

Courts follow doctors, not families, when it comes to patients' best interests

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Doctors' assessments of whether it is in a patient's 'best interests' to withdraw life-sustaining treatment are likely to prevail over family wishes when end-of-life matters go before the Supreme Court, a QUT review published in the *Medical Journal of Australia* has found.

QUT Australian Centre for Health Law Research director Professor Lindy Willmott said, while it was rare for disagreements between treating teams and [family members](#) about whether to stop [treatment](#) to end up in [court](#), Australia's Supreme Courts had jurisdiction in relation to end-of-life disputes.

"The Court's work is to decide what is in the 'best interest' of the patient who lacks the capacity to state their wishes, but just what 'best interests' means is contested," Professor Willmott said.

"Only eight Australian end-of-life Supreme Court decisions have revolved around the concept of best interests and within those we found six themes which influenced decisions on life-sustaining treatment.

"These factors could be useful for doctors considering withdrawing or withholding treatment from adult [patients](#) unable to communicate their wishes. They are:

"1. Futile treatment is not in the best interest of the patient. In most cases the court relies on medical practitioners' judgements as to which treatment would be futile.

2. Consideration of the pain and indignity a patient may suffer through treatment.
3. Quality of life is taken into consideration.
4. The views and wishes of the patient and perhaps the family were found to be relevant in three of the eight decisions.
5. The interests of others such as health professionals who may, for example, feel distress about providing forced treatment did not influence the decision.
6. The courts have usually deferred to medical opinion when assessing best interests."

Professor Willmott said an assessment based on the patient's best interested could be legally justified if there was a clear basis for deciding treatment was futile or if the patient was extremely unlikely to recover consciousness.

"Treatments that are particularly invasive or burdensome relative to their benefits will also not be considered in a patient's best interests," she said.

"The courts are likely to support a medical view that concludes treatment should not be provided, but we suggest it would be good practice for it to be corroborated with a second medical opinion."

Provided by Queensland University of Technology

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