



M. A. Akşit Koleksiyonundan

Declaration

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Marmaris Declaration:

Ethical Concepts of Right to life and Pre-viability*

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M Arif AKŞİT and EsOGÜ Team*, **Türkan DAĞOĞLU, Uğur DİLMEN, Rahmi ÖRS**

***EsOGU Team:** M Arif AKŞİT (Prof. Dr., Department of Neonatology), Ömür ELÇİOĞLU (Associated Prof., PhD., Department of Deontology), Turgay ŞENER (Prof. Dr., Department of Perinatology)

DEFINITIONS

Ethics

Medical science mainly concerns the person as individual, and physicians are also aware for the civil privilege and her/his autonomy, all must be solely considered from other aspects that will also a code of legal and/or ethical concepts. Primary approaches must be consultation on humanity and health, before the medical advices, thus for protection and serving measures.

The notion must be perceived that, each individual is a model of human mankind, and also its physiological, mental and spiritual aspects, and social and cultural personality at the community as unique. The primum factual right is "*right to life*". Consequently, life is beginning from the conception, the item has to accepted, and must be indicated that physician is also an advocate of embryo and fetus.

Medical profession consider the autonomy of the person as distinctive, and physicians are also aware for the civil privilege and her/his self-determinations, in collaboration of art and philosophical science, and ethics, from all other characteristics that will also a code of legal and or ethical concepts. If the beneficence is in conflict with mother and fetus, medical approaches must be, under lawful grounding aspects, ethical concepts indicated by informed consent to family, for demanding from mother and father, in some case confrontation of legal conditions must be taken in notice. This informed consent, advice constructed by the Perinatology council for the physician of the mother/family is the preferred basic aspect in methodology.

Ethics, which regard as the worth of values (philosophy of moral), and addresses the questions, "*what is right*" and "*what we ought to do*" in particular conditions and state of affairs. The indication of what is right is the beneficence. The convenience of utility is for common sense; medical decisions, mother preferences and fetal benefit, interventions can be considered as right action. Ethical concepts are guiding principles, consultant advisers under the moral principles and not an implicational order as a legal

court array. “*The best good one*” is the aim of ought to do, but the problem is what the best is?

Ethics, which has roots in philosophy, beyond the legal reasoning, requires the scientific inquiring, and not depending on the strict moral regulations, obligatory rules, guiding the way of performance and principles to follow. Ethics, considered the human being right to life as the inevitably most precious worth, and have a special value in ethics, at the life quality as well. Ethics is guiding to an individual and for community; the social, cultural relations, under the headings good and bad. Ethics is querying them as scientific aspects.

Right to life and pre-viability concept must be rooted on principles as; the structure of an individual is constructed by his/her unique attitudes and behaviors and by self-determination concept, individually solitary pattern, and the most precious value is, the right to life, liberty and security of person.

The evolution and the development of a person is a lifetime procedure, the contribution of education and experience contribute them. The development is a process, with contribution of cultural, legal and moral philosophy (ethics) on support with educational experience must evaluate the person, with all those dimensions. In the basis of these fundamentals, right to life is not restricted by the health, must be considered under the humanity concepts as a rule.

Principles

The purpose to assemble the ethical principles, they are beyond of the strict rule or patterns; they are entire obligatory reasoning bond of philosophical aspects, from the ancient. Greek thoughts “*arkhe*” the term, meaning as “primarily, the first” and its meaning is “the main concept”. As a dictionary meaning (Encyclopedia Britannica); “a comprehensive and fundamental doctrine, or assumption, a primary source, with respect to fundamentals” and it also permits for knowledge efficiency.

BASIC CONCEPTS

Ethical principles are mainly constructed under the “*human rights*” concepts, and ethics as a philosophical aspect under medical perspective, try to find the answer of “what is right” and “ought to do” for the special condition or case/patient. *Consider or treat the human not the disease* will be our aim with **empathic** approach.

From the Declaration of Human Rights and European Convention.

