Lecture Theatre
St Cross College
University of Oxford
12 June 2025 - 6:00pm

1

Thaddeus Pope

2

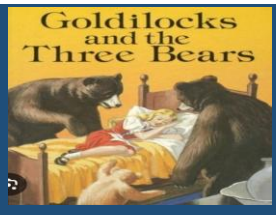
Resistance is Futile?

Resolving Radical Disagreements about Medical Treatment between Patients & Doctors?

3

Goldilocks problem

4



5

6

7

8

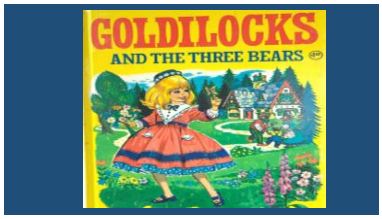
nature of a Goldilocks problem

9

both ends of spectrum are unsustainable

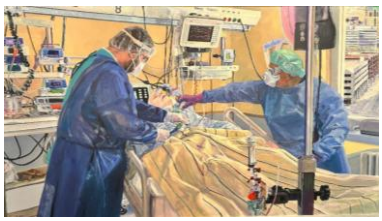
best place is the **middle**

10



11

12



13

catastrophically critically ill

14

lack decision making capacity

15

clinicians often recommend **CMO**

16

recommend **withholding or withdrawing** life-sustaining Tx

17

surrogates often **agree**

18

not always

19

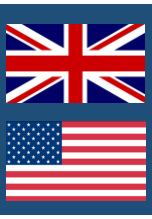
20

clinician	surrogate
CMO	LSMT

21

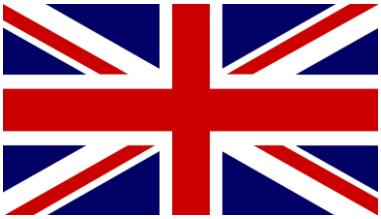
how do we resolve these conflicts -- when they become **intractable**

22



represent 2 **extremes**

23



24

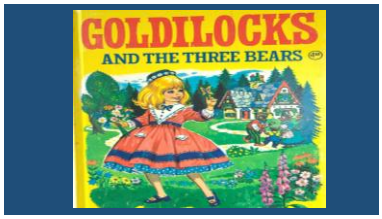
25

26

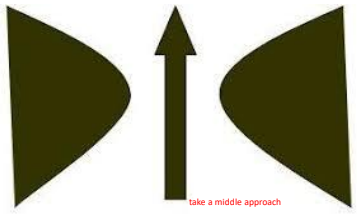
27

we should **avoid** those 2 extremes

28



29



30

31

32

33

we will not discuss **substantive** standards for dispute resolution

34

we will discuss the **process**

35

we will not discuss **how** to resolve these conflicts

36

we will discuss **where** to resolve them

37

roadmap

38

39

what **kind** of disagreements are we talking about

40

how **common** are these conflicts

41

clinicians & families usually reach **consensus**

42

but

43

when conflicts are **intractable**

44

how are they resolved in **US**

45

how are they resolved in **UK**

46

47

how are they resolved in **Ontario, Canada**

48

time for reform?

49

non-beneficial treatment conflicts

50

you are **familiar** with this type of conflict

51

52

53

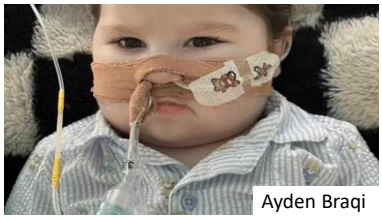
54

55

Indi Gregory

56

57



58

not just babies

59

older children

60

61

62

adults

63

64

65

familiar because extensive UK **media coverage**

66

familiar because of **dramatic portrayals** – like on *BBC One*

67

68

69

70

surrogate driven over-treatment

71

surrogate will **not** consent to CMO recommendation

72

73

appropriate	inappropriate

74

advisable	inadvisable

75

proportionate	disproportionate

76

beneficial	non-beneficial

77

effective	ineffective

78

neglect to stop Tx	abuse to continue

79

consistent with reasonable medical standards	**contrary** to reasonable medical standards

80

81

therapeutically obstinate

not therapeutically obstinate

82

83

these conflicts are often called **medical futility** cases

84

but the treatment at issue is **rarely** strictly "futile"

