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by

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At one time it was possible for Americans to ignore living wills. Now they will hear about them if and when they are admitted to a hospital that receives Medicare and Medicaid funding. At that time, as a requirement of the federal Patient Self Determination Act of 1990, all adults must be asked whether they have an advance directive. No one, it is true, has to have a living will as a condition for admission and treatment. The law only requires that a patient must be asked whether he or she has such a document.

In anticipation of future hospitalizations, religious congregations ought to prepare for this question about advance directives through community meetings. The meetings should point out some of the benefits and problems associated with living wills, review the religious, moral and legal aspects of these directives, and examine the civil forms for living wills and the appointment of health care agents.

Responsible Adults

There are two very good reasons for such meetings. One is that many religious groups of men and women in the United States have a large majority of members who are well past middle age. The other is that, as religious, they have neither spouses nor children to speak for them about health care decisions at the end of life. Of course, some have written and signed living wills. They have talked

about their wishes with their physicians, families, and religious superiors whom many have designated as their health care agents. But others have not given to those responsible for their care any information about the kind of medical treatment they want if they become incapacitated. For both groups, community meetings on advance directives are opportunities for responsible adults to reflect on the religious, moral, and legal aspects of these documents.

Material on Advance Directives

Such an opportunity was given to the Fairfield Jesuit Community. Before the meeting, everyone received a small package of information on advance directives. It contained the official forms for a living will and the designation of a health care agent, a summary of Connecticut's revised law on living wills and health care agents, and some articles on the benefits and limitations of advance directives. Additional information was placed on library reserve for those who wanted a more thorough explanation and evaluation of these directives. In this larger package, there was a copy of Georgetown University's Kennedy Institute of Ethics Scope Note 2 on *Living Wills and Durable Power of Attorney: Advance Directive Legislation and Issues.* There were the summaries of Connecticut's law governing living wills and health care agents as well as a brochure of questions and answers about advance directives provided by the State's Office of the Attorney General. Readings on the Church's position about the moral, theological and legal considerations of living wills were made available. Some policy statements on living wills, obtained from local hospitals, completed the package.

At the meeting, the moderator highlighted the readings and pointed out some of the benefits and problems associated with living wills. Two theologians (one who was also a lawyer) made brief presentations on the theological and civil aspects of advance directives. The fourth panelist, the personal physician of many in the community, spoke about the practical and clinical context of living wills. Questions followed.

Weighing Advance Directives

The benefits and problems associated with advance directives are many. Years ago some of the problems were pointed out by Andre E. Hellegers and Richard A. McCormick in "Legislation and the Living Will" *(America,* 3/22/77). Their benefits and practical necessity were subsequently noted in "Living-Will Legislation, Reconsidered" *(America,* 9/5/81) written by John J. Paris and Richard A. McCormick. In their reevaluation of legislation on living wills, they write that "several recent state supreme court opinions have forced us to reconsider our opposition to the legislation." Years later, after courts have May, frequently asked for "clear and convincing evidence" about the incompetent person's desire to forego life-sustaining technology, there is all the more reason for withdrawing opposition to reasonable legislation concerning living wills.

What are some of the benefits of living wills and other advance directives? The

most compelling one is "that they allow a person to take advantage of medical technology and not be afraid that this technology will be used to prolong one's dying." Another is that advance directives are the best legal means to communicate to everyone, physicians, spouses, family members, and in the case of a religious community, the religious superior, a person's choice to terminate life-sustaining treatments when these means only prolong the dying process. Through a living will, those involved in the care of the person have a clear expression of what a person wants them to do and not do. As a result, physicians will know that they "do not have to do everything" to prolong life. Family members will know that the request expressed in the words of the living will is the thoughtful choice of the one they love.

Problems associated with living wills were pointed out by Andre E. Hellegers and Richard A. McCormick in "Legislation and the Living Will" which was written when living will legislation was in its infancy. Some of them are still present while others have been answered through responsible state legislation. A major concern still present is the fear that living will legislation will go beyond allowing the person to die to sanctioning active euthanasia. Another is the possibility that lawmakers and citizens alike might believe that living will legislation, and not a previously existing moral right, enables each person to determine when life-support systems become an extraordinary use of medical means and can be discontinued.

