Engaging the culture of death with the Gospel of Life: “Integrating the Catholic faith in the practice of law and medicine”*

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The lay Catholic, ordained, and religious today are faced with making legal and medical decisions that will affect their health care during a time of incapacity and eventually the final moments of their life. Often times the response to the need for sound legal and medical instructions is met by non-profit, pro-life organizations which provide legal forms such as powers of attorney. By and large, these documents are morally in line with Catholic Church teaching, but do very little for practical application of the law as it interfaces with medicine in the crucible of the emergency room and courtroom. Thus, the “culture of death” which pervades both the professions of law and medicine, and which veils itself in euphemisms such as a “patient’s right to die,” creates pragmatic challenges to pre-printed legal documents which may vary from what are statutory in form for individual states. Thus, the promotion of “living wills” is tantamount to the expression of a fear and human desire to escape suffering at all costs. Accordingly, when Catholic physicians are informed of the legal and moral obligations owed to their patients through various estate planning documents, and Catholic lawyers seek to provide an integrated approach to drafting legal documents which include various provisions grounded in Catholic bioethical teaching, documents such as “living wills” and “advanced directives to physicians” ultimately are seen as unnecessary. Thus, engaging the culture of death is best accomplished when both physician and attorney work in their respective fields of practice by discussing the morality of various bioethical decisions with their patients and clients without fear of legal reprisal or recrimination.

Keywords: Living Wills, Catholic faith, civil law, canon law, proxy, end of life, nutrition, hydration

PREFACE

Having been involved in estate planning and elder law since I was a clerk in law school, as well as being on the inside of estate and elder law public policy and membership groups, I have come to understand that the culture of death and

the bioethical issues facing the elderly and the infirm are absolutely a cancer that is killing our parents, friends, and family, and will eventually attempt to seize each of us. It is not surprising given the decriminalization of abortion and the murder of innocent children that happens thousands of times each day.

In presenting this paper and lecture to the Tucson Catholic Physicians Guild, I emphasized the obvious: that the “culture of death” is at war with the “Gospel of

*This is a slightly modified version of a talk given to the Tucson Catholic Physicians Guild, on November 12, 2011, Tucson, Arizona.

Life.” And in every war, there are moments of strategy, diplomacy, posturing, negotiation, and battle. But the question is this: What role, side, or standard (thinking of St. Ignatius’s spiritual exercises) in this spiritual war are you actively taking? The clear answer should be to be *humble* and *calm* (1 Pt 5:5–9).

Today more than ever, Catholic estate and elder law attorneys, and physicians, are called to live for Christ; this means exactly what the priest (Fr. Joseph Illo, St. Joseph’s Catholic Church, Modesto, California) who witnessed the marriage of my wife Toni and I once told me. He said, “Be a Catholic lawyer, not just a lawyer who is Catholic.” No doubt, the world will hate you when you integrate your faith into your individual medical or law practice. But, that should not stop you (Jn 15:18).

As I gave this lecture, I recall having the notion while speaking, which I believe came from the Holy Spirit, that we should also have a group of Catholic fiduciaries who can act for our patients and clients as healthcare proxies, trustees, and personal representatives. Could you imagine a network of active attorneys who promote the gospel in speaking engagements and litigation, and who draft Catholic estate planning documents; physicians who are willing to fight against the utilitarianism and moral relativism that are rampant in the medical community; and fiduciaries who will faithfully carry out the Catholic faith provisions expressed in a legal document?

Although this paper reflects only in part on how physicians and attorneys can integrate their Catholic faith into practice, I believe more importantly that this paper is a beckoning for lawyers and physicians to actively engage the culture of death. Finally, I wish to thank Prof. Bernard J. Way, Ph.D. (Christendom College, Front Royal, Virginia), R. Michael Mohr (chairman of the board of directors,

Catholics United for the Faith), and Fr. Robert Rankin (St. Melany’s Byzantine Catholic Church, Tucson, Arizona) for their reading and editing of this white paper.

I call heaven and earth to witness this day, that I have set before you life and death, blessing and cursing. Choose therefore life. (Dt 30:19)

Is it possible for the physician and the lawyer to integrate the holy Catholic faith into their everyday practice? Yes, it is indeed possible. Certainly, our Lord taught that we must, “Go out and make disciples of all the nations” (Mt 28:19); and that “everyone who acknowledges me before men, I also will acknowledge before my Father who is in heaven; but whoever denies me before men, I also will deny before my Father who is in heaven” (Mt 10:32–33).