- The basic rulebooks are: Everyone has; “*right to life*”, “*liberty and security of person*”, “*worth to live*”, “*the right to protect his material and spirit entity*” and “*no one have the right to end the life*”. Even the unborn baby have the rights of “*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*” is clear and distinctive. Fetus have no autonomy on his/her right to life, therefore physician must consider “unborn rights” more cautiously and advocacy.
- The worth of life; must not be countable, it’s a virtue value. At the law of civil privilege, in case of everyone is; “*to be live in honorable way, and must be equal rights.*” Civil privilege and liberty of autonomy must be taken premium in everyone. Life is divine, we have to respect life and even to death. There will be no relation and evaluation between the economy and the right to life.
- The approaches/interventions, even scientific and legal implications, the main reasoning; are, the originating from medical evidence based objectives, with social, economic and cultural aspects; they must be based on confirmations under the “Human Rights Declaration fundamentals”. Abstract thinking can be noticed in philosophy, but

not in legal and scientific attitudes must be concrete. In the constitutional state, justice must be legally depending on it, and by the civil liberties we demand this right, from the European Court on Human Rights. Under the rule of law; “Civil liberties” and “the right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity” must be considered as violation parameters.

- The medical and ethical committees and legal courts must consider the balancing of the rights, in every special case and condition.

CONDITIONS

Condition is “any uncertain future act”. When the fact/condition occurs, then there is an existing, actual state. Law considered the concrete one and the reasoning and grounds of this state. Therefore the condition must be evaluated in every aspect.

“The personality” starts at “the moment of conception”. The capacity to rights is bound to “condition”. At conception, there is a capacity to right to life; “viability” is not requirement for the acquisition of personality. Born alive is the conditional capacity or personality. Loss/death in utero is the “ex post facto” and an “unconditional one”.

Unborn child has statutory heir, born death has no heir. Court appointed a curator for problems, called *Nondum concepti* = successive heir or legatee.

The rights of the mother and the fetus have to be balanced under the ethical concept of beneficence. Mother’s right to terminate programs versus right to life, balancing of legally protected values and interests. Father has the property rights, sharing the responsibility, whether married or not as spouses.

Conditions can be classified as:

- Condition precedent (Objective verdicts to suspense life): e.g.; Unborn child or still born
- Condition subsequent (Continual health problems, resolutely condition): e.g.; Pre-viable, born alive with problems
- Condition fulfillment (In good physical condition expectations): e.g.; healthy born infant

THE CAPACITY OF LIFE BOUND TO CONDITION

The capacity of rights is bound the condition of mother and fetus;

- Cell period: pre fertilization and all the medical intervention and procedures attended to Strasbourg and Oviedo Declarations. Some legal concepts considered this phase separately. 2 weeks can be added for legal termination of pregnancies as considering the embryonic week or after fertilization duration.
- Embryo period; up to 10 gestational weeks: The conditional rights mainly considered as woman (with father permission) rights; entire right is a body integration of the woman and part of a woman. Mother’s wish has to take in notice. Termination can be done, with her consent, may be without any medical ground.
- Fetal periods: The evaluation will be under these aspects; condition precedent, suspense of rights, and condition fulfillment. This is mainly directed by the development of organ system.
 - Pre-viability period (pseudo-glandular phase): unborn have rights to physical and moral integrity
 - Right to privacy (capacity of rights): the right must be in balance of legally protected values and interests. Mother and fetal rights must be balanced under the medical interventions.
 - Canalicular phase: At the limitation of life, it can only be given right to life, just physiological support but must be avoided futile treatment for causing as “wrongful life, wrongful birth”.

- Saccular phase: Medical interventions, ultimate health care and treatment mostly required. Just be aware of “*futile treatment*”.
- At the alveolar phase (Full right to life); Personality rights and into the absolute rights to be considered the condition must be medically fulfilled.

