

# ETHICS & MEDICS

A Commentary of The National Catholic Bioethics Center on Health Care and the Life Sciences

## POLST AND MORAL HUMAN ACTS

Much has been written about and debated in Catholic media concerning the morality and utility of physician orders for life-sustaining treatment (POLST) forms. A very intense debate continues to escalate with differing conclusions about the propriety of their use. Those for and against POLST appear to be talking past each other, yet usually agree with the authority of the *Ethical and Religious Directives for Catholic Health Care Services (ERDs)*.<sup>1</sup>

### Assessing POLST through the Catechism

If we are to take the true measure of the *ERDs*, we must turn to the sources of its teachings. POLST must be analyzed from the perspective of how the magisterium teaches us to evaluate human acts. The *Catechism of the Catholic Church* teaches that the morality of human acts depends on the object, the intention, and the circumstances.<sup>2</sup> The disconnection between those who advocate for POLST and those who oppose its use turns on the fact that those who support POLST are focused on the potential “use” of the form as dispositive while the latter are focused on *how* one should go about making moral judgments regarding life-sustaining treatments. Advocates of POLST gloss over the POLST form’s complete independence from present circumstances, which are critical for properly evaluating the morality of one’s actions. Because of this independence from circumstances, the POLST paradigm is intrinsically flawed as a Catholic model for end-of-life decision making.

In Catholic moral theology, circumstances are dispositive and absolutely critical for determining the moral quiddity of an end-of-life treatment. For example, the *ERDs* state, “A person has a moral obligation to use ordinary or proportionate means of preserving his or her life. . . . A person may forgo extraordinary or disproportionate means of preserving life.”<sup>3</sup> Determining whether treatments are proportionate or disproportionate necessarily requires an analysis of the actual clinical condition of the patient in the particular circumstances. Hence, then, here is the crux of the POLST issue: circumstances can determine whether an act is morally sound or is euthanasia. A particular medical intervention could be either morally obligatory or morally optional depending on the medical circumstances. To risk the exclusion of contemporaneous circumstances at the end of life (as POLST does) is to risk everything that matters—the dignity of human life. This is surely what

the bishops of Wisconsin had in mind when they said, “Because we cannot predict the future, it is difficult to determine in advance whether specific medical treatments, from an ethical perspective, are absolutely necessary or optional. POLST oversimplifies these decisions and bears the real risk that an indication may be made on it to withhold a treatment that, in particular circumstances, might be an act of euthanasia.”<sup>4</sup> From a Catholic perspective, a morally sound decision regarding end-of-life care flows from informed consent in actual circumstances and actual medical conditions at that moment. POLST considers neither. Thus, the paradigm of POLST is intrinsically flawed. POLST is merely a form with selections of medical orders that make no reference to, and are not related to, any particular circumstances.<sup>5</sup> For example, POLST can be used in circumstances where the patient is not terminally ill, thus becoming a form of assisted suicide or euthanasia.

Those who suggest that POLST’s moral quiddity consists in how it is used (and not in the form itself) are making a category mistake, which causes them to dismiss the essential in favor of the accidental. They are posing and answering the wrong question. They would have us impute validity and integrity to POLST if responsible advance care planning and durable power of attorney occur antecedent (or *outside* of) POLST. That is a big “if.” From this, it appears that euthanasia advocates could champion the same POLST form for their ends that a Catholic hospital would attempt to use according to Church teaching.

However, euthanasia advocates cannot use a properly composed Catholic advance directive and durable power of attorney for euthanasia without violating the intrinsic nature of that paradigm. This elucidates the essential difference between the POLST and an advance directive with durable power of attorney. An advance directive with durable power of attorney for health care is an intrinsically sound Catholic model because it does not become operative until it is needed in terminal circumstances, and it provides general principles for the proxy agent.<sup>6</sup>

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The position of POLST advocates is similar to an assertion that a nuclear warhead is not dangerous in the hands of St. Francis of Assisi. While Francis is a saint, we can agree that he would affirm that nuclear weapons are extremely undesirable because of the indiscriminate nature of their killing and, thus, that it is imprudent and dangerous to have them around. So too with POLST, which is simply not needed for medical orders to be issued with proper patient-informed consent in the actual circumstances. POLST is a document of decisions without discussions; it is a conclusion without a premise.

