



# Ethics Consultation

Responding to Ethics Questions in Health Care  
Second Edition



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Responding to Ethics Questions  
in Health Care

Second Edition

**IntegratedEthics**

Improving Ethics Quality in Health Care

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VA employees should access the site via the intranet at <http://vawww.ethics.va.gov/IntegratedEthics>.

Others should access the site via the Internet at <http://www.ethics.va.gov/IntegratedEthics>.

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# Executive Summary

*Ethics Consultation: Responding to Ethics Questions in Health Care* establishes IntegratedEthics® (IE) standards for health care ethics consultation, one of the three core functions of IE, a comprehensive and systematic approach to ethics in health care developed by the National Center for Ethics in Health Care (NCEHC) at the Department of Veterans Affairs. It is designed to serve as a primer, to be read initially in its entirety by everyone who participates in ethics consultation, including leaders responsible for overseeing the ethics consultation function. Subsequently, it can serve as a useful reference document when consultants wish to refresh their memories or answer specific questions about the standards for health care ethics consultation.

## ***Part I: Introduction to Ethics Consultation in Health Care***

Part I provides an overview of health care ethics consultation, outlines the proficiencies required to perform ethics consultation, and reviews other factors necessary for success.

### ***What is ethics consultation in health care?***

The IE model defines ethics consultation in health care as activities performed by an individual ethics consultant, a team of ethics consultants, or an ethics committee on behalf of a health care organization to help patients, providers, or other parties resolve ethical concerns in the health care setting. Ethical concerns are *uncertainties or conflicts about values*.

The general goal of health care ethics consultation is to improve the quality of health care through the identification, analysis, and resolution of ethical questions or concerns. By providing a forum for discussion and methods for careful analysis, effective ethics consultation:

- promotes practices consistent with ethical norms and standards;
- helps to foster consensus and resolve conflict in an atmosphere of respect;
- honors participants' authority and values in the decision-making process; and
- assists individuals and the institution in handling current and future ethical concerns by providing education in health care ethics and informing policy development, quality improvement, and the appropriate utilization of resources.

### ***Models for performing ethics consultation***

Ethics consultation may be performed by an individual ethics consultant, an ethics consultation team, or an ethics committee. Whether the ethics consultation service is part of an organization, ethics network, consortium, or referral service, it should use all three models, determining on a consultation-by-consultation basis which model is most suitable for the particular circumstances.



### ***Proficiencies required for ethics consultation***

Effective ethics consultation requires a range of skills and specific proficiencies. IE adapts the “core competencies” recommended by the American Society for Bioethics and Humanities (ASBH) to identify three categories of required proficiencies for ethics consultants:

- Knowledge, including familiarity with moral reasoning and ethical theory; common bioethical issues and concepts; health care systems; clinical context; the local institution and its policies; beliefs and perspectives of the local patient and staff population; relevant codes of ethics and professional conduct, and guidelines of accrediting organizations; and health law.
- Skills, including ethical assessment and analysis skills; process skills; facilitating formal meetings; evaluative and quality-improvement skills; running an effective health care ethics consultation service; interpersonal skills; ability to carry out ethical analysis, communicate effectively, and build consensus.
- Attributes, attitudes and behaviors, including tolerance, patience, and compassion; honesty, forthrightness and self-knowledge; courage; prudence and humility; leadership; and integrity.

### ***Critical success factors for ethics consultation***

To provide an effective mechanism for addressing ethical concerns in health care, an ethics consultation service must have the following:

- Integration
- Leadership support
- Expertise
- Staff time
- Resources
- Access
- Accountability
- Organizational learning
- Evaluation

Because all these factors are critical for the success of ethics consultation services, each should be addressed in policy.

## ***Part II: CASES — A Step-by-Step Approach to Ethics Consultation***

Part II describes in detail a standardized approach to ethics consultation called CASES.

### ***CASES: A step-by-step approach to ethics consultation***

The CASES approach establishes systematic, step-by-step process standards for high-quality ethics consultation. For consultations pertaining to an active patient case that require interaction with the patient (or surrogate) and documentation in the health record, consultants should follow all the steps in the CASES approach. For other types of consultations, such as requests for general information, policy clarification, document review, ethical analysis of organization-level ethics questions, or ethics questions about hypothetical or retrospective circumstances, the CASES approach should be applied as appropriate.



The CASES steps are designed to guide ethics consultants through the complex process needed to effectively resolve ethical concerns. These steps are to be used similarly to the way clinicians use a standard format for taking a patient's history, performing a physical exam, or writing up a clinical note. Even when some consultations do not require the specific application of a particular step, each step should be considered systematically as part of every ethics consultation.

### ***The CASES Approach***

C

#### **CLARIFY the consultation request**

*Characterize the type of consultation request*  
*Obtain preliminary information from the requester*  
*Establish realistic expectations about the consultation process*  
*Formulate the ethics question*

A

#### **ASSEMBLE the relevant information**

*Consider the types of information needed*  
*Identify the appropriate sources of information*  
*Gather information systematically from each source*  
*Summarize the information and the ethics question*

S

#### **SYNTHESIZE the information**

*Determine whether a formal meeting is needed*  
*Engage in ethical analysis*  
*Identify the ethically appropriate decision maker*  
*Facilitate moral deliberation about ethically justifiable options*

E

#### **EXPLAIN the synthesis**

*Communicate the synthesis to key participants*  
*Provide additional resources*  
*Document the consultation in the health record*  
*Document the consultation in consultation service records*

S

#### **SUPPORT the consultation process**

*Follow up with participants*  
*Evaluate the consultation*  
*Adjust the consultation process*  
*Identify underlying systems issues*

### ***Tools for ethics consultation***

The IE model emphasizes distance learning, providing a variety of print, Web-based, and video tools to help ethics consultation services succeed. These include tools to communicate the availability of the service; educate consultants; assess consultant and service-level proficiency for performing ethics consultation; obtain feedback from patients, staff, and others who participate in ethics consultation; remind consultants of the steps in the CASES approach; and help consultants appropriately document ethics consultation activities. Almost all the IntegratedEthics tools are available at <http://vaww.ethics.va.gov/IntegratedEthics> or <http://www.ethics.va.gov/IntegratedEthics>.

## Part I:

# Introduction to Ethics Consultation in Health Care

In the IntegratedEthics® (IE) model, *health care ethics consultation* is defined as a health care service performed by individuals with specialized training and expertise (e.g., engaging in ethical analysis) to help patients, providers, and/or other parties resolve ethical concerns (i.e., uncertainties or conflicts about values). An ethics consultation may be requested to help an individual resolve internal uncertainties or conflicts, or to help resolve uncertainties or conflicts between or among multiple parties.

Ethics consultation is often performed in conjunction with, but is distinct from, other health care ethics activities such as education of health care professionals, development of organizational policy, service on organizational committees, and scholarly work. Ethics consultation is distinguished from these related activities in that an ethics consultation is an expert response to one or more specific ethics questions (i.e., questions about which decisions are right or which actions should be taken when there is uncertainty or conflict about values). Just as the members of a cardiology consultation service typically perform various activities in addition to performing cardiology consultations, so too do the members of an ethics consultation service typically perform various activities in addition to performing ethics consultations. When an ethics consultant (or a cardiology consultant) gives a lecture, sits on a policy committee, or publishes an academic paper, he or she is not performing ethics consultation (or cardiology consultation).

Ethics consultation in health care encompasses both case consultation (i.e., responding to questions about an active patient case that requires interaction with the patient [or surrogate when the patient lacks decision-making capacity] and documentation in the health record) and non-case consultation (other types of consultation activities such as responding to general questions about ethics topics in health care, interpreting policy relating to ethics in health care, reviewing documents from a health care ethics perspective, providing ethical analysis of organizational ethics questions, and responding to ethics questions that are hypothetical or retrospective).

### ***The goal of ethics consultation***

The general goal of health care ethics consultation is to improve the quality of health care through the identification, analysis, and resolution of ethical questions or concerns.<sup>1</sup> By providing a forum for discussion and methods for careful analysis, effective ethics consultation:

- promotes practices consistent with ethical norms and standards;
- helps to foster consensus and resolve conflict in an atmosphere of respect;
- honors participants' authority and values in the decision-making process; and
- assists individuals and the institution in handling current and future ethical concerns by providing education in health care ethics and informing policy development, quality improvement, and the appropriate utilization of resources.<sup>1</sup>

### ***A brief history of ethics consultation***

Ethics consultation in health care settings dates back to the 1970s, when the first consultation services were established. In 1986, the Society for Bioethics Consultation, a professional society whose stated mission was to “study ethics consultation and support those who provided it in health care”<sup>\*</sup> was formed, and the first books on ethics consultation were published.<sup>2,3</sup> In the mid-1990s, a national consensus conference described goals of ethics consultation and methods for evaluating its quality and effectiveness.<sup>4</sup> Around that time in the Veterans Health Administration (VHA), increasing numbers of ethics consultations were performed by ethics committees and ethics consultants with varying levels of expertise. Survey data of the majority of VHA hospitals from 2000 reveals that between 1991 and 1999 the number of facilities conducting over six consultations per year increased by 50 percent. In 1998, the American Society for Bioethics and Humanities (ASBH) published *Core Competencies for Health Care Ethics Consultation*, a report that describes the proficiencies required for health care ethics consultation.<sup>5</sup>

In 2007, VHA released detailed standards for ethics consultation that are described in this primer. In 2009, these standards were codified as VA policy in VHA Handbook 1004.06, *IntegratedEthics*<sup>®</sup>, which was updated in 2013.<sup>6</sup>

In 2009, ASBH published *Clinical Ethics Consultation: An Education Guide*, which provided guidance and resources to assist in the development of skills necessary to conduct ethics consultation. The guide was updated and reissued in July 2015 as *Improving Competencies in Clinical Ethics Consultation: An Education Guide*.<sup>7</sup> In 2011, ASBH published a significantly revised second edition of the *Core Competencies for Healthcare Ethics Consultation*,<sup>1</sup> which relied heavily on the IE model for ethics consultation.

### ***Health care ethics consultation today***

Ethics consultation is now widely recognized as an essential part of health care delivery. Effective ethics consultation has been shown to improve ethical decision making and practice, enhance patient and provider satisfaction, facilitate the resolution of disputes, and increase knowledge of health care ethics.<sup>8</sup> Moreover, ethics consultation has been shown to save health care institutions money by reducing the provision of nonbeneficial or unwanted treatments and, as a direct result, lengths of stay.<sup>9–12</sup> Ethics consultation also contributes to a strong ethics culture by providing a mechanism for employees to bring forward ethics concerns, especially if ethics consultation is supported by senior leadership.<sup>13,14</sup>

The vast majority of U.S. hospitals have active ethics consultation services.<sup>15</sup> The Joint Commission set a standard that ethical principles guide hospitals’ business practices, and it requires specific evidence that they have and use a “process that allows staff, patients and families to address ethical issues or issues prone to conflict”.<sup>16</sup> The Malcolm Baldrige National Quality Award Program recognizes “ethical practices in all stakeholder transactions and interactions” as a key criterion for performance excellence.<sup>17</sup> Moreover, ethics consultation has been endorsed by numerous governmental and professional bodies.<sup>18–20</sup> Some states have legally mandated ethics consultation, and some health care organizations have also created policies that require it under certain circumstances.<sup>21–25</sup>

A 2007 study published in the *American Journal of Bioethics* documented the prevalence

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<sup>\*</sup>Society for Bioethics Consultation, Texas Archival Resources Online at <http://www.lib.utexas.edu/taro/utmb/00078/utmb-00078.html>.

of ethics consultations in U.S. hospitals. In a randomly selected sample of 600 general hospitals, ethics consultation services were found in 81 percent of the hospitals, and in 100 percent of hospitals with more than 400 beds. The services performed a median of three consults in the year prior to the survey. Most individuals (86 percent) performing ethics consultations belonged to the following professions: physicians (34 percent), nurses (31 percent), social workers (11 percent), and chaplains (10 percent). When extrapolated to all general hospitals in the United States, data from the study suggests that in a one-year period approximately 29,000 individuals devoted more than 314,000 hours to performing more than 36,000 ethics consultations.<sup>15</sup>

Over the last decade ethics consultation activity has expanded in other countries as well. For example, in the U.K., the number of clinical ethics committees has steadily grown in response to “clinical demand, local interest, and enthusiasm.” To support this trend, and provide guidance on appropriate standards for clinical ethics support, the U.K. Clinical Ethics Network recently published Core Competencies for Clinical Ethics Committees.<sup>26</sup>

### ***The ethics consultation service***

Every health care facility should have an effective local mechanism for providing ethics consultation — that is, an *ethics consultation service*. The scope of an ethics consultation service should include both *case consultations* (consultations pertaining to an active patient case) and *non-case consultations* (i.e., other types of consultations, including requests for general information, policy clarification, document review, ethical analysis of organization-level ethics questions, or ethics questions about hypothetical or retrospective circumstances).

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## ***What Models May Be Used to Perform Ethics Consultation?***

Health care ethics consultation may be performed by an individual ethics consultant, an ethics consultation team, or an ethics committee.

As discussed below, each model has advantages and disadvantages. Although some ethics consultation services might rely exclusively on one of these three models, we recommend against this, since all three models have their place. Instead, *for each consultation, the ethics consultation service should determine which model is most appropriate given the nature of the particular request, including its complexity, sensitivity, and urgency*. Some consultations are best addressed with an individual consultant model, others with an ethics consultation team model, and still others with an ethics committee model. Ethics consultation services should have consistent processes for determining how different types of consultations will be handled.

### ***Individual ethics consultant model***

In this model, one person — either an independent “solo” consultant or a member of an ethics consultation team or committee — is assigned to perform a given consultation.



*Advantages:*

- Addresses the consultation using the most efficient model<sup>15</sup>
- Results in fewer logistical hurdles (e.g., scheduling meetings)
- Facilitates a quicker response to urgent consultation requests

*Disadvantages:*

- Requires consultant to possess all required knowledge and skills relevant to the consultation
- Provides fewer checks and balances to protect against consultant's personal biases

It is incumbent on the individual ethics consultant to recognize his or her limitations and get help when needed. The successful ethics consultant will build a web of strong, collegial relationships within his or her organization and region, and will call on others for assistance with a variety of ethical, legal, cultural, or religious concerns. Even the most highly trained and experienced ethics consultant benefits from discussing complex consults with other experts. In addition, individual consultants should systematically seek feedback — e.g., by reviewing completed consultations with colleagues.

The individual ethics consultant model is generally appropriate only for the most straightforward consultations and for the most proficient ethics consultants.

***Ethics consultation team model***

In this model, responsibility for a given ethics consultation is shared by a small group of qualified consultants chosen on the basis of their complementary perspectives and expertise relevant to the specifics of the consultation. The team should collectively embody the full range of competencies required for ethics consultation, including advanced proficiency in core knowledge and skill areas. Every member of the team should possess basic ethics consultation knowledge and skills.<sup>1</sup>

*Advantages:*

- Provides several perspectives and diverse expertise
- Supports a relatively rapid response
- Enables variations in composition of the team to meet the situation
- Facilitates a less intimidating environment than the committee model
- Establishes a natural forum for support, reflection, and learning
- Balances workload in complex consultations

*Disadvantages:*

- Conducts the consultation less efficiently than the individual consultant model
- Offers fewer checks and balances than the committee model

This model allows for tasks to be divided among members of the team. For example, it is not necessary for every team member to go to the patient's bedside or attend a family meeting. A single member may perform both tasks and then report back to the team. Roles should be determined based on the strengths of individual consultants relative to the needs of the specific consultation.

The team model accommodates a wide range of situations and levels of consultant expertise and is in some ways a compromise between the individual and committee models. It is used more commonly than other models — two-thirds of hospitals in the United States have reported that they use the team model more commonly than either the individual or committee model.<sup>15</sup>

### **Ethics committee model**

In this model, a standing interdisciplinary committee — that is, a relatively consistent group of people (typically six or more) from across the organization — jointly performs a given consultation. Each member should possess certain basic skills and knowledge for addressing the types of issues that often come before the committee. Like a team, the committee must collectively have the full range of core competencies for ethics consultation.<sup>1</sup>

#### **Advantages:**

- Provides access to diverse perspectives and expertise
- Promotes collective proficiency

#### **Disadvantages:**

- Requires a great deal of staff time
- Requires that, collectively, the members have basic knowledge and skills
- Not well suited to situations that require a rapid response
- Potentially contributes to complacency and “groupthink” owing to diffusion of responsibility across committee members
- Potentially intimidates patients, family members, and even staff when they are required to meet with a large group of professionals

### **Tip:**

The committee model may be especially useful for ensuring broad organizational input into difficult consultations, including those that might establish precedent or end up in the media or the courts, and for organization-level ethics questions. This model may also be the only practical choice for health care facilities that handle a very low volume of consultations and/or lack consultants with a high level of specialized ethics expertise.

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## **What Proficiencies Are Required to Perform Ethics Consultation?**

The 2011 ASBH report<sup>1</sup> discusses the knowledge, skills, attributes, attitudes, and behaviors required for ethics consultation. The report notes that when an individual consultant performs ethics consultation, the consultant must have advanced knowledge and skills across multiple areas. In contrast, when the team or committee model is used, requisite knowledge and skills can be distributed across the various members of the group.

