ETHICS OF FETAL COUNSELING

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Disclosure

- Dr. McCullough has no conflicts of interest
Objectives

• Identify components of ethical framework for counseling pregnant women about imaging findings
• Identify clinical implications for counseling before fetal viability
• Identify clinical implications for counseling after fetal viability
Ethical Framework: Moral and Legal Status

- Moral status = others have an obligation to protect and promote the interests of some entity
- Legal status = society enforces moral status with the power of the state through its institutions of civil and criminal law, as well as regulatory law
Ethical Framework: Independent Moral Status

- Independent moral status: independently of every other entity, an individual originates obligations owed to that individual, usually expressed in rights
Ethical Framework: Independent Moral Status

- Results in rights-based reductionism in obstetric ethics
  - Fetal rights vs. rights of pregnant patient
- A formula for ethical and therefore clinical gridlock
  - Chervenak et al. 2011
Ethical Framework: Fetus as a Patient

- Based on work since 1983 with Frank A. Chervenak, M.D., Given Foundation Professor and Chairman of Obstetrics and Gynecology, Weill Medical College of Cornell University
  - McCullough, Chervenak 1994

2. All views on the independent moral status of the fetus assume that the only way to have moral status is to originate it
   - This assumption is common in philosophical ethics
   - This assumption shapes the “abortion debate” in the U.S.
   - This assumption is false
Ethical Framework: Fetus as a Patient

- Dependent moral status: The social role of an individual originates obligations owed to that individual
  - The ethical concept of a human being as a patient should be understood in terms of dependent moral status, created by the commitment of physicians and other healthcare professionals to protecting the health and life of patients
    - The human being in question is presented to a physician or other healthcare professional
    - There exist forms of clinical management that are reliably expected to benefit that human being clinically
    - One does not need to have rights, or the capacity to generate rights, in order to be a patient
Ethical Framework: Fetus as a Patient

- Debate about independent moral status of fetus (fetal rights) not resolvable and should be abandoned in professional medical ethics
- Determining when the fetus is a patient is resolvable on the basis of the ethical concept of a human being as a patient
  - Dependent moral status of fetus as a patient: a function of links to later becoming child and, still later, generating independent moral status (personhood and rights)
  - Preivable fetus is a patient solely as function of pregnant woman’s autonomous decision to confer, withhold, or withdraw status
    - She confers this status and is presented to a physician (or other healthcare professional) and there exist clinical interventions reliably expected to clinically benefit the fetus
  - Viable fetus is a patient when presented to a physician (or other healthcare professional) and there exist clinical interventions reliably expected to clinically benefit the fetus
Ethical Framework: Fetus as a Patient

- Obligations to fetal patient are beneficence-based
  - Beneficence-based obligations apply to all patients, including those incapable of having or exercising rights
  - Beneficence-based obligations to patients provide powerful and sufficient protection of their life and health-related interests in the clinical and research settings and in the law
- Obligations to fetal patient need to be balanced IN ALL CASES against both beneficence-based and autonomy-based obligations to the pregnant woman
  - Ethically, the fetus is NOT a separate patient
  - Hence, fetal intervention and invasive obstetric intervention are maternal-fetal interventions
    - McCullough, Chervenak 1994
Clinical Implications

• Before viability, if woman withholds or withdraws status of being a patient from fetus(es), termination of pregnancy is permissible in professional medical ethics because it does not involve killing a patient
  • Viability means the ability to exist ex utero, albeit with full technological support
  • In developed countries viability occurs at approximately 24 completed weeks of gestational age, as determined by high quality obstetric ultrasound examination
    • Chervenak et al. 2007
  • Non-directive counseling about continuing vs. terminating pregnancy, including pregnancy complicated by fetal anomalies or conditions detected by imaging
  • If the pregnant woman elects to continue her pregnancy:
    • The previable fetus is a patient
    • Directive counseling for fetal benefit, disciplined and guided by evidence-based reasoning
Clinical Implications

- After viability, the pregnant woman and her physicians (and other healthcare professionals) have beneficence-based obligations to protect and promote the fetus’ health-related interests
  - Directive counseling for fetal benefit, disciplined and guided by evidence-based reasoning
  - Beneficence-based obligation to provide aggressive obstetric management ends when there is a severe anomaly: certain diagnosis of a condition that involves either (a) certain or near certain death or (b) in cases of short-term survival very high probability of severe and irreversible deficit of cognitive developmental capacity
    - Obstetrician should then offer option of non-aggressive obstetric management
      - Anencephaly, trisomy 13
      - However: not trisomy 21, achondroplasia
      - An emerging clinical ethical challenge: trisomy 18?
        - Chervenak, McCullough 2007, 2008
Clinical Implications

• Non-directive counseling for innovation and research
  • Innovation is an experiment designed to benefit an individual patient
  • Research is an experiment designed to benefit future patients
  • Evidence-base for experimental innovation and for research for fetal benefit is, by definition, low
    • Chervenak, McCullough 2007
  • Pregnant woman is therefore not obligated to the fetal patient to authorize innovation or enrollment in research
  • Design of innovation and research, and therefore counseling, should be based on the hard-won lesson from the history of critical-care ethics:
    • Not every reduction in mortality is worth whatever morbidity, lost functional status, pain, distress, and suffering that results
References

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