

An Orthodox Christian Perspective: The Living Will/Health-Care Proxy

Interview with Fr Thomas Hopko

Published in the Spring 2004 edition of the Orthodox Christian Journal, Volume 77, number 1

In a time and day when the sanctity of human life is under increasing attack, there is a need for Orthodox Christians -legally, medically and spiritually - to provide express instructions to their relatives and health-care givers should they become seriously ill, incapacitated or near death. Some hospitals and nursing homes require that a patient execute a living will and health-care proxy upon admission. Most states and provinces have enacted statutes recognizing the living will and health-care proxy. Without them, the patient is often left to a civil court to determine what treatment will be given, refused or removed as in the recent Florida case of Terri Schiavo, whose estranged husband has been attempting to remove her life support against the wishes of her parents and family.

Father Thomas Hopko, dean emeritus, St. Vladimir's Seminary, was interviewed by Martin M. Shenkman of the New Jersey Lawyer, a legal publication, on the subject of "Estate Planning for Orthodox Christians." In this stimulating interview, Fr. Tom gave an Orthodox Christian response to a number of "end of life" issues and suggested drafting comments for inclusion in a living will and health-care proxy. With the kind permission of the New Jersey Lawyer, we are reprinting excerpts of this interview; the drafting sample language is omitted but is included in the sample living will/health-care proxy the Journal editor drafted based on Fr. Tom's interview. We hope these remarks and the sample will be of practical use for Orthodox Christians in their own estate planning.

Disclaimer: As with any legal document, a legal professional should be consulted before executing a living will and health-care proxy to ensure that it comports with the local jurisdiction's legal requirements; the sample published here (based on Pennsylvania's Advance Directive for Health Care Act, 20 Pa.C.S. §5401, et seq.) is for information purposes only.

Q: Living wills and health-care proxies raise a host of religious issues. What are some concerns that attorneys helping Orthodox Christians should address?

FR. TOM: The church's view of life-and-death issues should ideally be reflected in the living will and health-care proxy. A major tenet of the faith is that it is unethical to take a life. It is not the highest of all values to stay alive, but you cannot affirmatively take steps to kill someone. The church is strongly against euthanasia and suicide. But often if the patient and medical care providers permit nature to take its course without heroic intervention, the person's life may be taken by God.

So it is a narrow path. Taking a life is inappropriate; on the other hand, using heroic medical measures to keep a body biologically functioning would not be appropriate either. Mere biological existence is not considered a value. It is not a sin to allow someone to die peacefully and with dignity. We see death as an evil to be transformed into a victory by faith in God. The difficulty is discussing these issues in abstraction; they must be addressed on a case-by-case basis.

Drafting comment: Practitioners should incorporate into the recital clause of the client's living will language affirming the client's affiliation with the [Orthodox Church] and these basic values. This is especially important because it has become so common in today's society for family members to intermarry and/or adopt different faiths, that a client's religious beliefs should not be left unstated "because the family knows." They often don't!

Q: What about provisions concerning administration of pain relief?

FR. TOM: We affirm meaning to the act of suffering. It can be an experience providing purification, redemption and salvation. However, we do not encourage suffering - steps can and should be taken to alleviate suffering. Our religion teaches us to alleviate suffering, but one cannot alleviate suffering by taking a life.

Q: What about consciousness? What about traditions near death?

FR. TOM: Much of the decision has to do with lucidity. Orthodox Christians should make provisions in advance by specifying their wishes in a living will and telling their family. A living will should state your client's wish to have a priest present before death since there are many profound and moving prayers and observances for such a time. These traditions can bring great comfort to the patient and loved ones.

The entire process of dying is sanctified by a series of prayer services and sacraments. It is important that the patient be lucid and free to confess his sins and to receive Holy Communion. The need for consciousness to participate in these sacraments should be considered when administering pain medication. There also is the rite of anointing a person with holy oil for healing of soul and body. Selected prayers are read throughout the process; as suffering increases, as the patient nears death and immediately upon death.

