

Tolerance & Integrity: Defining Boundaries of Acceptable Treatment & Non-Treatment Decisions

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Years ago, in my hospital ...



“Angel”

The vortex ...

Choice

CONFLICT

Examples

- Refusal of immunizations
- Refusal of potentially substantial life-prolonging therapy
- Requests for care outside the standard of practice
- Requests to withhold diagnostic or prognostic information
- Requests to provide intensive interventions
- (Requests to) continue providing medical care in the context of non-adherence or verbal or physical abuse

The vortex ...

Choice

CONFLICT

Consternation & Confusion

Emotions!!!

Michel Eyquem, Seigneur de Montaigne

The Essays (1580, First Edition)



- “It seems to me that virtue is something other, something nobler, than those tendencies towards the Good which are born in us. ... the word virtue has a ring about it which implies something greater and more active than allowing ourselves to be gently and quietly led in reason’s train by some fortunate complexion.”
- “Book II: 11. On cruelty”
- Translation by M.A. Screech

The vortex ...

Choice

CONFLICT

Consternation & Confusion

Cognition & Concepts

Emotions!!!

Thoughts

Please let me emphasize ...

- 98% of the time, I am all about enhancing mutual understanding in the pursuit of collaborative engagements in medical care with mutually agreeable solutions
- 2% of the time, though ...

I Wish The News Was Different ...

Some of the choices will be tragic

My Thesis

Principled conflict management
requires the exercise of tolerance –

which is to say,

the virtue of

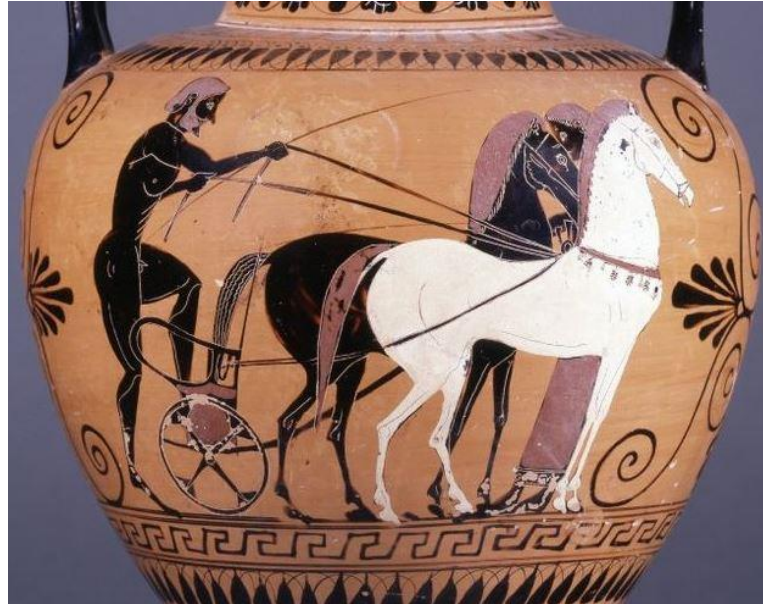
having the judgment to discern which refusals or requests
to accommodate and which to resist (and to what degrees),

