During the 2018 MAG House of Delegates meeting, Resolution 110A.18 on the American Thoracic Society’s Policy on “Responding to Requests for Potentially Inappropriate Treatments in Intensive Care Units” was referred to the Board of Directors. After reviewing the testimony, MAG staff recommends adopting this policy. The language of the policy can be found below and the entire report outlining the rationale behind the policy can be found at http://www.thoracic.org/statements/resources/cc/inappropriate-ther-st.pdf.

**ATS Policy**

**Overview**

One of the most ethically controversial issues in intensive care units (ICUs) is how to respond to requests from surrogates to administer life-prolonging interventions when clinicians believe those interventions should not be administered.

One reason these cases are difficult is that they bring into conflict important interests of patients, clinicians, and society. Patients have an interest in receiving care consistent with their values and preferences. Clinicians have an interest in not being compelled to act against their best understanding of their professional obligations. Society has important interests in protecting individual rights, fostering clinician professionalism, and ensuring the fair allocation of medical resources. These cases are also difficult because there are generally not clear substantive rules to which to appeal. Additionally, affected patients are generally vulnerable by virtue of incapacity, have little choice regarding their treating clinicians, and have limited ability to seek treatment elsewhere.

This multisociety statement recommends strategies to prevent treatment disputes in ICUs, provides a framework to characterize disputes, and outlines processes to manage intractable treatment disputes with an emphasis on procedural fairness. It is grounded on the premise that it is ethically untenable to give complete authority for treatment decisions to either patients/surrogates or
individual clinicians. Instead, clinicians and patients/surrogates should work collaboratively to make treatment decisions and, in the face of disagreement, should first augment efforts to find a negotiated agreement, including involving expert consultants. In the rare cases in which intractable conflict develops, clinicians should pursue a process-based approach to conflict resolution.

**Recommendation 1**
Institutions should implement strategies to prevent intractable treatment conflicts, including proactive communication and early involvement of expert consultation.

**Recommendation 2**
The term “potentially inappropriate” should be used, rather than “futile,” to describe 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. Clinicians should communicate and advocate for the treatment plan they believe is appropriate. Requests for potentially inappropriate treatment that remain intractable despite intensive communication and negotiation should be managed by a fair process of dispute resolution.

The committee recommends the following approach to manage such cases:
1. Enlist expert consultation to continue negotiation during the dispute resolution process
2. Give notice of the process to surrogates
3. Obtain a second medical opinion
4. Obtain review by an interdisciplinary hospital committee
5. Offer surrogates the opportunity to transfer the patient to an alternate institution
6. Inform surrogates of the opportunity to pursue extramural appeal
7. Implement the decision of the resolution process

When time pressures (such as a rapidly deteriorating clinical condition) make it infeasible to complete all steps of the conflict-resolution process and clinicians have a high degree of certainty that the requested treatment is outside accepted practice, they should refuse to provide the requested treatment and endeavor to achieve as much procedural oversight as the clinical situation allows.

**Recommendation 3**
There are two less-common situations for which the committee recommends different management strategies.

*Requests for strictly futile interventions.*
The term “futile” should only be used in the rare circumstance that an intervention simply cannot accomplish the intended physiologic goal. Clinicians should not provide futile interventions and should carefully explain the rationale for the refusal. If disagreement persists, clinicians should generally obtain expert consultation to assist in conflict resolution and communication.

*Requests for legally proscribed or legally discretionary treatments.*
“Legally proscribed” treatments are those that are prohibited by applicable laws, judicial precedent, or widely accepted public policies (e.g., organ allocation strategies). “Legally discretionary” treatments are those for which there are specific laws, judicial precedent, or policies that give physicians permission to refuse to administer them. In responding to requests for either legally proscribed or legally discretionary treatments, clinicians should carefully explain the
rationale for treatment refusal and, if there is uncertainty regarding the interpretation and application of the relevant rule, should generally seek expert consultation to confirm accurate interpretation of the rule.

**Recommendation 4**
The medical profession should lead public engagement efforts and advocate for policies and legislation about when life-prolonging technologies should not be used.

###