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Medical Futility: Can a Physician Unilaterally Terminate Treatment for a Patient When he Believes Further Measures to be Futile?

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Research Guides

Medical Futility: Can a Physician Unilaterally Terminate Treatment for a Patient When he Believes Further Measures to be Futile?

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Overview

With patients like Karen Quinlan, Nancy Cruzan, and Terri Schiavo gaining nationwide notoriety in their efforts to control their individual healthcare decisions, end-of-life case have attracted the spotlight. Generally defined, a futile medical intervention is one which would serve no meaningful purpose, no matter how often a treatment is repeated. When the decision whether a certain treatment is futile requires a value judgment from a physician, like weighing the chance of a full recovery against the cost of maintaining the patient's life, family members will often disagree with the physician's medical opinion. The ultimate issues in these end-of-life cases become patient versus physician autonomy, the best interests of the patient, and the patient's wishes regarding his care, if they can be ascertained.

Medical futility law and the rules regarding who is authorized to make decisions for a patient who is unable make healthcare decisions for himself are regulated by both state and federal law, and the variety of subjects to which medical futility decisions stretch make understanding the different aspects of the law extremely important, especially for practicing physicians. To date, the Supreme Court has not rendered a decision specifically answering the question raised here, but it has addressed similar issues, and there are many jurisdictions throughout the United States which have discussed and given their interpretation of the law regarding medical futility. Those court opinions, along with federal and state legislation give us a background of where the law began and where it is going in the future.

Scope of this Topic

This research is intended as an introduction to the laws surrounding medical futility in the United States. The materials produced here were generated to offer the law student, attorney, or medical professional a starting point for researching issues surrounding end-of-life cases when further treatment seems inappropriate or unnecessary. This research guide provides both primary and secondary sources that pertain to specific areas of advance directive and medical futility law. Please use these sources as a guide in your research or for an example of how to perform research on a similar topic.

About the Author

Drew Timmons is a third year student at Georgia State University's College of Law. He will graduate in May of 2008 and plans to pursue litigation and health care law. This guide was developed for Professor Nancy P. Johnson's Spring 2008 Advanced Legal Research Class.

Send an email to njohnson@gsu.edu for more information about this bibliography.

Disclaimer

The annotations provided here do not constitute legal advice. This guide is designed to be a starting point for research and is not comprehensive. Further, this guide has not been updated since April 2008. Do not rely on the author's interpretations of the cases or statutes provided. If you have questions on how to proceed with your research, talk to the reference librarians.

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Primary Sources

Legislation

i. Federal Statutes

Understanding federal statutes does not play a huge role in the medical futility discussion because Congress has not specifically addressed the issue. However, there is one federal statute which has been applied in certain medical futility cases.

- 42 U.S.C. § 1395dd – Emergency Medical Treatment and Active Labor Act (E.M.T.A.L.A.)

  The relevant sections of the Emergency Medical Treatment and Active Labor Act make it unlawful for a medical facility with an emergency department to turn patients away from treatment when they are in an emergency medical situation or when they are in active labor, despite any belief by the medical personnel that such care would be medically futile. However, the care required under the act need only stabilize the patient in order to effectuate a transfer, as the law was enacted in an attempt to prevent “patient dumping.” Further, most medical futility cases don’t arise in an emergency context, so the federal law only applies in certain circumstances and cannot be relied upon by families as a statutory duty to provide unnecessary or inappropriate care.

ii. State Statutes

While most states have some law on the books regarding surrogate decision making or advance directive law, the listing of those statutes is unnecessary due to the specificity of this topic. The more controversial state statutes are those regarding unilateral decision making by physicians and eliminating a duty to treat patients whose further care is deemed by their physician to be futile, and they are the more appropriate statutes here.

- Tex. Health & Safety Code Ann. § 166.046

  This is the most prominent state law on the issue of unilateral decision making by physicians in terminating healthcare for a patient if such care is believed to be futile. A qualified patient under the statute is one who is terminally ill with an irreversible condition. If the patient’s family/surrogate disagree with the physician’s opinion that continued care is futile, an ethics committee must review the decision and decide if they agree with the physician or the surrogate. If the ethics committee believes the care to be futile, the patient must be transferred within ten days or the physician has the right to terminate care for the patient, even over his family or surrogate’s objection.