and

having the ability to abide by this judgment

Plato and the Allegory of the “Human” Chariot

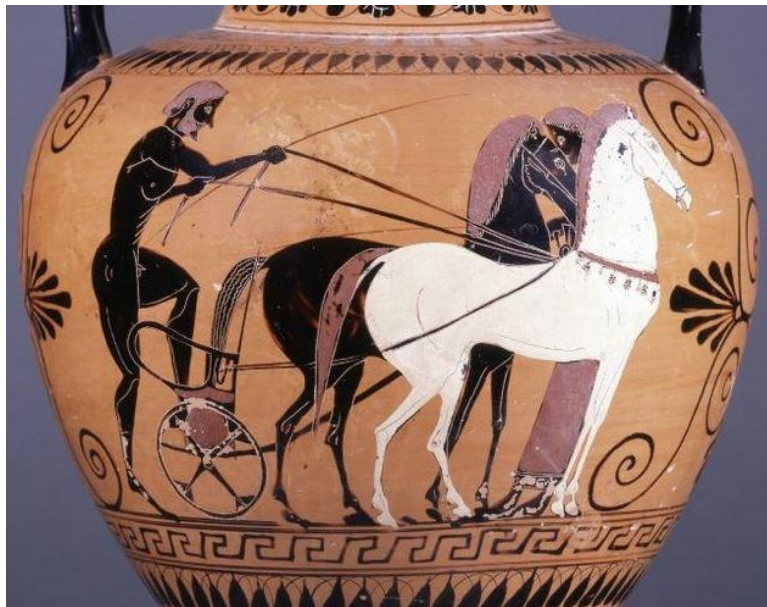
- The Soul



- Noble
- Ignoble

Plato and the Allegory of the “Human” Chariot

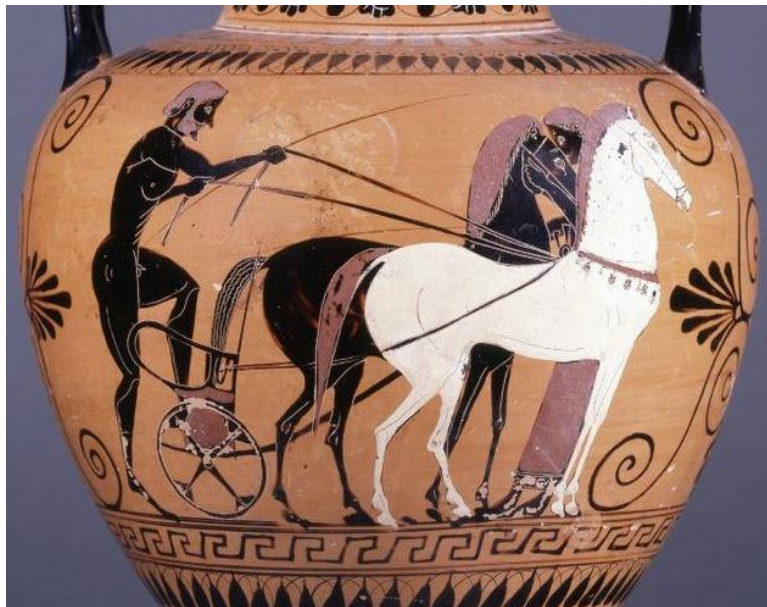
- The Soul
- Rationality



- Noble
- Ignoble
- Emotions
- Passions

Plato and the Allegory of the “Human” Chariot

- The Soul
- **Virtues**
- Rationality



- Noble
- Ignoble
- **Thoughts**
- **Feelings**
- Emotions
- Passions

My Thesis

Principled conflict management
requires the exercise of **tolerance** –

which is to say,

the **virtue** of

having the **judgment** to discern which refusals or requests
to accommodate and which to resist (and to what degrees),

and

having the **ability to abide** by this judgment

5 Part Agenda

1. Tolerance – Various Definitions or Senses
2. Accommodation, Reasonableness, Hardship
3. Power Relationships, Freedom, Hardship
4. Professionalism, Decision-Making Tasks & Duties
5. Suggestions about How to Approach Tough Choices

Part 1

Tolerance



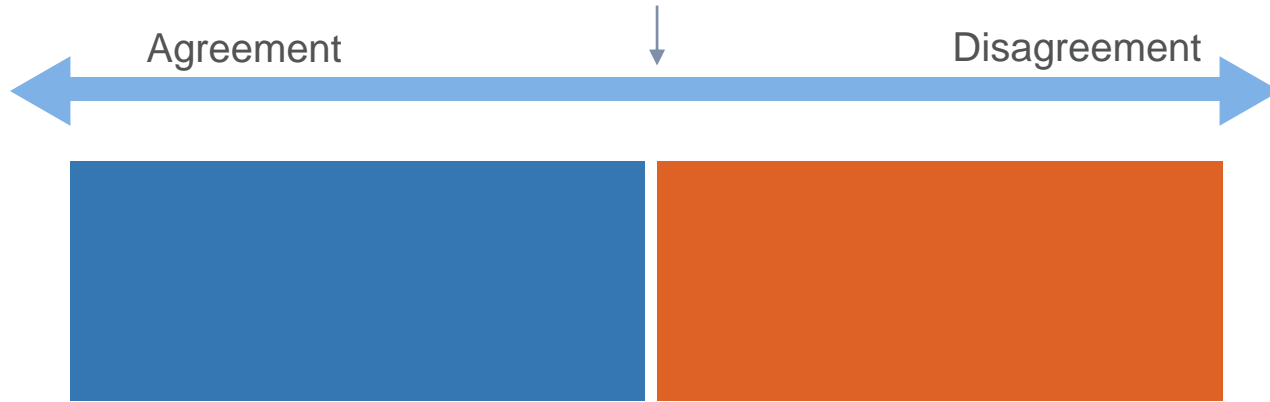
Tolerance (Definitions)

