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# The (Futile?) Attempts to Address Futility at End-of-Life

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# Disclosures

- No relevant financial disclosures

# Disclosures

- I'm going to talk about controversial topics
- I'm not going to present definitive solutions

# Objectives

- Describe frameworks of futility in clinical ethics
- Explore tensions in the application of futility frameworks to clinical care
- Discuss approaches to address futile and potentially inappropriate interventions for patients at end-of-life

**Mr. J is a 68 year-old man with metastatic pancreatic cancer...**



"Why are we doing this? It's **futile.**"

**Original Investigation**

November 11, 2013

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

Thanh N. Huynh, MD, MSHS<sup>1</sup>; Eric C. Klerup, MD<sup>1</sup>; Joshua F. Wiley, MA<sup>2</sup>; [et al](#)

[» Author Affiliations](#) | [Article Information](#)

*JAMA Intern Med.* 2013;173(20):1887-1894. doi:10.1001/jamainternmed.2013.10261

# Clinicians frequently worry that care is futile

Defining **futile** = withhold or  
withdraw a treatment over the  
objections of a decision maker

# Decision Making

Decision Making with Patient /  
Representative + Team

Consent

Healthcare Team  
Unilateral Decision

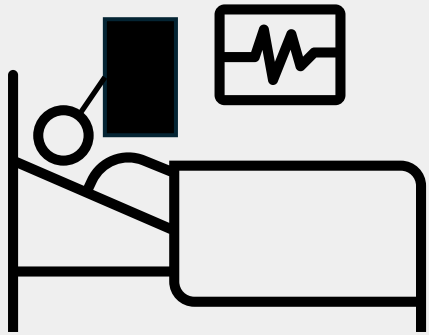
Patient/rep does not  
actively oppose  
decision

Assent

Patient/rep **actively**  
**opposes** decision

Conflict

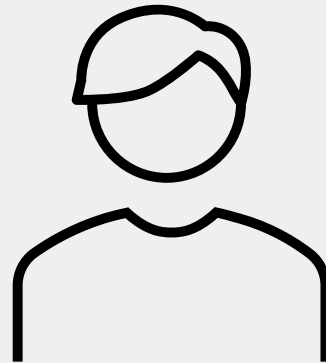
# CONSENT



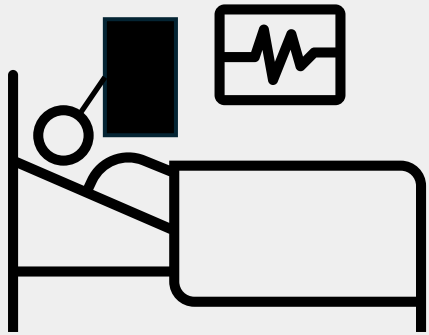
... I **recommend** focusing on comfort and not performing CPR.



I **understand and agree**. He wouldn't want this.



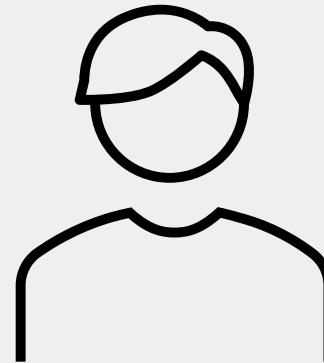
# ASSENT



...CPR will not be effective. We **will not provide** this.

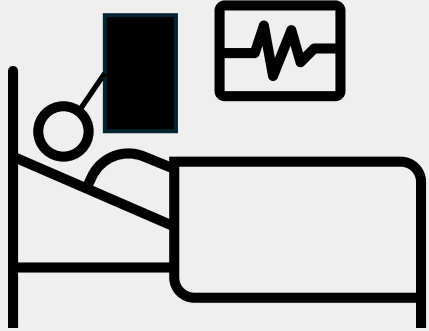


I understand.



Informed Assent Appropriateness...?

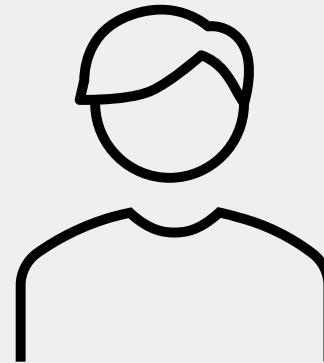
# CONFLICT



...CPR will not be effective. We **will not provide** this.



I **disagree**. I **request** that you provide CPR.



So, what do we do with conflict?

Yes, and...

Yes, we must address conflict with better  
**advance care planning** and  
**communication** with patients and  
families and...

...there will always differences in values  
= conflict

... and yes, society must address limits of healthcare and resource use as technologies increasingly forestall death...

