

Death & Life Issues

And Ohio Law on Advance Directives

A Catholic Perspective for All People to Consider

Preface

We, the Catholic bishops of Ohio, provide this document to explain some aspects of Federal and Ohio law and to explain Catholic teaching on end-of-life issues and advance directives. For those making critical decisions for the terminally ill or the permanently unconscious, we offer principles to be applied when making decisions to initiate, withhold or withdraw medical treatment. We also offer some definitions of terms you may encounter in discussions of end-of-life issues.

Medical science and modern technology have made great progress in the second half of this century. Lives of patients are being saved that could not have been saved in an earlier age. Sometimes medicine offers an extension of life, but one with great burdens, sometimes with dehumanizing equipment and treatment. How far must one go to preserve a life? How far ought one to go? Who makes the decisions? How can a patient be sure that his or her wishes for health care will be honored?

These questions can present a dilemma for patient, physician and family. They deserve careful reflection well before the moment of critical health-care decisions.

The Law

Federal Law

Beginning in December 1991, under the requirements of the Patient Self Determination Act of 1990, the Federal government requires all health-care facilities to provide for all patients, upon admission, information about the laws in their state related to Durable Power of Attorney for Health Care and advance directives for health care.

Facilities are required only to inform patients, not to promote or require advance directives or Durable Power of Attorney for Health Care documents be executed as a stipulation for admittance.

The health-care facility must also:

- † Develop and distribute to providers and patients a written description of the current law.
- † Develop a written policy regarding recognition of living wills and Durable Power of Attorneys for Health Care.
- † Inquire, then document in patient and permanent hospital records whether or not an

advance directive is executed.

† Educate staff and community regarding advance directives.

† Provide advance-directive forms if requested.

Ohio Law

The State of Ohio now recognizes a person's right to several options should they enter into a permanently unconscious state or become terminally ill and no longer able to make decisions. These decisions may involve the initiation, withholding or even withdrawal of life-sustaining treatment. They may be decisions about withdrawal of artificially supplied nutrition and hydration. Ohio law deals with terminal illness and permanent unconsciousness separately, with specific authorizations for each condition.

This summary is not intended as a legal interpretation of Ohio law, but as a general overview of what the law allows.

Durable Power of Attorney for Health Care

Ohio law now allows Ohio citizens to appoint someone as their agent to make health-care decisions for them, should they lose the ability to make decisions for themselves. Any adult citizen can execute a Durable Power of Attorney for Health Care, a legal document which designates the agent who will make decisions and what the scope of those decisions will be. The named agent is technically known as the attorney-in-fact. The agent need not be an attorney-at-law.

Under Ohio law:

The attorney-in-fact has authority to make most health-care decisions for a person if the attending physician determines that the person has lost the capacity to make such decisions. The attorney-in-fact can make **all** decisions for a person who is terminally ill if the attending physician determines that the person has lost the capacity to make such decisions.

The attorney-in-fact can make **all** health-care decisions for a person in a permanently unconscious state except withdrawal of artificially supplied nutrition and hydration unless this authority is specifically granted in the Durable Power of Attorney for Health Care document.

The authority of an attorney-in-fact for initiation or withdrawal of life-sustaining treatment is valid only when a patient is terminally ill and has lost the capacity to make informed health-care decisions or is in a permanently unconscious state.

By executing a Durable Power of Attorney for Health Care, a patient chooses a proxy decision-maker who knows the patient's intentions and will make decisions consistent with the patient's wishes, values and beliefs when the patient is no longer able to make decisions. Each Durable Power of Attorney for Health Care document can be unique: Persons assign power to their attorneys-in-fact in differing ways and in varying degrees.

Living Will with Next-of-Kin Validation

Ohio law now allows Ohio citizens to execute a living-will document as a general expression about the type of health care desired when one is terminally ill and has lost the capacity to make informed health-care decisions or is in a permanently unconscious state. The living will must be validated by next-of-kin when a decision is made to initiate, withhold or withdraw life-sustaining treatment. This provision is in the law to ensure that informed consent is preserved in the decision-making process.

Under Ohio law:

The living will (“Declaration”) can be used to implement **all** health-care decisions for a person (the “declarant”) who is terminally ill and has lost the capacity to make informed health-care decisions.

