

## **A Catholic Perspective on Advance Directives in Illinois**

### **1. Why should I be concerned about advance directives?**

A: Modern medicine and medical technology have made it possible to extend the length of life as well as the quality of life. Along with these advances, however, have come concerns. Patients question whether medical technology will keep them alive needlessly. Will they become prisoners of machines? Families and loved ones of an incompetent patient agonize over critical health care decisions. It also is difficult sometimes to determine which family member(s) should make decisions for incapacitated people. At other times physicians are reluctant to remove life support unless clearly protected from liability. These concerns and a variety of court decisions have highlighted the need for a person to provide advance directives and thus ensure that death occurs for each person in a morally acceptable manner.

### **2. What fundamental principles should guide a Roman Catholic, and indeed any person, who is thinking about advance directives?**

A: There are three principles that should be considered:

- a) *Human life is a gift from God.* Because human life is a sacred gift we must protect it as would any good steward. We have an obligation to take normal means to preserve and protect life.
- b) *Death is a beginning, not an end.* As believers in the mystery of the Resurrection, we know our current life is not all there is. We need not do everything possible to prolong our life.
- c) *We have the right to direct our own care.* Each person has two rights regarding medical care and treatment: the right to be clearly and accurately informed about a proposed course of treatment and its consequences, and the right to decide to receive or not receive treatment in accord with the moral law.

### **3. Is it possible for me to ask someone else to make health care decisions for me, to be my surrogate?**

A: Yes. My moral commitment to pursue, preserve and protect my life exists even when I am incompetent. I have the right to ask another, who is to be motivated by authentic love of neighbor, to seek my best interests and to make my health care decisions when I am no longer able to do so.

### **4. If I have not appointed a surrogate, can someone else make my health care decisions?**

A: Yes. We know that authentic love of God is expressed in loving concern for others. The obligation to love one's neighbor requires that those who are healthy care for the person who is incapacitated within proper moral parameters. The solidarity of interdependence of the human family is the ethical basis for proxy decision making.

### **5. If I have not selected a surrogate, what principles should guide the selection of a surrogate for me?**

A: First priority should be given to a person who has personal knowledge of you and shares your value system. As a minimum, there should not be any conflict of interest between you and your surrogate.

**6. What should be considered in determining whether I am capable of making my own health care decisions?**

A: From an ethical perspective you are capable of making your own health care decisions when you are able to understand and appreciate the nature and consequences of your illness, the treatment alternatives that are available and the consequences of your choices in light of the values you hold.

**7. Are there any limits to the authority of the surrogate?**

A: Yes, the same limits that apply to you. Because we are stewards of life, neither you nor your surrogate can intentionally commit or omit actions which by their nature or their consequences would directly cause your death.

**8. How should a surrogate proceed in making health care decisions for you?**

A: There should be three stages to the surrogate's decision making process:

- a) If you have clearly stated your intentions in an explicit manner and the circumstances are appropriate, then those wishes should be followed by the surrogate.
- b) If it is possible to conclude from your expressed values and previous life decisions how you would decide in this specific situation, that is how the surrogate should act.
- c) In the absence of the above, then the surrogate should act in your "best interests."

**9. What constitutes my "best interests"?**

A: The concept of "best interests" is complex related to stages b) and c) mentioned in number 8. From an ethical perspective there are several components to a person's "best interests." One must consider what is beneficial for you. Your preferences, insofar as they are known, are relevant. So, too, is an understanding of that which constitutes the basic goods of being human. Finally, your fundamental values and beliefs must be considered. Because of this complexity, it is obvious that what might be in the "best interests" of one person might not be in the "best interests" of another. For this reason it is important that at the very least you make your wishes and intentions known, and at the best, appoint a surrogate you believe will decide in *your* best interests.

**10. How do I or my surrogate determine whether a certain form of care or treatment is morally required?**

A: One begins by studying the type of care or treatment to be used; "its degree of complexity or risk, its costs 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 moral resources."\* In this context one then determines whether this *particular* form of care or treatment will achieve its purpose and/or is not unduly burdensome. If the care or treatment is useless (will not achieve its purpose) and/or is unduly burdensome, then it is *not* morally required.

