



*Protecting Patients' Rights in Medical Decision Making*

**PO Box 540, JAF Station, NY, NY 10116**

May 2, 2005

Mr. Michael F. Rodgers  
Interim president/CEO  
Catholic Health Association of the United States  
1875 Eye St, NW, Suite 1000  
Washington, DC 20006

Dear Mr. Rodgers:

We represent a coalition of organizations dedicated to protecting patients' rights to make treatment decisions based on scientifically-accurate medical information and individual ethical or religious beliefs.

We are writing to seek clarification on end-of-life policies at Catholic-sponsored health care facilities, in light of recent statements by Vatican officials and American Cardinals concerning the case of Terri Schiavo. The protracted legal battle that ended with Terri Schiavo's death has prompted many Americans to make advance directives and to discuss their end-of-life care wishes with family members. While these steps may help avoid the family conflict evident in the Schiavo case, we are concerned that families may still encounter difficulty in ensuring that the patient's wishes are honored, if the patient is receiving treatment in on of the more than 600 American Catholic health facilities.

**Statements prompting our concern**

Of particular concern to us have been statements over the last year that have described artificial nutrition and hydration (ANH) as "ordinary" or "basic care" that must be provided, instead of optional medical care, and seem to suggest that ANH should not be removed if the intent is to hasten a patient's death. Examples include these statements, in which we have underscored some troubling phrases:

- The late Pope John Paul's March 2004 statement that patients in persistent vegetative states (which is what Terri Schiavo's doctors said was her medical

condition) have “the right to basic health care,” which the Pope defined to include artificial nutrition and hydration. Providing food and water, even by artificial means, he said, is “morally obligatory insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment of the patient and alleviation of his suffering.”<sup>1</sup>

- The March 2005 statement by Monsignor Elio Segreccia, a Vatican spokesperson on bioethical issues, that withdrawing Schiavo’s artificial nutrition and hydration would be a direct act of euthanasia. In a Vatican radio broadcast, Monsignor Segreccia explained that Church teaching does not require continuation of “extraordinary” medical care, but that feeding tubes and respiration are “ordinary” care and must be provided. Explaining the Vatican’s decision to comment directly on the Schiavo case, he said that “Silence in this case would be interpreted as approval, with consequences that would go widely beyond the individual case.”<sup>2</sup>
- Statements during the legal battle on the Schiavo case by Cardinal William H. Keeler of Baltimore, chairman of the U.S. Conference of Bishops’ Committee for Pro-Life Activities, that drew on Pope John Paul II’s March 2004 statement and described ANH as “basic care and assistance in obtaining food and water.” While acknowledging that “there are times when even such basic means may cease to be morally obligatory because they have become useless or unduly burdensome for the patient,” Cardinal Keeler warned on March 9, 2005, that “Deliberately to remove them (food and water) in order to hasten a patient’s death, however, would be a form of euthanasia, which is gravely wrong.” In a March 24, 2005, after Schiavo’s feeding tubes had been removed, Cardinal Keeler applauded the efforts of Schiavo’s parents “to keep Terri from a death by starvation” and thanked President Bush, members of Congress and public officials in Florida for their efforts to give her a chance to live.” He concluded that “God will call Terri Schiavo to Himself when it is her time to die. It is not for us to determine when that time is.”<sup>3</sup>
- Statements by Vatican officials following Schiavo’s death. For example, Cardinal Renato Martino, prefect for the Pontifical Council for Justice and Peace at the Vatican said, “It is nothing else but murder,” adding that “It is a victory of the culture of death over life. It is an imposed death.”<sup>4</sup>

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<sup>1</sup> “Address of John Paul II to the Participants in the International Congress on ‘Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas,’” March 20, 2004, available from: [www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2004/march/documents/hf\\_jp-ii\\_spe\\_20040320\\_congress-fiamc\\_fr.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_fr.html).

<sup>2</sup> Alessandra Rizzo, “Vatican calls for keeping Schiavo alive,” March 21, 2005, The Associated Press.

<sup>3</sup> “Cardinal Keeler Issues Statement on Florida Schiavo Case; Stresses Church Teaching on Feeding, Hydration,” United States Conference of Catholic Bishops, March 9, 2005, and “Cardinal Keeler Says Terri Schiavo Deserves Basic Care,” US Conference of Catholic Bishops, March 24, 2005, both accessed at [www.uscb.org/comm/archives/2005/](http://www.uscb.org/comm/archives/2005/)

<sup>4</sup> Vinci, Alessio, “Vatican criticizes Schiavo’s hastened’ death,” March 31, 2005, CNN News, accessed at [www.cnn.usnews](http://www.cnn.usnews).

- Statements by American Bishops and Cardinals following Schiavo’s death, including one by Bishop Gregory Aymond of the Diocese of Austin, that “we hold strongly that she had a right to hydration and nutrition,”<sup>5</sup> and another by Miami Archbishop John C. Favalora that the Schiavo case demonstrates the need to have laws that “protect life from conception in the womb to natural death, without exception.”<sup>6</sup>

While we respect the right of the Vatican and American Bishops to provide religious teaching about end-of-life issues to Catholics, we are concerned that these views could affect end-of-life choices for people of other faiths if they become policy at Catholic-sponsored health facilities that are licensed to serve entire communities. We fear the statements cited above may presage a movement by the U.S. Conference of Catholic Bishops toward stricter policy on end-of-life care that could potentially limit the situations in which patients (or their appointed proxies) could refuse or remove life sustaining treatments, particularly feeding tubes.

