Living Wills—Biblical and Other Considerations

A general discussion between an attorney and a client about “end-of-life” issues does not go far enough when the client is a person of faith. Without attempting to cover the waterfront of different faiths, I will offer some considerations gleaned from the Christian Bible (which includes the Jewish Bible).

“Non-faith” discussions generally involve discussions of comfort, quality of life, relieving stress on surrounding family members and, of course, economics. We are still close enough in time to remember the highly publicized Florida scenario involving the litigious case of Terri Schiavo. Some folks to this day identify with Terri’s husband, who claimed to know Terri’s desire that her life not be sustained artificially, including artificial nutrition and hydration. Others identify with Terri’s parents, who insisted that Terri would want all available means of life support to be utilized until certain death had occurred notwithstanding such support.

The struggle was multi-faceted, but it resulted primarily from Terri’s lack of proper “life plan” documents in effect when she became incapacitated at the young age of 26. Some good which came out of that struggle, however, was that many people, including state legislatures, took a fresh look at previously existing, very basic, end-of-life provisions in various types of medical directives and chose to make changes intended to add clarity about when...or not...to “pull the plug.” Some say that the statutorily formatted changes went too far and made death too easy.

End-of-life considerations present, perhaps, the most difficult issues for the Christian client. To wrestle with practical questions, even from a Biblical perspective, of how much is enough; or how, when and to whom to dispose of property; or by whom and how to care for a living person is one thing. To wrestle with how and when to die, however, is quite another. Deciding about death (to the extent that we can) invokes spiritual issues more profound or conflicting than conventional stewardship issues associated with those other questions.

So, let’s see what the Bible says about life and death. It appears that God places a high value on human life. We read early that man was created in God’s own image. Genesis 1:27. We are formed by Him in our mother’s womb, skillfully wrought and foreseen in our substance while yet unformed. Psalm 139:13-16. For Christians, our body is the temple of the Holy Spirit and we are not our own, because we were bought at a price. 1 Corinthians 6:19-20. We are called to present our bodies a living sacrifice, holy, acceptable to God, which is our reasonable service. Romans 12:1.

Does this mean that we are entitled to live free from pain and suffering? That we deserve a “quality of life” that makes us happy or spares those around us from sadness? Consider the commentary of James Paul in “Advance Directives” [Christian Medical Fellowship, CMF Files, Issue 19 (2002)]:

“Advance directives may help people feel in control of their future. But Christians place their confidence in God rather than written documents. For them God is Lord of their lives, including the points of entry and exit. [Source footnote 9: Ecclesiastes 3:1-2, Job 14:5, Psalm 139:16] He is personally with us in our suffering, providing his strength and comfort. He can empathize with us fully, as God himself has experienced death when he was nailed to the cross. [Source footnote 10: John 19] But more than this, he can also bring good out of even the worst situations, just as he did when Jesus’ death brought new life to all those who follow him.”

However, the Apostle Paul, himself, was torn between his desire to depart the world to be with his Lord Jesus the Christ (Messiah) and his sense of need to remain for the benefit of the Philippians church.
Philippians 1: 23-24. In an April 2005 issue of the Christian Courier, Wayne Jackson comments about this balancing in this way:

“In difficult cases involving the Christian, the issue takes on another dimension. We may reflect: Where is our hope really focused? There is something to be said for quality of life; sometimes the best thing we can do for a loved one is to let him/her go home to be with the Lord (2 Corinthians 5:8). In my judgment, blessed release (Revelation 14:13) would be far better than electronically maintaining a brain-dead body for which there is no hope of recovery (if such is determined positively).”

While these are only a handful of verses among many others touching on the issue, can you begin to see the dilemma that Christians face, even when seeking guidance from Scripture?

Without significant spiritual discernment, using a “balancing approach” (i.e., sanctity of life vs. quality of life) can unwittingly end up tipping in favor of secular, bioethical efforts to implement anti-life morality in medical practices and public policy. One such effort has been named the Futile Care Theory, a belief that it is morally acceptable for a doctor to refuse to treat a patient if the doctor believes the patient does not or will not have an acceptable “quality of life.” Treatment withheld could include artificial nutrition and hydration, medications to cure infections or a fever, ventilator support or kidney dialysis. Furthermore, since its recent inception, the Futile Care Theory has been expanded to suggest that “reasonable treatment” for a patient should also take into account the “needs of other members of society.” (See Do No Harm: The Shifting Standard in Medicine by Mary Summa, J.D., in Family North Carolina Magazine, Summer 2010 ed.)

