

## National Speaker Howard Brody, MD, PhD Comes to Vermont

BY REV. DIANA SCHOLL

As VT slowly but persistently works toward creation of a healthcare system that will cover all Vermonters and keep costs under control, two voices are often missing from the conversation: clinicians and consumers. Dr. Howard Brody threw down the gauntlet to physicians to step up to the plate in 2010 with his article in the *New England Journal of Medicine (NEJM)* 362; 4 1/28/10) titled “Medicine’s Ethical Responsibility for Health Care

Reform—The Top Five List.” He has literally ignited an avalanche of research, policy commitments, and soul searching by physicians in multiple specialties, in medical schools, as well as in the popular media such as Gilbert Welch’s recent op/ed in the *New York Times* (“Testing What We Think We Know” on 8/19/12.)

VEN is fortunate to have Dr. Brody spend the day with us at our fall, statewide conference at Lake Morey Resort on September 19, 2012.

Hopefully you’ve registered because this will be a day you won’t want to miss. To register and get more information about the event go to the VEN website at [www.vtethicsnetwork.org](http://www.vtethicsnetwork.org).

In preparation, this small review of his game changing article will try to set the stage and encourage you to read in advance so we can have a rich, informed dialogue that will truly help our state move forward on this important topic that everyone is talking about. In

▼ Jump to page 2

## A “Top Five List” in Clinical Ethics

SALLY BLISS, RN, MSB AND ROBERT ORR, MD, CM

People often ask, “What are the most common issues you encounter as an ethics consultant?” Since Dave Letterman has not asked this question recently in the “Top Ten List” segment of his show, we decided we might raise the question, addressing only five in this newsletter as no one has yet offered us a one-hour time slot on TV. Even so, these five are overlapping and interrelated.

**1** In our experience at two teaching hospitals and from talking with those involved in ethics consultation in various hospital settings, the most common question raised is about limitation of treatment. Patients, families, and healthcare professionals often struggle to identify the goals of treatment at different times during the course of illness. Questions we might be asked to help clarify include: Should we continue the ventilator, or stop?—or dialysis?—or chemotherapy? Should we

do another surgery, or attempt CPR? These questions are complex and require challenging conversations about a patient’s goals and values.

**2** Closely related to question #1 is the question of non-beneficial treatment. This is the old “futility” bugaboo dressed up with a new name since resolution of that debate remains unsuccessful. It is of historical interest that a generation ago, these disagreements most often involved patients/families who wanted to stop and physicians who felt obligated to continue (recall the cases of Quinlan ’76 and Cruzan ’90). Currently, however, it is much more common for physicians to want to stop non-beneficial treatment before the patient or family is ready to change goals (Schiavo ’05).

**3** Other uncertainty regularly prompting requests for ethics consultation are questions surrounding decision making capacity and surrogacy. Ideally, decisions are made by patients themselves, but

illness can result in compromise to or loss of decision making capacity. It can be challenging to determine how much capacity a patient has, especially in critical situations. Even when there is agreement about the loss of capacity, who then speaks on the patient’s behalf? We had hoped this might be largely resolved through the use of Advance Directives, but (a) most adults have no documentation of advance care planning, and (b) even when this exists, the situations that actually arise very often do not fit those described in directives. So then we look to close family and friends for decisions, but (surprise!) there is frequent disagreement among these persons. More than 35 states have addressed this puzzle by legislating a hierarchical surrogate list. Giving legal decision-making authority to a specific individual might help in some situations, but all too often the “default” surrogate is not the person with the best information about the patient’s wishes

▼ Jump to page 3

# HEALTH DECISIONS

VOL. 21, NO.1

A publication of the  
Vermont Ethics Network

*The mission of the  
Vermont Ethics Network  
is to promote ethics as  
a core component of  
health care and health care  
decision-making*

Vermont Ethics Network  
61 Elm Street  
Montpelier, VT 05602  
Telephone: 802-828-2909  
Fax: 802-828-2646  
Email: ven@vtethicsnetwork.org  
Web site: www.vtethicsnetwork.org

