The Five Elements of Acupuncture Medical Ethics
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- Five Elements of Ethics
- Tuskegee Syphilis Experiment
- NCCAOM Code of Ethics
- Real World Applications

Definitions
- Ethics are a philosophical discipline, just like logic.
- It is the study of what is morally good and bad and similarly right and wrong.
- This includes examining actions as well as motives and ends
- Ethics are very closely related to two other terms: morals and laws

DEFINITIONS

Ethics
- There are three ways the term is used:
  - A general way of conducting yourself through life, for example a religious ethic such as Judeo-Christian ethics
  - A set or code of rules which involves professional ethics and what is unethical behavior
  - Philosophical ethics inquires about and studies ways of life and rules of conduct (Pozgar, 2005)

Morals
- Morals refer to the implementation or actions of theoretical ethics
- In other words, ethics are the ideas, ideals, and theories of right and wrong action and moral behaviors are the actual right or wrong actions
- This is the difference between saying something should be done (ethics) and doing it (morals)
Laws

- Everyday laws are governmental rules
- Ideally, they should be based on ethics and moral behavior, but after undergoing an imperfect political process, they may not resemble the original intent
- Whether or not they resemble the original ethical principle, there are consequences for violating them including suspension and revocation of a professional license, monetary fines, and incarceration

FIVE ELEMENTS OF ETHICS

Autonomy

- Autonomy is the right of an individual to make their own decisions
- This principle refers to an individual’s ability to decide what treatments to undergo and which ones to avoid
- Autonomy is the principle that allows a person of a particular religious faith, or other reason, to refuse a blood transfusion, a medication, or any medical interventions.

Five Elements of Ethics

- While ethics is an entire philosophical discipline involving all aspects of society and interpersonal relations, there are subsets of ethics
- Here we talk about medical ethics and that has been narrowed down to the five most important concepts:
  - Autonomy, beneficence, nonmaleficence, justice, and virtues

Autonomy

- What if a child of religious parents needs a life saving intervention?
- For a very long time—and sometimes currently—a doctor made the best decision for his/her patients without necessarily telling them why or fully informing them of potential risks
- This is called paternalism and it is a violation of the ethical principle of autonomy

Autonomy

- Jenny is a 28 year old woman who follows a vegan (no animal products) diet due to concerns about how animals are treated. Ralph is an older practitioner who thinks that Jenny needs to be on E Jiao (Asshide glue) in order to improve her health. He discussed this with Jenny and she flat out refused to have it in her herbal formula. Ralph, who has a daughter around the same age, decided it was in her best interest to have it, and put it in Jenny’s formula without telling her.
Autonomy
- Was putting E Jiao into Jenny's formula without her knowing wrong?
- Is there a situation where this wouldn't be wrong? For example, it might be wrong if Ralph believed it would give Jenny a little extra energy, but would it be wrong if he felt not taking it could cause great disability or even Jenny's death?

Beneficence
- While paternalism may violate autonomy, it actually can demonstrate the principle of beneficence
- Beneficence is the principle of doing good, demonstrating kindness, and showing compassion
- Basically, it means helping others

Beneficence
- Many medical controversies are based on a conflict between autonomy and beneficence
- Is beneficence culturally based?
- In other words, could one culture believe an act upholds the principle of beneficence and another believe the same act violates it?

Nonmaleficence
- Nonmaleficence is the ethical principle that states that caregivers should not cause harm in others
- This is what the Hippocratic Oath says: primum non nocere, "first, do no harm"
- This is in contrast with the previous principle, beneficence

Nonmaleficence
- Beneficence says one should do good but nothing about harm
- Nonmaleficence says that one should not do harm without regard to doing or not doing good
- They are opposite sides of the same coin
- Together, these principles say one should do good and not cause harm

Nonmaleficence
- In Asia, in severe cases of asthma that is not responding to treatment, a possible treatment includes breaking off the tip of a needle in the point Gallbladder 21. This permanently stimulates this point and is said to create a beneficial effect on the disease. This is forbidden in most, if not all, states within the United States.
- Why would this be banned in the United States?
Nonmaleficence

- This may be banned because it is perceived to cause harm by permanently damaging the local tissues and potentially working its way into the local structures including the lungs, causing a pneumothorax. Combined with the lack of evidence in the U.S. that it works, it is also considered a violation of beneficence in that it has not been demonstrated to do good.