- Definition 1, 2, 3
 - **Tolerance as Acceptance**
 - **Tolerance as Self-Congratulatory Condescension**
 - **Tolerance as Acquiescence**

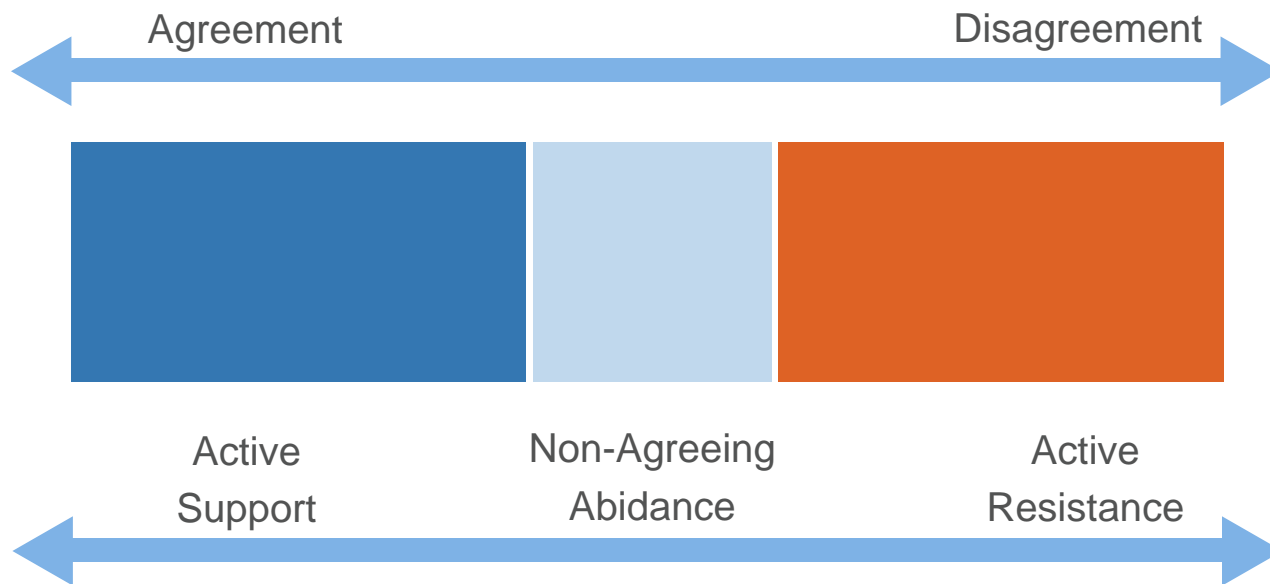
Tolerance (Definitions)

- Definition 4
 - **Tolerance as Margin**
 - Mechanical engineering
 - Tolerance is the degree to which parts can "disagree" yet still function

Tolerance (Definitions)



Tolerance (Definitions)



Tolerance (Definitions)

- Definition 5
 - **Tolerance as Non-Agreeing Abidance**
 - Back to human interactions
 - Agreement is not always possible
 - Collaborative actions can still occur despite non-agreement
 - To do so requires one or both parties to act beyond their narrowly conceived self-interest

Tolerance (Definitions)

- Definition 5a
 - **Tolerance as judgment about when to enter into Non-Agreeing Abidance**
 - Given the existence of moral boundary conditions, tolerance requires judgment
 - To do so requires one or both parties to act beyond their narrowly conceived self-interest