The universal call to holiness¹ is for each person to give truth and charity to everyone we meet in what we do each day as we walk with Christ.² Just like St. Josemaría Escrivá’s life showed a path by which Catholics might learn to sanctify themselves through their secular work³ for the greater honor and glory of God, today the question for each of us remains the same: How do I live the gospel through my vocation as a lawyer or physician?⁴

Life Issues that Permeate Law and Medicine

To understand how life issues and Catholic moral teaching pervade the practice of law and medicine, one must first understand the core principles as to why Catholics are pro-life. Some theologians have identified five truths about why we as Catholics are pro-life which are:

1. Each person has an inherent dignity because we are made in the image and likeness of God⁵;
2. Life is a fundamental gift from God,⁶ without which no other gifts may be enjoyed⁷;
3. The gift of life comes to us in a particular body, our body⁸;
4. The human person is relational—we live as social beings, and the judgments that we make affect not just us but those around us⁹; and
5. Suffering is not good in itself—but when suffering is endured with courage, it is bearable with the support of others and does not block our love since it can take on a new meaning in the light of the suffering of Christ.¹⁰

Although a paper could be written on each of these topics, it is enough to say that it is this which is the starting point: understanding that (1) we have a call to live a life of holiness in our profession, family, work, Church community, and world, bringing truth and charity to all; and, (2) our particular call is to be pro-life Catholic lawyers and physicians. This requires a clear understanding of how life issues intersect in the context of law and medicine.

Thus, in order to identify where life issues merge in the context of law and medicine, one must first grasp a fundamental understanding of the law regarding (1) living wills, (2) healthcare proxies, (3) surrogates, and (4) court ordered guardianship.¹¹

Making a Decision for Another

Living Wills

A “living will” or “directive to a physician” is a legal form which is verified in the same way as a healthcare power of attorney,¹² and which specifies in detail the types of medical treatment¹³ that the adult patient requests to receive or to be withheld under certain medical circumstances

(irreversible coma, persistent or permanent vegetative state, or a terminal illness).¹⁴

The person (adult patient) executing a living will has the option to use this document in conjunction with a healthcare power of attorney (proxy) or mental healthcare power of attorney or as a stand-alone document.¹⁵ However, the statute authorizing this legal document states unequivocally that,

If a person has a health care power of attorney, the agent must make health care decisions that are consistent with the person’s known desires and that are medically reasonable and appropriate.¹⁶

Therefore, the living will generally identifies limited medical conditions in which treatment either is to be withheld or provided.

Arizona law typically permits the use of either a statutory form living will, or as an attorney and his client agree, including “scratch drafted” provisions that can be used to meet the particular client’s needs.

Finally, healthcare providers who make good faith healthcare decisions based on the provisions of an apparently genuine living will, be it statutory or not, are immune from criminal and civil liability for those decisions.¹⁷

Healthcare Proxies

A healthcare proxy, also referred to as a healthcare power of attorney, is a statutory legal document, subject to modification, which authorizes an appointed person to act as a fiduciary or agent (attorney-in-fact), for the principal during a period of incapacity or at such time as when the principal cannot communicate a medical decision.¹⁸ Varieties on this document also include a “mental healthcare power of attorney” under A.R.S. §36-3281 which includes the specific authority for an agent to admit the adult patient to a level one behavioral health facility (mental hospital).

Generally, the healthcare power of attorney authorizes the appointed agent to make any necessary medical decision for the principal except where the principal has expressly stated a particular medical request (i.e., such as in a living will). And, in addition to general medical decisions, a healthcare power of attorney can grant legal authority to the agent to make decisions concerning (1) organ donation,¹⁹ (2) consent or refusal of an autopsy,²⁰ and (3) cremation and burial²¹ where the principal has not stated his express desire.

Finally, healthcare powers of attorney that are prepared in a state other than Arizona,²² or are prepared before September 30, 1992, are valid if the document either was (1) valid in the place where and at the time it was adopted or (2) only to the extent that it does not conflict with the criminal laws of Arizona.²³ Healthcare powers of attorney generally speaking do not expire during a period of incapacity.

Surrogate Decision Makers

In Arizona, a surrogate is a medical decision maker who steps in to make or communicate a healthcare treatment decision for an adult patient who is unable to do so because of incapacity or incompetency.²⁴ Accordingly, if the adult patient has a valid and enforceable healthcare power of attorney, then the appointed agent under the healthcare power is the surrogate.²⁵ Similarly, if there is a court appointed guardian, then the guardian acts as the surrogate.²⁶

Often times, there will be no healthcare agent or a court-appointed guardian. In these cases, under A.R.S. §36-3231(A), the healthcare provider must make reasonable efforts to contact the following persons in order of priority who are willing to serve as a surrogate for the adult patient in making medical treatment decisions:

1. The patient's spouse, unless the patient and spouse are legally separated;
2. An adult child of the patient. If the patient has more than one adult child, the healthcare provider shall seek the consent of a majority of the adult children who are reasonably available for consideration;
3. A parent of the patient;
4. If the patient is unmarried, then the patient's domestic partner;
5. A brother or sister of the patient;
6. A close friend of the patient (an adult who has exhibited special care and concern for the patient), who is familiar with the patient's healthcare views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interests.