## BOARD OF DIRECTORS

Denis Barton, MBA MA  
Kelly Champney, ESQ  
Linda J. Cohen, ESQ  
Candy Diamond  
Penrose Jackson  
James P. Leddy, MSW  
Robert Macauley, MD  
Ann Mallett, RN  
Sarah Narkewicz, RN MS CDE  
William A. Nelson, MDiv PhD  
Judy Peterson, RN BSN  
Catherine Suskin, ESQ  
Beth Cheng Tolmie, MSW EdD

## HONORARY BOARD MEMBERS

James L. Bernat, MD  
Michelle Champoux, LICSW  
Arnold Golodetz, MD  
Jean Mallary, RN  
Marge Trautz, RN

## STAFF

Cindy Bruzzese, MPA  
Executive Director

Design: Brian P. Graphic Arts  
www.brianpgraphics.com

## Brody from page 1

addition to reading his original article, you could also read his next article (*NEJM* 366; 21 on 24 May 2012) titled “From an Ethics of Rationing to an Ethics of Waste Avoidance.” Here you’ll find a fascinating application of the ethical theory of futility. Check it out!

Dr. Brody has both an MD (in Family Practice) and a PhD in philosophy which he has used to study and write about bioethics for the past 30 years. He brings serious credentials to the table when he began to wonder in 2009: why are insurance companies offering to take a hit in the pocketbook to help reduce healthcare costs (and getting all the great PR that came with this—only slightly offsetting the fact that many Americans have a pretty low opinion of them) and yet physicians said they would only reduce costs *if* their income was protected? Everyone loves their doctors (well, almost everyone) but would they love to see this? Does that mean my doc cares more about her income than whether I can’t come to see her because I can’t afford it? Is income more important than patients? Americans can easily believe the profit motive of insurance companies or drug companies, but this is a serious contradiction to what they think and know about their doctors. What’s wrong with this picture?

His mind really got creative when he saw research that showed significant geographic variations in the number of expensive procedures performed in one region of the US than in another, but where the outcomes in each region did not line up as would be expected. In other words, some areas had equally good or better health outcomes for patients *without* a particular intervention while patients who *had* that intervention in another area did not fare so well. What’s that about? Could it mean that we could reduce the number of expensive interventions and protect or improve the health outcomes of our patients as well as reduce the cost of healthcare at the same time?

Putting these two things together, Dr. Brody was off and running. He wasn’t just wanting to call doctors to the ethical table to uphold their Hippocratic Oath of patients before everything (including income), but he had suggestions of how to do it. His article suggests that each specialty could pick the top five procedures which meet criteria like: evidence based medicine does not prove they make a difference to patient outcomes;

high expense; and more risks than benefits to the health of patients. Then they could recommend that these not be automatically prescribed. Wow! This totally struck a chord and the medical community was off and running to meet the challenge.

Dr. Brody’s article is brief but powerful. His critique is full of common sense but also supported by the best research available (or evidence of the lack thereof.) First the American Board of Internal Medicine Foundation (ABIM) revved up their Choosing Wisely campaign ([www.ChoosingWisely.org](http://www.ChoosingWisely.org)) and so far more than 15 specialties (including oncology and cardiology) have signed on and identified their Top Five. Then Consumer Reports created their campaign ([www.consumerhealthchoices.org](http://www.consumerhealthchoices.org)) out of their Health Ratings Center. Their perspective was that consumers needed to be educated about these choices of interventions and truly partner with their doctors in deciding whether they wanted or needed them. The goal is for the doctor and patient together to know from evidence based medicine what the risks and benefits (including cost) are of a procedure before deciding to do it. Word spread like wildfire. Books like *Overdiagnosed: Making People Sick in the Pursuit of Health* by Welch, Schwartz, and Woloshin of Dartmouth hit the mainstream.

Then in July, 2012 the American College of Physicians put forth their curriculum for residents that added a seventh competency in order to practice medicine and it is called “The High Value, Cost-Conscious Care Curriculum” and flows from the seminal work of Dr. Brody plus Weinberger’s article “Providing High-Value, Cost-Conscious Care: A Critical Seventh General Competency for Physicians” in the *Annals of Internal Medicine* in 2011 (155:386-388.)