Of course, the greater the collective expertise in an ethics consultation service, the more

useful and effective that service will be. Although basic knowledge and skills may be developed through practical experience, development of advanced knowledge and skills generally requires a more rigorous and systematic approach to learning (e.g., formal coursework, in-depth reading and discussion, supervised practice with feedback).

The knowledge, skills, attributes, attitudes, and behaviors described below have been adapted from the ASBH report.

## **Knowledge**

Successful ethics consultation requires knowledge of the following:

- The process of ethical analysis, including generating ethical arguments and counterarguments, using moral reasoning and ethical theory
- Ethical issues and concepts in the domains of:
  - shared decision making with patients
  - ethical practices in end-of-life care
  - ethical practices at the beginning of life
  - patient privacy and confidentiality
  - professionalism in patient care
  - ethical practices in resource allocation
  - ethical practices in business and management
  - ethical practices in research
  - ethical practices in the everyday workplace
  - additional domains that are relevant to the consultant's organizational setting, such as ethical practices in government service, mission integration, or military medicine
- Health care practice, including:
  - basic medical terms, common disease processes, diagnostic and therapeutic methods, emerging technologies, and care delivery services and settings
  - different health care professional roles and expertise
  - factors that influence the process of health care decision making by patients, family members, and health care professionals
  - important beliefs and perspectives that bear on the health care of racial, ethnic, cultural, LGBT, and religious groups served by the facility, including staff
  - perspectives of historically disadvantaged groups (e.g., poor, uneducated, incarcerated, or targets of bigotry) and persons with disabilities and their loved ones
- Health care systems, including:
  - the local institution's mission statement, organizational structure, range of services, sites of care delivery, and medical records system
  - ethics consultation resources, including how the ethics consultation service is financed; the working relationships between the consultation service and other departments, particularly legal counsel, risk management, pastoral care, social work, and the palliative care service; and qualifications of fellow consultants staffing the consultation service



- health care systems as they relate to ethics consultation (e.g., managed care systems, medical home, private and public payment systems, and institutional review boards)
- Health care standards, including:
  - professional responsibilities for ethics consultants (e.g., “A Code of Ethics for Health Care Ethics Consultants”<sup>27</sup>)
  - applicable local, regional, and/or system-wide policies relevant to ethics consultation
  - health law relevant to ethics consultation
  - relevant codes of ethics and professional conduct, including codes of ethics from relevant professional organizations (e.g., medicine, nursing, and health care executives), health care facility’s code of conduct, patients’ bill of rights and responsibilities
  - relevant standards of The Joint Commission and other accrediting bodies

## Skills

Ethics consultation also requires specific skills in the following areas:

- Ethical assessment skills
- Ethical analysis skills
- Process skills
- Evaluative and quality improvement skills
- Ability to run an effective ethics consultation service
- Interpersonal skills

See Figure 1 for essential components of each of these skills.

### Figure 1. Essential Skills for Ethics Consultation<sup>1</sup>

#### **Ethical assessment skills**

- Identify the nature of the values uncertainty or conflict that underlies the need for the ethics consultation
- Discern and gather relevant data (e.g., medical facts, patients’ preferences and interests, and other parties’ preferences and interests)
- Assess the social and interpersonal dynamics of the consultation (e.g., power relations; ethnic, cultural, and religious differences)
- Distinguish the ethical dimensions of the consultation from other, often overlapping dimensions (e.g., legal, institutional, medical)
- Clearly articulate the ethical concern(s) and the central ethics question(s)
- Identify various assumptions that involved parties bring to the consultation (e.g., regarding the quality of life, risk taking, institutional interest, unarticulated agendas, what health and illness means to the patient or surrogate)
- Identify, clarify, and distinguish the relevant beliefs and values of involved parties
- Identify the consultant’s own relevant moral values and intuitions and how these might influence the process or analysis

### **Ethical analysis skills**

- Access relevant ethics knowledge (e.g., health care ethics, law, institutional policy, professional codes, research/scholarship, and religious teachings)
- Clarify relevant ethical concepts (e.g., confidentiality, privacy, informed consent, best interest, professional duties)
- Identify the ethically appropriate decision maker (e.g., patient, surrogate, health care team, or hospital administrator)
- Critically evaluate and use relevant knowledge of health care ethics, law (without giving legal advice), institutional policy, and professional codes
- Apply relevant ethical considerations in helping to analyze the consultation
- Identify and justify a range of ethically acceptable options and their consequences
- Evaluate evidence and arguments for and against different options
- Research peer-reviewed clinical and bioethics journals and books, and access relevant policies, laws and reports, online databases, and/or libraries
- Recognize and acknowledge personal limitations and possible areas of conflict between personal moral views and one's role in the consultation service (e.g., accepting group decisions with which one disagrees, but which are ethically and legally acceptable)
- Be familiar and comfortable with diversity among patients, staff, and institutions, and address it in relation to an ethics consultation

### **Process skills**

- Establish realistic expectations about the consultation process
- Determine whether a particular request will involve only the ethics consultation service or is appropriate for joint effort or referral
- Determine which consultations are appropriate for an individual consultant, team, or committee
- Identify which individuals (e.g., patient, health care professionals, family members) need to be involved in a consultation
- Utilize institutional structures and resources to facilitate implementation of the chosen option
- Gather and interpret information from the health record
- Visit and interview patients in various clinical settings
- Document consultations clearly and thoroughly in internal ethics consultation service records and in patient health records
- Summarize and communicate consultations to relevant parties
- Communicate and collaborate effectively with other responsible individuals, departments, or divisions within the institution
- Identify underlying systems issues and bring them to the attention of the appropriate resource for handling such concerns at the appropriate level
- Effectively begin a meeting by introducing members, clarifying participants' roles and expectations, identifying the goal of a meeting, and establishing expectations for equal involvement and confidentiality of what is discussed
- Keep parties focused to reach a meaningful conclusion or stopping point
- Establish a timeline for implementing agreed-upon tasks or "next steps"

- Discern the need for additional meetings
- Attend to power imbalances and attempt to level the playing field
- Mediate among competing moral views
- Engage in creative problem solving (i.e., help parties to “think outside the box”)
- Create an atmosphere of trust that respects privacy and confidentiality and that allows participants to feel free to express their concerns

#### **Evaluative and quality improvement skills**

- Identify or establish appropriate criteria for evaluation of different kinds of consultation (i.e., case and non-case)
- Collect useful data about consultation access and quality, including feedback from individuals involved in ethics consultations, and record that data in a systematic fashion
- Recognize and analyze possible structural or systemic barriers to an effective consultation process in specific cases
- Recognize and analyze possible structural or systemic obstacles to excellent care that may have contributed to the need for consultation
- Distinguish between process and outcome, scrutinizing each separately
- Recognize patterns (i.e., frequently repeated consults about the same issue, or from the same unit or department)
- Demonstrate sensitivity to context
- Understand how structures can enable or constrain behaviors
- Consider the implications of recommendations and results of consultations for the wider organization, including its mission and ethical standards

#### **Ability to run an effective ethics consultation service**

- Communicate well with senior leaders
- Identify an appropriate ethics consultation policy and implement appropriate process standards that match the mission of the organization
- Choose qualified and committed ethics consultants to staff the service
- Negotiate for adequate resources to ensure that the service can meet its obligations to those who request an ethics consultation
- Provide appropriate mentoring, supervision, and peer review to consultants on the service
- Withstand political pressure to compromise the mission of the consultation service

#### **Interpersonal skills**

- Listen well and communicate interest, respect, support, and empathy to involved parties
- Recognize and respond appropriately to suffering, moral distress, strong emotions, and other barriers to communication
- Educate involved parties regarding the ethical dimensions of the consultation
- Elicit the moral views of involved parties
- Accurately and respectfully represent the views of involved parties to others when needed
- Enable involved parties to communicate effectively and be heard by other parties

### ***Attributes, attitudes, and behaviors***

All ethics consultants should strive to possess and exhibit certain attributes, attitudes, and behaviors when performing ethics consultation. These include the following:

- Tolerance
- Patience
- Compassion
- Honesty
- Forthrightness
- Self-knowledge
- Courage
- Prudence
- Humility
- Leadership
- Integrity

Although the desired attributes, attitudes, and behaviors can be developed, individuals who are unable to demonstrate them when the situation demands are generally not well suited to perform ethics consultation.



The Ethics Consultant Proficiency Assessment Tool and the Ethics Consultation Service Proficiency Assessment Tool help ethics consultation services evaluate the proficiency of ethics consultants and their overall service. See also <http://vaww.ethics.va.gov/integratedethics/ecc.asp> or <http://www.ethics.va.gov/integratedethics/ecc.asp>.

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## ***What Are the Critical Success Factors for Ethics Consultation?***

In complex organizations, certain factors are generally predictive of the likelihood that a specialized service will achieve its goals. To provide an effective mechanism for addressing ethical concerns in health care, a consultation service must have integration, leadership support, expertise, staff time, and resources. Access, accountability, organizational learning, and evaluation are additional factors that should be ensured. Because all these factors are critical for the success of ethics consultation services, each should be addressed in policy.

### ***Integration***

A fully integrated ethics consultation service responds directly to the wide range of ethical concerns faced by the organization. The successful ethics consultation service does not function in a silo; rather, it develops and maintains positive relationships with the various individuals and programs that shape the organization's ethical environment and practices.



By establishing such effective working relationships across the organization, a fully integrated ethics consultation service carries out its activities in coordination with other offices and programs that address ethical concerns, and is available as an ethics resource for the organization as a whole, not just for clinical services. In this way, it serves the entire institution, not just a particular category of staff (such as physicians), a particular setting (such as home care), or a particular clinical service (such as surgery).

The ethics consultation service should look for opportunities to share activities and skills, or to identify and work to achieve mutual goals. For example, it might enlist the facility's quality improvement program to help evaluate the service's performance. In addition, it should develop ongoing working relationships with other facility programs and departments that commonly encounter ethics-related issues (e.g., chaplain service, patient advocate program, legal counsel, research, compliance and business integrity, human resources, risk management, patient safety). The establishment of these relationships will help promote collaboration and ensure that staff members across different services and programs understand one another's skills and roles, thereby contributing to the overall efficiency of the organization.

The structure of an IE program is designed to promote and support such relationships through a local IE council responsible for bringing together leaders from key offices and programs, including the IE Program Officer and coordinators of the three core IE functions (ethics consultation, preventive ethics, and ethical leadership), and coordinating ethics-related activities across the organization.<sup>28</sup>

### **Leadership support**

Explicit leadership support is essential if the goals of ethics consultation are to be realized. Ultimately, leaders are responsible for the success of all programs, and health care ethics consultation is no exception. Leaders establish organizational priorities and allocate resources to support those priorities. *Unless leaders support — and are perceived to support — the ethics consultation function in a facility, the consultation function cannot succeed.*

Leaders at all levels throughout the organization should demonstrate support of the facility's ethics consultation service. They should:

- understand the scope and role of the ethics consultation service;
- seek advice from the service when appropriate; and
- encourage others to utilize the service.

Leaders who supervise employees who are members of the ethics consultation service should also:

- include responsibilities of ethics consultation in staff performance plans;
- dedicate time for staff to complete ethics consultation work and professional development activities; and
- recognize staff for their ethics consultation activities.

Finally, executive leadership and chiefs of services or departments should also:

- keep up to date on the activities of the ethics consultation service;
- regularly update staff on those activities; and
- ensure that other critical success factors are in place, as described below.

## Expertise

Leaders of health care facilities as well as individuals who are responsible for ethics consultation should ensure that consultation services have the requisite expertise. Regardless of the consultation model used, all the proficiencies outlined in the previous section of this primer must be represented in the ethics consultation service. Individual members of the service may have different proficiencies, and some proficiencies may be represented by only one person. Collectively, however, the full set of core competencies noted above must be represented on the service and available when needed for a particular consultation.

Most health care facilities should recruit or train their own in-house ethics consultants. In VHA, ethics consultants are expected to complete specific training, which includes reading this primer, completing a video-based course, performing annual proficiency assessments, and participating in professional development activities. In addition, the *Ethics Consultation: Beyond the Basics* training and other education programs offer more in-depth training opportunities.

Ethics consultation leaders (in VHA, the ethics consultation coordinators) are responsible for assessing the proficiencies of their consultants and developing annual professional development plans based on this assessment. Additional requirements for certifying, credentialing, and/or privileging ethics consultants may evolve in VHA and the wider bioethics community, as they become more commonplace in the field (e.g., Clinical Ethics Credentialing Project, ASBH attestation project, and the Ethics Consultation Quality Assessment Tool project established by NCEHC).<sup>18,29,30</sup>

### Tip:

The Ethics Consultation Quality Assessment Tool assesses ethics consultation records on four key elements that *must be documented for a quality ethics consultation*:

- 1. Ethics Question.** The ethics question(s) focuses the consultation response.
- 2. Consultation-specific Information.** The consultation-specific information informs the ethical analysis.
- 3. Ethical Analysis.** The ethical analysis provides justification for the conclusions and/or recommendations.
- 4. Conclusions and/or Recommendations.** The conclusions and/or recommendations promote ethical practices.

When there are known gaps in knowledge or skill proficiencies, facilities might proactively consider ways to augment their local ethics consultation resources, such as participating in an ethics network or consortium, or accessing ethics consultation experts remotely. For example, some VHA facilities partner with other VHA facilities in their geographic area or engage the services of an outside ethics consultant on a contractual or fee basis; this may be most appropriate for small facilities that handle only a few consultations a year. Small community hospitals may choose to establish agreements with a local college's or university's health care ethics program. At integrated health care systems involving multiple health care facilities, it may be appropriate to develop a referral service to provide expertise and ensure consistency of policy application across the facilities. NCEHC's National Ethics Consultation Service is the authoritative referral service for VHA and receives several consultation requests per week from across the organization.

### Staff time

Facility leaders should also ensure that adequate and protected staff time is available for ethics consultation activities. Ethics consultation can be time-consuming; individuals responsible for management of this service need dedicated time to do their work, including education

and training. In a given facility, the time required for ethics consultation will vary depending on the types of consultations handled.<sup>15</sup> For example, even a straightforward ethics consultation will typically take several person-hours, while complex consultations — especially those that are novel or precedent-setting — may require many hours from multiple individuals over an extended period. Depending on the circumstances, a consultation may take a week or more and up to 20 person-hours or more of effort.

Ethics consultation services handle a variety of requests. Although the major part of consultants' time is likely to be devoted to helping address ethical concerns as they arise in the care of individual patients, consultants are also asked for assistance with many other matters. For example, the service may be called upon to answer questions about ethics topics in health care, interpret policy relating to ethics in health care, review documents from a health care ethics perspective, provide ethical analysis of organization-level ethics questions, conduct education sessions, or respond to hypothetical or retrospective questions. When all the person-hours devoted to ethics consultation are taken into account, the most active ethics consultation services may require a time commitment equivalent to a dedicated full-time staff member (FTE) or more.

Ethics consultation should be an assigned part of the employee's job that is given dedicated time and should not be viewed as an optional or voluntary activity to be done as time allows. Ethics consultants should engage in open, ongoing discussions with their supervisors about how much time this activity involves, and agreement about the amount of time should be specified, for example, in the consultants' performance plans. If individuals who are responsible

for performing ethics consultation in a health care facility do not have adequate time and resources to do their jobs well, patients may be harmed and the organization can be put

at risk. In the IE model, the IE council is responsible for communicating with senior leadership about needs for staff time and for negotiating adequate support for ethics consultation.

### *Tip:*

ECWeb, a secure Web-based quality improvement tool, is a repository of VHA ethics consultation records. The notes and attachments stored in ECWeb provide a ready resource of ethics knowledge for ethics consultants when similar consultations arise. However, because ethical thinking does evolve over time and specific features and circumstances of consultations can vary in subtle ways, ethics consultants should critically assess the content from prior ethics consultations when planning their approach.

### *Tip:*

A performance plan for an ethics consultant should specify the responsibilities related to ethics consultation and, if appropriate, the percentage of his or her time devoted to the tasks. The responsibilities might include promoting ethics consultation program goals and strong practices; ensuring continuing professional development; conducting all ethics consultations using the CASES approach; directing requesters who are not seeking ethics advice to other appropriate offices; documenting ethics consultations according to established standards; and documenting ethics case consultations in the patient's electronic health record.

### **Resources**

Leaders of health care facilities should also ensure that individuals who perform ethics consultation have ready access to needed resources, such as workspace, clerical or data entry support, library materials, and ongoing training. Many useful ethics resources are available online, so access to the Internet is essential as well. A variety of resources can be accessed at <http://vaww.ethics.va.gov/integratedethics/ecc.asp> or <http://www.ethics.va.gov/integratedethics/ecc.asp>. These include NCEHC publications, resources organized by health care ethics domains and topics (see Appendix 1), VA health care ethics policies, and links to important non-VA ethics resources, including the Encyclopedia of



Bioethics and ethics databases maintained by the U.S. National Library of Medicine, EthxWeb, and EthicShare. Another important outside source available through the ethics resources link is the American Medical Association's (AMA) PolicyFinder. PolicyFinder is the authoritative source for codes and policies published by the AMA, including *AMA Journal of Ethics* and reports from the Council on Ethical and Judicial Affairs. Another resource is prior consultation records. In VHA, ethics consultation services have access to records their service has entered in ECWeb.