The living will can be used to implement **all** health-care decisions for a person in a permanently unconscious state, **except withdrawal of artificially supplied nutrition and hydration unless authority is specifically granted in the document.**

As a guide to life-sustaining treatment decisions, the living will is valid only when the patient is terminally ill and has lost the capacity to make informed health-care decisions or is in a permanently unconscious state.

Next-of-Kin Authorization when No Document Is Executed

When no advance directive is executed, Ohio law now recognizes an order of decision-makers for people who are no longer able to make health-care decisions for themselves. This order of decision-makers follows current legally recognized next-of-kin priority order (spouse, children as a group, parents, siblings).

Under Ohio law:

Next-of-kin are allowed to make **all** health-care decisions for a person who is terminally ill and has lost the capacity to make informed health-care decisions.

Next-of-kin are allowed to make decisions for initiating, withholding or withdrawing life-sustaining treatment for a person in a permanently unconscious state **only** after a 12-month waiting period. (This does not include withdrawal of artificially supplied nutrition and hydration.)

Next-of-kin are allowed to make decisions for withdrawal of artificially supplied nutrition and hydration for a person in a permanently unconscious state **only after a 12-month waiting period and probate-court authorization.**

Next-of-kin authorization for withdrawal of life-sustaining treatment is valid only when the patient is terminally ill and has lost the capacity to make informed health-care decisions or is in a permanently unconscious state.

The moral right to make decisions concerning health care resides with the individual person. When persons lack the capacity to make health-care decisions for themselves, others, such as family, have the right to make these decisions on their behalf.

Other Provisions of Ohio Law

- † Ohio law does not authorize euthanasia or assisted suicide.
- † Hospitals and physicians must notify families when life-sustaining treatment is going to be withdrawn.
- † Hospitals and physicians are not required to withdraw life-sustaining treatment when such decisions are in conflict with the physician's conscience or hospital policy. The physician or hospital, however, cannot block transfer of the patient to another facility.
- † Health-care workers are allowed to be attorneys-in-fact only for their family members or members of their religious order.
- † The attorney-in-fact does not have authority to refuse or withdraw health care for a woman who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy (unless the pregnancy or health care would pose a substantial risk to the woman's life or if two physicians determine that the fetus would not be born alive).
- † Physicians and hospitals are protected from liability for withdrawing treatment in accordance with a living will or the decision of a validly authorized attorney-in-fact or next-of-kin.
- † A grandfather clause provides recognition of previously executed living wills and Durable Power of Attorneys for Health Care which are substantially in compliance with the new law. These documents may or may not include specific directions.
- † There is an appeal mechanism to question decisions authorized by an attorney-in-fact or next-of-kin. Appeals are limited to immediate family.

A Catholic Perspective for All People to Consider

The Value of Human Life

The Church strongly believes in the sanctity of life and the preservation of life at all stages from conception to death. Human life is a gift from God which we need to preserve and enhance. All of us have a duty to live our lives in accordance with God's plan.

Though human life bears fruit here on earth, it finds its full perfection only in eternal life.¹ Suffering and death have a special place in God's plan. Human suffering is a share in Christ's Passion and a union with the redeeming sacrifice which Christ offered for us. Death is the door that ushers us into eternity.²

Because of the sacredness of human life, we have the grave responsibility to preserve and protect it with all reasonable means. At one end of the spectrum of life, we believe that it is wrong to kill an unborn child, even if the law allows such behavior. At the other end of life, some in our age have asserted a so-called "right to die," the right to cause death. No one has such a right, even if the purpose of causing death is to end suffering. This would be euthanasia, which is gravely wrong.³

We can speak of a right to die only if we mean a person has a right to refuse extraordinary or disproportionate medical treatment and is allowed to die peacefully with human Christian dignity. Human life, then, is sacred, and we are obliged to preserve it. But one is not obliged in all circumstances, including when one may be dying, to utilize all possible medical treatments and remedies.⁴

Ordinary and Extraordinary Means

Health-care professionals use the terms "medically ordinary means" and "medically extraordinary means" when discussing life-sustaining treatments. Theologians use the terms "ethically ordinary means" and "ethically extraordinary means." There are important distinctions between these terms that you should know.

The Catholic Church teaches that one is morally obliged to use only ethically ordinary means to preserve life. These means are gauged not from a medical standpoint but rather from the standpoint of their effectiveness or burdens placed on the patients or others.

