Resolving Intractable Disputes about Goals of Care in ICUs

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Disclosures

Research Funding

- NIH- National Institute on Aging
- NIH- National Heart, Lung, and Blood Institute
- Greenwall Foundation
Main Points

✦ TRULY intractable disputes about goals of care are rare and ethically harder than you might think.

✦ Clinicians NEED NOT simply acquiesce to surrogates’ demands.

✦ There are at least five approaches to resolve intractable disputes, each with strengths and weaknesses.

✦ Strategies to resolve the very rare intractable cases should not negatively impact the management of the more common cases.
Case

✧ 81 year old man with dementia and severe COPD admitted with respiratory failure and septic shock.

✧ After 2 weeks, shock has resolved, but he is dialysis and vent dependent. Minimally responsive off sedation. No difficulty in maintaining his vital signs.
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Family is emotionally overwhelmed. No advance directive. Patient’s few prior statements suggested he “wanted every chance to survive”. They request all efforts to extend his life.
Is the dispute really intractable?
A Ddx: Why won’t the family let us stop?

✦ Overwhelming grief
✦ Inability to act according to patient’s values.
✦ Misunderstandings/disbelief of prognosis
✦ Distrust of physicians
✦ Conflict within family
✦ Ulterior motives
✦ Deep moral disagreement about what constitutes a life worth living
Prendergast (1998)

57% agree immediately

90% agree within 5 days

96% agree after more meetings
Garros et al. (2003)
Randomized Trial of Ethics Consults in the ICU

Schneiderman, JAMA 2003; 290:1166
Randomized Trial of Ethics Consults in the ICU

**Intervention:** ethics consult vs. usual care

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- **Setting:** adult ICU in 7 hospitals

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Randomized Trial of Ethics Consults in the ICU

- **Intervention:** ethics consult vs. usual care
- **Setting:** adult ICU in 7 hospitals
- **Patients:** 551 patients “in whom value-related treatment conflicts arose”
  - Identified by nurses; reviewed by PI
- **Cross-over:** 67/278 in intervention and 77/273 in usual care

Schneiderman, JAMA 2003; 290:1166
Outcome of Ethics Consult

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<td>Mortality(%)</td>
<td>62.7</td>
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Schneiderman, JAMA 2003; 290:1166
Importance of Encouraging Clinician Family Communication

- The vast majority of conflicts about goals of care can be overcome by intensive communication.

- Ethically valuable to strive for collaborative decision making.
  - Patient centered care is a core commitment of the profession
  - At least some ethical obligation to support families
How to Proceed in the Face of Intractable Clinician-Family Disagreement
Options

1. Give patients/families all authority.

2. Give physicians all authority.

3. Remove the surrogate.

4. Employ a procedural approach to dispute resolution.

5. Develop substantive rules about the boundaries of acceptable practice.
Give Families All Authority

Potential Benefits

- Families (might) be satisfied

Problems

- Ethically unsustainable
  - Positive v negative rights. Patients' rights to demand treatments far weaker than their rights to refuse treatment.
  - Potential negative impact on medical profession’s integrity
  - Potential unfair distribution of scarce resources
- Practically problematic
  - May worsen quality of dispute resolution in cases that are not intractable.
Principle of Dispute Resolution

✼ Both parties should be invested in negotiations;
  ➢ No individual should hold complete authority to determine the outcome

✼ Decisions to forego life support are emotionally and morally complex.
  ➢ Surrogates must overcome the impulse to “rescue”.
  ➢ Takes time and effort.

✼ If families “have all the power”, may fail to encourage the hard emotional/moral work needed to authorize treatment withdrawal.
Give Physicians/Hospitals All Authority

Pros

- Efficient
- Leverages beneficence-based obligations of profession

Cons

- Arbitrariness/variability
- Unilaterally imposed decisions may be especially burdensome on families.
- May remove incentive for clinicians to engage in intensive communication.
Critique: Removes Incentives to Engage

“In several interviews with Texas ethics committee chairs, I have learned that having the TADA option sometimes means that there is little attempt to improve communication or to engage in mediation.”

