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The definition of overzealous therapy. The consensus of the Polish Working Group on End-of-Life Ethics

On 29.06.2008 the Working Group on End-of-Life Ethics, operating within the scope of the project "The Limits of Medical Therapy", obtained consensus on the definition of Overzealous Therapy:

Overzealous therapy is the application of medical procedures with the goal of supporting vital functions in a terminally ill person that results in prolonged dying, and is associated with excessive suffering and/or with violation of the patient's dignity. Overzealous therapy does not include basic nursing, control of pain and of other symptoms or feeding and fluid administration, as long as these actions are beneficial to the dying person.

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VM VIA MEDICA
Advances in Palliative Medicine 2008, 7, 91–92
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Commentary

by Romuald Krajewski on behalf of the Polish Working Group on End-of-Life Ethics

The term "overzealous therapy" is used in the Polish Medical Code of Ethics (art. 32), and in many documents related to the problems of dying. However, it is not used in Polish law. There is no obligation to discontinue a therapy that has been recognized as being overzealous but such recognition makes it possible to decide to stop this therapy.

The definition limits the application of the overzealous therapy concept to a period of "dying" of a "terminally ill" person. "Dying" should be understood as the last stage of disease, during which there is steady deterioration of a patient's condition that leads to death in the foreseeable short term. A "terminally ill" person is a patient who has no therapeutic options that would give a realistic possibility of a cure or the stabilization of the disease, or for whom such a therapy is not available.

The practical application of a definition of overzealous therapy involves two steps. The first one is the decision as to whether the therapy is overzealous or not. This decision is made by the treating physician or by a team of physicians. The definition may help to make such a decision. Existing recommendations, guidelines and standards should be used as much as possible in order to check whether the criteria set in the definition have been met. The second step is the decision to discontinue a therapy that has been recognized as overzealous. The process involves two equal partners, patient and physician; both have their rights and obligations. Action taken with a given patient will be the result of autonomous decisions made by at least two or more people participating in the therapeutic process.

Articles 32 and 34 of the law governing on profession physicians and dentists in Poland state that any diagnostic or therapeutic intervention requires consent from the patient. This also means that denial of consent to any part of the therapy, or to therapy altogether, results in an obligation on the part of the physician to abstain from such treatment. The obligation does not depend upon the physician's opinion on the value or purpose of the therapy. Recognition of the therapy as futile, worthless or overzealous is not necessary for the patient to deny this therapy. Articles 33 and 35 state that decisions on the application of a therapy will be made by the physician whenever an urgent action is required and the patient's will (or the will of a representative) is unknown, and there is no possibility of obtaining consent without delaying necessary treatment.

Articles 38 and 39 of the law on professions state that the treating physician also has the right to refuse to give therapy. While the patient is not obliged to provide justification for the denial of therapy, physicians have to provide reasons and should also indicate where the patient can obtain this therapy or an opinion from another physician. Physicians also have obligations that result from their employment and put constraints on the right to refuse therapy.

Decisions to withdraw treatment without assessing whether it is overzealous therapy or not are made every day in medical practice. An informed patient can refuse any kind of therapy. Physicians recognize many therapeutic options as being futile or worthless in given circumstances and do not recommend them to their patients or refuse administration. Recognition of "overzealous therapy" provides the additional argument that removes the obligation to continue therapy and it may be used as a strong argument for resisting demands and pressures.

Irrespective of what forms the basis for withdrawal of therapy (such as denial of consent, futility and worthlessness of the therapy, or its being overzealous) an agreement between patient and physician should always be sought. Full disclosure of information on illness and treatment options, second opinions if necessary, a management plan adapted to the patient's expectations and to available resources should be provided. If agreement cannot be reached, differences should be clearly stated and possible solutions defined. A patient's decision to withdraw therapy can be challenged only in exceptional circumstances (mostly in conditions that diminish the ability to make decisions). A physician's decision to withdraw or to refuse therapy requested by the patient has to be justified and recorded in medical documentation. If possible, such decisions should be made by a team and legal and/or ethical consultation is advisable.

The law and Medical Code of Ethics do not state that overzealous therapy must not be used. However, the above definition indicates that it is not beneficial to the patient. Physicians caring for dying patients should pay particular attention to avoiding using futile, worthless or overzealous therapies.