Routine clinical conflict decisions  $\neq$   
limited-resource allocation or  
crisis triage



So, what do we do with conflict?

So, what do we do with conflict?

What are the bounds of patient  
autonomy?

Autonomy

Refusal ≠ Request

Patients with capacity may **refuse** any intervention

Patient **requests** may be denied in some situations... including if intervention is **futile**

FUTILITY





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**SOUNDING BOARD**

# The Rise and Fall of the Futility Movement

**Authors:** Paul R. Helft, M.D., Mark Siegler, M.D., and John Lantos, M.D. [Author Info & Affiliations](#)

Published July 27, 2000 | N Engl J Med 2000;343:293-296 | DOI: 10.1056/NEJM200007273430411

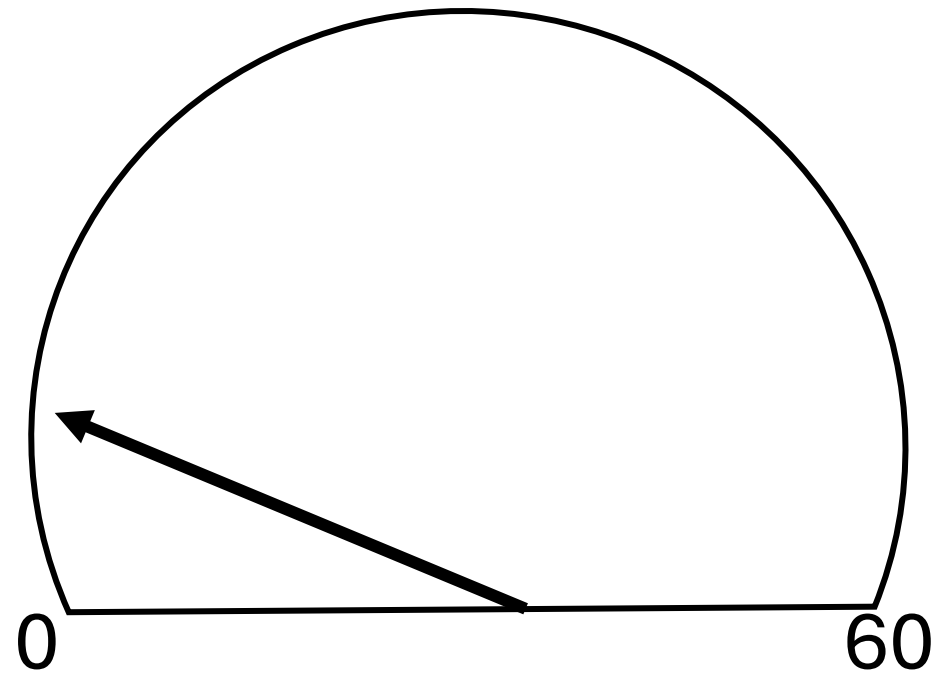
**VOL. 343 NO. 4** | **Copyright © 2000**

# Quantitative Futility

“when physicians conclude (either through personal experience, experiences shared with colleagues, or consideration of reported empiric data) that in the last 100 cases, a medical treatment has been useless, they should regard that treatment as futile.”

Schneiderman et al *Ann Intern Med* 1990

# What threshold?



Solomon MZ. Ann Arbor, Mich.: University Microfilms International, 1991

Poses et al. *Crit Care Med* 1989

Curtis et al. *JAMA* 1995

McCrary et al. *J Clin Ethics* 1994

# Prognostic Uncertainty

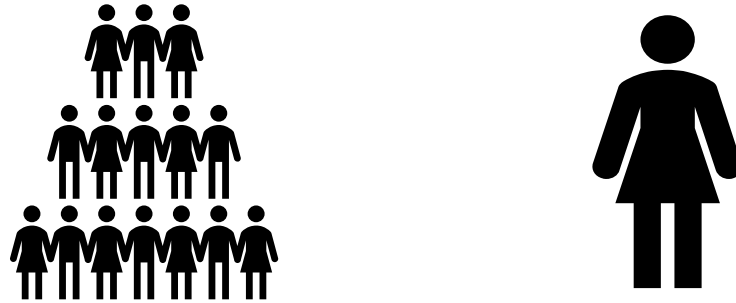


Inaccurate Clinician  
Judgement



Studies Variable

# Prognostic Impossibility?



Population Epidemiology  $\neq$  Individual Probability

Venn, *The Logic of Chance* 1876

Hajek *Synthese* 2007

Nair-Collins *J Med Philos* 2015

# AI Will Not Solve This



# Qualitative Futility

treatments that “merely preserves permanent unconsciousness or that fails to end a patient's total dependence on intensive medical care.”

