

Advance Health Care Directives: A Catholic Perspective

Preface

Roman Catholics believe that life is a gift from a loving God (*Catechism of the Catholic Church* [CCC], n. 1; n. 2280). Life is a holy gift for which we are responsible, but do not own (CCC, n. 2258). Part of our responsibility as stewards of our lives is to make reasonable and well-informed decisions about the types of medical treatments that we receive. Part of our respectful responsibility is to equip others to make medical treatment decisions for us when we are unable, for one reason or another, to make them for ourselves.

This document is intended to assist you in this important process of thinking through and then making informed medical treatment decisions about your future health care needs and wishes. There may come a time when you are unable to express your own health care decisions. In particular, this resource prepares you to complete an Advance Health Care Directive, which is a written document expressing a person's desire for medical treatment used in cases where the person becomes incapacitated and is no longer capable of making his or her own decisions. Examples include Living Wills and Durable Power of Attorney, both of which are described later in this resource. By writing an advance directive, you give instructions and make known your wishes for your future health care decisions.

As an adult, you have the right to make decisions about your health care. This right is stated in both the ethical framework of Catholic healthcare and in federal law.

In order to protect the rights of its citizens, Congress passed the Patient Self-Determination Act in 1991. This law makes it clear that you have the right to make decisions regarding your medical care including the right to accept or refuse treatment and the right to make an advance directive. The law also requires health care facilities/agencies to discuss advance health care directives with you as you enter their system.

Catholic healthcare, which is guided by the *Ethical and Religious Directives for Catholic Health Care Services* (ERDs, 2009, United States Conference of Catholic Bishops) is quite clear that you have the right to be informed about and to make decisions about your future healthcare needs and treatments.

The ERDs tell us in Directive 27 that you or your proxy (also known as a “surrogate,” which is the person you designate to make treatment decisions when you are unable to do so) have the moral and legal right to “all reasonable information about the essential nature of the proposed treatment and its benefits; its risks, side-effects, consequences, and cost; and any reasonable and morally legitimate alternatives, including no treatment at all.”

While you have the right to make your health care decisions, as a Catholic you may never choose your own death as an end in itself or as a means to end suffering, nor have an advance directive that is contrary to the moral teaching of the Church (ERDs, Part One, Introduction; ERD #24).

There are times when *treatments* are no longer of a benefit and may prove to be excessively burdensome. As Catholics are taught in the *Catechism*:

2278 Discontinuing medical procedures that are burdensome, dangerous, extraordinary, or disproportionate to the expected outcome can be legitimate; it is the refusal of "over-zealous" treatment.

Here one does not will to cause death; one's inability to impede it is merely accepted.

The decisions should be made by the patient if he is competent and able or, if not, by those legally entitled to act for the patient, whose reasonable will and legitimate interests must always be respected.

This point is reflected in the ERDs:

ERD #32: While every person is obliged to use ordinary means to preserve his or her health, no person should be obliged to submit to a health care procedure that the person has judged, with a free and informed conscience, not to provide a reasonable hope of benefit without imposing excessive risks and burdens on the patient or excessive expense to family or community.

ERD #33: The well-being of the whole person must be taken into account in deciding about any therapeutic intervention or use of technology. Therapeutic procedures that are likely

to cause harm or undesirable side-effects can be justified only by a proportionate benefit to the patient.

ERD #56: A person has a moral obligation to use ordinary or proportionate means of preserving his or her life. Proportionate means are those that in the judgment of the patient offer a reasonable hope of benefit and do not entail an excessive burden or impose excessive expense on the family or the community.

ERD #57: A person may forgo extraordinary or disproportionate means of preserving life. Disproportionate means are those that in the patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or the community.

There may come a time when you are unable to express your own health care decisions. By writing an advance directive, you give instructions and wishes for your future health care decisions. ***This advance directive for health care shall take effect when you are not able to express your health care decisions, as determined by your attending doctor.*** You can direct that those responsible for your care make health care decisions according to your stated ethically appropriate wishes.