Privacy

- Privacy is another fundamental right of patients
- The AMA made it the first topic their Ethical Force Oversight Body addressed
- It is crucial for building trust
  - If a patient does not believe what he or she is saying is private, they will not divulge adequate information to diagnose and treat
- Informational self-determination
  - A person's ability to control the flow of his own personal information

Privacy

- Two Types
  - Anonymity
    - Withholding of information
  - Fair information practices
    - Policies and procedures used to protect information once divulged

Privacy

- There are 5 major criteria to achieve privacy:
  - Notification – the collection of private information may not occur without the knowledge of the information's owner
  - Choice – the information gatherer must offer the owner of that information an opportunity to refuse to consent
  - Minimization – the information gatherer may obtain only as much information as is needed

Privacy

- Five Criteria (cont.)
  - Use – the information gatherer may only use the information for the express purpose for which he gathered it
  - Security – the information gatherer must erect a system to ensure that the other four criteria are not missed due to negligence

Virtues

- Virtues are defined as a beneficial quality or moral excellence
- They are the characteristics that differentiate between good people from bad people
- In the context of the five phases, virtues are like the earth phase when earth is in the center of the diagram; all the other phases stem from and return to the earth phase
Virtues

- In other words, virtues are the touchstones, the basis of the other ethical principles.
- Virtues include ideals such as commitment, compassion, conscientiousness, cooperativeness, courage, discernment, fairness, fidelity, freedom, honesty, justice, trustworthiness, hopefulness, integrity, kindness, and respect.

Tuskegee Syphilis Study

- In 1932, a study was started on the natural progression of untreated syphilis.
- In 1947, a cure for syphilis, penicillin, became widely available, but the researchers decided to deliberately withhold it from the subjects.
- This study went on for a total of 40 years while patients believed they were being adequately treated and being told they had “bad blood.”

Tuskegee Syphilis Study

- The subjects were given “treatment” for their condition, free rides to and from the clinic, free meals, and burial insurance in case of death.
- At one point, participants were cajoled into getting a potentially harmful, non-therapeutic spinal tap with a letter entitled “Last Chance for Special Free Treatment.”
- They suffered, they spread the disease, they were poor, most were illiterate, and they were African-American. (Tuskegee Syphilis Study Legacy Committee, 1996)

Tuskegee Syphilis Study

- The ethical breaches in this study were so numerous, it is considered the quintessential example of what not to do as well as the reason for many laws.
- What were the ethical breaches in the way this study was designed and implemented?

Tuskegee Syphilis Study

- First, the patients were selected specifically for their skin color and socioeconomic status and presumably their ignorance.
- Current ethical practices of experimentation closely regulate how patients are selected and they should not be chosen because subjects are easily available, in a compromised position, or easily manipulated.
- The fallout of this includes Institutional Review Boards (IRBs).
Tuskegee Syphilis Study
- Second, the subjects were lied to
  - Not once or twice, but repeatedly and possibly continually
- Third, the patients were not properly informed of the experiment and potential risks
- A key concept in ethics is that of informed consent
  - This refers to the ability of a patient to make a decision regarding participation in an experiment, or medical treatment, after given enough information about potential risks

- Fourth, there was no confinement of the experiment
  - This experiment was dangerous and exposed others outside of the experiment to harm unknowingly
- Fifth, they knowingly harmed the subjects, another no-no in experiments
  - To cause harm is unethical, immoral, and, in a Judeo-Christian way, evil.

- Sixth, to compound the imposed harm, the experimenters did nothing to mitigate the harm and withheld a cheap, easy cure
- How many basic ethical principles were breached in this study?
- It led to the 1979 Belmont Report and the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

NCCAOM Code of Ethics
- All practitioners certified by the National Certification Commission for Acupuncture and Oriental Medicine must be committed to responsible and ethical practice, to the growth of the profession’s role in the broad spectrum of American health care, and to their own professional growth. All Diplomates, Applicants and Candidates for certification agree to be bound by the NCCAOM Code of Ethics.

- COMMITMENT TO THE PATIENT
  - I will
    - Respect the rights and dignity of each person I treat.
    - Accept and treat those seeking my services in a nondiscriminatory manner.
    - Keep the patient informed by explaining treatments and outcomes.
    - Protect the confidentiality of information acquired in the course of patient care.
    - Maintain professional boundaries in relationships with patients and avoid any relationships that may exploit practitioner/patient trust.
    - Keep accurate records of each patient’s history and treatment.
    - Treat only within my lawful scope of practice.
NCCAOM Code of Ethics

COMMITMENT TO THE PATIENT

I will
- Render the highest quality of care and make timely referrals to other health care professionals as may be appropriate.
- Avoid treating patients if I am unable to safely and effectively treat due to substance abuse, physical or psychological impairment.
- Bill patients and third party payers accurately and fairly.
- Not engage in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established.
- Not engage in sexual contact with a former patient unless a period of six (6) months has elapsed since the date that the professional relationship ended.
- A sexual relationship must not exploit the trust established during the professional relationship.