Schneiderman et al *Ann Intern Med* 1990

# Qualitative Futility

“He’ll never wake up.”

“He’ll never get off ECMO.”

"He'll never get off the vent."

“He’ll never get out of ICU.”

“He’ll never get out of hospital.”

“He’s never going to walk.”

....

Qualitative = Values (Biases)  
+ Quantitative

Is Anything Futile?

# Absolute (Physiologic) Futility

Chance of intervention achieving  
intended effect = 0

Not 0.0001. Zero.

# Absolute (Physiologic) Futility

## Absolute futility examples for CPR

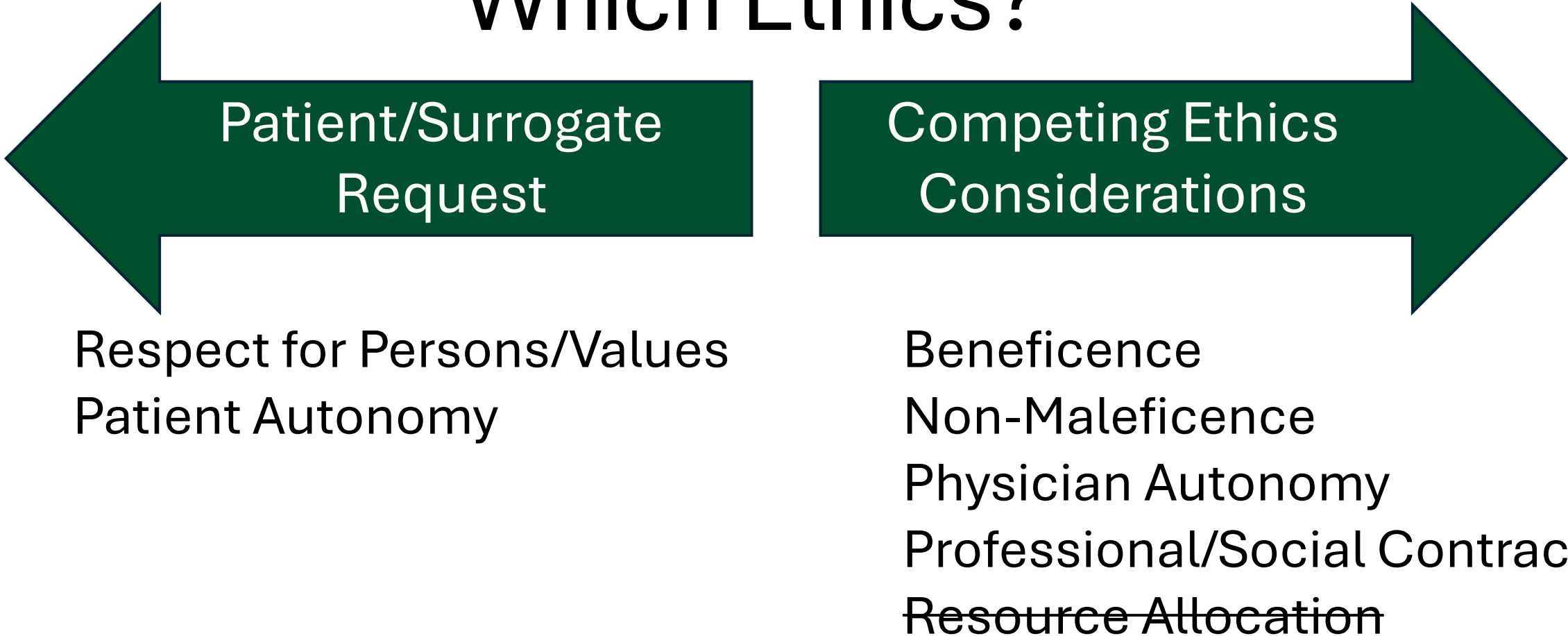
- Decapitation
- Rigor mortis

**Mr. J is a 68 year-old man with metastatic pancreatic cancer...**



Is it ever appropriate to withhold /  
withdraw over the objections of a  
decision maker beyond physiologic  
futility?

# Which Ethics?



Patient/Surrogate  
Request

Respect for Persons/Values  
Patient Autonomy

Competing Ethics  
Considerations

Beneficence  
Non-Maleficence  
Physician Autonomy  
Professional/Social Contract  
Resource Allocation

What do we **do**?

It's about process.