### Access

To be effective, an ethics consultation service must be accessible to the patients, families, and staff it serves. The service should be available not only in acute care hospitals but across all parts of the organization. Historically, ethics consultation services have been most active in inpatient clinical settings. Yet ethical concerns are also common in outpatient clinics, long-term care

facilities, home care, and other settings, including nonclinical settings — and a growing percentage of consultations are occurring in these settings. In VHA, for example, 30 percent of consults came from outpatient settings in 2014.

Ethics consultation services should take steps to ensure that patients and staff are aware of the ethics consultation service, what it does, and how to access it. For example, the service should be publicized through brochures, posters, newsletters, and other media through which patients and staff regularly receive information about the facility. In VHA, an easy-to-read ethics consultation brochure provides patients and families with this basic information. Information about ethics consultation is also available in the Patient Rights and Responsibilities statement.



The Patient Rights and Responsibilities statement is available at <http://www.va.gov/health/rights/patientrights.asp>.

Like most other health care services, the ethics consultation service should be available during normal work hours. If the request is urgent, an ethics consultant should contact the requester within four hours, and if it is not urgent, within one business day. After-hours coverage arrangements may vary. In facilities with a high volume of consultation requests, consultants should be available over weekends, nights, and holidays. In other facilities where there are fewer ethics consultations, requests may be triaged by an administrator who has access to an ethics consultant as needed.

### Tip:

While it can be efficient to have the ability to request an ethics case consultation via a consult request feature within an electronic health record system, having this approach as the only means through which to request an ethics consultation can limit access by patients, family members, and staff who do not have access to such a system. If such a tool is used in an organization, care should be taken to ensure that other means of contact are available as well (e.g., by ensuring that the ethics consultation phone, beeper, or pager numbers are known to the hospital operator).

### Tip:

While it is most desirable for ethics consultants to be physically present for all consultations, this may not be possible. Nonetheless, direct contact with the patient is still a critically important aspect of the ethics case consultation process. Consultants who need to perform off-site ethics consultations must make a special effort to overcome a variety of obstacles, such as establishing trust without face-to-face interaction and communicating effectively through remote methods. Such methods can include videoconferencing, teleconferencing, and secure online messaging. While deploying these methods may be unavoidable for geographically remote facilities, they should be used cautiously. Consultants must also ensure they are meeting evolving expectations and standards for maintaining the security of sensitive electronic information.

Requests for ethics consultations that pertain to an active patient case should only be accepted from someone who has “standing” in the case — that is, a person who is rightfully involved. For example, the patient and his or her close family members would have standing in a case, as would those clinical staff, medical students, and administrators who are directly responsible for the patient’s care. Individuals who would not have standing might include a member of the media or someone who heard about the case secondhand.

While requests for ethics consultation involving an active patient case should only be accepted from someone who has standing, requests involving other matters (e.g., requests for policy clarification) can be accepted from a broad range of individuals and addressed as non-case consultations.



The ethics consultation brochure (available in English and Spanish) can be customized with local contact information. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

### **Accountability**

Like any other important health care function, ethics consultation must have a clear system of accountability and place within the hierarchy of the organization. Day-to-day responsibility for the activities of the ethics consultation service should rest with a designated individual who is accountable to and evaluated by a supervisor or leader. In the IE model, the individual who is accountable for the ethics consultation service is called the ethics consultation coordinator. He or she serves as the representative for ethics consultation on the IE council.

The IE council provides a mechanism for oversight of the ethics consultation service and is responsible for establishing specific goals, structures, processes, and performance expectations for the service. The council also enables organizational leaders to monitor the service, its successes

**Anonymous requests for ethics consultation** are problematic for a variety of reasons and, as a rule, should not be accepted. The concept of service is central to ethics consultation.

When no one is identified as the requester, it is unclear whom the consultation serves and, if the requester remains anonymous, the consultant cannot clarify the nature of his or her concern(s) or determine whether the requester has standing in the case. In addition, anonymous requests often amount to allegations of unethical conduct, which require an investigation and not an ethics consultation; thus, they must be addressed through other means (e.g., a compliance hotline). Addressing allegations through ethics consultation may give the erroneous perception that ethics consultation serves a policing, compliance, or enforcement function, which it does not. Rather, ethics consultation serves to resolve conflicts about what is the right thing to do. If any request, anonymous or not, suggests a serious breach of compliance with organizational policy or the law, it should not be accepted as a consultation; instead, the consultant should refer the requester (or the request, if anonymous) to the appropriate institutional office or service, such as the compliance office.

Occasionally, an individual might request an ethics consultation in a non-anonymous fashion but ask to have his or her identity protected. For example, trainees or others who feel vulnerable in the organization might make such requests. The consultant should privately explore why the requester does not wish to be identified. If the request does not involve an active patient case, a confidential consultation can usually be performed but could be limited because protecting the requester’s identity might preclude some steps in the CASES approach. Case consultations involving an active patient case are different, since individuals other than the requester need to be involved. For such case consultations, the consultant should warn the requester that although the ethics consultation team will not intentionally reveal his or her identity, others might infer it. Alternatively, the consultant can encourage the requester to consider other ways to resolve his or her concern.

and failures, and whether it is accomplishing its goals. For example, the council might ask the ethics consultation coordinator to use the relevant IE evaluation tools (e.g., ECWeb reports, the Ethics Consultation Feedback Tool [see Appendix 2], the IE Facility Workbook, or IE Staff Survey) to present regular updates to the council, or to write quarterly or annual reports. Similar reports, when distributed more broadly to facility staff, serve as a useful reminder of the existence, availability, and value of the ethics consultation service.

In VHA, NCEHC provides yearly programmatic achievement goals with an eye toward developing strong ethics consultation services over time. Achievement toward these goals is tracked quarterly, summarized at year's end, and reported to facility and regional directors and NCEHC. Starting in 2008, program-reporting requirements have captured the degree to which key structural elements of the program, such as standard practices for documenting case consultations, have been put into place, thereby encouraging full program deployment. Reporting requirements have also been instituted to assess the consultation proficiency of consultants and identify knowledge or skill deficits that can inform professional development plans. These reporting requirements have required ethics consultation services to identify specific performance gaps, implement improvement plans, and produce measurable results. Success in achieving these goals is part of yearly performance assessments of many IE program officers and ethics consultation coordinators.



NCEHC offers an array of IE program assessment tools to help teams measure progress, such as the Ethics Consultation Service Proficiency Assessment Tool, Ethics Consultation Feedback Tool (see Appendix 2), IE Facility Workbook, and ethics consultation-related questions in the IE Staff Survey. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>. Leaders can use the IntegratedEthics Program: Status Check and Planning Tool to assess the performance of the ethics consultation service and identify areas that need improvement. See [http://vaww.ethics.va.gov/integratedethics/program\\_management.asp](http://vaww.ethics.va.gov/integratedethics/program_management.asp) or [http://www.ethics.va.gov/integratedethics/program\\_management.asp](http://www.ethics.va.gov/integratedethics/program_management.asp).

### **Organizational learning**

It is important for ethics consultants to contribute to organizational learning by sharing their knowledge and experience with others in the organization. Group discussion of actual cases (appropriately modified to protect the identities of participants) is an excellent way to educate clinical staff. A consultation service note can be reworked into a newsletter article that summarizes an important ethics topic. Policy questions handled by the service can be turned into Frequently Asked Questions and posted on a website. Efforts such as these not only enhance staff knowledge; they also bolster the credibility and visibility of the ethics consultation service.

### **Evaluation**

Ensuring the success of the ethics consultation service requires ongoing evaluation (i.e., the systematic assessment of the operation and/or outcomes of a program compared to a set of explicit or implicit standards). This activity is essential for contributing to the continuous improvement of the program.<sup>31</sup> This primer establishes explicit standards for ethics consultation against which actual practices may be compared.

Evaluation is an important strategy to improve the process of ethics consultation (i.e., how ethics consultation is being performed) as well as its outcomes (i.e., how ethics consultation



affects participants and the facility). Evaluation efforts need not be burdensome or costly. Experts in the facility, such as quality managers, can assist with developing appropriate ways to assess these factors to ensure that the measures used are valid and that data are collected and analyzed in a minimally burdensome fashion.

For example, the critical success factors identified in this section should be systematically assessed, and addressed in local policy:

- **Integration** — Is the consultation service well integrated with other components of the organization?
- **Leadership support** — Is the ethics consultation service sufficiently supported by leadership?
- **Expertise** — Do ethics consultants have the knowledge and skills required?
- **Staff time** — Do ethics consultants have adequate time to perform effectively?
- **Resources** — Do ethics consultants have ready access to the resources they need?
- **Access** — Is the ethics consultation service accessible to those it serves?
- **Accountability** — Is there clear accountability for ethics consultation within the facility's reporting hierarchy? Does the consultation service keep leadership apprised of its activities?
- **Organizational learning** — Is the ethics consultation service effectively disseminating its experience and findings?
- **Evaluation** — Does the ethics consultation service continuously improve its quality through systematic assessment?

Additionally, assessments should be made to determine whether ethics consultations are performed in accordance with the approach outlined in Part II, CASES — A Step-by-Step Approach to Ethics Consultation.

### **Policy**

The structure, function, and processes of ethics consultation should be formalized in institutional policy. At a minimum, this policy should address the following topics:

- The goals of ethics consultation
- Who may perform ethics consultations
- What education and/or training is required of an ethics consultant
- How consultant proficiency will be assessed and continuously developed
- The responsibilities of ethics consultants and the head of the ethics consultation service and other leaders
- Who may request ethics consultations
- When the ethics consultation service is available to receive requests for consultation (e.g., during business hours, 24/7)
- How urgent consults should be handled if the ethics consultation service is not available

### **Tip:**

Efforts should be made to determine whether the ethics consultation service is meeting its established goals. For example, does the service promote practices consistent with high ethical standards? Does it help to resolve conflicts in a respectful manner? Does it honor participants' authority and values in decision making? Does it effectively educate participants to resolve current and future ethical concerns?

- What requests are appropriate for the ethics consultation service
- How requests that are not appropriate for the ethics consultation service will be handled
- Which consultation model(s) may be used and when
- Who must be notified when an ethics consultation has been requested
- How participants' confidentiality will be protected
- How ethics consultations will be performed
- How ethics consultations will be documented
- Who is accountable for the ethics consultation service
- How the quality of ethics consultation will be assessed and ensured

The ethics consultation service leader should head efforts to develop and maintain the facility's ethics consultation policies. In VHA, the ethics consultation coordinator develops the local policy for the consultation service in collaboration with the IE council as part of the facility's IE program's overall policy.



The national IE policy and a model of local policy are available at <http://vaww.ethics.va.gov/IntegratedEthics> or [www.ethics.va.gov/IntegratedEthics](http://www.ethics.va.gov/IntegratedEthics).

## Part II:

# CASES — A Step-by-Step Approach to Ethics Consultation

This section describes the CASES approach, a practical, systematic approach to ethics consultation. This approach involves five steps:

C

### **CLARIFY the consultation request**

- Characterize the type of consultation request*
- Obtain preliminary information from the requester*
- Establish realistic expectations about the consultation process*
- Formulate the ethics question*

A

### **ASSEMBLE the relevant information**

- Consider the types of information needed*
- Identify the appropriate sources of information*
- Gather information systematically from each source*
- Summarize the information and the ethics question*

S

### **SYNTHESIZE the information**

- Determine whether a formal meeting is needed*
- Engage in ethical analysis*
- Identify the ethically appropriate decision maker*
- Facilitate moral deliberation about ethically justifiable options*

E

### **EXPLAIN the synthesis**

- Communicate the synthesis to key participants*
- Provide additional resources*
- Document the consultation in the health record*
- Document the consultation in consultation service records*

S

### **SUPPORT the consultation process**

- Follow up with participants*
- Evaluate the consultation*
- Adjust the consultation process*
- Identify underlying systems issues*

## Using the CASES Approach

The CASES approach establishes systematic, step-by-step process standards for high-quality ethics consultation. The CASES steps are designed to guide ethics consultants through the complex processes needed to effectively resolve ethical concerns in ethics consultations. These steps are intended to be used similarly to the way clinicians use a standard format for taking a patient's history, performing a physical exam, or writing up a clinical note. Even when some consultations do not require the specific application of a particular substep, each step should be considered systematically as part of every ethics consultation. For consultations pertaining to an active patient case that requires interaction with the patient (or surrogate) and documentation in the health record, consultants should follow all the steps in the CASES approach.

But not all requests for ethics consultation pertain to an active patient case. For these other types of non-case consultations, such as responding to questions about ethics topics in health care, interpreting policy relating to ethics in health care, reviewing documents from a health care ethics perspective, providing ethical analysis of organizational ethics questions, or responding to ethics questions that are hypothetical or retrospective, the applicable steps of the CASES approach should be applied as appropriate. While not all the steps will be applicable, working systematically through the steps that are relevant will help the consultant to respond effectively.



A pocket card summarizing the CASES approach is available at <http://vaww.ethics.va.gov/IntegratedEthics> or <http://www.ethics.va.gov/IntegratedEthics>.

## Step 1: Clarify the Consultation Request

The first step in the CASES approach is to clarify the request. The consultant should gather information from the requester to form a preliminary understanding of the situation, why an ethics consultation is being sought, and how to proceed.



### CLARIFY the consultation request

*Characterize the type of consultation request*

*Obtain preliminary information from the requester*

*Establish realistic expectations about the consultation process*

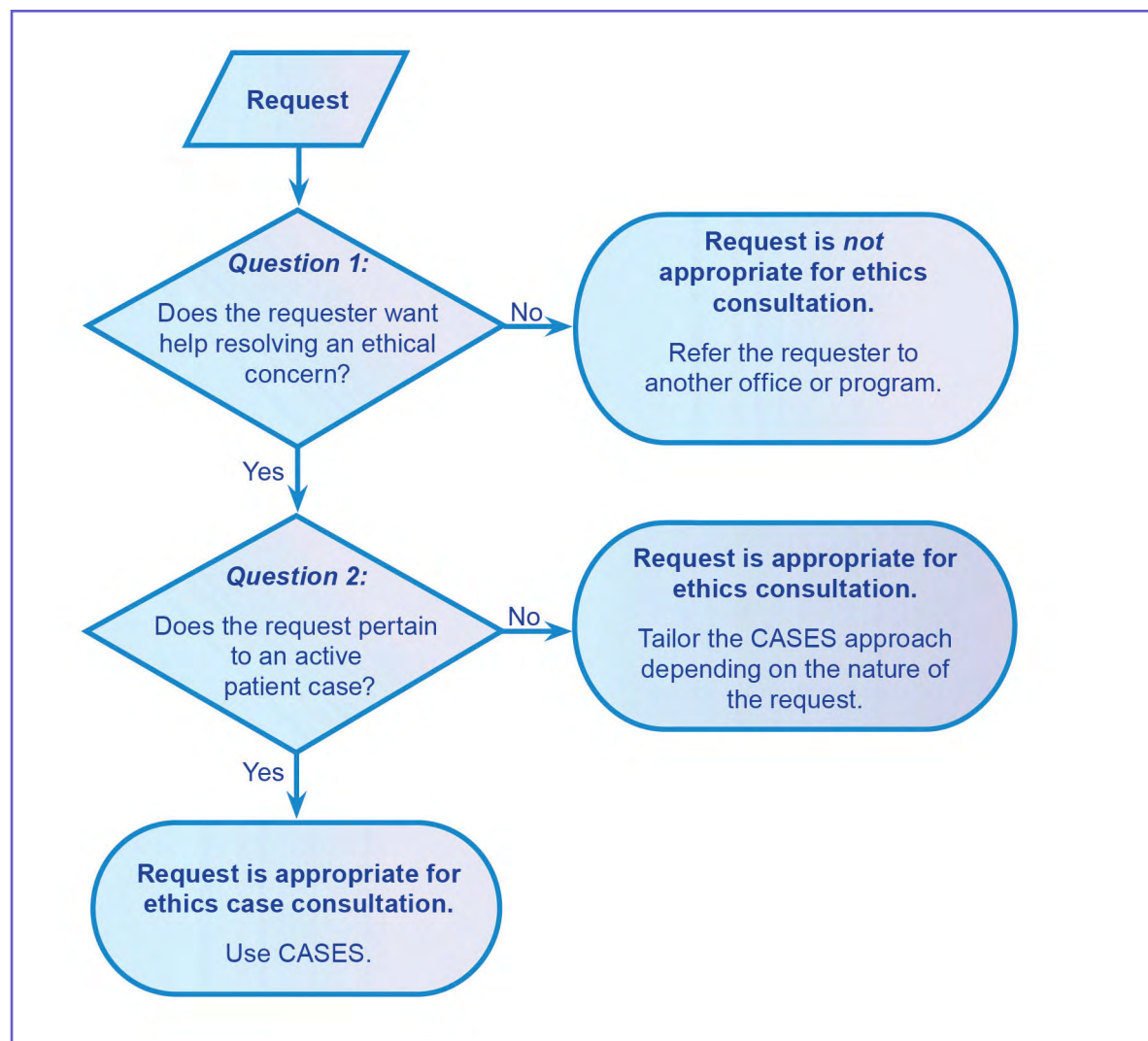
*Formulate the ethics question*

### Characterize the type of consultation request

Before doing anything else, the consultant should characterize the consultation request by determining: (a) whether the requester wants help resolving an ethical concern (in which case the request is appropriate for ethics consultation); and (b) whether the request pertains to an active patient case that requires interaction with the patient (or surrogate) and documentation in the health record (in which case the consultant should complete all the steps in the CASES approach). The decision rules are depicted schematically in Figure 2.

