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MEDICAL FUTILITY Practice of treating patients with little hope is debated

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Sep. 18, 2008 (McClatchy-Tribune Regional News delivered by Newstex) -- As a doctor who specializes in treating cancer, Aroop Mangalik has seen a lot of suffering. He believes some of the suffering happens when dying patients continue to receive treatment after any reasonable hope of recovery is gone.

Mangalik, a University of New Mexico medical professor who practices at UNM's Cancer Center, wrote in a Journal commentary early this year that such medically futile care "prolongs the process of dying and thereby the patient's suffering." When further treatment is pointless, Mangalik said, the kind thing to do is keep the patient comfortable while nature takes its course.

Physicians continue providing futile medical care for a lot of reasons, but a big reason is fear, Mangalik said.

"A lot of physicians approve of the need to curtail treatment," he said in a recent Journal interview. "Because of fear of lawsuits and bad publicity they are reluctant to override a family's wishes for unnecessary treatment."

That fear is justified, said Thaddeus Pope, an associate professor at Widener University School of Law in Wilmington, Del. Pope specializes in health law and has studied medical futility cases nationally. At Mangalik's invitation, Pope lectured on medical futility at UNM last month.

Only Texas has a law that seems to protect practitioners from criminal, civil or regulatory penalties when they refuse to provide what they consider to be futile care, and that law is very

State law says medical providers can stop what they consider to be inappropriate treatment that is medically ineffective or that is contrary to generally accepted health care standards and be protected from prosecution, civil liability and disciplinary action by the state licensing board.

"The problem is those terms," Pope said. "The key terms in the statute there are incredibly vague." The phrase medically ineffective means treatment "will not produce significant benefit, but again, what's significant? You could mush anything in there that you want."

A reason for vagueness

There is a reason for vagueness, he said. Ethicists, researchers and medical practitioners have been debating the meaning of medical futility in the medical literature since at least the 1980s. "People tried to say if treatment hasn't worked in the last 100 cases like this then it is futile. They tried to come up with quantitative (definitions), qualitative measures, but the consensus is you can't define it."

The result of medically futile treatment can be astonishing. One famous case involved Baby K, who was born in 1992 in Virginia in what is called an anencephalic state. She was born with a brain stem, which partially controls some automatic functions like breathing, but without a brain. About 1,000 anencephalic children are born in the United States a year.

Anencephalic children are usually given nutrition and fluids and are kept comfortable, but they are not given artificial breathing help, corrective surgeries or drugs. Most die in a matter of hours or a few days.

Baby K's mother said that all life is sacred and demanded the hospital keep the child alive until God decided she should die. The hospital challenged the mother's decision in court and lost. Baby K died of heart failure 2 1/2 years later. Her care cost $500,000 in the early 1990s.

"It was really grotesque to the providers," Pope said. "It was really not what they are about. It was some sort of weird science fiction experiment, they felt."

"There actually are a large number of cases every year where the patients are declared brain dead pursuant to appropriate criteria for determining brain death," he said. "Yet people sue and get injunctions ordering the health care provider to continue to treat. Under the law, well settled law since the '60s, these people are corpses. That is especially emblematic of the problem, if providers can't even stop treating people who are dead. If you ever thought there would be a point where you could stop, it would be when the patient died."

Often results are less dramatic but still troubling. A patient, or his children or spouse, might insist on continuing a failed course of chemotherapy, hoping for a miracle, even though the treatment is usually unpleasant and always expensive.

Pope believes a majority of physicians want to suspend medically futile care. It causes suffering, it deprives other patients who could be helped of medical resources like intensive care unit beds, it drives up health care costs and, some physicians say, it is simply wrong.

Disagreement in the ranks

Other physicians think it's wrong not to treat. "There are physicians who feel the same as these patients or these patients' substitute decision makers, namely, more treatment is better, life must be preserved at all costs," Pope said. "If there is even a very small percentage chance we can prolong life or reverse the disease, then we must take it, no matter how small the chance, no matter what the side effects, no matter what the costs. There is surely a minority of physicians who also think that."

Pope is sympathetic to that point of view. "It's medicine," he said. "It's uncertain. When we predict you're probably not going to make it, we're basing that on population studies." Odds of survival are usually not zero. "It's not Powerball. These are actually very good odds, one out of 100. So people say, I'm going to go for it and not sign the do-not-resuscitate order because there is a chance that my dad will be the one in 100. And he might be. Of course, if we do it all the time it means 99 other people are going to suffer."

Eventually, Pope said, economics may well dictate when treatment

stops. Today, insurance companies and Medicare keep paying the bills, regardless of how futile the care might be, Pope said. That will change.

"Medicare is soon going to consume the entire federal budget," he said. "There won't be any army, any highways, war."

"I think we are coming to the point where we really are going to have to face tragic choices," Pope said. "We have rationing: 47 million people are uninsured. But let's make it rational. If we're going to allocate health care let's do it in a way that maximizes something. We could use qualityadjusted life years or some other measure. But we haven't systemically sat down and owned up or confronted those types of decisions."

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