



Health Care Directives

A Catholic Perspective

A Supplement to the Pastoral Letter *Comfort and Consolation*
FROM THE CATHOLIC BISHOPS OF MARYLAND

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Health Care Directives: A Catholic Perspective

BACKGROUND

For nearly a century, it has been the law in Maryland (and most states) that you have the right to make decisions about your own health care, including the right to request or refuse health care interventions. Over the years, virtually all the states and the District of Columbia have gradually provided a framework for you to spell out your wishes for health treatment in the event that you are incapacitated.

The first wave of health care planning documents consisted of so-called “living wills.” These documents spelled out an individual’s wish as to the kind of care that would not be provided when the person was close to the end of life. These documents generally did not give positive authorization for treatment, and did not involve any other person. They were frozen documents that allowed for no flexibility. From the Church’s perspective, because we cannot predict a particular patient’s actual medical condition, living wills pose a risk of directing what could in some cases be considered a morally inappropriate refusal or withdrawal of care.

However, people came to see that it might be advantageous to designate an individual (health care agent) who was authorized to make decisions on behalf of an incapacitated person. Thus developed the kind of document known as a “Health Care Directive,” also known as an “Advance Directive” or a “Health Care Power of Attorney.”

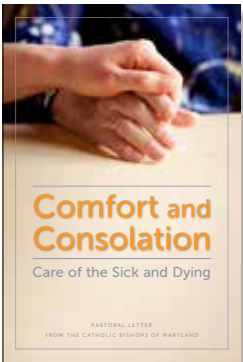
By naming and empowering the decision maker of the patient’s choice, these advance directives avoid the drawbacks of living wills which are rigid and do not allow for appropriate discretion based on the patient’s actual condition.



Health Care Directives in Maryland

Maryland has created its own legal framework, guidelines and a model form. However, there is no requirement that you use the state's form, and you may use another form, or create your own document (preferably with the assistance of an experienced attorney).

The Maryland Catholic Declaration for Health Care Decision Making is published by the Maryland bishops and is attached to this brochure. It has been designed to meet Maryland law and to give you an opportunity to express your wishes in a form that reflects Church



teaching regarding end-of-life decision-making.

Guidance on end-of-life issues may be found in greater detail in the Maryland Bishops' Pastoral Letter, *Comfort and Consolation*.

In addition to appointing a health care agent, a directive also may (but need not) contain a section listing your wishes as to receiving or not receiving certain treatments and procedures. The law allows any statement of your wishes to be as general or specific as you desire. Again, because medical conditions and circumstances are impossible to know in advance and are always changing, it is recommended that you allow your health care agent as much leeway as possible.

Maryland MOLST Form

A health care advance directive represents your statement of your wishes. It is not equivalent to a doctor's order. There is a document that embodies "doctor's orders," known as a Medical Orders for Life-Sustaining Treatment (MOLST) form that governs a range of medical care options, such as whether or not to attempt cardiopulmonary resuscitation (CPR) in the event of a heart attack, blood transfusions, antibiotics, and artificially administered fluids and nutrition, among other things. Unlike your own health care directive, which you prepare while you are healthy, the MOLST is intended to be completed by your physician (or nurse practitioner or physician's assistant) when you already are seriously ill. Nursing homes, hospices, assisted-living facilities, home health agencies, and hospitals all are required to honor these orders, and (in most cases) to fill out one for you if you don't already have one. The MOLST form should when possible be filled out after consultation with you, but often it is completed without your participation on the basis of instructions in your advance directive. Health care facilities are required to follow the orders set forth in the MOLST form, so this is a very important document.

Obviously, a MOLST form deals with decisions about what medical treatment is to be provided or waived in various circumstances — decisions that have significant moral and religious implications. You should ask to see any MOLST form to make sure that it is consistent with your wishes. If you don't want treatment options to be mandated in advance — or if you know you do want to get treatment in specific circumstances — your MOLST document should spell that out. If the need arises but you don't have a MOLST form in effect, you will be treated in accordance with your health care advance directive, if you have one, or if not, in accordance with the surrogate decision-making process described on page 8.

Frequently Asked Questions

Q: What legal requirements do I have to follow when completing an advance directive?

Under Maryland law, an advance directive must be signed in the presence of two witnesses, at least one of whom must be a person who does not stand to gain from your death. Maryland law does not require that the document be notarized, but many people notarize it anyway, in case they later move to a state that requires notarization. Whatever form you use, one part of the directive will designate an agent who is entitled to act for you — but only if you are determined to be unable to make and communicate decisions for yourself.