In rare situations, if the healthcare provider cannot locate any of the above-listed potential surrogates, the patient's attending physician may make healthcare treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee.²⁷ In the absence of a committee, two physicians can make the decision.²⁸

In contrast, although Arizona law permits a surrogate to make a mental healthcare decision, the authority to admit an adult patient to a level one behavioral health facility cannot be accomplished without either (1) a mental healthcare power of attorney or (2) through a court ordered guardianship where the order of appointment and letters of guardian include specific mental health powers.²⁹

Guardianship (for minors and adults)

Guardianship is a probate procedure where the court orders the appointment of a fiduciary to authorize and make decisions for either a minor or an adult patient, who is either incompetent or

unable to make or communicate a medical decision. In such cases, the guardian is appointed because there is no other valid and enforceable healthcare power of attorney or surrogate who can make such decisions. A guardianship can be either general or limited with very specific restrictions. Also, depending on the exigency of the circumstances, a guardianship can be filed with the courts on an emergency basis resulting most often in a temporary appointment. In addition, guardians can be appointed for a minor or incapacitated person³⁰ through a will³¹ or through a petition with the court,³² or now under a separate legal document.³³

A guardian's powers are expressed in Title 14, Chapter 5, but can be limited by court order. Generally, a guardian's powers will be limited by court order where there is an expressed interest arising either through testimony during an evidentiary hearing, or upon objection from counsel (often times court appointed) that the proposed ward desired to maintain certain rights subject to a future court hearing.³⁴

Guardianship will terminate on the death, resignation, or removal of the guardian or on the minor's death, adoption, marriage, or attainment of majority.³⁵ Each year a medical report and guardian's report must be prepared and delivered to the court having jurisdiction and venue for review.³⁶

Catholic Life Issues in Law and Medicine

As Catholic lawyers and physicians, the ultimate concern of preserving life and quality of life for us, can only come from the teachings of our Lord Jesus Christ and His Holy Catholic Church.³⁷ And is this not His mandate? For He said, "Go and make disciples of all the nations."³⁸ Nevertheless, we can and should be able to spread our values in a common vernacular.

Indeed, if this mandate is not followed, it is certain that all physicians will eventually discover in their practice, a secular and objective science that speaks nothing of the true reality of God's creation, our human ontology (including the fact that every person has a soul), or the perfect and divine origin of the universe. Similarly, the remnant of a legal practice without God's justice and charity generally gives lawyers only a body of law and policy that is filled to the brim with moral relativism, legal positivism, and materialism; a cocktail sure to destroy many.

But, should a Catholic lawyer or physician push or promote the Church teachings into an apparently "enlightened" society? After all not everyone is Catholic. *Prima facie*, this argument fails because just as the Church Fathers explain that Christ instructed the lawyer with the parable of the Good Samaritan that each of us must first be healed by Christ before we can heal others, it follows that we must be the Good Samaritan in law and medicine to others giving what Christ has given each of us: the Catholic Church's moral teaching and example by living a sacramental life.³⁹

Indubitably, a well-ordered public life or practice requires integrating the Catholic faith in our daily professional life.⁴⁰ To be sure, a Vatican note emphasizes and reminds us:

There cannot be two parallel lives in their existence: on the one hand, the so-called "spiritual life," with its values and demands; and on the other, the so-called "secular life," that is, life in a family, at work, in social responsibilities, in the responsibilities of public life, and in culture. The branch, engrafted to the vine which is Christ, bears its fruit in every sphere of existence and activity.⁴¹

Accordingly, we must turn to the magisterium, Holy Scripture, and tradition (as formalized to some end in the

Catechism of the Catholic Church) to give us guidance on understanding the gospel and tradition, and how we are to “engage the culture of death” in our professions.⁴²

What substantively should a physician and lawyer know about what the Church teaches concerning a person receiving medical treatment?

First, physicians and lawyers alike should know, understand, and believe that human life must be respected and protected absolutely from the moment of conception until natural death.

