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NCCB COMMITTEE
FOR PRO-LIFE ACTIVITIES

STATEMENT ON UNIFORM RIGHTS OF THE TERMINALLY ILL ACT

Committee for Pro-Life Activities
National Conference of Catholic Bishops

June 1986

In its planning document, as approved by the general membership of the National Conference of Catholic Bishops in November 1985, the Office for Pro-Life Activities was authorized to develop a statement "On the Uniform Rights of the Terminally Ill Act." The draft statement was submitted to the Administrative Committee in March, 1986, and its publication as a document of the NCCB Ad Hoc Committee for Pro-Life Activities was authorized pursuant to further discussion by the same Ad Hoc Committee. At its June 1986 meeting the Committee for Pro-Life Activities adopted a revised version of the "Statement on the Uniform Rights of the Terminally Ill Act" and its publication is authorized by the undersigned.

Monsignor Daniel F. Hoye
General Secretary
NCCB/USCC

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Introduction

In proposing a Uniform Rights of the Terminally Ill Act for enactment by state legislatures, the National Conference of Commissioners on Uniform State Laws has presented legislators with a new and complex challenge. The Uniform Act is designed to eliminate disparities among state laws on withholding and withdrawing life-sustaining treatment; such laws have been enacted in most of the fifty states over the past decade. Yet 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.

As Catholic bishops in the United States we feel a responsibility to contribute to this debate. We are concerned that legislation which is ethically unsound will further compromise the right to life and respect for life in American society. Moreover, we are confident that our Church's moral tradition can be of great assistance in determining the extent to which legislative proposals in this area are consistent with sound moral principles.

In keeping with this tradition we uphold the duty to preserve life while recognizing certain limits to that duty.

We absolutely reject euthanasia, by which we mean "an act or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated" (Vatican *Declaration on Euthanasia*, 1980). We maintain that one is obliged to use "ordinary" means of preserving life--that is, means which can effectively preserve life without imposing grave burdens on the patient--and we see the failure to supply such means as "equivalent to euthanasia" (U.S. Catholic Conference, *Ethical and Religious Directives for Catholic Health Facilities*, 1975, para. 28). But we also recognize and defend a patient's right to refuse "extraordinary" means--that is, means which provide no benefit or which involve too grave a burden. In cases where patients cannot speak for themselves, we urge family members, others qualified to interpret the patient's intentions, and physicians to be guided by these fundamental moral principles.

The task of judging how these principles can best be incorporated into social policy is complex and difficult. For example, various proposals giving legal force to an advance declaration or "living will" have been offered as ways of clarifying a terminally ill patient's legitimate right to refuse extraordinary medical treatment. From one perspective, clarification of this right seems increasingly necessary as physicians, concerned about legal liability, seek guidance concerning their legal rights and responsibilities. Indeed, public support for such legislation 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.

Yet the operative provisions of such legislation, and their degree of conformity with Catholic moral teaching, vary widely from state to state. Some "living will" proposals have been formulated and promoted by right-to-die groups which see them as stepping-stones to the eventual legalization of euthanasia. In fact, some existing laws and proposals could be read not merely as stepping-stones but as actually authorizing euthanasia in certain circumstances. Many "living will" statutes reflect a bias toward facilitating *only* the right to *refuse* means for sustaining life, instead of facilitating morally responsible decisions either to provide or to withhold treatment in accord with the wishes and best interests of the patient.

Due to concerns such as these, the Bishops' Committee for Pro-Life Activities has neither endorsed nor encouraged the trend toward enactment of "living will" legislation. Indeed, many people dedicated to the protection of human life have judged these concerns serious enough to warrant outright opposition to some legislative proposals of this kind, and have sought to amend other proposals to reduce their potential for abuse. As more states have debated and enacted a variety of legislative standards on this subject, we have sought to provide guidance by pointing out serious problems which deserve the special attention of legislators.

Our most comprehensive set of criteria for assessing these problems can be found in the *Guidelines for Legislation on Life-Sustaining Treatment* issued by the Bishops' Committee in November 1984. Such criteria should not be taken as implying support for legislation of this kind; but if

incorporated into law they can help safeguard the rights of the terminally ill and uphold the value of human life in this complex area.

The Uniform Act: An Analysis

The Uniform Rights of the Terminally Ill Act merits special consideration because it is designed for nationwide enactment and will undoubtedly be considered in many state legislatures. Assessing the proposed Act in the light of Catholic moral principles, we find that it poses at least three serious problems not always encountered in laws of this kind.