In suggesting the need for state legislation to protect the sanctity of human life, attorney Summa makes the following observation in her article:

“Living wills were enacted to protect loved ones from doctors who were trying to keep patients artificially alive on machines. Time has shown that it is almost impossible to predict every medical condition and adequately address them with a rigid set of directives. With the Futile Care Theory imbedded in many hospital protocols, living wills could be used to kill patients.”

As of June 2010, North Carolina has no statute affirmatively protecting a patient’s desire to live. In fact, the NC legislature in 2007 authorized Medical Order for Scope of Treatment (“MOST”) documents which may override a patient’s living will or health care power of attorney. While a MOST document requires the consent of the patient or the patient’s representative, the underlying statute also provides that a physician in a health care facility can issue a written order in accordance with acceptable medical practice and the facility's policies, even when contrary to the directives of the patient or the patient’s representative.iii

Although there may be some debate about maintaining or withholding medical equipment, or even life-prolonging medications, it seems that the most consternation surrounds the issue of nutrition and hydration.

God does not typically reverse natural laws which He, Himself, created. So, without food and water, death will inevitably occur...and relatively soon. Given that natural occurrence, some would say that to authorize the withdrawal of nutrition and hydration is a form of actual or assisted suicide or, at least, “playing God”.

In his address to the International Congress on “Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas” (March 20, 2004, Rome, Italy), Pope John Paul II (1920-2005)
proclaimed opposition to the withholding of nutrition and hydration from a patient who is in a vegetative state. And in the introduction to the encyclical Gospel of Life (Evangelium vitae), he admonishes every believer, as stewards of God’s gifts, to celebrate, value and guard the gift of human life:

Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart (cf. Romans 2:14-15) the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself are founded.

From this viewpoint, some clients have chosen language similar to the following for insertion into their Living Wills regarding the withholding of nutrition and hydration (applicable also to artificial means of life support):

Regarding artificially provided nutrition and hydration, it may be removed if it will allow me to die from an underlying condition, rather than unnecessarily prolonging my suffering. If my body is no longer able to process food and water and I will die from a disease or organ failure before starvation or dehydration could kill me, there is no moral obligation to provide nutrition and hydration. However, when the withdrawal of nutrition and hydration is intended to kill a person or will be the immediate, direct cause of doing so, quite apart from any disease or bodily failure, then I believe that withdrawing food and water would be an act of euthanasia, a grave sin against God.

We are all mortal. Barring the rapture (1 Thessalonians 4:16-17), we are all due to die. “The grass withers, the flower fades, because the breath of the Lord blows upon it; surely the people are grass. Surely, the grass withers, the flower fades, but the word of our God stands forever.” Isaiah 40:7-8.

Surely, we must plan for death. But we should do so prayerfully and reverently, not necessarily according to the “American way” of expedience or self-centeredness. This is why “model forms” found on the Internet or wherever, even when statutorily compliant, often fall short of addressing a client’s actual wishes, especially when the client has a Biblical worldview. Proper assistance for that client requires a competent estate planning attorney who also holds a Biblical worldview. The issues are simply too sensitive to be addressed otherwise.

---

1 Document prepared by Joseph H. Mitchiner, Attorney, Raleigh, NC

2 “In 1990, at the age of 26, Terri suffered a mysterious cardio-respiratory arrest for which no cause has ever been determined. She was diagnosed with hypoxic encephalopathy – neurological injury caused by lack of oxygen to the brain. Terri was placed on a ventilator, but was soon able to breathe on her own and maintain vital function. She remained in a severely compromised neurological state and was provided a PEG tube to ensure the safe delivery of nourishment and hydration. On March 31, 2005, Terri died of marked dehydration following more than 13 days without nutrition or hydration under the order of Circuit Court Judge, George W. Greer of the Pinellas-Pasco’s Sixth Judicial Court. Terri was 41.” Source: http://www.terrifight.org/pages.php?page_id=3
iii N.C.G.S. § 90-21.17(e): “This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR order or MOST not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.”