# 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, J. Randall Curtis, Dee W. Ford, Molly Osborne, Cheryl Misak, David H. Au, Elie Azoulay, Baruch Brody, Brenda G. Fahy, Jesse B. Hall, Jozef Kesecioglu, Alexander A. Kon, Kathleen O. Lindell, and Douglas B. White; on behalf of The American Thoracic Society *ad hoc* Committee on Futile and Potentially Inappropriate Treatment

THIS OFFICIAL POLICY STATEMENT OF THE AMERICAN THORACIC SOCIETY (ATS) WAS APPROVED BY THE ATS, JANUARY 2015, THE AMERICAN ASSOCIATION FOR CRITICAL CARE NURSES (AACN), DECEMBER 2014, THE AMERICAN COLLEGE OF CHEST PHYSICIANS (ACCP), OCTOBER 2014, THE EUROPEAN SOCIETY FOR INTENSIVE CARE MEDICINE (ESICM), SEPTEMBER 2014, AND THE SOCIETY OF CRITICAL CARE MEDICINE (SCCM), DECEMBER 2014

# Potentially Inappropriate Treatment

"...treatments that have at least some chance of accomplishing the effect sought by the patient, but clinicians believe that competing ethical considerations justify not providing them."

# Potentially Inappropriate Treatment

(Illustrative, controversial, not encompassing)

- Intubation in end stage dementia?
- Dialysis in persistent vegetative state?
- CPR in critically ill patient with poor prognosis malignancy?

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

Conflict  
Resolution

Notifications in  
Writing

Second  
Physician Eval

*Interdisciplinary*  
Institutional  
Committee  
Review

Offer Transfer

Offer Appeal  
(Judicial)

Withhold/  
Withdraw

Statute?

**Statute?**

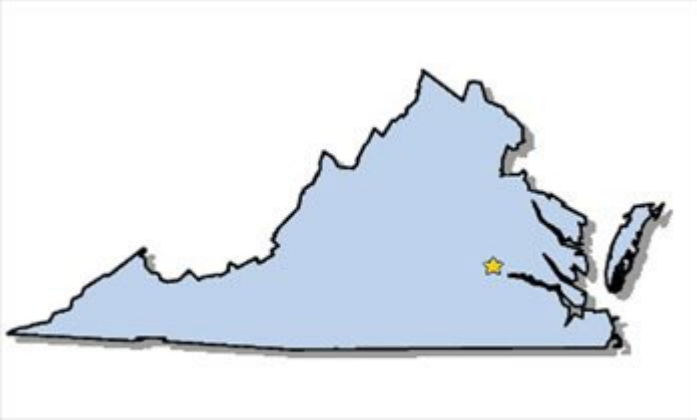
**This presentation is not legal advice.**

**Research Letter**



# **US State Statutes Addressing Unilateral Clinician Decisions About Life-Sustaining Treatment**

Gina M. Piscitello, MD, MS<sup>1,2</sup>; Michael T. Huber, MD, MS<sup>3,4</sup>; Leigh Meyer, BA<sup>5</sup>;  
Patrick G. Lyons, MD, MS<sup>6</sup>; William F. Parker, MD, PhD<sup>7,8</sup>; Erin S. DeMartino, MD<sup>5,9</sup>



# Virginia

If, at the end of the 14-day period, the conflict remains unresolved despite compliance with the hospital's written policy ... the physician may cease to provide the treatment that the physician has determined to be medically or ethically inappropriate subject to the right of court review by any party.





Florida

?

Policy?