It is advisable to make these health care decisions at a time when you have the capacity to do so. Making such health care decisions can become confusing for an individual. Technology is available that can respond effectively in many life-threatening situations. Sometimes this same technology that is intended to assist in restoring a person to health can become a mechanism that prolongs the very dying process.

Many seriously ill persons do not have the capacity to make decisions about their care. For this reason many states have passed laws that encourage advance health care directives. By means of such a document, you are able to determine now about the future kind(s) of treatment you wish to receive should you become incapacitated or unable to make those determinations at the time of your illness. These laws are intended to allow adults to delegate the right that is properly yours to a designated proxy to make health care decisions on your behalf when you are unable to do so. The law does not intend to encourage or discourage any particular health care treatment or to legalize euthanasia, suicide or assisted suicide.

Advance Health Care Directives

You have two options in preparing your Advance Directive document. A *Living Will* enables you to make your wishes known regarding life-prolonging treatment in advance of the time when you are no longer able to participate actively in decisions concerning your medical care. A *Durable Power of Attorney for Health* (DPOAH, which is distinct from a Durable Power of Attorney for Finance) provides the same powers as does the Living Will but, in addition, allows you to designate one or more persons to serve as "proxy," such as a family member or close friend, to make health care decisions for you if you lose the ability to decide for yourself in the future. This is done by designating a "health care proxy." A proxy is someone who speaks and makes decisions for you when you do not have the capacity to do so for yourself. *Your proxy is required to make decisions as you would make them for yourself.*

You...

1. Have the right, according to the *Ethical and Religious Directives for Catholic Health Care Services* (ERD #24) and the Patient Self-Determination Act to make all of your own health care decisions so long as you retain the capacity to make decisions. The Advance Directive only becomes effective should you become incapacitated through illness or accident.
2. Have the right to challenge your doctor's determination that you are unable to make your own medical decisions.
3. Can give special instructions about your medical treatment to your proxy and can forbid that proxy to make certain treatment decisions (ERD #25). You must communicate your wishes, values, religious beliefs, and instructions to proxy so that the proxy will be able to act appropriately on your behalf if you become unable to make medical decisions at a later date. Specific instructions about any treatment/procedures which you desire under specified conditions can be written in your proxy designation.
4. Have the right to sign a directive without designating a proxy. In this case the attending physician is required to follow the directions for care that you state in your Living Will.
5. May revoke your Advance Directive document and the appointment of your proxy at any time while competent.
6. Need to be informed regarding who may serve as your proxy based on the laws in your state.

Options to Consider When Preparing an Advance Directive

The basic differences between a Living Will and an Advance Directive Proxy rests in the facts that:

1. The determinations you make in a Living Will will be carried out according to your written statements by the health care provider who cares for you at the time you are unable to make your own decisions. This may or may not be a person you know.
2. The determinations you make in a Durable Power of Attorney for Health designation will be carried out by the person or persons you specifically select to act on your behalf. The Durable Power of Attorney for Health designation allows for decisions to be made in light of the existing circumstances which you perhaps could not foresee at the time you created your Advance Directive.
3. Catholics are encouraged to use the proxy designation approach because it involves personal interaction, first between you and your proxy(s), and later between the proxy(s) and the health care providers. The fact is, however, that some people may not have family members or friends who are able or willing to become proxies for the patient. A Living Will may be helpful in providing direction relative to the patient's wishes regarding care in terminal illness.

Your Proxy...

1. Can begin making decisions for you only when your doctor determines that you are no longer able to make health care decisions for yourself.
2. May make any and all health care decisions for you within the boundaries of reasonableness, including treatments for physical and mental conditions and decisions regarding life-sustaining procedures . . . UNLESS you limit the power of your proxy.
3. Subject to certain exceptions in the law, will have power to authorize the withholding or withdrawal of life-prolonging treatment and decisions about provision of medically assisted nutrition and hydration (feeding tubes).
4. Is protected from legal liability when acting in good faith.
5. Must make a decision based on your expressed wishes and values or your "best interests"; this will take precedence over other decisions, regardless of family relationships.
6. May have his or her decision challenged if your family, health care provider or close friend believes the proxy is acting in bad faith or is not acting in accord with your wishes and religious/moral beliefs.

