

# Ethics In Aging Services

Leading Age Massachusetts  
June 10, 2026



Michael A. Gillette, Ph.D.  
(434)384-5322    [mgillette@bsvinc.com](mailto:mgillette@bsvinc.com)  
<http://www.bsvinc.com>

# The Structure of Ethical Reasoning

# Ethical Theory

## NORMATIVE ETHICS

- Utilitarianism (J.S. Mill): Always act so as to bring about the greatest good (happiness) for the greatest number.
- Deontology (Immanuel Kant): Always treat people as ends in themselves, never as a means only.
- Virtue Theory (Aristotle): Always act consistently with the standards of the role you play in life.

# CORE VALUES

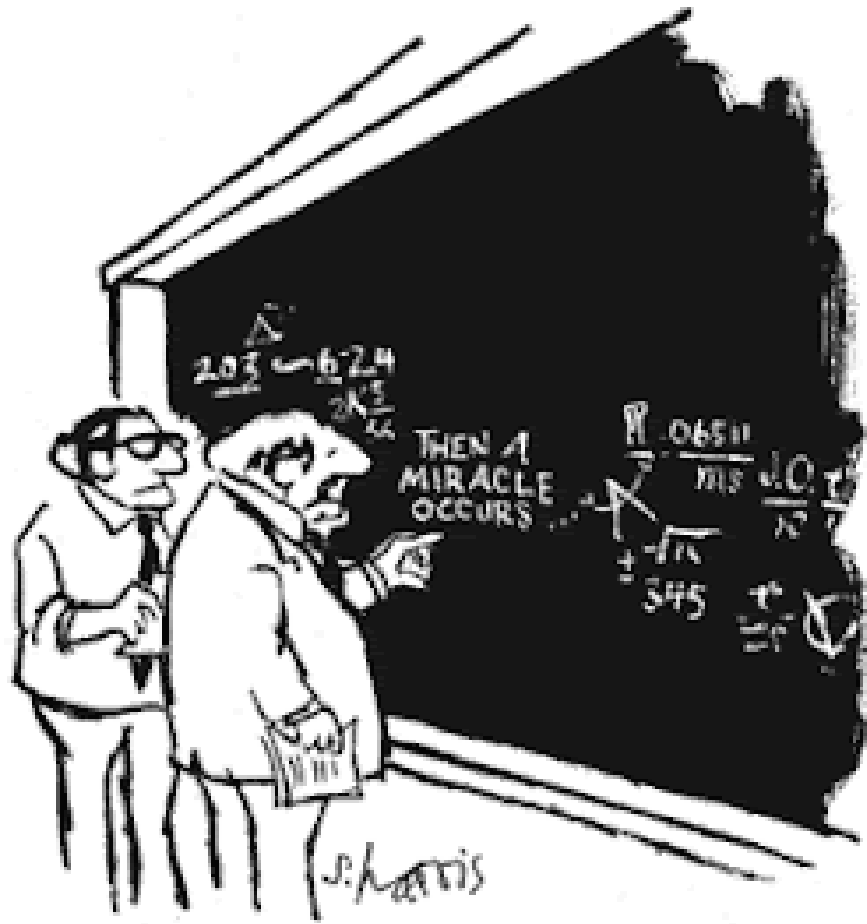
## “Principles of Medical Ethics”

**Autonomy**

**Nonmaleficence**

**Beneficence**

**Justice**



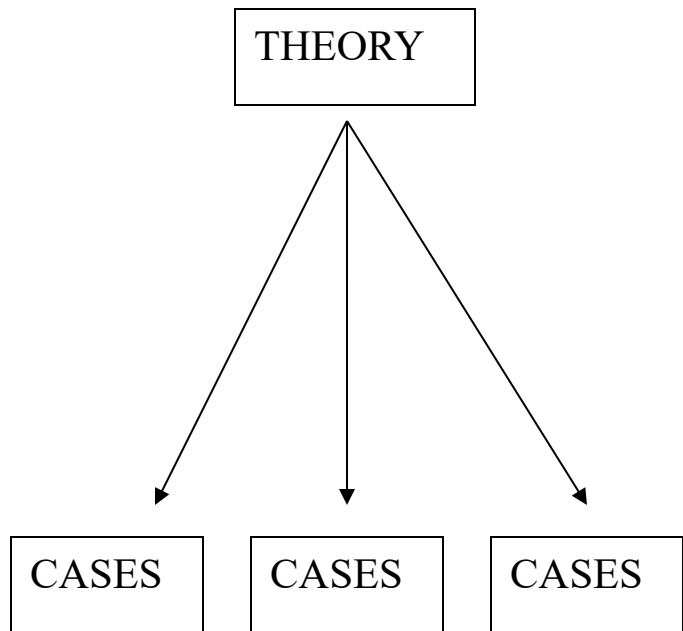
"I THINK YOU SHOULD BE MORE EXPLICIT HERE IN STEP TWO."

