

## Reply to the Jesuit Consortium

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ew.jpg Earlier this year, seven directors of bioethics programs at Jesuit universities, calling themselves the Consortium of Jesuit Bioethics Programs, published in *Commonweal* a critique of papal teaching on the moral requirement to provide food and water to patients in the so-called persistent vegetative state (PVS). [1] Their aim is to influence the American bishops against amending the *Ethical and Religious Directives for Catholic Health Care Services (ERDs)* to bring the directives in line with the March 2004 teaching of Pope John Paul II on PVS. [2] The amendment will be considered at the bishops' June 2009 meeting.

Directive 58 of the *ERDs* states that "there should be a presumption in favor of providing nutrition and hydration to all patients . . . as long as this is of sufficient benefit to outweigh the burdens involved to the patient." [3] The reference to burdens to the patient is interpreted by the Consortium in light of the preceding directive, no. 57, which states that persons "may forgo extraordinary or disproportionate means of preserving life" and that "disproportionate means are those that in the patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or the community." [4] The Consortium concludes that a legitimate ground for deciding to forgo food and water according to the *ERDs* is excessive expense to the patient, family, or community. But this is not the case. Directive 58 speaks only of burdens "to the patient." It says nothing about broadening this to match the language about burdens on family and society found in directive 57.

Why not? Because the chief burden on family and society is cost—not necessarily cost of the feeding per se, but the total cost of caring for a person in a helpless state. But if *this* is the burden to be avoided, are we not intending the patient's death by removing food and water?

Much of the Consortium's subsequent argument rests on this erroneous move. The Consortium criticizes John Paul II's 2004 address for apparently depriving the patient of the liberty to decide against receiving food and water, and for rejecting excessive expense to patient, family, or community as a legitimate ground for judging a means disproportionate.

### The Unsettled Question

Before considering the papal teaching, a few words on the drafting of the *ERDs* are in order. During preparation of the fourth edition of the *ERDs* in 2001, whether providing food and water to patients in a PVS was morally obligatory or not was still an unsettled question in the minds of some Catholic theologians and health care workers. The Holy See had taught consistently since 1981 that feeding and hydrating sick patients was morally required, but had not yet explicitly applied that teaching to

patients in a PVS. A document published in 1992 by the Committee for Pro-Life Activities of the National Conference of Catholic Bishops, titled *Nutrition and Hydration: Moral and Pastoral Reflections*, called for a presumption in favor of assisted feeding for all patients who need it to survive, while stating that this presumption can sometimes be overridden by the risks and burdens of the feeding procedure. (This document was singled out for praise by John Paul II in an address on the occasion of the *ad limina* visit of some American Bishops to the Holy See in 1998.) It also warned against any removal of food and water from persons in the vegetative state based on a “quality of life” judgment about the value of their lives or on the cost of total care.

The bishops’ directive 58 teaches the presumption in favor of food and water for all patients; but since the presumption had not yet explicitly been extended to patients in a PVS by the Holy See, the bishops chose not to mention them. It is crucially important, however, to bear in mind that the 2001 *ERDs*, following the 1992 edition published by the National Conference of Catholic Bishops, call specific attention to the fact that the legitimacy of removing hydration and nutrition from patients in a PVS had not been resolved by the magisterium. The bishops understood that the norm they were teaching was provisional pending an authoritative judgment from the Holy See. In March 2004, John Paul II provided that judgment.

Specifically, the Pope said that providing food and water to patients in a PVS is morally required, even when doing so does not facilitate the patient’s recovery from the comatose condition. He refers to the common distinction between “ordinary and proportionate” means of care and “extraordinary and disproportionate” means, with the former always being morally required. Providing food and water should not be considered a medical act strictly speaking, but an ordinary and proportionate means of caring for disabled patients; the Pope calls them forms of basic health care to which every patient, no matter how disabled, has a right. The administration of nutrition and hydration is thus morally obligatory, provided that they remain useful for accomplishing their end, namely, to nourish the patient and preserve his or her life.

