Legal Mechanisms to Resolve Futility Disputes

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Last resort

Consensus Intractable
5% of futility conflicts are intractable

Transfer

Surrogate Selection
  Concept
1. Follow directions
2. Substituted judgment
3. Best interests

Surrogate Selection Cases
<table>
<thead>
<tr>
<th>Surrogate</th>
<th>Advance directive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Go</td>
<td>Stop</td>
</tr>
</tbody>
</table>

Minnesota

2011

Albert Barnes
2005

Barbara Howe

[Image of Massachusetts map]

[Image of Barbara Howe]

[Image of Barbara Howe doing ironing]
“Your own personal issues are impacting your decisions”

“Refocus your assessment”

Surrogate Selection
3 comments
Not just an **option**
But a **duty**

*Cardoza v. USC*  
(Cal. App. 2008)
Surrogate Selection
Limitations

Good ?? Bad

Hassan Rasouli
Withhold or withdraw without consent

Green light
You may stop LSMT for **any reason**
- with immunity
- if your HEC agrees

*Tex. H&S 166.046*
Resolution 5848

**TITLE:** LEGAL SUPPORT FOR NONBENEFICIAL TREATMENT DECISIONS

**Author:** H Hugh Vincent, MD
William Andereck, MD

**Introduced by:** District 8 Delegation

**Endorsed by:** District 8 Delegation

Reference Committee

October 4-6, 2008
WASHINGTON STATE MEDICAL ASSOCIATION
HOUSE OF DELEGATES

WA

Subject: Legal Protection for Physicians When Treatment is Considered Futile
Introduced by: King County Medical Society Delegation
Referred to: Reference Committee C

Resolution: C-5 (A-99)

RESOLUTION 1 - 2004
(read about the action taken on this resolution)

WI

Subject: Futility of Care
Introduced by: Michael Katzoff, MD and the Medical Society of Milwaukee County

RESOLVED, That the Wisconsin Medical Society, concurrent with a recommendation of the American Medical Association, Medical Futility in End-of-Life Care policy E-2.037, supports the passage of state legislation which establishes a legally sanctioned extra-judicial process for resolving disputes regarding futile care, modeled after the Texas Advanced Directives Act of 1999.

S.B. 1114
(Mar. 2009)
Conscience clauses
Traditional limitation

Treat until transfer

Miss. Code § 41-107-3

Oklahoma

Okla. H.B. 2460
Red lights

SB 1348
effective
July 2012
Discrimination in Denial of Life-Preserving Treatment Act

“Health care . . . may not be withdrawn or denied if its provision is directed by . . . patient . . . directive . . ., or . . . surrogate”

“Futile care” exception
“... death is **imminent** within hours or at most a few days whether or not ... treatment is provided ...”

**OR**

“denial ... will **not result** in or hasten ... death.”
“may decline to comply . . . medically inappropriate health care . . . contrary to generally accepted health care standards”
Providers won almost every \textit{ex post} case.

Risk > 0

Perceptions of “futile care” among caregivers in intensive care units

“... follow the ... SDMs instead of doing what they feel is appropriate, ... lack legal support.”
References


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Pope TM, Restricting CPR to Patients Who Provide Informed Consent Will Not Permit Physicians to Unilaterally Refuse Requested CPR, 10(1) AM. J. BIOETHICS 82-83 (Jan. 2010).


