

## DHHS's "Right of Conscience" Regulation

clinic. The protection of conscience cuts both ways—it protects against coercion in activities that violate one's conscience and also protects against discrimination when one does participate in activities in accord with one's conscience that some judge to be immoral.

This could pose a challenge for Catholic health care organizations. An additional consideration for Catholic health care facilities and health care professionals working in them—full disclosure. Patients need to know from the outset what the facility/health pro-

fessional will not do. It would seem prudent for Catholic health care organizations to discuss these and other ethical issues coming to the fore as a result of the rule, if they haven't already. ■

---

## Update on Brain Death

In the last issue of *HCEUSA*, an entry in this section noted challenges from various sectors to the adequacy of "brain death" as a legitimate definition of death. Shortly after the publication of the Fall 2008 issue, a conference on organ transplantation was held at the Vatican (November 6-8, 2008) sponsored by the Pontifical Academy for Life, the International Federation of Catholic Medical Associations, and the Italian National Transplant Center. In September, the head of American Life League, who is a member of the Academy, as well as other members of the Academy, requested that the conference be postponed until members of the Academy could discuss it privately. There was concern among these individuals that the conference was not addressing brain death or other death determining criteria. The conference went ahead as planned, and with no scheduled sessions on brain death.

Judie Brown of the American Life League and others believe that brain death criteria are simply a means for obtaining organs from living patients.

Dr. Paul Byrne of St. Vincent's Medical Center in Bridgeport, Connecticut wrote in a book last year that "life and true death cannot and do not exist at the same time in the same person." He went on to say that persons on ventilators have "normal respiration, a beating heart and normal blood pressure. This is quite different from true death manifested by: no breathing, no heartbeat and no reflexes. Therefore, 'brain death' is simply an error; 'brain death' is false death."

In his address to participants in the international Congress, Pope Benedict XVI referred to organ donation as "a unique testimony of charity." He went on to underscore the critical nature of informed consent in order to preserve organ donation as a "gift." Regarding the determination of death, the Pope said: "[I]t is useful to remember that the various vital organs can only be extracted 'ex cadavere' [from a dead body], which possesses its own dignity and should be respected. Over recent years science has made further progress in ascertaining the death of a patient. It is good, then, that the achieved results

receive the consensus of the entire scientific community in favor of looking for solutions that give everyone certainty. In an environment such as this, the minimum suspicion of arbitrariness is not allowed, and where total certainty has not been reached, the principle of caution should prevail" (*A Unique Testimony of Charity*, [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2008/november/documents/hf\\_ben-xvi\\_spe\\_20081107\\_acdlife\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/november/documents/hf_ben-xvi_spe_20081107_acdlife_en.html)). While still a cardinal, the Pope himself registered with an organ donor association.

(**N.B.** James DuBois, Ph.D., director of the Center for Health Care Ethics at Saint Louis University, published an article in the February 2, 2009 issue of *America* on the issue of "Brain Death and Organ Donation," touching on many of the issues noted above).