

# **DEFINITIONS AND INSTRUCTIONS FOR CREATING AN ADVANCE MEDICAL DIRECTIVE**

*A review of concepts used in Catholic moral teaching and important medical and legal terms to assist individuals and families in developing a useful, Christian-based Advance Medical Directive.*

## **Introduction**

***This section is divided into four parts. Part I (Terms Used in Catholic Moral Teaching) summarizes important concepts used in the moral teachings of the Catholic Church regarding medical decision-making. Part II (Medical Terms) defines common medical terms that you may encounter in the health care setting. Part III (Legal Terms) reviews legal terms that are found in an Advance Medical Directive. Part IV (Instructions) presents general instructions consistent with Catholic teaching on how to create an Advance Medical Directive. A clear understanding of these terms and instructions will assist you in making choices for yourself and/or loved-ones in making decisions on your behalf.***

## **PART I: TERMS USED IN CATHOLIC MORAL TEACHING**

### **Ordinary Means vs. Extraordinary Means**

Terms used by the Church to distinguish between those means that we must use to preserve human life (ordinary), and those means that we are not obligated to use (extraordinary). Means that offer no reasonable hope of benefit, are disproportionately burdensome or useless, or later become so, are *extraordinary* and therefore morally optional.<sup>1,2</sup> The Church teaches that you are only morally obligated to accept or render *ordinary* means of care.<sup>3,4</sup>

More recently, the Church has used the traditional terms “ordinary” and “extraordinary” interchangeably with the terms “proportionate” and “disproportionate,” as these more modern terms are more precise and practical when weighing the various issues raised by a serious health problem.

### **Proportionate Means**

Measures that provide a reasonable hope of benefit and do not impose excessive burdens on the patient and family.<sup>5</sup> The Church teaches that such care always includes adequate pain relief, personal cleanliness, a comfortable, safe environment, and the presence of loved ones. These ordinary means are always *proportionate* and therefore obligatory. The provision of nutrition and hydration, even by artificial methods, is considered to be proportionate and therefore morally obligatory except in cases where such provision is useless or imposes an excessive burden.<sup>6</sup> There are other means, for example medical procedures, which initially may be proportionate but later become disproportionate as circumstances change.<sup>7,8</sup>

## **Disproportionate Means**

Measures that do not offer a reasonable hope of benefit or that impose excessive burdens on the patient or family. Disproportionate or extraordinary means would be interventions or treatments that are likely to cause harm or undesirable side-effects out of proportion to the benefit they might offer.<sup>9</sup> The Church states that you or the person designated to make decisions for you may forgo disproportionate or extraordinary means of preserving life.<sup>10, 11, 12</sup>

## **PART II: MEDICAL TERMS**

### **Brain Death**

Defined by the medical profession and the Commonwealth of Virginia as the irreversible loss of all brain function, from which recovery is not possible. Brain death can be established with certainty based on strict guidelines that have been established by the neurological profession.<sup>13</sup> When two physicians confirm a diagnosis of "brain death," the person is considered medically and legally to be dead. Death is pronounced as having occurred at the point when brain activity ceased, and not necessarily heart-lung activity, so a person can be pronounced dead even if connected to life-support equipment.<sup>14</sup>

### **Coma**

Medically defined as an abnormal state of unconsciousness. A person in coma is alive, but lies with the eyes closed and does not meaningfully respond to stimulation.<sup>15</sup> There are variations in the degree of coma. In deep coma, the person may show no reactions of any kind. In lighter stages, sometimes called "semicomatose," the person may stir or moan to vigorous stimulation. Coma ends with the person either waking up, dying or passing into a *persistent vegetative state*.<sup>16</sup>

### **Persistent Vegetative State (PVS)**

Defined medically<sup>17</sup> and legally<sup>18</sup> as a condition where a person has completely lost the ability to think and reason, but retains basic vital bodily functions such as heart function, respiration and blood pressure. The person's eyes may open, and movements and sleep-wake cycles may occur, but the person cannot speak or obey commands. The person has no self-awareness or awareness of the environment.<sup>19</sup> Because this state is typically due to severe brain damage, improvement in the person's condition is extremely rare.<sup>20</sup>