85

AMERICAN THORACIC SOCIETY DOCUMENTS

An Official ATS/AACN/ACCP/ESICM/SCCM Policy Statement: Responding to Requests for Potentially Inappropriate Treatments in Intensive Care Units

Gabriel T. Bosslet, Thaddeus M. Pope, Gordon D. Rubenfeld, Bernard Lo, Robert D. Truog, Cynda H. Rushton,

86

AMERICAN THORACIC SOCIETY 1905 ATS

We help the world breathe

PULMONARY · CRITICAL CARE · SLEEP

87

Society of Critical Care Medicine

The Intensive Care Professionals

88

AMERICAN COLLEGE OF CHEST PHYSICIANS

The Global Leader in Clinical Chest Medicine

89

AACN

90

ESICM
EUROPEAN SOCIETY OF INTENSIVE CARE MEDICINE

91

futile

92

intervention **cannot** (at all) accomplish physiological goals

93

scientific impossibility

94

95

96

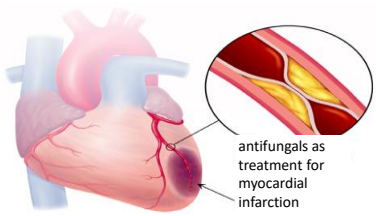
example 1

97

98

example 2

99



100

example 3

101

102

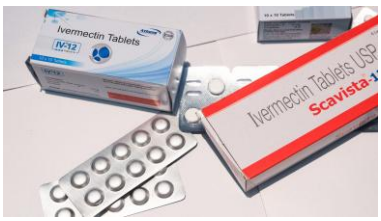
example 4

103

104

example 5

105



106

example 6

107

108

"prospect of … treatment having any benefit is as **close to zero** as makes no difference"

109

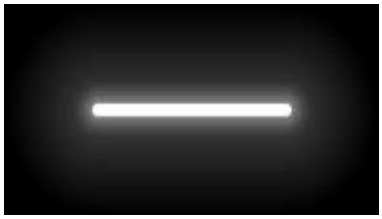
"futile"

110

value free

objective

111



112

may the clinician stop LSMT?

113

"futile"

114

may & should refuse

115

rare

116

treatment in **most** cases

117

some chance of accomplishing the effect sought by patient or surrogate

118

not "futile" because **might** "work"

119

examples

120

dialysis for permanently unconscious

121

MV for widely metastatic cancer

122

we call these "futility disputes"

123

but

124

disputed Tx **might** keep patient alive

125

126

is that chance or outcome **worthwhile**

127

not a medical judgment

128

value judgment

129

130

not asking "will it **work**"

131

asking "is it in the patient's **best interest**"

132

that's the **nature** of NBT conflicts

133

prevalence of conflicts

134

135

136

137

intensivists

or

ethicists

138

intensivists

measures

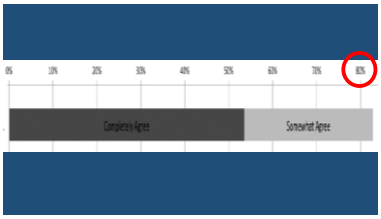
139

700 acute care clinicians

140

"NBT is a **problem**"

141



142

"NBT is **common** among **my** inpatients"

143

144

UCLA Health

145

The Frequency and Cost of Treatment Perceived to Be Futile in Critical Care

20%

Thanh N. Huynh, MD, MSHS; Eric C. Kleerup, MD; Joshua F. Wiley, MA; Terrance D. Savitsky, MBA, MA, PhD; Diana Gude, MD; Bryan J. Garber, MD; Neil S. Wenger, MD, MPH

JAMA Intern Med. 2013;173(20):1887-1894.

146

frontiers | Frontiers in Pediatrics

14%

Perceived potentially inappropriate treatment in the PICU: frequency, contributing factors and the distress it triggers

Amrita Sarpal, Michael R. Miller, Claudio M. Martin, Robert W. Sibbald and Kathy N. Speechley

147

"conflict ... in ICUs ... **epidemic** proportions"

148

ethicists

measures

149

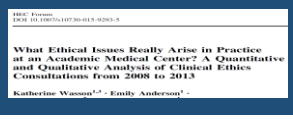
33% ethics consults

University of Michigan Health System

Physician Executive Journal (37 no. 6)

