1992

The question has reversed

- 1970-90s: Do patients have the right to refuse treatment?
- 2000s: Do providers have the right to refuse treatment?

Important Distinctions

- Fairness or equity involves treating people in similar situations, alike
- Equity involves treating all individuals the same, regardless of circumstance

Mrs. Ewing

- **Mrs. Ewing is an 86-year old with dementia, severe heart disease and chronic kidney disease. She lives in a nursing home, where she has been bedridden for a year. She occasionally speaks and follows some commands, but does not communicate consistently. It is uncertain if she recognizes any family members or staff.**
- **Despite several trips to the hospital for treatment of congestive heart failure, her condition remains grave. Fluid has been removed from her lungs via thoracentesis on several occasions. Recognizing that her prognosis is poor, the medical director addresses the treatment plan with the family.**

- The director suggests that further treatment would be futile. Neither a permanent chest tube to withdraw fluid, nor attempted resuscitation after a cardiac arrest, would be likely to be successful in altering her state.
- Her daughter insists everything be done. Her son in the U.S. says that they should do whatever it takes to keep her alive, and that she be transferred to the ICU if necessary.
- What do you think should be done?
- Do you think the central question in this case is primarily about beliefs (facts/medical information) or values (regarding what is important)?

Factual versus evaluative statements

- There is 30 centimetres of snow on the ground
- There is too much snow on the ground

- This presentation will last 45 minutes
- This presentation is much, much too long

Important distinction

- **Physiological futility:**
  The treatment is not effective
- **Evaluative futility:**
  The treatment is not worth it

Futility often breaks down to:

- **Cost: *Futile* or *non-beneficial* treatment consumes health care resources that could otherwise be directed towards more legitimate health care ends.**
- **Harm: *Futile* or *non-beneficial* treatment merely harms patients, or at best prolongs their dying process.**

"Physicians are in the best position to know empirical facts about many aspects of futility. I would argue, however, that all (treatments), except for physiological futility and an absolute inability to postpone death, also involve value judgments… Physicians should not offer treatments that are physiologically futile… Beyond that, they run the risk of giving opinions disguised as data"

Stuart Youngner, Who Defines Futility? 1988

Science can only ascertain what is, but not what should be, and outside of its domain, value judgments of all kinds remain necessary

Albert Einstein

In Support of Age-Based Rationing

- Everyone grows older. If we treat the young one way and the old another way, over time, each person is treated the same.
- The drain on health care resources to extend the lives of the elderly has the effect of violating the rights of the young to live out a "normal" life span
- The skewed distribution of health care resources is unjust because the elderly receive a disproportionately large piece of the health care pie
- In the context of constant technological innovations to prolong life at all costs, the "needs" of the elderly know no bounds

In Support of Age-Based Rationing

- Society benefits from the increase in economic productivity that results when medical resources are diverted from an elderly, retired population to younger members who are more likely to be working.
- A rationing system would bring about the greatest good for the greatest number of people. While the health of the young can be ensured by relatively cheap preventive measures such as exercise programs and health education, the medical conditions of the elderly are often complicated, requiring the use of expensive technologies and treatments.

Concern Re Age-Based Rationing

- For the young, policy would lead to heightened levels of anxiety and fear while the elderly, not wishing to die and feeling abandoned by society, would despair.
- No guarantee that any savings on the old would actually be directed to the young, or that they would result in real improvements in the overall health of our citizenry
- Society could instead transfer funds from military spending to health-care, and enact reforms to improve efficiency

Concern Re Age-Based Rationing

- Mere consideration of benefits and costs fails to give due weight to justice and rights.
- Age reveals little about a person's medical need or prognosis, and should no more influence the distribution of health care than race or sex.
- To claim that aged have achieved a ‘natural life span’ may be erroneous