### The Health Progress Article

Rev. Gerald Coleman and Margaret McLean's article in *Health Progress*, "POLST Supports Care in Context of ERDs," by Rev. Gerald Coleman and Margaret McLean, illustrates both the good will of many POLST advocates and how their reasoning is disconnected from the essential problem with POLST.<sup>7</sup> Both the title and the text of the article seek to consider POLST in the "context" of the ERDs and in the use of POLST. However, the proper context actually needs to be the *circumstances*, which bring the ERDs to life as applied in *this person's terminal illness at this time*. We agree that the ERDs are the applicable principles for end-of-life decision making, but as noted above, POLST does not support care in the context of the particular circumstances, and as a result, the ERDs will risk not being properly applied. POLST poses morally grave choices in a form that lacks any context. Let us review just a few excerpts from the article.

The article states, "A POLST form may have relieved Klein of some of the burden of real-time decision-making." To the contrary, real-time decision making is exactly what Catholic moral theology requires for end-of-life treatments. We should resist the temptation to make clarity and finality of decision an absolute trump card.

The article says POLST was "developed to translate advance directives into a physician's order."<sup>8</sup> Yet the POLST form does not require a completed advance directive or power of attorney as a prerequisite. Hence, POLST will often be used in lieu of an advance directive with durable power of attorney. The article continues, "POLST preparation is voluntary, and the form must be signed by both the physician and patient or . . . surrogate." It would not be surprising to see POLST become mandatory under government-managed health care and be used to ration limited universal health care resources. Also, POLST forms do not require patient or health agent signatures, thus violating true informed consent.

The article says the "form is recommended for use by people who have advanced chronic progressive illness."<sup>9</sup> Recommended for the terminally ill? Again, the authors seem content with the fact that the POLST form could be used by someone who is *not* terminally ill, which leads to decisions concerning do-not-resuscitate orders, assisted nutrition and hydration, and antibiotic treatment that could cause euthanasia.

The authors comment that "POLST, when properly used, is meant to address . . . treatment . . . in the here-

and-now context of terminal, life-limiting illness."<sup>10</sup> This simply is inaccurate. As explained already, POLST becomes binding immediately on completion. The problem is that the here-and-now condition at that moment of completion becomes the then-and-gone condition when a person becomes terminally ill and their pathologies and symptoms change and evolve, thus rendering the POLST order obsolete and dangerous.

At the end of the article, the authors express serious concern with current law, which "permits a legally authorized surrogate to override the previously expressed wishes of the patient, potentially undermining POLST."<sup>11</sup> Their recommendation is for the law to "be changed and surrogate override, in general, not permitted in Catholic facilities."<sup>12</sup> This position is profoundly erroneous for reasons already expressed. Such a position would thrust absolute patient autonomy above even a legally authorized surrogate (appointed by the patient to make decisions for them) in cases where the patient is incapacitated. Remarkably, the authors would subjugate the informed judgment of the health care surrogate in the immediate circumstances to a POLST form.<sup>13</sup>

In sum, the error intrinsic to POLST is that the POLST paradigm prescind from the actual circumstances and their evolution, which are indispensable for correct moral judgments at the end of life.

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<sup>1</sup>U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed. (Washington, DC: USCCB, 2009).

<sup>2</sup>*Catechism of the Catholic Church*, 2nd ed., trans. U.S. Conference of Catholic Bishops (Vatican: Libreria Editrice Vaticana, 2000), nn. 1749–1754.

<sup>3</sup>USCCB, *Ethical and Religious Directives*, nn. 56, 57.

<sup>4</sup>Wisconsin Catholic Conference, *Upholding the Dignity of Human Life* (Wisconsin Catholic Conference, 2012).

<sup>5</sup>These forms risk being used widely as the sole mechanism for discussions about a person's wishes regarding end of life treatments.

<sup>6</sup>Saying that an advance directive with durable power of attorney is intrinsically sound is not to say that it is perfect or that right decisions will always be made. Rather, it is to say that it is the best possible model for making moral judgments consistent with Catholic teaching. The POLST paradigm could also lead to right judgments, but as a model of decision making, it is intrinsically flawed.

