

Classic Cases in
MEDICAL ETHICS

THE OATH

I by Apollo the physician and
Esculapius & Health & All heal all the gods & goddesses
that are due to my ability & judgement

I WILL KEEP THIS OATH
I will stipulation to reckon him who taught me this Art
as my parent to share my substance
with him to relieve his necessities if required to look upon
his offspring in the same way as my own brothers & to teach them this Art
if they shall wish to learn it

WITHOUT FEE OR STIPULATION
What is received for every other mode of instruction I
will impart a knowledge of the Art to my own sons & those of my
teachers & disciples and of a stipulation & gain

ACCORDING TO THE LAW OF MEDICINE
but to none other I will follow the system of regimen which
according to my ability & judgement I consider

FOR THE BENEFIT OF MY PATIENTS
Salutary to man whatever is dangerous & mischievous I will give
no deadly medicine to any one if asked nor suggest any such
counsel On the matter I will not give to a woman a pessary to produce
abortion

**WITH PURITY & WITHOUT HOLINESS I WILL
PASS MY LIFE & PRACTISE MY ART**

I will not cut persons having no under the stone, but will leave this to be
done by men who are practitioners of this work In whatever houses
I enter I will be there for the benefit of the sick & will abstain from
every voluntary act of seduction, of males or females of freemen & slaves

Whatever it comes from with my professional
privilege or not in consultation with it I see or hear
in the life of man which ought not to be spoken
of abroad

I WILL NOT DIVULGE
as reckoning that all such should be kept secret
While I continue to keep this Oath unviolated
may it be granted to me to enjoy life & the practice
of the Art respected by all men in all times

But should I trespass to violate this Oath
may the reverse be inflicted

Interpret

GREGORY E. PENCE

Classic Cases in Medical Ethics

*Accounts of Cases that Have
Shaped Medical Ethics,
with Philosophical, Legal, and
Historical Backgrounds*

FOURTH EDITION

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School of Medicine
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Boston Burr Ridge, IL Dubuque, IA Madison, WI New York
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CLASSIC CASES IN MEDICAL ETHICS: ACCOUNTS OF CASES THAT HAVE SHAPED MEDICAL ETHICS, WITH PHILOSOPHICAL, LEGAL, AND HISTORICAL BACKGROUNDS

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This book is printed on acid-free paper.

6 7 8 9 0 FGR / FGR 0 9 8 7 6

ISBN 978-0-07-282935-8

MHID 0-07-282935-4

Publisher: *Christopher Freitag*

Sponsoring editor: *Jon-David Hague*

Marketing manager: *Lisa Berry*

Project manager: *Jill Moline*

Production supervisor: *Janean Uttley*

Designer: *Sharon C. Spurlock*

Supplement associate: *Kate Boylan*

Photo research coordinator: *Alexandra Ambrose*

Cover design: *Linda Robertson*

Interior design: *Linda Robertson*

Typeface: *10/12 Palatino*

Compositor: *G&S Typesetters*

Printer: *Quebecor World Fairfield Inc.*

Library of Congress Cataloging-in-Publication Data

Pence, Gregory E.

Classic cases in medical ethics : Accounts of cases that have shaped medical ethics, with philosophical, legal, and historical backgrounds/Gregory E. Pence.

p. cm.

Includes index.

ISBN 0-07-282935-4 (softcover : alk. paper)

1. Medical ethics—Case studies. I. Title

R724.P36 2004

174' 2—dc21

2003044513

<http://www.mhhe.com>

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GREGORY E. PENCE is a Professor of Philosophy in the School of Medicine and Department of Philosophy at the University of Alabama at Birmingham, where he has taught since 1976. He has written *Who's Afraid of Human Cloning?* (1998), *Designer Food: Mutant Harvest or Breadbasket of the World?* (2002), *Re-Creating Medicine: Ethical Issues at the Frontiers of Medicine* (2000), and *Brave New Bioethics* (2003) and edited *Flesh of My Flesh: The Ethics of Cloning Humans—A Reader* (1998) and *The Ethics of Food* (2002) (all published by Rowman & Littlefield). He has cowritten *Seven Dilemmas in World Religions* with G. Lynn Stephens (Paragon, 1995). He has published articles in *Bioethics*, *American Philosophical Quarterly*, *Canadian Journal of Philosophy*, *The New York Times*, *Wall Street Journal*, *Newsweek*, and *Journal of the American Medical Association*. He has also edited *Classic Works in Medical Ethics: Core Philosophical Readings*, a companion anthology to this work (McGraw-Hill, 1995). He also directs the BS/MD program at UAB.

Preface

This new, fourth edition reflects several big changes. First, and like no other issue in decades, since the birth of the lamb Dolly was announced in early 1997, cloning has dominated bioethics. For that reason, and because this author has some unique national expertise on this topic, the new edition contains two new chapters on the ethics of cloning: the first on cloned embryos and stem cells, the second on reproductive cloning.

So much has happened since the last edition with assisted reproduction (AR) that a new rewrite of this chapter would have been necessary even if Dolly had not been cloned. The new chapter on AR includes material previously in a separate chapter on surrogacy as well as new material about the ethics of paying for sperm, eggs of young women, adopted babies, surrogacy, and other reproductive services.

The old chapter on ethics and AIDS previously focused on mandatory testing and the case of Kimberly Bergalis, but the new chapter concentrates on stopping the spread of this lethal disease across the planet. How to stop this spread is perhaps our paradigmatic case in the ethics of international medicine and world public health. This chapter surveys conflicting theories about how to stop HIV's spread and, more pessimistically, whether it will be possible to do so.