### **Need for Clarification of Catholic health facilities’ policies**

End-of-life care policies for Catholic hospitals and nursing homes are spelled out in the *Ethical and Religious Directives for Catholic Healthcare Services* (ERDS) promulgated by the U.S. Conference of Catholic Bishops and interpreted by each Bishop for the health care facilities within his diocese.<sup>7</sup> These ERDS contain three specific Directives that seem directly applicable to the case of Terri Schiavo and other patients in her condition:

- “There should be a presumption in favor of providing nutrition and hydration to all patients, including patients who require medically assisted nutrition and hydration, as long as this is of sufficient benefit to outweigh the burdens involved to the patient.” (Directive No. 58);
- “The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, *unless it is contrary to Catholic moral teaching.*” (Directive No. 59, with emphasis added);
- “Euthanasia is an action or omission that of itself or by intention causes death in order to alleviate suffering. Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way.” (Directive No. 60)

Before the late Pope John Paul II’s March 2004 declaration that feeding tubes are “morally obligatory,” the statements of American Catholic leaders on the Schiavo case had been relatively moderate and careful in their tone, reflecting a “benefits vs. burdens”

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<sup>5</sup> “Bishop Aymond Statement on Terri Schiavo’s Death,” March 31, 2005, accessed on the website of KVUE.com

<sup>6</sup> “Schiavo’s death raises questions for society,” Catholic News Service, April 8, 2005, accessed at [www.the-tidings.com/2005/0408/schhiavo.htm](http://www.the-tidings.com/2005/0408/schhiavo.htm)

<sup>7</sup> [www.chausa.org](http://www.chausa.org)

analysis as spelled out in Directive No. 58. For example, in 2003 the Florida Catholic Conference, in response to queries about Terri Schiavo, had said:

“Church teaching is clear that there should be a presumption in favor of providing medically assisted nutrition and hydration to all patients as long as it is of sufficient benefit to outweigh the burdens involved to the patient. The Church cannot make this decision, but her teaching guides those who must: the patient or those legally entitled to do so if the patient is unable. If Mrs. Schiavo’s feeding tube were to be removed because the nutrition she receives is of no use to her, or because she is near death, or because it is unreasonably burdensome for her, her family, or caregivers, it could be seen as permissible.”<sup>8</sup>

The Rev. Kevin D. O’Rourke, Director of the Center for Health Care Ethics at St. Louis University, had even published an article in the journal of the Catholic Health Association maintaining that Catholic doctrine does not always forbid the refusal or removal of feeding tubes.<sup>9</sup>

Moreover, residents of communities facing mergers of non-Catholic hospitals with Catholic facilities were repeatedly assured that their health care proxies and advance directives would be honored following the mergers. For example, during a 1999 New York State Public Health Council meeting, (first name?? Iseman) the lawyer for Catholic Health Services of Long Island responded to questions about whether the end-of-life policies at nonsectarian Mid-Island Hospital would change following its pending acquisition by the Catholic system:

“I think that the questions reflect some unfounded assumptions, and that’s one of them. There is no difference in my knowledge, and Monsignor Regan is here to address this, between the position of the Catholic Church and the full range of options available under NY law with regard to end of life issues, period.”<sup>10</sup>

Monsignor Dennis Regan, chief ethicist (get his exact title) for the Catholic health system (since appointed to the Public Health Council by Governor George Pataki), followed up by stating:

“One thing I do want to say which Mr. Iseman has said before, just so you can hear it from an ethical viewpoint representing the Catholic Church, at this point in New York State law, whatever is permitted under New York State law is also ethically permitted, as far as we are concerned, concerning the end-of-life issues.”<sup>11</sup>

Similar assurances were offered in early 2004 by the Catholic-sponsored Resurrection

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<sup>8</sup> “Florida Bishops Urge Safer Course for Schiavo,” Florida Catholic Conference, August 27, 2003.

<sup>9</sup> O’Rourke, Rev. K., “Applying the Directives,” *Health Progress*, July-August 1998, accessed at [www.chausa.org](http://www.chausa.org).

<sup>10</sup> Transcript of the NYS Public Health Council Establishment Committee meeting held on March 2, 1999, pp. 151-152.

<sup>11</sup> *Ibid.*, pages 178-179.

