



## Concepts

# 7

### **Ethical Concepts at the preterm infants, considering the Right to life and Pre-viability\***

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*Prematurity is an inevitable condition; viability limitation leads to dismissing the Rights to live. In legal and ethical consideration, the right of life is natural right to be a living organism as Human. No person or legal/ethical concepts are having right to directive or life ending decision, even no right to consider any discussion on the right to live.*

**S**ome arguments on the life ending or letting to die decisions considering by ethical perspectives. The article “Ethical Issues in Neonatal Care” at 2015, January 16,

(from: Brian S Carter, MD, FAAP; Chief Editor: Ted Rosenkrantz, MD, et al) mentioned some aspects on ethical discussions as indicated below.

- Who deserves Access to prenatal and Neonatal specialty care?
- Who pays for this care?
- Is the cost of Neonatal intensive care acceptable?
- How can this care be assured and equitably distributed?
- Are some babies too sick or too premature for newborn intensive care?
- What outcomes of neonatal intensive care are too burdensome?
- Who decides whether an infant receives care?
- How are these decisions made?

They also mentioned some other questions concerning the care of the babies as:

- 1) What are the goals of neonatal intensive care?
- 2) What place to guideline have in the ethical practice of neonatal medicine and how should they be developed?
- 3) What is good for critically ill newborns and who determines this?

Counter legal/court orders have not any permission or even positive Conduct on this aspect. European Human Right Council indications; a) *civil liberties*, b) *the right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity*. The opposite act might be conducted do the accusation of: Article 1 (), Article 2 (Right to live), Article 3 (Righteous action), Article 6 (security), Article 8 (individually protection), Article 21 (no discriminancy), Article 22 (cultural, believe and language rights), Article 31 (Rights of Child), Article 25 (Right of Old people), Article 31 (equal rights of work), Article 34 (social security), Article 37 (environment rights), Article 38 (consumer rights), Article 45 (settlement right) etc. Thus, if you will end the life, the individual will not be get old, and no rights concerning that, you will be the reasoning not have the rights. So, it is a cumulative conduct of accusation, not only the 2<sup>nd</sup> Article Right to Life.

In 2006, at the European Council Report, there is not any compensation or to return, after taken the right of life, this is a strict condition, not any evaluation, consideration on it, the governments must have evaluated the cause of death, there is not any evidence when the life starts and ends, so the concept of life is not for the decision of any person, even to Mother. This conducts are over any National laws (Articles; 51, 53).

## Outline

**AIM:** The Right to life is the primary concept to be living. This is a strict rule, not even allowed for discussion. Preterm infants, even periviability but still living ones, this is contemporary be medical duty for life.

**Grounding Aspects:** The European Council Articles at 2006 for Right to Life and 20015 End to life Rights, The Court Orders and from legal conducts.

**Key Words:** Right to life, European Council Reports in 2006 and 2015

By considering the right to life, even to pre-viable infants from the aspect of European Council Reports nearly 12 Articles are overruled. The right to life is strict rule, not any compensation performed after taken the life.

Ethical evaluation leads, first to discuss what is right and true concepts. In theory and evaluative perspectives. Afterwards, ought to do, the application and performance of the conducts. There will be conflicts of interest as; a) autonomy, b) benefit/utility, c) confide, d) honesty, e) futile treatment, f) informed consent, g) justice.

Each consideration must be done by the responsible medical staff and consent form legal representatives, thus, in case of right to life considerations, in case of demand to letting to die demand, the infant can be taken from family for the aspect of Right to Life.

### Özet

**AMAÇ:** Yaşam Hakkı insan hakları olarak ilk tanımlanan ve katı olarak uygulanması istenilen, herhangi bir kıyaslama ve tartışmaya bile açılmayan bir konudur. Prematürelere de yaşam sınırında olanlar için bu hakkın yerine getirilmesi konusundaki ilkesel boyut sunulmaktadır.

**Dayanaklar/Kaynaklar (Materyal ve Metot):** Tüm İnsan Hakları Bildirgesi temelinde, Tıbbi Deontoloji ve Avrupa Konsey Kararı dikkate alınmıştır. 2010 Perinatoloji Kongresinde sunulan metin yeniden Yenidoğanda Etik Konular (2015) makalesi üzerine yeniden gündeme getirilmiştir.