### **The Error of the Consortium’s Claims**

The Consortium states that directive 57 leaves to the patient the judgment whether means of life support should be considered extraordinary and disproportionate; the Pope’s teaching, however, by defining food and water as ordinary and proportionate care, takes the judgment out of the hands of the patient. The Consortium further claims (erroneously, as we’ve shown) that the directive identifies financial burden to the patient, family, or community as grounds for judging that a type of treatment is disproportionate while the papal teaching “seems to prohibit such considerations” in regard to patients in a PVS (*Commonweal*, 14). These two observations lead the Consortium to level two questionable criticisms against the papal teaching: first, that the Pope’s views “represent a departure from long-standing Roman Catholic bioethical traditions” (p. 13); second, that the Pope’s teaching is out of touch with medical and legal realities of U.S. health care because it insists that “society must allot sufficient resources for the care of this sort of frailty.” [5] The Consortium warns the bishops against “making hasty generalizations” from the papal teaching in regard to patients in the vegetative state (p. 15). Let us consider the soundness of these two criticisms.

First, is John Paul II's teaching a departure from traditional Catholic bioethical norms? No. It is consistent with what the Church has explicitly taught on the subject for the last thirty years. *The Declaration on Euthanasia* published in 1981 by the Congregation for the Doctrine of the Faith is the first contemporary document of the magisterium to address the removal of life-sustaining treatments. This document teaches that disproportionate means of medical treatment may be refused "so long as the normal care due to the sick person in similar cases is not interrupted." [6] A year later, the Pontifical Council *Cor Unum* gave an authoritative interpretation of the term "normal care," namely, that basic nourishment aimed at sustaining life is part of the normal care always due to a patient. To remove such care, it said, "would mean in effect willing the end of the patient's life." [7]

Three years later, John Paul II reaffirmed this judgment in an address to participants in an international course on human preleukemia.[8] In 1995, the Pontifical Council for Pastoral Assistance to Health Care Workers published its *Charter for Health Care Workers*, which states, "The administration of food and liquids, even artificially, is part of the normal treatment always due to the patient when this is not burdensome for him: their undue suspension could be real and properly so-called euthanasia." [9] And in October 1998, in an *ad limina* address to the bishops of California, Nevada, and Hawaii, John Paul II insisted that the "presumption should be in favor of providing medically assisted nutrition and hydration to all patients who need them." [10] Clearly, in affirming this same principle in relation to patients in a PVS in March 2004, the Pope was not departing from Roman Catholic bioethical tradition, but insisting on continuity in the face of continuing doubts.

But is the papal teaching out of touch with American medical and legal realities? The first ground for thinking so, according to the Consortium, is that the practice of providing artificial nutrition and hydration generally is viewed by health care professionals as a medical treatment (p. 14). In support of this the Consortium says that surgically introducing and maintaining a percutaneous endoscopic gastrostomy (PEG) tube can be quite complex. The wider conclusion which one is apparently meant to draw is that the Pope was misguided in saying that food and water are always ordinary and proportionate means of caring for patients in a PVS.

This misses the point of the papal teaching. The Pope's statement that feeding and hydrating disabled patients "always represents a natural means of preserving life, not a medical act" is not a judgment about the complexity of health care procedures. It is a normative judgment about the basic duties of persons to one another based on "the intrinsic value and personal dignity of every human being." [11] Feeding disabled people is not a medical *treatment*, even though a medical procedure may be required. It is a form of *care* owed to all persons, including patients in a PVS.

The second ground for thinking that the papal teaching is out of touch, according to the Consortium, is that tending a PEG tube, even at home, can cost \$9,000 to \$25,000 yearly, which for not a few families would be an excessive expense envisioned by directive 57 as grounds for judging a procedure is morally disproportionate and subject to being refused. Evidently one is meant to conclude from this that because the cost of a PEG tube can be excessive for some, removing or withholding *all* feeding and hydrating can be legitimate. But the conclusion does not follow. The papal teaching nowhere requires a specific form of nutrition and hydration, especially if expense

poses an unreasonable burden. *But it does forbid choosing to withhold all food and water when a patient needs them to survive and they do not impose undue burdens on that patient.*

### **The Church's Concern about Euthanasia**

The concern of the papal teaching is not to adjudicate among different means of feeding comatose patients. Its overriding concern, ignored by the Consortium, is to confront the growing problem of euthanasia by omission for patients in a PVS. But "death by starvation or dehydration is, in fact, the only possible outcome as a result of their withdrawal. In this sense it ends up becoming, if done knowingly and willingly, true and proper euthanasia by omission." [12] Removing food and water from a patient said to be in the "vegetative state" does not always carry out a choice to kill the patient, but those who intend to put an end to burdensome lives that food and water are sustaining sometimes do regard withdrawing them as the apt means to their homicidal end.