From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life.⁴³ Accordingly, every Catholic lawyer and physician must fully grasp this truth and share it with others in order that every client and patient will have protected their fundamental right to life and physical integrity.⁴⁴

As this regards medical treatments, the Holy Catholic Church teaches that there are times when the administration of medical treatment, which may only be given with informed consent, can be discontinued.

The *Catechism of the Catholic Church* (CCC), n. 2278 provides that,

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. When medical treatment or procedures are withdrawn, the reason is that one does not will to cause death; one’s inability to impede it is merely accepted.

As stated above, the distinction made in the *Catechism* is that some medical treatment is “extraordinary” or “disproportionate” as opposed to “ordinary.” This is critical in understanding the moral issues surrounding

the administration of medical treatment. To be sure, the Second Vatican Ecumenical Council solemnly reaffirmed the lofty dignity of the human person, and in a special way her right to life.⁴⁵ The council condemned crimes against life, such as murder, genocide, abortion, euthanasia, or willful suicide.⁴⁶ (As an aside, Arizona law, specifically A.R.S. §36-2110, expressly states that “This Chapter [referring to Chapter 32 of Title 36] does not approve or authorize suicide, assisted suicide or mercy killing.”)⁴⁷

Similarly, the United States Conference of Catholic Bishops (USCCB) reflected the magisterial teaching in their resource paper titled, *Nutrition and Hydration: Moral and Pastoral Reflections*, stating as a moral principle that,

Everyone has the duty to care for his or her own life and 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 either “extraordinary” means or “disproportionate” means of preserving life—that is, means which are understood as offering no reasonable hope of benefit or as involving excessive burdens. Decisions regarding such means are complete, and should ordinarily be made by the patient in consultation with his or her family, chaplain or pastor, and physician when possible (United States Conference of Catholic Bishops 1992).

Therefore, it is certain then that “extraordinary” medical treatment may be withdrawn. But, what about “ordinary” medical treatment?

Is every person entitled to “ordinary” medical care regardless of their state or condition in life?

Again, the USCCB echoed the magisterial teaching even further in answering this question where it stated,

Decisions regarding human life must respect the demands of justice, viewing each human being as our neighbor and avoiding all discrimination based on age or dependency. A human being has “a unique dignity and an independent value, from the moment of conception and in every stage of development, whatever his or her physical condition.” In particular, “the disabled person (whether the disability be the result of a congenital handicap, chronic illness or accident, or from mental or physical deficiency, and whatever the severity of the disability) is a fully human subject, with the corresponding innate, sacred and inviolable rights.” First among these is “the fundamental and inalienable right to life.”⁴⁸

In this same document the USCCB further articulates that even “medical treatments are morally obligatory when they are ‘ordinary’ means.”⁴⁹ To this extent, the USCCB states the magisterial position that nutrition and hydration whether provided naturally or through medical assistance, provides for all patients who can assimilate food and water:

1. “Loving concern and solidarity with the helpless”⁵⁰;
2. Additional care for those who are hoping for a cure⁵¹;
3. And “for patients who are imminently dying and incurable, food and fluids can prevent suffering that may arise from dehydration, hunger, and thirst.”⁵²

What moral exceptions are there to withholding or withdrawing nutrition and hydration?

Again, based on the magisterial teachings⁵³ reflected through the USCCB, attorneys preparing healthcare proxies or healthcare powers of attorney, and physicians treating adult patients, should understand that nutrition and hydration can be morally withdrawn or withheld only if (1) the patient’s body *cannot*

assimilate the food or fluids, or (2) if the administration of the food and fluids will worsen the medical condition or cause significant physical pain.

This answer is supported in a September 2007 document titled *Q&A from the USCCB Committee on Doctrine and Committee on Pro-Life Activities regarding The Holy See’s Responses on Nutrition and Hydration for Patients in a “Vegetative State.”* In this document, the USCCB restated the Holy See’s responses in stating:

Are There Medical Situations in Which It Is Moral to Withhold Nutrition and Hydration? Yes. For example, a patient in the last stages of stomach cancer is already dying from that condition. Such a dying patient, or others who can speak for the patient, may decide to refuse further feeding because it causes pain and gives little benefit. The administration of nutrition and hydration in this case would pose a burden on the stomach cancer patient which is disproportionate to its benefit.⁵⁴

Mindful of this answer, Catholic attorneys should seriously consider counseling all Catholic clients (and Protestants from other ecclesial communities) to consider including a provision as additional language into a healthcare power of attorney for Catholics, which expressly states this teaching. An example might look like the following paragraphs:

