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Ethics of Non-Treatment

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Medical Futility

Definition: A clinical action serving no useful purpose in attaining a specified goal for a given patient

Kasman DL. J Gen Intern Med 2004,19:1053-1056

Old concept: Hippocrates - “refuse to treat those who are overmastered by their disease, realizing that in such cases medicine is powerless”

Lascaratos et al. J Med Ethics. 1999,25:254–258

Issues often arise when the relatives want “everything done” and doctors do not think that an intervention will help.

Futility in Practice

- There is a goal
- There is an action and activity aimed at achieving this goal
- There is virtual certainty that the action will fail in achieving this goal

Medical futility in end-of-life care: report of the Council on Ethical and Judicial Affairs JAMA. 1999;281:937–41

Virtual Certainty?

- *1%, 2%, 5%* and can it be quantitated?

Helft PR et al. N Engl J Med. 2000,343:293–6

- Can you use *physiologic futility*?

- What of *benefit-centred futility?*

Veatch RM et al. Am J Law Med. 1992,18:15–36

- *Operationalizing futility* - treatment costs exceed measurable benefits

Waisel DB et al. Ann Intern Med. 1995,122:304–8

- *Utility* – goals compared to cost benefit

Kopelman LM et al 1995;20:109–21

Futility and benefit

Jecker N. https://depts.washington.edu/bioethx/topics/futil.html

Quantitative futility **– likelihood of an intervention benefiting the patient is very poor**

Qualitative futility **– Where the quality of the benefit of an intervention is very poor**

Both are distinguished from physiological improvement

Futility is not a general statement but applies to particular patients in their particular situation

Quantitative and Qualitative Futility

Schneiderman LJ. J Bioeth Inq 2011, 8:123-131

- Most would agree that if a treatment has not worked in the last 100 cases, almost certainly it is not going to work if it is tried again. (Statistically the upper limit of the 95% Confidence Interval is 3%.)

- Another proposed quantitative threshold is similar to that used in the statistical evaluation of clinical trials i.e. observations have a one in twenty chance of being nonsignificant ($p = 0.05$)

- Qualitative definition attributed by Plato to Asclepius-if the treatment fails to release the patient from being “preoccupied” with the illness and incapable of achieving any other life goal then it should be regarded as futile

Other Issues

- **When does a treatment prolong life vs prolong dying?**
- **Judgement of futility to trump relatives may be paternalistic**
- **Is futility a cover for rationing resources?**
- **Alternative to futility would be standards of care plus best interests of patients**

Withdrawing Treatment

Physicians are not obligated to provide treatments they believe are ineffective or harmful

When giving options to patients the “futile” treatment should be mentioned and discussed with the alternatives

Is “medically inappropriate” a better term for relatives

Symptom control is never futile it is only active treatments that may be futile

Passive Euthanasia

- Treatment withdrawal in the dying patient is not euthanasia unless the intention is death
- Test intention by counterfactual test
- Passive euthanasia term used to try to claim an inconsistency if you support treatment withdrawal and not active euthanasia (killing a patient)

Where clinicians and relatives disagree

- The side effects of a treatment compared to the negligible chance of recovery
- Allow second opinions
- Give treatment alternatives
- Should have discussed DNR orders prior to the situation where resuscitation is required (including the likely outcome: >20% patients are discharged from hospital after CPR)

Experimental treatments

- There is a difference between a futile treatment (based on evidence) and an experimental treatment with an unknown outcome

- Phase I trials have a low likelihood of benefit and this needs explaining. Eligibility criteria usually preclude imminently dying patients

Conclusions

- Futile treatments most probably will not contribute to treatment goals and could increase harm

- Issues are around the threshold for futility, paternalism and motive for judging futility

- Alternative is treatment standards and focus on patient benefit

- Communication with patients about alternatives including supportive care