150

20% ethics consults



What Ethical Issues Really Arise in Practice at an Academic Medical Center? A Quantitative and Qualitative Analysis of Clinical Ethics Consultations from 2008 to 2013

Katherine Wasson - Emily Anderson

151

15% ethics consults

Sutter Health

152

2 futility cases **per month**

MGH 1811

Courtwright, 2015 J Crit Care 30(1):173–77

153

causes

154

155

156

incapacitated → surrogate

157

why surrogates **demand**

why providers **resist**

158

surrogate demand

159

misunderstanding

160

161

confusion

162

163

iatrogenic

inadequate communication

uncoordinated, conflicting

164

Association between shared decision-making during family meetings and surrogates' trust in their ICU physician

165

"at least 1 of 5 core elements of shared decision making … **missing** from **95%** … family meetings"

166

explain patient's medical condition/**prognosis**

elicit or assess **understanding**

167

mistrust

168

169

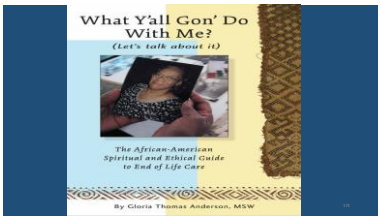
31%

Trust the US healthcare system

170

171

172



173

174

emotional barriers

175

176

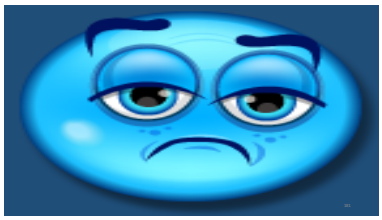
177

178

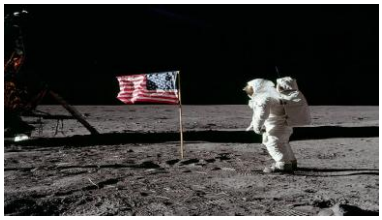
psychological barriers

179

180



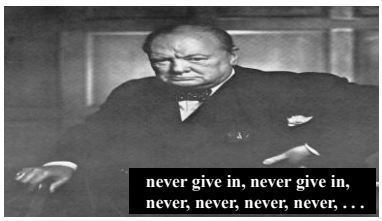
181



182

183

184



185

186

187

188

189

190

Trauma Death

Views of the Public and Trauma Professionals on Death and Dying From Injuries

Lenworth M. Jacobs, MD, MPH; Karyl Burns, RN, PhD; Barbara Bennett Jacobs, RN, MPH, PhD, CHPN

Arch Surg. 2008;143(8):730-735

191

Question and Responses[a]	Public, % (n=1006)
If the doctors treating your family member said futility had been reached, would you believe that divine intervention by God could save your family member?	
Yes	57.4
No	35.5

192

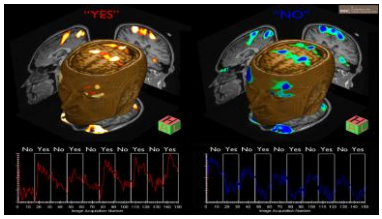
Cheating Death

The Doctors and Medical Miracles that Are Saving Lives Against All Odds

Sanjay Gupta, MD

Chief Medical Correspondent, CNN, and New York Times Bestselling Author of Chasing Life