Responsible legislation has dispelled other concerns such as the fear that patients, with or without living wills, might be treated differently in emergency situations. And although the authors also say that advance directives can interfere in the doctor-patient relationship and the role of the family in these decisions, it seems that the doctor-patient relationship can be enhanced and strengthened if patient and doctor discuss the content of a living will and come to an understanding about what is to be done and not done when death is near. There is, likewise, no need to compromise the family's role in this age of advance directives if, like physician and patient, family members talk about their living wills before times of crisis. Through these discussions, both physicians and families can be prepared to accept the decision attested to in living wills and not substitute their judgments for the ones expressed in them.

Theological and Moral Basis of Living Wills

To reflect on the theological and moral foundation of living wills, members of religious communities should be encouraged to consult readings on Christian beliefs about life and death and the moral principles following from these beliefs. One of these beliefs is the obligation and the right of "responsible stewardship" in caring for one's life. Almost by itself stewardship is enough to show how living wills can be in keeping with Catholic principles. In brief, it means that the gift of life is ours from God. and while life is a good, it is not an absolute good, for this human life of ours will come to an end. Because of stewardship, one has the responsibility to take reasonable care of the gift of life, but because life cannot go on forever, there are limits to this responsibility.

The words "responsible stewardship" are summary words. The phrase best expresses the Catholic understanding of the care we should show for the life God has given us, for it implies that a person has both a right and even an obligation to decide on the extent of the duty to care for one's health. In practice, it means that a person should seek medical care to maintain or regain one's health. But it also means that a person does not have to use every means to maintain and regain health. In other words, there are limits to the duty to preserve one's life. The responsible person, therefore, may choose to omit or to accept treatment when death is near. Certainly the patient has the right to choose to prolong life in these circumstances; but he or she does not have to do so.

Unfortunately, this teaching, that there are limits to life-preserving medical interventions, is not as well known by Catholics as the teaching that there is a responsibility to take reasonable care for one's life. Catholics do, however, know that these two truths, together with compassionate care for the dying, constitute the moral justification for not always opposing the dying process in hospice care. It seems that, if the finitude of life and the limits of medicine justify the omission of the extraordinary uses of medical means in hospice care, they should do the same for dying patients in hospitals and nursing homes. There, too, patients have the right to be free from procedures that only prolong dying.

Responses to Living Wills

This kind of reflection on the rights and duties of responsible stewardship is most needed when living will legislation is evaluated. It is the kind of theological reflection articulated so well by James F. Bresnahan in "Catholic Spirituality and Medical interventions in Dying" *(America,* 6/29/91) where he responds to questions such as the following: "Dare we regard legal provisions (a Living Will or Durable Agency for Health Care) for specifying the kind of terminal care we want and do not want as 'merely secular' and legalistic measures, perhaps even as irreligious temptations? Or can we make of such a document a personal spiritual testament?" The author says "yes" to both of these questions.

The response of "yes" to the questions asked by James F. Bresnahan is strongly opposed by some Catholics. They say that living will legislation is dangerous and needs many correctives. For example, Robert Barry writes about these dangers and "serious deficiencies," and suggests as an alternative to a civilly sanctioned living will, "a pro-life living will," to protect life if and when one is incompetent and terminally ill. In "Writing a Pro-Life Living Will" *(Homiletic & Pastoral Review,* 12/91), he says that "...there has been an extraordinarily intense publicity campaign to promote living wills and durable powers of attorney legislation." Because of the "studied ambiguity of many popular living wills" and because of the "extraordinary powers given" to proxies in some laws, such advance directives can do great harm. He outlines, in great detail, thirteen features of a life-protective advance directive which he believes should replace both the standard legal forms for living wills as well as "the Christian Affirmation of Life." His own words are these: "The best way of overcoming the ambiguity of both the contemporary living will and the Christian Affirmation of Life and the

dangerously unrestricted powers of durable powers of attorney delegations is by executing a twofold life-protective advance medical directive."

Such a choice anyone can make, but there is another perfectly acceptable moral choice open to Christians. It is to put into writing a request asking others to discontinue medical interventions when they are futile. It is the decision to write a living will. According to James F. Bresnahan, it is a decision that can transform a "secular" living will into "a personal religious testament." Those who write living wills in this way accept the positive aspects of living wills and see their compatibility with their beliefs as Christians. They admit that there are concerns about the content of some advance directive legislation, but they maintain that these concerns can be answered through responsible civil statutes. Their position is that not all advance directive legislation is incompatible with Catholic beliefs. In fact, some laws respond very well to them.

