Annals of Health Law

Volume 19
Issue 1 *Special Edition 2010*

Article 21

2010

The Catholic Bishops, the Law, and Nutrition and Hydration: An Historical Footnote

Sandra Johnson
Saint Louis University

The Catholic Bishops, the Law, and Nutrition and Hydration: An Historical Footnote

*Sandra Johnson**

Just over twenty-five years ago, as Loyola prepared to launch its health law center, the Coca Cola Company introduced "New Coke." In contrast to the success of Loyola's effort, New Coke was soundly rejected and Coca Cola soon returned "Classic Coke" to its loyal drinkers.

Recently, the U.S. Catholic bishops released a directive (#58 of the Ethical and Religious Directives for Catholic Health Care Services (ERD 58)) concerning the moral obligation to provide nutrition and hydration to patients, including those in a persistent vegetative state.[1] For many, the revision fits stereotypes of Catholic thought: its moral distinctions rest on the nature of the particular intervention involved; it requires sustaining life in the face of permanent unconsciousness as a commitment to the ultimate value of all human life; and it denies the moral significance of burdens carried by anyone other than the patient. For others, the directive departs significantly from central principles and decades of Catholic practice in end-of-life decision-making that has supported withdrawal of medically administered nutrition and hydration (MANH) for persistent vegetative state (PVS) patients.

---

* Professor Emerita of Law and Health Care Ethics, Saint Louis University. B.A., Saint Louis University; J.D., New York University; LL.M., Yale Law School.

1. "In principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally. This obligation extends to patients in chronic and presumably irreversible conditions (e.g., the "persistent vegetative state") who can reasonably be expected to live indefinitely if given such care. Medically assisted nutrition and hydration become morally optional when they cannot reasonably be expected to prolong life or when they would be excessively burdensome for the patient or (would) cause significant physical discomfort, for example resulting from complications in the use of the means employed. For instance, as a patient draws close to inevitable death from an underlying progressive and fatal condition, certain measures to provide nutrition and hydration may become excessively burdensome and therefore not obligatory in light of their very limited ability to prolong life or provide comfort." U. S. CONFERENCE OF CATHOLIC BISHOPS (USCCB), ETHICAL & RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH CARE SERVICES 31 (5th ed. 2009), *available at* http://www.usccb.org/meetings/2009Fall/docs/ERDs_5th_ed_091118_FINAL.pdf.

I. NEW COKE OR CLASSIC COKE?

The Classic Coke camp maintains that the revised ERD is consistent with traditional Catholic principles for care at the end of life. Under ERD 58, as before, the decision to discontinue MANH rests on the balance of benefits and burdens and treatment is not obligatory when its burdens exceed its benefits to the patient. For example, ERD 58 specifically allows for discontinuation where the patient experiences serious complications from the means used to deliver MANH such that it becomes "excessively burdensome," although it remains unclear how this would apply to PVS patients.

I am in the New Coke camp. ERD 58 departs from accepted practice reflecting traditional teachings in Catholic health care by requiring MANH where the patient is permanently unconscious. It reaches that result by asserting that extension of unconscious life is always a benefit to the person and by narrowing the scope of morally relevant burdens of treatment to those burdens experienced by the patient alone; both of which are significant points of departure from the interpretation of the benefits-burdens principle as applied over the past several decades.[2] My conclusion that ERD 58 is "new" is informed by the legal history of Catholic thought more than a theological or philosophical analysis in regard to end-of-life care.

II. THE HISTORICAL FOOTNOTE[3]

When Joe and Julia Quinlan, both devout Catholics, needed to make a decision about whether to continue ventilator support for their daughter Karen Ann, they first sought advice from their pastor. Their pastor advised the Quinlans that they were not morally required as Catholics to continue life-sustaining ventilator support for their daughter when there was no hope of recovery of consciousness. Lawrence Casey, bishop of the Patterson diocese in which the Quinlans lived, strongly supported the morality of the family's decision, including publicly refuting claims that the Quinlans would be murdering their daughter in withdrawing the respirator. The statewide organization of Catholic bishops in New Jersey filed an amicus brief with the New Jersey Supreme Court in support of the Quinlans'

2. *Id.* (explaining that ERD 57 remains unchanged and that a person may forego life-sustaining treatment when it will "impose excessive expense on the family or the community.").

