



# Ethical Issues in the Newborn Medical Futility

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# Goals



- Understand ethical considerations in withdrawing or withholding therapy from a critically ill newborn.
- Understand the parents' right to decide and limitations of that parental right based on the rights of the newborn, including the patient's best interests, and Kenya legal precedent
- Understand the role of the parents and of the physician in critical decision-making in the delivery room and newborn unit.

# Case Presentation



- A 2800 gram term male is born to a 26 year old G2P1 O+, VDRL-, HIV-, Hepatitis B- mother via SVD with Grade 3 Meconium
- APGARS 1/2/4
- BVM and CPR and Epi x 3
- First gasp at 30 minutes
- Severe lung disease and hypotension

## Case continues

- Initial response to BCAP now failing; O<sub>2</sub>sats 88% on CPAP =8
- Hypotension worsens even on Dopamine 20 mic/kg/min

### **YOU ARE CALLED FOR TRANSFER**

- Family wants everything done and no vent available at current hospital
- They also want transfer to hospital “K” because short of funds

# To treat or not to treat?

physician

yes

no

patient

yes

+

?

no

- (+)

-

# What to do????



- If informed parents request resuscitation and intensive care but the clinical team feels they are inappropriate, is the team nevertheless obligated to provide it?
- If informed parents decline resuscitation and intensive care measures but the clinical team feels it is inappropriate to withhold those measures, is the team nevertheless obligated to withhold those treatments?
- What ethical principles or approaches can be applied to guide clinicians and parents through the care provided to this child?

# Medical Futility Defined



- The treatment will not achieve the intended goal
  - Medical Futility (physiologic; quantitative)
  - Medical Futility (social; qualitative)
    - **OR** the cost/benefit ratio to the patient / family/ or society are deemed not worthwhile. (government policy on funding ICU care)
    - **OR** because costs are completely prohibitive
    - **OR** because others patients with a better prognosis would die, and so on



MEDICAL INDICATIONS	PATIENT PREFERENCES
<p><b>Beneficence and Nonmaleficence</b></p> <ul style="list-style-type: none"> <li>• What is the patient's medical problem? History? Diagnosis? Prognosis?</li> <li>• Is the problem acute? Chronic? Critical? Emergent? Reversible?</li> <li>• What are the goals of treatment?</li> <li>• What are the probabilities of success?</li> <li>• What are the plans in case of therapeutic failure?</li> <li>• In sum, how can this patient be benefited by medical and nursing care, and how can harm be avoided?</li> </ul>	<p><b>Respect for Patient Autonomy</b></p> <ul style="list-style-type: none"> <li>• Is the patient mentally capable and legally competent? Is there evidence of capacity?</li> <li>• If competent, what is the patient stating about preferences for treatment?</li> <li>• Has the patient been informed of benefits and risks, understood this information, and given consent?</li> <li>• If incapacitated, who is the appropriate surrogate? Is the surrogate using appropriate standards for decision making?</li> <li>• Has the patient expressed prior preferences (eg, advance directives)?</li> <li>• Is the patient unwilling or unable to cooperate with medical treatment? If so, why?</li> <li>• In sum, is the patient's right to choose being respected to the extent possible in ethics and law?</li> </ul>
QUALITY OF LIFE	CONTEXTUAL FEATURES
<p><b>Beneficence, Nonmaleficence, and Respect for Patient Autonomy</b></p> <ul style="list-style-type: none"> <li>• What are the prospects, with or without treatment, for a return to normal life?</li> <li>• What physical, mental, and social deficits is the patient likely to experience if treatment succeeds?</li> <li>• Are there biases that might prejudice the provider's evaluation of the patient's quality of life?</li> <li>• Is the patient's present or future condition such that his or her continued life might be judged as undesirable?</li> <li>• Is there any plan and rationale to forgo treatment?</li> <li>• Are there plans for comfort and palliative care?</li> </ul>	<p><b>Loyalty and Fairness</b></p> <ul style="list-style-type: none"> <li>• Are there family issues that might influence treatment decisions?</li> <li>• Are there provider (physician, nurse) issues that might influence treatment decisions?</li> <li>• Are there financial and economic factors?</li> <li>• Are there religious or cultural factors?</li> <li>• Are there limits on confidentiality?</li> <li>• Are there problems of allocation of resources?</li> <li>• How does the law affect treatment decisions?</li> <li>• Is clinical research or teaching involved?</li> <li>• Is there any conflict of interest on the part of the providers or the institution?</li> </ul>



# Panel of Experts



- if you were called at hospital K, what would you reply?

IF YOU WERE WITH THE PARENTS REQUESTING  
DO EVERYTHING....

- What discussions would you have with the parents?
- What discussions would you have with trainees? nursing staff? Colleagues?

# Leon Kass says



- Medicine is inherently a moral enterprise
- Practicing Medicine means making decisions
  - Clinical uncertainty
  - Ethical uncertainty

# Uncertainty and Certainty

“When you can't be certain; be responsible.”

The ratio of births to deaths is 1:1

# Relationship between Law and Ethics

- Law is the codification of social ethics
- Law is the lowest common denominator
- An action can be
  - Legal and ethical
  - Illegal and ethical
  - Legal and unethical
  - Illegal and unethical

Physicians always want to know

CAN I BE SUED IF.....

..... The answer is always YES

# Kenya Law

- Kenya's Constitution is very aspirational
- The Bill of rights under the constitution of Kenya applies to all equally, and accordingly, it follows that all lives are equal and that no life is better than the other
- Little legal precedent exists when the government has made allocation decisions that drive medical futility
  - Limited ICU beds and ventilators; too few ICU nurses and docs.
  - Limited recognition that others will die while a patient who is less likely to benefit is on ventilator

# Kenya Penal Code



- The Penal Code, an Act of Parliament to establish a code of criminal law, as provided above, makes it a criminal offence to aid death of another by any method (including participating in a decision that might lead to ultimate death of a patient). Commission of such act is punishable by life imprisonment.
- In states where medical futility is practiced, its exercise is backed by laws embracing futility considerations which assist hospital policymakers in drafting hospital futility policies that both provide a fair process to settle disputes and embrace an ethic of care.



# Lawsuits are inevitable



- Practice good medicine  
AND DOCUMENT IT
- Practice good ethics  
AND DOCUMENT IT

# KPA Leadership Opportunity

- Open up the dialogue
  - Continue to advocate for health care for all children and increased access at all levels of care;  
Drive the discussion of priorities for children
  - Ethics sessions at every KPA
  - Begin to advocate for laws that protect physician's in cases of medical futility

Kijabe Maternal Newborn Community Health



*Birthing health and hope in the community*

**THANK YOU!**