

Medical Futility Litigation

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Medical futility statutes have now been adopted in many states, explicitly giving health care providers the “green light” to provide medical care as they see morally and professionally appropriate. These statutes authorize providers to unilaterally refuse compliance with patients' requests for life-sustaining treatment when such treatment would be “medically inappropriate” or “contrary to generally accepted health care standards.”

However, futility laws have largely failed to facilitate the very decisions that they were meant to facilitate, notwithstanding several widely publicized cases from Massachusetts and Texas. Due to significant uncertainty regarding the scope, applicability, and even constitutionality of medical futility statutes; many providers remain “chilled” from adopting or implementing futility policies authorizing involuntary passive euthanasia.

Why is there such legal uncertainty? Because despite the growing impact, the enormous public interest, and the kindling controversy surrounding futility statutes, there has been little significant judicial or academic analysis of these statutes. Physicians reluctantly continue to provide futile care for fear of being sued. This presentation outlines the scope and applicability of futility laws and plots a roadmap that institutions can follow to safely adopt and implement futility policies.