For example, when the patient is in great pain and approaching death, the priest may also say the Prayer of Separation of Soul and Body, asking God to take the life of the person and help him die in peace. Faithful members of the family are encouraged to be present during these prayers. The desire to have a priest present to say these prayers and administer the sacraments should be communicated in your client's living will. If the family is not present and the living will does not inform the medical care providers, the spiritual needs and wishes of the patient could be overlooked without this provision. And if the children or other family members do not have the same religious beliefs, they may not know of these rites and traditions, or that the patient was faithful.

Drafting comment: A provision governing pain relief included in many living wills should be modified to reflect these important near-death wishes.

Q: It seems essential that a priest be called to administer these rites and address the decisions.

FR. TOM: It's quite essential since many of the issues to be decided are gray. Also, the traditions are rich and require time.

Drafting comment: Consider designating a particular priest or church to be contacted and providing contact numbers in the living will.

Q: What about organ donations?

FR. TOM: We have no theological problems with organ donations so long as those involved are not trafficking in payments for organs or taking a life to obtain the organ. There is generally no problem from a religious perspective. Many pastors in fact are encouraging organ donations out of compassion for those in need.

Q: One of the issues many religions have been grappling with is the definition of death. If you cannot take a life to harvest an organ, the definition of death is vital because removing an organ too early could be the cause of death.

FR. TOM: Generally, if the patient would die if the life support were removed, although it is a gray area from a religious perspective, it is unlikely to be an ethical problem to harvest organs at that time. Our ethical experts would probably use the modern medical test of cessation of brain activity as a definition of death.

Q: What about informing the patient [about his medical condition]?

FR. TOM: It is critical that the patient have complete information as to his or her condition, otherwise the patient will

never be able to know when to begin the many important religious observances that are to accompany the process of dying.

Q: Charitable giving is an important principle of many faiths. How does the church view this in the context of adherents' estate planning?

FR. TOM: We encourage church members to consider charitable bequests as part of their planning. We especially urge advisors to encourage their clients to consider charitable giving. We have found that people are grateful for that reminder. We believe that providing opportunities for doing good, such as giving to charity, is very important. Historically, tithing-giving 1 | 10 of one's wealth - was the standard. People still speak about this religious ideal. We believe it is a religious obligation for people to use what they need and to share with others any excess. It would be wonderful for an attorney to suggest that if the client is a believing member of the Eastern Orthodox Church, sharing that wealth with others is part of the teachings of the church.

We have a rich history of charitable giving beginning with the legacy of St. Constantine, a 4th-century Roman emperor who used his wealth to build churches, schools and hospitals. The Slavs have a similar history of giving beginning with St. Vladimir in the 9th-century. There always have been members for whom giving large gifts to the church was a normal part of their religious life. The great majority of American people do not consider themselves wealthy, but collectively they can provide tremendous help to the church. People with limited resources who give according to their means make a vital contribution to help others. In James 1:27 it states: "Religion that is pure and undefiled before God and the Father is this: To care for orphans and widows in their affliction...." People are becoming more aware of this religious concept of charity.

Q: What about inheritance?

FR. TOM: There is a religious obligation to take care for your household. Scriptures say in a Letter to Timothy by the Apostle Paul: "If anyone does not provide for his relatives, especially for his own family, he has disowned the faith and is worse than an unbeliever." Family at that time extended to more than just the nuclear family. It clearly included the wife and children and other relatives as well. People should give consideration to the needs of family members even beyond spouse and child. How can you love your neighbor if you don't care for your own household?

There are a host of provisions in scripture concerning your responsibility to your family and, indeed, to the human community as a whole. This is the reason Orthodox Christians must reasonably address life insurance needs, writing a will and all aspects of estate planning. We preach to our people that they have obligations to their spouses and children and to their church and society at large after they die. They must fulfill these duties during their lifetime.

Click here to download: Declaration pursuant to 20 Pa.C.S.A. 5404: Pennsylvania advance directive for health care act "An Orthodox Christian living will & health-care proxy" (PDF format)