193



194

some reasons
surrogates
demand NBT

195

cognitive
psychological
emotional
religious
mistrust

196

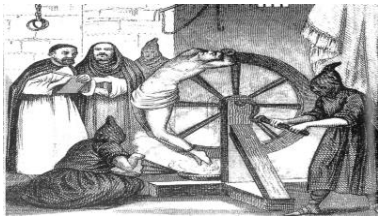
197

clinicians
resist

198

avoid patient suffering

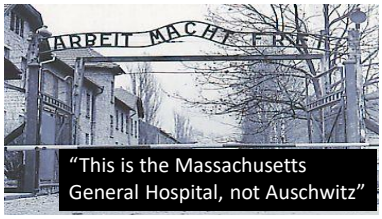
199



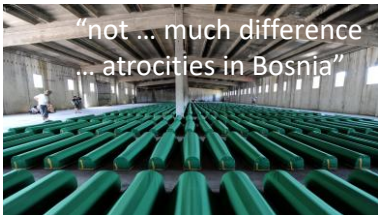
200

quotes from actual cases

201



202



203

avoid moral distress

204

205

206

absenteeism

retention

quality

207

integrity of profession

208

209

210

stewardship

211

212

distrust surrogate

213

60% accurate

214

more aggressive treatment

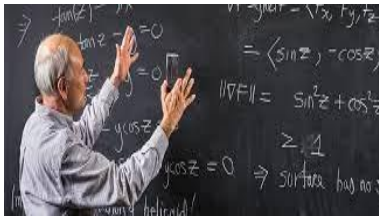
215

protect Pt from their surrogate

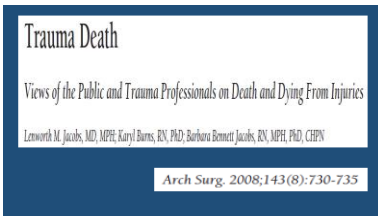
216

some reasons
clinicians
resist NBT

217



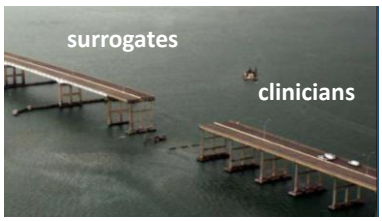
218



219

Question and Responses[a]	Public, % (n=1006)	Professionals (n=774)
If doctors believe there is no hope of recovery, which would you prefer?		
All efforts should continue indefinitely	20.6	2.5

220



221

222

223

consensus usually reached

224

negotiation

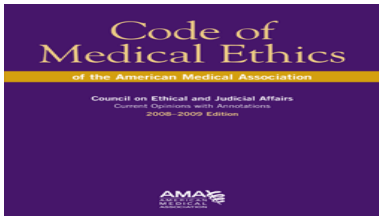
mediation

225

most hospital policies

most society guidelines

226



227

4 of 7 steps

228

1. earnest attempts … deliberate … **negotiate**

2. **joint** decision making … maximum extent

229

3. attempts … **negotiate** … reach resolution

4. involve … **ethics committee**

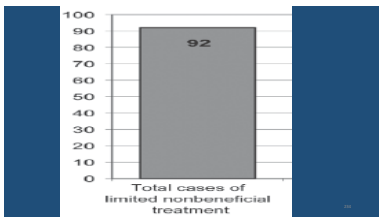
230

231

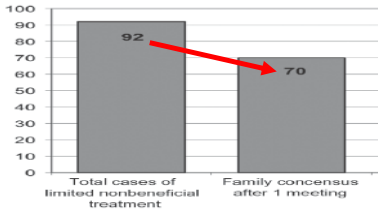
95%

232

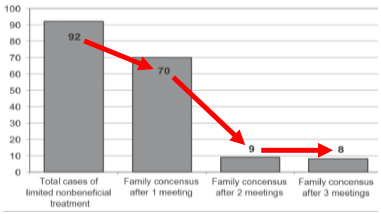
233



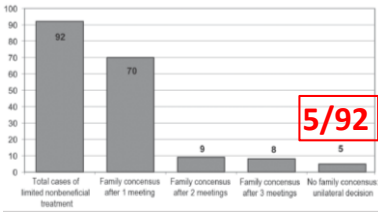
234



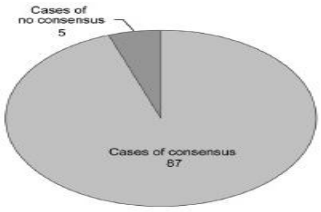
235



236

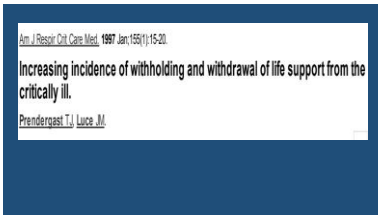


237



238

239



240

57% agree immediately

90% agree within 5 days

96% agree after more meetings

241

Resolution of Futility by Due Process: Early Experience with the Texas Advance Directives Act

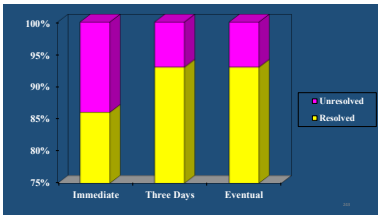
Robert L. Fine, MD, and Thomas Wm. Mayo, JD

Every U.S. state has developed legal rules to address end-of-life decision making. No law to date has effectively dealt with medical futility—an issue that has engendered significant debate in the medical and legal literature, many court cases, and a formal opinion from the American Medical Association's Council on Ethical and Judicial Affairs. In 1999, Texas was the first state to adopt a law regulating end-of-life decisions, providing a legislatively sanctioned, extrajudicial, due process mechanism for resolving medical

2 years of practical experience with this law, data collected at a large tertiary care teaching hospital strongly suggest that the law represents a first step toward practical resolution of this controversial area of modern health care. As such, the law may be of interest to practitioners, patients, and legislators elsewhere.

