Ethics Toolkit

How to approach an ethical question

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BMA Medical ethics and human rights

bma.org.uk

How to approach an ethical question

Approaches to ethical questions will vary depending upon the complexity of the question. Some can be easily resolved by reference to relevant law or regulatory guidance. Questions such as who can consent on behalf of a young child, for example, have well-established answers. The law sets the limits within which doctors may exercise their professional judgement. Guidance from the General Medical Council (GMC), which is binding on all doctors, must also guide doctors' actions. Within those parameters, however, doctors must use their judgement to make decisions that are reasonable in the circumstances and can be justified with sound and logical arguments.

Complex cases, particularly where duties to different parties conflict, require more detailed consideration. Through many years of providing ethical guidance for doctors facing real-life ethical challenges, we have developed a flexible approach to these dilemmas, combining practicality, law (UK-wide and devolved), and ethical reasoning. While there is no single 'right' way to tackle complex ethical questions, our approach recognises that ethical decision-making in medicine involves balancing a range of clinical, legal, regulatory, and practical issues to achieve the best available outcome.

For these more complex questions, we take the following six-step approach.

Step one: recognise that you are facing an ethical question

This is not always as easy as it sounds. The distinction between an ethical problem and a clinical or practical problem may not be clear cut, particularly in high-pressured work environments or where there are established cultures and practices. Ethical problems generally arise where there is a conflict of principles, values, rights, or interests, or where there are good moral reasons to act in two or more different ways, each of which may also be, in some way, morally flawed.

Sometimes the language we use suggests the problem may be an ethical one. Technical questions will often use words like 'can we' or 'can't we', in the technical sense of 'do we have the ability?'. Similarly, questions of medical law are also usually framed in terms of 'can we' or 'can't we', in the sense of 'is it lawful to do this?'. Ethical questions often involve words like 'should we' or 'shouldn't we', 'ought we' or 'oughtn't we'. We often ask ourselves if the decision is 'right' or 'wrong'. Consider, for example, a patient in a serious prolonged disorder of consciousness. On the clinical, technical side is the question of whether we can keep them alive in such a condition - and generally, we can. But then the question arises as to whether we should keep them alive. And this is now an ethical question. Not whether we can keep them alive, but whether it is right or wrong to do so.

Identifying a situation as raising an ethical problem, signals the need to stop and think through how best to proceed.

Step two: identify the ethically important components

Ethical questions in medicine can be complex. An important early step is to remove extraneous detail so the ethical question can be seen as clearly as possible. Before deciding on a response, it is vital to properly understand the question. This usually involves identifying relevant rights, duties, interests, benefits, and harms, along with all relevant viewpoints; particularly the views of the patient.

It can be helpful to start off by identifying the ethical concepts at play – is the question, for example, primarily about consent, mental capacity, or confidentiality? We can then go back to first principles to see if they help us address the question. For example, personal health information should remain confidential unless the patient consents to disclosure, there is a legal requirement to disclose, or there is an overriding public interest. This process can help to focus on the question that needs addressing and provide some indication of how to respond.

Where there are competing rights or interests, these need to be clearly articulated so that they can be assessed and prioritised. In some cases, it will be clear whose interests should take priority and the issue can be easily resolved. In child protection cases, for example, the rights and interests of children usually take priority over any adults involved and this can be a powerful aid to decision making.

Step three: where necessary, seek additional information

For some questions, identifying the ethically important components will be insufficient and further information may be required. Obtaining clarity about the relevant facts is an important part of the decision-making process. Where, for example, the question has to do with disclosing confidential information relating to a child, the child's decision-making capacity will need to be identified (or, if the child is very young, it will be important to know who has parental responsibility). Ethically, the patient is at the centre of decision making, and, in most cases, the informed views of the patient will be determinative. Even where a patient lacks capacity it is essential to take all reasonable steps to identify their prior wishes, feelings, and beliefs where relevant to the decision.

Part of this process of information gathering may involve speaking to other healthcare professionals who are involved in the patient's care, who may have a different perspective, or may have had more contact with the patient and, as a result, have additional information to feed into the process.

