Futility: Values in Conflict

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Objectives

1. Identify the controversy around defining medical futility.

2. Analyze how different interpretations of the “sanctity of life” affects individuals’ requests for life sustaining treatment in the face of a poor prognosis.

3. Describe a process-based approach to resolve conflicts about medical futility.
Case of Mr. Paul

Mr. Paul is a 72 year-old man with a history of CAD s/p CABG, admitted with pneumonia. He develops sepsis, MSOF and is admitted to the ICU where he is intubated, ventilated and given pressors in addition to antibiotics. After 3 days in the ICU, Mr. Paul remains pressor dependent and develops anuria.
You believe that Mr. Paul’s chance of surviving to discharge is <5%. When you discuss this with the family, they say he would “want everything possible to give him a chance”.

Is further treatment futile in this setting? Would you unilaterally withdraw life support?
Futility
The Concept of Futility

- Latin: *futilis*- leaky
- OED: *futile*: leaky, failing in the desired end through intrinsic defect.

- Greek mythology: the daughters of Danaus were condemned in Hades to fill a large pond by transporting water in leaky buckets.

Futile medical interventions serve no meaningful purpose, no matter how often they are repeated.
The Strict Concept of Futility
Justification for Unilateral Decisions

**Definition:** the intervention will not accomplish its intended goal.

- The intervention has no pathophysiologic rationale. (treating MI with antifungal therapy)
- The intervention has already failed in the patient. (asystole despite ACLS).
- Cardiac arrest occurs despite maximal treatment. (sepsis → hypotension → cardiac arrest)

Lo B. Resolving Ethical Dilemmas. 2000; 72-79
Discarded definitions of futility

“When physicians conclude (either through personal experience…or consideration of published empiric data) that in the last 100 cases a medical treatment has been useless, the treatment should be considered futile.”

“If treatment merely preserves permanent unconsciousness or cannot end dependence on ICU care, the treatment should be considered futile.”
What constitutes a “life worth living”?  

<table>
<thead>
<tr>
<th>Philosophy</th>
<th>Description</th>
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<tbody>
<tr>
<td>Vitalist</td>
<td>Life is precious in any form; value measured in milliseconds.</td>
</tr>
<tr>
<td>Hedonist</td>
<td>Life’s value is having more pleasure than pain.</td>
</tr>
<tr>
<td>Affective</td>
<td>Life’s value arises from human interaction and emotional relationships</td>
</tr>
<tr>
<td>Autonomy</td>
<td>Life’s value derives from the ability to self-determine. When that ability is gone…</td>
</tr>
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Emanuel EJ, Hastings Center Report. 1987
Conflicting Ethical Duties

**AUTONOMY**

“Patient’s right to potentially beneficial treatment”

**FAIR RESOURCE ALLOCATION**

“The world has only so much money”

*Individual Perspective*

*Societal Perspective*
Legal Aspects of Futility
Physician Autonomy & the Wanglie Case

The Case: 85 year-old woman in a persistent vegetative state suffered hip fracture and cardiopulmonary arrest → resuscitated, but permanently unconscious.
MDs stated that further life-sustaining interventions represented “inappropriate medical treatment.” Husband disagreed & sued.

The Ruling: Husband was appointed conservator. Patient autonomy trumped physician judgement of the appropriateness of care.

Legal Aspects of Futility

• Legal opinions: cost-containment is probably not a valid legal defense for denial of ICU admission & treatment.

“…courts look to consensus statements by professional groups as one of the main sources of the legal duties to which MDs must conform.”
SCCM Guidelines on Futile Treatment
SCCM Consensus Statement on Futility

Definition: A futile intervention is one that will not accomplish the intended goal.

- Futile treatments are rare.
- Futility not a useful concept for policies to limit treatment or contain costs.
Would futility guidelines save money?

“The low frequency of futility in an adult intensive care unit setting.”


