When Medical Intervention is Futile and Who Decides?

A global Review of the Concept and Policies of Medical Futility

Alireza Bagheri MD, PhD.

Research Affiliate: Center for Healthcare Ethics

Lakehead University

St. Joseph's Hospital

Lakehead University

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Introduction

MF: An Old Concept a Continuing Concern

- Plato and Hippocrates commented on the proper response of physicians in the face of medical limitation.

- Hippocrates advised physicians to refuse to treat those who are overmastered by their diseases.

(Lascaratos J., et all 1999).

Introduction

- Medical Futility is:
  - An acknowledgement of human mortality
  - an inescapable clinical reality;
  - vague in definition;
  - clinically unpleasant connotations .

(Pellegrino 2005).

MF: Concept and Controversy

- Controversy exist over its definition and its application;
- It has divided experts into two camps:
- Proponents and Opponents.

- Proponents authorize physicians to determine whether a treatment is futile and whether it should be withheld or withdrawn.
- They defend the physicians' exclusive right to determine the futility of treatment (Scneiderman 1990).

MF: Concept and Controversy

- They define MF as treatments that:
  - ✓ will not serve any useful purpose;
  - ✓ cause needless pain and suffering; or
  - ✓ do not achieve the goal of restoring the patient to an acceptable quality of life.
- They argue that physicians should be given sole authority to make decisions to withhold or withdraw treatment (Nelson and Nelson 1992).

MF: Proponents

- Futile treatments are those that fail to provide benefit -i.e. comfort, well-being, general health- to a patient (Scneiderman el al 1990).
- "The physician must decide unilaterally … when an intervention is futile, the physician may and indeed should withhold it regardless of the patient's request.
- Someone who calls himself a physician, but who is constantly willing to compromise on valid modes of treatment in order to satisfy the wishes of the patient, is a fraud" (Howard Brody 1992).

MF: Proponents (Empirical Survey)

- 83% of interviewed physicians had unilaterally withheld treatment on the basis of a futility determination, and often without informing the patient and/or his or her surrogate. (American Thoracic Society 1991)

- In the Netherlands, DNR decision was discussed only with 14% of all cases (30% of those patients were competent)
  - in cases of incompetent patients, the family was consulted in only 37% of cases (van Delden 2005).

MF: Opponents

- Opponents argue medical futility was constructed, in part, as a means of enhancing a physician's domination in a context wherein medical authority is threatened (Carnevale 1998).
- They have formulated medical futility based on patient's autonomy.
- In their approach, in dealing with medical futility priority should be given to the patient's values.

MF: Opponents

- **Evaluative futility**: refers to treatment that is inappropriate to provide because it would simply not be worth it;

- **Factual futility**: refers to a situation in which futility operates as a primarily factual judgment and it is understood to mean that a treatment is ineffective because it would not work in practice (Susan Rubin 1998).

MF: Opponents

- Physician unilateral decision making on the basis of futility is a problematic and misguided approach to the challenge of setting appropriate limits in medicine.

(Rubin 1999)

- futility will become a powerful tool for relieving physicians of the requirement to talk to their patients

(Wolf 1998)

MF: Opponents (Empirical survey)

- In Japan, 70% of the respondents expressed concerns about the consequences of granting physicians wide latitude in formulating medical futility based on their personal values, and called it “paternalism”.
- 60% believe that it may cause greater distrust in medical professionals (Bagheri et al 2006)
- 78% of patients with colorectal cancer and 52% with breast cancer preferred to leave the decision to the doctor, but generally wanted the doctor to consider their own opinion (Beaver et al 1999)

MF: Definition

- Physician-oriented definition:

Based on professional integrity and scientific rationality;

- Patient-oriented definition:

Based on patient's values and right to self-determination.

MF: Key Factors

- In dealing with medical futility there are several key factors which have great impact on decision about futile treatment.

- **Socio-Cultural Issues;**
  - religious teachings;
  - socio-cultural belief;
  - ✓ i.e. public attitudes towards human death.

MF: Key Factors (2)

- **Ends of Medicine;**
  - MF controversy exists, partly, because of disagreement about the goals of medicine.

  - The end of medicine, if defined clearly, would determine when medical intervention is meaningful and when further treatment is beyond the powers of medicine (Bagheri 2006)

MF: Key Factors (3)

- **Scarcity of Healthcare Resources;**

- scarcity of resources: a global problem
- to limit their inefficient use;
- how to use the existing limited resources
- Just allocation
- MF decision when family should bear some of the medical costs?