I rearranged the four chapters that focus on the beginning of human life to reflect the order in which these topics burst into American life. So I began with abortion in the early 1970s, moved to assisted reproduction in the 1980s and 1990s, and ended with the two chapters on cloning. The section on surrogate motherhood in previous editions now lies within the chapter on assisted reproduction. Continuing controversies about abortion that originated in the early 1970s explain why embryonic cloning now symbolizes the power of faith-based constituencies to shape national medical policy.

To make room for the additions, and to eliminate redundancy, the two chapters on the first heart transplant and artificial heart have been combined into one—on the ethics of adult heart replacement. The three core chapters on death and dying have had their cases updated and include new sections on palliative care, disability groups, and the problem of depression in physician-assisted dying. These chapters and all others have been edited to improve their flow.

All in all, this edition has four completely new chapters.

As with previous new editions, and so far as possible without violating privacy or the wishes of the people involved, each chapter's central case has been

updated. A gratifying trend has been the participation of many key people in these chapters in verifying details and correcting any mistakes. In particular, I have communicated with Dax Cowart, Elizabeth Bouvia (through her lawyer), Jack Kevorkian's lawyers, Kenneth Edelin, and Nancy Wexler. Others have also communicated to me who were indirectly involved in these cases, such as Russ Fine (Larry McAfee), Nancy Cummings (God Committee), and Norman Fost (Johns Hopkins cases). I am grateful for the cooperation of all these people, who continue to make this a much better text than it would have been without them.

An important new section focuses on the Jesse Gelsinger case (in the chapter on ethics and genetics), which could have itself been a whole chapter. My student Satya Shreenivas, now in our medical school, wrote an excellent paper for me on this case in a 2001 seminar (later published in the *Monash Bioethics Review*). Other new sections focus on Edward Taub's breakthrough in constraint-induced therapy for stroke victims, scandals in research ethics (deaths of Ellen Roche and the lead-paint study on black children, both at Johns Hopkins), hand transplants, new Abicor artificial heart recipients, UNOS and the rule of rescue, separating conjoined twins at birth (the case in England), Kendra's law in New York (for violent homeless patients), the Carr case in Georgia (mother kills adult sons with Huntington's disease), and states with successful CHIP programs to get medical coverage to poor kids.

Throughout several editions of this book, several users have provided great feedback, including Lance Stell (Davidson University), Mark Yarborough, (University of Colorado), and Louis Pojman (United States Military Academy). Stuart Rachels (at my sister institution, the University of Alabama-Tuscaloosa) provided superogatory commentary on two thirds of the chapters and especially on the first chapter on ethical theory.

McGraw-Hill picked an extraordinary group of professors to review the last edition, many of whom have been using *Classic Cases* for a decade. In particular, I want to thank and acknowledge Paul T. Durbin at the University of Delaware, Lynn Lindholm at the University of North Dakota, David Karnos at Montana State University-Billings, Daniel Holbrook at Washington State University, Albert Flores at California State University-Fullerton, and Marlene Spencer at Valencia Community College. Disability advocate Karen Sadler has also helped me through the years.

Several gifted students in the BS/MD program at UAB helped me with this new edition. During the summer of 2002, my full-time research assistant for this book, Pooja Agarwal, was a spectacular summer research assistant. For someone just out of high school, her ability to write, research, and edit material was amazing. Jason Lott also contributed to this edition before he went off to Oxford, and to a much greater extent, my later part-time, temporary research assistant, Matt Malone, who contributed heartily, especially on the sections in genetics and finance. I thank all these extraordinary students for helping me in this research-journey.

At McGraw-Hill, I thank Jon-David Hague, Ken King, Allison Rona, and Jill Moline for helping me push out the fourth edition.

As always, I am eager to hear from students and professors using this book, so please email me at the address below with any and all comments.

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Index I

Moral Reasoning and Ethical Theories in Medical Ethics

PART ONE: MORAL REASONING

A. Common Mistakes in Moral Reasoning

There are well-known pitfalls into which students often fall in discussing issues in contemporary ethics, and one that is peculiar to medical ethics. In the following brief section, these mistakes are covered.

Begging the Question is to assume to be true what should be proved to be true. It is obviously easier to just assume a contentious point under debate than to do the hard work of proving it. Even if we can't prove a point, we must attempt to give reasons for it. To simply state that our given position is *obvious* is to avoid giving such reasons and not intellectually respectable.

Begging the question occurs frequently in debates about who is and who is not a person in those cases at the margins that involve comatose humans, human embryos and fetuses, and non-human animals. For example, someone may say, in referring to a nine-day-old human embryo, "No mere bit of cells the size of a dot could be a person." This debater has assumed that the size of a being, not its genes, DNA, or potential, determines its personhood, but that assumption needs both to be made explicit and defended. Similarly, someone might assert that "Anyone who calls a Crisis Center and says he is planning to commit suicide should be committed because he is not in control of his mind." This also begs the question because we have assumed that all suicides are irrational without even inquiring about the reasons a caller has for wanting to die (there may be cases of rational suicide, e.g., where a person is in the last stages of cancer and still mentally competent).

In general, question-begging statements are designed to mask the need for reasons or an argument. Unmasking such statements sometimes involves identifying and justifying key premises—both factual and evaluative—in our arguments.

Approaching the Arguments: Premises, Conclusions, and the Fact-Value Gap In moral reasoning, a conclusion about a moral issue is supposed to follow logically from certain premises. If the premises logically support the conclusion,