Ann Intern Med. 2001;134:743-746. www.annals.org

242



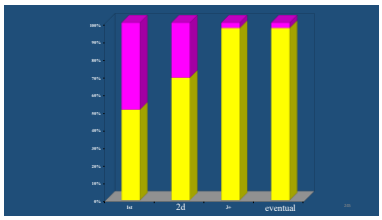
243

Circumstances Surrounding End of Life in a Pediatric Intensive Care Unit

Daniel Garros, MD*; Rhonda J. Rosychuk, PhD†; and Peter N. Cox, MD*

PEDIATRICS Vol. 112 No. 5 November 2003

244

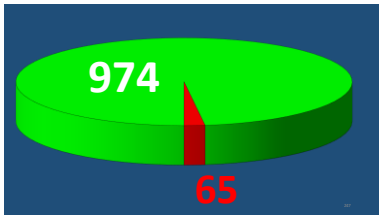


245

Dallas Morning News

"Bills challenge care limits for terminal patients: Some say 10 days to transfer isn't enough before treatment ends" (Feb. 15, 2007)

246



247

not always

248

MASSACHUSETTS GENERAL HOSPITAL

HEC Forum (2022) 34:73

Experience with a Revised Hospital Policy on Not Offering Cardiopulmonary Resuscitation

Andrew M. Courtwright[1,2] · Emily Rubin[2,3] · Kimberly S. Erler[2,4] ·

249

Bioethical Inquiry
https://doi.org/10.1007/s11673-023-10270-7

ORIGINAL RESEARCH

Declining to Provide or Continue Requested Life-Sustaining Treatment: Experience With a Hospital Resolving Conflict Policy

Emily B. Rubin · Ellen M. Robinson · M. Cornelia Cremens · Thomas H. McCoy · Andrew M. Courtwright

250

Original research

Can mediation avoid litigation in conflicts about medical treatment for children? An analysis of previous litigation in England and Wales

Veronica Neefjes

2023

Arch Dis Child first published

251

95%

darn good

252

consensus

intractable

253

but

254

tried reach consensus

255

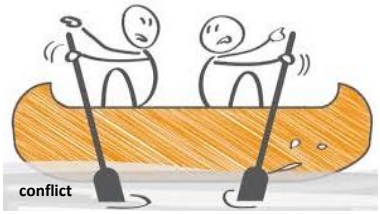
intensive communication

mediation

256

still no consent

257



258

	clinician		
		stop	go
surrogate	stop		
	go	X	

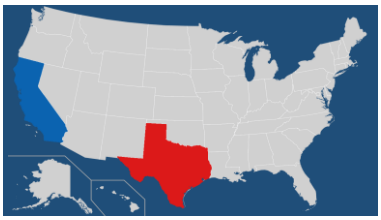
259

260

dispute resolution in USA

261

262



263

California	40,000,000
Texas	30,000,000
	70,000,000

264

265

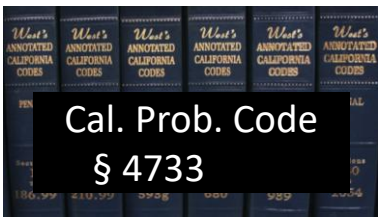
CA + TX = UK

266

267

normally, clinicians must **follow** patient & surrogate decisions

268



269

"provider … **shall … comply** with a … decision … made by a person then authorized"

270

but

271

EXCEPTION TO THE RULES

272

273

"provider … **may decline to comply** with … decision that … requires"

274

either

275

"**medically ineffective** health care"

276

or

277

"health care **contrary** to generally accepted health care **standards**"

278

plus

279

legal immunity

280

281

"**not subject** to civil **or** criminal liability **or** to discipline for unprofessional conduct"