<sup>7</sup>Gerald D. Coleman and Margaret R. McLean, "POLST Supports Care in Context of ERDs," *Health Progress* 93.6 (November–December 2012).

<sup>8</sup>*Ibid.*, 60, citing John Tuohey and Marian O. Hodges, "End of Life: POLST Reflects Patient Wishes, Clinical Reality," *Health Progress* 92.2 (March–April 2011).

<sup>9</sup>*Ibid.*, 61.

<sup>10</sup>*Ibid.*, 62.

<sup>11</sup>*Ibid.*, 63.

<sup>12</sup>*Ibid.*, 64.

<sup>13</sup>The potential conflict between POLST and advance directives with durable power of attorney is another important reason why the latter must be championed and the former rejected.

## MY LIVING “I LOVE YOU”

The Second Vatican Council, in *Gaudium et spes*, speaks of children as the “ultimate crown” and “supreme gift” of marriage.<sup>1</sup> Children are described in this way because marriage is a lofty calling to become a community of love, and children help a married couple to realize this call. While every married couple can attest that married life and parenthood can be trying at times, new life within marriage forms this community of love in a unique and precious way.

Influenced by years of working with married couples, Pope John Paul II observed that “in children [spouses] see the crowning of their own love for each other. They want children for the family, as a *priceless gift*.”<sup>2</sup> Here John Paul II offers an essential observation for a society that tends to see children and parenting as burdensome. His words mean that every child born of marital intercourse is a precious gift of love—a living “I love you.”

I have become fond, therefore, of describing my own children as my living “I love you.” They are quite literally the visible and permanent manifestation of the love my wife and I give to and receive from each other. The very lives of our children constantly proclaim, “I love you” to my bride, and when I see my children, I encounter my spouse’s love for me.

It is easy for new parents to think of their children in this way when they see a peacefully sleeping newborn. It is especially helpful to recall this truth when that same newborn is crying for the tenth time in the middle of the night. Through it all, as the living incarnation of the love shared between husband and wife, a child’s existence is a reminder that one’s love for one’s spouse must also be embodied, generous, and faithful.

Saint Paul’s description of marriage is rooted in the spousal relationship between Christ and His bride, the Church (Eph. 5:21–33). He exhorts husbands and wives to be mutually submissive out of reverence for Christ. He encourages each husband to love his bride as Christ loves his. Married couples are to love each other completely, humbly, and generously through a sincere gift of self.

### A Hindrance to Love

Married love seeks to be embodied through disinterested acts of love that mutually enrich spouses; there is no room for the ugly, the banal, the false. The daily goal of married life is to pursue that which is good, true, and beautiful for one’s spouse. A fundamental orientation toward this goal allows for the equal personal dignity of husband and wife to be “acknowledged by mutual and total love.”<sup>3</sup>

There is, therefore, no acceptable time in a marriage to intentionally hinder the call to make of oneself a complete

gift to the other. Intentional efforts to prevent a complete gift of self to the other contradict the lofty but realistic desire to become a sanctuary of life and love. Though love is bound to be imperfect in this life, every aspect of the relationship between spouses must reflect an openness to total love. Is it enough to love one’s spouse most of the time, partially, or “when it suits me”?

In the end, husbands and wives will be judged according to how faithful they have been to this vocation of selfless, life-giving love. A deepening intimacy in love between spouses in this life prepares them for union with God in the next. At the same time, steadfast commitment to God’s plan for marriage, including marital intercourse, fosters greater union and intimacy between spouses.

This vision of marriage and family is why an increasing number of married couples find contraception unattractive. A growing number of couples ardently desire what is sacred in their marital union, and they look to the Church for guidance.<sup>4</sup>

Contraception hinders the couple’s ability and responsibility to become that community of love that they long to be. Human acts by their very nature have definitive meaning built into them, and marital love “naturally tends towards fatherhood and motherhood.”<sup>5</sup> Marital intercourse is the kind of action that by its very nature is directed toward life and complete self-giving love. Since love is total self-gift and our current and future children are the visible manifestation of that self-gift, to withhold fertility, to place a barrier between us, to reject the fertility of one’s spouse would necessarily entail withholding oneself from and even rejecting the beloved.

