Futile or Non-Beneficial Treatment

When medical treatment is considered to be futile, of no benefit or not in a person's best interests, a decision may be made to withhold or withdraw it. However, an older person, their family and/or health professionals may disagree about when treatment is futile or non-beneficial. This can make these decisions complex. This factsheet explains the law on futile or non-beneficial treatment.

Clarifying the law

This factsheet explains:

- What futile or non-beneficial treatment is
- Who decides if treatment is futile or non-beneficial, and how
- When a decision to withhold or withdraw futile or non-beneficial treatment can be made
- Health professionals' legal obligations regarding futile non-beneficial treatment

What is futile or non-beneficial treatment?

Futile or non-beneficial treatment is not defined in law, and there is disagreement about what it means. It is often used to describe treatment which:

- **is of no benefit,**
- **cannot achieve its purpose, or**
- **is not in the person's best interests.**

Examples of futile or non-beneficial treatment

There are different types of futile or non-beneficial treatment. One is **physiological futility, where treatment will not provide any physiological benefit to the person**. An example is where an aged care resident close to death is receiving palliative care, and is so medically compromised that cardiopulmonary resuscitation will not work if that person suffers a cardiac arrest.

More common is where **treatment might possibly work but doctors believe that in the person's case it is not worth providing**. For example, treating the person would be burdensome with a low prospect of success, or bring only limited improvement in the person's quality of life.

Who decides if treatment is futile or non-beneficial, and how do they decide?

A decision that treatment is futile or non-beneficial is generally made by the person's treating doctor or clinical team. However, these decisions are increasingly made through effective communication and shared decision-making between health professionals, the person, and families/substitute decision-makers (when the person does not have capacity). Involving individuals and families/substitute decision-makers in decisions about futile or non-beneficial treatment helps to:

- find out a person's values, preferences and goals of treatment, or the substitute decision-maker's understanding of these,
- communicate the risks, benefits and burdens of continuing or commencing treatment,
- explain why the health professional/s believe treatment is futile or non-beneficial, and
- come to a shared view about the options.

If there is a dispute, **the Supreme Court or a State or Territory tribunal may be asked to decide if treatment is futile or non-beneficial.** However, the courts have usually agreed with medical assessments about futility.

When will treatment be futile or non-beneficial?

There is no easy answer to this question, and **no set rules to decide if life-sustaining treatment is futile or non-beneficial**. Instead, it is generally decided on a case-by-case basis. Factors that are usually considered include:

- the person's treatment goals, and the likelihood they will be achieved by providing treatment,
- risks, burdens, and benefits of further treatment,
- treatment alternatives, and
- the person's prognosis and quality of life.

When the courts have been asked to decide whether or not treatment should be provided they have **decided based on the person's best interests, taking into account similar factors to those above**. The courts have also stated that the interests of others (including health organisations or systems) and resources are not relevant.

Is it lawful to withhold or withdraw futile or non-beneficial treatment?

It is **lawful for a health professional to withhold or withdraw treatment that is futile or non-beneficial**.

A health professional **does not need to obtain consent** from a person or their substitute decision-maker to withhold or withdraw futile or non-beneficial treatment. In **Queensland**, however, where a person does not have capacity, consent from a substitute decision-maker is required to withhold or withdraw life-sustaining treatment.

This is the case even if the treatment is futile or non-beneficial. This issue is complex, and health professionals may wish to refer to *End of Life Law in Australia* for further information. (https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws/queensland#QLDfutile)

Practice tip

Though consent is generally not required, it is good practice for health professionals to engage in shared decision-making with the person or their family/substitute decision-maker about treatment considered to be futile or non-beneficial.

Where treatment may be futile or non-beneficial, State and Territory guardianship and medical treatment laws about withholding and withdrawing treatment can also apply.

Learn more in the End of Life Law Toolkit factsheet *Withholding and Withdrawing Life-Sustaining Medical Treatment*. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Withholding-and-Withdrawing-Life-Sustaining-Medical-Treatment)

Does a health professional have to provide futile or non-beneficial treatment?

Health professionals generally have **no legal obligation to provide treatment** that is **not in the person's best interests**, or would be **inconsistent with good medical practice**.

Therefore, a person and/or their substitute decision-maker **cannot require or demand that a health professional give futile or non-beneficial treatment**. An Advance Care Directive also cannot direct that futile or non-beneficial treatment be given.

Disputes about futile or non-beneficial treatment

Different views about when treatment is futile or non-beneficial can sometimes lead to disputes. For example, an older person's clinical team may consider providing or continuing life-sustaining treatment to be futile or non-beneficial, but the person or their family disagree and insist that treatment be provided.

In most situations, early, proactive communication can help avoid or resolve conflict.

Learn how to manage disputes in this kind of situation in the **End of Life Law Toolkit** factsheet *Managing Disputes about Medical Treatment Decision-Making*. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Managing-Disputes-about-Medical-Treatment-Decision-Making)

Key points to remember

1. Futile or non-beneficial treatment is not defined in law, but is often used to describe treatment which is of no benefit, cannot achieve its purpose, or is not in the person's best interests.
2. Health professionals generally decide whether particular treatment for a person is futile or non-beneficial. When courts or tribunals are asked to review these matters, they have nearly always agreed with medical assessments of futility. However, it is good practice for health professionals to make shared decisions with the person or their family/substitute decision-maker about futile or non-beneficial treatment.
3. There are no universally accepted rules for deciding if treatment is futile or non-beneficial but a range of factors relating to the person, their treatment and condition, treatment risks, burdens and benefits, and quality of life will be considered.
4. When hearing a dispute about whether treatment should be provided, courts will decide this on the basis of the person's best interests. Treatment that is futile or non-beneficial will not be in the person's best interests.
5. It is generally lawful to withhold or withdraw treatment that is futile or non-beneficial.
6. A health professional has no duty to provide futile or non-beneficial treatment, nor to obtain consent to withhold or withdraw it. However, the law in Queensland is different. There, if the person does not have decision-making capacity, a substitute decision-maker's consent is required to withhold or withdraw futile or non-beneficial treatment.

Mythbusters: Futile or Non-Beneficial Treatment

Myth 1: A health professional must provide life-sustaining treatment to a person if the person's family insists that treatment be provided

No. *A health professional generally has no legal obligation to provide treatment they consider to be futile, non-beneficial or not in a person's best interests, even if family members or substitute decision-makers insist that the treatment be provided.*

It is always good practice to try to reach a shared decision with the person or their substitute decision-maker about withdrawing or withholding futile or non-beneficial treatment.

Myth 2: Courts will not support a health professional who does not want to provide futile or non-beneficial treatment

Courts and tribunals have generally supported medical opinion about futility when asked to decide if treatment is futile or non-beneficial. This is especially so when the person's health professionals have consulted other health professionals, acted in accordance with guidelines, and engaged in discussions with individuals and their families.

However, courts have not always agreed with medical opinion, and there have been legal cases where the court has overruled clinical decisions to withdraw life-sustaining treatment considered to be futile.

Myth 3: A health professional or residential aged care facility does not have to provide vaccinations (for example, influenza vaccinations) to residents of these facilities because that would be futile or non-beneficial treatment

No. *Whether or not treatment is futile or non-beneficial can be decided only on a case-by-case basis. This is because it depends on an individual person's needs and whether they would benefit from the treatment (including an assessment of the treatment's benefits and risks). Because of this, it is not possible to make global assessments about futile or non-beneficial treatment for people living in residential aged care facilities.*