I. Administration of Nutrition (Food) and Water. I believe that food (nutrition) and fluids (hydration) are not medical treatments, nor medical procedures, and are not extraordinary means of preserving life, but instead are ordinary means of preserving life. Therefore, I direct and demand that my healthcare provider(s) provide me with food and fluids orally, intravenously, by tube, or by other means to the full extent necessary both to preserve my life and to assure me the optimal health possible.⁵⁵

Accordingly, if at any time during my life, I am in a permanent vegetative state, persistent vegetative state, irreversible coma, I am terminally ill, if I am failing to thrive, or if at such time as I am unable to eat and drink on my own (i.e., in a natural manner), I want the administration of comfort care, and I want the administration of food and water whether by natural or artificial means, and that food and fluids must be provided to me in an assisted manner (i.e., by tubes or a similar manner), EXCEPT AND UNLESS (1) my body cannot assimilate the food or water or (2) if the administration of food and water would cause me to suffer significant physical discomfort or worsen my medical condition, which is to be determined by my Attorney-in-Fact under my Durable healthcare power of attorney.

Who should be considered to be a “surrogate” decision maker and what legal document is best suited for decision making?

The answer here is that the Church instructs that 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.⁵⁶ Accordingly, an agent under a healthcare power of attorney is generally suited as the best surrogate decision maker because this person can be informed of the adult patient's desires while the adult patient is competent.

Thus, Catholic attorneys who prepare legal documents that are faithful to the teaching of the Holy Catholic Church should discern and give thoughtful consideration to offering their clients faith-based provisions in a healthcare power of attorney. Some additional, although not exclusive⁵⁷ legal provisions might include:

1. A request to receive Holy Communion daily or at least on Sundays;

2. A request to receive the Sacrament of Anointing of the Sick (Extreme Unction) even within 3 hours of death⁵⁸;
3. A request to not use Certain Medical Treatments (e.g., embryonic stem-cell research);
4. A request to receive Holy Communion if ever institutionalized in a mental hospital⁵⁹;
5. A request to receive plenary indulgence from Apostolic Blessing⁶⁰;
6. A request that the healthcare agent discuss medical decisions and end-of-life decisions with a priest or deacon;
7. For females only, a request that if pregnant, life sustaining treatment should not be withheld or withdrawn if it is possible that the embryo/fetus will develop to the point of live birth with continued application of life-sustaining treatment⁶¹;
8. A request for a Catholic burial service, “Mass of Christian Burial,” and rosary wake; or cremation, and if possible that the body be cremated only after a Catholic burial service; and,
9. A final request for a mass for the dead, or the Gregorian Masses.⁶²

Of second importance is the need for there to be Catholic licensed fiduciaries⁶³ who are instructed spiritually, legally, and medically to handle life issues so that Catholics can receive clear guidance on Church teaching. By having Catholic licensed fiduciaries, persons who may be involuntarily isolated because of having few family members or friends around for support who have similar faith beliefs, can rely on a professional to make medical decisions consistent with the teaching of the Catholic Church.

Should a living will be advocated in the light of Church teachings?

There is no definitive answer from the Church yet as to whether or not a person should or should not use a living will

albeit some bishops have issued pastoral letters on this issue.⁶⁴ Nevertheless, we have guidance from the *Catechism* and the magisterium that can be helpful.

In reviewing the *Catechism of the Catholic Church*, n. 2278, the Church clearly affirms that either (1) the patient must make (a medical treatment) decision if competent; or (2) someone legally entitled to act for the patient must make the decision. Here, prudence from the Holy Spirit requires that our reason must conform to faith.

ARGUMENTS AGAINST USING A LIVING WILL

1. A living will should be avoided because (1) the living will directs a physician alone to make a decision to administer or withhold medical treatment despite the fact that (2) the physician is not yet a legally appointed surrogate, and is unknown to the adult patient.

Recall that a “living will” specifies in detail the types of medical treatment that the adult patient can request to receive or to be withheld under certain medical circumstances (irreversible coma, persistent or permanent vegetative state, or a terminal illness).

Since a living will usurps the powers and authority of a family surrogate, guardian, and agent under a healthcare power of attorney to make a decision when a specific medical condition exists,⁶⁵ the living will makes a de facto appointment of some unknown physician who in the future will evaluate and make a medical and moral decision based on the patient’s request in the document. What prevents a physician when pressured by a family member of an adult patient to find a terminal diagnosis because the family errantly believes the adult patient to have a poor “quality of life,” to acquiesce to familial duress and therefore find a diagnosis of “failure to thrive” (a terminal diagnosis)

resulting in the denial of otherwise requested medical treatment.