- Va. Code Ann. § 54.1-2990

  The Virginia statute resembles that of Texas, in that it is the only other state which has a time limit set within the law in which the patient must be transferred after the physician has determined further care to be medically or ethically inappropriate. In Virginia’s case, the limit is 14 days, during which time continued care must be provided. Afterwards, however, the physician has no further duty to treat the patient.

- Cal. Prob. Code § 4735

  The California statute allows physicians to disregard health care instructions given by a patient or surrogate which would provide for medically ineffective health care, somewhat eliminating a physician's duty to treat in certain circumstances.

- N.M. Stat. Ann. § 24-7A-7

  The New Mexico statute uses the exact same language as the California statute, and defines "medically ineffective health care" as treatment that would not offer the patient any significant benefit, as determined by a physician. This provides that the physician’s decision may not even require the review of an ethics committee.

- Md. Health-General Code Ann. § 5-611

  The Maryland statute is distinguishable from the others. It still seems to eliminate the duty to treat a patient with care that is deemed by a physician to by ethically inappropriate or medically ineffective, but it requires an additional physician to agree and it does not allow a physician to terminate health care if the patient’s previous advance directive or other expression indicates that he would not agree to such an act.

- Unif. Health-Care Decisions Act § 7 (1993)

  This act was drafted in 1993 as a model advance directive act for states to use when drafting their own similar acts. The relevant portion of it states that a hospital or other health care provider may refuse to comply with a patient's advance directive for health care if the suggested treatment requires providing medically ineffective health care or health care contrary to generally accepted health-care standards. It has been adopted and/or revised by several states, none of which have substantially changed the aforementioned clause, including Hawaii, Wyoming, and Mississippi.

- Model Starvation and Dehydration of Persons with Disabilities Prevention Act (Revised 2006)

  This model act was authored by the National Right to Life organization as a format for states to use when drafting their own similar acts to protect persons who are unable to make their own health care decisions. The act provides that there is a presumption that all patients incapable of making health care decisions have instructed their health care providers to continue to give nutrition and hydration to a degree that is sufficient to sustain life. However, it has an escape clause where, in the physician’s reasonable medical judgment, the nutrition and hydration would not contribute to sustaining the patient’s life or providing comfort to the patient. This is not controlling law, but it has been introduced in several states.

Case Law

i. Supreme Court Cases

- ***Cruzan by Cruzan v. Director, Missouri Dept. of Health***, 497 U.S. 261 (1990)

  Nancy Beth Cruzan was severely injured in an automobile accident in 1983, and after some weeks in the hospital, she progressed to a persistent vegetative state with virtually no chance of recovering to a cognitive state. Her parents requested that the hospital to terminate the artificial nutrition and hydration which was keeping her alive, but the hospital refused to do so. This was the first "right to die" case to reach the United States Supreme Court. The narrow legal question was whether Missouri could insist procedurally upon "clear and convincing" evidence of an incompetent patient's wishes before allowing the termination of life support. The Supreme Court ruled that this state procedural requirement was permissible under the federal constitution. More broadly, the Court assumed that competent patients had the right to refuse lifesaving nutrition and hydration, and that this right to die was a constitutionally protected right. On remand to a Missouri court, testimony from friends and family concerning her wishes permitted the feeding tubes to be removed and Ms. Cruzan died.

ii. Federal Cases

- ***In the Matter of Baby K***, 15 F.3d 590 (4th Cir. 1994)

  This case challenged the Virginia medical futility statute in an emergency situation. Baby K was born in a Virginia hospital suffering from anencephaly, an irreversible congenital condition in which a major part of the brain is missing. Physicians attempted to convince the mother that respiratory support would serve no therapeutic purpose and that continued aggressive treatment was inappropriate. The mother disagreed, however, and insisted that the infant be provided with mechanical ventilation whenever she had difficulty breathing. While the baby was weaned from a ventilator and transferred to a nursing home, whenever her breathing difficulties recurred she was readmitted to the hospital to be placed on a ventilator. The hospital went o court for a declaration that, under Virginia law, it did no have a duty to keep providing Baby K with ventilator support. The federal court of appeals held that the Virginia state futility statute was pre-empted by EMTALA, and since the baby had come to the hospital with an emergency condition (respiratory distress), the hospital was legally obligated to provide respiratory support necessary to stabilize her condition.

iii. State Cases

While the Supreme Court has not further addressed the specific issue of decision making in end of life case where a medical intervention is deemed futile, many states have discussed some of the concerns of both individuals and physicians. The following are notable cases which provide some insight into the path that a doctor should take under certain circumstances, and they may be persuasive in any given state.