Health system in an application seeking State of Illinois permission to acquire nonsectarian West Suburban Hospital in Oak Park. In documents submitted to the Illinois Attorney General's office and the Illinois Department of Public Health, Resurrection officials said there would be no change in end-of-life policies at West Suburban "since the hospital policies currently do not support euthanasia or assisted suicide, and the ERDs recognize an individual's right to participate in the decision-making related to ending life support).<sup>12</sup>

After Pope John Paul II's March 2004 pronouncement, however, there was confusion as to how the policies at Catholic health facilities would be affected. The Rev. Michael D. Place, former President of the Catholic Health Association of the United States, issued a statement on April 1, 2004, acknowledging that "the guidance contained in his (the Pope's) remarks has significant ethical, legal, clinical and pastoral implications that must be carefully considered."<sup>13</sup> Determining the impact of the statement "will require dialogue among sponsors, bishops and providers, especially with regard to practical implications for those patients who are not in a persistent vegetative state."

Rev. Place, however, hastened to add that "As that dialogue commences, we assume that the guidance contained in the current *Ethical and Religious Directives for Catholic Health Care Services*, as interpreted by the diocesan bishop, remains in effect." In other words, he seemed to be saying, there would be no change in Catholic hospital policies until further notice.

A year has passed without any further notice, except for the public statements we have cited that seem to equate removal of feeding tubes with euthanasia in the Schiavo case.

### **Public Disclosure of Hospitals' End-of-life Policies is Required**

It is essential that patients and their families know if local hospitals or nursing homes have policies that would prevent individuals' carefully considered decisions about end-of-life treatment from being honored because of conflict with religious doctrine.

The Patient Self-Determination Act (PSDA), a federal law that works in conjunction with state laws, requires hospitals to maintain written policies and procedures concerning advance directives. An advance directive is a patient's written instructions regarding medical treatment decisions that should be made on her/his behalf if the patient becomes unable to make such decisions. Patients also use this document to appoint a person—called a proxy—who will make decisions on their behalf if they become incapacitated. If a person does not have an advance directive, state law will determine who is appointed to make decisions on behalf of the patient.

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<sup>12</sup> "Supplemental Information Concerning the Proposed Change of Control of West Suburban Hospital Medical Center to Resurrection Health Care," February 19, 2004.

<sup>13</sup> "Catholic Health Association of the United States Statement on the Papal Allocution on Persistent Vegetative State," April 1, 2004, accessed at [www.chausa.org](http://www.chausa.org).

Under the PSDA, hospitals must provide written information, upon admission, to patients about their rights under their state's laws to make decisions about medical treatment, including the right to refuse treatment and the right to make advance directives. Patients (and in some states, their proxies) have the right to refuse life-sustaining treatment.

State law governs whether a hospital or individual provider may refuse to honor an advance directive because of religiously-based objections to the patient's wishes—as opposed to situations in which there is a dispute among family members about the patient's wishes, or if abuse is suspected or there is a dispute about a patient's medical condition. If state law does allow hospitals or individual providers to refuse to honor an advance directive, the PSDA requires hospitals to inform patients of any such limits. Hospitals are required to disclose their end-of-life policies under the federal Patient Self-Determination Act.

To determine whether hospitals are complying with these legal requirements, the MergerWatch Project recently worked with community-based groups in Illinois and New York State to send volunteers to sample groups of hospitals and ask for copies of informational materials on advance directives in the same way that a patient might do prior to admission to the hospital. A follow-up written survey asked officials of these same hospitals to describe their end-of-life policies and describe any limitations in the hospitals' ability to honor a patient's wishes.

Although the sample of 35 hospitals in two states included a total of 12 Catholic facilities, not one volunteer visiting these hospitals was told of any end-of-life care restrictions and only one of these hospitals returned a written survey form indicating any potential restrictions. While the survey form indicated the hospital would not allow euthanasia, the volunteer who had visited that hospital had been informed by a nun on the premises that there were no circumstances in which an advance directive would not be honored.

### **Questions for the Catholic Health Association**

While we understand the Church is in a period of transition following the recent death of Pope John Paul II and the installation of Pope Benedict XVI, we believe that statements by American Bishops and Vatican spokesmen concerning the Terri Schiavo case have raised significant questions about Catholic hospital policies that must be answered. We strongly believe that patients seeking treatment at Catholic health facilities must be informed prior to admission of any institutional policies that would prevent the hospital or nursing home from honoring patients' advance directives.

Specifically, we seek answers to the following questions:

- Does Catholic teaching now prevent Catholic-sponsored health facilities from withdrawing artificial nutrition and hydration from patients who are in a persistent vegetative state?
- Does Catholic teaching prevent the removal or refusal of artificial nutrition and hydration in cases involving patients with medical conditions other than those

- who are diagnosed as being in a persistent vegetative state? If so, can you provide guidance as to which medical conditions this policy affects?
- Are forms of life-sustaining care other than ANH, such as artificial respiration devices, also impacted by the recent statements concerning the Schiavo case? If so, which ones, and in what ways?
  - Will the *Ethical and Religious Directives for Catholic Health Care Services* be revised to reflect broader prohibitions on honoring patients' end-of-life wishes?
  - How will Catholic Health Association member institutions inform and educate their patients about which end-of-life choices will be permitted and which will not, so that patients may make informed choices about where to seek care?

We look forward to your response and would welcome the opportunity to open a dialogue with you to discuss this important issue.

Sincerely,

Lois Uttley  
Director  
MergerWatch Project

Judith Waxman  
Vice President  
National Women's Law Center