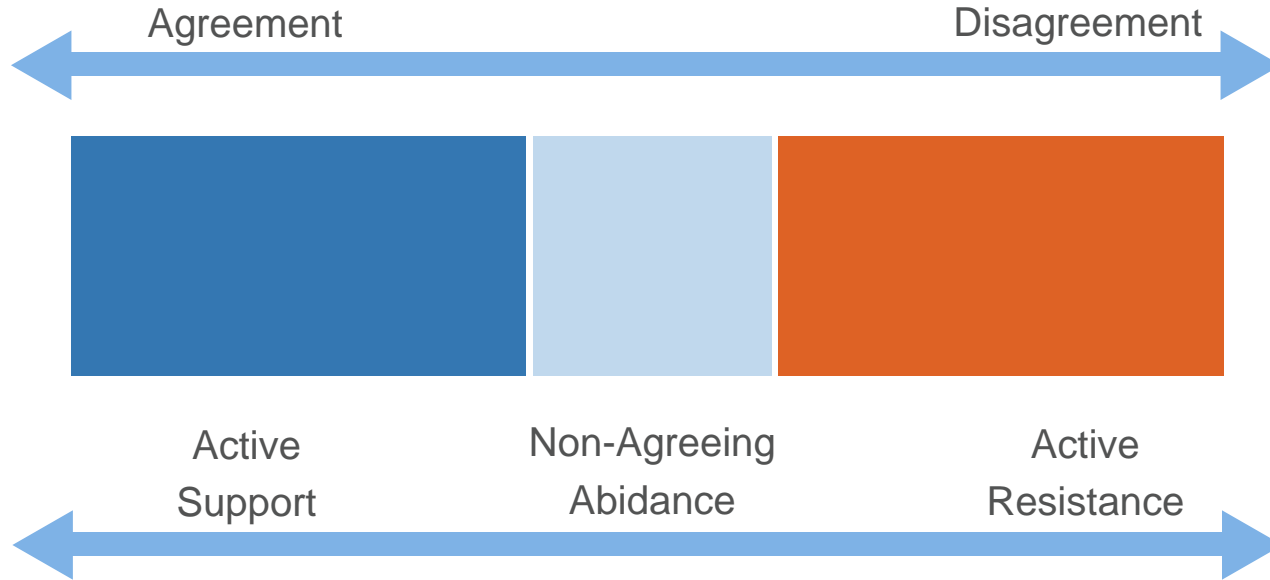
Tolerance (Definitions)

- Definition 5b
 - **Tolerance as the judgement regarding the degree to which accept the state of Non-Agreeing Abidance**
 - Acceptance need not be all-or-nothing
 - The range of acceptance extends from complete and permanent acquiescence to ongoing or reiterative active resistance just short of full opposition or withdrawal

Tolerance (Definitions)

- Definition 5c
 - **Tolerance as the individual and collective ability to endure in a state of Non-Agreeing Abidance**
 - Existing in this state may be unpleasant
 - Acting beyond one's narrowly conceived self-interest is difficult
 - At both the individual and the collective level, developing the capacity to tolerate some level of distress can enable better judgment and action

Not simply a passive “grey zone”



Part 2

Accommodation Reasonableness Hardship



Accommodation as Tolerance

- Accommodation is potentially Type 1, 2, or 3 Tolerance
 - **Accommodation requires an agent to act behind narrowly conceived self-interest**
 - This may be done willingly or begrudgingly
 - The typical non-self-interest part is economic
 - How much against self-interest?
 - Reasonable
 - Not to level of Undue Hardship

Conflict and Accommodation

- Applying the Accommodation framework:
 - **Principled Conflict Management should seek Reasonable Accommodation for one party that does not cause Undue Hardship on the other party**
 - To apply this, we need to consider what “reasonable” and “undue hardship” might mean
 - This framework also presupposes that the first party has some right or reason to compel the second party to seek accommodation

Reasonable

- Analogy to legal and policy accommodation framework:
 - **Reasonable begins where the Proposed Action can achieve the stated aim and stops when Undue Hardship is imposed on the other party**
 - Accommodation has the goal of enabling function
 - For a proposed accommodation to be reasonable, providing the accommodation must (to some probability and degree) make function possible
 - This point can be hotly debated – but should not be abandoned as a key consideration

Reasonable: Considerations, Ranges, Ratios ...

Across multiple considerations ...