- ***HCA, Inc. v. Miller ex rel. Miller***, 36 S.W.3d 187 (Tex. App. Houston 14th Dist. 2000)

  In this case, parents brought a negligence action against the hospital for allegedly administering life-sustaining medical treatment to their premature newborn infant, contrary to pre-birth instructions of her parents not to do so. The court ruled in favor of the parents, reversing the lower court's decision. It held that states are not required to authorize anyone besides the individual patient to exercise the patient's right to refuse life-sustaining medical treatment.

- ***In re Matter of Quinlan***, 70 N.J. 10 (N.J. 1976)

  In this case, Karen Ann Quinlan, a young woman in her early twenties, was admitted to a New Jersey hospital after friends and a rescue squad failed to revive her following two 15-minute periods when she stopped breathing. She lapsed into a persistent vegetative state, from which her doctors predicted no hope of recovery. After months of hospitalization, her father petitioned to have her removed from the ventilator which was sustaining her life. The Supreme Court of New Jersey granted the father's petition, despite testimony from her physicians that doing so would conflict with their professional medical judgment and offend prevailing medical standards. Despite no expression of the patient's wishes, under the doctrine of "substituted judgment", the court found that her father could determine her wishes and exercise her right to decline further treatment. She survived for another ten years after the ventilator was removed.

- ***Barber v. Superior Court***, 147 Cal. App. 3d 1006 (Cal. App. 1983)

  The defendants in Barber were two physicians who had followed a family member's direction to remove life-sustaining treatment from the patient, and as a result, the patient died. The state of California sought to indict the physicians for murder, but the court refused, stating that the doctors had no duty to continue treatment "once it has become futile in the opinion of qualified medical personnel." The court defined futile as those procedures that lack the ability to "improve the prognosis for recovery." While this decision seems definitive regarding a physician's duty, it was applied in a situation in which both the attending physician and the patient's family agreed on the course of treatment. The court simultaneously favored direct control by the physician, while placing the decision of whether or not to treat the patient in the hands of the family.

- ***Matter of Westchester County Med. Ctr. on Behalf of O'Connor***, 72 N.Y.2d 517 (N.Y. 1988)

  This case involved an elderly patient who was incompetent and unable to make her individual health care decisions. As a result of several strokes, she was unable to obtain food or drink without medical insistence. Because of alleged statements made by the patient to her daughters that she did not want to be kept alive by artificial means, the daughters insisted that no medical efforts be made by the hospital staff to continue to provide her with artificial nutrition or hydration. The hospital disagreed. In this dispute between her daughters and the hospital the question was whether the hospital should be permitted to insert a nasogastric tube to provide her with sustenance or whether, instead, such medical intervention should be precluded and she should be allowed to die. The court of appeals of New York found that the hospital's petition to provide the patient with artificial sustenance over the objections of the patient's family was granted because there was not clear and convincing proof that the patient had made a firm and settled commitment, while competent, to decline this type of medical assistance under the circumstances. While this case may have been ruled in favor of the physician's medical opinion, like *Barber*, it also tends to favor patient autonomy above physician autonomy.

- ***In re Helga Wanglie*** (cite not available), as discussed in 'A. Capron, "In Re Helga Wanglie," ***Hastings Center Report*** 21(5) (1991)'

  Helga Wanglie was an 86-year old woman rendered comatose by a massive stroke. After months in the intensive care unit of a Minnesota hospital, the patient's physician's sought to have her removed from a ventilator on the grounds that further treatment was futile. The patient had no advance

directive, and her husband, as her legal representative, insisted upon continuing treatment. The hospital and physicians sought to have Mr. Wanglie replaced as legal guardian in an effort to remove the ventilator. The Minnesota court refused to appoint another guardian because they found nothing in the record which would suggest that the husband was not competent to determine what the patient's best interests were. This case addressed only the narrow question of who was the appropriate decision maker for an incompetent patient, not the lager question of what decisions may appropriately be made by a surrogate or a physicians when their views conflict.