Ethically *ordinary* means:

† Do not involve serious burden such as severe pain, excessive costs, severely disabling effects, risk

¹ Declaration on Euthanasia I, Congregation of Faith, May 5, 1980.

² Declaration III

³ Declaration I and II

⁴ Declaration IV

- † Are genuinely beneficial.

Ethically ordinary means are sometimes called “proportionate means.” Their benefit is proportionate to any burden they cause. The term *ethically ordinary means* is not to be confused with *medically ordinary means*, which refers to customary treatment for a medical condition.

Ethically *extraordinary* means are:

- † Disproportionately burdensome.
- † Useless or become so in the course of treatment.

Ethically extraordinary means are sometimes called “disproportionate means” because their burden outweighs whatever benefit they provide. They should not be confused with *medically extraordinary means*, which refers to treatments that are experimental or not in common use.

Ethically extraordinary means are morally optional: No one is obliged to use them. The refusal of ethically extraordinary means is not the equivalent of suicide. As one Church-teaching document explains, “[the refusal] should be considered as an acceptance of the human condition or a wish to avoid the application of a medical procedure disproportionate to the result that can be expected, or a desire not to impose excessive expense on the family or the community.”⁵

At times it is difficult to determine whether a treatment is ethically ordinary or extraordinary. “It will be possible to make a correct judgment as to the means by studying the type of treatment to be used, its degree of complexity or risk, its cost and the possibilities of using it, and comparing these elements with the result that can be expected, taking into account the state of the sick person and his or her physical and moral resources.”⁶

Artificial Nutrition and Hydration

Artificial nutrition and hydration poses a special problem depending on whether it is considered medical treatment or ordinary comfort care. As medical care, it could be an ethically extraordinary means and, thus, optional. As ordinary comfort care it would not be optional from a Catholic perspective.

Here is one summary of the current Catholic thinking on artificial nutrition and hydration:

There is common agreement among Catholic moral theologians that, in the case of a patient in a permanently unconscious state, such nutrition and hydration may be withheld or withdrawn if the patient can no longer assimilate the liquids or nourishment or if the patient is suffering from terminal illness and death is imminent. There is, however, disagreement among Catholic moral theologians whether such hydration and nutrition may be withheld or withdrawn from other persons in permanently unconscious states, i.e., persons who are not in imminent danger of death and are able to assimilate liquids and nourishment. In any case, before withdrawing or withholding, there must be clear evidence

⁵ Declaration IV

⁶ Declaration IV

that providing artificial nutrition and hydration is, in fact, burdensome, ineffective or futile.⁷

Who Makes the Decision?

The patient or proxy, if the patient is unable, makes the decision on the treatments to be used in consultation with the medical doctors and the family, in accordance with moral principles applied to the various aspects of the case. “In numerous cases, the complexity of the situation can be such as to cause doubts about the way ethical principles should be applied. In the final analysis, it pertains to the conscience either of the sick person or of those qualified to speak in the sick person’s name or of the doctors to decide, in the light of moral obligations and the various aspects of the case.”⁸

Advance Directives

It is recommended that persons study the moral positions in this document and prepare advance directives — either a Durable Power of Attorney for Health Care document or a living will — for the eventuality that one cannot communicate his or her wishes.

The Durable Power of Attorney for Health Care is the most acceptable advance directive. The patient appoints a person (the attorney-in-fact) to make decisions rather than rely on written wishes. The living will is less recommended because the person has to make a decision about a future medical condition at a time when he or she is not confronted by it.

In many cases, neither a Durable Power of Attorney for Health Care nor a living will exists. In those cases the Catholic Church supports that decisions are best made by next-of-kin in conjunction with the family doctor and an appropriately qualified second physician. The patient’s expressed wishes and the applicable moral principles are to be fully considered.