### **DNR**

DNR stands for Do Not Resuscitate, which is a medical order written by a physician that directs cardiopulmonary resuscitation (CPR) be withheld from a patient in the event of cardiac or respiratory arrest. It must be understood that CPR may entail not only giving compressions to the chest but also inserting a breathing tube down the person's windpipe and connecting the person to a mechanical ventilator, and/or delivering electrical shocks to the heart.<sup>21</sup>

Under Virginia law, a DNR order does not restrict a physician or hospital from providing other medical interventions such as intravenous fluids, oxygen or therapies deemed necessary to provide comfort care or to alleviate pain.<sup>22</sup>

## **Palliative Care**

Palliative care, frequently also referred to as “comfort care” or “comfort measures,” means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient as he or she experiences the stress of a chronic illness and/or the dying process, rather than investigating and initiating treatment and interventions for the purpose of seeking a cure or prolongation of life.<sup>23</sup>

## **PART III: LEGAL TERMS**

### **Advance Medical Directive**

A witnessed legal instrument that makes known what type of health care you would or would not want if you ever become incapacitated and unable to express these wishes yourself. An Advance Medical Directive generally has four sections.

In the first section, called "Appointment of Health Care Agent," you may name another person or persons to act as your Agent(s) in making health care decisions for you if you become unable to make these decisions yourself because of mental or physical illness or injury.<sup>24</sup> In the second section, called "Instructions about my Health Care to my Health Care Agent(s) and All Medical Personnel," you may state the types of treatment you would or would not want your physician to provide should the situation arise when you are unable to make or communicate treatment decisions for yourself. A part of this section, sometimes called a “Living Will,” specifically addresses your desires regarding what type of care and treatment you would or would not want should you have a terminal condition and your death is imminent. In the third section, you may document your preferences about organ, tissue and eye donation, and appoint an Agent to make organ donation decisions on your behalf following your death. The Advance Medical Directive is completed in the fourth section after you sign the document in the presence of two witnesses.

Under Virginia law, an Advance Medical Directive serves the same or a similar function as other documents called a “Durable Health Care Power of Attorney,” a “Health Care Proxy,” or a “Living Will.”<sup>25</sup> Also be aware that even if you do not complete and sign an Advance Medical Directive form, if you are diagnosed with a terminal condition and your death is imminent, the Commonwealth of Virginia will accept an oral statement by you to your physician about what treatment you would or would not want your physician to provide you.

### **Agent (more precisely “Health Care Agent”)**

An adult 18 years of age or older appointed to make health care decisions for another person (called the Declarant in an Advance Medical Directive, see below). A Health Care Agent must also be capable of understanding, making and communicating informed health care decisions to the Declarant’s physicians. The Health Care Agent’s responsibilities on the Declarant’s behalf may include consenting to or refusing medical treatment, authorizing admission to a hospital or mental health facility, transfer to another facility, and making arrangements for organ donation after death.<sup>26</sup> Under Virginia law, the Health Care Agent is not allowed to restrict visitors unless you have provided specific instructions in your Advance Medical Directive about visitation at times when you are unable to make decisions on your own behalf.<sup>27</sup>

## **Assisted Suicide**

A form of euthanasia (defined below) in which a person, including a physician or other medical personnel, provides a lethal substance to or in some way assists a person in taking his or her own life.

## **Attending Physician**

The primary physician who has responsibility for the patient's health care.

## **Declarant**

The Declarant is the person who is making the Advance Medical Directive for himself or herself. The law states that the Declarant must be 18 years of age or older and be capable of making and communicating an informed decision when creating the Advance Medical Directive.<sup>28</sup>

## **Euthanasia (also known as "mercy-killing")**

An action or omission (meaning failing to act) that intentionally causes a person's death, whether directly or indirectly, for the purpose of eliminating that person's suffering.