3. *See* Sandra H. Johnson, *Quinlan & Cruzan: Beyond the Symbols, in* HEALTH LAW AND BIOETHICS (Sandra H. Johnson, Joan H. Krause, Richard S. Saver, & Robin Fretwell Wilson eds., Aspen Publishers 2009) (providing detailed information and background about the Quinlan and Cruzan cases and more thorough citation of historical documents discussed in this essay).

appeal.

The Court in *In re Quinlan* quoted nearly the entire bishops' brief in its 1976 opinion holding that the withdrawal of the ventilator was permitted even though Karen was expected to die as a result.[4] Although the opinion claims that the Catholic perspective is relevant only as to Joe Quinlan's character as guardian, the Court's extensive reliance on the bishops' brief provided both substantive content and a rhetorical device for its opinion. It showcased the Catholic perspective as a credible moral counterweight to then widely held views in medicine and law that withdrawal of life-sustaining treatment would likely be unethical or illegal. Issued three years after *Roe v. Wade*, the opinion's use of Catholic principles also may have allowed policymaking on end-of-life treatment to progress in its formative years along a public-policy pathway distinct from that of abortion.

In their brief, the New Jersey bishops relied upon a 1957 address by Pope Pius XII concerning the then-new capacity for resuscitation and long-term respirator support. The papal statement observes that the family usually considers resuscitation and ventilator support "an astonishing result and is grateful to the doctor;" however, the family later opposes continuing these efforts "when the patient's condition . . . remains stationary and it becomes clear that only automatic, artificial respiration is keeping him alive."[5] The papal statement relies on a distinction between ordinary and extraordinary means with extraordinary means being those that impose a "grave burden for oneself or another," to conclude that there is no obligation to continue ventilator support in this circumstance. It clearly measures ordinary/extraordinary means in terms of benefits and burdens rather than in terms of the technological character of the intervention itself and includes burden to others within morally relevant concerns. Its conclusion is incompatible with an assertion that continuation of life in such circumstances is itself a value that trumps every other. Neither the bishops' brief nor the 1957 statement addressed the issue of nutrition and hydration. Also, the legal status of MANH was not resolved in *Quinlan*.

Nearly a decade after *Quinlan*, Joe Cruzan, although not Catholic himself, consulted with Catholic bioethicists in forming his decision to stop MANH for his daughter Nancy. A group of Catholic health care organizations, including more than 100 Catholic hospitals, submitted an amicus brief to the U.S. Supreme Court in the Cruzans' appeal.[6] This brief noted that amici were "Catholic institutions and individuals," but that they

4. *See* 355 A.2d 647 (N.J. 1976).

5. Pope Pius XII, Address to an International Congress of Anesthesiologists (November 24, 1957), *reprinted in* THE ROLE OF THE VOLUNTEER IN THE CARE OF THE TERMINAL PATIENT AND THE FAMILY (Martha M. Newell, Harriet H. Naylor, Betty Marcus, Austin H. Kutscer, Daniel J. Cherico, Irene B. Seeland, Lillian G. Kutscher eds., Arno Press 1981).

6. *Cruzan v. Mo. Dep't of Pub. Health*, 497 U.S. 261 (1990).

were not the "official teaching authority" of the Church, and there was no "authoritative statement" on the issue of the withdrawal of nutrition and hydration. Although formally filed in support of neither the Cruzans nor the state of Missouri, the Catholic health care brief argued that "the dignity and sanctity of life" do not require the "assertion of an absolute value in the maintenance of biological life regardless of other human values;" that "both under-treatment, especially of the disabled or unprotected, and overtreatment of the dying" are to be avoided; and that persons in PVS are distinguishable from those who are merely impaired.