MF: Key Factors (4)

- **Payment system;** Fee For Service vs Capitation

- It shapes: Decision-making as well as the dialogue between healthcare providers and patient/family.
- Healthcare professionals' conflict of interest??

MF: Key Factors (5)

- **Physician-patient Relationship;**
- the problem of medical futility is the absence of trust between physician and patient (Arthur Caplan 1996).
- medical ethics begins and ends in the doctor-patient relationship; … the conception we hold of that relationship shapes the decision we make (Pellegrino 2003).
- the traditional physician-patient decision-making process is now threatened by the erosion of trust …it makes the recognition and acceptance of medical futility increasingly difficult (Doty and Walker 2000).

MF: Key Factors (6)

- **Decision-making Model:**

- Paternalism: a strong desire for a unilateral decision making;
- patient-centered care: patient's values and right to self-determination;
- shared-decision making: Physician's knowledge and patient's best interest

MF: Key Factors (7)

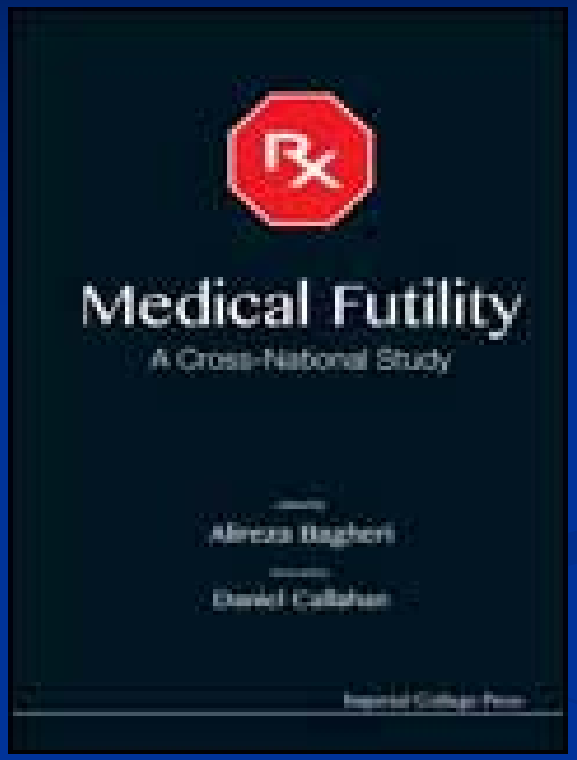
- **Health Insurance**:
  - Public insurance;
  - Private insurance; not consuming social resources

If patient is entitled to get access to a treatment deemed futile if the funding of the treatment come from sources for which the patient has a just claim,

Principles involved in Futility debate:

- Patient's autonomy
- Non-maleficence (do no harm)
- Resource allocation (justice)
- Professional integrity

Global Review: Current Practices



Medical Futility: A Cross-National Study

Alireza Bagheri (ed)

Imperial College Press, 2013

MF Global Review: China

- Chinese view of death has influenced the attitudes of the public and physicians in decision making about medical futility.

- The idea of *cherishing life but dreading death*;
- Overtreatment is relatively common;
- The terminology of medical futility is absent;
- Futile treatment is dealt under the issue of hospice care.

(Shi et al 2013)

MF Global Review: Japan

- The role of traditional views of death, medical technology and universal insurance policy

- Excessive medical examinations;
- Lengthy hospitalizations ;
- Overtreatment of the elderly patients;
- physicians confront legal, emotional, and cultural barriers.

(Kadooka and Asai 2013)

MF Global Review: Korea

- Withdrawing futile treatment from dying patients is understood as *death with dignity*;

- Facing death in harmony with the natural order;
- Family may override Patient's wishes;
- End of life decision is influenced by *economic burden* .

(Kwon 2013)

MF Global Review: Turkey

- Patients' Rights Act of 1998 addresses medical futility

- Physicians have the right not to offer medically futile interventions.
- Fair resource allocation determines futility decision
- Lack of public and professional education

(Arda and Acıduman 2013)

MF Global Review: UAE

- End of life decision is influenced by the Islamic teachings

- Lack of understanding about the prognosis of terminal illnesses;
- Patients' families usually request futile treatments;
- The idea of limiting futile treatment is gaining more public and professional attention.

(Abuhasna and Al Obaidli 2013)

MF Global Review: Iran

- Four influential factors determine futility decisions

1. Scarcity of medical resources;
2. Patient's suffering;
3. Family's opinion;
4. Religious concerns.

- There is an ongoing initiative to develop futility policy.