Because it involves the deliberate killing of a human person, euthanasia is always morally unacceptable.<sup>29</sup> Euthanasia and any form of mercy-killing, including physician-assisted suicide, is a grave violation of the law of God and completely contrary to our Christian faith.<sup>30</sup>

## **Health Care**

"Health care" is legally defined as the provision of services to any individual for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability. These services may include but are not limited to giving medications, surgery, blood transfusions, chemotherapy, radiation therapy, psychiatric or other mental health treatments, admission to a hospital, nursing home, assisted living facility or other type of health care facility, and the provision of life-prolonging procedures and palliative care.

## **Incapable of Making an Informed Decision (sometimes referred to as being "medically incapacitated")**

The law states that a person is "incapable of making an informed decision" when he or she is unable to understand the nature, extent and probable consequences of a medical recommendation; is unable to make a rational evaluation of the risks and benefits of a proposed medical intervention and weigh it against the risks and benefits of alternatives to that intervention; or is unable to communicate such understanding in any way.

The determination that a person is incapable of making an informed decision is made by that person's attending physician along with a second physician or licensed clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision. All of the evaluators must personally examine the person and then certify in writing their findings. This certification is required before a Health Care Agent is given authority to make health care decisions on another's behalf and before health care is provided, continued, withheld or withdrawn.

The law requires that this assessment be made every 180 days for as long as the person remains incapacitated and health care needs to continue.<sup>31</sup>

### **Terminal Illness**

A medical condition where recovery is not expected and, as defined by the Commonwealth, death is anticipated within six months.<sup>32</sup>

It should be noted that the Commonwealth of Virginia has a separate legal definition for “terminal condition” where terminal condition is more broadly defined as a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, a patient cannot recover and (1) the patient's death is imminent, or (2) the patient is in a persistent vegetative state.<sup>33</sup> This definition is somewhat problematic, both morally and medically, because there are conditions like PVS (defined in Part II) where a person in such a state may neither be terminally ill (that is, death expected within six months) nor imminently dying (that is, death expected in a week or less).

### **Witness**

The witness of an Advance Medical Directive must be a person who is at least 18 years old and may include the spouse or another blood relative of the Declarant. Any physician, health care worker or employee of a hospital or physician’s office is allowed to serve as a witness when creating an Advance Medical Directive.<sup>34</sup>

## **PART IV: INSTRUCTIONS** <sup>35</sup>

### **The Basic Requirements**

The process for creating an Advance Medical Directive in Virginia can be fairly simple and only has three essential steps: (1) an adult puts his or her health care wishes in writing, (2) he or she signs it, and (3) the document is signed by two adult witnesses. The person’s spouse, other blood relatives, and health care providers are allowed by Virginia law to serve as witnesses.

The Advance Medical Directive document does not need to be notarized or reviewed by an attorney. The Catholic Bishops of Virginia have issued an Advance Medical Directive that you are welcome to use for free. However, no specific written form of an Advance Medical Directive is required under state law in Virginia. The Commonwealth of Virginia also recognizes Advance Medical Directives drawn up in other states, as long as those Directives comply with the laws of the states in which they were created and do not conflict with Virginia law. Lastly, photocopies, faxes, and computer-generated forms (like scanned PDFs) of Advance Medical Directives are all valid in Virginia.

### **Oral Advance Medical Directives**

Typically, Advance Medical Directives should be put into writing, but the Commonwealth of Virginia does accept an oral statement as valid in the specific situation where a person has been diagnosed with a terminal illness and then states his or her treatment preferences to his or her attending physician in the presence of two witnesses.

### **Choosing a Health Care Agent(s)**

You need to think carefully about whom you will choose to be your Agent, because this will be the person who will be entrusted and legally authorized to make health care

decisions for you when you become unable to make them for yourself. The person you choose should be mature, 18 years of age or older, generally knowledgeable about your values and wishes, and prepared to follow the moral teachings of the Catholic Church and your health care treatment preferences. The Agent does not need to live in Virginia but at the least needs to be accessible by phone. To avoid conflict, it is usually best to appoint only one person to serve as your Agent, and at the same time, it is important to appoint alternate (successor) Agents (perhaps at least two) in case the primary Agent is unable to serve.