Q: Who should be named as agent?

You should designate a health care agent, first of all, who can be counted on to carry out your wishes. You want someone who will not be swayed by emotion, and who will take the time to consult with doctors and other advisors, as well as with your priest and family members, if the need arises to make a decision. As a Catholic, you should name someone who can be counted on to carry out your wishes in a way that is consistent with Church teaching.



For obvious reasons, Maryland law prohibits you from designating as your agent either an owner or employee of a health care facility who currently is caring for you, or a relative of such a person.

If a spouse is able to serve, that is most often the first choice, though it need not be. One or more children often are named. People sometimes ask whether all of their children should be named together as health care agent. This can be done, but experienced lawyers recommend that you not name all your children “just so no one feels left out.” Rather, select only those children who meet the qualifications above — and who you are confident can work together in a stressful situation.

It is helpful but not essential that your agent live near you. Your agent may come to town to be present, or deal with health care providers by phone, as necessary, but it is an advantage to have someone physically on the scene. Still, experienced advisers say that it is better to have an agent who meets all the other qualifications but is not local, rather than an agent who is local but lacking in other respects.

You may name more than one agent to serve together, if you wish. Many people also designate one or two back-up agents, in case the primary agent dies, becomes incapacitated, or is otherwise unavailable.

You may, if you wish, insert language requesting, or even requiring, that your agent act only in accordance with the teachings of the Church. If you do so, you might consider adding language to discourage anyone — inside or outside your family — from seeking court intervention with respect to your health care in the event of disagreements.

Q: How do I decide what should go into my health care directive?

What kind of medical decisions would you want to be made for you if you are unable to communicate or decide for yourself? This is not an easy question. It takes thought, discussion, and prayer. Doctors say that many people sit around a dining room table and jump to the conclusion that they would not want life-sustaining treatment if they were terminally ill or permanently unconscious — but those same people, when they actually go to an emergency room with a life-threatening health problem, turn out wanting to ensure that they receive medical treatment. Take the time to think through what you *really* would want to happen. Talk with your family and perhaps a close friend. Find out what the Church teaches about these matters by consulting *Comfort and Consolation* and its summary Q&A brochure. Consult a priest or other advisor. Pray. There are few decisions that are more important.

Q: What if a decision needs to be made for me, and I have no advance directive?

In that case, Maryland law provides for decision-making by a “surrogate,” which means a spouse, or other close family member, or even, in some cases, a friend. Maryland law contains a list, in priority order, of such surrogates, should you become incapacitated without an advance directive. The surrogate is supposed to act first in accordance with your wishes, to the extent he or she knows what your wishes are; and second, if he or she does not know your wishes, in accordance with your “best interest.” In most cases it is better for you to designate the agent you want, one whom you can speak with in advance about your faith, one you are confident will act on your behalf and in accordance with your Catholic beliefs.

Q: If I make an advance directive, how can I revoke it?

You can revoke it by:

- saying so in writing (which does not need to be witnessed or notarized), or
- destroying it or marking it as revoked, or
- stating orally to a doctor or other health care practitioner that you wish to revoke it, or
- executing a new advance directive.

Note, however, that if you revoke an advance directive, you should recall and destroy all copies of that document, so that no confusion is created in the minds of health care providers.

Q: When does my advance directive become effective?

It is “effective” in the sense of the person being designated as your agent, immediately when you have signed it with the required formalities. However, the agent has no authority to act on your behalf unless you are unable to make or communicate decisions about your health care. Generally, this determination is made by two doctors — your attending physician and a second doctor who has recently examined you — but if you are unconscious or unable to communicate, the certification of a single doctor is sufficient.

However, even before such physician certification, the directive may grant your agent access to your medical information, notwithstanding the provisions of federal privacy law (sometimes known as “HIPAA”). This could be important in case your doctor needs to consult with your agent about whether you are capable of making health care decisions. But you should consider carefully how much access to your medical information you want to give your agent prior to the time you are incapacitated.



Q: Are advance directives only about “pulling the plug?”

No, even though people often speak of advance directives only in terms of “pulling the plug,” they are in fact applicable — and can be useful — in many other situations. For example, if you were temporarily unconscious in an automobile accident, your agent could authorize surgery on your behalf. Your agent under an advance directive also can direct that you be given certain treatments; these documents are not aimed only at withdrawing treatment, as may commonly be supposed. And your agent can advocate for you when you are unable to do so for yourself.

Q: What should I do with my advance directive once I have signed it?