282

283

may stop LSMT **without** consent

284

with legal **immunity**

285

contrary to GAHCS

286

medically ineffective

287

who determines when this exception applies

288

dispute adjudicated by

hospital ethics committee

289

CALIFORNIA MEDICAL ASSOCIATION

290

San Diego County Medical Society
"Physicians United for a Healthy San Diego"

Model Policy on "Non-beneficial Treatment"

Lynette Cederquist, MD, July 2009 "San Diego Physician" • Ethics in Medicine

291

TORRANCE MEMORIAL MEDICAL CENTER

Department: Medical Staff

DRAFT

Policy/Procedure: MEDICALLY INEFFECTIVE TREATMENT

WITHDRAWING OR WITHHOLDING MEDICALLY INAPPROPRIATE LIFE-SUSTAINING TREATMENT HS 1319

UCLA Health

WITHDRAWING OR WITHHOLDING MEDICALLY INAPPROPRIATE LIFE SUSTAINING TREATMENT

292

who is on the hospital ethics committee

293

physicians, nurses, others who work at **this same** hospital

294

what is the process

295

296

2d notice meeting

HEC meeting

2d for options

297

298

299

300

301

stop LSMT **without** consent

302

any reason

303

if your **own** hospital ethics committee agrees

304

"not civilly or criminally liable or subject to … disciplinary action"

305

contrast California

306

"**medically ineffective** health care"

307

or

308

"health care **contrary** to generally accepted health care **standards**"

309

no substantive standard in TX

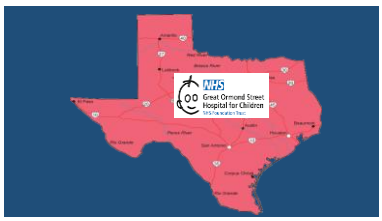
310

example

311

NHS
Great Ormond Street Hospital for Children
NHS Foundation Trust

312



313

314

"**we (GOSH)** think the requested treatment is inappropriate"

315

not only is court approval **not needed**

316

judicial review is **prohibited**

317

HEC = forum of last resort

318

319

5 steps

320

321

step 1

322

April 14, 2006

Ms.
~~Christina~~ Gonzales
407 Neches St.
Lockhart, Texas 78644

notice HEC meeting

Dear Ms. Gonzales;

We, the physicians and other members of the healthcare team, appreciate you taking your time to attend the patient care conferences regarding your son.

At the last conference, your son's physician discussed his brain condition and the poor prognosis for any further neurological improvement. As you know, the physicians involved in the care of your son believe that his condition is irreversible and that to continue certain treatments will serve to prolong his suffering without the possibility of cure. We understand that you do not agree with this position and want the hospital to continue to provide all current treatments for your son.

When disagreements of this nature arise, Texas law allows hospitals to call the hospital ethics committee meeting to review whether certain treatments are medically appropriate. A meeting has been called for the Seton Family of Hospitals Pediatric Ethics Committee to consider Emilio Gonzales's care. This meeting will be held on February 16, 2007 at 09:00 a.m. in the 3rd floor boardroom at Breckenridge Hospital of Austin. The physicians providing care for your son, as well as the ethics committee members will attend the meeting. While that is not legally required, we strongly encourage you to be present for this discussion. You will be given the opportunity to ask questions regarding your son's care and to provide input into the committee's decision-making process.

323

step 2

324

325

step 3

326

The Ethics Committee further recommends that

- The treatment plan for the patient be modified to allow only comfort measures (such as hydration, pain control and other interventions designed to decrease the patient's suffering).
- New complications that develop should not be treated, except additional palliative measures, as appropriate.
- The patient's code status be changed to a DNR.
- Appropriate spiritual and pastoral care resources should be provided to Emilio's mother and family members.

327

step 4

328

329

step 5

330

no transfer → withdraw LSMT

331

332

333

but

334

335

336

notice

neutral decision-maker

judicial review

337

notice

338

independent
neutral
decision
maker

339

judicial
review

340

dispute resolution in UK

341

342

343

344

345

but

346

347

348

application Feb 24, 2017

final July 27, 2017

349

154 days

350

351

application May 28, 2021

final Oct. 6, 2021

352

132 days

353

354

application Dec. 19, 2017

final Apr. 23, 2018

355

126 days

356

1000%

longer than US

357

358

litigation £200,000

treatment ?