Suddenly the idea that doctors will be in the forefront of determining what healthcare is both necessary and economical has become a real player in the world of healthcare reform. How to keep our costs down so that everyone can be covered and practice good medicine is now a legitimate goal. The medical world has taken ethical leadership and we will all benefit. Thank you Dr. Brody for setting us on this path, and for coming to Vermont to help us put your knowledge and insights into practice.

## New Board Members at VEN

**K**elly Champney—Blue Cross Blue Shield of Vermont—is Manager of Provider Contracting and contracting counsel focusing on development of a comprehensive high quality low cost provider and facility network for Blue Cross Blue Shield of Vermont the state's local not for profit health insurance company. Ms. Champney's focus is development of provider relationships which focus on high quality reasonable cost services for all Vermonters. She works with individual providers to large teaching facilities to create value based business relationships focusing on the quality and efficient provision of services to Vermonters. Ms. Champney has substantial experience in commercial contract negotiation, regulatory analysis for large health systems and provider network development. Additionally, prior to Blue Cross Blue Shield of Vermont, Ms. Champney served as defense counsel for hospitals, providers, and employers for civil employment, workers' compensation and malpractice claims. Ms. Champney also represented local ski companies in malpractice and workers' compensation matters. Ms. Champney's legal career in Vermont began at Vermont's Department of Banking, Insurance, Securities and Health Care Administration where

she served as a law clerk primarily for the Insurance and Health Care Administration Divisions. At BISHCA, Ms. Champney assisted with drafting the rules for the newly created Catamount Health system and assisted in obtaining federal funding for Vermont's high risk pool insurance population. Ms. Champney also serves as an Associate for the Vermont Board of Bar Examiners and is a member of the Vermont and New York Bar Associations.

**S**arah Narkewicz is the Director of the Bowse Health Trust, a grant funding department at Rutland Regional Medical Center that was initiated in 1996 to improve the health of the people in Rutland County. In addition to this role, she is RRMC's Blueprint Manager for Rutland County. Her non-profit experience started as a Board Member for the Vermont Chapter of the Diabetes Association. She later became the first President of the Vermont Association of Diabetes Educators and guided the association in becoming a chartered chapter of the American Association of Diabetes Educators.

Sarah is a life-long Vermonter who completed her undergraduate nursing degree at the University of Vermont and her Master's Degree at the University

of Connecticut. She currently holds certifications as a Certified Diabetes Educator, a Certified Quality Manager, and a Master Trainer in the Stanford Self-Management Program. She lives in Rutland, Vermont with her husband, Brian. Now that her 3 children are grown, she has more time to enjoy biking, hiking, and skiing.

**C**andy Diamond joins the VEN board as a community member with passion, commitment, and a desire to address the ethical dilemmas that confront our ever-changing health care world. She also currently serves as a community representative on the Vermont Board of Medical Practice. Prior to joining the VEN board, Candy ran three statewide political races and one national race in Vermont, and worked as the legislative coordinator for the Office of the Attorney General. Candy has also served on the board of Woodbury College and on the board of a free health care clinic, The Peoples Health and Wellness Clinic, in Barre, Vermont. As a long-time engaged community member, Candy brings a unique, grass roots perspective to the Vermont Ethics Network. She currently resides in Montpelier with her husband, Jerry.

---

### Top Five from page 1

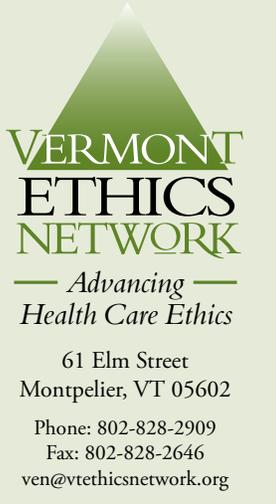
and values. (The authors prefer the non-legislated situation in Vermont where we attempt to resolve such conflicts by medical tradition, i.e., by identifying the person or persons with the most reliable and representative information about the patient, and then, building a treatment plan around the consensus of what the patient would have valued for themselves.)

