



## Decisional Authority & Advance Directives

A Catholic Approach

John A. Di Camillo, PhD, BeL  
Staff Ethicist, The National Catholic Bioethics Center  
National Conference of Veterans Affairs Catholic Chaplains  
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I – Patient’s judgment:  
Autonomy and substituted judgment

II – What is “free and informed  
consent”?

III – Advance directives

IV – Conflicts of judgment and  
conscience

I

Patient’s judgment:  
Limited autonomy and  
substituted judgment

Patient’s judgment: Consent

ERDs 56 / 57: proportionality is determined  
“in the patient’s judgment”

“The free and informed judgment of a  
competent adult patient . . . **should always  
be respected and normally complied with**  
. . .” (ERD 59)

**Caveat: “unless it is contrary to Catholic  
moral teaching”** (ERD 59), i.e., God’s loving  
plan, gift and stewardship of life

► *suicide / assisted suicide, euthanasia*

## Substituted judgment: Consent

“The free and informed **consent of the person or the person’s surrogate** is required for medical treatments and procedures.” (ERD 26)

### How do surrogates make decisions?

- ▶ with the **mind of the patient**; not personal preferences
- ▶ “**faithful to Catholic moral principles** and to the person’s intentions and values, or if the person’s intentions are unknown, to the person’s best interests” (ERD 25)

II

What is “free and informed consent”?

## Free and Informed Consent

### *Basic Requirements (ERD 27):*

1. All reasonable **info about essential nature of treatment**, including:
  - ▶ Benefits
  - ▶ Risks
  - ▶ Side-effects
  - ▶ Consequences
  - ▶ Cost
2. Any reasonable and **morally legitimate alternatives**, including no treatment

## Free and Informed Consent

### *Fundamental prerequisite (ERD 28):*

Conscience formation resources for patient / surrogate:

- ▶ Medical information
- ▶ Medical counseling
- ▶ Moral information
- ▶ Moral counseling

## III

## Advance directives

## Advance Directives

- ▶ Surrogate / proxy / agent appointment
  - ▶ Health care power of attorney
  - ▶ Health care representative
  - ▶ Etc.
- ▶ Living Will
- ▶ Medical Orders
  - ▶ DNR (+DNI?)
  - ▶ POLST / other orders

## PA Act 169 (2006): Adv Directives

PA Code Title 20, Chapter 54: Health Care (fully replaced 1992 version)

- ▶ **Health care representative** (§5461)
  - ▶ Spouse, adult child, parent, adult sibling, adult grandchild, adult with knowledge of patient's values/pref.
- ▶ **Out-of-hospital do-not-resuscitate** (§5483)
- ▶ **Living will** – written wishes/instructions
- ▶ **Health care power of attorney (agent)** – to make decisions for the patient
- ▶ **Combined form** – see *PA Catholic Conf.*

## Karen Ann Quinlan (NJ)

- ▶ Catholic; adopted
- ▶ 21 years old: extreme diet, drugs, alcohol → collapse, coma, “persistent vegetative state” (1975)
- ▶ Parents to docs: remove vent (extraordinary)
- ▶ Morris County threat: homicide charges against hospital and docs
- ▶ Legal battle: NJ Supreme Court
- ▶ **DECISION (1976)**: Removal of vent okay
- ▶ **OUTCOME**: Karen lived until **1985!** (respiratory failure)

## Nancy Cruzan (MO)

- ▶ Car accident → coma, “persistent vegetative state” (1983)
- ▶ Parents to docs: remove feeding tube (1988); hospital refusal
- ▶ Legal battle: MO Supreme Court
  - ▶ **DECISION:** Can't remove; need clear and convincing evidence of wishes
- ▶ **US Supreme Court (1990):** absent living will or “clear and convincing evidence” of wishes, state interest in preserving life outweighs the individual rights to refuse
  - ▶ No constitutional “right to die”; but states free to make own standards

## Patient Self-Determination Act (1990)

- ▶ Notice of patient decision-making rights and hospital policies re advance directives
  - ▶ Right to facilitate health care decisions
  - ▶ Right to accept or refuse treatment
  - ▶ Right to have advance directive
- ▶ Ask and record advance directive
- ▶ Staff education re advance directives
- ▶ Nondiscrimination re advance directive

## Advance Directives: Ethics?

“Each person may **identify in advance a representative** to make health care decisions . . . In the event that the person loses capacity” (ERD 25)

- ▶ **Living will only?** Problem.
- ▶ **Limitations re future;** proportionality?
- ▶ **Too much / not enough specificity**
- ▶ **Ambiguous terms**
  - ▶ e.g., “terminal,” “incurable,” “irreversible,” or “end-stage” condition
- ▶ **Interpretations and abuses**
  - ▶ Surrogates, providers, law, etc.

## Do-Not-Resuscitate (DNR) Orders

- ▶ **CPR: Proportionate?**
  - ▶ Cardiac arrest (<25% survival in hospital)
  - ▶ Chest compressions and ventilation
    - ▶ Defibrillation
    - ▶ Vasoactive drugs
    - ▶ Antiarrhythmic drugs
    - ▶ Intubation / mechanical ventilation
- ▶ **Out-of-hospital DNR**
  - ▶ Cardiac arrest: ~10% survival

## Orders for Life-Sustaining Treatment (POLST/MOLST, POST, etc.)

### ► Ethical problems:

- Check-box format for complex decisions, changing situations
- Categorical denials of certain interventions (antibiotics, ANH)
- “Comfort measures only”: excludes IV fluids, treatment for dehydration
- Signature requirements?
- Review / update requirements

## IV

## Conflicts of judgment and conscience

## Conflicting Judgments

### ► Pre-conflict:

- **Review** of advance directive
- **Education** re ethical decision-making, advance directives, hospital identity, policies
- **Update / amend** directives

## Conflicting Judgments

### ► Conflict

- Medical discussion / information
- Pastoral care (and others) discussion / mediation
- Ethics committee mediation

### ► Unresolved conflict

- Transfer of care v. referral
- Legal involvement

## Conflicting Judgments

### **Need to protect consciences of:**

- ▶ Patients
- ▶ Patients' families
- ▶ Doctors
- ▶ Nurses
- ▶ Social workers
- ▶ Chaplains / pastoral care workers
- ▶ Health care facility