Humanities: Original Research

## Hospital Policy Variation in Addressing Decisions to Withhold and Withdraw Life-Sustaining Treatment

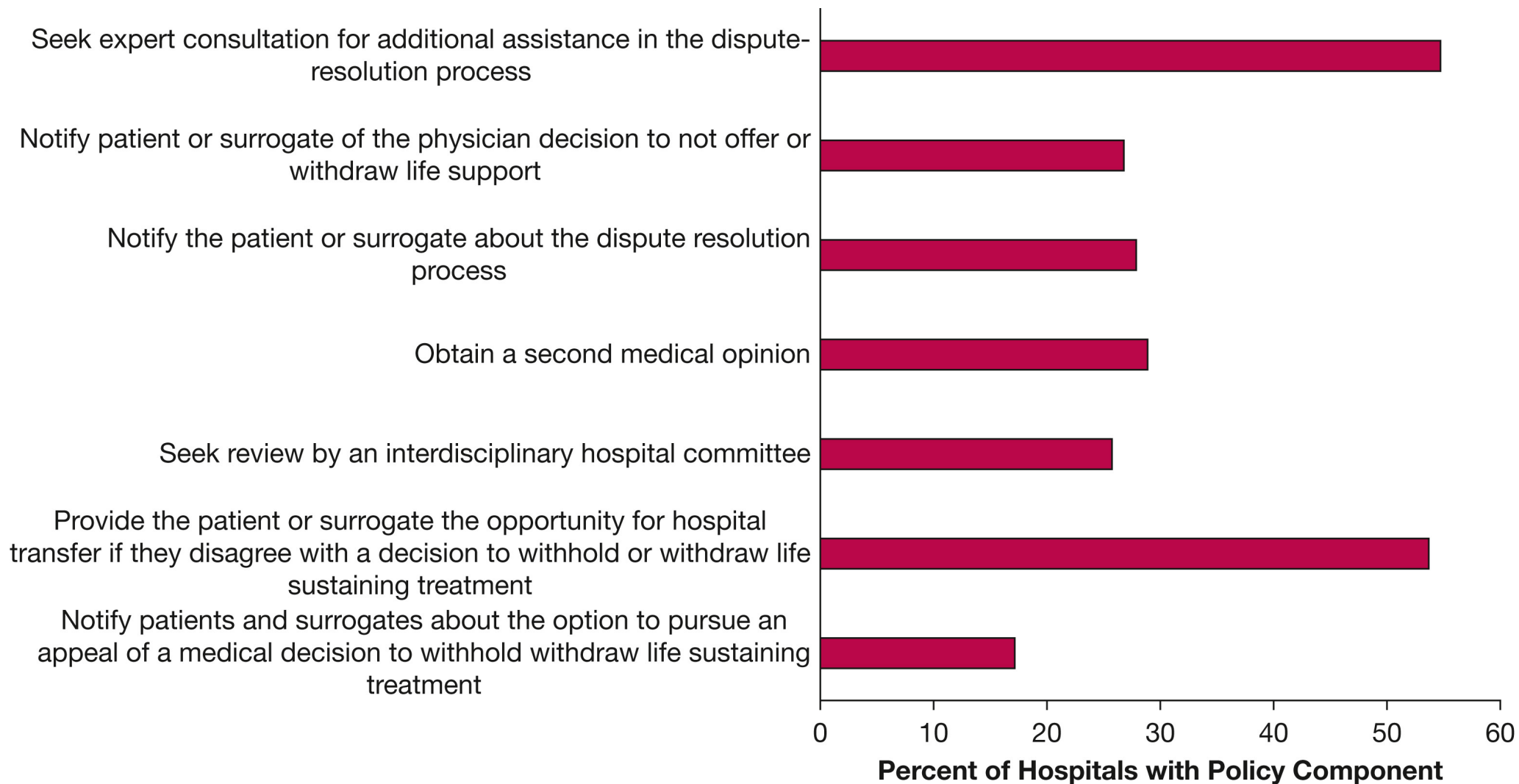
Gina M. Piscitello MD<sup>a b</sup>  , Patrick G. Lyons MD<sup>c d</sup>, Valerie Gutmann Koch JD<sup>e f</sup>,  
William F. Parker MD, PhD<sup>f g h</sup>, Michael T. Huber MD<sup>i j</sup>

93 hospital/system policies

All 50 states + Puerto Rico

64% address potentially inappropriate treatment

Wide variability in process



**Policy? Practice!**

# The Influence of Hospital Policies on Clinicians' Decisions to Withhold or Withdraw Life-Sustaining Treatment



*Gina M. Piscitello, MD; Edlyn Lopez Wolwowitz, BS; Michael T. Huber, MD; Kelly C. Vranas, MD;  
Donald R. Sullivan, MD; Katrina E. Hauschildt, PhD, BCPA; and Patrick G. Lyons, MD*