1. ***The Scope of the Uniform Act.*** Like most "living will" laws, the Uniform Act is intended to authorize withdrawal of life-sustaining treatment from patients in the final stage of a terminal condition--that is, patients who will inevitably die soon. But the ambiguity of key terms in the Uniform Act's "definitions" section creates the potential for a much broader application. For example, the Act could be read as authorizing withdrawal of life-sustaining treatment in cases where the patient could live a long time with treatment but will die quickly without it. Patients who have an incurable or irreversible disabling condition might be seen as falling within this broader scope. In such cases, even treatment that is not unduly burdensome and could effectively prolong life may be dismissed as merely "prolonging the process of dying" and hence removed. Such an interpretation would allow withholding of customary and beneficial

medical procedures in order to hasten the patient's death. Thus the potential for abuse is greater here than in laws whose scope is clearly limited to patients in the final stage of a terminal condition.

2. ***Nutrition and Hydration.*** Because human life has inherent value and dignity regardless of its condition, every patient should be provided with measures which can effectively preserve life without involving too grave a burden. 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 for sustaining life, the law should establish a strong presumption in favor of their use.

The Uniform Act states that it will not affect any existing responsibility to provide measures such as nutrition and hydration to promote comfort. But it does not adequately recognize a distinct and more fundamental benefit of such measures--that of sustaining life itself. This is a serious lapse in light of the ambiguous scope of the Uniform Act, which may include cases in which a patient will live a long time with treatment but die quickly without it. For most patients, measures for providing nourishment are morally obligatory even when other treatment can be withdrawn due to its burdensomeness or ineffectiveness.

Negative judgments about the "quality of life" of unconscious or otherwise disabled patients have led some in our society to propose withholding nourishment precisely in order to end these patients' lives. Society must take special

care to protect against such discrimination. Laws dealing with medical treatment may have to take account of exceptional circumstances, when even means for providing nourishment may become too ineffective or burdensome to be obligatory. But such laws must establish clear safeguards against intentionally hastening the deaths of vulnerable patients by starvation or dehydration.

3. ***Treatment of Pregnant Women.*** The Uniform Act explicitly allows a pregnant woman to refuse treatment that could save the life of her unborn child whenever she herself fulfills the conditions of the Uniform Act. The State is thus placed in the position of ratifying and facilitating a decision to end the life of the child. This provision goes beyond even the U.S. Supreme Court's decisions which removed most legal restrictions on abortion. Instead of ignoring the unborn child's independent interest in life, the law should provide for continued treatment if it could benefit the child.

Other Problem Areas

Although the above are the most serious flaws in the proposed Uniform Act, it also contains other problem areas which deserve comment:

* The absence of a preamble stating the exact purpose of the Act is a notable deficiency, because such a preamble could assert a presumption in favor of life and thereby help to eliminate ambiguities in the judicial interpretation of the Uniform Act. For example, a preamble could

clearly recognize that a patient's right to refuse treatment is limited by certain legitimate state interests, such as interests in preserving life, preventing suicide and homicide, protecting dependent third parties, and maintaining sound ethics in the medical profession.

* The Act fails to define "euthanasia," or to explain whether this word is meant to include euthanasia by omission, thus reducing the effectiveness of its disclaimer that it does not authorize euthanasia.

* The broad immunities given for withdrawing life-sustaining treatment, and the penalties imposed upon physicians who do not obey a patient's directive, reinforce the Act's bias toward withdrawing treatment and even encourage such withdrawal in doubtful cases.

* The Act does not encourage communication among patient, family and physician, but tends to exclude family members from the decision-making process.

* The vaguely worded directive intended for a patient's signature provides very little information to help the patient appreciate the scope of the power being granted to a physician. For example, the patient is given no warning that his or her directive may authorize withdrawal of food and water, or that it may apply to situations where he or she could live a long time with continued treatment.

Conclusion

The NCCB Committee for Pro-Life Activities has provided this analysis in order to indicate some serious problems raised by much current "living will" legislation and by the proposed Uniform Rights of the Terminally Ill Act. We believe that legislators considering such proposals must appreciate the importance of examining them in the light of sound moral principles, precisely because these are matters of life and death for some of the most helpless members of our society. Above all, public policy in this area must be based on a positive attitude toward disabled and terminally ill patients, who have a right to live with dignity and with reasonable care until the moment of death.

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