Your Health Providers...

Neither your health professional nor your health care facility or agency is required to honor your proxy's decision if it is contrary to their religious

beliefs or sincerely held moral convictions (*ERD #24*). In such event, they may not prevent or impede your transfer to another facility/health professional willing to honor your proxy's decision.

Both your health care professional and health care facility or agency are protected from legal liability when acting in good faith.

Considerations from Catholic Teaching

Roman Catholic teaching celebrates life as a gift of a loving God and respects each human life because each is made in the image and likeness of God.¹ It is consistent with church teaching that each person has the right to make his or her own health care decisions.² Further, a person's family or others may have to assume that responsibility for someone who has become incapable of making these decisions.

Accordingly, it is morally acceptable to designate a health care proxy, as long as they conform to the teachings and traditions of the Catholic faith (*ERD #25*). In this regard, the Catechism of the Catholic Church notes that decisions to discontinue medical procedures "should be made by the patient if he is competent and able or, if not, by those legally entitled to act for the patient, whose reasonable will and legitimate interests must always be respected." (CCC n. 2278).

While the health care proxy laws allow us to designate someone to make health care decisions for us, life is a sacred trust over which we have been given stewardship (*ERD #29*). We have a duty to preserve it, while recognizing that we have no unlimited power over it (*ERD #32*). Therefore, the Church encourages us to keep the following considerations in mind if we decide to develop a document creating a living will or designating a health care proxy.

1. As Christians, we believe that our physical life is sacred and that our ultimate goal is everlasting life with God (*ERD, Part Five, Introduction*). Therefore, we should accept death as a part of the human condition. Death need not be avoided at all costs (CCC n's 1107-1109).
2. Moreover, ". . . suffering is a fact of human life, and has a special significance for the Christian as an opportunity to share in Christ's redemptive suffering. Nevertheless, there is nothing wrong in trying to relieve someone's suffering as long as this does not interfere with other moral and religious duties. For example, it is permissible in the case of terminal illness to use pain killers which carry the risk of shortening life, so long as the intent is to relieve pain effectively rather than to cause death."³

3. "Euthanasia in the strict sense is understood to be an action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering. Euthanasia's terms of reference, therefore, are to be found in the intention of the will and in the methods used."⁴
4. "Everyone has the duty to care for his or her own health and to seek necessary medical care from others, but this does not mean that all possible remedies must be used in all circumstances. One is not obliged to use 'extraordinary' means, that is, means which offer no reasonable hope of benefit or which involve excessive hardship."⁵ Decisions regarding treatment or refusal of treatment should be made in accordance with the principle that there should be some reasonable proportion between the benefit of the treatment and the burden (e.g. pain, risk, cost) it imposes on the patient. In the light of the moral tradition of the Church, the Vatican Declaration on Euthanasia (1980) sets forth key concepts for guiding end-of-life decisions --- proportionate ("ordinary") and disproportionate ("extraordinary") means to preserve life. In explaining the traditional norm based on the principle of benefit and burden, namely, that it is not obligatory to use disproportionate means to preserve life, the Declaration states:

... 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 or moral resources.

Moreover, the Declaration observes that a procedure which carries a risk or is burdensome cannot be imposed on a patient even if it is already in use. According to the Declaration, a refusal of disproportionate treatment ought not be viewed as "the equivalent of suicide." Rather, such decisions should be "considered as an acceptance of the human condition, or a wish to avoid the application of a medical procedure disproportionate to the results that can be expected, or a desire not to impose excessive expense on the family or the community." (*Jura et Bona*, IV - "Due Proportion in the Use of Remedies.")

Consistent with that traditional moral teaching, the United States Conference of Catholic Bishops issued appropriate guidelines in the current edition of the *Ethical and Religious Directives for Catholic Health Care Services* (ERDs, 2009). The ERDs formulate the following moral guidelines concerning the obligatory or optional nature of treatments to preserve one's life:

ERD #56: A person has a moral obligation to use ordinary or

proportionate means of preserving his or her life. Proportionate means are those that in the judgment of the patient offer a reasonable hope of benefit and do not entail an excessive burden or impose excessive expense on the family or the community.