**Question 1: Does the requester want help resolving an ethical concern?** The role of the ethics consultation service is to help patients, providers, and other parties in a health care setting resolve ethical concerns, (i.e., uncertainties or conflicts about values). In this context, values are strongly held beliefs, ideals, principles, or standards that inform decisions or actions. These might include a belief that people should never



**Figure 2. Is the Request Appropriate for Ethics Case Consultation?**

be allowed to suffer; the ideal that health care workers should always be truthful with patients; the principle that no one should be discriminated against on the basis of his or her religion, ethnicity, or cultural background; or the standard of voluntary consent for research.

Individuals who have ethical concerns may seek values clarification and/or resolution of values conflicts. As a general principle, if the requester thinks that a circumstance raises an ethical concern, the assumption should be that it does. However, requesters may sometimes contact the ethics consultation service to seek assistance with other types of concerns that are better handled by other offices or programs, such as legal questions, medical questions, requests for psychological or spiritual support, general patient care complaints, or allegations of misconduct.

The ethics consultant should help the requester articulate the nature of their concern, and help clarify the values uncertainty or conflict. If it is not obvious that the requester wants help resolving an ethical concern, the ethics consultant should explore the nature of the concern to determine if it is appropriate for ethics consultation. Often a situation may raise ethical concerns in addition to other types of concerns. For example, requesters who are seeking legal advice often want assistance resolving an ethical concern as well.

When a question involves both legal and ethical concerns, the legal aspect should be referred to legal counsel and the ethical concerns addressed by the ethics consultation service. For other types of concerns, the ethics consultant should refer the requester to the appropriate programs or offices (as discussed below) while also addressing the ethical concerns.



The Triage Tool for Ethics-related Leadership Decisions summarizes VHA resources that leaders and staff can access to address types of ethics-related concerns including those appropriate for ethics consultation (see Appendix 3). See also <http://vaww.ethics.va.gov/IntegratedEthics> or <http://www.ethics.va.gov/IntegratedEthics>.

If the answer to Question 1 is no — that is, the requester doesn't want help resolving an ethical concern but is only seeking assistance with other matters — the request is not appropriate for ethics consultation. Requests that do not pertain to ethical concerns should be referred to other offices in the organization. For example:

- Legal questions (e.g., “Will the facility get in trouble if we accept a commemorative plaque from a pharmaceutical company?”) should be referred to legal counsel. In VA, legal questions should be referred to Regional Counsel or the VA Office of General Counsel. VA employees should note that questions specifically concerning standards of conduct for employees of the executive branch — i.e., government ethics standards, such as those about accepting or giving gifts — should always be referred to Regional Counsel or the Office of General Counsel.
- Medical questions (e.g., “Will this patient regain decision-making capacity?” or “Does this Jehovah's Witness patient really need a blood transfusion?”) should be referred to an appropriate clinical resource or service chief.
- Requests for psychological or spiritual support (e.g., “As a doctor, I'm having trouble coming to terms with my mistake” or “Someone needs to talk to the wife about her husband's impending death”) should be referred to the local employee assistance program, chaplain service, social work program, or mental health professional, as appropriate.
- General patient care complaints (e.g., “The clinic staff are insensitive and don't listen to me” or “I'm concerned that this doctor does not wash his hands before touching patients”) should be referred to hospital administration, the local patient advocate or ombudsman program, or similar office. In VA, general patient care complaints can also be referred to the Office of the Medical Inspector.
- Allegations of misconduct (e.g., “An employee is falsifying data” or “That doctor is diverting VA patients to his university clinic practice”) should be referred to the local compliance program, administration, or other appropriate office or program. In VA, allegations of misconduct can also be referred to the VA Compliance and Business Integrity Helpline or the Office of the Inspector General Hotline, as appropriate.

If the answer to Question 1 is yes, consider Question 2.

**Question 2: Does the request pertain to an active patient case?** If the answer is yes, the request requires interaction with the patient (or surrogate) and documentation in the health record. As such, it should be considered a “case consultation.” In VHA, use of the CASES approach is required. Working through all the steps is essential. Failure to do so may compromise the quality of the consultation.

Some ethics questions relating to an active patient case may seem straightforward and too simple to warrant use of the CASES approach. However, even these questions should be addressed systematically and comprehensively, because ethics consultations are often more complex than they are initially presented or perceived to be. For example, the information presented by the requester may not be complete or accurate, and facts may change once additional information is collected. Or other parties involved may have ethically relevant perspectives that weren't communicated by the requester but ought to be considered. For reasons such as these, ethics consultations should not be handled through an informal or curbside approach. Note: When ethics consultants are asked to comment informally on a question pertaining to an active patient case, they should make it clear that they can only respond in general terms and cannot give recommendations about a specific patient's circumstances without completing a formal consultation process. The ethics consultant should take the opportunity to briefly describe the ethics consultation process and encourage the person to request an ethics consultation if appropriate.

If the answer to Question 2 is no — i.e., the request doesn't pertain to an active patient case that requires interaction with the patient (or surrogate) and documentation in the health record — then the request is considered a non-case consultation, and the CASES approach should be tailored as needed. Although CASES is designed especially for case consultations, its steps are relevant to non-case consultations as well and should be used whenever they are appropriate. For example, it is always important to clarify the question and do a thorough job of assembling relevant information. A non-case consultation might require different techniques or accessing different types of information from that needed for a case consultation. But for a request involving a hypothetical or retrospective scenario, the consultant might not conduct, or be able to conduct, interviews with involved parties. Similarly, when a request for consultation doesn't involve a specific patient, the consultant would not review the health record.

Typically, non-case consultations include requests to:

- respond to general questions about ethics topics in health care;
- interpret policy relating to ethics in health care;
- review documents from a health care ethics perspective;
- provide ethical analysis on organizational ethics questions; and
- respond to ethics questions that are hypothetical or retrospective.

### ***Obtain preliminary information from the requester***

Having characterized the type of consultation request, it is important to obtain information that will facilitate planning the next steps of the consultation process.

Consultants should obtain and document the following basic information:

- Requester's contact information and title, if appropriate
- Date and time the requester contacted the consultation service
- Urgency of request
- Brief description of the circumstances and the ethical concern as the requester understands them
- Requester's role in the case (e.g., patient, attending physician, family member, administrator)
- Steps already taken to resolve the ethical concern



- Type of assistance desired (e.g., forum for discussion, conflict resolution, explanation of options, values clarification, policy interpretation or review, recommendation for care, moral support, answer questions/provide resources about topics in health care ethics, document review, hypothetical or retrospective review)
- Care setting (e.g., inpatient, outpatient, extended care, other)

Once this information is obtained, the consultant should determine, in a preliminary way, whether the individual, team, or committee model best suits the request (see Part I, What Models May Be Used to Perform Ethics Consultation?), which consultant(s) can best address the concerns it raises, and what steps should be taken next.

### ***Establish realistic expectations about the consultation process***

The consultant should always provide a concise, clear description of the ethics consultation process and how it helps resolve ethical concerns. This includes information about the goals of ethics consultation, the expected time frame for completing the consultation, and the specific actions the consultant(s) will take. This is particularly important for requesters who are seeking ethics consultation for the first time. The information can be communicated orally, electronically, or in print form.

Consultants should also attempt to identify and correct any misconceptions the requester may have about the ethics consultant's role. For instance, ethics consultants do not take

over decision making in the case, nor do they automatically “rubber stamp” the position of the requester or the health care team. See Figure 3 for a list of other misconceptions about the role of the ethics consultant.

### ***Figure 3. Common Misconceptions about the Ethics Consultant's Role***

It is a misconception to think that an ethics consultant will:

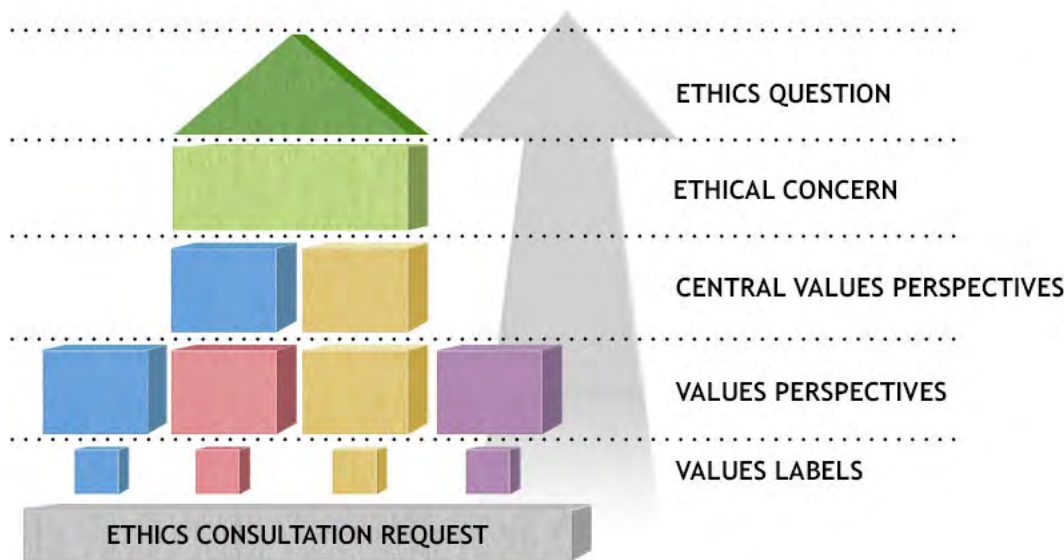
- Investigate an allegation of serious misconduct
- Rubber stamp what the health care team wants or what the patient/family wants
- Clean up a “mess”
- Conduct a medical evaluation
- Make a treatment plan
- Tell the requester what is legal
- Tell the requester what to do
- Talk to the family (or other party) so the provider doesn't have to
- Take the decision out of the hands of the family (or staff)
- Never report anything to authorities
- Tell someone he or she is being unethical
- Get the patient, doctor, nurse, or family to see things the requester's way

Finally, consultants should take time to explain how their role as an ethics consultant differs from other roles they play in the organization. For example, an ethics consultant who is also a psychiatrist, or medical or palliative care specialist, may be qualified to offer technical advice about medical treatments, but generally, such advice would not be considered part of the ethics consultation process.



More information about the role of an ethics consultant and common misconceptions about that role is available in the *Ethics Consultation: Beyond the Basics* training module, *Managing Common Misconceptions about the Role of an Ethics Consultant*. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

**Figure 4. The Building Blocks of the Ethics Question**



#### Building Blocks Description

1. Start at the bottom of the figure with the ethics consultation request. The requester describes the circumstances and the ethical concern as he or she understands them.
2. Moving upwards in the figure, identify the values labels that apply to the request. The consultant elicits value labels from the requester. Values labels are one- or two-word identifiers for strongly held beliefs, ideals, principles, or standards. Examples include “truth-telling,” “equality,” and “stewardship.”
3. Articulate those values from the perspective of those involved. The consultant, working with the requester, describes a values perspective. A values perspective is a common-sense expression of how a value applies to the consultation from the perspective of one or more participants. For characteristics of a values perspective, see the inset box.
4. Determine the central values perspectives in the request. The consultant works with the requester to determine which values perspectives are most central to the ethical concern. Note: The requester may hold two competing values or two or more individuals may hold conflicting values. Also, sometimes both parties are conflicted about a single value (e.g., both are concerned about doing good for the patient).
5. Articulate the ethical concern. This step entails conjoining two central values perspectives into a single statement. The ethical concern is stated as, “[first values perspective], but [second values perspective].”
6. Formulate the ethics question. The ethics consultant inserts the ethical concern into the appropriate structure for the ethics question based on whether the requester is concerned about a particular decision or action, wants to know what decisions or actions would be ethically justifiable, or plans to determine if a document raises ethical concerns. (See Figure 5.)

#### Characteristics of a Values Perspective:

- Explicitly identifies the person or group whose perspective is being represented, i.e., who holds the perspective (e.g., the spouse or the team)
- Uses words such as “believes” or “according to...” to link the person or group to the value
- Is normative (expresses or implies how things should be as opposed to how things are)
- Explicitly expresses an underlying value (which may or may not include a values label)
- Contains enough contextual information to relate the value to the specifics of the consultation
- Does not include any names or other individual identifiers of those involved
- Uses everyday language and avoids jargon
- Is in the form of a sentence

### **Formulate the ethics question**

Formulating the ethics question can be the single most difficult, yet most important, part of ethics consultation. Formulating the ethics question in a clear way that is understandable to those involved in the consultation allows all participants to focus on the central values perspectives that form the ethical concern and to work efficiently toward a resolution. Formulating the ethics question poorly or imprecisely can sidetrack or derail the consultation process. In addition, in some instances, the process of clarifying the ethics question may lead to the realization that the situation is not appropriate for ethics consultation after all. Finally, a poorly formulated ethics question can cause harm if it results in ethically inappropriate conclusions or recommendations.<sup>30</sup> For these reasons, ethics consultants should formulate the ethics question early in the process and revisit the ethics question again, once all the relevant information has been assembled.

In an ethics consultation, an ethics question asks which decisions or actions are ethically justifiable given an ethical concern. The formulation of the question should state the question in a way that is helpful to those who will be involved in the consultation. To help clarify the process of formulating the ethics question and to help ensure that the question is formulated clearly, we have broken the process down into five sequential steps, which are described and illustrated in Figure 4.

To be most helpful, we suggest that an ethics question be formulated in one of three ways as shown in Figure 5.

**Figure 5. Formats for Ethics Questions**

1. Given that [first central values perspective] but [second central values perspective],  
[ethical concern]  
  
what decisions or actions are ethically justifiable?
2. Given that [first central values perspective] but [second central values perspective],  
[ethical concern]  
  
is it ethically justifiable to \_\_\_\_\_?  
[decision or action]
3. What ethical concerns are raised by [name of document], and what should be done to resolve them?

The first format is appropriate when the requester does not propose a particular decision or action but instead is asking about all ethically justifiable options. This format is used for both case and non-case consultations. For example:

Given that the patient's authorized surrogate believes that the patient should not have a Do-Not-Resuscitate (DNR) order because he does not want to feel complicit in the patient's death, but the attending believes that the patient should have a DNR order because she is obligated to follow the patient's advance directive, which indicates that he would want a DNR order in his current circumstance, what decisions or actions are ethically justified?



The second format is appropriate when the requester proposes a specific decision or action and seeks advice about whether it is ethically justifiable. This format is also used for both case and non-case consultations. For example:

Given that the patient believes he should not have to divulge his Hepatitis C status to his caregiver because he has a right to control his health information, but the home care staff believes that the caregiver should have the information so that she can protect herself from infection, is it ethically justifiable to not disclose the patient's Hepatitis C status to the patient's caregiver?

The third format is appropriate when no particular ethical concern has been identified, but the ethics consultation service is asked to review a document from a health care ethics perspective. This format is used only for a particular type of non-case consultation — document review. For example:

What ethical concerns are raised by the draft, "Audio and Visual Recording of Clinical Encounters Policy," and what should be done to resolve them?

**The examples below illustrate how each format for an ethics question could be developed from the following case:**

The chief medical resident requests an ethics consultation. She has just begun a six-month rotation at the hospital and is upset because her attending has chastised her for allowing her resident physicians to practice procedures (central line insertions and intubation) on newly deceased patients without obtaining consent from the next of kin. The chief resident defends this practice because she sees it as an invaluable learning opportunity for the medical residents, and she is responsible for their education. Practicing procedures on newly deceased patients without consent is allowed at other affiliated hospitals where she has trained. She says it should be allowed in this hospital as well because it "is best for the most people."

1. Given that [first central values perspective], but [second central values perspective], what decisions or actions are ethically justifiable?

Given that the attending thinks that the family should determine what procedures are performed on their deceased relative's body because it is their right, but the chief resident believes that it will be good for the community if residents are allowed to practice procedures on newly dead patients, what decisions or actions are ethically justifiable?

2. Given that [first central values perspective], but [second central values perspective], is it ethically justifiable to [decision or action]?

Given that the attending thinks that the family should determine what procedures are performed on their deceased relative's body because it is their right, but the chief resident believes that it will be good for the community if residents are allowed to practice procedures on newly dead patients, is it ethically justifiable to practice procedures on newly dead patients without consent from the next of kin?

3. What ethical concerns are raised by [name of document], and what should be done to resolve them?

If there was a request to review a proposed policy about performing procedures on newly dead patients, the third ethics question formulation might be:

What ethical concerns are raised by the draft policy on performing procedures on newly dead patients, and what should be done to resolve them?



In some ethics consultations, there may be multiple ethical concerns and it may be necessary to formulate more than one ethics question. Sometimes as a consultation unfolds, the ethics question may change or additional questions may emerge. Nonetheless, formulating the ethics question at the outset is essential, as it helps to focus the consultation.