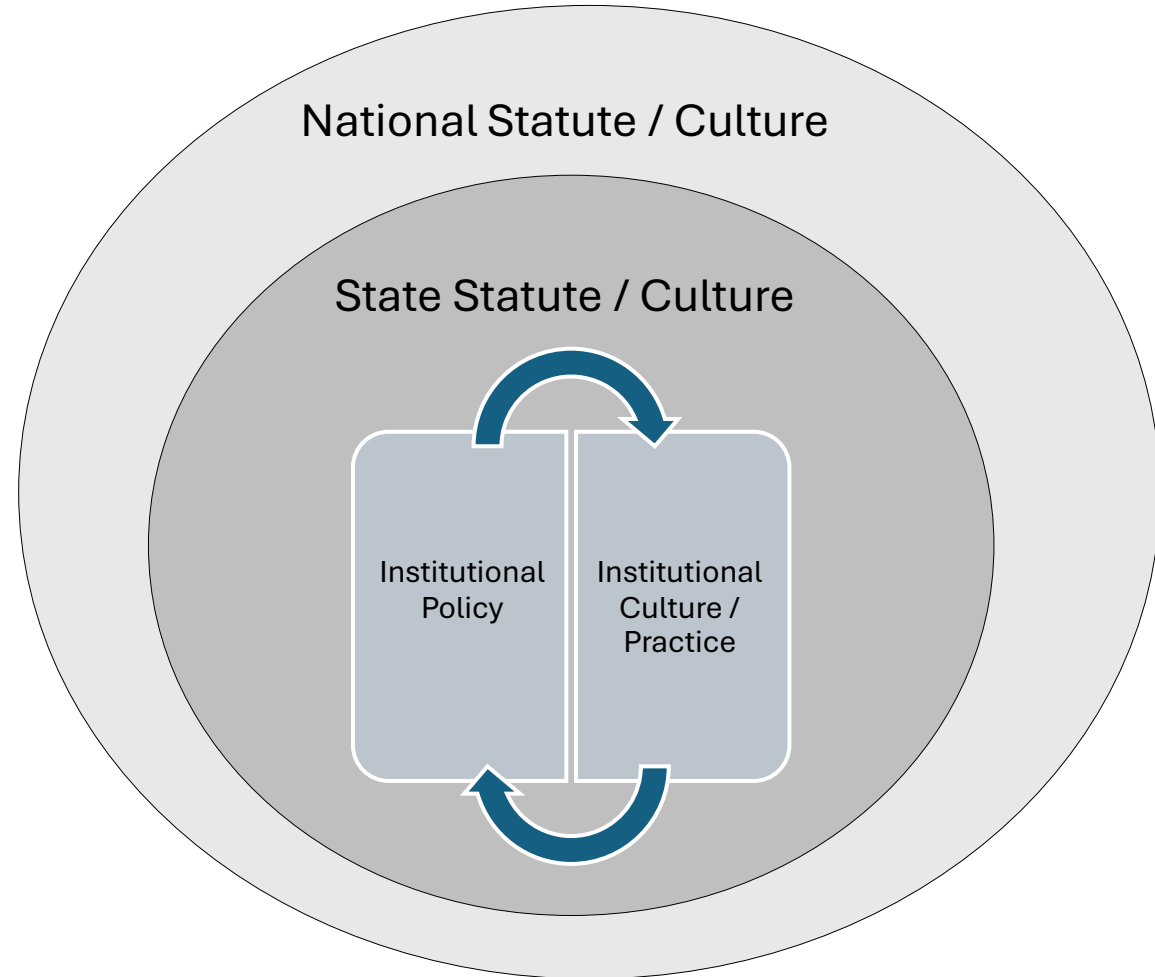


Interviews - 10 ICU nurses, 8 ICU physicians  
3 geographically diverse academic health systems  
Lack of awareness of hospital policies  
Lack of alignment in hypothetical scenarios

## Hospital Culture and Intensity of End-of-Life Care at 3 Academic Medical Centers

Elizabeth Dzung, MD, PhD, MPH; Jason N. Batten, MD, MA; Daniel Dohan, PhD; Jacob Blythe, MD, MA; Christine S. Ritchie, MD, MSPH; J. Randall Curtis, MD, MPH

113 Qualitative Interviews  
Variability in Practice  
Practice = Culture = Structures



Data?

Shared Decision Making with  
Patient / Representative + Team

Consent

Patient/rep does not  
actively oppose  
decision

Assent

Healthcare Team  
Unilateral Decision

Documentation?

Patient/rep **actively**  
**opposes** decision

Conflict

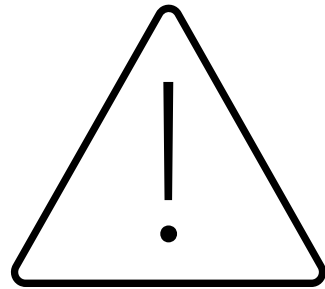
# Unilateral DNR in Literature

Study	Years	Site	Unilateral DNR Cases
Curtis et al JAMA 1995	1992	Two academic centers	17 cases
Cassarett et al Crit Care Med 1999	1992-1996	Single academic center	31 cases
Anderson-Shaw Health Law Eth Reg 2003	1999-2000	Single academic center	10 cases
Courtwright et al J Crit Care 2015	2007-2013	Single academic center	67 cases
Curtis et al JAMA 1995	1992	Two academic centers	17 cases
Piscitello et al Crit Care Med 2023	2020-2021	Two academic centers	51 cases

