Reviewer’s report

Title: Can clinical ethics committees be legitimate actors in bedside rationing?

Version: 0 Date: 01 Feb 2019

Reviewer: Juergen Wallner

Reviewer's report:

Relevance
This article is important in two ways: First, by taking up the issue of resource allocation (aka "rationing"), it covers an ethical challenge that is present in all healthcare systems on a macrolevel and a microlevel. With very costly therapies on the horizon (e.g., immunotherapy), allocation decision-making will certainly not go away. Secondly, the article contributes to the field of clinical ethics consultation from a methodological perspective: How could clinical ethics committees (CECs) contribute to allocation decision-making at the bedside?

General Feedback
I would like to give my feedback from two perspectives: (1) moral philosophy and (2) practical ethics.

Ad (1). The article develops an approach that I would associate with discourse ethics. It clearly argues how legitimacy through institutional procedures works, especially by the seven requirements (p. 8/9). For those who work in legal or political philosophy, this approach is convincing in context of a pluralistic society and complex societal questions to be decided. The authors' presumption that "CECs do not have the mandate to make bedside rationing decisions" (p. 6) fits into the idea of deliberative justice, where consultative bodies (like CECs) are part of the decision-making process without determining it. So, from the perspective of moral philosophy, I think the article argues convincingly for the involvement of CECs in allocation decision-making and elicits how this decision-making may benefit by the involvement in terms of legitimacy.

Ad (2). Coming to the question of how CECs could be involved in resource allocation at the bedside (p. 10), the article tackles problems of practical ethics. The typology of roles (table 2) CECs could play in this context are comprehensive and helpful for developing a CEC's profile in resource allocation issues. Case 1 clearly elucidates how bedside allocation decision can gain legitimacy by ethics consultation. Case 2, however, is not the best example for the article's message. First, it is not so clear how the patients' wish (a drug they bought themselves to be administered in a public hospital) is an allocation decision. Certainly, it is not an allocation decision regarding the cost of the drug, because this does not affect the hospital's resources. One could argue that administering a privately bought drug by hospital staff affects personnel resources, i.e., time and effort that has to be allocated between patients on this immunotherapy and others. However, this argument would fall short if the cancer patients would have to be admitted to the hospital anyway, for the standard therapy. Because then, the human resources would be allocated to them anyway (maybe even in a greater amount if the standard therapy would demand more personal care than the immunotherapy). So, the resource allocation decision lies on another level, namely the public one. In accordance with this assessment, the authors point out that the CEC referred the issue to the political level (p. 16). Hence, case 2 exemplifies macrolevel allocation decisions better than microlevel ones. It could help the focus of the paper if the authors point the (necessary) interdependence between micro- (bedside), meso- (hospital), and macrolevel (public system). In other words: When CECs are involved in bedside allocation issues, they often must be
willing the engage in issues of organizational and social ethics (which may be too heavy for some CECs).
A final observation from the point of practical ethics: Is it really feasible that a whole committee is involved in bedside resource allocation decisions? It seems to me that a CEC's primary role would be in giving policy advice (as the paper also explains).

Specifics
1. Although the term "rationing" is frequently used in ethics debates, it may help the interdisciplinary discourse (with economists, managers) to use the technical term "allocation".
2. The paper's structure could be better: The section "background" could be subdivided in 2-3 subsections. The subheading "main text" (p. 7) sounds somehow generic; a more substantial wording could help.

In Conclusion
I think the paper contributes to resource allocation debates in healthcare in that it clearly argues the criteria and roles that clinical ethics committees have in this field. I hope that my review acknowledges the authors' intent and may help them to finalize the paper.

Are the methods appropriate and well described?
If not, please specify what is required in your comments to the authors.

Yes

Does the work include the necessary controls?
If not, please specify which controls are required in your comments to the authors.

Unable to assess

Are the conclusions drawn adequately supported by the data shown?
If not, please explain in your comments to the authors.

Unable to assess

Are you able to assess any statistics in the manuscript or would you recommend an additional statistical review?
If an additional statistical review is recommended, please specify what aspects require further assessment in your comments to the editors.

Not relevant to this manuscript

Quality of written English
Please indicate the quality of language in the manuscript:

Acceptable

Declaration of competing interests
Please complete a declaration of competing interests, considering the following questions:

1. Have you in the past five years received reimbursements, fees, funding, or salary from an
organisation that may in any way gain or lose financially from the publication of this manuscript, either now or in the future?

2. Do you hold any stocks or shares in an organisation that may in any way gain or lose financially from the publication of this manuscript, either now or in the future?

3. Do you hold or are you currently applying for any patents relating to the content of the manuscript?

4. Have you received reimbursements, fees, funding, or salary from an organization that holds or has applied for patents relating to the content of the manuscript?

5. Do you have any other financial competing interests?

6. Do you have any non-financial competing interests in relation to this paper?

If you can answer no to all of the above, write 'I declare that I have no competing interests' below. If your reply is yes to any, please give details below.

I declare that I have no competing interests.

I agree to the open peer review policy of the journal. I understand that my name will be included on my report to the authors and, if the manuscript is accepted for publication, my named report including any attachments I upload will be posted on the website along with the authors' responses. I agree for my report to be made available under an Open Access Creative Commons CC-BY license (http://creativecommons.org/licenses/by/4.0/). I understand that any comments which I do not wish to be included in my named report can be included as confidential comments to the editors, which will not be published.

I agree to the open peer review policy of the journal