Texas Catholic Conference of Bishops
THE PUBLIC POLICY VOICE OF THE CHURCH

Catholic Health Association of Texas

Statement on Texas Advance Directives Act Dispute Resolution Process

The Texas Advance Directives Act dispute resolution process protects patients and physicians by providing a fair and reasonable process to resolve disagreements regarding end of life care decisions. While this law is not often used, it is generally used appropriately and compassionately. Even with its advantages, however, some aspects of the TADA would benefit from more specificity and clarity. For this reason, the Texas Catholic Conference of Bishops and the Catholic Healthcare Association of Texas have sought reform of this act for more than a decade.

The foundational Catholic principle of respecting the inherent dignity of human life from conception to natural death is at the heart of our call for access to ethically responsible healthcare.[1] Pope St. John Paul II emphasized the clear right to life in his encyclical, *Evangelium Vitae*, in which he further articulated and responded to the modern threats to the sanctity of human life at all its stages. He affirmed that the sanctity of human life exists in every human being, regardless of age, stage, or disability, and specifically condemns euthanasia as a "grave violation of the law of God.[2]" Furthermore, in the *Declaration on Euthanasia*, the Congregation for the Doctrine of the Faith clearly defines and rejects euthanasia under any and all circumstances as inherently evil because it is the direct willing of death.[3]

Some medical interventions are actually harmful to the human person and therefore constitute violence to the human body. Archbishop Jose Gomez refers to this aggressive medical treatment as therapeutic tyranny[4] and Pope Saint John Paul II said that inappropriate medical intervention on dying patients can be "particularly exhausting and painful for the patient, condemning him in fact to an artificially prolonged agony."[5] This is not a new theological concept. St. Basil of Caesarea in the 300s said medical care that "requires an undue amount of trouble…or involves a large expenditure of effort…must be avoided by Christians."[6] Forcing health care workers to administer these interventions by law, requires them to violate the dignity of the human person.

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[1] USCCB, Ethical and Religious Directives, 6th edition, no. 23
[2] *Evangelium Vitae*, no. 65
[3] USCCB, Ethical and Religious Directives, 6th edition, no. 60
[4] Most Reverend Jose H. Gomez. *A Catholic Bishop Responds…A Will to Live: Clear Answers on End-of-life Issues*. Irving, Texas: Basilica Press, 2006.
[5] Pope St. John Paul II. "To Participants at the International Congress on Assistance to the Dying." *L' Osservatore Romano,* no. 4 (18 March 1992). *Evangelium vitae*, no. 65 regarding the foregoing of 'aggressive medical treatment.'
[6] St. Basil the Great, The Long Rules, Question 55, quoted from "The Fathers of the Church", Vol 9, translated by Sr. Monica Wagner, *CUA Press*, 2010, p 331.

We have repeatedly attempted to support legislation that respects autonomy and human dignity, both for patients and providers. We maintain at the outset that all human life, no matter how disabled or critically ill, is of inherent dignity and incomparable worth; thus it is no less entitled to adequate health care. Our position takes a balanced approach to end-of-life care that equally respects the rights of patients in the natural process of dying and the conscience of health care professionals providing their care. While illness and other circumstances can make life very difficult, they cannot diminish the inestimable worth of each human life created by God. Life itself always has quality that can never be lost. Still, we need not cling to this life at all costs, for our ultimate destiny is eternal life with Christ in heaven.

Overview of the Dispute Resolution Process

The Texas Advance Directives Act establishes a process by which physicians may submit intractable disagreements with surrogates over the withdrawal of life-sustaining treatments to an ethics committee for review. When disputes arise between providers and patients regarding the continued provision of medical interventions for patients with terminal or irreversible conditions, an ethics committee can play a valuable role in resolving conflicts and protecting autonomy within the physician-patient relationship. If the ethics committee does not agree with the physician's decision to withdraw interventions, then the physician faces criminal and civil liability if he fails to provide the treatment requested by the patient or surrogate. However, if the ethics committee agrees with the physician's decision to remove treatment, the physician is granted criminal and civil liability immunity for following the ethics committee review procedure. If the patient or surrogate disagrees with the physician and the ethics committee ruling, they have ten further days after the ruling to effectuate a transfer to a provider who is willing to continue the interventions requested by the family. If no willing alternate provider is located, the physician and hospital are legally authorized to withdraw the requested medical interventions.

In a survey conducted in 2020, the Texas Hospital Association reported that the dispute resolution process is rarely used. In 2018-2020, the process was initiated 4 times in 2 facilities. [7] There are over 2.9 million inpatient admissions to Texas Hospitals in 2018.

[7] Texas Hospital Association July 2020 Survey, At https://www.tha.org/Portals/0/files/Issues/AdvanceDirectives/Key_Findings_From_THA_046_Survey_Final.pdf?ver=2020-11-10-205504-063

Positive Aspects of the Process

The current statute provides for certain protections for physicians and dignity of patients through a process to address disagreements between families and physicians regarding end-of-life care. It can often be difficult for a family to accept that their loved one's death is imminent and inevitable. However, in the reasonable medical judgment of the physician and the hospital ethics committee, continued medical intervention will delay natural death and further the severe suffering of the patient with no real benefit. The Catholic voice in the pro-life world does not view death as the ultimate enemy. We view it through a lens of the inherent sanctity of human life, including life in its final stages. Aggressive medical treatment under these circumstances in some cases can actually hasten death or require physicians to harm patients without any medical benefit. Doing so is neither justifiable nor acceptable.