### **Instructing Health Care Agents and Health Care Providers**

As a competent person over the age of 18 residing in the Commonwealth of Virginia, you have the legal right to instruct medical personnel and any court, either directly or through your Health Care Agent, about what health care you will accept or refuse. You have the right to instruct them that you regard food and water (nutrition and hydration) as necessities and not “treatment.” You have the right to instruct them that if you are ever diagnosed as being in a persistent vegetative state, you are not, by that fact alone, “terminally ill.”

### **Revocation and Cancellation**

You can revoke or cancel your Advance Medical Directive at any time if you are capable of understanding the nature and consequences of your actions. You can revoke your entire Advance Medical Directive or any part of it, leaving the remainder in effect.

The law requires that you inform your attending physician about your revocation. You can cancel your Advance Medical Directive by destroying it yourself or having another destroy it in your presence (if you choose this method, it is best to destroy all known copies), or by orally stating your new wishes (if you choose this method, you should have witnesses sign and date an entry in your medical record), or by signing and dating a new document which again has been properly witnessed. You should also notify in writing any previously appointed Health Care Agent of your cancellation of the Advance Medical Directive.

An Advance Medical Directive cannot be revoked by family members or health care providers. If family members or others disagree with your Advance Medical Directive at a time when you are hospitalized and incapable of making health care decisions, they should be encouraged to contact the hospital’s Ethics Committee or they may need to seek legal counsel.

### **Understanding the Patient Protest Option**

This is an optional part of the Advance Medical Directive form. All other parts of the Advance Medical Directive remain in full effect whether you fill out this portion or not. If you choose to fill out this portion, be aware that Virginia law very clearly states that the Patient Protest Option does not involve anything to do with withholding or withdrawing life-prolonging care.

The Patient Protest Option addresses the situation where a patient in an incapacitated state refuses or “protests” being given necessary medical treatment. Ordinarily, unless under court order, a physician is restricted in providing a capable adult patient treatment or health care if the patient “protests” or refuses the treatment. By completing the

Patient Protest Option, you are giving your Health Care Agent the authority to consent to or refuse treatment (other than life-prolonging treatment), allowing your physicians to provide or withhold that treatment that you may later protest while being in an incapacitated state.

### **Signature and Dating**

If you are unable to sign and date the Advance Medical Directive document, you may make your mark ("X") on the document in the presence of two witnesses and direct someone 18 years of age or older to date it for you in your presence. The persons who witness your mark or signature should provide their signatures, names, addresses and phone numbers on the document.

### **GIVE COPIES OF THIS DOCUMENT TO:**

- your physician (with a request that it be made part of your medical records);
- your Health Care Agent (and successor Health Care Agents);
- your family;
- your health care facility (or facilities); and
- your lawyer, if you have one.

### **RISKS OF NOT HAVING AN ADVANCE MEDICAL DIRECTIVE:**

- (1) Your specific directions about your own medical treatment may not be known or may be ignored.
- (2) Decisions about your medical treatment may be made by family members other than the person you would have chosen, or by a court or a court-appointed guardian if no family members are available and willing to make your health care decisions.
- (3) Your family will face the burden of making decisions for you without your guidance and, if they cannot agree, the burden of going through court proceedings.