**11. Is the provision of nutrition and hydration always morally required?**

A: Since food and water are necessities of life for all human beings and can generally be provided without the risks and burdens of more aggressive means of sustaining life, there should be a strong

presumption in favor of their use. Because of the complex nature of medical realities in these matters and the obligation to protect the rights of the handicapped, the medically incompetent, and other helpless patients, great caution and serious attention should be paid to all reasons or motives involved in withdrawing or not initiating artificially provided nutrition and hydration (intravenous feeding, tube feeding, etc.) That being said, it is possible, on a case by case basis, for you or your surrogate, utilizing the principles outlined in #10, to determine that artificially provided nutrition and hydration are not morally required. In such instances, however, all other normal patient care due to a sick person must be provided (e.g., comfort, hygiene, freedom from pain, etc.). Finally, the reason or intention for making such a decision must not be to directly bring on death, but must be to spare the patient care or treatment that is not morally required.

## **12. Is this not the same as suicide or euthanasia?**

A: No! One determines whether euthanasia or suicide is present by examining the intention and the methods used. When the intention and methods are in accord with the principles outlined in #10 and #11, then you or your surrogate are acting in a morally proper way. You are accepting the human condition or avoiding useless or unduly burdensome care or treatment.

## **13. How can I be sure that my surrogate acts in a morally responsible way?**

A: The following paragraph reflects the ethical guidance given above. In fact, you might wish to include this paragraph in any written advance directive you may have (such as a Durable Power of Attorney for Health Care):

*As regards to life sustaining treatment, I declare my belief that life is a sacred gift from God.*

*However, it is not the highest value.*

*“Accepting death is a sign of our recognition of the human condition.”*

*Therefore, I do not want my life prolonged, nor do I want life sustaining treatment to be provided, including artificial nutrition and hydration, if the burdens of the treatment outweigh the benefits or if the treatment would be ineffective. In this regard, I want my agent to consider the relief of suffering, the expense involved and the burdensome conditions of the treatment(s) associated with the extension of my life in making decisions as regards the initiating, withdrawing and/or life sustaining treatment.*

\* from *Declaration on Euthanasia, Congregation for the Doctrine of the Faith* – May 5, 1980

## **Advance Directives for Medical Treatment: Questions and Answers on Illinois Law**

### **Q: What are advance directives?**

A: Advance Directives are written instructions you can give about your health care, especially life sustaining treatment. In Illinois there are three kinds of Advance Directives, the Durable Power of Attorney for Health Care (DPAHC) and the Living Will (LW) and the Declaration for Mental Health Treatment (DMHT). If you have not signed an advance directive and you become unable to make health care decisions for yourself, some decisions may be made by a health care surrogate (HCS).

### **Durable Power of Attorney for Health Care**

### **Q: What is a Durable Power of Attorney for Health Care?**

A: A document signed by you as a competent person, naming another person as agent to make health care decisions for you. Unless the DPAHC says otherwise, your agent can make decisions whenever you are unable to do so. This is the broadest and most flexible option available in Illinois.

### **Q. What can the agent named in the DPAHC do?**

A. Your agent can consent to or refuse any kind of medical treatment or procedure, just as you could do when competent. The DPAHC is not limited to decisions about life sustaining treatment for terminally ill patients. You can limit your agent's powers by the language of your DPAHC. Unless so limited, your agent can have artificial nutrition and hydration (intravenous feeding, tube feeding and the like) withdrawn. Your agent also has limited authority after your death. Unless otherwise limited in your DPAHC, your agent can make decisions about autopsies, anatomical gifts and the disposition of your body.

### **Q: How can I make a DPAHC?**

A: You sign a document that names an agent and explains the powers you are giving the agent. The DPAHC must be witnessed by one adult other than the agent. Illinois law includes a standard form, but you do not have to use that form. The statutory form is usually used and clearly complies with all the legal requirements. If you plan to use a different form, you probably should consult with an attorney.