More information about formulating the ethics question is available in the Ethics Consultation: Beyond the Basics training module: Formulating the Ethics Question. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

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## Step 2: Assemble the Relevant Information

The second step of the CASES approach is to assemble information relevant to the consultation request. In this step, consultants elicit data from multiple sources to build a more comprehensive picture of the circumstances surrounding the consultation request.



### **ASSEMBLE the relevant information**

*Consider the types of information needed  
Identify the appropriate sources of information  
Gather information systematically from each source  
Summarize the information and the ethics question*

#### ***Consider the types of information needed***

The CASES approach builds on the work of Jonsen, Siegler, and Winslade in defining topics that should be reviewed in every ethics case consultation.<sup>32</sup> However, based on experience with ethics consultation, CASES reframes Jonsen and colleagues' "medical indications," "patient preferences," "quality of life," and "contextual features" into three slightly different categories. These categories are "medical facts," "patient's preferences and interests," and "other parties' preferences and interests." A fourth category of information, ethics knowledge, needs to be reviewed for each ethics consultation.

In gathering information, the consultant may be faced with an abundance of facts and data from sources such as records and notes. However, only information relevant to the ethics question should be included in the ethics consultation record.

**Medical facts.** When performing ethics case consultations, ethics consultants must be well informed about the medical facts of the patient case. Indeed, ethical concerns can often be resolved merely by clearing up factual misunderstandings among patients, families, and members of the health care team. When gathering medical facts, consultants who have clinical training may be at an advantage relative to their nonclinical colleagues, since they can apply their medical knowledge to critically assess the accuracy and adequacy of the

information. Consultants without a clinical background need to learn to ask probing clinical questions in order to understand the situation, to appreciate that medical “facts” are often merely expert opinions that may later prove to be wrong, and to identify when facts are not as clear as they may initially have seemed. In general, the more limited the consultant’s medical knowledge relevant to the case, the more effort is needed to collect, understand, and confirm the medical facts. Ethics consultants should not make medical decisions or offer medical opinions.

The medical facts should be explained in detail if — and only if — they are relevant to the consultation. For example, if the consultation focuses on issues related to a persistent vegetative state, then details about neurologic status and basis for prognosis would be critically important while other past medical history may be irrelevant.

**Patient’s preferences and interests.** With case consultations, ethics consultants also need information about the patient’s values, goals, preferences, needs, and interests as they pertain to the individual’s clinical circumstances. These interests may relate to what makes life good or worth living to the patient and, in particular, to the patient’s goals of care. To the extent possible, this information should be obtained directly from the patient, although other parties can add important insights to help put the patient’s perspective into context. For patients who lack decision-making capacity, information about the patient’s preferences and interests should be obtained by examining advance directive documents and notes in the health record, speaking to the patient’s surrogate decision maker, and interviewing other people, such as relatives, friends, and health care providers, who might have relevant information to share (e.g., about the patient’s cultural values and religious beliefs).

**Other parties’ preferences and interests.** Next, ethics consultants need to collect information about other parties’ preferences and interests related to the consultation. Family, friends, and other stakeholders who may be affected by the outcome of the consultation should have their views and preferences considered. For example, the family may have concerns about financial matters, caregiver burdens, or religious or cultural considerations; health care professionals may have interests related to professional integrity, legal liability, or public health; and health care managers may have interests in protecting their organization’s reputation, meeting standards, or satisfying stakeholders, such as unions and local governments. Also, appreciating the diverse and potentially competing perspectives surrounding a case enriches the consultant’s grasp of the complexities involved and often leads to new insights and ideas.

**Ethics knowledge.** Finally, when performing a consultation, it is important for the ethics consultant to draw on ethics knowledge or “best thinking”<sup>33</sup> relevant to the consultation request. The ethics consultant should reflect on his or her knowledge to consider whether it covers all aspects of the ethics question, whether there are sources that should be investigated, and whether there may be new thinking on the issue. The consultant should assemble the additional ethics knowledge as needed. Ethics knowledge can be gleaned from codes of ethics, ethics standards and guidelines, consensus statements, scholarly publications, precedent cases that establish an authoritative standard, and applicable institutional policy and law, among other sources. (See Figure 6.)

For novice consultants, the “Assemble” step should always involve at least some reading about the topic and should include a literature review. For experienced consultants, the necessary effort will vary. For example, if they have in-depth training and previous

experience directly relevant to the consultation, they may not need to conduct a new literature review but simply reflect on what ethics knowledge is relevant to the consultation. Nonetheless, even experienced ethics consultants will often benefit from reviewing literature so that authoritative information is fresh in their minds. This would also enable them to quote specific source materials to support their analysis or provide resources to participants.

Ethics consultants should be familiar with a range of ethics-related journals and texts, know how to perform Internet searches to find ethics material, and make good use of these skills to research a consultation topic when needed. Although novice consultants may find reviewing the literature daunting at first, as they gain experience they will become more familiar with the topics and how to access information efficiently. They can also engage in discussions with more experienced consultants, who are another important resource.



More information about how to perform an Internet search for ethics knowledge is available in the Ethics Consultation: Beyond the Basics training module: Finding the Available Ethics Knowledge Relevant to an Ethics Question. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

Ethics consultants also need to have basic legal knowledge and ready access to legal expertise. Although the ethics consultation service should not attempt to provide legal advice, consultants must appreciate the legal implications of cases and have a sense for when it is appropriate to seek advice from legal counsel. Consultants should thoroughly understand their organization's policies, such as those relating to informed consent, advance care planning, privacy and confidentiality, patient safety, and organ and tissue donation. In VA, ethics consultants should also be familiar with regulations governing the conduct of employees of the executive branch and should refer questions involving these government ethics standards to Regional Counsel or Office of General Counsel.

Finally, ethics consultants should build and sustain a network of external contacts that can provide specialized ethics expertise as needed. Ethics experts can be found in health care delivery organizations as well as in universities or ethics centers. For VHA ethics consultants facing especially difficult or challenging consultations, support is available from NCEHC.\*

\*VA employees may request consultation support from NCEHC by email: [vhaethics@va.gov](mailto:vhaethics@va.gov). (Note: Unencrypted email is not secure. Requests for consultation support that include personally identifiable information about patients or staff must be encrypted.)

## Figure 6. Examples of Ethics Knowledge

Examples of ethics knowledge by category:

- Accreditation standards, e.g., The Joint Commission
- Consensus statements, position papers, or white papers from professional societies, e.g., the American Nursing Association's position paper on "Forgoing Nutrition and Hydration"
- Published ethics literature, e.g., an article from the American Journal of Bioethics on advance care planning
- Executive directives, e.g., a memo from the hospital director to all staff
- Organizational policies, e.g., a hospital policy on informed consent
- Precedents from case law, e.g., Schiavo vs. Sixth Circuit Court of Florida
- Professional codes of ethics, e.g., American College of Physicians' *Ethics Manual*
- Statutes, e.g., the Patient Self-Determination Act of 1990



### **Identify the appropriate sources of information**

**Patient.** In ethics case consultations, failure to interact directly with the patient can lead to serious quality problems. A face-to-face visit with the patient is desirable in all ethics case consultations. Unfortunately, such contact with the patient isn't always practical, especially if the consultant and patient are separated geographically (e.g., patient may be home or at a clinic in the community and the consultant is at the hospital). Nevertheless, the consultant should attempt to interview the patient via videoconference, or at least by telephone.

Reports that the patient is not interactive or responsive should not dissuade the consultant from visiting the patient. Direct observation in itself can enrich the consultant's understanding of the patient's situation and reveal new information not available from other sources (e.g., the patient appears to enjoy television, or seems in distress). In addition, patients who lack decision-making capacity may still be able to communicate in ways that will help to inform decisions others must make for them. For example, even cognitively impaired patients may be able to indicate their current experience of pain or the person they trust to make their health care decisions.

**Health record.** A careful review of the patient's health record is a necessary step in all ethics case consultations. Consultants should not rely on the requester's summary of the patient's circumstances, but should look to the health record to develop a detailed understanding of the clinical situation. In addition to medical facts, the patient's record can reveal emotional reactions, judgments, and attitudes that may prove helpful in understanding and resolving conflicts. For instance, the health record may suggest that one family member holds out hope for a miracle despite clinical indications of the patient's impending death. These powerful feelings may help explain a reluctance by the family member to withdraw treatments even if they know it is inconsistent with the patient's previously expressed goals of care. The record may also reveal whether the patient's perspectives have changed recently or stayed consistent over time.

In addition to examining the patient's health record, ethics consultants should seek out other relevant documents that may not be in the health record, such as advance directives, court papers establishing guardianship, or health records from other providers.

Ethics consultants who have access to health records do not need specific authorization to access a particular patient's health record in response to a consultation request. Under the Health Insurance Portability and Accountability Act (HIPAA), health care providers may access patient records for the purpose of treatment, defined as "the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and a referral of a patient by one provider to another," or for the purpose of health care operations.<sup>34,35</sup> Thus, under HIPAA, ethics consultation on an active patient case is considered part of the treatment process.

Although ethics consultants are authorized to view health records, they must comply with all relevant privacy policies and regulations when accessing patients' information.<sup>36,37</sup> This means that ethics consultants should access only the information they need to perform their function. Consultants should receive appropriate privacy training and be granted access to health records in accordance with local policy. If individuals who are not employed by the organization participate on the team or in any aspect of ethics case consultation, the consultation service should seek guidance from the local privacy officer and/or legal counsel to ensure that these individuals meet all applicable legal requirements. In most circumstances, this will require specific authorization granting these individuals access to identifiable patient information.<sup>38</sup>



**Staff.** The ethics consultant should interview staff members who may have important information or views to share. This typically includes the attending physician, house staff, primary nurse, and patient's primary care provider (if different from the attending physician), as well as specialists or allied health providers critical to the case. The preferences and interests of individual staff are often ethically relevant to the consultation, especially when the circumstances involve a conflict between the patient or surrogate and the health care team. Interviews with staff can also be helpful in clarifying medical facts, treatment alternatives, and prognosis. For example, a dietitian may be the best person to offer options for patients who cannot take food by mouth. A social worker may have invaluable information about placement and discharge planning.

In addition, when the patient lacks decision-making capacity, or when the patient cannot be interviewed directly, staff may be able to provide essential information about the patient's values or previously expressed preferences.

**Family members and friends.** To gain additional insight into the patient's values and preferences, it is also important to interview other people who have direct knowledge of the patient, such as close relatives and friends. This is especially important when the patient lacks decision-making capacity or cannot be interviewed directly.

When a patient lacks decision-making capacity, responsibility for health care decisions falls to the surrogate decision maker — a person authorized to make decisions on the patient's behalf. The consultant should confirm that the surrogate identified by the health care team is in fact authorized to serve in that capacity according to applicable law and policy. The ethics consultant should interview the authorized surrogate not only to obtain information, but also to clarify for the surrogate his or her responsibilities as they apply to the consultation. Often, the health care team has not discussed the role of the surrogate in medical decision making with the surrogate decision maker. The consultant should not assume that the surrogate understands (or wishes to enact) his or her role. It is often useful to supplement the information provided by the surrogate with information from other family members or friends — particularly when there are concerns about whether the surrogate is adequately representing the patient's preferences and interests, when there is conflict in the family, or when the surrogate is presenting a perspective that differs from that which the patient stated before losing decision-making capacity.

Even with patients who retain decision-making capacity, family and friends may supply helpful contextual information, such as insights into the patient's prior preferences or explanations about his or her religious beliefs. When contacting family members or friends, consultants must be careful to respect patients' privacy in accordance with law and policy.

### ***Gather information systematically from each source***

**Collect sufficient information.** Ethics consultants should gather data from these sources in a thorough and systematic manner. The required content and depth of information will vary depending on the consultation at hand. For example, if the consultation is about a spouse who is refusing to honor a patient's advance directive, information gathering should focus on confirming that the patient lacks decision-making capacity, establishing that the spouse is the authorized surrogate, ascertaining the patient's preferences and values, clarifying the spouse's position, understanding his or her rationale, and interpreting how the known preferences documented in the advance directive apply to the current situation.

**Verify the accuracy of information.** Consultants should take steps to ensure that the information they collect and study is accurate. The quality of an ethics consultation depends on it.

Whenever possible, consultants should collect information directly from the source rather than relying on secondhand reports. For example, if an advance directive is ethically relevant to the case, the consultant should directly examine the document. It would not be appropriate to rely on a third party's description of the document's content. Similarly, if a family member's perspective is important, then the ethics consultant should personally interview that person.

Consultants should attempt to independently verify critical information and facts by gathering them from more than one source. For instance, if two different people were to describe a patient who lacks decision-making capacity's preferences in similar terms, this would lend credence and weight to that information.

Another way that consultants can improve accuracy is to be aware of their own biases in how they think about the information they collect. Even when they have the best of intentions, it is difficult for individuals to be truly objective in gathering and processing information.<sup>39</sup> For example, people tend to give greatest weight to the first information they receive, whatever the source. Thus, consultants should try to actively counteract this "primacy bias" by deliberately considering information and perspectives that are inconsistent with their initial impression.<sup>39</sup>

**Distinguish facts from value judgments.** Consultants should be careful to distinguish facts from value judgments, since case descriptions often reflect a combination of objective knowledge and opinions. Figure 7 illustrates this point.

**Handle interactions professionally.** In addition to a personal introduction, consultants should share a succinct description of the goals of ethics consultation and the CASES approach with patients, families, and staff members. For example, when the consultant first meets a patient who is not familiar with ethics consultation, the consultant might explain that his or her job is to use ethics knowledge and experience to assist patients, families, and staff as they work through difficult decisions by listening to what everyone thinks and helping people decide the best thing to do. The consultant should also explain the ethics question in the case, as well as each person's role in the consultation process. Consultants should make it clear that they will attempt to protect the rights and interests of all involved and that their role is distinct from that of the treatment team.

While ethics consultation is part of health care delivery, it is not a clinical treatment or procedure. Participation in ethics consultation is always voluntary, and anyone, including the patient or

### *Tip:*

Prior to visiting the patient, the consultant should notify the patient's attending physician. This is important for two reasons: (a) as a courtesy and (b) to determine whether there are medical considerations that should influence the consultant's plans. For example, if the patient suffers from extreme paranoia, the patient's physician may advise the consultant to postpone the interview or may make suggestions about how to avoid aggravating the patient's condition. However, the physician may not use his or her authority to block a consultation that is initiated by another person with standing in the case, since this would effectively deny requesters access to this institutional resource designed to help them with their ethical concerns.

### Figure 7. Examining Value Judgments in an Ethics Consultation: Example

*Suppose a nephrologist states that dialysis is futile for a particular patient . . .*

*She might mean by this that:*

- She believes that it isn't medically possible to dialyze the patient safely and effectively.*

*or*

- She believes that while it would be medically possible to dialyze the patient safely and effectively, it isn't "appropriate" to do so because in her opinion, the potential benefits of dialysis are minimal given the patient's cognitive impairments.*

On hearing the word "futile," ethics consultants should ask questions to determine exactly what the speaker means, such as:

- Is the patient expected to die?*
- If so, what are the chances the patient will survive a week? a month? a year?*
- Are those estimates based on specific data or on general clinical judgment?*
- Is there any possibility that the patient will improve enough to leave the ICU? to be discharged? to live independently?*

It may also be necessary to ask similar questions to clarify the recommended treatment plan and the possible alternatives.

Other potentially value-laden terms that need to be critically assessed include "terminally ill," "noncompliant," "quality of life," "in denial," and "poor prognosis."

surrogate, may choose not to participate. Thus, it is important to advise the patient that a consultation has been requested but that formal procedures for explicit informed consent are not required.

In their interactions with involved parties, ethics consultants should encourage everyone to participate. If a party other than the patient or surrogate objects to the consultation, it should be noted in the consultation record. However, if a patient or surrogate objects, consultants should seriously consider whether it is in the best interests of the patient or organization to proceed. Consultants should strive to remain empathically neutral; even in the most highly charged situations, they should serve as models of respectful, professional behavior.

#### **Summarize the information and the ethics question**

Once information has been assembled and verified, it should be summarized for the benefit of everyone involved in the consultation. The consultant may communicate the information in one-on-one conversations, in meetings, and/or in writing. The summary must include all the important information yet be clear and succinct. Consultants should be careful to report information from various sources respectfully and attempt to reconcile contradictory information. In other words, the summary should describe the uncertainty or conflict, not contribute to it. Sometimes a clear and thorough summary is all that is needed to resolve the ethics question.

After summarizing the relevant case information, the consultant should review the preliminary ethics question and refine or revise it as appropriate. For example, if the consultant determines that the central values perspectives are different from those that

were originally described or that he or she should explore the full range of decisions and actions rather than focusing on the particular decision or action that was emphasized in the initial consultation request, the question should be revised.

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## Step 3: Synthesize the Information

The third step in the CASES approach requires the consultant to synthesize the information about the case in an effort to address the ethical concern.



### **SYNTHESIZE the information**

*Determine whether a formal meeting is needed*

*Engage in ethical analysis*

*Identify the ethically appropriate decision maker*

*Facilitate moral deliberation about ethically justifiable options*

### ***Determine whether a formal meeting is needed***

After assembling relevant information about the consultation, it is important for the ethics consultant to synthesize information in a way that helps others process that information and, ideally, resolve the ethical concern. Sometimes the best way to accomplish this is to gather the key parties for a formal meeting facilitated by the ethics consultant. Formal meetings are especially useful when the patient, surrogate, or other parties are not confident that their interests or views have been accurately represented or fully taken into account, when the parties are having trouble understanding one another's point of view, or when there are many different parties involved.

