

THE NEW DIRECTIVE 58: WHAT DOES IT MEAN?

BY RON HAMEL, PH.D. AND FR. THOMAS NAIRN, OFM, PH.D.

EDITOR'S NOTE:

On November 17, 2009, at its fall meeting in Baltimore, the United States Conference of Catholic Bishops voted 264 to 4 (with one abstention) to approve a revision of Directive 58 of the Ethical and Religious Directives for Catholic Health Care Services, which deals with medically assisted nutrition and hydration. The following Q & A is an attempt to answer some of the questions that have surfaced in the ministry subsequent to the bishops' revision. This Q & A reflects the views of CHA ethics staff and is not intended to be an official interpretation of Directive 58. The full text of the revised Directive 58 appears on page 72.

Why did the bishops revise Directive 58 now?

The United States Conference of Catholic Bishops had extensively rewritten the *Ethical and Religious Directives for Catholic Health Care Services* in 1994 and last revised the document in 2001. At that time, the Holy See had not spoken regarding the morality of providing medically assisted nutrition and hydration to patients in a persistent vegetative state. The Introduction to Part Five of the *Directives* at that time explained there were "necessary distinctions between questions already resolved by the magisterium and those requiring further reflection, as, for example, the morality of withdrawing medically assisted hydration and nutrition from a person who is in the condition that is recognized by physicians as the 'persistent vegetative state.'" However, in March 2004 Pope John Paul II addressed this issue and in August 2007 the Congregation for the Doctrine of the Faith issued a clarifying document. The Introduction to Part Five and Directive 58 have been revised in light of these statements.

Does Directive 58 now require that all patients who cannot take food and fluids by mouth receive medically assisted nutrition and hydration?

No, it does not. What the revised directive does say is that patients who both can be fed and hy-

drated and who would benefit from being provided with food and water, even by artificial means, should, as a general rule, be fed and hydrated. In other words, there is a general moral obligation to provide patients with nutrition and hydration.

This general obligation applies as well to patients who are in a chronic condition and who could continue to live if they are provided with nutrition and hydration. This part of the directive focuses particularly on patients in a persistent vegetative state and embodies the teaching of Pope John Paul II contained in his 2004 address as well as the statement made by the Congregation for the Doctrine of the Faith in August 2007.

However, the directive also notes that there are exceptions to this general obligation:

- With regard to **dying patients**, nutrition and hydration may be deemed to be excessively burdensome to the patient or may provide little or no benefit, in which case they become morally optional.
- With regard to **patients in a chronic condition**, for example, a patient in a persistent vegetative state, the obligation could also become morally optional if providing nutrition and hydration

cannot be expected to prolong life or if they become excessively burdensome or cause significant physical discomfort (e.g., medical complications resulting from the use of medically administered nutrition and hydration).

So while the revised directive emphasizes the general moral obligation to provide nutrition and hydration, even when administered medically, it also recognizes that this obligation is not absolute and that the use of these measures must be assessed with regard to their benefits and burdens to the patient.

Must all patients in a persistent vegetative state receive medically assisted nutrition and hydration?

The revised Directive 58 makes two assertions in this regard: (1) that in principle there is an obligation to provide food and water to patients, and that this includes medically assisted nutrition and hydration for those who cannot take food and water orally and (2) that medically assisted nutrition and hydration becomes “morally optional” when (a) they can no longer prolong life or (b) when they become “excessively burdensome for the patient.” This judgment is a clinical judgment between the patient (or surrogate) and the physician. Among the clinical elements that need to be assessed are: the indications and contraindications of tube feeding for this particular patient and understanding potential medical complications that might occur. In the actual circumstances facing a given patient, medically assisted nutrition and hydration might not be appropriate. However, Pope John Paul II in his 2004 address, and the Congregation for the Doctrine of the Faith in its 2007 doctrinal statement, both insist that the belief that a patient is never likely to regain consciousness is not in itself a sufficient reason for withdrawing medically assisted nutrition and hydration.

Will Directive 58 significantly increase the number of people receiving medically assisted nutrition and hydration?

Although the answer to this question is rather speculative at present, it is not likely that Directive 58 will significantly increase the number of people on medically assisted nutrition and hydration. The directive merely puts into the *Directives* a teaching that has been in effect for several years. There is no indication of a significant increase in medically assisted nutrition and hydration for patients in a persistent vegetative state in either 2004 or 2007.

Will a Catholic hospital initiate medically assisted nutrition and hydration against the patient's wishes?