## REFERENCES

- <sup>1</sup> See Matthew 25:31-46; James 2:14-17.
- <sup>2</sup> Nutrition and Hydration: Moral and Pastoral Reflections, Committee for Pro-Life Activities, National Conference of Catholic Bishops, 24 March 1992 (Washington, D.C., United States Catholic Conference, third printing, 1998), p. 2.
- <sup>3</sup> See Matthew 25:31-46; James 2:14-17.
- <sup>4</sup> Address of Pope Pius XII to the International Congress of Anesthesiologists; Vatican City, November 24, 1957 (*L'Osservatore Romano*; Nov. 25-26, 1957).
- <sup>5</sup> Ethical and Religious Directives for Catholic Health Care Services, Part V, # 56.
- <sup>6</sup> Joint Statement on the Vegetative State: the Pontifical Academy for Life and World Federation of Catholic Medical Associations; Rome, Italy, March 10-17, 2004, no.10; Address of Pope John Paul II to the participants in the International Congress on "Life-sustaining treatments and vegetative state: scientific advancement and ethical dilemmas", March 20, 2004, no. 4.
- <sup>7</sup> Congregation for the Doctrine of the Faith, "Declaration on Euthanasia," Rome, 1980, Part IV.
- <sup>8</sup> Congregation for the Doctrine of the Faith, "Responses to certain questions of the United States Conference of Catholic Bishops concerning artificial nutrition and hydration" together with a commentary prepared by the Congregation, Rome, 2007.
- <sup>9</sup> Ethical and Religious Directives for Catholic Health Care Services, Part III, # 32, 33; Part V, # 57.
- <sup>10</sup> "Declaration on Euthanasia" Part IV.
- <sup>11</sup> Ethical and Religious Directives for Catholic Health Care Services, Part V, # 57.
- <sup>12</sup> Commentary on "Responses to certain questions of the United States Conference of Catholic Bishops concerning artificial nutrition and hydration."
- <sup>13</sup> Practice Parameters for Determining Brain Death, summary statement of the American Academy of Neurology, September 24, 1994 (*Neurology* 1995; 45:1012-1014). Reaffirmed January 13, 2007.
- <sup>14</sup> Health Care Decision Act, Code of Virginia, § 54.1-2972.
- <sup>15</sup> Bradley, Daroff, Fenichel and Marsden, *Neurology in Clinical Practice* (Boston: Butterworth-Heinemann, 2004), p. 45, 62-63.
- <sup>16</sup> Viktor and Adams, *Principles of Neurology*, 6<sup>th</sup> ed. (New York: McGraw-Hill Inc.1997), p. 365.
- <sup>17</sup> Practice Parameters: Assessment and Management of Patients in the Persistent Vegetative State, Summary Statement of the American Academy of Neurology, 5 May 1995 (*Neurology* 1995; 45: 855-1034). Reaffirmed July 28, 2006.
- <sup>18</sup> Health Care Decision Act, Code of Virginia, § 54.1-2982.
- <sup>19</sup> Bradley, Daroff, Fenichel and Marsden, p. 44.
- <sup>20</sup> Viktor and Adams, *Principles of Neurology*, 6<sup>th</sup> ed., p.347.
- <sup>21</sup> Health Care Decision Act, Code of Virginia, § 54.1-2987.1.
- <sup>22</sup> Health Care Decision Act, Code of Virginia, § 54.1-2987.1.
- <sup>23</sup> Code of Virginia, § 32.1-162.1.
- <sup>24</sup> Health Care Decision Act, Code of Virginia, § 54.1-2982.
- <sup>25</sup> Health Care Decision Act, Code of Virginia, § 54.1-2981.
- <sup>26</sup> Health Care Decision Act, Code of Virginia, § 54.1-2982.
- <sup>27</sup> Health Care Decision Act, Code of Virginia, § 54.1-2986.
- <sup>28</sup> Health Care Decision Act, Code of Virginia, § 54.1-2982.
- <sup>29</sup> "Declaration on Euthanasia," Part II; Catechism of the Catholic Church, # 1994, 1997, 2277.



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<sup>30</sup> Pope John Paul II, *The Gospel of Life*, #65 (1995).

<sup>31</sup> Health Care Decision Act, Code of Virginia, § 54.1-2986.

<sup>32</sup> Coverage for Hospice Care, Code of Virginia, § 38.2-3418.11B.

<sup>33</sup> Health Care Decision Act, Code of Virginia, § 54.1-2983.

<sup>34</sup> Health Care Decision Act, Code of Virginia, § 54.1-2982.

<sup>35</sup> This summary of instructions is for educational purposes only and should not be considered to represent legal advice. Portions of this summary have been adapted from the *Virginia Advance Directives Primer for Providers*, Health Law Section of the Virginia State Bar (Richmond, Virginia), 2009.