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Mr. Salinas

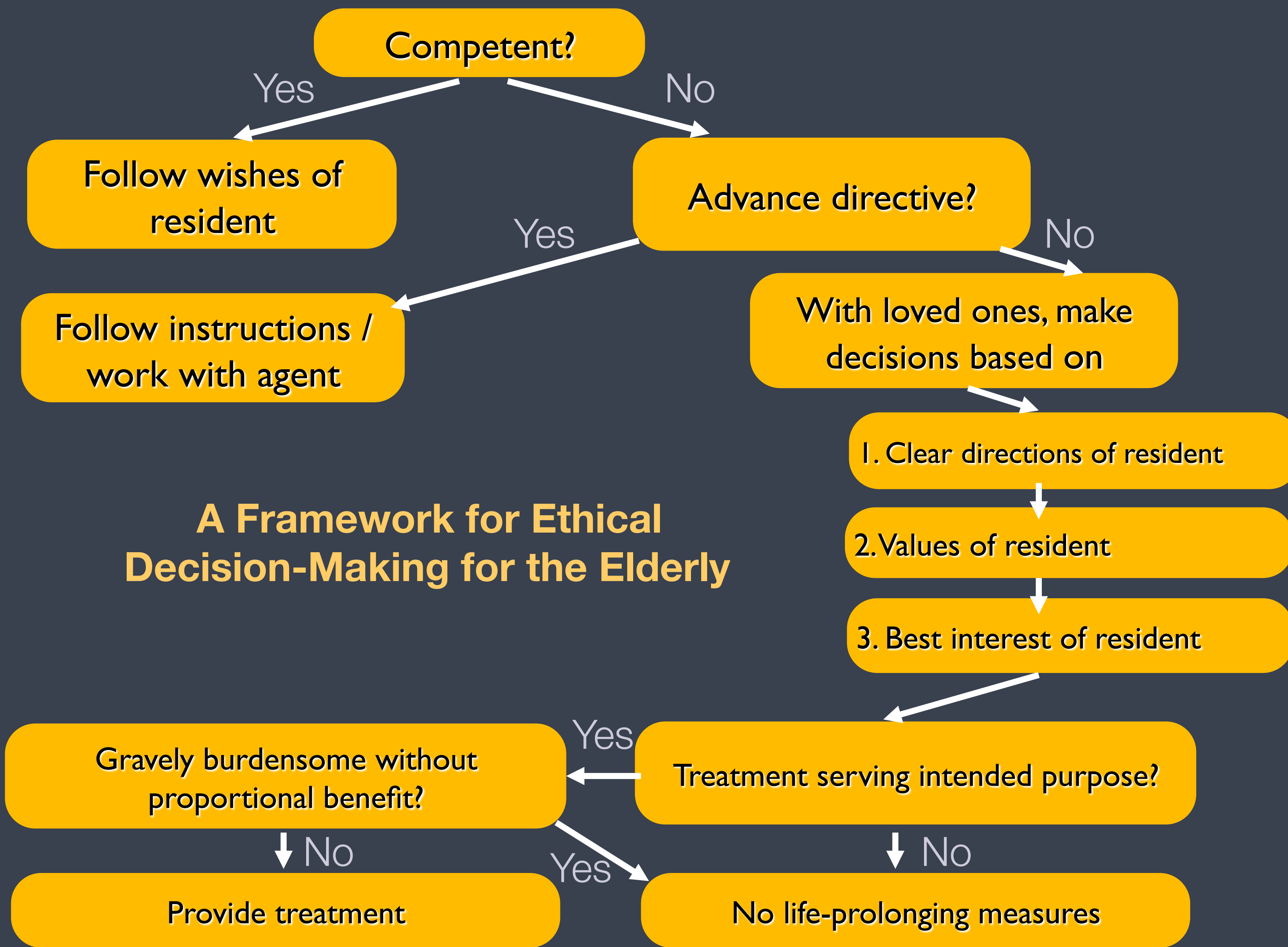
- Mr. Salinas is a 79-year old Spanish male with a chronic progressive disease. He is in a long-term care centre. He has deteriorated markedly in the past 6 months. The condition is irreversible, and is expected to continue to deteriorate rapidly in the next 2-3 months. He has diabetes, hypertension and chronic headaches. He suffers from intractable pain.

- His deteriorating muscles and extreme choking risk have required the insertion of a PEG tube. He is wheelchair bound, and requires assistance with activities of daily living. Psychiatric evaluations have indicated that his cognitive capacity and ability to communicate are low.

- Nevertheless, Mr. Salinas seems very resistive to the tube feedings. Sometimes he will strike out at the nurses who are starting or discontinuing the feed, and shake his head and wave his hand in a dismissive manner.

- Questions arise about whether the tube feeding should be continued. His family - two children - indicated that they had never had conversations with their father about what he would want in this situation, nor did they feel confident that they knew enough about his beliefs to know what he might have asked for.

- After extensive conversations with the son and daughter, it is decided that the feeding tube should be removed, and that it is in his best interests to allow him to ‘die with dignity’. Some of the nurses are uncomfortable with this, feel that allowing him to ‘starve’ would be wrong, and that this is being done only because he is older. What do you think is the appropriate course of action?


Competent?
Yes
No
Follow wishes of resident
Advance directive?
Yes
No
Follow instructions / work with agent
With loved ones, make decisions based on
1. Clear directions of resident
2. Values of resident
3. Best interest of resident
A Framework for Ethical Decision-Making for the Elderly
Yes
Gravely burdensome without proportional benefit?
Treatment serving intended purpose?
No
Yes
No
Provide treatment
No life-prolonging measures

Summary

- Treating the elderly fairly requires ensuring that decisions are made using only morally relevant criteria
- The claim of “futile care” is often be inappropriately summoned to restrict health care to the very ill or elderly
- Appropriate criteria for decision-making for the elderly rest on their wishes and best interests