The Church’s teaching concerning contraception is appealing because “fatherhood and motherhood are themselves a particular proof of love; they make it possible to discover love’s extension and original depth.”<sup>6</sup> This appreciation of children leads one to recognize that it only makes sense that each marital act be open to new life. Is not contraceptive intercourse a rejection of a potential living “I love you,” and therefore a rejection of my spouse and a withholding of my love? Every sexual act must be open to receive the supreme gift of marriage; to do otherwise is deliberately incomplete at best or self-centered at worst.

In short, sexual intercourse cannot truly be an act of love and cannot say “I love you” if a couple is opposed to the fruit of love. Contraception introduces a radical contradiction between what a couple desires by intercourse and the act that they choose. Contraceptive intercourse is incapable of the complete gift of self that married couples truly desire: “When the conjugal act is deprived of its inner truth because it is deprived artificially of its procreative capacity, it also ceases to be an act of love.”<sup>7</sup> When intercourse is contracepted, the “I love you” of marital union rings hollow because it is closed off from the fruit of love.

Just as children—the fruit of love—abide forever by virtue of their rational and immortal souls, true marital love must be open to permanence. John Paul II comments that the unity of spouses, “rather than closing them up in





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themselves, opens them towards a new life, towards a new person. As parents, they will be capable of giving life to a being like themselves, not only bone of their bones and flesh of their flesh (cf. Gen 2:23), but an image and likeness of God—a person.”<sup>8</sup> This person, the fruit of married love, is begotten as an overflow of love. Love is a choice, and to choose an action that says, “I reject the permanent manifestation of our love” would be a dire offense to a couple’s marriage.

### The Unwanted Child

If a woman conceives while using contraception, then it is believed that “something went wrong.” The child follows from the failure of a method of contraception that was deliberately used in an effort to prevent him or her from existing. The child of a contraceptive sexual act does not receive the lofty title of “precious gift” or living “I love you” like the child conceived through a chaste marital act, because the couple’s intercourse ceased to be an act of love: every deliberate effort was made to make sure that *this* sexual act could not bring forth his life.<sup>9</sup> This is precisely why popular culture describes such children as “unplanned” or “unwanted,” and such a pregnancy as an “accident.” Thus, millions of people believe that abortion is a fitting solution to their “unwanted pregnancies.” Thankfully, however, many couples who use contraception welcome a child into their family if the contraception fails. Nonetheless, the fact remains that the child is not conceived as a result of complete and free gift of self between spouses. Marital intercourse embraces the fruit of the marital act. Contracepted intercourse, even if the couple has good intentions, is the kind of action that is necessarily opposed to new life and to total love.

Couples who are considering contraception or who currently use it should consider what they welcome into their relationships by recourse to contraception. Every

spouse deserves self-gift from their beloved, and every child deserves to be the fruit of that love, willed by God *and* parents. Married couples are called to have a fundamental openness to any living “I love you” with which God chooses to bless them.

When my wife and I look at our sons or daughters and consider any future children, we know that they are the ultimate glory and supreme gift of our marriage and the very fruit of love. It is in their openness to children and in their children so conceived that husbands and wives share in the creative love of God and proclaim, “I love you” to each other all the days of their life.

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<sup>1</sup>“By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown. . . . Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents.” Vatican Council II, *Gaudium et spes* (December 7, 1965), nn. 48, 50.

<sup>2</sup>John Paul II, *Letter to Families* (February 2, 1994), n. 9, original emphasis. This beautiful appreciation of children expresses why the cross of infertility causes such great suffering. It also brings to the fore the responsibility Catholic researchers and hospitals have in securing ethical solutions for infertility.

<sup>3</sup>*Gaudium et spes*, n. 49.

<sup>4</sup>*Ibid.*, n. 47.

<sup>5</sup>*Letter to Families*, n. 7.

<sup>6</sup>*Ibid.*

<sup>7</sup>John Paul II, *Man and Woman He Created Them: A Theology of the Body* (Boston: Daughters of St. Paul, 2006), 123:6.

<sup>8</sup>*Letter to Families*, n. 8.

<sup>9</sup>Of course, every child is planned by God and made in his image and likeness. I address here the status of the child in relation to her parents.