Also, this appointment is entirely inconsistent with the law which permits a physician to be a surrogate decision maker only in cases where (1) there is no statutory surrogate available to act, (2) there are no estate planning documents or court ordered guardianship in place, and the medical provider does not have access to an “ethics committee.” Even so, in cases such as this, two physicians must make the medical treatment decision.

Moreover, CCC, n. 2278, supports the conclusion that the living will must be avoided because the Church instructs that it is the patient who must make (a medical treatment) decision if competent; or (2) someone *legally entitled to act* for the patient must make the decision. When a person executes a living will, the adult patient has little or no way of knowing who the eventual physician might be who will carry out the directives in the living will should the specific medical condition described ever exist. It is implicit in CCC, n. 2278, that the adult patient expressly consents to the person who will authorize medical treatment. Put another way, the physician must be someone who is reasonably identifiable to the adult patient. And because this rarely if ever happens, the living will should be avoided.

2. A living will should be avoided because it does not consider future medical treatment available.

Often times because of despair and fear over the future, people execute a living will. The reason can be because they envision their future medical decisions or types of medical treatments based only on current available treatment or perhaps because the adult patient has experienced medical malpractice, misfeasance, or even protracted suffering.

Nevertheless, many therapies, pharmacological treatments, surgeries, and other

medicine available today were not present twenty-five years ago. What then will the future bring? Perhaps medical treatments in the field of nanotechnology may one day make available nutrition in a simple pharmacology treatment. Thus, use of the living will acts on the extraordinary assumption that medical treatment will remain the same at some point in the future as it is today.

Certainly living will proponents contend that the living will can be modified, amended, and restated as time passes. Although this is true, the problem is that no person knows what tomorrow brings in new medical treatments. Therefore, it is necessary to conclude further that using the living will is not an appropriate legal document.

3. *A living will should be avoided because it does not distinguish between "extraordinary" or "ordinary" means of medical treatment.*

As discussed previously, ordinary means of medical treatment according to Church teaching, include artificial and natural administration of food and water. In fact, in an excerpt from the *Ethical and Religious Directives for Catholic Healthcare Services*, by the United States Conference of Catholic Bishops, June 15, 2001, n. 56, the USCCB stated that,

A person has a moral obligation to use ordinary and 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 (United States Conference of Catholic Bishops 2001, n. 56).

In addition, it was also stated in n. 58 of the same document that,

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 patients (United States Conference of Catholic Bishops 2001, n. 58).

Often times, the living will has the option for the patient to deny himself food and water under such circumstances including a persistent vegetative state.⁶⁶ In the *Q&A from the USCCB Committee on Doctrine and Committee on Pro-life Activities' Questions and Answers regarding the Holy See's Responses on Nutrition and Hydration for Patients in a "Vegetative State,"* the magisterial position was affirmed that "for modern societies with advanced medical services the administration of nutrition and hydration by artificial means to patients in a vegetative state who need such assistance to survive is generally neither extraordinary nor disproportionate."⁶⁷

The problem again with the living will is that it describes certain medical treatments for various conditions that are to be withheld or administered. However, the living will does not, unless severely modified, define the types of treatments that are considered "ordinary" or "extraordinary" under Church teaching. Owing to this failure, the document does not adequately protect the adult patient's interests, particularly as those interests relate to the moral teachings of the Holy Catholic Church.

Called to be a light to the world

We must never forget the words of our Master and Lord who said, "let your light shine, so that men may see your works and give glory to your Father who is in heaven."⁶⁸

If we are to be the light in the professions of law and medicine, then we must understand how the light of truth and charity cannot be checked at the door of the hospital or courtroom. Accordingly, lawyers and physicians must engage the culture of death head-on in educating their clients, patients, and those who are

not informed of the complexities of end-of-life issues.

Although this paper hopefully sheds some light on the convergence of faith and work, no doubt faith is never enough⁶⁹—action must follow bringing truth and charity out to the world in the spirit of the new evangelization.

Glory to Jesus Christ! Glory to Him Forever!

