ADVANCE DIRECTIVES FOR A NATURAL END OF LIFE: A SUMMARY

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I. MISSOURI DURABLE POWERS OF ATTORNEY FOR HEALTH CARE

A. GENERAL EXPLANATION. In Missouri, a patient binds a health-care agent to a legal duty to follow the patients' wishes on future health care by putting advance directives into a durable power of attorney for health care (DPAHC).[*] See secs. 404.800-404.872, RSMo. The agent accept the responsponsibilty of serving as the health care agent, of course. Section 404.705.4. While he or she serves as the agent, there is a legal obligation to follow the directives of the DPAHC to the best of his or her ability, disregarding any disadvantage to self that may result. Section 404.714.1. DPAHC's go into effect when the patient is "incapacitated and will continue to be incapacitated for the period of time during which treatment decisions will be required." Section 404.825.

B. LIMITATIONS OF DPAHC's. People should be careful if they attempt to use forms of DPAHC's that are available online or from organizations.

1. Forms That Include Checklists of Conditions to Forgo are Somewhat Misleading. Informed consent is almost impossible ahead of the time an impairment is contracted. One does not know what conditions one will face and what medical treatments are going to be available in the future for one's conditions.

2. Checklists Cannot Help But Be Overly-Broad. Because the impairments that can afflict people are quite numerous (for example, think of all the different cancers that people contract), and each can affect individuals in different ways, the broad descriptions of treatments presented in checklists (e.g., "any surgery", "all antibiotics") are almost always going to include treatments that most people will want as well as treatments they may not want.

3. People Change Their Minds. Giving directions about treatments far in advance does not take into account that people change their minds about many things as they pass through life. Studies indicate that many people alter their attitudes about end-of-life decisions over time.

4. Diagnoses of Mental States are Uncertain Judgment Calls. The diagnoses of "persistent unconsciousness," "persistent vegetative state," and the like lack definiteness. They are labels without much content, much as "neurasthenia" was a century ago. At best they are diagnostic judgment calls--judgment calls that are sometimes wrong.

5. Quality of Life Concerns. Another general caveat about DPAHC's: the forms that are presented by secular organizations usually assume a quality-of-life philosophy, in which the value of life as a gift is downplayed. This is illustrated by the thought, "I wouldn't want to live like *that.*" However, if it is a choice of living like *that* and not living at all, people's perspectives often changes, as mentioned above. This philosophy leads to discrimination against impaired people, too. For believers, a time to prepare for the journey through death to eternal life is precious, whatever the quality of life might be during the preparation time. A good DPAHC will not presume that quality of life is more important than spiritual matters at the end of life.

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* The author needs to make a disclaimer here. He is not acting as anyone's attorney in this paper or in any oral presentation, but only as a commentator offering thoughts to fellow pro-lifers. He does not intend to offer legal advice to any individuals in these materials, and no one should take this summary as such.

C. NOT REFUSING CARE DOES NOT OBLIGATE ONE TO RECEIVE IT LATER. In Missouri, if a person does not authorize the withholding or withdrawal of artificially-supplied nutrition and hydration (tube feeding, or ANH) in an DPAHC, that is not the same as requiring that ANH be provided in all circumstances. Section 404.820.1. The same principle governs any treatment: if it does not provide a medical benefit, including stabilizing a patient's condition, then it is not good medical practice to provide it, and it may be terminated. Section 404.822.

D. RECOMMENDED FORMS. Pro-life people may consider the form of Missouri Durable Power of Attorney for Health Care that Missouri Right to Life will make available online for downloading (home page: www.missourilife.org). It does not use a "check off" system but a set of principles for one's Health Care Agent to follow in making health care decisions for a patient. Instructions accompany the form. Other pro-life organizations have forms that they recommend, too. A person has to make a judgment on which form, if any, will best suit his or her own situation. If persons have an attorney draft an DPAHC, they should be careful not to surrender their pro-life principles in the text of the document. A good lawyer shoujld accommodate the pro-life and/or religious beliefs of clients and not discourage them when he or she drafts an DPAHC document.

II. THE STANDARDS FOR HEALTH-CARE AGENTS TO FOLLOW IN MAKING DECISIONS

The health-care agent should be educated on how to carry out the responsibilities contained in the DPAHC.

First, when admitting a patient to an institution, the agent should provide a copy of the DPAHC to the institution so that the institution knows what it contains.

Second, when the time comes to make a decision about medical treatment, an agent should take following steps:

(1) Obtain as much information from the medical professionals as is possible on the patient's current condition (diagnosis) and probable progression (prognosis).

(2) Obtain as much information as possible on what exactly the treatment is expected to do for the patient, e.g. reduce fever and/or infection? zap cancer cells?

(3) Also obtain information on side effects, risks, and burdens.

(4) Does the treatment itself accelerate death? No one may choose a course of action or inaction with the intent to cause death. Section 404.820.2. However, the agent may choose pain control measures that have the secondary effect of reducing a patient's bodily defenses that stave off death, so long as accelerating death is not the real goal.

(5) Armed with the information obtained as outlined above, and after reviewing the directives of the patient in the DPAHC, the agent will then make his or her judgment call about what the appropriate course of treatment should be.

(6) One can foresee that a health-care agent may need to fight energetically for adherence to the pro-life directives of an DPAHC. He or she will be greatly assisted by having the patient's directives in writing, because then he or she can point to the document and correctly say there is no choice under the principles specified in the DPAHC.