NCCAOM Code of Ethics

COMMITMENT TO THE PROFESSION

I will
- Continue to work to promote the highest standards of the profession.
- Provide accurate, truthful, and nonmisleading information in connection with any application for licensure, certification, NCCAOM disciplinary investigation or proceeding or recertification.
- Report any changes to the information on my application regarding professional ethics and my on-going fitness to practice, including but not limited to reporting to the NCCAOM any disciplinary action taken by a school or regulating agency against me, and any criminal charges or civil actions that may be relevant to my health care practice or fitness to practice.

NCCAOM Code of Ethics

COMMITMENT TO THE PUBLIC

I will
- Provide accurate information regarding my education, training and experience, professional affiliations, and certification status.
- Report to NCCAOM or appropriate licensing authorities information about any violations by me or by my peers of the Code of Ethics or Grounds for Professional Discipline.
- Use only the appropriate professional designations for my credentials.
- Advertise only accurate, truthful, nonmisleading information and refrain from making public statements on the efficacy of Oriental medicine that are not supported by the generally accepted experience of the profession.

NCCAOM Code of Ethics

COMMITMENT TO THE PUBLIC

I will
- Respect the integrity of other forms of health care and other medical traditions and seek to develop collaborative relationships to achieve the highest quality of care for individual patients.
- Comply with all public health and public safety reporting duties imposed on licensed health care professionals.

REAL WORLD APPLICATIONS
Business Ethical & Legal Issues

- Truthfulness in advertising
  - Cannot state or imply something that isn’t accurate
- Fraud in general cannot be done and there is a specific branch of fraud called healthcare fraud
- Conflicts of interest

Health Care Fraud

- Billing for services not performed
- Falsifying a patient’s diagnosis to justify procedures that are not medically necessary
- Misrepresenting procedures to get payment for non-covered services such as facial rejuvenation acupuncture
- Up coding – billing for a more costly procedure than the one performed

Health Care Fraud

- Unbundling – billing each stage of a procedure as if it were a separate procedure
  - An example is billing an examination and management code for every acupuncture treatment
- Accepting kickbacks for patient referrals
- Waiving patient co-pays or deductibles and overbilling insurance companies

Abandonment

- A medical practitioner cannot “abandon” a patient
- Once a patient/practitioner relationship has been established, the practitioner MUST continue seeing that patient unless one of the following conditions has been met:
  - Mutual consent to end
  - The patient dismisses the practitioner
  - The practitioner withdraws from the case
  - The practitioner’s services are no longer required

Abandonment

- Generally, if a practitioner does not wish to continue seeing the patient, he or she must give reasonable notice so that the patient can find alternative care
- When ending the relationship and/or giving referrals, it is recommended to give at least three

Falsification of Records

- The intentional alteration, falsification, or destruction of medical records in order to avoid consequences for medical negligence
- Shows malice and damages are probable even if the acts did not directly cause harm to the patient
Informed Consent

- This is a cornerstone to a patient's autonomy: if a patient doesn't know, how can they make an informed decision?
- For a patient to consent they must be capable of consenting
  - Usually a court decides incapacity
  - Children under 18 are incapable of consenting unless they are married or emancipated (state by state)

Can be oral or written, though written is much more provable
- In our profession, informed consent forms are usually determined by our malpractice insurers and cannot be altered without their consent or malpractice coverage may be compromised

An informed consent form should have each of these elements:
- The nature of the patient's illness or injury
- The name of the proposed intervention
- The purpose of the proposed intervention
- The risks and probable consequences of the proposed intervention
- The probability that the proposed intervention will be successful

Elements of the form (continued):
- Any alternative interventions and their risks and benefits
- The risks and prognosis if no intervention is performed
- An indication that the patient understands all of the above
- The signatures of the patient, practitioner, and witnesses
- The date signed

Right to Refuse Treatment

- Inherent in the doctrine of informed consent is the ability or right to refuse treatment
- Only a court can violate this right and does so in cases where state rights overrule individual rights such as in cases of preservation of life, protection of third parties, and prevention of suicide
- Religious beliefs are common areas of dispute in this category