### **Q: How can I make sure my agent carries out my wishes?**

A: Give your agent written information about the decisions you would want made for you. This can be done by writing your initials by one of the instruction paragraphs in the statutory form of the DPAHC. You also can write your own instructions as an attachment to the DPAHC, or as a separate letter to your agent. Second, give copies of the signed DPAHC to your physician, close family members, friends, pastor or others who might be involved in case of serious illness or injury.

### **Q: What if I later change my mind about DPAHC?**

A: You can change your DPAHC at any time simply by signing another written document. You also can revoke the DPAHC altogether. You do this by destroying the paper on which it is written or by signing another written document that revokes the DPAHC. You also can revoke the DPAHC by telling or

indicating to another adult that you want to do so. That person must then confirm your instructions in writing. Even if you become incompetent, you can still revoke the DPAHC as long as you can express your desire to do so.

**Q: What is a living will?**

A: A living will is a written declaration directing that certain life sustaining treatments be withdrawn under certain circumstances. The LW, unlike the DPAHC, does not name a person to make decisions. It simply states your wishes as a direction to family, friends and physicians. These persons, particularly the physician, must decide whether the directions in a LW apply.

**Q: When does a living will become effective?**

A: The LW controls treatment decisions only if you have no agent available under a DPAHC. The LW applies if your attending physician has personally examined you and has verified, in writing, that you have a terminal condition. This is defined in the Living Will Act as “an incurable and irreversible condition which is such that death is imminent and the application of death-delaying procedures serves only to prolong the dying process.”

**Q: How does the living will work?**

A: The LW directs the physician not to use death-delaying procedures for a person with a terminal condition. These are medical procedures that the physician believes serve only to postpone the moment of death. Such procedures could include assisted or artificial breathing, artificial kidney treatments (like dialysis), artificial nutrition and hydration (intravenous feeding, tube feeding and the like), and blood transfusions.

**Q: Are there limits on the treatment that can be withdrawn under the living will?**

A: There are several limits on the treatment that can be withdrawn. The LW does not permit withdrawal of any treatment needed for the person’s comfort or for alleviation of pain. It does not allow withdrawal of artificial nutrition or hydration if death would then result from starvation or dehydration. It also does not apply to a pregnant woman whose physician believes that continued use of death delaying procedures would allow the fetus to develop to the point of live birth.

**Q: How do I make a living will?**

A: You sign a document called a Living Will Declaration. The LW must be witnessed by two adults who are not financially responsible for your medical care and who would not receive property at your death. The Illinois statute includes a standard form, but you do not have to use that form. The statutory form is usually used and clearly complies with all the legal requirements. If you plan to use a different form, you should probably consult an attorney.

**Q: How do I make certain the provisions of my living will are carried out?**

A: You may have specific wishes about the treatments you would want used. If so, you should include your own instructions as part of the LW. Give copies of the signed LW to your physician, close family members, friends, pastor or others who might be involved in case of serious illness or injury.

**Q: What if I later change my mind about the living will?**

A: If you want to change any provisions of your LW, you should revoke your LW and sign a new LW with the corrected information. You can revoke the LW altogether. You do this by destroying the paper on which it is written or by signing another written document that revokes the LW. You also can revoke the LW by telling or indicating to another adult that you want to do so. That person must then confirm your instructions in writing. Even if you become incompetent, you can revoke the LW as long as you can express your desire to revoke it.

## **Declaration for Mental Health Treatment (DMHT)**

### **Q: What is a Declaration for Mental Health Treatment?**

A: A declaration for mental health treatment is a written document signed by you as a competent person, naming another person as attorney-in-fact to make specific mental health care decisions for you. Unless the DMHT says otherwise, your attorney-in-fact can make decisions whenever you are unable to do so.

### **Q: What can the attorney-in-fact named in the DMHT do?**

A: Your attorney-in-fact can consent to or refuse specific mental health treatments or procedures, just as you could do when competent. The specific treatments are electroconvulsive therapy, psychotropic medication, and admission to and retention in a health care facility for up to 17 days. You can limit your agent's powers by the language of your DMHT.