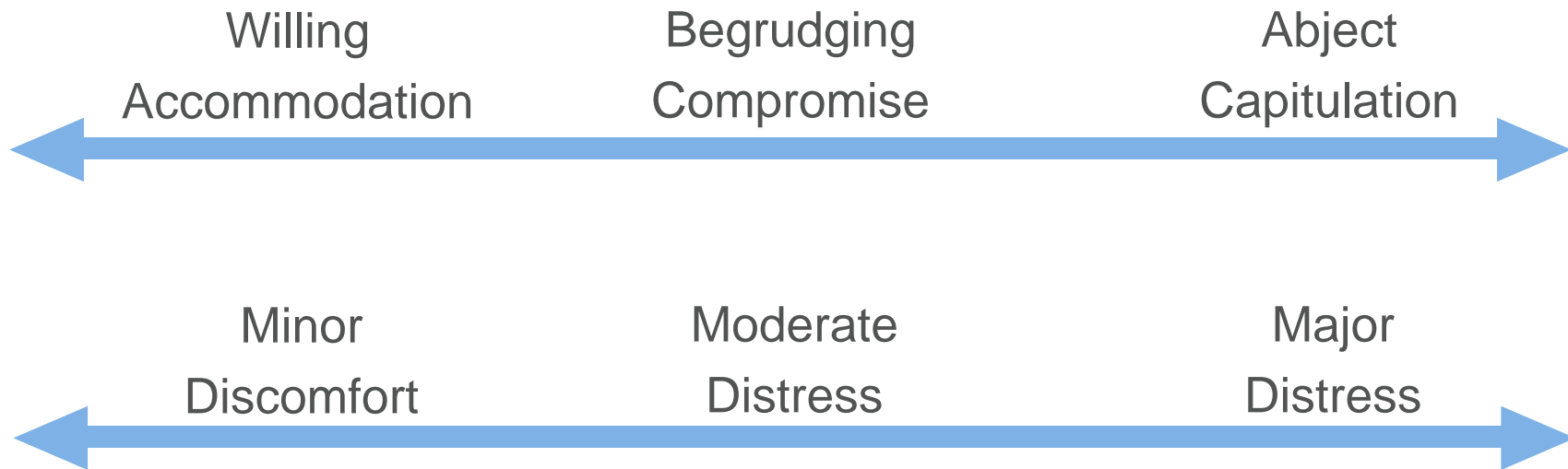
Undue Hardship

- What about Hardships regarding providing medical care?
 - **Hardships on clinical team members and others can arise from practical and psychological consequences of providing or not providing medical interventions**
 - Practically, there are costs and opportunity costs
 - Certain forms of medical care for one patient may impose unfair burdens on other patients
 - Psychologically, acting in a way that does not conform to one's sense of the right course of action causes distress, which in turn can cause other problems

Undue Hardship

- What about Hardships for patients and families?
 - **Hardships on patients and families can arise from practical and psychological consequences of receiving or not receiving medical interventions**
 - Most pertinent, health, wellbeing, life may be at stake
 - Patients and families also confront costs and opportunity costs
 - Confronting clinicians whose plan of care does not conform to one's sense of the right course of action causes distress, which in turn can cause other problems