Some ethics consultants convene a formal meeting in every consultation and, in fact, use the meeting format to gather basic information. There are several problems with this approach. Formal meetings can be logistically difficult and time-consuming to arrange, which can delay the consultation process. In addition, such meetings require a large number of person-hours, making them inefficient compared with other alternatives. Some people are uncomfortable speaking in front of a group. This is especially a problem for patients and family members, but staff may also be intimidated by the presence of multiple representatives from the organization. If consultants rely on formal meetings as their primary means of gathering information, key pieces may not be available during the meeting, and consultants will have little opportunity to verify that the information presented is accurate. In addition, consultants who enter a formal meeting without anticipating the interpersonal dynamics or who fail to gather sufficient information in advance may find they are poorly prepared to manage a discussion of the circumstances or the relevant ethics knowledge. For these reasons, it is recommended that the consultant assemble most (if not all) of the relevant information before determining whether to convene a formal meeting.



If the consultant decides to hold the meeting, it is essential to set a goal for the meeting. Does the consultant want to try to resolve the entire consult? Is that possible at this stage of the consultation process? Or, does the consultant want to achieve something more modest, such as making sure that everyone has the same information or opening lines of communication and establishing trust? Knowing the goal, the consultant will have a good idea who should attend. The consultant needs to make sure to invite all relevant parties while keeping the meeting to a manageable size.

If possible, the consultant should communicate with each key participant before the meeting. A prior interview with the patient or surrogate is important and can help them feel safer and more comfortable talking openly during the meeting. The consultant should also review the relevant ethics knowledge prior to the meeting, and bring along any policies or other specific source materials that may be useful.

Once the group is assembled, the consultant should begin with introductions, and then explain what an ethics consultation is, its purpose and limits, its scope of authority (or lack thereof), and the relationship between the ethics consultant, the treatment team and the health care organization. Participants should also be informed about the ethics consultant's role in the consultation, and what the parties should expect from the meeting and the consultation overall. Finally, it is important for the consultant to introduce the patient, even if the patient is absent, and remind participants that the well-being of this patient ought to be everyone's primary concern.

It is always a good idea to establish ground rules for the meeting. Rules might include:

- Turn phones and beepers off or to vibrate
- Try to speak in terms that can be understood by everyone
- Listen to everyone
- Allow one another to talk without interruption
- Stay in the room until the end of the meeting, if possible

When an ethics consultation is rife with conflict, formal meetings can be especially challenging. In such circumstances, the success of the consultation may hinge on expert facilitation or mediation skills.<sup>8</sup> To help defuse conflict at the start of the meeting, a consultant can:

- Focus on the common goal of doing the right thing for the patient
- Reassure participants that all relevant parties have been invited
- Reveal prior contact with any participants, and explain his or her understanding from these contacts (e.g., about differences of opinion)
- Encourage everyone to participate
- Acknowledge that participants have different perspectives
- Assure everyone — especially the patient/family — that their perspective has equal stature

Following a standard meeting protocol can help ensure that all positions are voiced. An important skill for ethics consultants is being able to recognize power imbalances and address them effectively so that everyone has a chance to be heard. In any meeting, but particularly in a formal meeting, the ethics consultant should take steps to “level the playing field” — that is, to help ensure that all parties involved, especially those who hold

less power in the system, have an equal opportunity to express their views. Participants may choose not to speak, but the consultant should ask each person if he or she wants to contribute to the discussion. Failing to recognize the power dynamics in a consultation can make the situation worse, not least by undermining the consultation process and eroding trust.

The consultant should also help parties to communicate effectively — for example, by ensuring that medical information is communicated clearly so everyone involved has a good understanding of what is at stake. Making decisions during times of uncertainty is difficult. It is important to express probabilities as clearly as possible to avoid bias and misinterpretation.<sup>39</sup> The consultant should also help the parties clarify and express their values as they apply to the question at hand.

Once the medical facts and stakeholder perspectives are understood, the ethics consultant should encourage the group to engage in creative problem solving and, if possible, develop additional options that have not previously been considered. This is particularly important when participants have become polarized around positions that one party or another prefers. A new option may offer a neutral — and therefore acceptable — solution. Using mediation techniques to help parties focus on interests or values instead of specific positions, for example, can enable participants to identify fresh options and move forward.<sup>8,41</sup>



More information about how to prepare for a formal ethics consultation meeting is available in the Ethics Consultation: Beyond the Basics training module: Getting Off to the Right Start in a Formal Ethics Consultation Meeting. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

### **Engage in ethical analysis**

Whether or not a formal meeting is held, the consultant needs to engage in ethical analysis. Ethical analysis uses systematic methods of reasoning to apply relevant ethics knowledge to consultation-specific information for the purpose of responding to an ethics question. This process involves rigorous, critical thinking to develop and then weigh ethical arguments and counterarguments that are based on consideration of principles, rules, duties, likely consequences, and analogous cases.

The ability to perform ethical analysis is one of the most difficult yet important proficiencies an ethics consultant must master. Proficiency in ethical analysis requires a foundation of strong analytic skills, augmented by reading, study, and supervised practical experience over time. Ethics consultants should not rely exclusively on a single theoretical perspective; rather, they should draw on multiple perspectives in analyzing a single case. Familiarity with a broad range of theoretical perspectives provides the consultant with a variety of different lenses to “combine and shift” in order to unpack tough ethics questions.<sup>42</sup> Figure 8 includes a brief description of a number of approaches that a consultant may consider.

### **Tip:**

The consultant should ask health care providers to reframe information about an outcome in terms that all the participants will understand. For example, when explaining a probability it would be better to say, “If there were 100 patients like you, only one would get better,” rather than saying “one percent of patients get better.” Consultants should also avoid using terms like *rare*, *uncommon*, or *unlikely*, which different individuals may interpret differently.<sup>39,40</sup> Or the consultant might reframe information in both negative and positive ways, such as “If there were 10 patients like you, nine would be paralyzed,” or “If there were 10 patients like you, one would not be paralyzed.”

### Figure 8. Approaches to Ethical Analysis

**Casuistry:** Some ethics consultants emphasize a “casuist” or case-based reasoning approach.<sup>43</sup> Casuistry is a practical, as opposed to theoretical, approach to ethical decision making that attempts to determine the ethically justifiable options to resolve an ethical concern by drawing conclusions based on parallels with accepted responses to similar “paradigmatic” cases. Jonsen, Siegler, and Winslade employ a casuist approach in their system of clinical ethics case consultation. Their widely read book, *Clinical Ethics*,<sup>32</sup> proposes a four-part system in which the central ethics question is analyzed in reference to medical indications, patient preferences, quality of life, and the distinctive contextual features of the case. These authors prompt consultants to include a range of factors in their ethical analysis, such as treatment goals and patient decision-making capacity. Caution should be employed when using casuistry as the sole method of ethical analysis, because “paradigmatic” cases can sometimes conflict with or be applied in a general way to specific circumstances that differ in subtle but ethically salient ways from the paradigm.<sup>8</sup>

**Consequentialism:** The theory that ethical decisions should be made on the basis of the rightness of the expected outcome or consequences of the decision or action. Consequences of actions matter more than the intent.

**Utilitarianism:** A common type of consequentialism where a decision is made regarding the best course of action by applying a cost-benefit analysis to the situation.<sup>44</sup> According to this theory, the most ethical action is the one that will result in the best outcomes for the most people.

**Principlism:** In their widely cited *Principles of Biomedical Ethics*,<sup>45</sup> Beauchamp and Childress lay out what is known as the “principlist” approach to ethical analysis. They describe four principles — autonomy, beneficence, non-maleficence, and justice — that many clinical ethics consultants explicitly draw upon when they analyze a case. Ethics consultants should be familiar with these principles but must be cautious not to use them inappropriately. Labeling the problem in terms of the principles and relying on this approach exclusively to reach a conclusion is not advisable. In particular, inexperienced consultants who don’t have specific training in philosophy or humanities may be prone to overuse and/or apply the principles in an overly simplistic manner. As Beauchamp and Childress themselves point out, the principles are not sufficiently detailed to provide practical guidance for ethics consultation, and relying on them as the primary method of ethical analysis should be avoided. For example, knowing that autonomy is in conflict with beneficence does not lead directly to practical recommendations in a particular case.

**Deontological ethics, Duty-based ethics, or Rule-based ethics:** The use of duties, rules, regulations, and policies that defines specific duties and obligations rather than consequences to justify an action or policy. A decision or action is considered ethical or unethical based on its adherence to applicable rules or duties that guide ethical behavior rather than on its consequences.<sup>43,46</sup>

**Virtue Ethics:** Good character is expressed in ethical decisions. Right and good actions are those that a virtuous person would make. Virtue ethics emphasizes feelings and motivations.

**Other Approaches:** There are other important approaches to ethical analysis, including feminist or care ethics,<sup>47,48</sup> the deductivist “moral rules” approach,<sup>49</sup> and narrative ethics.<sup>50,51</sup> Like the approaches detailed above, all have specific advantages and disadvantages that might make them more or less applicable to a particular case.



**Performing Ethical Analysis.** Ethical analysis requires using systematic methods of reasoning to apply relevant ethics knowledge to consultation-specific information for the purpose of responding to an ethics question. The process involves two complex steps:

1. Articulating important ethical arguments and counterarguments in a clear and compelling fashion. This involves two substeps:
  - a. Generating ethical arguments and counterarguments
  - b. Strengthening ethical arguments
2. Weighing the strength of each argument and balancing competing arguments to yield a conclusion that responds to the ethics question

### **Articulating important ethical arguments and counterarguments in a clear and compelling fashion**

To generate ethical arguments and counterarguments, the consultant must first understand what an argument is and how to construct one.

An ethical argument is a statement that a particular decision or action is, or is not, ethically justifiable and is supported by at least one rationale to justify the conclusion. A counterargument is simply an ethical argument that opposes another ethical argument.

There are three legitimate types of rationales that may be used for an ethical argument:

- **Credo:** the decision or action is consistent or inconsistent with a statement intended to guide the ethical behavior of an individual or group over time (e.g., providing single rooms is consistent with The Joint Commission's standards, which require patient privacy)
- **Consequence:** the decision or action in question will or will not result in certain good and/or bad effects (e.g., using Social Security numbers to identify patients will increase the risk of identity theft)
- **Comparison:** the decision or action in question is similar to or different from another decision or action (e.g., authorizing an expensive drug that will cure the patient is similar to authorizing an expensive surgical procedure that will cure the patient)

Arguments that are not based on any of these rationales are sometimes also articulated during an ethics consultation. These *counterfeit arguments* are based on logical fallacies and, as such, should not be considered — or “weighed” — during an ethical analysis.

Examples include:

- *Ad populum:* appeals to the masses to support the argument
- Inappropriate appeal to authority: uses an authority figure to support the argument
- Appeal to emotion: positive or negative emotions are evoked to support the argument
- Red herring: irrelevant information is presented to divert attention from the original issue
- Dichotomous question: the rationale that just one other highly undesirable option exists
- *Ad hominem:* uses derogatory language or innuendo to discredit the author of the argument, rather than the argument itself



Ethical arguments can fall along a continuum from weak to strong. Stronger arguments are those that are *clear* and *credible*. That is, the intended meaning is understandable and not open to interpretation, and the rationale is authoritatively supported.

Just as a well-formulated ethics question helps to guide the consultation process, well-developed ethical arguments are essential to the ethical analysis. An ethical argument will be constructed differently if the rationale is based on a credo, consequence, or comparison. Strong arguments are clear and provide credible rationales. While it may seem challenging at first, the use of a format specific to each of the three rationales for generating ethical arguments will reinforce strong practices. Specifically:

**Credo:** (Decision or action) is (consistent/inconsistent) with (type of credo, e.g., policy) (as supported by a statement from a credo).

Example of an ethical argument based on a credo: Writing a do-not-resuscitate order on this comatose patient without consulting the surrogate is not ethically justifiable because it is inconsistent with Hospital Policy 123, “Do Not Resuscitate Orders,” which defines the surrogate’s right to decide whether a patient should have a do-not-resuscitate order.

**Consequence:** (Decision or action) (will/will not) lead to (consequences) (as evidenced by X).

Example of an ethical argument based on a consequence: Writing a do-not-resuscitate order on this comatose patient without consulting the surrogate is not ethically justifiable because it will lead to surrogate mistrust of the health care team as evidenced by an article entitled, An Empirical Study of Surrogates’ Preferred Level of Control over Value-laden Life Support Decisions in Intensive Care Units, in *Am J Respir Crit Care Med*. 2011 Apr 1; 183(7).

**Comparison:** (Decision or action) is (similar to/different from) other (decision or action).

Example of an ethical argument based on a comparison: Writing a do-not-resuscitate order on this comatose patient without consulting the surrogate is not ethically justifiable because it is similar to performing non-emergent procedures on patients without decision-making capacity without consent of the surrogate, which is also not ethically justifiable.

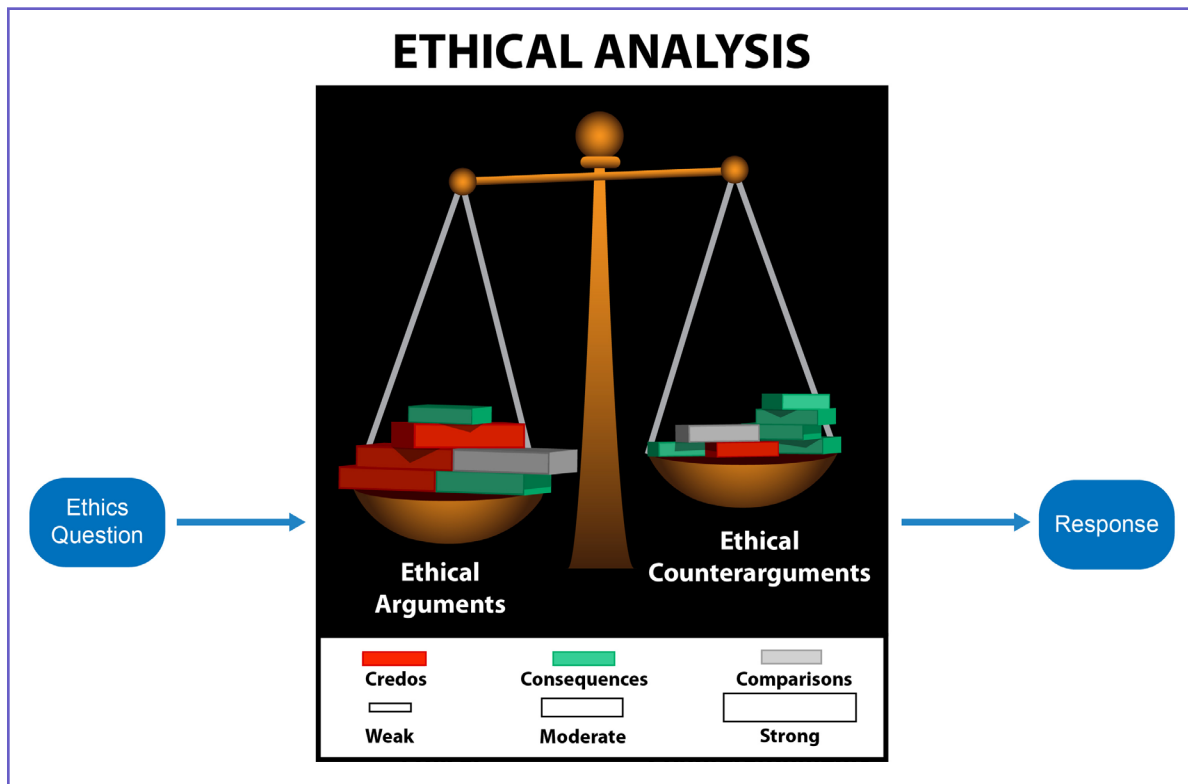
### **Weighing the strength of each argument and balancing competing arguments to yield a conclusion that responds to the ethics question**

The second major step in an ethical analysis is to weigh the strength of each argument and counterargument and balance them to yield a conclusion that responds to the ethics question. Figure 9 provides a graphical representation of ethical analysis. In this image, ethical arguments and counterarguments are represented by the bar-shaped weights on the scale. You will notice that some of the bars are bigger than others. In weighing and balancing ethical arguments and counterarguments, it is important to take into account the relative strength of each of the arguments. Ethical arguments can fall along a continuum from weak to strong. Note that the weight is important. Sometimes one argument will outweigh many counterarguments.



More information about how to conduct an ethical analysis is available in the *Ethics Consultation: Beyond the Basics* training modules, *Generating Ethical Arguments and Counterarguments* and *Strengthening Ethical Arguments*. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

**Figure 9. Weighing Ethical Arguments and Counterarguments**



### **Identify the ethically appropriate decision maker**

The ethically appropriate decision maker is determined by the type of decision that needs to be made:

- Identifying the range of treatments or procedures that are medically indicated and appropriate: the ethically appropriate decision maker is the responsible provider.
- Accepting or refusing specific treatments and procedures: the ethically appropriate decision maker is the patient or his or her authorized surrogate.
- Distributing limited health care resources among programs, services, and patients, or how to limit patient or provider freedoms to protect the health and safety of others: the ethically appropriate decision makers are health care administrators or policy makers.

