Court Cases Relevant to Futile Treatment

There are two kinds of court cases related to futility (provision of treatment which puts a disproportionate burden on the recipient, compared to the benefit derived): those which affirm the right of parents or other surrogates to **refuse** treatment, and those which affirm the right of physicians to **refuse to offer** treatments.

The Right of Patients or their Surrogates to Refuse Treatment

These are typically adult cases, although several civil cases deal with pediatric cases.. The court cases which are most often cited in this connection are:

In Re Quinlan (1975): a 21 year old New Jersey woman suffered severe brain damage after an alcohol/drug overdose. Her father petitioned to remove the ventilator and the N.J. supreme court upheld his right to do so against the advise of her physicians, who held that ventilation was "standard treatment." The ventilator was removed and she lived for another 10 years.

> "*The state's interest [in preserving life] weakens and the individual's right of privacy grows as the degree of bodily invasion increases and the prognosis dims. Ultimately there comes a point at which the individual's right overcomes the State's interest."*

Barber v. Superior Court (1983): A severely brain-damaged patient with poor prognosis was removed from a ventilator and later from a nasogastric tube with the agreement of his family and physicians. Another caregiver alleged that the withdrawal of both treatments was part of a conspiracy to kill the patient to hide malpractice; a California appeals court ruled that the physicians had no duty to continue to provide life sustaining treatment in light of their prognosis and his surrogate's agreement that he would prefer not to be so sustained.

> *"…Since we view [the doctors'] conduct as that of omission rather than affirmative action, the resolution of this case turns on whether [they] had a duty to continue to provide life sustaining treatment. There is no criminal liability for failure to act unless there is a duty to act…The question posed by this modern technology is, once undertaken, at what point does it cease to perform its intended function and who should have the authority to decide that any further prolongation of the dying process is of no benefit to either the patient or his family?"*

Cruzan v. Harmon (1990): A 25 year old woman was seriously brain-injured in an automobile accident in 1983. After 4 years her parents asked that her gastrostomy feedings be discontinued, on the basis of statements to friends that she would not wish to be sustained if she were seriously brain injured. Being refused by the long-term care facility in which Nancy was being treated, they sought a declaratory judgment action in 1988 seeking judicial sanction for their request. A probate judge approved their request but the Missouri Attorney General appealed the case to the state supreme court, which overturned the lower court's decision and required the feeding tube not be removed.

"Were quality of life at issue, persons with all manner of handicaps might find the state seeking too terminate their lives. Instead, the state's interest is in life; that issue is unqualified."

In 1990 the family appealed the case to the US Supreme Court, which (a) affirmed that a competent person had a constitutionally protected right to refuse lifesaving hydration and nutrition; but (b) the US constitution did not prohibit a state from "requiring clear and convincing evidence of a person's expressed decision while competent" before allowing withdrawal. The family produced additional witnesses who eventually convinced Nancy's court-appointed guardian of her prior wishes. Her feeding tube was withdrawn and she died 13 days later.

Only two states, New York and Missouri, require a higher standard of evidence of the patient's preference than prior verbal statements.

Children are typically treated as never-capable patients, for whom the standard of "best interests" applies, rather than patients for whom surrogates must establish prior preferences (the "substituted judgment" standard).

The Linares Case: (1988) 8 month old Samuel Linares swallowed a balloon and showed no vital signs for 20 minutes. He was intubated and admitted to a pediatric intensive care unit with severe brain damage. After several months his parents intervened to ask that the ventilator be removed. The hospital attorney took the position that while Illinois law did clearly permit hospitals to withdraw life support from brain dead patients, there was no precedent for withdrawing a ventilator from a person with minimal brain function. After 8 months of hospital refusal the parents were advised to seek a court order authorizing the removal of the ventilator; but on the day they made an appointment with a lawyer the hospital announced that they were transferring Samuel to a long term care facility.

Mr. Linares entered the ICU with a pistol, and held caretakers at bay while he unplugged his child's respirator and held him while he died. He was charged with murder, but the judge in the criminal court dismissed the charge.

The Messenger Case: (1995) Michael Messenger was born 15 weeks early, and weighed 27 ounces. Before he was delivered by caesarian section his parents requested that he not be sustained on life support if he were born alive. The neonatologist attending the C-section ordered the baby to be put on a ventilator and examined to determine his prognosis. His defense at the trial was that federal law and some state laws dating from the early '80s mandate that children born alive who are not imminently dying or permanently unconscious must be treated regardless of prognosis.

Michael's father, a dermatologist who worked at the hospital where Michael was delivered, went to the ICU and disconnected his ventilator several hours after his birth. He defended his actions by saying he did not want his son "to be an 'experiment,' sprouting tubes and barely alive." His attorney argued that the cause of death was the condition of Michael's lungs due to prematurity, not his father's actions in removing him from the ventilator. His father was charged with manslaughter and acquitted.

The Right of Physicians or Hospitals to Refuse to Offer Treatments

In theory, clinicians have the right to refuse to render treatment that violates their personal or professional ethical standards. Fidelity to one's professional ethics is a necessary criterion for professionalism. In cases involving refusal to treat, clinicians may not abandon their patients, but must make very reasonable effort to transfer the patient to the care of another clinician or facility. Some states (such as Virginia) include a conscience clause that explicitly addresses the issue of professional ethical standards in their Health Care Decisions Act. Until recently most such cases met the fate of Baby K.

In re Baby K. (1994): Baby K was born in October 1992 in Fairfax Hospital with a large portion of her brain and skull missing. Her condition was diagnosed prenatally but her mother refused abortion and asked that the child be treated maximally. She was born by Caesarian section and intubated at birth. Three months later she was successfully weaned from the ventilator and transferred to a nursing home. The hospital filed a proceeding in federal court to determine the level of care they were obligated to render and requesting a guardian ad litem. After three re-admissions for respiratory distress a breathing tube was placed.

A federal judge ruled in July 1993 that the hospital has a duty to provide full medical care, including ventilator support, to Baby K under the Federal Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Emergency Medical Treatment and Active Labor Act. No weight was given to the claim that further prolongation of Baby K's dying process was futile and inhumane.

> *"The use of a mechanical ventilator to assist breathing is not 'futile' or 'inhumane' in relieving the acute symptoms of respiratory difficulty which is the emergency medical treatment that must be treated under EMTALA. To hold otherwise would allow hospital to deny emergency treatment to numerous classes of patients, such as accident victims who have terminal cancer or AIDS, on the grounds that they eventually will die anyway from these diseases and that emergency care for them would therefore be futile."*

The Fourth Circuit Court of Appeals in 1994 addressed the question of whether the Congress, in passing EMTALA, had provided an exception for anencephalic infants in respiratory distress. The Court found the language clear, and "left it to Congress" to draft language for federal legislation to clarify congressional intent that EMTALA's requirement for stabilization be "consistent with reasonable medical standards." The US Supreme Court declined to review the case.

Baby K died at the hospital of cardiac arrest in April 1995 after being vigorously resuscitated. She was 2 1/2 years old, and it was her sixth admission to the hospital.

The court explicitly stated that since EMTALA was a federal law, it overrode the Virginia Health Care Decisions Act that allowed for refusals of conscience for individual providers.