ERD #57: A person may forgo extraordinary or disproportionate means of preserving life. Disproportionate means are those that in the patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or community.

The ethical concepts of "benefit" and "burden" are patient-centered, not treatment-centered, and are applied on a case-by-case basis.⁵

No proxy is authorized to deny comfort care which every patient can rightfully expect, such as appropriate food, water, bed rest, room temperature and hygiene. (See Catechism of the Catholic Church n. 2279).⁶

The patient's condition, however, may affect the moral obligation of providing medically assisted nutrition and hydration. Factors that should be weighed in making this judgment include: the patient's ability to assimilate the medically assisted nutrition and hydration, the imminence of death and the burden of the procedures for the patient.⁷

ERD #58 of the *Ethical and Religious Directives for Catholic Health Care Services* sums up the official teaching of the Church regarding the provision of medically assisted nutrition and hydration (MAN/H):

In principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally. This obligation extends to patients in chronic and presumably irreversible conditions (e.g., the "persistent vegetative state") who can reasonably be expected to live indefinitely if given such care. Medically assisted nutrition and hydration become morally optional when they cannot reasonably be expected to prolong life or when they would be "excessively burdensome for the patient or [would] cause significant physical discomfort, for example resulting from complications in the use of the means employed."⁴¹ For instance, as a patient draws close to inevitable death from an underlying progressive and fatal condition, certain measures to provide nutrition and hydration may become excessively burdensome and therefore not

obligatory in light of their very limited ability to prolong life or provide comfort.

The Pro-Life Activities Committee of the United States Conference of Catholic Bishops proposed several ethical duties entailed in this complex medical-moral question of provision of MAN/H:

- 1) a rejection of "any omission of N/H intended to cause a patient's death";
- 2) establishment of "a presumption in favor of providing medically assisted nutrition and hydration to patients who need it, which presumption would yield in cases where such procedures have no medically reasonable hope of sustaining life or pose excessive risks or burdens." (See USCCB Committee for Pro-Life Activities, "Nutrition and Hydration: Moral and Pastoral Reflections," 1992).

The principle of burden and benefit allows judgments, in case-by-case situations, that MAN/H are not morally required. Decisions about MAN/H and obligations to patients in a persistent vegetative state (PVS) [post-coma unresponsiveness] are of special moral concern.

Accordingly, the assessment of MAN/H as being "in principle, ordinary and proportionate" grounds a presumption in favor of providing MAN/H except when death is imminent or the patient is unable to assimilate the MAN/H, or the procedure is unduly burdensome for the patient.

Decisions to discontinue MAN/H because the life of a patient in this condition is judged not to be of value or in order to cause the death of the patient intentionally are morally wrong.

In effect, morally justified decisions to discontinue treatment entail an intention to remove a burdensome or non-beneficial procedure, not the death of a patient. In all cases, palliative or comfort care is always in order. (See November 12, 2004 address of Pope John Paul II to the Pontifical Council for Pastoral Care; CCC n. 2278; ERD #58).

Life-sustaining treatment must be maintained for a pregnant patient if continued treatment may benefit her unborn child.⁸

Such principles and guidelines from our Christian heritage should guide Catholics and others as they strive to make responsible health care decisions and designate health care proxies. These Christian principles and guidelines

should also guide Catholic health care facilities and providers in deciding when to accept and when to refuse to honor a proxy's decision.