**4** Many ethics consults are not really about ethical issues, but are rather about poor communication. Prognosis is an inexact science. Patients and families often feel confused because they hear different things from different members of the treatment team. Team members often have unique perspective related to their specialty, each individual

with variable communication skills. Differences in language or culture may also unintentionally result in miscommunication. Unfortunately, many professionals are very reluctant to say, "I'm sorry, but your mother is not going to survive this illness," instead saying "Things are not looking good" with the noble intent of not wanting to eliminate hope. We all have experience with hoping and planning for the best, but we are relatively inexperienced with planning for and communicating about the worst, especially in the compressed atmosphere of illness and suffering. Much of this confusion could be resolved with improved communication skills training and documentation in the chart, not only about one's thinking, but also about what has been said to the patient and their family.

**5** When seeking to identify a source for these issues, we encounter a common theme—diminished trust. The patient-physician relationship has historically been based on the premise that physicians can be trusted to promote well-being and alleviate pain and suffering. This is largely true today as well; however, several factors have contributed to erosion of trust at the margins. Such factors as: social mobility, specialization, and large group practices often lead to "stranger medicine"; the high cost of high-tech care encourages physicians to be good stewards of medical resources, but patients often interpret this as miserliness or even discrimination (again, often proposed by strangers).

We are sure ethics committee members can also expand on this list.



**VERMONT  
ETHICS  
NETWORK**

— *Advancing* —  
*Health Care Ethics*

61 Elm Street  
Montpelier, VT 05602

Phone: 802-828-2909  
Fax: 802-828-2646  
ven@vtethicsnetwork.org

Visit us online at  
[www.vtethicsnetwork.org](http://www.vtethicsnetwork.org)

## V E N O T E S : *Upcoming Events*



### ***When Less Is Better: Ethical Issues in the Use of Health Care Resources***

**Wednesday, September 19, 2012 • 8:00 AM – 4:30 PM**  
**Lake Morey Resort, Fairlee, Vermont**

Register by September 12: [www.vtethicsnetwork.org](http://www.vtethicsnetwork.org); 802-828-2909

PRESENTERS: Howard Brody, MD, PhD; Karen Hein, MD; Brenda Sirovich, MD, MS; Paul Bengtson, MA, MBA, FACHE; Linda Cohen, ESQ; Charles D Maclean, MD, CM, FACP; Jean Mallery, BA, RN, BSN; Todd Moore, MBA; Don George; Jeff Wennberg.

### **Health Care Planning is For Everyone: Start the Conversation today!**

TALK to others about your values and future health care wishes.

- ▲ GO to [www.vtethicsnetwork.org](http://www.vtethicsnetwork.org) for the Vermont Advance Directive Form and for comprehensive information about Advance Care Planning and Advance Directives.
- ▲ COMPLETE your Advance Directive.
- ▲ REGISTER your Advance Directive with the Vermont Advance Directive Registry - an easy and secure way to give your health care providers immediate access to your wishes about health care decisions.

For more information about the Vermont Ethics Network, or to order the Taking Steps Booklet, contact us by phone at 802.828.2909 or via e-mail at [ven@vtethicsnetwork.org](mailto:ven@vtethicsnetwork.org).

### ***Physician Leadership Conference: Making Vermont a High Performance Health System***

**Saturday, September 22, 2012 • 8:00 AM – 1:00 PM**  
**UVM College of Medicine**  
**Carpenter Auditorium, Burlington, VT**

CO-SPONSORED BY:

UVM College of Medicine, with  
Fletcher Allen Health Care, The Physicians Foundation,  
Vermont Association of Hospitals and Health Systems,  
and Vermont Ethics Network

---

### ***36th Meeting of the NH-VT Hospital Ethics Committee Network: The Interface of Ethics and Psychiatry***

**Monday, October 1, 2012**  
**DHMC in Lebanon, NH**

---

### ***Jane Brody's Guide to the Great Beyond: Preparing Medically, Legally and Emotionally for the End-of-Life***

**Tuesday, October 16, 2012 • 7:00–8:30 pm**  
**Double Tree Hotel, So. Burlington**

VNA's Madison-Deane Initiative hosts Jane E. Brody, award-winning personal health columnist for *The New York Times* and best-selling author. Jane will provide practical advice and information to help attendees and their loved ones prepare for the end of life. Book signing to follow the event. Free and open to the public.