Thus, identifying the ethically appropriate decision maker(s) requires careful consideration of the nature of the decisions that need to be made. The consultant should be prepared to sort through and clarify the different judgments that play into a particular situation to identify the critical decision at stake, and then identify who should make that decision.

A surprising number of ethics consultations can be resolved simply by clarifying who the appropriate decision maker is for the particular consultation and the principles that should guide their decision making. A number of subtle issues can complicate the identification of this person (or, at times, persons). Thus, the ethics consultant should consider this matter carefully.

When a patient lacks decision-making capacity, a search should be made for an authorized surrogate willing and able to make decisions about treatment on the patient's behalf. Consultants may need to help staff determine who is authorized to serve as surrogate

**Tip:**

**Scope of authority?**

**Patient:** Except under rare circumstances (such as a public health emergency), a patient who has decision-making capacity has the right to accept or refuse any treatment or procedure that is offered by the health care provider responsible for his or her care. This decision may not be overruled.

**Court appointed guardian:**

Depending on applicable law and policy, the authority of court-appointed guardians may apply only to specific periods (e.g., not to exceed two years) or under very specific circumstances (e.g., authorized to make treatment decisions except those which involve withholding or withdrawing life-sustaining treatment).

under relevant law and policy, and to explain the obligations and limits of surrogacy. Law and policy pertaining to surrogate selection vary from state to state.

In VA, the authorized surrogate is established under regulation and national policy and is consistent across the VHA system. VA policy not only establishes a priority hierarchy of authorized surrogates but also mandates that such surrogates base their decisions on the patient's preferences and values if they are known — the concept of substituted judgment — and if these are not known, on the patient's best interests. The policy also describes a process whereby recommendations regarding life-sustaining treatment for patients without surrogates can be made.<sup>24</sup>

Once the surrogate is identified, the consultant should work closely with the surrogate to determine the patient's relevant preferences and how they apply to the current situation. For example, the consultant might ask the surrogate, "If your husband were able to talk to us, what would he tell us to do in this situation?"

When an authorized surrogate makes a decision to accept or refuse a recommended treatment or procedure, that decision should generally be honored. Consultants should try to support surrogates in the decision-making process and resist the temptation to second-guess an authorized surrogate's decision (e.g., by speculating on a potential

conflict of interest) because most patients want their surrogate to make decisions for them. In fact, patients often want this even if the surrogate were to make a decision that is different from one they would have made themselves.<sup>52,53</sup> Only in rare cases, when a surrogate insists on a decision that is clearly contrary to the patient's previously expressed wishes, values, or best interests, should it be necessary to challenge or override a surrogate's decision.

When a patient who lacks decision-making capacity has no authorized surrogate, the ethics consultant should facilitate implementation of an appropriate decision-making process consistent with relevant law and policy.

Since identification of the ethically appropriate decision maker often hinges on the question of the patient's capacity to make health care decisions, ethics consultants need to thoroughly understand the concept of decision-making capacity and how it is determined.<sup>54</sup> Although ethics consultants do not necessarily need to be able to assess decision-making capacity themselves, they should at least be able to determine whether capacity has been appropriately assessed. If the consultant has reason to believe that the patient's capacity may be different from what has been described in the health record or what parties involved in the case believe, the consultant should address the discrepancy with the responsible health care provider(s) and ensure that capacity is appropriately assessed.

It should be noted that society does not recognize a right for patients to receive any treatments or procedures they (or their surrogates) request. The patient's or surrogate's primacy as the ethically appropriate decision maker is limited to the range of treatments

or procedures that are legal, medically indicated, appropriate, and consistent with sound medical practice given the patient's specific clinical circumstances. Patients' providers should be accountable for justifying which treatments or procedures they decide to offer or withhold from consideration.

For some types of decisions, a health care administrator may be the ethically appropriate decision maker. For example, administrators may legitimately place limits on patient or provider freedoms to protect the health and safety of patients, employees, or the general public. Health care administrators may also need to make tough decisions about how to distribute limited health care resources among programs, services, and patients.

### ***Facilitate moral deliberation about ethically justifiable options***

Once the ethically appropriate decision maker is identified, the ethics consultant should facilitate moral deliberation to help the decision maker(s) determine what should be done. This is known as *ethics facilitation*. This process respects the rights of decision makers to decide, within ethically justifiable limits, in accordance with their individual values. This is the approach recommended in the ASBH *Core Competencies* report.<sup>1</sup>

Not all options are ethically justifiable, however. For example, a proposed option might violate an important tenet of ethics in health care, such as a patient's right to refuse treatment. In such instances, the consultant should help the ethically appropriate decision maker(s) understand why a particular option is not ethically justifiable, citing specific sources to support the claim. To avoid usurping the authority of the ethically appropriate decision maker, ethics consultants must be careful to clearly differentiate between claims about what is ethically justifiable and judgments that reflect the consultant's personal values. If, at the end of this discussion, the decision maker continues to insist on an option that the ethics consultant deems ethically unjustifiable, the consultant should bring this to the attention of a higher institutional authority that is in a position to affect the outcome. If, for example, the attending physician insists on providing blood products to a Jehovah's Witness patient after the patient or surrogate has refused treatment, the consultant should bring this to the attention of the service chief.

The process of deliberation should yield one or more specific recommendations and a concrete plan of action. If all parties concur about how to proceed, the recommendation(s) and plan will focus on implementing the agreed-upon decision. If, however, no consensus is reached, the consultant should make recommendations on how to alleviate any residual ethical concerns and articulate a specific plan for next steps.

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## ***Step 4: Explain the Synthesis***

The next step in the CASES approach requires the ethics consultant to explain the synthesis to others involved in the consultation. This step helps to ensure that ethical concerns are resolved and often serves an educational purpose as well. The synthesis should be communicated to key participants directly and documented in both the health record and consultation service records.





## **EXPLAIN the synthesis**

*Communicate the synthesis to key participants*

*Provide additional resources*

*Document the consultation in the health record*

*Document the consultation in consultation service records*

### ***Communicate the synthesis to key participants***

Communicating the synthesis and reaching closure with participants is crucial to success. The ethics consultant should contact the requester and, if appropriate, the patient or surrogate and other key participants in the consultation process.

Ethics consultants should describe what transpired in the consultation, as well as the resolution reached and any further recommendations or plans. This gives participants an opportunity to discuss aspects of the case privately with the consultant and offers an occasion to clarify any information and resolve any remaining concerns. The ethics consultant should indicate his or her willingness to continue working with participants, including those who disagree with the plan. In some cases, the consultant may discover that significant factors were overlooked in the proposed plan and that it must be revisited. In any event, the consultant should continue to provide information and support. In addition, the consultant should consider whether anyone not involved in the consultation should be notified of the consultation (e.g., the service chief).

### ***Provide additional resources***

Educating staff, patients, and families is an important part of the ethics consultation process. For this reason, ethics consultants should reinforce and supplement their explanation of the synthesis with education and/or resources that participants can apply to future situations. This could include providing copies of articles, book chapters, or other publications that might help participants understand the ethical analysis, or Web links to additional information about the topic. Over time, ethics consultants should compile a collection of user-friendly resources to provide to participants, including materials that are specifically targeted to patients and families. Consultants may also provide patients with information about other resources within the facility, such as social workers and patient advocates.

### ***Document the consultation in the health record***

Documenting the consultation is another important aspect of communicating the synthesis. All ethics case consultations should be well documented in the patient's health record. By definition, non-case consultations do not involve the values and perspective of a patient and should not be documented in the health record. For example, if a nurse wishes to be reassigned from the care of a particular patient for reasons of conscience, this concern is between the staff member and her supervisor and the patient's perspective is not ethically relevant. Thus, it would be a non-case consultation and, as such, not be appropriate to document in the health record.

Good documentation in the health record not only communicates information to involved staff, but it also promotes accountability and transparency for legal purposes. Because the health record may be read by many staff members as well as by the patient/surrogate and others, it should be professional in tone. Consultants should avoid generalizations and jargon. All information should be accurate and relevant to the specific consultation.

The ethics case consultation note in the health record should contain the following elements:

- Information about the person requesting the consult, including:
  - name and role in the case
  - date and time of the request
  - requester's description of the circumstances, including his or her ethical concern(s), and steps he or she may have already taken to resolve them
- Information about the patient, including:
  - name
  - location and clinical service caring for the patient
  - attending physician
- Name(s) of consultant(s) working on the case
- Clear statement of the ethics question
- Sources and summary of the relevant information, including:
  - medical facts
  - patient's preferences and interests
  - other parties' preferences and interests
  - information about patient's decision-making capacity
  - information about patient's advance directive, if applicable
  - information about the authorized surrogate, if applicable
  - ethics knowledge, including relevant law and policy, professional codes and guidelines, empirical data, and precedent cases
- Description of any formal meetings held
- Summary of ethical analysis
- Identification of the ethically appropriate decision maker(s)
- Options considered, and whether they were deemed ethically justifiable
- Explanation of whether consensus was reached
- Recommendations and next step(s)



A sample consultation summary and template provides an example for how this information can be formatted. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

### ***Document the consultation in consultation service records***

All information pertaining to an ethics consultation should always be documented in the consultation service's internal records. These records are useful for performance improvement, informing future consultations, legal documentation, and workload tracking.

The consultation service records should include all health record notes, as well as additional information that does not necessarily belong in the health record including:

- communications among consultants;
- consultants' observations about the consultation process, such as comments on the power dynamics during meetings or discussions;

- logistical details, such as scheduled appointments;
- notes and references relating to the sources of ethics knowledge; and
- documentation of actions taken to support the overall consultation process (see the following CASES step, “Support the Consultation Process”).

Documentation is enhanced when consultants use a database to track, trend, and note critical steps taken throughout the ethics consultation.<sup>55</sup> A database (rather than paper or single-consult electronic files) also provides an easily searchable record to guide future consultations by showing how similar issues have been previously addressed and resolved. Reports generated by such a database can be systematically analyzed to assess ethics consultation outcomes and to plan ethics consultation quality improvement efforts.

Some health systems use database systems to track ethics consultations.<sup>56</sup> VA ethics consultants use ECWeb, a quality improvement tool and ethics consultation database to document all ethics consultations. ECWeb provides a valuable resource that consultants can use in addressing ethics consultation quality. By systematically analyzing work and comparing it with clearly defined standards, ethics program leaders and team members can identify strengths and weaknesses in their organization’s processes, and can formulate strategies for quality improvement. Aggregated data can also serve as benchmarks and provide other information about how a facility or system is performing relative to others.



The ECWeb training tool describing ECWeb is available to VA ethics consultants. See <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp>.

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## Step 5: Support the Consultation Process

After the synthesis has been explained and documented, the final step in the CASES approach requires the consultant to support the overall process of ethics consultation.



### **SUPPORT the consultation process**

*Follow up with participants*  
*Evaluate the consultation*  
*Adjust the consultation process*  
*Identify underlying systems issues*

#### ***Follow up with participants***

At some interval after the completion of the ethics consultation, consultants should follow up with the requester and/or other key participants. Contact with these individuals enables the consultant to determine if any new ethical concerns have emerged that need to be addressed and to learn the outcome of the consultation, including whether the recommendations and plan (if any) were followed.

By following up in this fashion, the ethics consultant can learn whether the recommended plan actually helped resolve the ethical concern. If the participants followed the plan but the ethical concern was never resolved, the consultant may need to reactivate the CASES process and offer further support. Even if action is no longer possible (e.g., the patient died), the consultant may still wish to review the consultation for educational purposes.

If recommendations were not followed, it is important to understand why. For instance, the recommendations may have been impractical, requiring time and resources that weren't readily available. A participant who disagreed with the plan might have undermined it, or the patient's circumstances might have changed so that the recommended plan was no longer applicable. Consultants can learn a great deal from reviewing consultations in which participants did not follow recommendations. Indeed, the service cannot improve without understanding why the plans it proposes sometimes fail.

### ***Evaluate the consultation***

Ethics consultation services should also evaluate their consultations more formally with the aim of continuously improving their practices. This evaluation can take several forms. At a minimum, ethics consultants should always complete a critical retrospective self-review after each consultation and reflect on it with other members of the consultation team. Discussion should focus on lessons learned, including acknowledging what went right and specifying practices that should be repeated, along with addressing opportunities for improvement.

After each consultation, the ethics consultation service should also elicit specific feedback from those the consultation served. This includes the requester and other individuals who were involved in the consultation, including the patient, family, and staff. Ideally, someone who was not involved in the consultation process should perform such evaluations and provide data to the consultation service in a de-identified fashion. He or she can use the Ethics Consultation Feedback Tool for this purpose (see Appendix 2).



The Ethics Consultation Feedback Tool is also available at <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp> or <http://www.ethics.va.gov/IntegratedEthics/ecc.asp>.

In addition, ethics consultation services should systematically assess whether consultations meet the standards established in this primer and by the consultation service. For example, a consultation service might review each consultation to make sure that the ethics question was well formulated, information was obtained directly from primary sources where possible, the patient's decision-making capacity was properly considered and assessed, the ethically appropriate decision maker was correctly identified, the ethical analysis was cogent, and the recommendations and plan were ethically justifiable.

Finally, to further challenge the ethics consultation service to improve, ethics consultants should explore opportunities for external peer review or formal quality assessment of the ethics consultation record. Peer review could involve periodic discussions of de-identified cases with ethics colleagues at another facility or a university. Trained raters can perform formal assessments based on key elements of a

#### ***Tip:***

During the evaluation process, services should also seek feedback from peers and supervisors, which can be invaluable. For example, presenting de-identified cases to an ethics committee or executive leadership board can be a learning experience for consultants and committee members alike.



quality ethics consultation. A rating along with narrative comments and suggestions can help individual consultants and the service continuously improve the practice of ethics consultation and its outcome.<sup>30</sup>



VA consultants can learn more about Ethics Consultation Quality Assessment and related tools at <http://vaww.ethics.va.gov/IntegratedEthics/ecc.asp>.

### ***Adjust the consultation process***

Depending on the results of the follow-up and evaluation steps described above, the ethics consultation service may need to make systematic changes in its policies and procedures. For example, if follow-up discussions reveal that a participant had a misconception about the consultation process, the team should take steps to ensure that its methods for establishing realistic expectations are adequate and consistently deployed. If the service discovers that consultants are not correctly identifying the ethically appropriate decision maker, an improvement plan should be developed to address this.

### ***Identify underlying systems issues***

The process of ethics consultation is designed to respond to ethics questions in health care. However, this process can sometimes also reveal underlying ethical issues that need to be addressed proactively, at a systems level. For example, if the service receives many requests for consultations that arise due to the lack of advance directive documents completed by patients, there may be a procedural or technical problem inhibiting the ability of staff to collect this information and consider and respect the patient's expressed wishes. Thus, each consultation should be actively reviewed to determine whether it suggests any underlying systems issues that need to be addressed.

In addition, consultation records should be reviewed periodically to look for patterns of recurring concerns. For example, if multiple services are seeking clarification or interpretation of a new policy, the service may alert the IE council to review this concern and formulate a system-level solution.

Significant systems issues should be brought to the attention of the individual or body responsible for handling such concerns on behalf of the institution. In VHA, this is the IE council and, as appropriate, the preventive ethics team.



The companion IntegratedEthics primer, *Preventive Ethics: Addressing Ethics Quality Gaps on a Systems Level*, provides a discussion of preventive ethics. See <http://vaww.ethics.va.gov/IntegratedEthics> or <http://www.ethics.va.gov/IntegratedEthics>.

## Conclusion

Health care ethics consultation is an important service that helps to ensure the quality of ethics practices and patient care. By providing a means through which patients, families, health care professionals, and other staff can address ethical concerns, effective ethics consultation promotes understanding of and respect for patients' preferences, clarification of professional ethical obligations, and adherence to recognized ethical standards. By providing a forum in which staff can grapple with their ethical concerns, effective ethics consultation can also address the problem of professional burn-out and help sustain morale. And by visibly engaging in and supporting ethical analysis and moral deliberation, the ethics consultation service helps to support an environment in which the link between ethical practice and quality of care is understood and appreciated.

To serve the needs of patients and families, staff, and the institution, ethics consultation must be recognized and appropriately supported as an essential activity. The success of an ethics consultation service depends on several factors. It must be well-integrated with other offices and programs in the institution, visibly supported by leadership, and ensured the resources (both human and material) that it needs to function effectively. Staff members who participate in ethics consultations must have appropriate expertise and training. Patients, families, and staff must be aware of the consultation service, including what it does and how to contact it. The service must be clearly situated in the institution's reporting hierarchy (i.e., accountable to a designated senior official), and its structure, function, and processes should be formalized in institutional policy. The ethics consultation service must also contribute to organizational learning — consultants should regularly share their knowledge and experience with others in the institution. Finally, a successful ethics consultation service must be committed to ongoing evaluation and systematic assessment of its own performance.