- ***Gilgunn v. Massachusetts General Hospital*** (1995) (cite not available), as discussed in '1997 Task Force on Futility, Health Care Ethics Consortium of Ga., Report on Futility (Jan. 1997).'

  The patient here was a 71 year old woman with multiple illnesses, who was being kept alive with a ventilator at her daughter's request. Eventually, however, the treating physicians felt that further treatment for the patient was futile, and that they were ethically obligated to allow Mrs. Gilgunn to die in peace. After the physician's removed the ventilator, the patient died and her daughter sued in tort for the physicians' unilateral decision to discontinue treatment. The jury in this case returned a verdict which defined further treatment by the physicians as futile and relieved the doctors and hospital from liability. While the case squarely presented the question of whether doctors have the legal right unilaterally to refuse to provide medical treatment in the form of life-sustaining measures which they regard as futile to a critically ill patient, despite demands from the patient's family, it does not have the legal binding effect of a judicial opinion, and it only acts a reflection of what decisions may be yet to come.

iv. Georgia Cases

- ***In re L.H.R.***, 253 Ga. 439 (Ga. 1984)

  L.H.R. was an infant who suffered a medical catastrophe 15 days after her normal birth. A neurologist diagnosed the child as being in a chronic vegetative state with a complete absence of cognitive function, and that such condition was irreversible with no hope of recovery. Because 85 to 90 percent of the child's brain tissue had been destroyed, the neurologist, the infant's parents, and the guardian ad litem all agreed that she should be removed from life-support systems. The hospital and physicians sought declaratory relief, but were enjoined from interfering with the wishes of the infant's parents and her guardian to remove life-sustaining treatment. Such treatment was removed, and the child died 30 minutes later. The question for the court in this case was who could make the decision to remove life-sustaining treatment for a terminally ill, incapacitated patient with no hope of development of cognitive function. The court here held that the decision was up to the parents and/or appointed guardian of the patient, regardless of the lack of any previous decision by the patient, under the doctrine of substituted judgment and the constitutional right of a patient to refuse medical treatment.

- ***Velez v. Bethune***, 219 Ga. App. 679 (Ga. App. 1995)

  This action was brought by the parents of deceased infant, Mary Elizabeth Bethune, seeking to recover against the treating physician for the wrongful death of their child. Because the infant was born prematurely, it had severe pulmonary and respiratory problems, and nine days after its birth, the treating physician ordered the termination, de-escalation, and discontinuance of cardio pulmonary resuscitation, life support measures, and medical treatment for the child. The parents claimed that he acted without their consent. The Georgia court of appeals denied the physician's motion for summary judgment, indicating that all doctors have a duty to treat their patients unless directed contrarily by the patient or her surrogates. In this case, the unilateral decision of the physician to terminate life support was a violation of Georgia law.

- ***Ussery v. Children's Healthcare of Atlanta, Inc.***, 289 Ga. App. 255 (Ga. App. 2008)

  This case involved an infant who was brought into Scottish Rite hospital for throat surgery. After the surgery, complications arose regarding the infant's breathing and there was a period of 20 minutes in which her brain was deprived of oxygen. The treating physicians discussed with the parents the option of withdrawing life support, including nutrition and hydration, and according to hospital records, the parents consented to such an action. After life sustaining procedures were discontinued, the child died, and this action was subsequently brought against the treating physicians and the hospital for an intentional tort. The trail court and the court of appeals found for the hospital, finding no evidence that the parents did not consent to the withdrawal of treatment, and finding that the child's medical condition legally justified the decision to withdraw life support, regardless of whether her condition was terminal or whether death was imminent.