Personal communication, Thaddeus Pope, JD, PhD
Replace the Surrogate Decision Maker
Ontario Consent and Capacity Board (CCB)

- An independent quasi-judicial body created by the Ontario government under its Health Care Consent Act.

- Composition: lawyer, psychiatrist, public member.

- In intractable disputes, can make a “legal, binding decision that can only be reversed on appeal through the courts”.

- Designed to ensure that surrogates comply with the principles of substitute decision-making:
  - Substituted judgment
  - Best interest

Pope T. SLU Health Law & Policy. 2010
Is the Surrogate being Faithful?

- 81 year old man with advanced dementia and severe COPD admitted with respiratory failure and septic shock.

- After 2 weeks, shock has resolved, but he is dialysis and vent dependent. Unresponsive off sedation. No difficulty in maintaining his vital signs.
Is the Surrogate being Faithful?

- 81 year old man with advanced dementia and severe COPD admitted with respiratory failure and septic shock.

- After 2 weeks, shock has resolved, but he is dialysis and vent dependent. Unresponsive off sedation. No difficulty in maintaining his vital signs.

Family says he was an Orthodox Jew who believed that “the value of life is measured in milliseconds”.

- His detailed advance directive supports this and requests full life support.
Remove the Surrogate

❖ Pros
❖ May persuade/remove surrogates who are clearly acting against patient’s wishes or interests.

❖ Cons
❖ Limited scope of applicability:
❖ Often difficult to prove that decisions are contrary to patient’s values/interests.
❖ Not developed as a mechanism to address conflicts between the interests of individual patient and those of society.
The more nuanced debate…

“Are there situations in which biological life could be extended (and doing so is requested by the patient/proxy), but it is should not be?”
Procedural Fairness

- When there is deep disagreement about a policy question, the process of decision-making takes on added ethical importance.

- Characteristics:
  - Oversight by legitimate body
  - Transparency
  - Appeals to reasons that all can accept as relevant
  - Accountability
  - Opportunity for review and appeal

Daniels N. BMJ. 2003
Fair Processes of Dispute Resolution

Three phase consultation process:

- Exhaust all avenues of collaborative decision making:
  - Intensive communication, specialty consultation, formal mediation.

- **Phase 1**: Meeting with Committee and **clinical team**. The purpose is to present the medical perspective on the case.

- **Phase 2**: Meeting with Committee and the **patient or family**. The purpose is for the patient or family to “tell their story”.

- **Phase 3**: The Committee meets **alone**. The purpose is to make a determination of whether further use of life-sustaining treatment is inappropriate or harmful.
If committee and hospital leadership affirms the determination, surrogates are informed in writing;

Attempt to transfer patient to willing provider at another institution.

Notify family of intention to unilaterally withdraw therapy

Inform family of their option to seek a court order to compel continued treatment.

Unilaterally withdraw treatment. Clinicians are not legally immune, but decisions are endorsed by hospital leadership.
Fair Processes of Dispute Resolution

Pros

❖ Stepwise approach emphasizes intensive communication.
❖ Incorporates clinical and legal elements (internal and external views on medical practice)
❖ Final option of appeal to the courts offers robust procedural fairness (and incentivizes communication).

Cons

❖ Clinicians may be afraid to act without complete legal immunity.
Main Points

❖ TRULY intractable disputes about goals of care are rare and ethically complex.

❖ Clinicians NEED NOT simply acquiesce to surrogates’ demands.

❖ There are at least five approaches to resolve intractable disputes, each with strengths and weaknesses.

❖ Fair processes of dispute resolution are best available option for resolution of both “easy” and intractable cases.
Develop substantive rules about

Pros

- If successful, would yield clear rules
- Adheres to democratic principles

Cons

- May not be feasible in current partisan political climate
- Resource intensive public engagements
- Consensus unlikely
- Not a solution in the short term