BALANCING THE RIGHTS OF CONDITIONS

- Civil Rights: Unborn child has the right privacy. Neonatologist is mainly the advocator of unborn, if not legally “*curator*” and “*advocator*” will be attended. The civil rights is beginning from the first day of life, but some rights, as heir, can be in real after live birth. The decision of termination, is taken the unique and uppermost civil right “*right to life*” from a human being. Therefore legislation must be required. Every mother must have the right to medical interventions at the pregnancies, as indicated by the Perinatology. The medical interventions must be carefully evaluated not to be in torture and causing suffers. Futile treatment will be also avoided. For the pre-viable and severely handicapped infants, “*comfort care*” procedures must be considered, but physiological support must be given.
- Autonomy: Mother has privacy and autonomy for herself and for embryonic stage but not for the fetus.
- Informed consent: Informed consent is arbitrary for taking woman’s decision and demand, as an indicator of autonomy. Informed consent must be appropriate to the legal patient’s rights concepts, preferably prepared by the Perinatology Council/committee or the third person of interest.
- Termination: Mother’s right to terminate the pregnancies versus right to healthy life, have to be balancing of legally protected values and interests, for mother and the fetus, in medical interventions. In some legal concept, after 20 week of gestation (In WHO the 22 week of gestation can be confirmed by adding 2 weeks for fertilization) indicating fetus has right to life, except life threatening conditions of the mother and some legal aspects like the pregnancies after rape.
- Court order: Physicians and medical staffs can only give advice, demand from the patient. Informed consent must be arranged by the third person of interest, like ethical Perinatology councils and/or committees, with the contribution of responsible medical personnel. If they are obligatory and life treating condition and mother has no demand to do, they have to get legal or court advice/order. Forceful actions must be in legal interventions.
- Prima facie: Mother life threatening conditions must be considered premium, thus fetus could not survive without women and pre-viable fetus can be sacrificed (end of life decisions) only by beneficence presence and in the presence of medically evidence based condition.

CONFLICTS OF INTEREST

DILEMMA

The most important controversy in medicine is the maternal versus fetal/infant rights. There is no accurate and stress-free way to solve it. To find an answer is not so easy, even it is so hard to choice the medical procedure. Therefore to share the responsibility there must be a team, who considered the fact as medically and ethically under the legal perspective. The legal responsibility belongs to the physician of the patient.

Ethic rules are considered in the presence of value/s. In the civil privilege or individual rights perspective, the evaluation reasoning’s rest on not only normative concepts, but conditional and actioner ethics/act logic assessments are implemented. Then the biases/conflict of interests is encountered and the perinatology councils/committees, functioning as ethical ones’, must form and give advices to physician and patient.

Ethical conflicts confirm by the questions; A) what the best is? B) What the righteous action, C) civil privilege, autonomy. Some conflicts are considered below and Table 1; A versus B. Summarized at the Table 1 and ethical equilibrium parameters indicated at the Figure 1.

- **Autonomy;** A) Every mother must give their own conclusion. B) What will be done, if the choice conflicts with the doctor's decision? If it is forbidden by law/virtue/moral values, how can physician resolve this problem?
- **Utilitarian;** A) Person can choose the best for his/herself. B) What will be done, if it will be suicide or self-destruction approach? If the mother is not considered the fetal life, or vice versa? The correction of abnormality considered as the rights of the malformed baby. This right must be grounded on the beneficence, under the ethics fidelity code of the physician. In some occasions physician act cannot be utilitarian; then the action will be, not to cause any harm, *primum non nocera*.
- **Confidence;** A) All procedures, decisions must be in great secret and confident. B) Can it be secret, if there is a conflict between the assessments?
- **Honesty;** A) Doctor must give all the information to mother, informed consent is obligatory. B) Even in extreme evaluation, can doctor confirm the anomalies exact and correctly? Physicians only predict it, not strictly confirm it. Physician can explain, but can mother be understood, perceive it?
- **Futile approaches;** A) upon request at futile treatment; abortion and even euthanasia, DNR order can be accepted. B) Is it legal to end one's life, or letting to die upon her/his demands or ethical committee advice? In some regulations in countries, like Republic of Turkey, all of them are illegal.
- **Informed consent;** A) In order to apply any actions to a person, you must have taken consent, by giving true, correct information. If there will be no civil privilege or autonomy, in these situation cannot mentioned as moral act.