There is a third alternative for those who do not wish to appoint an attorney-in-fact or execute a living will. The Catholic Health Association provides a “Christian Affirmation of Life” document which reflects a general intent for withdrawal of ethically extraordinary means when a person is terminally ill and can no longer make decisions. Such a document could help direct family members as to the patient’s wishes. Here is a sample of the “Christian Affirmation of Life”:

To My Family, Friends, Pastor, Physician and Attorney:

Because of my Christian belief in the dignity of human life and my eternal destiny in God, I ask that, if I become terminally ill, I be fully informed of the fact so I can prepare myself to die. I have a right to make my own decisions concerning treatments that might unnecessarily prolong the process of dying. If I am unable to make these decisions and have no reasonable expectation of recovery, then I request that no ethically extraordinary treatment be used to prolong my life. Ethically extraordinary treatment is treatment that does not offer a reasonable hope or benefit to me or that cannot be accomplished without excessive expense, pain or other grave burden. I request my family,

⁷ Advance Directives for Health Care Decisions, Pope John XXIII Center, 11/1/91

⁸ Declaration IV

friends and the Christian community join me in prayer as I prepare for death.

Signature _____

This is not a legal document

Other Death-Related Concerns

Hospice

Hospice is a special way of caring for persons with advanced disease when curative treatment is no longer helpful. Hospice care affirms life. Quality of life, comfort, dignity and pain-control are a major focus so that persons may live their remaining life in peace, surrounded by home and family.

A wide range of services is available to persons and their families from 24-hour on-call medical and nursing services to volunteers who run errands and help families after the death of a loved one.

Hospice philosophy recognizes dying as a normal process. Hospice care neither hastens nor postpones death. The hope is that the help of the interdisciplinary caring team may free persons and their families to attain a degree of mental and spiritual preparation for death that is satisfactory for them. Hospice centers are not places where people come merely to die; hospice is a philosophy, a unique approach to care which helps people live through their dying.

Donation of Organs

Donation of vital organs following death is an act of charity that is acceptable to the Church. This procedure requires the consent of the deceased person prior to death, or the approval of family following death when there is no expressed intent of the deceased. Persons who wish to donate vital organs after death should make this known in writing and provide a record to the proper medical authority. Donation of the human body after death for scientific research is acceptable to the Church.

Cremation and Burial

The disposition of human remains by cremation is acceptable to the Church, provided that the request for cremation is not made to deny the Church's belief in eternal life or some other teaching of the Church. Disposition proceedings involving funeral homes and cemeteries should be discussed prior to death so the wishes of the deceased may be honored.

Burial in Catholic cemeteries enhances the community spirit of the Church. Prearrangement for funeral and cemetery proceedings often provides comfort to the family in preparation for a new life after death.

Definitions

advance directives

The means used to communicate wishes before a person is unable to make informed health-care decisions. Two legal documents in Ohio are the Durable Power of Attorney for Health Care and the living will.

artificial nutrition and hydration

Sustenance and fluids that are technologically administered.

attorney-in-fact

Named in the Durable Power of Attorney for Health Care document, the attorney-in-fact, who need not be an attorney-at-law, can make health-care decisions for a patient who is temporarily noncommunicative, whether the patient is dying or not.

comfort care

Medical or nursing procedures given to diminish pain or discomfort, not to postpone death.

durable power-of-attorney for health care

A legal document recognized by Ohio law that names and authorizes an attorney-in-fact to make health-care decisions for a patient at any time that the attending physician determines the patient has lost the capacity to make informed health-care decisions.

life-sustaining treatment

Any medical procedure, treatment, intervention or other measure that, when administered to a patient, will serve principally to prolong the process of dying.

living will

A legal document governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment. Ohio law refers to the living-will document as a Declaration.

permanently unconscious state

A state of permanent unconsciousness in a person that, to a reasonable degree of medical certainty, as determined in accordance with reasonable medical standards by the person's attending physician and one other physician who has attended the person, is characterized by the following:

- † The person is irreversibly unaware of self and environment.
- † There is a total loss of cerebral cortical functioning, resulting in the person having no capacity to experience pain or suffering.

terminal illness

An irreversible, incurable and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a person's attending physician and one other physician who has examined the person, both of the following apply:

- † There can be no recovery.
- † Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

Forms for Durable Power of Attorney for Health Care and living will are available from the following organizations:

Ohio State Medical Association

3401 Mill Run Dr.
Hilliard, OH 43026
614-527-6762

Ohio State Bar Association

P.O. Box 16562
Columbus, OH 43216
614-487-2050

Catholic Conference of Ohio

9 E. Long St. Suite 201
Columbus, OH 43215
614-224-7147

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