Rules and Regulations

i. American Medical Association Guidelines

Because there is not much controlling law on the issue of physician unilateral decision making, and because it is such an ethical debate among those in the legal and medical profession, the American Medical Association has provided ethical guidelines for doctors to follow when approached with a patient whose care could be futile. While not legally binding, they give an outline of what the majority opinion regarding such cases is at this point in time, and they could provide an outline for a later federal law.

- A.M.A. E-2.307 "Medical Futility in End Of Life Care"

  The guidelines set out here by the American Medical Association direct hospitals and other health care facilities to take a "due process" or "fair process" approach to end of life cases. The guidelines stress negotiations between health care providers and the patient's family or surrogate decision maker in order to come to an agreement about the proper care for the patient. However, if disagreements continue, facilities are to request an ethics committee review, a transfer of the patient if necessary, and if the transfer is not possible and the ethics committee agrees that further care is futile, the facility is given an "ethical green light" to discontinue care for the patient. The guidelines do stress, however, that the legal ramifications of that course of action are uncertain.

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Secondary Sources

Law Review Articles and Other Periodical Sources

Law review articles are very useful in determining the public outlook and a review of the law on a particular issue. Because of the lack of controlling federal law, and the various positions that have been taken on the ethical issue, much has been written about advance directive law, the right to die, and when the right of patients and physicians to make a final decision may butt heads.

- Thomas Wm. Mayo, ***Health Care Law***, 53 SMU L. Rev. 1101 (2000).

  This article discusses in depth the broad range of new Texas health care law which was introduced into the state by its legislature in 1999. While the article spends a good deal of time on other unrelated health care issues, it has a substantial section dedicated to the Texas Advance Directive law referenced above, its potential consequences in the health care field, and arguments both for and against its enactment. The article also discusses abortion, physician liability and health care insurance law within the state.

- Alasdair R. Maclea, ***Advance Directives and the Rocky Waters of Anticipatory Decision Making***, 16 Med. L. Rev. 1 (2008)

  This article presents a broad discussion of advance directives and the moral questions which arise when a person who is incapable of determining his/her immediate future has made an anticipatory decision regarding his/her medical treatment. The author argues that rather than protecting the patient's autonomy, the legal implementation of advance directives actually serves to facilitate the provision of healthcare, to protect the patient's welfare and to protect the healthcare professionals from liability, and that any protection of patient autonomy is secondary to those primary goals.

- Luis Kutner, Comments, ***Due Process of Euthanasia: The Living Will, A Proposal***, 44 Ind. L.J. 539 (1969)

  This article was one of the first proposals for initiating a living will in order to secure patient autonomy even when the patient is incompetent and unable to make his own decisions. It reviews the criminal law behind mercy killings and the idea that the patient's desire to die could overrule the intent to kill of the person who actually did the killing. It does not address the specific issue of unilateral decision making by physicians, but it sheds some historical light on the issue of how advance directives can solve some of the underlying problems with allowing a person to die in accordance with his own wishes.

- Richard P. Vance, ***Autonomy's Paradox: Death, Fear, and Advance Directives***, 42 Mercer L. Rev. 1051 (1991)

  This article presents the conflicts between patient autonomy, religious and moral views, and the efforts to keep trusting relationships in health care possible. The author poses a very strong argument that advance directives are necessary as a substitute for "dying in a community that cherishes an honorable, or a faithful life."

- Michael R. Flick, ***The Due Process of Dying***, 79 Cal. L. Rev. 89 (1991)

  The author of this article not only holds an M.D. from Johns Hopkins, but also acted as a professor of medicine at the University of California and was earning his Juris Doctorate from UC-Berkeley when he tackled the issue of "The Due Process of Dying." In this essay, he addresses patient vs. physician autonomy and their relationship to medical decision making, as well as the role of lawyers and judges in working to negotiate choices between doctors and patients. It discusses thoroughly the conflicts between a patient's right to decide (or their surrogate's right to decide) and the desire of physicians to compel patients to do what they decide is best for them.

American Law Reports

American Law Reports contain broad summaries of legal topics. ALRs are a very useful tool to get a broad overview of a specific issue, and have access to numerous cases that have looked at an issue.