First, remember that a copy is as good as an original. You should make multiple copies and send one



to your primary care physician. You should send another copy to your health care agent (and perhaps your back-up agent if you have one). You should discuss the document, the treatment you want, and your Catholic beliefs about medical decisions with your agent (and possibly with your back-up agent) if you have one.

Finally, it is a good idea to keep a copy of the document somewhere easily accessible in your residence, for example, in your kitchen. The reason: if you have to go to the emergency room, you might have time to pick up this document on your way out. And if you do, you can be sure that it will be included in your hospital records at the time you check in. Federal law requires hospitals to ask you at the time you register whether you have such a document. (Of course, in the event of an emergency, you might not have time to locate and take with you your advance directive; but in many cases, you will have the opportunity to do so, and providing one increases the likelihood that your wishes will be carried out.)

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POINTS TO TAKE AWAY

- Think carefully about what you would want if you were unable to decide for yourself.
- Talk with others about your wishes – your family, physician, parish priest.
- Designate a health care agent being careful to choose someone who will reliably carry out what you want to happen – in accordance with the teaching of the Church. Don't be swayed by emotion or a concern about hurting the feelings of family members.
- Put your wishes in written form utilizing the advance directive form at the end of this brochure.
- Consider consulting with an attorney to help you draft a document ensuring that your wishes are carried out.
- Sign the document with the proper formalities. Make sure the witnesses are qualified.
- Make sure that a copy of the document reaches your doctor, your agent, and anyone else who might need it.
- Tell your doctor to put your advance directive in your medical file.
- Don't hesitate to change the document if circumstances change.

Catholic Declaration for Health Care Decision Making

The following is the **Catholic Declaration for Health Care Decision Making**. It is an advance directive through which you can appoint a health care agent and express your wishes for spiritual support, medical care and treatment, pain-relieving medication and, should you be unable to take food or drink orally, medically-assisted nutrition and hydration.

This *Declaration* has been prepared in light of the pastoral letter by the bishops serving Maryland, *Comfort and Consolation*, and also in light of Maryland law, the Maryland Health Care Decisions Act.

- Read the *Declaration* carefully.
- Discuss your wishes with a person you would like to appoint as a health care agent and others whom you would consider appointing as alternate health care agents.
- Fill out the *Declaration*, but do not sign it yet.
- Ask two people to be your witnesses when you will sign the *Declaration*; Maryland law requires this. Maryland law does not require that you have the *Declaration* notarized. If you are planning to travel to other states, however, it is recommended that you have the *Declaration* notarized.
- After you have filled out the *Declaration* but before you sign or have it witnessed, you may want to make a number of copies for your health care providers and the facilities to which they might refer you for treatment. Remember, you may need to present the *Declaration* to several hospitals, health care, or living facilities.
- Sign each copy as an original and have each witnessed in front of a notary.

Catholic Declaration for Health Care Decision Making

Instructions for My Health Care

My Catholic faith teaches that human life is a precious gift from God. We are not its owners but its guardians. No one must ever presume to adopt a course of action or inaction that is intended to hasten my death, even if the motive is to alleviate my suffering. Having thought seriously about my beliefs and the principles that the Catholic Church teaches about end-of-life decision-making, I have set down the following instructions for my care for those who must make decisions for me should I become incompetent — that is, unable to make these decisions for myself. I have executed this document and intend to revoke any earlier health care directive or living will that I may have executed. I retain the right to revoke this document.

Spiritual Support

I request that my family, parish community, and friends support me through prayer and sacrifice and that the sacraments of the Church be made available to me as I prepare for death or face serious illness. I wish to see a Roman Catholic priest and receive the Sacrament of the Sick (formerly called the “last rites”), as well as Confession and Communion.

Medical Care and Treatment

I wish to receive medical care and treatment appropriate to my condition as long as it is useful and offers a reasonable hope of benefit and is not excessively burdensome to me — that is, does not impose serious risk, excessive pain, prohibitive cost, or some other extreme burden. I oppose any act or omission that of itself or by intention will cause my death, even for the purpose of eliminating suffering. I direct that all decisions about my medical treatment and care be made in accord with Catholic moral teachings as contained in such documents as:

- *Care for Patients in a “Permanent” Vegetative State* (Saint John Paul II, March 20, 2004),
- *Declaration on Euthanasia* (Congregation for the Doctrine of the Faith, 1980), and
- *Ethical and Religious Directives for Catholic Health Care Services*, (U.S. Conference of Catholic Bishops, edition current at the time decisions are being made.)

