

Futile or non-beneficial treatment

Where medical treatment is considered to be futile, non-beneficial or not in a person's best interests, a decision may be made to withhold or withdraw it. However people may disagree about what futility means and when treatment is non-beneficial. This can make these decisions complex. This factsheet explains key legal principles about futile treatment.

Clarifying the law

This factsheet explains:

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

What is futile treatment?

People disagree about what 'futile' or 'non-beneficial' treatment means. Common definitions include that it is treatment which:

- is not in the person's best interests,
- cannot achieve its purpose, or
- is not clinically indicated.

An example of futile treatment is providing cardiopulmonary resuscitation to someone who will not respond to it.

'Futile' treatment is not formally defined in law.

Who decides treatment is futile and how do they decide?

Who decides on futility?

A **decision that treatment is futile is generally made by the person's treating doctor**. But it is good practice for health professionals to first discuss this with the person or their substitute decision-maker (where the person lacks capacity). Discussion will help to:

- find out a person's wishes or the substitute decision-maker's understanding of the person's wishes,
- communicate the risks and benefits of continued treatment,
- explain any reasons why the medical team believe treatment is futile, and
- come to a shared view about the options.

In some cases, such as when there is a treatment dispute, **the Supreme Court or a State or Territory Tribunal may be asked to decide if treatment is futile**. However, the courts have usually supported medical assessments about whether or not treatment is futile.

How is futility determined?

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

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

When is it lawful to withhold or withdraw futile treatment?

It is lawful in each State and Territory (except Queensland) for a health professional to withhold or withdraw treatment that is futile.

In Queensland, where an adult lacks capacity, consent from a substitute decision-maker is required to withhold or withdraw life-sustaining treatment. This is so even if the treatment is futile. This issue is complex, and health professionals may wish to refer to *End of Life Law in Australia* (<https://end-of-life.qut.edu.au/stopping-treatment/adults/state-and-territory-laws/queensland>) for further information.

Where treatment may be futile, the local guardianship and medical treatment laws about withholding and withdrawing treatment can also apply. The law in this area is complex and it is important to consult the legislation in your State and Territory (<https://end-of-life.qut.edu.au/stopping-treatment>). These laws are also discussed in the Legal Toolkit factsheet 'Withholding and withdrawing life-sustaining medical treatment'.

Does a health professional have to provide futile treatment?

No obligation to treat

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

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

Consent

A health professional **does not need to obtain consent** from a person or a substitute decision-maker to withhold or withdraw futile treatment.

However, as a matter of good medical practice, a person or their substitute decision-maker should always be involved in treatment decision-making, including when health professionals think treatment is futile.

The law in **Queensland is different where a person lacks capacity**. As noted above, the consent of the person's substitute decision-maker is needed.

Disputes about futile treatment

Different views about when treatment is futile can sometimes lead to disputes. Find out more about how to resolve disputes in this kind of situation in your State or Territory at *End of Life Law in Australia* (<https://end-of-life.qut.edu.au/stopping-treatment>).

Key points to remember

1. There are different views about what 'futile treatment' means and this term is not defined in law.
2. Health professionals generally decide whether particular treatment for a person is futile. Sometimes courts or tribunals decide these matters but they generally support medical assessments.
3. There are no universally accepted rules for deciding if treatment is futile but a range of factors relating to the person, their treatment and condition, treatment risks and benefits, and quality of life will be considered.
4. It is generally lawful to withhold or withdraw treatment that is futile.
5. A health professional has no duty to provide treatment that is demanded if it is futile, nor to obtain consent to withhold or withdraw futile treatment. However, the law in Queensland is different.

Myth-busters: Futile and 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. This is so, even if family members or substitute decision-makers insist that the treatment be provided.

The law is different though in Queensland where an adult lacks capacity. In this case, consent from a substitute decision-maker is required to withhold or withdraw life-sustaining treatment. This issue is complex, and health professionals may wish to refer to **End of Life Law in Australia** (<https://end-of-life.qut.edu.au/stopping-treatment/adults/state-and-territory-laws/queensland#547985>) or obtain their own legal advice on this issue.

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

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

Courts and tribunals have generally supported medical assessments of futility when these matters are litigated. This is especially so when the health professionals have consulted other health professionals, acted in accordance with guidelines, and engaged in discussions with persons and families.

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 treatment

No. Whether or not treatment is futile 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 treatment for people living in residential aged care facilities.