- John D. Hodson, Annotation, ***Judicial Power to Order Discontinuance of Life Sustaining Treatment***, 48 A.L.R. 4th 67 (1986).

  This annotation collects and analyses those state and federal cases in which courts have discussed or determined whether and under what conditions judicial authority exists to order that life-sustaining treatment of patients unable to competently make their own treatment decisions be discontinued.

- Gregory G. Sarno, Annotation, ***Homicide: Physician's Withdrawal of Life Supports From Comatose Patient***, 47 A.L.R. 4th 18 (1986).

  This annotation collects and analyzes the state and federal decisions in which the courts have discussed or determined whether, or under what circumstances, a physician's withdrawal of life support from a comatose or vegetative patient constitutes murder, manslaughter, the unlawful aiding and abetting of suicide, or any other related crime.

Books

Because it is such a controversial issue in the medical and legal fields, books written on the subject could provide the researcher with an in-depth look into the historical background on medical futility guidelines, practice, or law.

- Bernard Lo, Resolving Ethical Dilemmas: A Guide for Clinicians, 3rd Ed. (Lippincott, Williams & Wilkins, 2005).

  This book explains the background and reasoning behind most of the ethical issue that arise in the practice of medicine. It has extensive sections on shared decision making and decision about life-sustaining interventions which would be helpful to a researcher to become more familiar with the subject and the concerns

that arise in the midst of these particular situations.

- Peter J. Riga, Right to Die or Right to Live?: Legal Aspects of Dying and Death (Associated Faculty Press, Inc. 1981). Call Number KF 3827.E87 R53 1983.

  The fact that this book isn't current eliminates its possibility of helping directly with the legal implications of end-of-life decisions, but it gives an overview of some of the older case law on the subject, the right to privacy and the right to die, as well as a look at the role of judges in determining a medical course of action.

- Carl E. Schneider, Law at the End of Life: The Supreme Court and Assisted Suicide (The University of Michigan Press 2000). Call Number KF 3927.E87 L39 2000.

  This book covers a narrower subject with regard to the law at the end of life, specifically physician assisted suicide. However, it still includes some interesting discussion of the court's role in determining what course to take with a patient in a terminal condition and whether or not he or she may retain the ability to decide what and what not to do to his or her body.

- Melvin I. and Philip E. Urofsky, The Right to Die: A Two-Volume Anthology of Scholarly Articles (Garland Publishing, Inc. 1996). Call Number KF 3827.E87 R539 1996.

  This book is a compilation of legal articles, medical journals, opinion pieces, case studies, and more that all discuss the ethics behind end-of-life care and decision making. It starts with medical definitions, and discusses euthanasia, suicide, advance directives, patient vs. physician autonomy, and the court cases that have made decisions regarding such care. This is a great asset for any researcher to have access to relevant material to follow and update since the book's publishing.

Practice Material

- Yale-New Haven Hospital Clinical Administrative Policy & Procedure Manual (Revised 1/21/03, Reviewed 9/1/03, 6/1/05)

  This policy manual includes a section on "Conscientious Practice" which outlines the steps to take when the attending physician of a patient feels that further treatment is medically inappropriate or un-indicated, and yet the patient or his surrogate continues to request the treatment. This is an example of an actual hospital policy and provides some insight for the researcher about the measures that could be taken by a hospital when there is no controlling statutory or case law. This particular hospital procedure includes a review of the decision by an ethics committee, negotiation techniques between the physician and surrogate, transfer of the patient to another facility, and possibly even further review by the hospital's Chief of Staff. The "possible decisions" section eliminates the physician's obligation to provide further treatment if his decision is supported by the committee and/or the Chief of Staff.

Legal Encyclopedias

Legal encyclopedias, like American Jurisprudence (AMJUR) and Corpus Juris Secondum, are great resources for finding a general overview of a legal topic. If you do not know where to start researching a particular legal issue, finding a legal encyclopedia that deals with the issue can help you understand many different aspects of the topic.