# Other Life Support Interventions

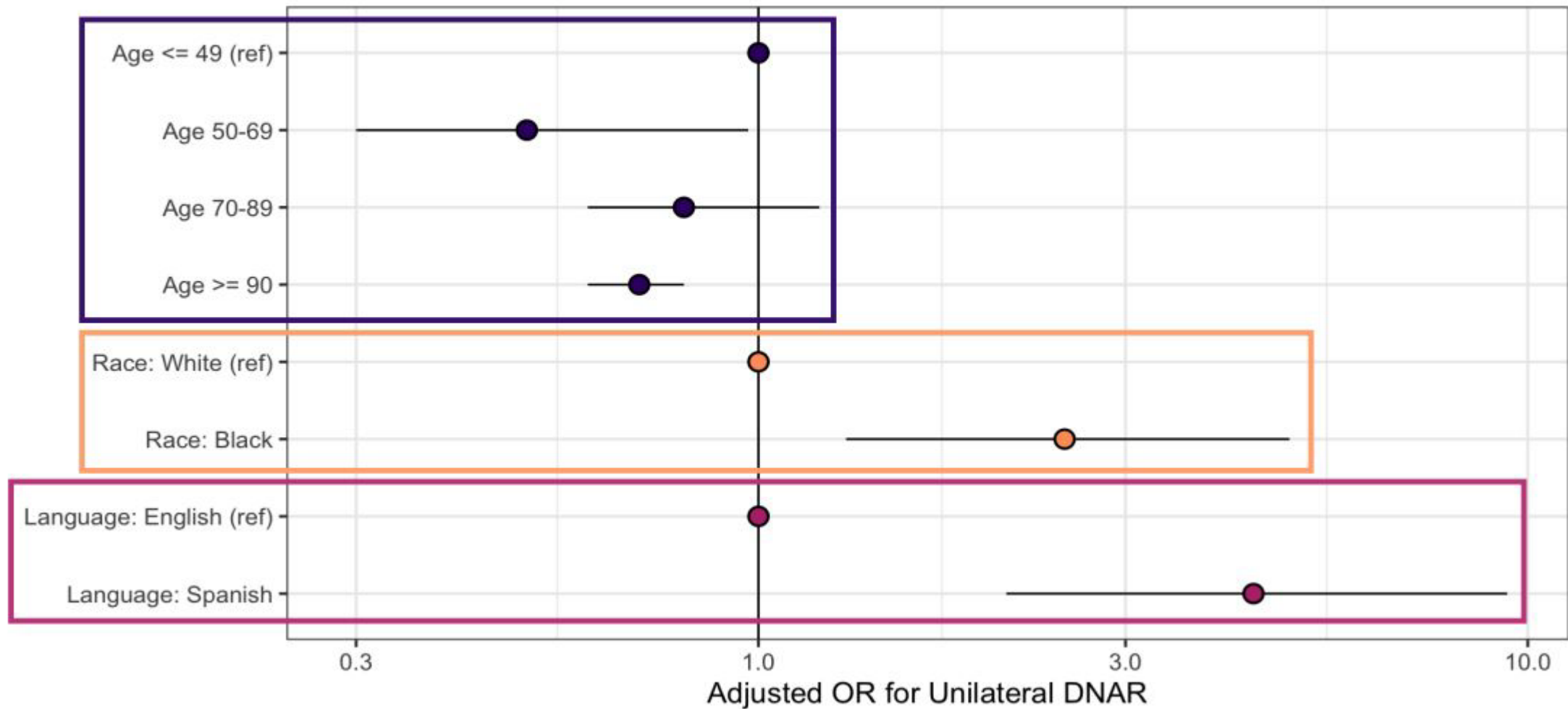
???

Variability



Disparities

# Predictors of Unilateral Do-Not-Resuscitate



## Disparities in Unilateral Do Not Resuscitate Order Use During the COVID-19 Pandemic\*

Piscitello, Gina M. MD, MS<sup>1,2</sup>; Tyker, Albina MD<sup>3</sup>; Schenker, Yael MD, MAS<sup>1,2</sup>; Arnold, Robert M. MD<sup>1,2</sup>; Siegler, Mark MD<sup>4,5</sup>; Parker, William F. MD, PhD<sup>5,6</sup>

Author Information ©

Critical Care Medicine 51(8):p 1012-1022, August 2023. | DOI: 10.1097/CCM.0000000000005863

What do we **do**?



