UPMC LIFE CHANGING MEDICINE

Medical Futility

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UPMC Passavant

May 17, 2019

FACTUAL SCENARIO

82-year old female Mandarin speaking only.

Metastatic squamous cell cancer with mets to brain, lung and bronchial obstruction. Recent lengthy hospitalization at Shadyside. Was discharged home with family with recommendation hospice.

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Out of hospital arrest. Presents to ED at Passavant. She is presently in ICU vented. EEG hypoxic encephalopathy. Neuro documents prognosis for functional recovery grim. Palliative and Dr. Doe met with family yesterday and outlined current medical issues including the fact that she will never be able to have further intervention for her cancer; she has anoxic brain injury and will not survive this hospitalization. Family is adamant that they want to continue care without limitations and would not consider removing support. No Advanced Directive. Extensive documentation that this is nonbeneficial care.

FACTUAL SCENARIO

- **Communicate**
- **Negotiate**
- **Ethics and Legal Involvement**
- **Immunity**

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Dearth of Case Law

- **So Policies Reflect Statutory Language**
- **Gilgunn v. Mass General (Mass Suffolk County Superior Court, April 25, 1995 #92-4820)**
  - **71-year old woman on a respirator**
  - **Diabetes, heart disease, breast cancer, hip fracture**
  - **Two seizures—coma**
  - **Daughter wanted everything done**
  - **After several weeks, doctors decided further treatment futile**
  - **Attending entered a DNR order**
  - **Daughter sued after patient died**
  - **Jury found patient would have wanted CPR but also that it would be futile**
  - **Defense Verdict**

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20 Pa.C.S.A. § 5422

"End-stage medical condition." An incurable and irreversible condition in an advanced state caused by injury, disease or physical illness that will, in the opinion of the attending physician to a reasonable degree of medical certainty, result in death, despite the introduction or continuation of medical treatment. Except as specifically set forth in an advance health care directive, the term is not intended to preclude treatment of a disease, illness or physical, mental, cognitive or intellectual condition, even if incurable and irreversible and regardless of severity, if both of the following apply:

(1) The patient would benefit from the medical treatment, including palliative care.

(2) Such treatment would not merely prolong the process of dying.

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20 Pa.C.S.A. § 5422

“Permanently unconscious.” A medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, an irreversible vegetative state or irreversible coma.

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20 Pa.C.S.A. § 5422

“Life-sustaining treatment.” Any medical procedure or intervention that, when administered to a patient or principal who has an end-stage medical condition or is permanently unconscious, will serve only to prolong the process of dying or maintain the individual in a state of permanent unconsciousness. In the case of an individual with an advance health care directive or order, the term includes nutrition and hydration administered by gastric tube or intravenously or any other artificial or invasive means if the advance health care directive or order so specifically provides.

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20 Pa.C.S.A. § 5423

(c) Findings in general. The General Assembly finds that:

(1) Individuals have a qualified right to make decisions relating to their own health care.

(2) This right is subject to certain interests of society, such as the maintenance of ethical standards in the medical profession and preservation and protection of human life.

(3) Modern medical technological procedures make possible the prolongation of human life beyond natural limits.

(4) The application of some procedures to an individual suffering a difficult and uncomfortable process of dying may cause loss of dignity and secure only continuation of a precarious and burdensome prolongation of life.

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20 Pa.C.S.A. § 5424

(a) Notification by attending physician or health care provider. If an attending physician or health care provider cannot in good conscience comply with a living will or health care decision of a health care agent or health care representative or if the policies of a health care provider preclude compliance with a living will or health care decision of a health care agent or health care representative, the attending physician or health care provider shall so inform the principal if the principal is competent or the principal's health care agent or health care representative if the principal is incompetent.

(b) Transfer. The attending physician or health care provider under subsection (a) shall make every reasonable effort to assist in the transfer of the principal to another physician or health care provider who will comply with the living will or health care decision of the health care agent or health care representative.

(d) Liability. If transfer under subsection (b) is impossible, the provision of life-sustaining treatment to a principal may not subject an attending physician or a health care provider to criminal or civil liability or administrative sanction for failure to carry out either the provisions of a living will or a health care decision of a health care agent or health care representative.

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20 Pa.C.S.A. § 5431

(a) General Rule. A health care provider or another person may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed an act of unprofessional conduct as a result of any of the following:

(6) Refusing to comply with a direction or decision of an individual based on a good faith belief that compliance with the direction or decision would be unethical or, to a reasonable degree of medical certainty, would result in medical care having no medical basis in addressing any medical need or condition of the individual, provided that the health care provider complies in good faith with sections 5424 (relating to compliance) and 5462(c) relating to duties of attending physician and health care provider).