# Methods of Doing Ethics

## “Theory and Casuistry”

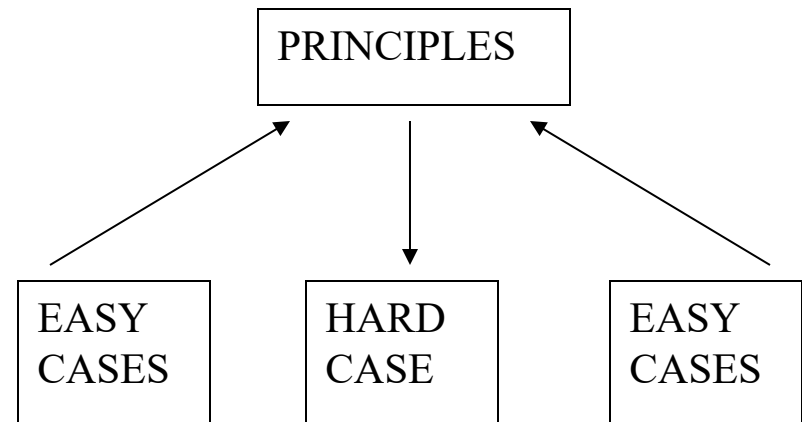
Theory

Top-Down



Casuistry

Bottom-Middle-Down



# The Structure of Ethical Argument

The Process of Moral Reasoning

The Default Assumption

The Burden of Proof

Casuistic Exploration

Application to the Current Case

# Individual Choice

## Basic Assumptions

1) What is the default assumption regarding an adult individual's right to direct his/her own healthcare?

2) Where does the burden of proof rest? Does the patient have to justify control, or do those who would intervene have to justify wresting control away from the individual?

3) What would it take to satisfy the burden of proof?

# Individual Choice

## The Burden of Proof

- 1) All other things being equal, individuals have an autonomy right to control their own care.
- 2) The burden of proof rests on the party that would restrict an individual's autonomy right.
- 3) The burden of proof can be satisfied on the basis of only two classes of argument: prevention of harm to self (paternalism) and prevention of harm to others (distributive justice).

# The First Paradigm: Paternalism

# Paternalism

An intervention is ‘paternalistic’ whenever the justification for the restriction of an individual’s freedom is calculated to be in their own best interest.



# Requirements For Paternalism

## **Paternalistic interferences with clients' liberty of action are justified only when:**

- The client lacks the capacity for autonomous choice regarding the relevant issue
- There is a clearly demonstrated clinical indication for the treatment or restriction under consideration
- The treatment or restriction under consideration is the least restrictive alternative that is reasonably available and capable of meeting the client's needs
- The benefits of the treatment under consideration outweigh the harms of the interference itself

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\*Paternalistic interventions must attempt to advance the values of the individual whose freedom is restricted.\*



# Diminished Capacity

## Basic Assumptions

The two most important things to remember at the beginning of any interaction with a patient surrounding capacity issues are:

- 1) All adults should be presumed to have capacity until they are explicitly found to lack it,
- 2) An individual cannot be found to lack capacity simply because s/he carries a particular clinical diagnosis.

# Diminished Capacity

## The Definition of Capacity

In order for a patient to have diminished capacity, s/he must meet at least one of three criteria:

- 1) The inability to understand information about the decision that needs to be made (ARBs)
- 2) The inability to use the information, even if understood, to make a rational evaluation of the risks and benefits involved in the decision
- 3) The inability to communicate by any means

# Diminished Capacity

## Incapacity Determinations

There is an important difference between a clinical finding of incapacity that can be documented by the attending physician, and a legal adjudication of incompetence.

A determination that a patient has diminished capacity can apply to a particular healthcare decision, a set of healthcare decisions, or all healthcare decisions.

It is essential that a clinician making a determination that a patient has diminished capacity be able to define the scope of the finding and its basis. A note must be set forth in writing to indicate something like “This patient is unable to make decisions of type X because of deficit Y.”

# Diminished Capacity

## Important Concepts

- Capacity is task specific, so incapacity must be assessed relative to the particular decisions at hand.
- Patients can maintain capacity in certain decisional areas while simultaneously lacking it in others.
- The amount of capacity necessary to make any particular decision is relative to the complexity of the decision and the risks associated with the decision. Therefore, clinicians should be very careful when assessing the inability of patients to make complicated high-risk choices and to verify that the patient lacks a sufficient level of capacity to take responsibility for those choices.

# The Second Paradigm: Distributive Justice

# Distributive Justice

An intervention is justice-based whenever the justification for the restriction of an individual's freedom is that it is calculated to protect a victim of the individual's action other than him/herself.



# Requirements For Justice

## **Justice-based interferences with clients' liberty of action are justified only when:**

- The client behaves in some manner that places others at risk  
and
- Those placed at risk have not provided valid consent to be placed at risk (either by choice or incapacity)  
and either
- The risk of harm to others is more significant than the harm generated by restricting the client's freedom and is not protected by an identified right (deterrence)  
or
- The client forfeits his/her right to liberty by transgressing a clearly defined social expectation (punishment)

# The Standard of Care

# The Ethics of Patient Refusal

## “The Limits of Provider Support”

Optimal Care

Sub-Optimal/Super-Standard Care

Sub-Standard Care

Staff never have an obligation to commit malpractice



# The Ethics of Patient Refusal

## Three Resolutions to Conflict

When care provider A and care recipient B are involved in a dispute whereby B refuses (or demands) care that A believes is (in) appropriate, three options are available.

- A May Give in to B's Demands (if A is unable to show that B's choice would involve negligence, abuse or sub-standard care)
- A May Forcibly Overrule B's Choice (if A can show that B's choice would require A to engage in negligence or abuse)
- A May Legitimately Refuse to Satisfy B's Demands, But B May Receive the Demanded Services Elsewhere (if A cannot show that B's choice would entail negligence or abuse, but A can show that B's choice would involve A in the provision of sub-standard care)