Step four: identify any relevant legal or professional guidance

Many ethical questions in medicine are addressed either directly or indirectly by GMC guidance and the law. For some questions this will provide a straightforward answer – the GMC makes it clear, for example, that doctors must not accept payments from providers to whom they refer patients. Other issues are more complex and may require advice from a range of sources. In addition to statute, case law, and GMC guidance, this could include advice from professional bodies such as the BMA, medical defence organisations, or relevant regulatory bodies such as the Human Tissue Authority. The law and GMC guidance are binding on doctors; professional guidance, such as that from the BMA or medical defence organisations, is not, but can provide useful insight and can help to identify actions that would, or would not, be considered reasonable. A decision that is in line with relevant and appropriate professional guidance is also less likely to be challenged.

Step five: critically analyse the question

For complex moral questions, this is often the challenging part. Where law, regulation, guidance – or discussion with informed colleagues – does not find a way forward, some form of critical analysis is required. Doctors do not need to be moral philosophers. The important point is that any decision is reasonable and defensible in the circumstances. In medicine, some decisions also need to be made urgently, without the luxury of extended consultation.

Critical analysis will ordinarily involve several considerations. Even where the law or guidance doesn't show a clear way forward, it may give an indication of things that must be considered. Critical analysis will also involve consideration of the morally relevant factors identified at step two. Where one or more of these compete, they need to be weighted to find which should take priority.

Consider a request from the police for full access to the medical records of a patient who is suspected of having committed a crime. Here duties of confidentiality to the patient are in tension with duties to the public good. Confronted with such a request, factors to consider will include:

- Is it possible to seek the patient's consent, bearing in mind that it may jeopardise the police investigation?
- Is the crime sufficiently serious to override duties of confidentiality?
- Is anybody else at risk of serious harm?
- What is the purpose of the disclosure and what information is required to assist the police?
- Can the information be obtained without breaching confidentiality?
- Is there an urgent need to disclose?
- If a disclosure is justified, what is the minimum information necessary to achieve the objective?

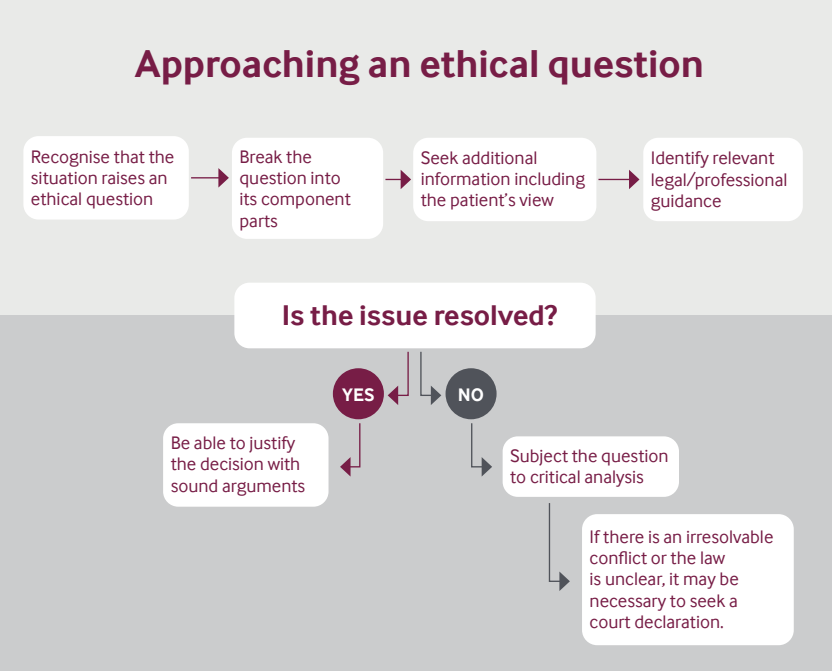
Based on an assessment of these, and any other relevant factors, the doctor must balance the competing interests and duties to make a judgement about whether breaching confidentiality is justified. Going through this process helps to provide the logical basis for the judgement reached which should be recorded in the medical record.