“The frequency of futile interventions appears to be low unless one is willing to accept a definition that includes patients who could survive for many months... this suggests that concepts of futility will not play a major role in cost containment.”
Would futility guidelines save money?

“Resource consumption and the extent of futile care among patients in a pediatric intensive care unit setting.”


“Despite our use of broad definitions of medical futility, relatively small amounts of resources were used in futile PICU care... attempts to reduce resource consumption in the PICU by focusing on medical futility are unlikely to be successful.”
Financial Aspects of ICU Rationing
Will it reduce health care costs?

- 85% of ICU costs are fixed.
- The most ‘expensive’ ICU patients cannot be predicted.
- The majority of patients whose ICU stays were the most expensive had intermediate predicted survival (40-80%).

Conclusion: Because of the difficulty identifying terminally ill patients and the high fixed costs, ICU rationing likely will not yield significant cost savings.
A Potentially Ethical Version

Benefits

Costs

Reallocation to other patients in circle

Small % of $s leave circle to:
- Lower premiums (taxes)
- Pay for cost of maintaining circle
A More Problematic Version

**Benefits**
- Reallocation to other patients in circle

**Costs**
- Most $s leave circle to:
  - Pay CEO, shareholders
  - Pay incentives for withholding care
Why Saying ‘No’ in the US is Difficult

- Lack of a closed-budget system. Will the money saved by saying ‘no’ be put to better use in the system?
- Lack of universal access to care (40 million uninsured).
- Perceived breakdown of fiduciary relationship
- No clear prioritization of health care needs.
SCCM Categorization of Types of Treatments

Futile Treatment: Will not achieve the intended outcome

Potentially Inadvisable Treatment
- Is extremely unlikely to achieve the intended outcome
- Is potentially beneficial but extremely expensive
- Is of uncertain or controversial benefit
Policies to Limit Inadvisable Treatment: Ethical Requirements

- Rationale is explicit, equitable, democratic
- Does not disadvantage the disabled, poor or uninsured
- Recognizes the diversity of individual values
Policies to Limit Inadvisable Treatment: 
Procedural Recommendations

• Be disclosed in the public record
• Reflect the moral values of the community
• Not based exclusively on prognostic scoring systems
• Contain an appeals mechanism
• Be recognized by the Courts
The Texas Advance Directives Act
A process-based model for resolving futility disputes

- Goal: to strike a balance between patient autonomy and physician autonomy

- Used in setting that MD believes treatment is “futile”, but family insists on treatment

- A process of deliberation that is written into law in Texas; it protects physicians from prosecution if the steps are followed.
Resolution of Futility by Due Process:
The Texas Advance Directives Act

1. Family must be given written information about the futility determination process
2. Family given 48 hrs notice and is invited to participate in the consultation process
3. Ethics committee must provide a written report of its findings to the family
4. If dispute cannot be resolved, then hospital must attempt to arrange transfer to another hospital.
Resolution of Futility by Due Process:
The Texas Advance Directives Act

5. If no willing provider found w/in 10 days, MD can unilaterally WD the treatment in question.

6. Family can ask a court judge to grant an extension (judge must determine that there is reasonable likelihood of finding a willing provider).

7. If the above steps are followed, physician may unilaterally withdraw treatment with immunity from prosecution.
Legal challenges to the TADA

- Violation of due process considerations
- Denies patients with “alternative views” of the sanctity of life the right of a fair hearing.
The Ddx: Why won’t the family let us stop?

- Misunderstanding about prognosis
- Distrust of physicians’ prognostications
- Conflict within family
- Overwhelming grief
- Ulterior motives
- Deep moral disagreement about what constitutes a life worth living
Medical Futility- Take Home Points

• Most MDs use the term loosely and inaccurately
• Futile only if the treatment cannot achieve the desired outcome.
• The thought that tx is futile should trigger in-depth, clear discussion with family about prognosis.
• Prudent to involve ethics committee if conflict is intractable