Hardship: Ranges



Part 3

Power
Relationships

Hardship

Freedoms



Undue Hardship: Weighing Claims

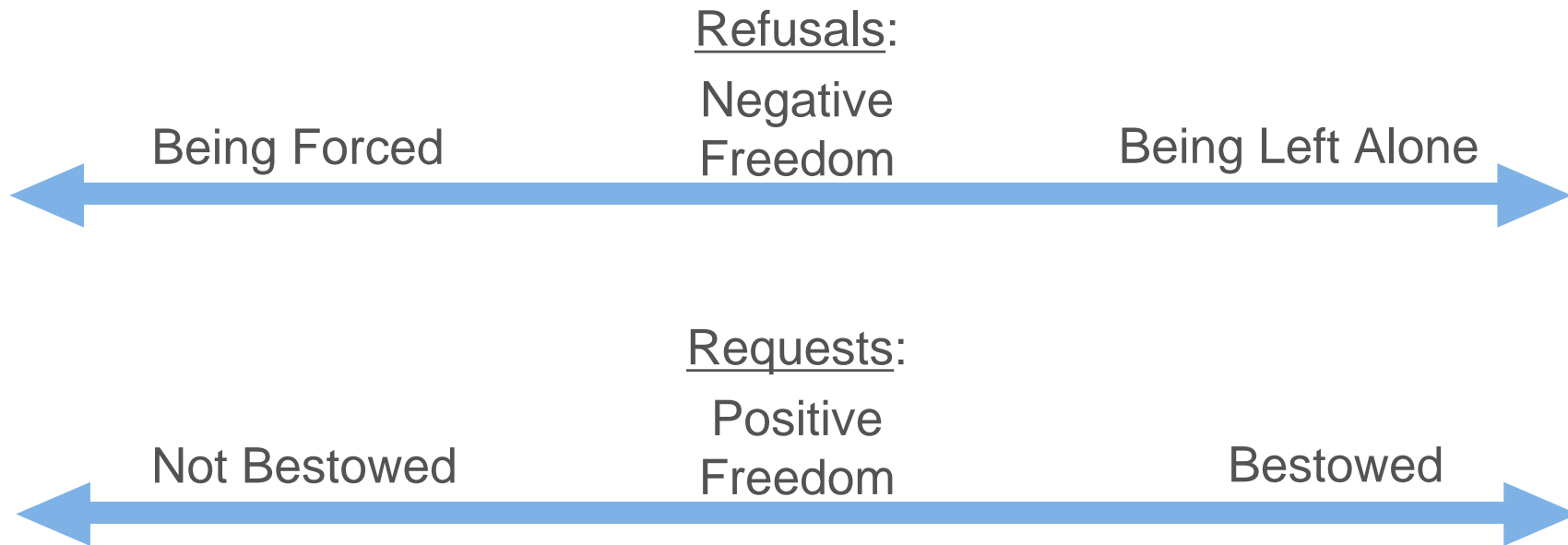
Patient & Family

Clinical Team

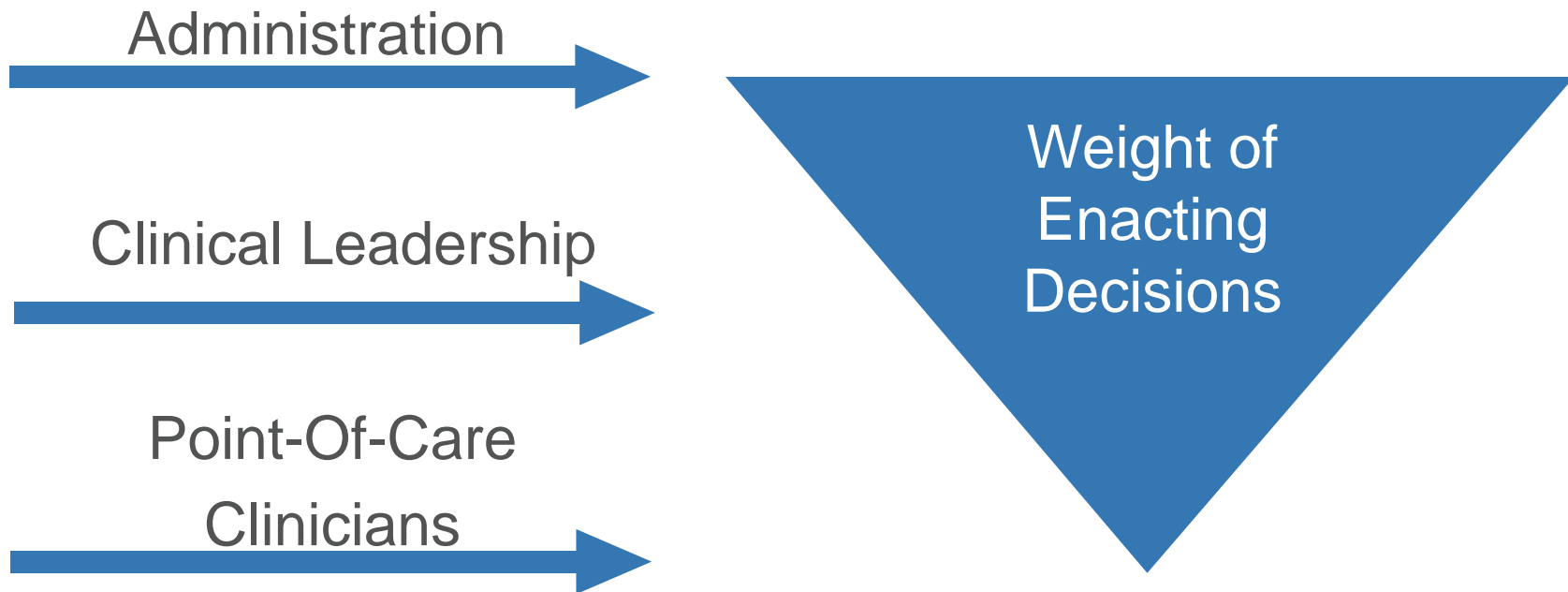


Power
Relationships

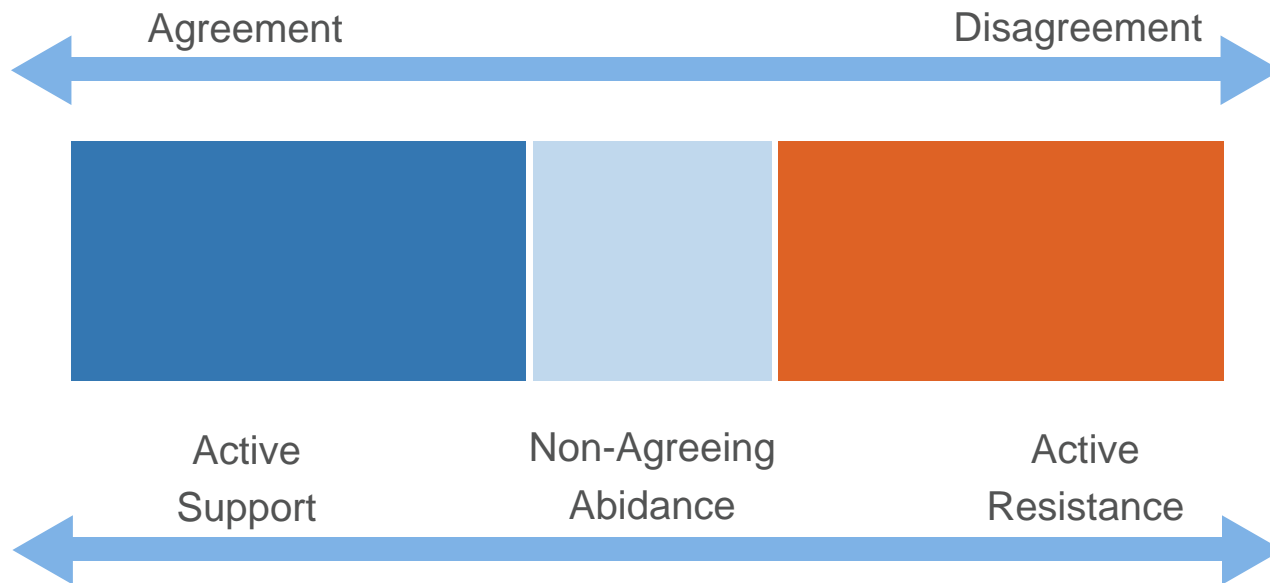
Freedom (Types): Ranges



Undue Hardship: Hierarchy



Recap



Recap

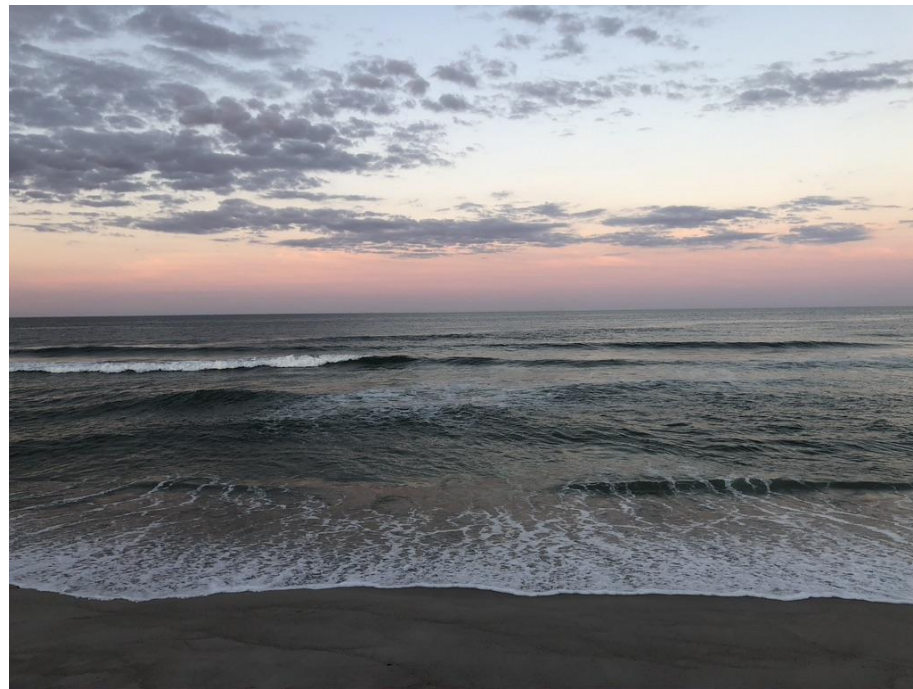
- How to manage conflict – and specifically deciding when to enter into non-agreeing abidance and endure in this state – is a multi-dimensional problem:
 - **Disagreement:** How much do we disagree, and on what basis?
 - **Reasonableness:** How reasonable is the request?
 - **Hardship:** How much is the ensuing hardship if abide?
 - **Freedom:** Are we being asked to restrain our actions, or to act?
 - **Hierarchy:** How are different people affected?