Practical Considerations for Those Choosing to Designate a Proxy

1. When possible, prior to or upon entering a health care institution, you should request a copy of the facility's principles and policies related to advance medical directives.
2. Both you and your proxy are encouraged to seek sound pastoral guidance before making decisions about life-sustaining treatment. Discuss your questions and beliefs with your pastor or other spiritual advisor.
3. Be prepared to present your advance directives when you enter a health care system. If their policies or principles indicate that they refuse to comply with your advance directive, they are responsible to inform you immediately of the refusal and allow you to transfer to another health care system.
4. Discuss your choices and the reasons for these choices and share copies of your Living Will and/or Advance Directive with Durable Power of Attorney for Health with your doctor, your proxy (if one is named), family members, close friends, your pastor, or anyone else who should be aware of your wishes.
5. As stated above, Catholics are encouraged, where possible, to name a proxy or proxies because it involves personal interaction, first between you and the proxy(s), and later between the proxy(s) and the healthcare providers.
6. Reflecting the *Ethical and Religious Directives for Catholic Health Care Services* and their emphasis on human dignity, making your wishes known reflects three dimensions of respect for persons:
 - A. Respect for yourself by giving voice to your wishes.
 - B. Respect for your family and loved ones, especially your proxy, by helping them clearly know your wishes.
 - C. Respect for your healthcare providers, by helping them to provide the best and appropriate care.

Endnotes:

1See the Encyclical *Evangelium Vitae (The Gospel of Life)* of Pope John Paul II, March 25, 1995

2See *Declaration on Euthanasia*, Sacred Congregation for the Doctrine of the Faith, May 5, 1980, n.IV

3Guidelines for *Legislation on Life-Sustaining Treatment*. National Conference of Catholic Bishops Administrative Committee, November 10, 1984. Also *Evangelium Vitae*, #65, 2.

4 *Evangelium Vitae*, #65, 2. *See also the Catechism of the Catholic Church nn. 2276-2279.*

5 Guidelines for *Legislation on Life-Sustaining Treatment*. National Conference of Catholic Bishops Administrative Committee, November 10, 1984

6 *Evangelium Vitae*, #65, 2

7. *Ibid.*

8 Guidelines for *Legislation on Life-Sustaining Treatment*. National Conference of Catholic Bishops Administrative Committee, November 10, 1984

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE PROXY
and LIVING WILL ADVANCE DIRECTIVE DESIGNATION**

Name _____
Address _____
City State ZIP _____
Telephone Number _____
E-Mail _____

My stated wishes regarding life-prolonging treatment and medically assisted nutrition and hydration to be provided to me if I no longer have decisional capacity, and have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below.

A) I have chosen the following person to be my Primary Durable Power of Attorney for Health Care Representative (Proxy).

Name _____
Address _____
City State ZIP _____
Telephone Number _____
E-Mail _____

He or she will be my health care representative to make my health care decisions when I am not able to speak for myself. If my wishes are not clear or events take place that I have not talked about, I ask that my health care representative make the decisions based upon what he or she knows of my wishes.

I have talked with my health care representative about this responsibility. He or she has willingly agreed to accept this role.

B) I have chosen the following person(s) as my *Alternate* Durable Power of Attorney for Health Care Representative (Proxy), if the primary person I have chosen above is not able, not willing, or not available to act as my health care representative:

Name _____
Address _____
City State ZIP _____
Telephone Number _____
E-Mail _____

OR

Name _____

Address _____

City State ZIP _____

Telephone Number _____

E-Mail _____

He or she will be my alternate health care representative to make my health care decisions when I am not able to speak for myself. If my wishes are not clear or events take place that I have not talked about, I ask that my alternate health care representative make the decisions based upon what he or she knows of my wishes.

I have talked with my alternate health care representative about this responsibility. He or she has willingly agreed to accept this role.

Any prior proxy designation is revoked.

If I do not designate a proxy, the following are my directions to my attending physician.

If I have designated a proxy, my proxy shall comply with my wishes as indicated below.

TREATMENT CHOICE INSTRUCTIONS

You are asked to give directions about your future health care. This will mean making important and difficult choices. You need to think about and write down different situations when different types of medical treatments, including life-sustaining actions, should be given or should not be given.

Before finishing this part, you should talk this over with your health care representative, doctor, priest, deacon, spouse, family members or those who may be responsible for your care. It is suggested that from time to time you look over these instructions with these same people to make sure that your wishes are still the same.