Confidentiality

- 1996 Healthcare Insurance Portability and Accountability Act (HIPAA)
- Cannot divulge identifying information
- Confidentiality is incredibly important, but can be breached such as in cases of protecting the public, abuse, or to other care givers for proper medical care
- Before breaching confidentiality, the practitioner should make every effort to discuss the issues with the patient
Failure to Seek Consultation
- When a practitioner determines, or should have determined, that a patient's condition is beyond his or her capacity to treat with a likelihood of reasonable success, there is a duty to disclose this to the patient and the patient should be advised to receive other treatment.
- To win such a case, the patient needs to show that the practitioner deviated from the standard of care and that it caused injury.

Failure to Obtain Adequate History and Physical Exam
- Failure to obtain both an adequate history and physical exam violates a standard of care owed to the patient.
- Not obtaining a proper history can prevent the practitioner from knowing serious contraindications and conditions that could alter treatment.
- Exam as an acupuncturist must include a pulse and tongue.

Misdiagnosis
- Misdiagnosis is the most frequently cited cause of injury in malpractice cases.
- Misdiagnosis alone is not usually enough for a case.
  - A plaintiff must also show deviation from standards of care and an actual injury.

Abuse
- In most states both elder abuse and child abuse must be reported to authorities.
- Most locales have Adult Protective Services and Child Protective Services to receive reports.
- Don't hesitate to call, they will make the determination if intervention is necessary.
- Domestic violence is generally not reportable.

Elder Abuse
- Harmful treatment of people including:
  - Abandonment
  - Emotional, financial, verbal, mental, sexual, or physical abuse
  - Corporal punishment
  - Involuntary restraint or seclusion
  - Neglect

Child Abuse
- An abused child is one who has suffered intentional serious mental, emotional, sexual, and/or physical injury by a parent or other person responsible for the child's care.
- Some states add in suffering from starvation, moral neglect, and/or immoral associations.
- Any report must be made with a good-faith belief that the facts reported are true.
Patient Rights
- Patients have the following rights:
  - Right to know patient rights
  - Right to an explanation of patient rights
  - Right to participate in care decisions
  - Right to informed consent
  - Right to ask questions
  - Right to know of restrictions of rights
  - Right to have special needs addressed
  - Right to access medical records
  - Right to sensitive and compassionate care
  - Right to a timely response to care needs
  - Right to know the caregivers

Charting
- Charting is crucial as a written record of our compliance with these ethical/moral/legal issues
- There is no better defense against almost any medical accusation than good charting
- Poor charting will increase the probability of losing a case

Hippocratic Oath
- I swear by Apollo, the healer, Asclepius, Hygieia, and Panacea, and I take to witness all the gods, all the goddesses, to keep according to my ability and my judgment, the following Oath and agreement: To consider dear to me, as my parents, him who taught me this art; to live in common with him and, if necessary, to share my goods with him; To look upon his children as my own brothers, to teach them this art.

- I will prescribe regimens for the good of my patients according to my ability and my judgment and never do harm to anyone.
- I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a pessary to cause an abortion.
- But I will preserve the purity of my life and my arts.

- All that may come to my knowledge in the exercise of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal.
- If I keep this oath faithfully, may I enjoy my life and practice my art, respected by all men and in all times; but if I swerve from it or violate it, may the reverse be my lot.
The "Chinese Hippocratic Oath" is Sun Si Miao's "On the Absolute Sincerity of Great Physicians"

Talks about the importance of: proper diagnosis and treatment, proper study, proper disposition, compassion, having a clear mind and a dignified appearance, and developing an attitude of goodwill.

A Great Physician should not: gossip, pay attention to status, wealth, whether a person is attractive, a friend or enemy, act hastily, rely on one's superiority, keep their reputation in mind, be talkative, provocative, make fun of others, raise one's voice, decide over right and wrong, or discuss other people or their business.

Sun Si Miao

Sun Si Miao

Sun Si Miao

make the access to help more difficult and underscore one’s own merits and abilities. Such conduct has to be regarded as contrary to the teaching of magnanimity (chang-shu). The object is help. Therefore I enter into all the problems in such detail here. Whoever studies medicine should not consider these problems insignificant.

“Life is short, the Art is long, opportunity fleeting, judgment difficult.”

Hippocrates

Please feel free to address any questions to Dr. Greg Sperber at greg@sperbsherbs.com

THANK YOU

Bibliography