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Act 169

§ 5409

§ 5409. Unwillingness to comply; transfer of declarant.

(a) Attending physician or health care provider.--If an attending physician or other health care provider cannot in good conscience comply with a declaration or if the policies of the health care provider preclude compliance with a declaration, the attending physician or health care provider shall so inform the declarant, or, if the declarant is incompetent, shall so inform the declarant's surrogate, or, if a surrogate is not named in the declaration, shall so inform the family, guardian or other representative of the declarant. The attending physician or health care provider shall make every reasonable effort to assist in the transfer of the declarant to another physician or health care provider who will comply with the declaration.

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UPMC Presbyterian Shadyside Policy PR-19, Patient Rights

Resolution of Intractable Disputes Related to Life-Sustaining Measures, April 26, 2018

I. POLICY

The goal of this policy is to define a process for resolution of conflict involving requests by the patient or the patient's surrogate (the patient's health care agent, health care representative, or court-appointed guardian) for initiation or continuation of medical interventions that clinicians feel are inappropriate.

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UPMC Systemwide Policy HS-PS0506*, Physicians

Guidelines on Life-Sustaining Treatment, December 31, 2018

I. POLICY

It is the policy of UPMC to provide quality medical care to its patients with the objective of enhancing the quality of life and conforming to accepted medical and ethical standards of care. We also recognize the right of all competent patients to limit, refuse or discontinue medical treatments, including those which are life-sustaining.

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UPMC Systemwide Policy HS-PS0506*, Physicians (continued)

Guidelines on Life-Sustaining Treatment, December 31, 2018

E. Collaborative Physician-Patient Decision Making/Rights of Physicians and Health Care Workers

3. Where a physician believes that complying with a patient's or substitute decision maker's instructions would be unethical or result in treatment having no medical basis in addressing any medical need or condition of the patient, or where a physician believes that complying with a substitute decision maker's instructions would be contrary to the patient's wishes, then the physician should seek assistance from the appropriate Ethics Consultative Service and the UPMC Corporate Legal Department.

4. If, following such efforts, the attending physician and patient or substitute decision maker do not reach a mutually acceptable agreement, the physician should offer and make reasonable attempts to transfer the care of the patient to another provider who would be willing to carry out the patient's or substitute decision maker's instructions. This should be the final option after attempting to resolve differences with the assistance of the Ethics Consultation Service and UPMC Corporate Legal Department. If transfer is not feasible, then the Ethics Consultation Service and Corporate Legal Department should be notified and should participate in any further decision-making.

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Hahnemann University Hospital

Withholding or Withdrawing of Life-Sustaining Treatment

(including Guidance on Futile Medical Treatment)

Futile Medical Treatment

A health care provider or another person may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed an act of professional conduct as a result of refusing to comply with a direction or decision of an individual based on a good faith belief that compliance with the direction or decision would be unethical or, to a reasonable degree of medical certainty, would result in medical care having no medical basis in addressing any medical need or condition of the individual. (Emphasis in original.)

The patient or his/her health care agent/representative has the right to make informed decisions regarding medical care. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

Medical Futility

Hahnemann University Hospital

Withholding or Withdrawing of Life-Sustaining Treatment

(including Guidance on Futile Medical Treatment)

Procedure

When an attending physician determines a current or requested course of treatment is medically futile, the physician must inform the patient or health care agent/representative of the following: the nature of the ailment, the prognosis, the reasons why the treatment is medically futile, the options including palliative treatment and hospice. This should include a discussion of the goal of care. The assistance of a third party, such as a nurse, social worker, chaplain, or informed relative, maybe sought to facilitate the patient's or decision-maker's understanding of the physician's explanation.

Forgoing medically futile treatment does not constitute abandonment; rather, it reinforces the commitment to continue the provision of palliative treatment.

The attending physician must certify the end-stage medical condition or that the patient is permanently unconscious in the medical record.

The attending physician should document in the patient's chart that the treatment under consideration is medically futile and a discussion with the patient or authorized decision maker has occurred.

Exceptional reasons may exist for providing treatment that is medically futile for short periods of time in order to provide special accommodations to the patient and family.

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LOYOLA UNIVERSITY CHICAGO MEDICAL CENTER POLICY

Medically Futile Resuscitation:

- *"Physicians are not obliged to initiate or continue medically useless resuscitation. When death is imminent for a terminally ill patient, or it is clear that resuscitation efforts will not be effective in resuscitating the patient, resuscitation can be omitted. The family should be informed that resuscitation would be ineffective and will not be considered owing to the burdens it would impose on the patient without any expectation of medical benefit. The consent of the family is not needed for the attending physician to discontinue or withhold resuscitation that is deemed to be medically futile. Medically futile resuscitation does not include treatment that is provided for a patient's comfort, care, or alleviation of pain. This decision should be documented by the Physician in the patient medical record." [RES-005]*

- ***Wasson***

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MAYO CLINIC

Ten Common Questions (and Their Answers) on Medical Futility

Keith M. Swetz, MD, MA; Christopher M. Burkle, MD, JD; Keith H. Berge, MD; and William L. Lanier, MD

Mayo clin Proc., July 2014;89(7);943-959

Defining Futility:

"Definition of medical futility: excessive (in terms of effort and finances) medical intervention with little prospect of altering a patient's ultimate clinical outcome."