Imposing indefinite medical intervention on dying patients ignores the professional judgment of the physician, increases patient burdens, and prolongs the patient's natural death. This leads to conditions such as moral distress in which the healthcare provider knows the correct ethical and moral action but is prevented from taking it or is required to take an action he or she believes to be immoral and unethical.[8] The National Academy of Medicine reports that "Clinicians report feeling troubled- often profoundly so- when they feel unable to provide the care they think is best based on their professional standards of practice and their values. These morally distressing situations can leave clinicians susceptible to emotional and physical symptoms, including powerlessness and fatigue, depression, suicidal behavior, burnout and post-traumatic stress."[9] Nearly one quarter of hospital ICU nurses experience symptoms of post-traumatic stress and the physician rate of suicide is twice that of the general population.[10]

Catholic moral and ethical teaching does not support the concept of radical autonomy; instead, it highlights a balance between personal and professional autonomy and the common good.[11] As St. Paul said, "You are not your own, for you have been purchased at a price."[12] Pope St. John Paul II explicitly

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[8] Elizabeth G. Epstein and Sarah Delgado, "Understanding and Addressing Moral Distress" *OJIN: The Online Journal of Issues in Nursing* (Sept 30, 2010) Vol. 15, No. 3, Manuscript 1. At http://www.nursingworld.org/MainMenuCategories/EthicsStandards/Courage-and-Distress-/Understanding-Moral-Distress.html

[9] Ulrich, C. M. and C. Grady. 2019. Moral Distress and Moral Strength Among Clinicians in Health Care Systems. NAM Perspectives. Commentary, National Academy of Medicine, Washington, DC. https://doi.org/10.31478/201909c

[10] Dyrbye, L. N., T. D. Shanafelt, C. A. Sinsky, et al. 2017. Burnout among health care professionals: A call to explore and address this underrecognized threat to safe, high-quality care. NAM Perspectives. Discussion Paper, National Academy of Medicine, Washington, DC. https://doi.org/10.31478/201707b

[11] USCCB, Ethical and Religious Directives, 6th edition, no. 58.

[12] 1 Corinthians 6:19-20.

warned against views of freedom that promote absolute autonomy as serious distortions of life in society. He pointed out that this type of promotion of self inevitably leads to the point of rejecting the autonomy of others such that, "[e]veryone is considered an enemy from whom one has to defend oneself."[13] Thus, the physician has a right not to violate the moral obligation to act in the best interest of the patient when being faced by a patient or family insisting on the primacy of their autonomy.

Continued Reforms Needed

While the Texas Advance Directives Act Dispute Resolution Process is not often used, it can be a helpful process for resolving disputes between families and healthcare providers. Despite this, there is still inconsistency amongst hospital leaders in the application of this process. Therefore, the law could benefit from improved clarity on (1) the ethics committee's composition, and (2) the decision–making process to help eliminate ambiguity. While the process is designed to provide an objective ethics committee review of the case, further safeguards are needed to reduce the potential for conflicts of interest or mistaken quality of life decisions. In addition, reforms are needed to provide more timely and compassionate communication between medical professionals and patient families when disagreements arise. It is time to correct the deficiencies to demand accountability and consistency of process. To accomplish these goals, we support the following reforms to the Texas Advance Directives Act:

- Establish criteria for committee composition;
- Ensure that patients with disabilities are not discriminated against based on their disability;
- Extend the time for notice to the family of the ethics committee meeting;
- Require patients or patient's family to be invited to present in the ethics committee meeting;
- Extend the dispute resolution process to provide seven calendar days of notice of the committee meeting and to up to fourteen calendar days for transfer after the committee meeting;
- Correct the Do-Not-Resuscitate (DNR) revocation processes to ensure that surrogates may only revoke a valid DNR if the surrogate authorized the DNR and must follow the patient's known wishes and values related to DNRs;
- Require hospitals to report data on 166.046 dispute resolution process; and
- Clarify the circumstances under which interventions may be withheld or withdrawn, for example, if they are outside the ordinary standard of care.

[13] *Evangelium Vitae*, no. 20

Opposition to Repeal

Requiring indefinite medical interventions on dying patients against the professional and medical judgement of the physician is unacceptable. Therefore, we will oppose efforts to totally repeal the Texas Advance Directives Act dispute resolution process. We strongly believe that such a policy is not in the best interest of patients because it can prolong patient suffering, artificially delaying natural death with no real benefit to patients. It can also fail to respect the conscience and professional integrity of health care providers by requiring them to indefinitely honor requests for interventions that they consider unethical and harmful to patients.

The Congregation for the Doctrine of the Faith has said "Every medical action must always have as its object—intended by the moral agent—the promotion of life and never the pursuit of death. The physician is never a mere executor of the will of patients or their legal representatives, but retains the right and obligation to withdraw at will from any course of action contrary to the moral good discerned by conscience."[14] For this reason, we support the retention of the dispute resolution process to ensure that physicians can exercise their right of conscience while also ensuring that patients can access a transfer if appropriate.

We would caution against the rhetoric claiming that Texas doctors and hospitals are killing patients whenever they use this process. That view fails to account for the reality that there are times when the withdrawal of medical interventions reflects an acceptance of natural death that fully respects the care due to the human person. Accepting that a person is dying and withdrawing ineffective and harmful interventions is not euthanasia or suicide. Instead these actions can reflect a recognition that we come from God at the beginning of our existence and return to Him at the end of our earthly life.

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[14] *Samaritanus Bonus*, no. 2, Congregation for the Doctrine of the Faith