'Wrongful Life' Lawsuits

'You're suing me because I kept your mom alive?'

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Wrongful Prolongation of Life lawsuits, as they are called, are on the rise, and providers should take note and beware.

Advance Directives (ADs) give competent adult patients the right to accept or reject medical treatment, along with the right to choose a surrogate to speak for them when they become incapacitated.

In 1914, Judge Benjamin Cardozo stated, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages."

This right was codified in law in 1990 when Congress passed the Patient Self-Determination Act, encouraging the creation of ADs (living wills and choice of healthcare surrogate) before a person becomes unable to make their preferences known.

Suppose you have decided you don't want specific medical treatments – but medical staff administers them against your AD, POLST, DNR or legal surrogate's instructions. Medical providers have a duty to follow them even if they disagree. An adult with capacity has the right to refuse treatment – even if it's life-saving.

Doctors cannot override or ignore a patient's wishes because they think they know what's best, even if they feel they're acting "in good faith." If they disregard your wishes, you or your family may have a cause of action against the provider resulting in punitive payouts.

Court damages are typically based on medical expenses from the time of the unwanted treatment, and on the pain and suffering the patient and family endure. Some of these settlement payouts are in the millions, and this trend is becoming more prevalent.

In *Doctors Hospital of Augusta v. Alicea – 2016,* Alicea, the healthcare surrogate, "filed a lawsuit against the hospital and the physician who intubated Stephenson (her grandmother) and placed her on the ventilator. The lawsuit alleged that Stephenson was caused unnecessary pain and suffering, contrary to her advance directive for healthcare and the specific directions of Alicea, her designated healthcare agent. The complaint alleged breach of agreement, professional and ordinary negligence, medical battery, intentional infliction of emotional distress, and breach of fiduciary duty."

Alicea settled for $1 million after the Georgia Supreme Court refused to dismiss the last appeal and ruled the case could move forward. A judge wrote, "It is the will of the patient or the designated agent, and not the will of the healthcare provider, that controls" (full judgment here).

This case and others have set a standard that courts in other states have followed. For many years, our judicial system routinely threw these cases out because doctors and medical staff enjoyed immunity from liability.

Doctors no longer have that automatic shield because they "kept someone alive."

It is not always better to "err on the side of life," especially when the Advance Directive and surrogate say otherwise. Sometimes, resuscitating someone only serves to prolong a much-wanted death.

The law is becoming more clear: It is the hospital's and doctors' responsibility to check your AD and follow your wishes – *or suffer the consequences.*