359

360

361

dispute resolution in Ontario

362

363

Canada's most populous province

holds **40%** Canadian population

364

Ontario

CONSENT AND CAPACITY BOARD

365

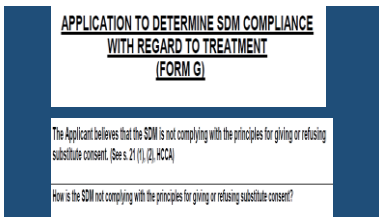
quasi-judicial administrative tribunal

366

fast & efficient

like US HECs

367



APPLICATION TO DETERMINE SDM COMPLIANCE WITH REGARD TO TREATMENT (FORM G)

The Applicant believes that the SDM is not complying with the principles for giving or refusing substitute consent. (See s. 21 (1), (2), HCCA)

How is the SDM not complying with the principles for giving or refusing substitute consent?

368

hearing in **7 days**

369

decision **1 day** after hearing

370

371

372

independent & neutral

like UK judges

373

psychiatrist
lawyer
public member

374

board members are **trained**

375

Ontario

CONSENT AND CAPACITY BOARD
RULES OF PRACTICE

376

377

378

should UK change how it resolves NBT conflicts?

379

380

4 reasons

381

reason 1

382

383

reason 2

384

385

386

reason 3

387

JOURNAL OF SOCIAL WELFARE AND FAMILY LAW
https://doi.org/10.1080/09649069.2025.2454107

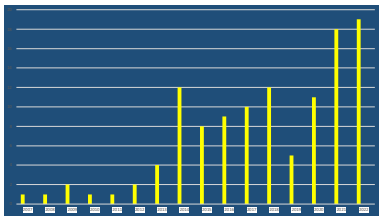
Routledge
Taylor & Francis Group

OPEN ACCESS Check for updates

Medical Treatment Disputes and Children: An Empirical Analysis of Sixteen Years of Reported Judgments in England and Wales

Jaime Lindsey[a], Denise Schuberg[b] and James Browning[c]

388



389

reason **4**

390

model to copy

391

392

393

Terminally Ill Adults (End of Life) Bill

[AS INTRODUCED]

A

BILL

TO

Allow adults who are terminally ill, subject to safeguards and protections, to request and be provided with assistance to end their own life; and for connected purposes.

Presented by Kim Leadbeater supported by Kit Malthouse, Christine Jardine, Jake Richards, Siân Berry, Rachel Hopkins, Mr Peter Bedford, Sarah Champion, Sarah Green, Dr Jeevun Sandher, Rachel Gadsby and Paula Barker.

Ordered, by the House of Commons, to be Printed, 16th October 2024.

394

after 2 doctors confirm patient eligibility

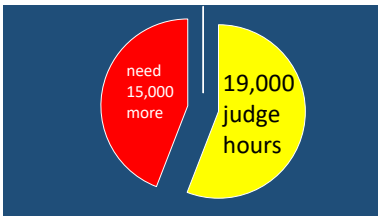
395

High Court judge must confirm eligibility

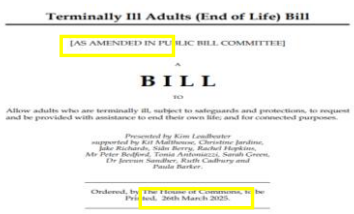
396


Sir. Munby

397



398


Terminally Ill Adults (End of Life) Bill

[AS AMENDED IN PUBLIC BILL COMMITTEE]

BILL

399

~~High Court judge must confirm eligibility~~

400

Assisted Dying Review Panels

401

legal member

psychiatrist member

social worker member

402

panel members appointed by the Voluntary Assisted Dying Commissioner

403

Commissioner is a current or retired judge appointed by the Prime Minister

404

Ontario

CONSENT AND CAPACITY BOARD

405

conclusion

406

2 objectives for dispute resolution

407

fair
efficient

408

409

410

411

proposal

412

413

quasi-judicial
administrative
tribunal

414

415

get Pt right Tx
save healthcare £
Save litigation £

416

minimal loss
fairness PDP

417

Thank you!

418

419

Thaddeus Mason Pope, JD, PhD, HEC-C
Mitchell Hamline School of Law
875 Summit Avenue
Saint Paul, Minnesota 55105
T 651-695-7661
C 310-270-3618
E Thaddeus.Pope@mitchellhamline.edu
W www.thaddeuspope.com
B medicalfutility.blogspot.com

420