- 22A Am. Jur. 2d ***Death*** §§ 504, 513 (2008)

  American Jurisprudence 2d can be found by accessing Westlaw or LexisNexis, or in print in the library. This is an extremely comprehensive secondary source which provides detailed information on the civil and criminal aspects of removing life-sustaining treatment and the discussion of a patient's right to receive and refuse such treatment, including case law and secondary sources dealing with all types of end of life cases. This resource provides an in-depth discussion of advance directive law and the rights of a patient in a terminally ill and incapacitated condition.

- 40A Am. Jur. 2d ***Homicide*** § 622 (2008)

  This section of American Jurisprudence discusses the withdrawing of life sustaining treatment as an exception to the criminal act in most jurisdictions of assisting suicide.

- 83 C.J.S. ***Suicide*** § 11 (2008)

  Corpus Juris Secundum (CJS) is an encyclopedia of U.S. law and is a great resource for starting research. One of the best aspects of CJS is the many footnoted citations to case law that may be helpful to further your research. This CJS discusses the consequences of declining or failing to provide life-sustaining treatment and the patient's or physician's decision to withdraw life support systems from a patient. It determines that refusing medical intervention merely allows the disease or effects of an injury to take its their natural course, and if death were to eventually occur, it would be the result primarily of the underlying disease or injury, and not the result of a self-inflicted injury.

Medical Journals

Because of the close relationship of this legal issue with the everyday practice of medicine, the discussion of medical futility is not limited to legal publications, and rather is greatly expanded upon throughout medical journals. The following articles are just a few of the ethical positions that have been taken within the medical field and they present a potential future path for lawmakers.

- R. Baker, "The Ethics of Medical Futility," ***Critical Care Clinics*** 9(3) (1993)

  This article attempts to raise all of the ethical issues which arise when future care for a patient is deemed futile by her physician. It uses the principles of medical ethics, *autonomy, beneficence, nonmaleficence, and justice,* as a framework and a foundation for the discussion of the conflicts which arise when continued care

seems questionably innappropriate or medically unnecessary.

- A. Capron, "In Re Helga Wanglie," ***Hastings Center Report*** 21(5) (1991)

  This article discusses in detail the facts and circumstances surrounding the case of Helga Wanglie, a woman for whom physician's believed further medical treatment would be futile and who attempted to remove her husband as her surrogate decision maker.

- D. Johnson, "Helga Wanglie Revisited: Medical Futility and the Limits of Autonomy," ***Cambridge Quarterly of Healthcare Ethics*** 2(2) (1993)

  This is another article which describes the facts and circumstances of the Helga Wanglie case as an example of a real life scenario where medical futility was an issue, and in which the family's desires for the patient's care and the medical opinion of the treating physicians were in conflict. The author attempts to explain how patient autonomy can be lost under certain circumstances, and the ethical implications of the patient's lost voice.

- L. Schneiderman, N. Jecker, A. Jonsen, "Medical Futility: Its Meaning and Ethical Implications", ***Annals of Internal Medicine*** 112 (1990)

  This article is an attempt by the authors to reframe the debate of the ethics of medical futility, as well as resolve the confusion over the meaning of "medical futility" by proposing a quantitative definition for the term. For these writers, medical futility refers to "any effort to achieve a result that is possible, but that reasoning or experience suggests is highly improbable and cannot be systematically produced." They suggested as a rule of thumb that a treatment should be deemed futile if it cannot be shown to have produced the desired results in the last one hundred trials. Further, the same should be true if the treatment cannot be shown to restore consciousness or eliminate the patient's total dependence on intensive care.

- Council on Ethical and Judicial Affairs, "Medical Futility in End-of-Life Care," JAMA, 281; 10: 937-941 (1999).

  The relevant portion of this article discusses in depth the American Medical Association's recommendation with regard to end of life care for terminally ill patients. It outlines the fair process guidelines for the ethical review of a physician's decision, the transfer of a patient, and the duty to continue to treat, if any. It also recognizes that the legal ramifications of terminating a patient's treatment over the objections of the family are uncertain.

- Mercurio, ***The Conscientious Practice Policy: A Futility Policy for Acute Care Hospitals***, Conn. Med. J., 69: 417-419 (Aug. 2005).