- Data sharing and benchmarking
  - Identifying DISPARITIES!
- Education
- Policy Alignment
- Legislative Advocacy

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# Acknowledgements

- Marc Siegler, MD, University of Chicago
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- William Parker MD, PhD, University of Chicago
- Patrick Lyons, MD, MS, Oregon Health Sciences University
- Elizabeth Dzung, MD, PhD, University of California San Francisco
- Jason Batten, MD, University of California Los Angeles

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Kenneth Goodman, PhD, FACMI, FACE  
30+ years of ethics at U Miami/UHealth!

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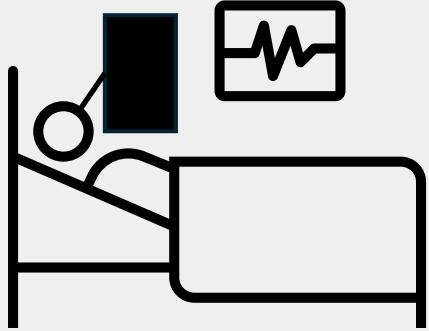
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**Additional Slides**

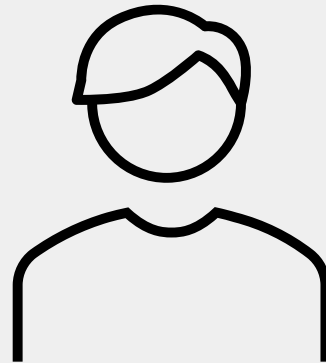
# DUPLICITY



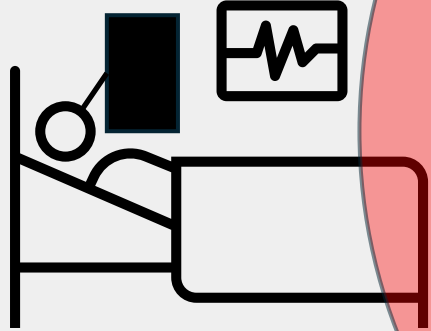
[We plan not to provide CPR but we don't tell you that]



[I will lose trust in medicine that will affect me and my family for generations]

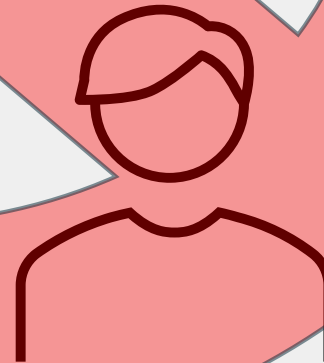


# DUPLICITY



[We plan not to provide CPR but we don't tell you that]

[I will lose trust in medicine that will affect me and my family for generations]



We have worked on advance care  
planning and communication for decades  
and we are where we are...

## Original Contributions

### A Controlled Trial to Improve Care for Seriously Ill Hospitalized Patients

The Study to Understand Prognoses and Preferences for Outcomes and Risks of Treatments (SUPPORT)

The SUPPORT Principal Investigators

JGIM

#### REVIEWS

### A Systematic Review of Communication Quality Improvement Interventions for Patients with Advanced and Serious Illness

Oluwakemi A. Fawole, MBChB, MPH<sup>1</sup>, Sydney M. Dy, MD, MSc.<sup>2</sup>, Renee F. Wilson, M.S.<sup>3</sup>, Brandyn D. Lau, MPH<sup>4</sup>, Kathryn A. Martinez, PhD<sup>5</sup>, Colleen C. Apostol, MSN, RN<sup>6</sup>, Daniela Vollenweider, MD<sup>7</sup>, Eric B. Bass, MD, MPH<sup>8</sup>, and Rebecca A. Aslakson, MD, MSc.<sup>9</sup>

436 *Journal of Pain and Symptom Management*

Vol. 56 No. 3 September 2018

#### Review Article

### Overview of Systematic Reviews of Advance Care Planning: Summary of Evidence and Global Lessons

 Check for updates

Geronimo Jimenez, MA, Woan Shin Tan, MSocSc, Amrit K. Virk, PhD, Chan Kee Low, PhD, Josip Car, PhD, and Andy Hau Yan Ho, EdD, PhD

#### Viewpoint

October 8, 2021

### What's Wrong With Advance Care Planning?

R. Sean Morrison, MD<sup>1,2</sup>; Diane E. Meier, MD<sup>1</sup>; Robert M. Arnold, MD<sup>3</sup>

[» Author Affiliations](#) | [Article Information](#)

*JAMA*. 2021;326(16):1575-1576. doi:10.1001/jama.2021.16430

# Palliative Care

- Specialized medical care for people with a **serious illness**
- Focused on **relief from the symptoms and stress** of the illness
- To improve the **quality of life** for the **patient and the family**