Use the term "Potentially Inappropriate" instead of futile.

Medical Futility

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Predictive models do reasonably well at a population level but not so much for individual patient prognostication.

Miracle Outcomes

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Impact of costs: Does it ever matter?

- ***Rationing of Care***

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American Medical Association

Futility

- ***Meriam Webster- "useless act or gesture"***
- ***Medical Futility***
  - ***Physician judges that in last 100 cases treatment has been useless (less than 1% chance of success)***
  - ***'Effect' of treatment = limited to one part of the body***
  - ***'Benefit' = improves patient as a whole***
  - ***Schneiderman et al. 1990***
  - ***Wasson***

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American Medical Association

Futility (continued)

- ***AMA Code of Medical Ethics opinion on futile care:***

"Physicians are not ethically obligated to deliver care that, in their best professional judgment, will not have a reasonable chance of benefiting their patients. Patients should not be given treatments simply because they demand them."

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Ethics in Medicine, University of Washington School of Medicine
Medical Futility by: Nancy S. Jecker, PhD

What is "medical futility"?

"Medical futility" refers to interventions that are unlikely to produce any significant benefit for the patient. Two kinds of medical futility are often distinguished:

1. ***Quantitative futility**, where the likelihood that an intervention will benefit the patient is exceedingly poor;*

   and

2. ***Qualitative futility**, where the quality of benefit an intervention will produce is exceedingly poor.*

Medical Futility

Ethics in Medicine, University of Washington School of Medicine (continued)
Medical Futility by: Nancy S. Jecker, PhD

*Both **quantitative and qualitative futility** refer to the prospect that a specific treatment will benefit (not simply have a physiological effect) on the patient.*

Futility does not apply to treatments globally, to a patient, or to a general medical situation. Instead, it refers to a particular intervention at a particular time, for a specific patient. For example, rather than stating, "It is futile to continue to treat this patient," one would state, "CPR would be medically futile for this patient."

Substituted judgment of patient standard.

Questions

- **Who decides when treatment is futile?**
  - **Heathcare providers**
  - **Patients and their surrogates**
  - **The courts**
- **Anderson**

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Annals of Internal Medicine

Discussing Treatment Preferences with Patients Who Want "Everything"

September 1, 2009

One option is to consider a time-limited trial. A treatment's potential effectiveness may be too uncertain for a patient to make a nontreatment decision. Requests to try a particular treatment may be offered in a time-limited way. Then the treatment can be continued or stopped depending on its subsequent effects. For example, the patient we described in the introduction may not want CPR (too burdensome and ineffective), but could benefit from going on a ventilator if she developed a potentially reversible respiratory problem (a mucus plug). She clearly did not want long-term ventilatory support, but the possibility of a "time-limited trial" might provide some middle ground between foregoing this possibly helpful but invasive treatment and accepting that treatment forever without limitations. The challenge is to adapt medical treatments to best serve patients' needs and values in light of their medical conditions.

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Annals of Internal Medicine

Discussing Treatment Preferences with Patients Who Want "Everything"

September 1, 2009

- *Who should be forced to go to Court?*
  - *Providers*
  - *Family*

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- *When is Medical Treatment Futile? A Guide for Students, Residents, and Physicians*, Deborah L. Kasman, MD, MA, J Gen Intern Med. 2004 Oct; 19 (10): 1053-1056. doi: 10.1111/l. 1525-1497.2004.40134.x

- S.Y. Tan, *Consent and DNR Orders*, The Hospitalist (February 14, 2018), https://www.the-hospitalist.org/hospitalist/article/158675/business-medicine/consent-and-dnr-orders

- *Pennsylvania Medical Society Advance Health Care Directives and Health Care Decision-making for Incompetent Patients*, A guide to Act 169 of 2006 for physicians and other health care providers

- SOC Medical Futility (PowerPoint), James G. Anderson, Ph.D., Purdue University, https://slideplayer.com/slide/7543478/

- Ethical Issues at the End-of-Life (PowerPoint), Katie Wasson, Ph.D., MPH, Associate Professor, Neiswanger Institute for Bioethics, Stritch School of Medicine, Loyola University of Chicago