

## Medical Futility: Is a Policy Needed?

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### Summary

Medical futility generally refers to the inappropriate application of medical intervention that is unlikely to produce any significant benefit for the patient. Medical futility, once called “a problem without a name” [1], remains a controversial issue in its definition as well as in its applications. The controversy exists, partly, in disagreements between families and physicians about the patient’s best interests, the goals of treatment and the ends of medicine.

In everyday clinical practice, physicians are under pressure to make decisions whether or not to offer futile treatment and how to communicate their decisions with the family. However, in some cases there are disagreements between healthcare providers and patients’ family about the course of action. The inevitability of human death, limitations of medical science, the scarcity of health resources, and various socio-cultural issues shape decisions regarding end-of-life care in general and medical futility in particular.

In an era with an aging population and escalating healthcare costs, the futility debate has become the object of extended critical attention. Currently, except in some hospitals in the United States, there is a lack of policy or regulation in dealing with medical futility. It is crucial to develop futility policies which guide healthcare professionals on the process for decision making on the treatment options, and when it is morally permissible to withhold or withdraw life-sustaining treatment. It is expected that such policies would be very instrumental in decreasing disagreement between physicians and family members about futile treatment.

### Futility Policy: Expected Benefits

Given the problems caused by disagreements about futile treatment, the question is whether and what would be the benefits of addressing medical futility through legislation, policy, or regulations. As Dr. Pellegrino suggested, “Where definition is difficult to come by, or consider subjective, there is a turn to procedures and policies” [2].

Making decisions about futile treatment is medically complex and morally stressful. It has been suggested that futility policies which can guide the withholding and withdrawal of futile care seem to offer a way out of morally distressing clinical situations [3].

By establishing a policy and procedure to identify and decide about futile treatment, physicians will have a framework for making decisions and justifying the proposed course of treatment.

With no policy in place, physicians have no choice but to refer to their own evaluations, perspectives and opinions as well as their own judgment about a patient’s quality and value of life. In such cases, a patient’s family may feel that they have no choice but to surrender themselves to the physician’s personal opinions. The family may be left with a feeling that the physician has imposed his own personal

opinions about the value and quality of life and has decided not to extent their loved one’s life. One of the advantages of referring to a futility policy, while deciding about and communicating futility decisions, is avoiding a perception that physicians are biased by their own personal opinions on the value of life at its marginal level. Following a procedural framework would also reassure patients and their families that the decision has been made through a balanced and fair process which is supported by a thoughtful policy. Futility policies can further ensure that all involved parties hear the family’s narrative about their loved one and why they want treatments to be continued. Such guidelines can also help family members better understand the decision-making framework and become more active participants in the decision-making process.

In addition, decision making based on an established policy ensures family that someone besides the physician in charge -such as an ethics committee -carefully reviews the case and provides input on the decision making. Therefore, with a policy in place, one can expect that it is more likely to help avoid disagreements or to reach agreement in the face of conflict.

### What are the Policy Options?

In terms of policy development about medical futility, currently there are two options:

The first option is to adopt a hospital policy, which has been applied in several large hospitals in the United States. In such a “due process policy”, physician’s judgement on futile treatments, in cases of disagreement, will be evaluated by the hospital ethics committee. This ensures family members that physician’s futility decisions are not based on physician’s personal views and has taken the policy and the patient’s best interests into account.

The second policy option is to address medical futility through a legislative approach, by adopting a national or state law. In the United States this has been implemented in the states of Texas and Virginia for more than a decade. These two states appear to have carved out a set of circumstances under which a physician could unilaterally withhold or withdraw life sustaining treatments even though the patient or family object to such action [4].

However, in recent years, these two states’ laws have been subject to critical bioethical analysis.

For instance, as Truog and Mitchell [5] observe in comparing these two futility policies “a due process approach is an excellent way to address the concerns of caregivers while equally respecting the views of patients and families...and when applied through state laws, however, we believe there may be an unjustified imposition of the caregivers’ perspective on that of the patient and family”.

## Towards a Futility Policy: Points to Consider

The development of a medical futility policy cannot ignore medical facts, normative values, socio-economic considerations and the opinions of patients and families.

In a futility policy, neither legitimizing the excessive claims of patients to dictate the course of treatment nor granting physicians the authority to decide exclusively and unilaterally will solve the problem. Not only would such approaches fail to prevent conflict between the parties involved, but also damage the essential elements of “trust” in the therapeutic relationship. If the patient feels that the physician’s opinion prevails unilaterally, the patient may think that his or her wishes and values are being disrespected by the physicians. On the other hand, if physicians are pressured to comply with whatever their patients ask, they may see this as a violation of their professional integrity.

In a fair approach to this problem, a futility policy should be based neither on excessive patient autonomy nor physician paternalism [6]. It is important to take a comprehensive approach that balances patient autonomy and physician authority so that neither party feels they are being undermined. In addition, it must allow physicians to support and guide patients’ decision-making without surrendering his professional integrity or imposing medical power on their patients. Guidelines should provide the opportunity for all voices to be heard. It is important to give an opportunity to patients and their family to exchange information and engage in dialogue with physicians and to help each party understand the other’s concerns. Such approach encourages all parties to understand and accept the limitations of medicine and the inescapable clinical reality in which they should no

longer insist only on their personal views. It should require physicians to listen attentively to their patient’s concerns and the patient and family should realize the limits of medicine and respect the just claims of others on scarce resources. This provides an opportunity to override a scientific justification for a futility decision by providing morally justifiable reasons, if they exist.

In addition to guidelines, however, there is a great need for professional and public education about end of life decision making in general and medical futility in particular. It is important to emphasize what the late Dr. Pellegrino reminded us, “Physicians’ responsibility is to restore health, if that is possible; or to provide comfort care if restoration of health is not possible”. However, care of the patient is never futile.

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