Training Catholic Health Care Ethicists in Legislative and Regulatory Advocacy

INTRODUCTION

Health care ethics consultation training does not include legislative and regulatory advocacy. This is despite the fact that the ASBH's Core Competencies for Healthcare Ethics Consultation recognizes that an essential competency of an ethics consultant includes "knowledge of…case law, legislation, statutes, and regulations that are intrinsic to the work of most ethics consultation services…", that a common pitfall of incompetent ethics consultants is that those "who are not intimately familiar with the legal and ethics literature may make recommendations that (at best) are not practical or (at worst) are not ethically supportable", and recommends the consultants "establish baseline knowledge regarding case law, statutes, and regulations pertinent to the area of consultation".[1]

In medicine and nursing, their respective professional societies encourage and train members of their guilds to provide competent legislative and regulatory advocacy in order to advance their interests and those of their patients. That is, the work of physicians and nurses includes not just knowledge and application of statute and regulations within the walls of the hospital or clinic but active engagement with policy makers outside of those walls to change flawed statutes and regulations in order to improve their practice and the well-being of patients. This author (a physician and ethicist deeply involved in legislative and regulatory advocacy within organized medicine at the state and national level) presented a workshop at CHIEF 2023 aimed at advancing the argument that clinical ethics expertise, particularly from a Catholic viewpoint, can likewise inform the legislative and regulatory process in order to advance the work of clinical ethics, the well-being of patients, and the interests of Catholic health care institutions. It then introduced clinical ethicists to basic political advocacy skills and allowed participants to role play these skills with their peers.

WHY ADVOCATE?

CHIEF organizers and participants have been actively involved in the emerging professionalization of clinical ethics through existing professional societies including the American Society for Bioethics and Humanities (ASBH) and the Association of Bioethics Program Directors (ABPD) as well through informal partnerships that have developed out of conferences and workgroups. While the effort to professionalize the discipline of bioethics has not been without controversy, the first step of developing a credentialing progress through ASBH's Healthcare Ethics Consultant-

Certified (HEC-C) Program has grown since its launch 5 years ago.[2,3] However, neither ASBH nor ABPD has yet developed another practice common to professional societies in health care: organized advocacy to advance the interests of clinical ethicists and to modify legislation or regulations that impact the practice of clinical ethicists or can be informed by their expertise. If so developed, clinical ethics advocacy would overlap with the advocacy efforts of other health care professionals, hospitals, and patients, but would also be distinct and separate. In addition to the advocacy programs that are likely to emerge from the ongoing professionalization of secular clinical ethics, clinical ethicists sympathetic to the Catholic tradition who are trained in advocacy would also be able to enrich the existing advocacy efforts of Catholic hospitals through their respective health systems and the Catholic Health Association.

HOW TO ADVOCATE

The workshop consisted of sharing basic advocacy tools and techniques. Participants were challenged to imagine themselves as advocates prepared to share their expertise as clinical ethicists with policy makers. Initial steps included:

- Determining the ethical issues or policy areas you're most passionate about.
- Focusing on specific areas where your expertise can make a meaningful impact.
- Conducting research to understand the current state of regulations and policies related to your chosen focus area.
- Analyzing the ethical implications of potential solutions to flawed policies.

Once a policy solution was in mind, participants were then challenged to consider which policy makers would need to be engaged to make change. Taking into consideration their knowledge of their political representatives and the political landscape, participants were encouraged to develop an engagement strategy that considered the following questions:

- Am I equipped to speak authoritatively on this issue? Can I make a succinct and compelling argument?
- Is this an issue best addressed at the national, state, or local level?
- Is this an issue that requires a legislative solution or conversation with a regulatory body?
- Who does my position align with? Can we create a coalition, or can we at least obtain their support?
- Who is going to oppose my effort and how vociferously? How can I mitigate their arguments or efforts?
- Whose interests, financial or otherwise, will be threatened by my efforts?
- Is there a solution that everyone can support?
- Is there a tangible achievement worth the political effort/capital? What are my non-negotiables and what am I willing to compromise on?

Tips and tricks about how to maximize the effectiveness of meeting with elected representatives were provided. While discussed in the workshop, these were cultivated from a number of secondary sources, the authors of which have not provided permission to republish. Therefore, they are not listed here.

CASES

Finally, the participants were then broken into small groups to consider two cases, both drawn from real-life scenarios. In the first, a state is considering taking up a potential revision to state statute defining death by neurological criteria as envisioned by proposed changes to the Uniform Determination of Death Act.[4] Whereas current model legislation for defining death by neurologic criteria requires irreversible cessation of all functions of the entire brain, including the brain stem, proposed revisions would have required:

- Permanent cessation of circulatory and respiratory functions; or
- Permanent coma, cessation of spontaneous respiratory functions, and loss of brainstem reflexes.

Participants noted that this was a challenging issue that would be difficult to easily explain to their local legislator. However, it was also recognized that Catholic clinical ethicists are likely to be best positioned to understand the potential ramifications of the proposed changes and articulate the potential treats to human dignity contained therein. Participants identified that their arguments and potential allies might vary depending on the political party of the legislator they might meet with or which party is in power in their respective locations.

The second case asked the participants to envision a scenario in which they are pulled aside by a close nursing colleague at the hospital who happens to be the Board President of the State Nursing Association. The nurse shares that the State Nursing Association is proposing legislation mandating minimum staffing ratios in hospitals. The participants are informed that the State Hospital Association, including the administration of their own Catholic health care system, is steadfastly opposed. The clinical ethicist is asked to offer their support to the nurses. In the case, the participants identified the importance of prudence in informing one's advocacy efforts. It was recognized that Catholic social teaching has a wealth of information about the rights and duties of employers and employees that can encourage the nurses and hospitals to critically reflect on their obligations to their patients and each other. However, a consensus emerged that if the clinical ethicist can be a resource to both parties, those efforts would be most effective if they take place out of the public view with an aim towards mediating the conflict internally.

CONCLUSION

To this author, the participants appeared actively engaged throughout the entire workshop. They seemed to welcome the opportunity to be introduced to basic advocacy skills and contemplate if advocacy work would align with their talents and passions. None argued that they did not see advocacy work as contrary to their role as a professional clinical ethicist and none argued that having clinical ethicists informed by the Catholic tradition would not be a valuable and important voice in the public square.

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ENDNOTES

1. American Society for Bioethics and Humanities, *Resources for Developing Advanced Skills in Ethics Consultation*. Available at https://asbh.org/uploads/publications/Resources_for_Ethics_Consultation.pdf
2. Claire, Horner, Andrew Childress, Sophia Fantus & Janet Malek (2020) What the HEC-C? An Analysis of the Healthcare Ethics Consultant-Certified Program: ONe Year in, *The American Journal of Bioethics*, 20:3, 9-18.
3. James A. Hynds & Joseph A. Raho (2020) A Profession Without Expertise? Professionalization in Reverse. *The American Journal of Bioethics*. 20:3, 44-46.
4. Truog, R. D. (2023). The Uncertain Future of the Determination of Brain Death. *JAMA*, 329(12), 971-972