ENDNOTES

1. Pope Pius XI states in *Casti Connubii* that: “All men of every condition can and ought to imitate that most perfect example of holiness,” our Lord Jesus Christ, “and by God’s grace to arrive at the summit of perfection” (n. 23) (see <http://www.pathsoflove.com/blog/2009/01/universal-call-to-holiness/>); Vatican Council II, *Lumen Gentium*, “The Universal Call to Holiness in the Church,” nn. 39–42.
2. The Code of Canons of the Eastern Churches, can. 13 states, “All the Christian faithful must strive, each according to his or her own condition, to lead a holy life and to promote the growth of the Church and its continual sanctification.” Moreover, can. 14 provides that, “All the Christian faithful have the right and obligation to work so that the divine message of salvation may more and more reach all people of all times and of all the world.”
3. Catholic Online, “St. Josemaria Escriva de Balaguer”; available at https://www.catholic.org/saints/saint.php?saint_id=5603.
4. *Catechism of the Catholic Church* (CCC), n. 1733—*the more one does what is good, the freer one becomes. There is no true freedom except in the service of what is good and just.*
5. Life, Death and Catholic Medical Choices, “50 Questions from the Pews,” Kevin O’Neil, CSSR & Peter Black, STD.
6. CCC, n. 2280—Everyone is responsible for his life before God who has given it to him. It is God who remains the sovereign Master of life. We are obliged to accept life gratefully and preserve it for his honor and the salvation of our souls. We are stewards, not owners, of the life God has entrusted to us. It is not ours to dispose of.
7. Life, Death and Catholic Medical Choices, “50 Questions from the Pews,” Kevin O’Neil, CSSR & Peter Black, STD., at p. 8.
8. Ibid. at p. 9.
9. Ibid. at p. 10.
10. Ibid. at p. 10.
11. Reference will only be made to Arizona law.
12. A.R.S. § 36-3261(A)—A living will can either be witnessed or notarized (see also A.R.S. § 36-3221).
13. With respect to medical treatments offered, there is under the law, no difference between what is referred to in the Catholic Church as “ordinary means” versus “extraordinary means” of medical treatment.
14. A.R.S. § 36-3262.
15. Ibid.
16. Ibid.
17. A.R.S. § 36-3261 (see also A.R.S. § 36-3205).
18. A.R.S. § 36-3221.
19. A.R.S. § 36-843(2), and 36-859.
20. A.R.S. § 36-3224.
21. A.R.S. § 36-3224, § 32-1365.01.
22. Including a district or territory of the United States.
23. A.R.S. § 36-3208.
24. A.R.S. § 36-3201(13).
25. A.R.S. § 36-3231.
26. Ibid.
27. A.R.S. § 36-3231(B).
28. Ibid.
29. A.R.S. § 36-3231(D).
30. A.R.S. § 14-5301.
31. A.R.S. § 14-5202.
32. A.R.S. § 14-5303 and 14-5207.
33. New law in 2011—Senate Bill 1081 (Standby Guardianships; Guardianships for Minors Approaching Adulthood). Provides that any signed writing can be used to make the appointment effective only after the parent or spouse dies, is adjudicated to be incapacitated, or is other determination of incapacity.
34. Often times, a proposed ward may not want to relinquish the authority to withhold nutrition or hydration because of a particular belief. This must be communicated to the Judicial Officer and litigated as needed.

35. A.R.S. § 14-5306.
36. A.R.S. § 14-5315.
37. CCC, n. 1711: "Endowed with a spiritual soul, with intellect and with free will, the human person is from his very conception ordered to God and destined for eternal beatitude. He pursues his perfection in "seeking and loving what is true and good" (GS 15, n. 2). Certainly, lawyers and physicians must seek and love what is true and good the practice of law and medicine."
38. Matt 28:19.
39. Daniel Garland Jr., "The Patristic Interpretation of the Good Samaritan": Many Fathers of the Church and early Christian writers have identified Christ himself as the Good Samaritan. The man who falls into the hands of thieves is a symbol of humanity wounded by original sin and personal sin. St. Augustine has commented: 'These offenses robbed mankind of immortality. They covered him with wounds and made him susceptible to sin.' St. Bede has written that sins are called wounds because they destroy the integrity of human nature. The thieves represent the devil, unrestrained human passions, scandal.... The Levite and the priest symbolize the Old Covenant, which cannot cure these wounds. The inn is a symbol of the Church. 'What would have happened to this poor Jew if the Samaritan had stayed at home? What would have happened to our souls if the Son of God had not undertaken his journey?' (R.A. Knox). Jesus is moved with compassion for man and heals his wounds, making them his own. St. John wrote to the early Christians: 'In this the love of God was made manifest among us, that God sent his only Son into the world, so that we might live through him.... Beloved, if God so loved us, we also ought to love one another,'" quoting Fr. Francis Fernandez, October 4, 2010, Irish, Catholic, and Dangerous blog, <http://irishanddangerous.blogspot.com/2010/10/patristic-interpretation-of-good.html>.
40. Diarmuid F. O'Scannlain, "Catholic Lawyers in an Age of Secularism," from a reflection presented at the Red Mass banquet of the Diocese of Galveston-Houston, October 1, 2003, 11.
41. Congregation for the Doctrine of the Faith, *Doctrinal Note on Some Questions regarding the Participation of Catholics in Political Life* (2002), n. 6, quoting Vatican Council II, *Apostolicam actuositatem*, n. 24, at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html.
42. "Acting is morally good when the choices of freedom are in conformity with man's true good and thus express the voluntary ordering of the person toward his ultimate end: God himself, the supreme good in whom man finds his full and perfect happiness." Blessed Pope John Paul II, *The Splendor of Truth* (1993), n. 72.
43. CCC § 2270.
44. CCC § 2273; and CDF, *Donum Vitae*, III.
45. Sacred Congregation for the Doctrine of the Faith, *Declaration on Euthanasia* (1980).
46. Vatican Council II, pastoral constitution *Gaudium et Spes*, n. 27.
47. It is often debated whether the pro-life position is inconsistent with the death penalty. Undoubtedly, the Holy Catholic Church teaches in the *catechism* (CCC § 2266-67) that "The State's effort to contain the spread of behaviors injurious to human rights and the fundamental rules of civil coexistence corresponds to the requirement of watching over the common good. Legitimate public authority has the right and duty to inflict penalties commensurate with the gravity of the crime. The primary scope of the penalty is to redress the disorder caused by the offense. When this punishment is voluntarily accepted by the offender, it takes on the value of expiation. Moreover, punishment, in addition to preserving public order and the safety of persons, has a medicinal scope: as far as possible it should contribute to the correction of the offender." And, "The traditional teaching of the Church does not exclude, presupposing full ascertainment of the identity and responsibility of the offender, recourse to the death penalty, when this is the only practicable way to defend the lives of human beings effectively against the aggressor." This teaching is grounded in the presupposition that the "legitimate public authority" or government imposing the death penalty has at its foundation the universal principles of the natural law and correct moral teaching.