Effective ethics consultation also rests on consistent, high-quality consultation practice. The CASES approach described in this primer is intended to help ethics consultation services respond appropriately to ethics questions and, ultimately, to resolve ethical concerns. By working systematically through the steps of clarifying requests for consultation, assembling relevant information, synthesizing that information to identify ethically acceptable solutions, explaining the synthesis to all involved parties, and supporting the overall consultation process through follow-up and evaluation, the ethics consultation service helps to ensure that ethical concerns are addressed consistently throughout the health care organization. And by identifying underlying systems issues that emerge in individual consultations or ethical concerns that recur across consultations, the ethics consultation service can help improve ethics quality in its organization.



## Appendix 1. Domains of Ethics in Health Care

Shared decision making with patients (how well the organization promotes collaborative decision making between clinicians and patients)

- Decision-making capacity (ability of the patient to make his/her own health care decisions)
- Informed consent process (providing information to the patient or surrogate, ensuring that the decision is voluntary, and documenting the decision. Note: informed consent for research is included under the domain of Ethical Practices in Research)
- Surrogate decision making (selection, role, and responsibilities of the person authorized to make health care decisions for the patient)
- Advance care planning (statements made by a patient with decision-making capacity regarding health care decisions in the event they lose capacity in the future)
- Limits to patient choice (choice of care setting, choice of provider, demands for unconventional treatment, etc.)
- Other (topics about shared decision making with patients that do not fit in the categories above)

Ethical practices in end-of-life care (how well the organization addresses ethical aspects of caring for patients near the end of life)

- Cardiopulmonary resuscitation [CPR] (withholding or stopping resuscitation in the event of cardiopulmonary arrest, including DNAR/ DNR orders)
- Life-sustaining treatments (the initiation, limitation, or discontinuation of artificially administered fluid or nutrition, mechanical ventilation, dialysis, surgery, antibiotics, etc.)
- Medical futility (a clinician's judgment that a therapy will be of no benefit to a patient and that it should not be offered or should be withdrawn)
- Hastening death (intentionally or unintentionally, e.g., euthanasia, assisted suicide, or the doctrine of double effect)
- Death and post-mortem issues (determination of death, organ donation, autopsy, disposition of body or tissue, etc.)
- Other (topics about ethical practices in end-of-life care that do not fit in the categories above)

Ethical practices at the beginning of life (how well the organization promotes ethical practices with respect to preconception, conception, pregnancy, and the perinatal period)

- Preconception and conception (assessment of reproductive capacity, cryobanking of sperm, ova, and embryos, fertility medications, assisted reproductive technologies, preconception sex selection, gestational surrogacy, etc.)
- Pregnancy (genetic testing and diagnosis, the balance between the health of the mother and the fetus, forced interventions during pregnancy, etc.)
- Perinatal period (labor-inducing drugs, elective cesareans, extraordinary medical interventions for premature infants, perinatal care at the threshold of viability, etc.)
- Other (topics about ethical practices at the beginning of life that do not fit in the categories above)



Patient privacy and confidentiality (how well the organization protects patient privacy and confidentiality)

- Privacy (protecting individuals' interests in maintaining personal space free of unwanted intrusions and in controlling data about themselves)
- Confidentiality (nondisclosure of information obtained as part of the clinician-patient relationship)
- Other (topics about patient privacy and confidentiality that do not fit in the categories above)

Professionalism in patient care (how well the organization fosters behavior appropriate for health care professionals)

- Conflicts of interest (situations that may compromise the clinician's fiduciary duty to patients, including inappropriate business or personal relationships. Note: financial conflicts of interest relating to the government employee's duty to the public are included under the domain of Ethical Practices in Government Service; conflicts of interest relating to the researcher's duty to research are included under the domain of Ethical Practices in Research)
- Truth telling (open and honest communication with patients, including disclosing bad news, adverse events, etc. Note: truth telling related to informed consent is included under the domain of Shared Decision Making with Patients; truth telling relating to leadership, human resources, or business integrity is included under the domain of Ethical Practices in Business and Management; truth telling relating to communications with the public is included under the domain of Ethical Practices in Government Service; truth telling among staff is included under the domain of Ethical Practices in the Everyday Workplace)
- Challenging clinical relationships (staff management of relationships with patients and/or their families and loved ones who present challenging or disruptive behaviors, requests, or demands. Note: challenging clinical requests, demands, and choices related to treatments and procedures are included under the domain of Shared Decision Making with Patients)
- Diverse cultural/religious perspectives (clinician interactions with people of different ethnicity, religion, sexual orientation, gender, age, etc.)
- Interprofessional relationships (recognition and respect for unique cultures, values, roles, and expertise of other health care professionals; development of cooperative and trusting relationships among professionals)
- Other (topics about professionalism in patient care that do not fit in the categories above)

Ethical practices in resource allocation (how well the organization demonstrates fairness in allocating resources across programs, services, and patients)

- Systems level/macroallocation (fairness in allocating resources across programs and services)
- Individual level/microallocation (fairness in allocating resources to individual patients or staff)
- Other (topics about ethical practices in resource allocation that do not fit in the categories above)

Ethical practices in business and management (how well the organization promotes high ethical standards in its business and management practices)

- Leadership (behaviors of leaders in support of an ethical environment and culture)
- Human resources (fairness of supervisory management of employees)
- Business integrity (support for the oversight of business processes, compliance with legal and ethical standards, and promotion of business quality and integrity)
- Other (topics about ethical practices in business and management that do not fit in the categories above)

Ethical practices in research (how well the organization ensures that its employees follow ethical standards that apply to research practices)

- Research integrity (conduct of research and reporting of results)
- Societal value (value of research to the advancement of science and to society at large)
- Risks and benefits for human subjects research (adequate protections of human subjects and the appropriate balance of risks and benefits)
- Selection of human subjects (equitable recruitment and selection, including for vulnerable populations, etc.)
- Informed consent for human subjects (providing information to research participants/ others, ensuring that the decision is voluntary, participation incentives, approach to documentation, etc. Note: informed consent for clinical care is included under the domain of Shared Decision Making)
- Privacy and confidentiality for human subjects (protection and disclosure of personal information of research subjects)
- Other (topics about ethical practices in research that do not fit in the categories above)

Ethical practices in the everyday workplace (how well the organization supports ethical behavior in everyday interactions in the workplace)

- Respect and dignity (employee privacy, personal safety, respect for diversity, respectful behavior toward others, etc.)
- Ethical climate (openness to ethics discussion, perceived pressure to engage in unethical conduct, etc.)
- Other (topics about ethical practices in the everyday workplace that do not fit in the categories above)

Ethical practices in government service (how well the organization fosters behavior appropriate for government employees)

- Government ethics rules and laws (ethics rules, regulations, policies, or standards of conduct that apply to federal government employees, e.g., bribery, nepotism, gift and travel rules)
- Other (topics about ethical practices in government service that do not fit in the category above)

## **Appendix 2. Ethics Consultation Feedback Tool**

### **About the Ethics Consultation Feedback Tool**

An important aspect of ensuring a high-quality ethics consultation service is to satisfy the needs and expectations of those involved in the consult. This Ethics Consultation Feedback Tool provides a quick and easy means of obtaining feedback from staff, patients, family members, and other participants at the end of every ethics consultation.

### **How to Use the Ethics Consultation Feedback Tool**

The leader of the ethics consultation service (ethics consultation coordinator) should ensure that the Feedback Tool is distributed regularly and consistently to everyone who had significant involvement in the ethics consultation including the requester, clinicians and other staff involved in the consultation, and, for case consultations, the patient and family.

The tool should be distributed and collected by a designated person (hereafter referred to as the evaluator) who is not an ethics consultant on the service. The evaluator should write the relevant consult record number on each form before it is distributed. The evaluator should request feedback by email, telephone, fax, and/or mail through a standardized script or template that includes the following elements:

- A very brief de-identified description of the consultation
- The purpose of the feedback
- A statement that participation in the evaluation is voluntary

For example:

Thank you for participating in an ethics consultation about the Do Not Resuscitate status of a patient in the MICU. We would very much appreciate your feedback on the consultation process so that we can continue to improve our service. Your completion of the feedback tool is completely voluntary.

### **Using the Results to Improve the Ethics Consultation Service**

The ethics consultation coordinator should regularly review the response data, report it to institutional leadership, and use it for quality improvement purposes. Ideally, a high percentage of responses should be “excellent” or “very good” and very few, if any, responses should be “fair” or “poor.” Targeted interventions should be used to improve scores on specific items.



Department of Veterans Affairs

**Ethics Consultation Feedback Tool**

This information is collected in accordance with section 3507 of the Paperwork Reduction Act of 1995. Accordingly, VA may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a valid OMB number. VA anticipates that the time expended by all individuals who complete this survey will average 5 minutes. This includes the time it will take to read instructions, gather necessary facts and fill out the form. Customer satisfaction surveys are used to gauge customer perceptions of VA services as well as customer expectations and desires. The results of this survey will lead to improvement in the quality of service delivery by helping to shape the direction and focus of specific programs and services. Submission of this form is voluntary and failure to respond will have no impact on benefits to which you may be entitled.

Recently, you spoke with someone from the Ethics Consultation Service. The job of the service is to help patients, families, and staff work through difficult patient care decisions by listening to what everyone thinks and helping people decide the best thing to do. In order to help improve the Ethics Consultation Service, we ask that you take a few minutes to complete this form.

**DIRECTIONS:** For each of the following statements, please place an "X" in the box that best describes your most recent experience with the Ethics Consultation Service.

Rate the Ethics Consultant(s) on:	Excellent	Very Good	Good	Fair	Poor	Don't Know
Making you feel at ease	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Respecting your opinions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Being an expert in ethics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Giving you useful information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explaining things well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarifying decisions that had to be made	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarifying who is the right person to make the decision(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Describing possible options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clearing up any disagreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Being easy to get in touch with	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Being timely enough to meet your needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Providing a helpful service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall, my experience with the Ethics Consultation Service was:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Did the consultation service make any recommendations?

Yes ☐ No ☐ Don't Know ☐

If yes, were the recommendations generally followed?

Yes ☐ No ☐ Don't Know ☐

Do you have any comments or suggestions for the Ethics Consultation Service?

Yes ☐ No ☐ Don't Know ☐



## Appendix 3. Triage Tool for Ethics-related Leadership Decisions

### IntegratedEthics

#### TRIAGE TOOL FOR ETHICS-RELATED LEADERSHIP DECISIONS

Ethics-related leadership decision needs to be made

Consider how the decision relates to ethics

**Decision Relates to an Ethical Concern**  
(Ethical Concern = uncertainty or conflict about values, i.e., the "right thing to do" is unclear)

Make a preliminary decision based on the information you have

**Decision Relates to a Systems-level Quality Gap**  
(Ethics Quality Gap = disparity between current practices and ideal practices from an ethical perspective)

Refer to IE Preventive Ethics Team or other quality improvement mechanism or, if not appropriate for a QI approach, to the IE Council or another leadership committee or workgroup that includes relevant ethics subject-matter expertise.

**Decision Relates to Government Ethics**  
(Government Ethics = legal questions about standards of ethical conduct for employees of the executive branch)

Refer to Designated Agency Ethics Official or Regional Counsel.

**Decision Relates to an Ethics Violation**  
(Ethics Violation = allegation or evidence of serious risk to patients, administrative misconduct, or noncompliance with legal or regulatory standards)

Refer to Compliance and Business Integrity, Medical Inspector, Privacy Officer, Office of Research Oversight, Information Security, Inspector General, or administrative board, as appropriate.

Use the Ethical Leadership Quality Check to decide on an appropriate decision-making process.

1. Do I have all the important facts relevant to this decision?
2. Have I involved everyone who should be part of this decision?
3. Can I provide a strong ethical justification for this decision?
  - Does this decision reflect organizational, professional, and social values?
  - Do the likely benefits of the decision outweigh any potential harms?
  - Will this decision keep the problem from recurring or establish a good precedent?
  - How would this decision look to someone outside the organization?

Decide on an appropriately systematic decision process. The more ethically complex the decision, the more systematic the decision-making process needs to be. If the decision is relatively straightforward, make the decision yourself after thoughtful deliberation. If the decision requires additional ethical analysis, request an ethics consultation. If the decision is controversial or high stakes, also consider:

- involving the IE Council or another leadership committee
- chartering a special workgroup, and/or using a formal decision-making framework.

Make ethical leadership decision.

Communicate the decision, explaining the decision-making process and ethical justification.

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## IntegratedEthics Glossary

**Case consultation:** An *ethics consultation* that pertains to an active patient case. (See also *non-case consultation*.)

**CASES:** A systematic, step-by-step process for performing *ethics consultation*. The steps of the CASES approach are:

- Clarify the consultation request
- Assemble the relevant information
- Synthesize the information
- Explain the synthesis
- Support the consultation process

**Counterfeit ethical argument:** Ethical arguments that are not based on a legitimate credo, consequence, or comparison.

**Credo:** A statement intended to guide the ethical behavior of an individual or group over time. Examples include legal standards, policy standards, professional standards, religious standards, and organizational values statements.

**Decision-making capacity:** Ability of the patient to make his or her own health care decisions. Clinical determination of decision-making capacity should be made by an appropriately trained health care practitioner.

**ECWeb:** A secure, intranet-based database used throughout VHA to document, track, monitor, and assess all ethics consultation activities. ECWeb reinforces the CASES approach, helps ethics consultants manage consultation records, and supports quality improvement efforts. Note: It is expected that when ECWeb is modified and expanded it will be renamed IEWeb.

**Ethical analysis:** In the context of ethics consultation, the use of systematic methods of reasoning to apply relevant ethics knowledge to consultation-specific information for the purpose of responding to an ethics question.

**Ethical argument:** A statement that helps to answer an ethics question by asserting that a particular decision or action is (or is not) ethically justifiable on the basis of a specific rationale. Ethical arguments can be based on credos, consequences, or comparisons.

*Ethical arguments based on credos:* A statement intended to guide the ethical behavior of an individual or group over time. Examples include legal standards, policy standards, professional standards, religious standards, organizational values statements.

*Ethical arguments based on consequences:* An ethical argument with a rationale to the effect that the decision or action in question will result in certain good and/or bad effects.

*Ethical argument based on comparisons:* An ethical argument with a rationale to the effect that the decision or action in question is similar to or different from another decision or action.

*Characteristics of a strong argument:* For a claim to be strong, it must have two characteristics. First, it must be *clear*, and second, it must be *compelling*.

*Clear ethical arguments:* The intended meaning is understandable and not open to interpretation.

*Compelling ethical arguments:* The rationale for the ethical claim is normative, logical, and credible.

**Ethical counterargument:** An ethical argument that opposes another ethical argument.

**Ethical leadership:** Activities on the part of leaders to foster an environment and culture that support ethical practices throughout the organization. These include demonstrating that ethics is a priority, communicating clear expectations for ethical practice, practicing ethical decision making, and supporting a facility's local ethics program.

**Ethical practices in health care:** Decisions or actions that are consistent with widely accepted ethics standards, norms, or expectations for a health care organization and its staff. Note: In this context, "ethical" conveys a value judgment — i.e., that a practice is good or desirable. Often, however, "ethical" is used simply to mean "of or relating to ethics," as in the phrase "ethical analysis," which refers to analysis that uses ethical principles or theories.

**Ethics:** The discipline that considers what is right or what should be done in the face of uncertainty or conflict about values. Ethics involves making reflective judgments about the optimal decision or action among ethically justifiable options.

**Ethical concern:** Uncertainty or conflict about values. In an ethics question, an ethical concern is an uncertainty or conflict about values that is expressed as two values perspectives. (See also *values perspective*.)

**Ethics consultation in health care:** The activities performed by an individual or group on behalf of a health care organization to help patients, providers, and/or other parties resolve *ethical concerns* in a health care setting. (See also *case consultation*, *non-case consultation*.)

**Ethics consultation service:** A mechanism in a health care organization that performs ethics consultation and manages ethics consultation-related activities.

**Ethics quality:** Practices throughout an organization that are consistent with widely accepted ethical standards, norms, or expectations for a health care organization and its staff. Ethics quality encompasses individual and organizational practices at the level of decisions and actions, systems and processes, and environment and culture.

**Ethics question:** A question in an ethics consultation about what decisions or actions are ethically justifiable given an ethical concern. (See also *ethical concern* and *values perspective*.)

**IntegratedEthics program:** A local mechanism in a health care organization that improves ethics quality at the levels of decisions and actions, systems and processes, and environment and culture through three core functions: *ethics consultation*, *preventive ethics*, and *ethical leadership*.

**Non-case consultation:** An ethics consultation that does not pertain to an active patient case, including requests for general information, policy clarification, document review, ethical analysis of organization-level ethics questions, or ethics questions about hypothetical or retrospective circumstances. A non-case consultation may relate to a particular patient but the patient's perspective is not relevant to the question. (See also *case consultation*.)

**Normative claim:** A statement about how something should or ought to be that cannot be proven or disproven by empirical evidence.

**Preventive ethics:** Activities performed by an individual or group on behalf of a health care organization to identify, prioritize, and address systemic *ethics quality gaps*.

**Surrogate:** The individual authorized under relevant law and policy to make health care decisions on behalf of a patient who lacks decision-making capacity.

**Values:** In the health care setting, values are strongly held beliefs, ideals, principles, or standards that inform ethical decisions or actions, such as the belief that people shouldn't be allowed to suffer and the principle that patients should be treated with respect.

**Values perspective:** A common-sense statement of how a value applies to the consultation at hand from the perspective of one or more participants in the case.





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