  The relevant portion of this article discusses a section of the Clinical Administrative Policy & Procedure Manual of Yale-New Haven Hospital, which outlines the steps to take when circumstances arise wherein a patient (or surrogate decision-maker) requests a therapy or procedure that the attending physician feels is medically inappropriate, and which he would choose not to provide or to discontinue. The section of the manual which the article addresses allows for the unilateral termination of treatment by a physician, and the article advises that the legal implications of such an action are unclear.

- Fine & Mayo, "Resolution of Futility by Due Process: Early Experience with the Texas Advance Directives Act," ***Annals of Internal Medicine*** 138;9: 743-746 (May 6, 2003).

  This article discusses the aftermath of the Texas Advances Directives Act in its first two years and gives the researcher some actual real life circumstances to review regarding how the Texas law would apply. It goes into great detail regarding the medical conditions and outcomes of each end-of-life case.

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Interest Groups & Associations

National Right to Life

The National Right to Life organization is a group of like-minded individuals on a national level which began as an effort to fight Roe v. Wade and its legalization of abortion in all 50 states. The ultimate goal of the National Right to Life Committee is to restore legal protection to innocent human life. While the primary interest of the National Right to Life Committee and its members has been the abortion controversy, it is also concerned with related matters of medical ethics which relate to the right to life issues of euthanasia, infanticide, and the rights of patients to participate in their end-of-life medical treatment. This organization is the drafter of the Model Starvation and Dehydration of Persons with Disabilities Prevention Act, which is referenced above.

http://www.nrlc.org/

Not Dead Yet: The Resistance

The "Not Dead Yet" organization is a disability rights group that opposes the advance directives law in Texas, and it has been involved in numerous protests of the law, as well as in efforts to amend it to make the process more fair for Texas residents. They believe strongly that the ability of a doctor to overrule both the patient and their surrogate in withdrawing life-sustaining treatment is in violation of the principle of patient autonomy.

http://www.notdeadyet.org/

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Computerized Research

Westlaw

Westlaw is a very useful online search engine that provides current primary and secondary research materials for a broad variety of legal topics. It can be used to search case law, legislative material, law reviews, journals, legal encyclopedias, legislative histories, as well as any recent news that has been published about certain issues. One especially useful feature of Westlaw is the Key Digest System, whereby West editors assign particular keys that correspond to issues relevant in healthcare law. The Keycite feature also allows you to check whether the opinion you are viewing is still current law.

Some of the search terms that may be useful in researching medical futility law are:

- "medical futility"
- "advance directive"
- "patient autonomy"
- "withholding and/or withdrawal of life sustaining treatment" and/or "end of life"

Another tool provided by Westlaw which is useful for this particular subject may be the "Medical Litigator" which provides access to all kinds of helpful medical sources, including medical journals and abstracts.

www.westlaw.com

LexisNexis

LexisNexis is also a very useful online search engine that provides current primary and secondary research materials for a broad variety of legal topics. It can be used to search case law, legislative material, law reviews, journals, legal encyclopedias, legislative histories, as well as any recent news that has been published about certain issues. You can search particular areas of law by topic, state, or jurisdiction. The Shepard's feature of LexisNexis is very similar to the Keycite feature of Westlaw, in that it allows you to check whether the opinion you are viewing is still current law.

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- "patient autonomy"
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www.lexisnexis.com

Search Engines

Below are useful search engines that may help you scan the Internet to narrow down your topic or find names, web documents, or laws relating to your health care topic. These search engines will provide you with links to the most popular websites that are related to the search terms you enter.

- www.google.com/scholar
- www.yahoo.com
- www.ask.com
- www.altavista.com

PubMed

PubMed is a very useful database to find relevant articles concerning health care issues. PubMed is a service of the U.S. National Library of Medicine that includes over 17 million citations from MEDLINE and other life science journals for biomedical articles back that go back to the 1950s. It includes links to full text articles and other related resources. Search terms may be authors, titles of specific articles, or specific journals.

Some of the search terms that may be useful in researching medical futility law are:

- "medical futility"
- "advance directive"
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You can also search using the names of authors provided in this bibliography.

In order to access the PubMed database as a Georgia State student, go to www.library.gsu.edu/databases and select the subject "Health Sciences." You will then have to

select PubMed from a list and you will be asked to enter your MyLaw ID and password.

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