### **Q: How can I make a DMHT?**

A: You sign a document that names an attorney-in-fact and explains the powers you are giving the attorney-in-fact. The DMHT must be witnessed by two adults other than the attorney-in-fact or health care provider. Illinois law includes a standard form, but you do not have to use that form. The statutory form is usually used and clearly complies with all the legal requirements. If you plan to use a different form, you probably should consult with an attorney.

### **Q: How can I make sure my attorney-in-fact carries out my wishes?**

A: Give your attorney-in-fact written information about the decisions you would want made for you. This can be done by writing your initials by one of the instruction paragraphs in the statutory form of the DMHT. You also can write your own instructions as an attachment to the DMHT, or as a separate letter to your attorney-in-fact. Second, give copies of the signed DMHT to your physician, close family members, friends, pastor or others who might be involved in case of serious illness or injury.

### **Q: What if I later change my mind about DMHT?**

A: You can change your DMHT at any time you are not under mental health treatment pursuant to the DMHT by having you and a physician sign another document. As long as the DMHT is not being implemented, the DMHT expires after 3 years.

## **General Questions**

**Q: Can my family make treatment decisions for me if I don't sign a durable power of attorney for health care or living will?**

A: Yes, under specified circumstances. The Health Care Surrogate Act, as amended effective January 1, 1998, allows the appointment of a person to make some treatment decisions for some patients who are incapable of making decisions and who have not executed DPAHC, a LW, or a DMHT. This includes minor children and adults who are not competent to sign an Advance Directive.

A Health Care Surrogate (HCS) may make decisions concerning medical treatment on behalf of a minor or an adult patient who lacks decision making capacity. However, the HCS may only make decisions about life-sustaining treatment if the patient suffers from a terminal condition, permanent unconsciousness or an incurable or irreversible condition. In order for an HCS to make decisions about life-sustaining treatments, two physicians must certify that the patient lacks decisional capacity and has a condition for which there is no reasonable prospect for cure or recovery, and that use of life-sustaining treatment would only prolong the dying process or provide minimal medical benefit. In addition, an HCS, other than a court appointed guardian, may not authorize electroconvulsive therapy, psychotropic medication, or admissions to a mental health facility.

The health care provider must find an HCS, choosing the highest person available in the priority list under Illinois law. In descending order, the following may act as surrogates: The patient's court appointed guardian; the patient's spouse; any adult child of the patient; either parent of the patient; any adult brother or sister of the patient; any adult grandchild of the patient; a close friend of the patient (an adult who has shown special care and concern for the patient and can show enough regular contact with the patient to be familiar with the patient's activities, health and beliefs); the court appointed guardian of the patient's estate.

The HCS's decisions are to be based on what the patient would have wanted under the circumstances, considering the patient's beliefs and values. If the patient is a child, or if the patient's preferences cannot be determined, the HCS should decide based on his or her own determination of the patient's best interests. In determining the patient's best interests, the HCS shall weigh the burdens and benefits to the patient of treatment.

Q: Do advance directives really work?

Health care providers (including physicians, hospitals, and nursing homes) are required by law to comply with the valid directions of any agent under a DPAHC, an attorney-in-fact under a DMHT, or an HCS, or with the provisions of a LW. In fact, the law generally protects health care providers who rely on advance directives, and imposes liability on those who refuse to comply with valid instructions from the patient or the patient's representative. If a health care provider is unwilling to comply, they must assist in the transfer of the patient.

Q: What are the risks if I do nothing?

A: Your specific wishes about your own medical treatment may be ignored. Decisions about your medical treatment may be made by persons other than those you would have chosen. Your family may be unable to make decisions about life sustaining treatment if you have a condition that does not meet the law's requirements. Your family will face the burden of making decisions for you without your guidance and, possibly, the burden of court proceedings if they cannot agree.

The information contained in this section is educational in nature and is not intended, nor should it be considered, as legal advice. If you have questions about any of the matters discussed in this section, you should consult your attorney.