No hospital or physician, including a Catholic hospital or physician, may ever initiate a non-emergency invasive procedure, such as inserting a percutaneous endoscopic gastrostomy (PEG) tube, without the permission of the patient or his or her surrogate. This could be considered an affront to human dignity and, in addition, could give rise to legal proceedings.

Does the new Directive 58 mean that Catholic health care facilities will not honor a patient's advance directive?

No, it does not. In the vast majority of cases, patients' advance directives will be honored. As previously noted, medically assisted nutrition and hydration at the end of life may be medically inappropriate. There may be the occasional situation, such as some patients in a persistent vegetative state, when what the patient is requesting through his or her advance directive is not consistent with the moral teaching of the Church. In these few cases, the Catholic health care facility would not be able to comply.

But this is nothing new. Directive 28 already notes that “the free and informed health care decision of the person or the person's surrogate is

to be followed so long as it does not contradict Catholic principles.” And Directive 59 echoes this: “The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, unless it is contrary to Catholic moral teaching.” In those rare instances when the Catholic health care organization is not able to comply with an advance directive, it is not permitted to impose medically assisted nutrition and hydration upon the patient contrary to the patient's wishes as they are expressed in the advance directive or by the patient's surrogate. This could give rise to legal proceedings. Instead, other options would need to be explored.

Does Directive 58 place Catholic health care facilities in conflict with federal or state laws?

Directive 58 does not appear in and of itself to conflict with any federal or state law. Whether the *application* of Directive 58 will conflict with a given state law depends on the circumstances of each individual case.

Does the revision of Directive 58 change the standard of care, often described as ordinary and extraordinary means, as traditionally used by Catholics?

Part of the long moral tradition of the Catholic Church regarding end-of-life issues has been the moral distinction between “ordinary” and “extraordinary” means. As shown in Directives 56 and 57, this distinction involves an assessment of the burdens and benefits of a treatment. Those means of preserving life are proportionate or “ordinary” and therefore obligatory when “in the judgment of the patient [they] offer a reasonable hope of benefit and do not entail an excessive burden or impose excessive expense on the family or the community” (Directive 56). Those means of preserving life are disproportionate or “extraor-

dinary” and therefore not morally obligatory when “in the judgment of the patient [they] do not offer a reasonable hope of benefit or entail an excessive burden or impose excessive expense on the family or the commu-

nity” (Directive 57). The language of Directive 58 continues to allow for this burden/benefit assessment with regard to medically assisted nutrition and hydration.

DIRECTIVE 58 OF THE *ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH CARE SERVICES*

Directive 58 deals with the provision of fluids and nutrition to patients, whether by mouth or in a medically assisted manner (e.g., via feeding tube).

The previous Directive 58 spoke of a “presumption in favor of providing nutrition and hydration to all patients ... as long as this is of sufficient benefit to outweigh the burdens involved to the patient.” The revised Directive 58 incorporates the teaching of Pope John Paul II as expressed in his 2004 address on “Life-Sustaining Treatments and the Vegetative State: Scientific Advances and Ethical Dilemmas” as well as the Congregation for the Doctrine of the Faith’s August 2007 doctrinal statement, “Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration” confirming what John Paul had said.

The revisions included a change to the last paragraph of the Introduction to Part Five of the *Ethical and Religious Directives* as well as to the directive itself. The revised texts are as follows:

REVISION TO THE INTRODUCTION TO PART FIVE

“The Church’s teaching authority has addressed the moral issues concerning medically assisted hydration and nutrition. We are guided on this issue by Catholic teaching against euthanasia, which is ‘an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated.’³⁸ While medically assisted nutrition and hydration are not morally obligatory in certain cases, these forms of basic care should in principle be provided to all patients who need them, including patients diagnosed as being in a ‘persistent vegetative state’ because even the most severely debilitated and helpless patient retains the full dignity of a human person and must receive ordinary and proportionate care.”

REVISED DIRECTIVE 58

“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 conditions and presumably irreversible conditions (e.g., the ‘persistent vegetative state’) who can reasonably be expected to live indefinitely if given such care.⁴⁰ 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.’⁴¹ 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.

NOTES

38. See Declaration on Euthanasia, Part II.

40. See Pope John Paul II, Address to the Participants in the International Congress on “Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas” (March 20, 2004), no. 4, where he emphasized that “the administration of water and food, even when provided by artificial means, always represents a natural means of preserving life, not a medical act.” See also 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).

41. Congregation for the Doctrine of the Faith, Commentary on “Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration.”

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