The U.S. Catholic Conference (USCC), the national organization of bishops, also filed a brief, but in support of the state of Missouri. The USCC argued that food and water are necessities of life. Reflecting the convergence of prolife and disabilities rights advocacy, the brief argues that "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."[7]

The "Catholic" briefs in *Cruzan* evidenced a divide between Catholic health care and the USCC on the issue of MANH. As the USCC was opposing the Cruzans' decision, the Catholic Health Association (CHA) published a guide for priests and nuns executing durable powers of attorney (DPOA) for themselves. The CHA guide presented refusal of MANH as a moral option, and included a model DPOA that directed the withdrawal of MANH when the intervention would "only prolong my inevitable death or irreversible coma."

The conflict apparent in the *Cruzan* briefs existed among the bishops as well, and bishops in various dioceses took conflicting public positions about MANH in the wake of *Cruzan*. This disagreement loomed over an on-going revision of the ERDs. At that point, however, the bishops did not select one position over another regarding MANH for persons in PVS, as the USCC brief in *Cruzan* had done three years earlier, but directed that "physicians and patients are to be guided by . . . instructions [from the local bishop]."[8] Finally, in 2001, the bishops issued a directive stating that nutrition and hydration should be provided "as long as this is of sufficient benefit to outweigh the burdens involved to the patient," which was a very general statement and one quite similar to the presumption adopted by most courts and the legal test used for discontinuation where no direction from the patient was available.[9]

---

7. NATIONAL CONFERENCE OF CATHOLIC BISHOPS (NCCB), STATEMENT ON UNIFORM RIGHTS OF THE TERMINALLY ILL ACT 5 (1986).

8. Thomas R. Kopfensteiner, *Health Progress,* 81 HEALTH PROGRESS (2000), *available at* http://www.chausa.org/Pub/MainNav/News/HP/Archive/2000/05MayJun/Articles/Features/hp0005e.htm.

9. Press Release, USCCB, U.S. Bishops To Vote On Revision Of Ethical Directive On

Legal disputes over treatment decisions for Terri Schiavo sharpened the focus on the ERDs once again when Pope John Paul II delivered an address on the issue of MANH, which was supportive of Schiavo's Catholic parents.[10] In 2007, in response to questions submitted by the U.S. bishops, the Vatican's Congregation for the Doctrine of the Faith issued a document concerning provision of MANH to persons in the vegetative state, which guided the final text of ERD 58.[11]

III. CONCLUSION

ERD 58 does not require medically administered feeding for every patient in every circumstance—not for the dying patient, not for the patient who cannot process nutrition, and not for any patient who will experience serious complications in the course of receiving MANH—but it leaves very little room in the case of PVS patients. I think it is likely that any change in practice in Catholic health care will be confined only to PVS and not extended to what may be considered similar situations, even though the principle underlying the direction to extend life without prospect of recovery of consciousness is more broadly stated. The CHA implies as much, noting that removal of a feeding tube would be inconsistent with ERD 58 only in "very few" or "rare" instances and that under no circumstances would Catholic facilities "impose" MANH "contrary to the patient's wishes" but would consider other options.[12] Although the new directive concerning MANH may have limited effect clinically, it is not insignificant.

Catholic leadership in end-of-life decision-making contributed significantly to establishing that life sustaining treatment is not morally required and did so when that conclusion was in serious doubt in medicine and law. I appreciated Catholic health care's voice in restraining the grasping for the extension of life at any cost, and I hope that ERD 58 in

---

Nutrition And Hydration At November Meeting (November 5, 2009).

10. Pope John Paul II, Address at the International Congress on "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas" (March 20, 2004), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_en.html.

11. Congregation for the Doctrine of the Faith, Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration (August 1, 2007), *available at* http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070801_risposte-usa_en.html; *see also* Press Release, Priests for Life, Father Pavone Welcomes Vatican Statement on Nutrition & Hydration (September 14, 2007), *available at* http://www.priestsforlife.org/pressreleases/07-09-14concerning-artificial-nutrition-and-hydration.htm.

12. Announcement, Catholic Health Association (CHA), Clarification of Claims Regarding Directive 58 (December 9, 2009), *available at* http://www.chausa.org/NR/rdonlyres/56F04272-5375-482D-9687-92278E614ECD/0/091209CompassionChoicesStatement.pdf.

practice develops more nuanced understandings that are more compatible with that earlier voice.