This is a lot to take on

Part 5

Suggestions

How to Evaluate Tough Choices



Examples

- Refusal of immunizations
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Overview

5. Grade harm
6. Size up benefit
7. Harm-to-Benefit ratio

1. Clarify status
2. Identify stakeholders
3. Name emotions
4. Explore sense of duty

8. Blindfold test
9. Substitution test
10. Policy test

0. Legal Considerations

- ***Is there any black letter law or clear case law to guide what is / is not to be done?***
 - Before getting deep into ethical evaluation, always good to check with legal counsel regarding what the law has to say
 - Good ethics begins with good facts, including legal facts
 - Often, though, the law does not provide sufficient guidance

1. Clarify Patient's Current Status

- ***Clarify patient's current status***
 - ***What does the patient already know? How involved does the patient want to be? What is the patient's chance of survival, or morbidity?***
 - Despite discussion on daily rounds, some key overall status and prognostic assessments can be left unstated
 - Discussing the current situation in explicit terms can be revealing
 - This also serves to re-anchor perspectives of where the decision is starting from

2. Identify all stakeholders

- ***Who are all the people who are going to be affected by the decision that we make?
Where is the patient in this mix?***
 - Conflict can feel very personal, shrinking one's sense of who will be affected
 - Listing out everyone who will be touched by the decision, either as individuals or by roles, helps clarify the scope of impact

3. Name the emotions

- ***What are all the emotions that of the team are feeling? What emotions are the patient or family feeling (if we know)?***
 - Conflict ALWAYS generates emotions, which ALWAYS influence decision-making
 - One aspect of how to manage the emotions, and potentially counteract biases arising from them, is to name them, giving them a cognitive “handle” via the name label, thereby making them more manageable
 - Other emotion management techniques also important

4. Explore Various Sense of Duties

- ***Do we feel duty-bound to either do or not do something? Describe. What other duties do we also have? Does this vary across members of the care team? What duties do the parents feel that they have, if we know?***
 - Moral conflicts usually tap into a sense of duty or obligation
 - Making these senses of duty explicit can help clarify underlying issues

Focus on Issues, not Positions

5. Grade the Action's Potential Harm

- ***If we perform the requested action, what possible harms to the patient could occur? How likely are they? On a side-effect grading scale, with 1 being mild and 4 being severe, how would we grade each of these harms?***
 - If one duty is to protect the patient from harm, being explicit about the harms can help both assessment and communication
 - Severe illness does not itself justify substantial risk of substantial harm without compensatory prospect of potential benefit

6. Size Up the Prospect of Benefit

- ***If we perform the requested action, what possible benefits to the patient could occur? How “big” a shift in either quantity of life or quality of life would result? How likely is this shift to occur?***
 - “Saving life” is an imprecise way to state a potential benefit
 - Better to go through the exercise of estimating the size of the shift for both life span and life quality

7. What is Harm-to-Benefit Proportion?

- ***For refusals: Does the prospect of potential benefit substantially outweigh the prospect of potential harm?***
- ***For requests: Does the prospect of potential harm substantially outweigh the prospect of potential benefit?***
 - These are judgments
 - Professionals are licensed to exercise judgment
 - Judgments can be questioned
 - Questioning of judgment does not make judgment illegitimate or dispensable

8. Blindfold Test

- ***If one were to put on a blindfold and not be able to see the person for whom an act is being performed, would one be willing to perform the act?***
 - The goal of this test is to focus on what the requested act is, not on who is making request, thereby eliminating *ad hominem* bias

9. Substitution Test

- ***If the act was not going to be performed by someone else but instead by me (and I had all the requisite knowledge and skills to perform the act well), what would I think and how would I feel about performing the act?***
 - This is to reveal and consider the implications of organizational hierarchy and the different distances from the point of care

10. Policy Test

- ***Would we be willing to make the course of action under consideration into standard operating policy?***
- ***And to then post this policy on the wall and inform all patients and families?***
 - Identifies issues of fairness, and potential special treatment
 - The role of distributional fairness when caring for a specific patient is an unclear and touchy subject in the US context
 - Nevertheless, few would argue that it is completely irrelevant
 - This test can reveal not only the reality of special treatment, but also the potential justifications, which can then be evaluated

CONCLUSIONS

- Medical care presents some complex, value-based choices
- Some courses of action are simply inappropriate – but figuring out which courses of action are inappropriate is often not simple
- **Tolerance, in the sense of non-agreeing abiding, requiring both judgment and capacity to endure in this state, is a virtue worth cultivating**
- Tolerance should not, however, cross into the realm where the course of action is no longer reasonable or where the action poses undue hardship on the patient or members of the care team
- Judging where this realm begins is not easy, but is a professional duty

Thank you

Questions, Comments?