Besides failing to acknowledge the reasonableness of the Holy See's concern for euthanasia with patients in a PVS, the Consortium indicates its own concern that the papal teaching will extend beyond patients in a PVS to other cases of severe cognitive damage, such as patients with advanced Alzheimer's disease. As deterioration occurs and death becomes imminent, feeding is decreasingly useful to achieve its end of providing nourishment and supporting life. The Consortium says, "Catholics both within and without the health care system are left with uncertainty about how to apply John Paul II's allocution" (p. 14). But the teaching is quite clear: where food and water no longer attain their proper finality, they may be discontinued. But if they continue to serve their end of nourishing and sustaining life, the Holy See's teaching that assisted feeding is a part of normal care does not stop being true just because the patient's cognitive loss is due to something other than a PVS.

The Consortium makes no effort to address numerous other problems cited in the March 2004 papal address. These include the high number of diagnostic errors reported in the PVS literature; the fact that, in well-documented cases, patients in a PVS have experienced at least partial recovery, even after many years; the fact that medical science still does not understand many things about the vegetative state; and the fact that "the withdrawal of nutrition and hydration, as reported by authoritative studies, is the source of considerable suffering for the sick person." [13] Instead of addressing these concerns, the Consortium appears to have the narrow purpose of pressuring the U.S. bishops not to revise the *ERDs* in accord with the recent teaching of the Holy See. But if the *ERDs* lend themselves to justifying the removal of food and water from patients in a PVS, or any cognitively diminished patients, when the nutrition and hydration can still fulfill their proper finalities and can be administered without excessive burden to the patient, then the *ERDs* should be amended.

While the authors of this document believe that the *ERDs* are in basic compliance with John Paul II's teaching that is necessary to provide nutrition and hydration to all patients who are not imminently dying, this misinterpretation of the *ERDs* by the Consortium leads us to believe that perhaps some revision would be beneficial.

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#### Notes

1 Consortium of Jesuit Bioethics Programs, "Undue Burden? The Vatican and Artificial Nutrition and Hydration," *Commonweal* 136.3 (February 13, 2009).

2 U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed. (Washington, D.C.: USCCB, 2001), and John Paul II, Address to the participants in

the international congress on "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas" (March 20, 2004).

3 USCCB, Ethical and Religious Directives, n. 58.

4 Ibid., n. 57.

5 John Paul II, "Life-Sustaining Treatments and Vegetative State," n. 6.

6 Congregation for the Doctrine of the Faith, Declaration on Euthanasia (May 5, 1980), IV.

7 Pontifical Council Cor Unum, Questions of Ethics regarding the Fatally Ill and the Dying (June 27, 1981), [http://www.academiavita.org/template.jsp?sez=DocumentiMagistero&pag=pontifici\\_→consigli/mal\\_mor/mal\\_mor&lang=english](http://www.academiavita.org/template.jsp?sez=DocumentiMagistero&pag=pontifici_→consigli/mal_mor/mal_mor&lang=english).

8 John Paul II, Address to Students in the International Course on Human Preleukemia (November 15, 1995), n. 5, in AAS 78 (1995): 361.

9 Pontifical Council for Pastoral Assistance to Health Care Workers, Charter for Health Care Workers (Vatican City: Libreria Editrice Vaticana, 1995), n. 120.

10 John Paul II, Address to the bishops of the Episcopal Conference of the United States of America (California, Nevada, and Hawaii), (October 2, 1998), n. 4.

11 John Paul II, "Life-Sustaining Treatments and Vegetative State," n. 3.

12 Ibid., n. 4.

13 Ibid., nn. 2 and 5.

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