Step six: support the decision with sound arguments

It can always be helpful to discuss the issue, without breaching confidentiality, with a colleague, clinical ethics committee, or someone from the BMA or a defence body. Ultimately however, the doctor providing care must make the decision, working in partnership with the patient as far as possible. Doctors need to be able to justify their decisions and explain the reasoning behind them. This will include details of any discussion with the patient, those close to them, colleagues, or any professional adviser, along with any published professional guidance referred to. Where for example a patient refuses treatment necessary to prolong their life, and there may be doubts as to their capacity to make that decision, a written record should be kept of a formal assessment of their capacity. A record of information given to the patient – and those close to them where necessary – including information as to the likely consequences of their decision, should also be made.

Where the decision is serious, and a reasonable, consensual way forward cannot be found, or where the law is unclear, it may be necessary to seek a court declaration.

The BMA has an ethics advice service that is available and free to doctors and medical students in the UK. It can be accessed via support@bma.org.uk



Using the BMA's approach: should I disclose information about a serious transmissible disease?

You are a GP. A male patient tells you he has been to a private clinic for HIV testing and the result has come back positive. His partner is also registered at the practice. During the consultation you discuss the risk to his partner and begin to explore the importance of informing her of the result, its implications for her, and options for safer sex. During the conversation it becomes clear that your patient does not believe in any form of barrier contraception, is continuing to have sex with his partner and that they will shortly be trying for a child. He makes it clear that he has no intention of informing her. You suggest to him that you would like to discuss the issue with her directly, but he refuses.

What makes this an ethical problem? Doctors are aware that they owe their patients a duty of confidentiality. Ordinarily, doctors are under an obligation to respect patients' privacy and only disclose information where the patient agrees to it or where it is essential for their healthcare. Not only that, but this patient has explicitly refused consent to disclosure of information to his partner. On the other hand, your patient is putting his partner at a clear risk of serious harm, a harm that you could protect her from. It is this tension between two obligations that makes this a clear ethical problem.

In terms of the ethical concepts at play here, confidentiality is obviously important. What is the duty of confidentiality and what are its limits? But there is also his partner's right to be protected from serious, identifiable harm. Her interests are in tension with his rights to confidentiality. You have already sought consent from your patient to disclose information to his partner, but he has refused. Having identified the ethical problem, and the relevant conflicts in play, what are the next steps?

Confidentiality is an issue that regularly generates ethical challenges. The GMC, and professional bodies such as the BMA, all produce guidance for doctors in this area. The GMC has specific guidance on Confidentiality: disclosing information about serious communicable diseases. Although the guidance refers to a range of scenarios, it addresses our question explicitly:

> 'You may disclose information to a person who has close contact with a patient who has a serious communicable disease if you have reason to think that:
>
> a. the person is at risk of infection that is likely to result in serious harm
> b. the patient has not informed them and cannot be persuaded to do so.'

Although this addresses our question directly, the GMC makes it clear that this is an example of a 'public interest' justification for the disclosure of confidential information. These arise where the public interest in the disclosure of information is stronger, or 'trumps', the duty of confidentiality. Although the GMC gives us a clear decision here, there will be occasions when the answer is less obvious and there is no clear answer. In these cases, we will have to engage in ethical reasoning, weighing up the different interests. In its guidance on public interest disclosures the GMC says:

> 'When deciding whether the public interest in disclosing information outweighs the patient's and the public interest in keeping the information confidential, you must consider:
>
> a. the potential harm or distress to the patient arising from the disclosure – for example, in terms of their future engagement with treatment and their overall health
> b. the potential harm to trust in doctors generally – for example, if it is widely perceived that doctors will readily disclose information about patients without consent
> c. the potential harm to others (whether to a specific person or people, or to the public more broadly) if the information is not disclosed
> d. the potential benefits to an individual or to society arising from the release of the information
> e. the nature of the information to be disclosed, and any views expressed by the patient
> f. whether the harms can be avoided or benefits gained without breaching the patient's privacy or, if not, what is the minimum intrusion.
>
> If you consider that failure to disclose the information would leave individuals or society exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, you should disclose relevant information promptly to an appropriate person or authority.'

What the GMC requires here is the identification of all morally-relevant factors and a reasoned weighing and balancing of them. It would also be important to make a note of the decision, any advice taken, and the reasons behind the decision you made.

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