GENERAL INSTRUCTIONS: I direct the people who are responsible for my medical treatment to carry out the following:

Life-Prolonging Treatment

A. _____ I direct that all medically indicated treatments and medically assisted nutrition and hydration (through tubes if necessary) be given to maintain my life, no matter what my physical or mental condition. **(Skip B & C)**

OR

B. _____ If a serious health condition occurs and my primary doctor and at least one other doctor, who has personally examined me, decide that I am in a terminal life condition and/or further medical treatment would not be beneficial and would be medically inappropriate, I direct **not** to have treatments that would only prolong my dying. If these treatments have been started, they should be stopped. I also want to be given all necessary medical care appropriate to stop pain and to make me comfortable. **(Go to C)**

C. _____ If I have been diagnosed as being in a permanent coma or in a persistent vegetative state after being examined by my primary doctor and at least one other doctor who is qualified to make this decision, **choose either 1 or 2.**

1. _____ I direct that **disproportionate or extraordinary means*** of medical treatment, as understood in the teachings of the Catholic

Church, including medically assisted nutrition and hydration (through tubes if needed) shall be used no matter what my physical or mental health.

OR

2. _____ I direct that **disproportionate or extraordinary means*** of medical treatment, as understood in the teachings of the Catholic Church, shall **not** be used. I direct that medically assisted nutrition and hydration (through tubes if needed) be continued unless or until the benefits of this medically assisted nutrition and hydration are clearly outweighed by a definite danger or burden, or are useless.

* **Disproportionate or Extraordinary** medical treatment is understood as those medicines, treatments or operations which, in the judgment of the patient, may be very expensive, may cause excessive pain or other extreme difficulties or which may offer no reasonable hope of benefit (ERD #57).

Examples of disproportionate or extraordinary measures that I would want are as follows:

Other special instructions for my Health Care Proxy:

In the absence of my ability to give directions regarding the use of life-prolonging treatment and medically assisted nutrition and hydration, it is my intention that this directive shall be honored by my **attending physician**, my **family**, and any **proxy** designated pursuant to this directive as the final expression of my ethical and legal right to refuse medical or surgical treatment, and I accept the consequences of the refusal of treatment.

My Health Care Proxy is authorized to receive protected information under the Health Insurance Portability and Accountability Act of 1996 (HIPPA), and to authorize the disclosure and use of my protected health information as provided in federal law (45 CFR Part 164), to the greatest extent allowed by federal law. It is my intent for my Health Care Proxy to be considered my personal representative under federal law 45 CFR 164.502(g), and, therefore, my Health Care Proxy will be treated as I would be with respect to my rights regarding the use and disclosure of my protected health information or other medical records.

My Health Care Proxy is authorized to:

- Consent, refuse consent, or withdraw consent to any treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of my body
- Make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel, to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care, as the proxy shall deem necessary for my spiritual, physical, mental and emotional well being.

LIMITATIONS OF AUTHORITY

- (1) The powers of the proxy herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing validly made declaration.
- (2) The proxy shall be prohibited from authorizing consent for the following items:

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

EFFECTIVE TIME

This Durable Power of Attorney for Health care decisions shall become effective upon my disability or incapacity. It becomes non-effective if and when I regain capacity to make medical decisions for myself.

REVOCAATION

Any Durable Power of Attorney for Health care decisions I have previously made is hereby revoked

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this _____ day of _____, 20____.

Signature _____

Print Name: _____

Address: _____

Phone: _____

This document must be witnessed or notarized in accord with the legal requirements of your state.

In our joint presence, _____, who appears to be of sound mind and eighteen years of age or older, voluntarily dated and signed this writing or directed it to be dated and signed for him or her.

_____ Signature of witness	_____ Signature of witness
_____ Print Name	_____ Print Name
_____ Address	_____ Address

-OR

STATE OF _____)

SS.

COUNTY OF _____)

This instrument was acknowledged before me on

(date)

by _____.
(name of principal)

(signature of notary public)

(Seal, if any)

My appointment expires: _____

NOTE: Execution of this document restricts withholding and withdrawing of some medical procedures.