48. Sacred Congregation for the Doctrine of the Faith, *Declaration on Euthanasia* (1980), conclusion; see also *Nutrition and Hydration: Moral and Pastoral Reflections* (1992), resource paper NCCB Committee for Pro-Life Activities, n. 7.
49. USCCB, *Nutrition and Hydration: Moral and Pastoral Reflections*.
50. *Ibid.*
51. *Ibid.*
52. *Ibid.*
53. Congregation for the Doctrine of the Faith, *Responses to Certain Questions Concerning Artificial Nutrition and Hydration*, 2007.
54. *Ibid.*, question 4.
55. Diocese of Kansas City, Kansas Catholic Conference, November 2006; Catholic Faith Declaration.
56. *Catechism of the Catholic Church* (CCC) § 2278.
57. If a person chooses organ donation, caution must be given or death must be defined as the “cessation of all circulatory and respiratory functions” and not brain death. Likewise, a request for cremation or burial can be included as well as the consent or refusal of an autopsy.
58. Code of Canon Law, can. 1005: “This sacrament is to be administered when there is a doubt whether the sick person has attained the use of reason, whether the person is dangerously ill, or whether the person is dead.” (See also can. 1006—“This sacrament is to be conferred upon sick persons who requested it at least implicitly when they were in control of their faculties.”) This of course is left to the discretion of the priest or at the direction of the bishop.
59. This of course also acts to protect and ensure that a legal basis exists to assert a violation of the 1st Amendment to the United States Constitution should there ever be a denial of communion by a medical person.
60. *Enchiridion of Indulgences* of 1969.
61. Or another provision might look like, “Special Instructions for Pregnancy. If I am pregnant, I direct my health care provider(s) and health care representatives(s) to use all lifesaving procedures for myself with none of the above special conditions applying if there is a chance that prolonging my life might allow my child to be born alive. I also direct that lifesaving procedures be used even if I am legally determined to be brain dead if there is a chance that doing so might allow my child to be alive.” An excerpt from Roman Catholic Diocese of Phoenix, “Advance Medical Directives,” pastoral letter, July 2005.
62. The Gregorian Masses are a series of thirty Holy Masses offered on thirty consecutive days by the same priest or different priests.
63. See A.R.S. § 14-5651.
64. Roman Catholic Diocese of Phoenix, “Advance Medical Directives.”
65. A.R.S. § 36-3262.
66. This is a specific option in the Statutory Form Living Will.
67. Q&A from the USCCB Committee on Doctrine and Committee on Pro-Life Activities regarding The Holy See’s Responses on Nutrition and Hydration for Patients in a “Vegetative State.”
68. Matt 5:16.
69. James 2:26: “For just as a body without a spirit is dead, so also faith without works is dead. Nor is man saved by works alone.”

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BIOGRAPHICAL NOTE

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