(Bagheri 2013)

MF Global Review: Belgium

- Demand for futile treatment has been reduced because of:

  - Legalized physician-assisted dying ;
  - Comprehensive palliative care program ;
  - Euthanasia has been integrated into palliative care.

- The question is whether the approach taken in Belgium can be adopted by other countries?

(Bernheim et al 2013)

MF Global Review: Russia

- Medical futility terminology is absent from the vocabulary of healthcare professionals;
- Medical futility are expressed through the concept of palliative medicine;
- Availability of health resources determine the reasonable limits of treatments.

(Kubar et al 2013)

MF Global Review: Switzerland

- Medical futility has been addressed by the Health Insurance Law

- Futility decisions are based on societal and economic consideration;
- A strong reliance on risk-benefit assessments by physicians.

(Krones and Monteverde 2013)

MF Global Review: Australia

- There are initiatives to address this issue through related legislation and policy

- Lack of a formal definition of medical futility;
- A broad consensus on the key elements of the concept ;
- More attention regarding the role of medical futility in end-of-life care.

(Martin 2013)

MF Global Review: Venezuela

- Cultural issues as well as available resources shape medical futility decisions.

- Lack of unified medical protocol ;
- Physicians have more power in decision making
- Variation in physicians' approach to medical futility.

(d'Empaire 2013)

MF Global Review: Brazil

- There is a challenge of harmonizing judicial rulings with ethical standards

- Healthcare professionals are concern about legal action against them;
- This may force them to provide futile treatment against their professional judgement;
- The attempt is to manage end-of-life issues by regulations

(Pessini and Hossne 2013)

MF Global Review: USA

- There is a trend to address medical futility by legislative and regulatory approach

- Texas and Virginia have developed futility policies;
- This approach tries to allow physicians to a unilateral decision making;
- Almost all court cases have advocated patients' rights to access futile treatments.

(Veatch 2013)

Medical Futility Policy:

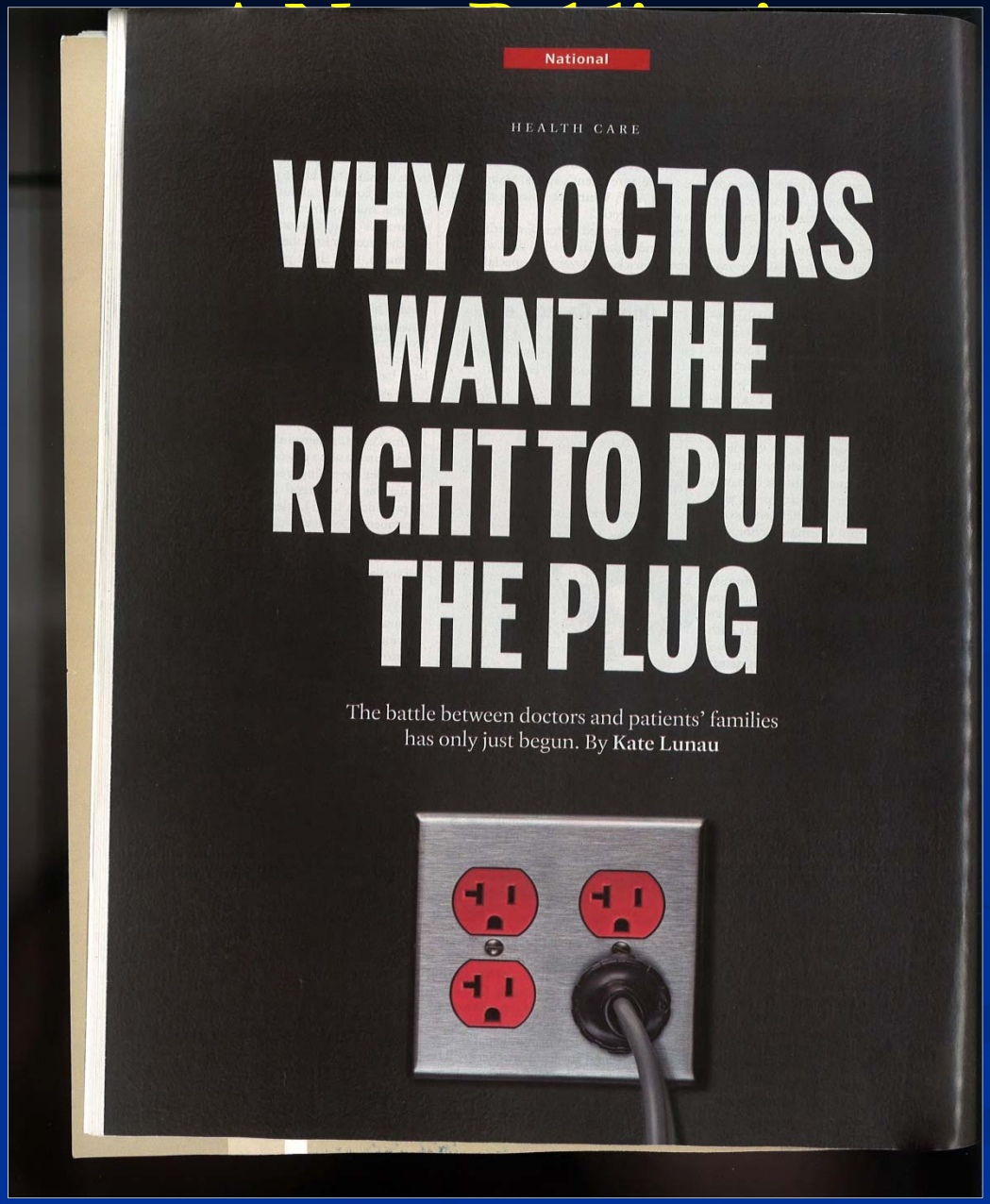
- Expected Benefit
- Current Policies

- No common universal standard for the concept of futility or its proper use. (Callahan 2013)

- It is vital that we think more clearly and systematically about what can be justifiably described as “medically futile”. (Alastair Campbell 2013)

Why Futility Policy is Needed?

- Were definition is difficult to come by, there is a turn to procedures and policies. (Pellegrino 2005).
- With a criteria-based policy, providers will have a rationale for refusing requests for such treatment.
- It seem to offer a way out of morally distressing clinical situations (Carol Taylor 1995).


National
HEALTH CARE
WHY DOCTORS WANT THE RIGHT TO PULL THE PLUG
The battle between doctors and patients' families has only just begun. By Kate Lunau

MF Policy: Expected Benefit

- the family make sure that someone besides them (*ethics committee)* review the case;
- physicians can hear the family's narrative.

(Troug and Mitchell 2006)

- decision based on policy vs personal view;
- provides a rationale for refusing requests for futile treatments;
- offers a way out of morally distressing clinical situations
- building Trust

Futility Policy: State law

- *Texas and Virginia Laws:*

- They elaborate the circumstances under which a physician could unilaterally withhold or withdraw treatments against the wishes of the patient or surrogates.

(Veatch 2013)

State Policy: Texas Health and Safety Code

- If the requested treatment is deemed "*inappropriate*"
- Patient or surrogate will be given 48 hours' notice;
- A committee will also review the case and if confirms;
- Patient should find a facility willing to provide the requested treatment.
- In the meantime, the patient should receive the requested treatment for up to 10 days.

State Policy: Virginia law

- Virginia law does not require referral to a committee and allows the patient 10 days to find an alternative caregiver.

- If a provider cannot be found within 10 days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension (Code of Virginia, Title 54.1)

Hospital Policy vs State Law

- In hospital policy: an excellent way to address the concerns of caregivers while equally respecting the views of patients and families.

- Risk of an unjustified imposition of the caregivers' perspective on that of the patient and family.

(Troug and Mitchell 2006)

State Law vs Hospital Policy

- With a State Policy, clinicians are much more confident;
- They are protected by the law;
- Hospital policy does not provide this assurance;
- State laws gives more power to physicians.

Futility Policy: Concerns

- Ethics committee: independent? unbiased ? truly capable of weighing patient's interests ?
- State law may bypass family participation in the conversation .

Closing Remarks:
A Comprehensive Approach is needed

Futility Policy Development:

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

- It should:

  - respects patients' values and wishes
  - includes the values of physician, patient/family and other team members.

Futility Policy (cont…)

- It should acknowledge;
  - ✓ the goals of medicine (avoiding harm to patients),
  - ✓ physicians integrity
  - ✓ the limits of medical interventions,
  - ✓ just allocation and good stewardship of medical resources.
- Building trust between physician and patient/family
- A constructive and informative dialogue is essential.
- No automatic trump card:
  - Neither excessive patient autonomy
    - Nor physician paternalism

(Bagheri 2008).

Words of Wisdom

- Physician's Promise: ends of medicine

- to restore health, *if that is possible*;
- to provide comfort /care *if restoration of health is not possible*.

- ***Patient Care, is never futile***

(Pellegrino 2003)

Thanks for your kind attention

A. Bagheri