**Anahtar Kelimeler:** Yaşam Hakkı, Avrupa Konsey Kararları, Yenidoğanda Etik Konular

Her insan canlı olarak var olması ile tüm yasal haklara sahip olabilmektedir. Prematürelere de yaşam sınırında olan her bebeğin canlı doğması ile yaşam hakkı oluşmakta ve tüm vatandaşlık haklarına da sahip olmaktadır. Bu açıdan Yaşam Hakkı konusunda Avrupa Konseyinin 2006 tarihli yazı ile Ölüm Hakkı ile ilgili 2015 tarihli kararları irdelendiğinde, yaşam hakkının tartışmaya açık bir konu olmadığı ve kesin kalıplarla uygulanmasını şart koşmaktadır. Yaşam Hakkının alınması ile 12. Yasal boyut çığırılmış olmaktadır.

Etik ilk aşamada teorik ve ilkeler boyutu ile doğru nedir, gerçek boyut nedir irdelemesi yaptıktan sonra ise ikinci aşamada uygulamalarda ne yapmalıyım boyutu gündeme gelmektedir. Başlıca etik çatışmalar; a) otonomi, b) yararlılık, c) gizlilik, d) sadakat, e) yararsız yaklaşımlar, f) aydınlatma/bilgilendirme ve rıza/onam, g) adalet, haklara göre davranma.

Bu her olguya göre irdelenmesini gerekli kılmaktadır. Hekim ile hasta ailesi farklı düşünebilir ama temel çerçevede prematürenin yaşam hakkı temelinde bakış gerekmektedir, gerekirse aileden bebeğin koruma ve bakım için kamu tarafından alınması gündeme gelmektedir.

## 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, everyone is a model of human mankind, and 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 must have 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 conflicts 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*” 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 has 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 advocatory.
- 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 *Non dum 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.
- Embry 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 must 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 are 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, must be balancing of legally protected values and interests, for mother and the fetus, in medical interventions. In some legal aspects 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 must 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 choose 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 nocere*.
- 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) 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 situations cannot have mentioned as moral act.

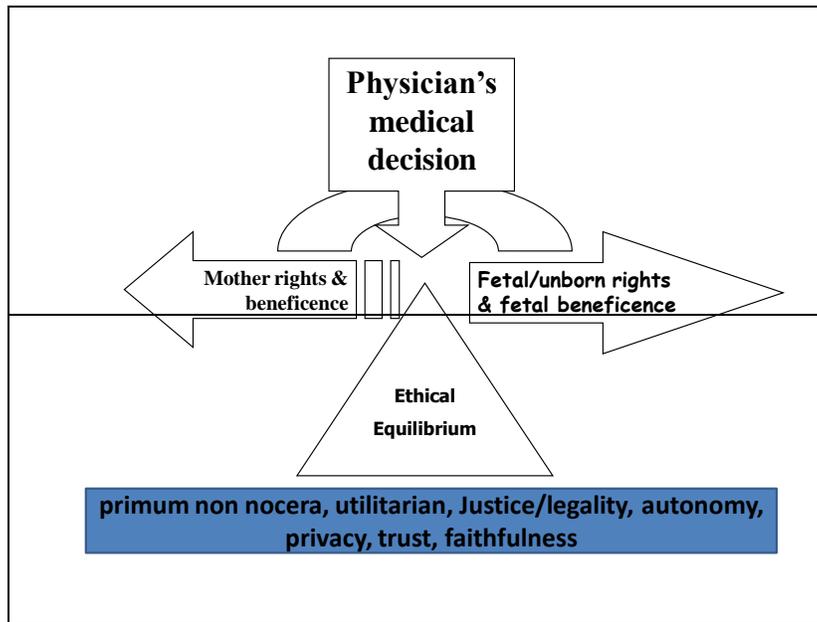
The information (**informed consent**) must concerns; a- health condition, b- medical interventions which is decided to perform, c- The benefit and possible warnings and precautions, d- alternative medical interventional methods, e- the outcome and the results of the conditional process, f- what will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

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 beneficiation	Maternal and fetal beneficence overweight.	Beneficences of mother and fetus conflicts 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 conflicts with maternal beneficence.
YES	<p>The degree of fetal abnormality guides 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 mother's 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 conflicts 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 mother's life in danger, medical intervention is obligatory.	Maternal preference conflicts with beneficence, follow up the pregnancy is needed.

NB: Poster Presentation at the 9<sup>th</sup> World Perinatology Congress, Berlin, 2010.

- 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.



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