Legislation and Catholic Beliefs

One source book, *Medical Ethics: Sources of Catholic Teachings,* helps a person to see how a reconciliation of living will legislation and Catholic beliefs can be made. Edited by Kevin D. O'Rourke and Philip Boyle and published by The Catholic Health Association of the United States, it contains two documents on advance directives prepared by the National Conference of Catholic Bishops' Committee for Pro-Life Activities.

The first, *(Origins,* 14: no. 32, Jan. 24, 1985), presents the pertinent moral principles which should be considered in advance directive legislation. It was intended to "outline a general approach which, we believe, will help clarify rights and responsibilities with regard to such treatment (of the terminally ill) without sacrificing a firm commitment to the sacredness of human life." The second document, *(Origins,* 16: no 12, Sept. 4, 1986), evaluates and criticizes a model law (called a Uniform Act) on living wills which was offered to individual states for possible enactment. The bishops' committee points out many "problem areas" in the Uniform Act, and expresses a hope that individual states would recognize and correct these serious limitations. Both documents urge care and caution in legislation on advance directives. But in neither document is there a blanket condemnation of such legislation.

With good reason the bishops' committee urged care and caution. There is need to pay attention to any new legislation concerning the care for the dying, especially after "Initiative 119" in the State of Washington and "The California Death with Dignity Act" on physician assisted suicide were proposed and only narrowly defeated in 1991 and 1992 respectively. The bishops' committee point out how "some of the provisions of the Uniform Act raise new and significant moral problems, highlighting the need for serious debate on the purpose and risks of legislation on this subject." But the bishops do not reject all attempts at drawing up laws which allow a person a forego medical interventions that merely prolong the dying process. They note a national interest in laws about advance directives, and they admit that the interest in living will legislation is understandable. They write that a major reason for this interest in living wills "is

due in large part to a concern that some physicians are resisting even morally appropriate requests for withdrawal of treatment when these requests have no explicit statutory recognition."

In both documents, the bishops say in various ways that they recognize and defend a patient's right to refuse "extraordinary" means while reaffirming the necessity of providing "ordinary" means of preserving life. In this context, the committee repeats the rejection of euthanasia as a proper moral option. The committee, therefore, accepted what a living will should try to insure — a person's duty to preserve his or her life, a recognition of the fact that there are limits to this duty, and the rejection of euthanasia.

When the bishops speak about times when a living will might be invoked, they state: "we urge family members, others qualified to interpret the patient's intentions, and physicians to be guided by these fundamental moral principles." They also express a hope that our Catholic principles would help lawmakers in their work of framing morally sound civil legislation about patient care when death is near. This, I think, has been done in many states, one of which is Connecticut. Obviously, the bishops could not endorse all legislative proposals in this matter since they vary so much from state to state. They likewise did not condemn them.

In Massachusetts, for example, the State's Catholic Conference composed an excellent statement on Massachusetts' recently enacted Health Care Proxy Bill. Intended as a guide for Catholics, the document gives a brief explanation of the moral principles involved in the new legislation, principles which show why a Catholic is morally free to take advantage of the law which enables a person "to choose an agent to make health care decisions should they lose the ability to decide for themselves." One statement in the guide summarizes in a most succinct way their position on advance directives, living wills and health care agents: "In our day, there are many attempts to legalize euthanasia. We unalterably oppose these efforts because we believe that life is God's precious gift and must not be subjected to deliberate violence or destruction. Our faith also teaches that one is not obligated to prolong life by the use of disproportionate means. The refusal or withdrawal of such means would not be considered suicide or euthanasia."

Personal Decisions

Through community meetings, religious men and women should be encouraged to learn enough about living wills in order to make a decision about treatment at the end of life. In the days that followed the Fairfield meeting, some members of the community brought their living wills up to date and designated health care agents. Others signed the appropriate forms for the first time. A few decided not to exercise this legal option. But individually and as a group, during this meeting, they faced the realities that prompt people to write living wills — their mortality and the limits of medicine.