Food and Fluids (nutrition and hydration)

If I am unable (even with assistance) to take food and drink orally, I desire that medically-assisted nutrition and hydration (MANH) be provided to me so long as it is capable of sustaining my life. Even if I am in a persistent vegetative state, MANH should be continued. MANH should be discontinued if it is futile (no longer able to sustain my life). MANH should be discontinued if it imposes excessive burdens to me (serious risk, excessive pain, prohibitive cost, or some other extreme burden). MANH should be discontinued if death is both inevitable and so imminent that continuing MANH is judged futile.

Pain Relieving Medication

If my condition includes physical pain, I wish to receive pain-relieving medication in dosages sufficient to manage the pain, even if such dosages make me less alert or responsive, and even if managing my pain in this way is likely to shorten my life. No pain medication should be given to me for the purpose of hastening my death.

Imminent Death from Terminal Illness

If my death from a terminal illness is near at hand, I wish to refuse treatment that would only secure a precarious and burdensome prolongation of my life, so long as the ordinary care due me is continued.

Pregnancy

If I am pregnant, I wish every means to be taken to preserve and nurture the life of my unborn child, including the continuation of life-sustaining procedures.

Signature _____ Date _____

Witness _____

Witness _____

Note: *Your appointed health care agent(s) may not serve as a witness to your declaration. One witness may not be someone who will benefit from your death.*

Appointment of My Health Care Agent

I, _____ hereby designate and appoint

Name: _____

Address: _____

City/State/Zip: _____

Home: _____ Work: _____

Cell: _____ Email: _____

as my health care agent to make health care decisions for me should I be diagnosed as comatose, incompetent, or otherwise mentally or physically incapable of communication. My agent must not be an owner, operator, or employee of a health care facility from which I am receiving health care, or an immediate relative of such facility's owner, operator, or employee. My agent is to make decisions for me only for the duration of my incompetency. I have carefully discussed my preferences for medical treatment with the above-named agent and I direct my agent to choose on my behalf the appropriate course of treatment or non-treatment that is consistent with the preceding "Instructions for My Health Care." I charge my agent and all those attending me neither to approve nor commit any action or omission which by intent will cause my death. In all decisions regarding my health care, I instruct my agent to act in accordance with Catholic teaching. Notwithstanding the foregoing or any other provision in this document, I do not intend that any person other than my agent have the right to intervene in decisions about my health care, including initiating or joining in any court proceeding.

If the person named as my agent is not available or is unable to act as my health care agent, I appoint the following person(s) to act on my behalf.

Alternate Agent 1 _____ Alternate Agent 2 _____

Name: _____

Address: _____

City/State/Zip: _____

Home: _____

Cell: _____

Signature _____ Date _____

Witness _____ Witness _____

Note: *Your appointed health care agent(s) may not serve as a witness to your declaration. One witness may not be someone who will benefit from your death.*

Authorization and Consent Under HIPAA

This advance directive is my direct authorization and consent under the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, and its regulations. I waive all rights to privacy under all federal and state laws and designate my agent as my personal representative under HIPAA, for the purpose of requesting, receiving, using, disclosing, amending, or otherwise having access to my personal, individually identifiable health information. I authorize any health care provider to release to my agent or to any person designated by my agent, all medical records of whatever nature, mental health records, billing statements, radiological films, pathology material, photographs, videos, and other information about me. This advance directive also authorizes any health care provider to speak to and disclose orally, to my agent and any person designated by my agent, any information about my diagnosis, care, treatment, prognosis, and opinions about me. It is my express intention that, to the greatest extent permitted by law, the authorization and consent provided herein will be effective for so long as this advance directive is effective.

Optional Notarization

(Notarization is not required by Maryland, but is recommended for those who travel to other states. It may be prudent, after you have filled out the *Declaration* but before you sign it and have it witnessed by two persons, to make a number of copies for several hospitals or health care facilities. Then sign each of them as an original and have each witnessed in front of a notary.)

Sworn and subscribed to me this _____ day of _____, 20_____

My term expires: _____ (Notary)

“Even the weakest and most vulnerable,
the sick, the old, the unborn and the poor,
are masterpieces of God’s creation,
made in his own image,
destined to live forever,
and deserving of the
utmost reverence and respect.”

Pope Francis, July 7, 2013

This brochure is one of a series published by the bishops of Maryland to provide guidance and support to Catholics as they consider important issues related to end-of-life decision-making for themselves and loved ones.

For a comprehensive guide to these issues, consult the Maryland bishops' pastoral letter, *Comfort and Consolation*, available at www.mdccathcon.org/publications.

The information in this brochure should not be considered legal advice.



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