

Diocesan Committee on Bioethics, Catholic Diocese of Hong Kong

Response to Consultation by the Food and Health Bureau on the Consultation Paper “Introduction of the Concept of Advance Directives in Hong Kong”

The Diocesan Committee on Bioethics of the Catholic Diocese of Hong Kong was formed in June 2005, comprising lay representatives of various Catholic medical and healthcare professional organizations as well as priests and religious personnel, to communicate with the curia to make timely and appropriate response on healthcare issues, especially in the field of medical ethics. In its terms of reference, the Committee has been charged with making known the position of the Catholic Church on bioethics issues. It is in the discharge of this duty that the Committee responds to this consultation exercise. As the Committee includes both doctors as well as lay persons (vis-a-vis medicine), this response will address the sections for the general public and the medical profession. Before proceeding with this response, attention should be paid to what this Committee has published in response to the report of the Law Reform Commission of Hong Kong (LRC) on this matter in August 2006.¹

For general public

- (a) Just as we have noted in our Statement of August 2006, we find no objection in principle to the concept of advanced directives though we are concerned about the possibility of using it to refuse tube feeding as a means of achieving a certain type of euthanasia. This will also apply to Advance Care Planning (ACP). Apart from this concern, we do not object to the introduction of advance directives nor or ACP to Hong Kong.
- (b) The information contained in Annex C forms a reasonable introduction although generally speaking neither the English or Chinese drafts are particularly user-friendly for those unfamiliar to advanced directives, wills, power of attorneys and similar instruments. The language of both are unnecessarily “official” (官腔) and occasionally it reads as if the person(s) drafting the information pack is concerned more about legal liability than the wide dissemination of information to the general public. Some information packs used as part of the consent procedure for medical research are more user-friendly than this, and those documents have a more direct legal impact on the

¹ Statement of the Diocesan Committee on Bioethics regarding the Report of the Law Reform Commission of Hong Kong on Substitute Decision Making and Advance Directives in relation to Medical Treatment <http://www.bioethics.catholic.org.hk/publication/advancedirective.doc>

adequacy and validity of informed consent.

Information on the relationship between mental capacity and the activation of advance directives are not particularly obvious or clear in the drafts. In the section “Should I make an advance directive?” (p30), the advance directive is portrayed as an expression of preference, but in the model form (Enclosure 1 to Annex B), both refusal of consent as well as request for treatment are presented in the choices to be “ticked” by the person making an advance directive. This is less confusing in the Chinese draft.

In the last paragraph before FAQs (p31), persons considering making an advance directive are asked to make sure that doctors and family are kept informed. There is a natural temptation for someone reading this to ask a family member to witness the directive although they are not reminded there and then that family members are often excluded because they usually have interests in the estate of the person wishing to execute such an instrument. Again the Chinese version is less misleading in this aspect.

Another aspect relating to witness requirements is the declaration that the person making a written directive or revocation has done this in front of a witness that he or she knows not to be a beneficiary under any instruments he or she had executed (at the time of making or revoking the said directive). On the other hand, the recorder of an oral revocation only needs to declare that he or she is not related and is not a beneficiary to the best of his or her knowledge. The latter is reasonable but not necessarily the former. Whilst it may be reasonable for someone to declare that his witness is not a beneficiary when he makes an advance directive, it may not be so for a revocation, especially if some acute event was the cause of the revocation. In the stress of such an event, stringent requirements which hamper a person to change his mind do not serve to protect or enhance his autonomy. Of course a delicate balance must be made between ease of changing minds and possible conflict of interests of witnesses, so that undue influence may not be brought to bear upon the person wanting to revoke a directive.

In Q4 of the FAQs, mention is made of a proxy in both versions, but there does not seem to be any other mention of this in the information package. The mention here of proxies seem to be most inappropriate in relation to advance directives, seeing that the LRC had ruled out the appointment of proxies either for decision making as part of a living will or to help interpret the fine nuances of refusal in the sort of advance directives they recommended.

The answer to Q6 seemed to be overly legalistic in terms of language used in both versions, to the point of hampering understanding.

Q8 seemed to be more relevant to the healthcare providers and will be dealt with in that section.

- (c) One area where Catholic bioethics differs from mainstream medical practice is over the question of artificial nutrition and hydration being administered to patients in the

persistent vegetative state. Whilst there is no question that the use of general anaesthesia, surgery or endoscopy to place a feeding tube would be properly regarded as a medical procedure or treatment, the use of a functional feeding tube to provide liquid food and water to a patient is regarded by the Church as basic care, which the healthcare worker is obliged to provide and the patient equally morally obliged to receive. This has already been pointed out in our earlier Statement in response to the LRC report.² Since then, Rome has reaffirmed this position with a specific statement issued by the Congregation for the Doctrine of the Faith, declaring that such tube feeding is obligatory for patients in the vegetative state as well as for those in irreversible coma.³

This is the position which will be promulgated to all the faithful of the local Catholic Church, both healthcare workers as well as the general public. It is within this context that we welcome the amendment of the model form to include a request for continuing artificial nutrition and hydration. We hope that the Government will ensure that such requests in validly executed advance directives would be respected.

For the medical profession

This Committee includes representatives from The Guild of St Luke, St Cosmas and St Damian Hong Kong, which is the local Catholic doctors' association, as well as representatives from the Catholic Nurses' Guild. The former organization will also be making its own response to this consultation exercise. The comments here represent those areas which concern not just doctors but also nurses and other healthcare workers who may be involved in caring for patients in whom advance directives may be activated.

The main concern here relates to the plight of healthcare workers who may have objections to some aspects of treatment (or non-treatment) contained within a validly executed advance directive. The right to freedom of conscience necessarily includes the right to refuse to participate in an act to which one has a conscientious objection. The right to freedom of conscience, enshrined in both the Universal Declaration of Human Rights as well as the International Convention on Civil and Political Rights (to which Hong Kong is a signatory), is codified in the Hong Kong Bill of Rights (Cap 383, Section 8, Article 15) and provisions for conscientious refusal are also found in Subsection 6 of Section 47A of Cap 212 as well as Section 20 of Cap 561. Although there are no plans for specific legislation for advance

² See FN1.

³ Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070801_risposte-usa_en.html

directives, we urge the Government to put in place administrative procedures to provide protection to a conscientious objector.

Diocesan Committee on Bioethics
Catholic Diocese of Hong Kong
22 March 2010