The information (**informed consent**) must concerns; a- health condition, b- medical interventions which is decided to perform, c- The benefit and possible warnings and precautions, d- alternative medical interventional methods, e- the outcome and the results of the conditional process, f- what will be happened if not accepted any treatment and/or medical procedures.

B) If the patient/mother will not accept the recommendation, what will you do? If it will be emergent, you can perform the medical procedure, but how can you perform it? Do you take it to court, as in cesarean section for the placenta previa cases?

- **Justice;** A) under the civil privilege, by considering the common sense, legal laws, cultural traditions, social and/or ethical principles, fundamentals of medical perspective confirm the justice. Law is not alone satisfactory for justice. There must be a legal relation and reasoning between the rights and demands legislation is required. B) If all or part of them conflict between the civil privilege/liberties, what will be your conclusion? If you consider the rights, whose right will be overcome each other, mothers or fetal? The ethical equilibrium must be required for the juridical action.

TABLE 1: ŞENER-AKŞİT Algorithm (Ethical assessment at the Perinatal Conflict)

Conflict	Possibilities	Action	Ethical Equilibrium	Comment
NO	<p>All interests are in the same direction</p>	Proceed.	YES	On the same direction
YES	<p>Mothers life is of prime importance</p>	Possible act against fetal beneficence	Mother's preference and beneficences are on the same line.	Mother's autonomy is considered.

YES	<p>Mothers preference is discordant</p>	Possible act against mother's preference on behalf of beneficence	Maternal and fetal beneficence overweight.	Beneficences of mother and fetus is in conflict with mother's preferences
YES	<p>Medical requirements might change the procedure</p>	Action against the preference should be done under court order.	Maternal beneficence is in danger	Maternal preference and fetal beneficence is in conflict with maternal beneficence.
YES	<p>The degree of fetal abnormality guide the medical direction.</p>	Continue with the routine pregnancy care.	Mother's beneficence and autonomy should be considered.	Mother's preference and beneficence are on the same direction.
YES	<p>The direction is going to negative for the mothers preference</p>	Termination of pregnancy if anomaly is severe or life incompatible. Continue pregnancy if assessment is mild.	Degree of fetal anomaly can be decisive. If needed court ordered required	Maternal preference is in conflict with beneficence, medical interventions must be considered.
YES	<p>Act due to the progression of the pregnancy, follow-up</p>	Court order required terminating the pregnancy. Consider the medical requirements	Degree of fetal abnormality can be decisive. If mothers life in danger, medical intervention is obligatory.	Maternal preference is in conflict with beneficence, follow up the pregnancy is needed.

NB: Poster Presentation at the 9th World Perinatology Congress, Berlin, 2010.

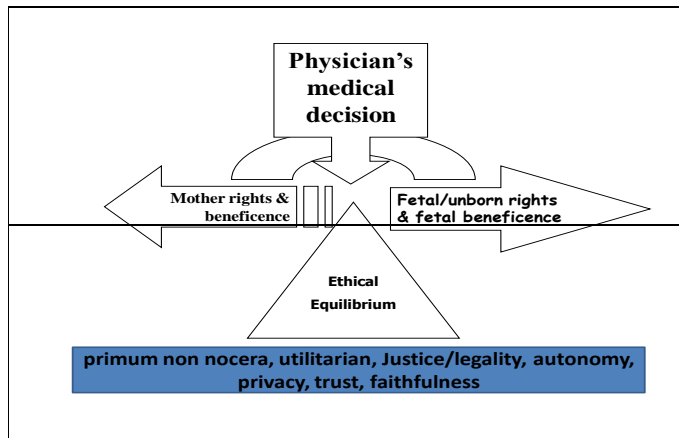


Figure 1: The ethical equilibrium is a pivot for the beneficence of maternal and fetal rights.