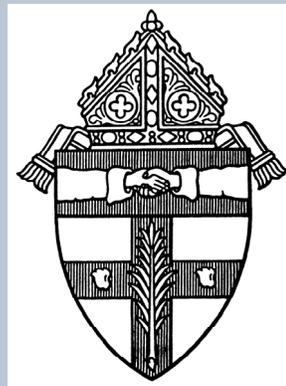
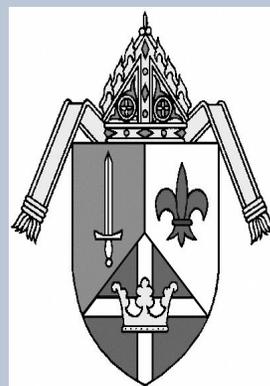
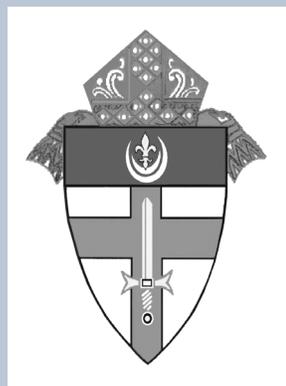
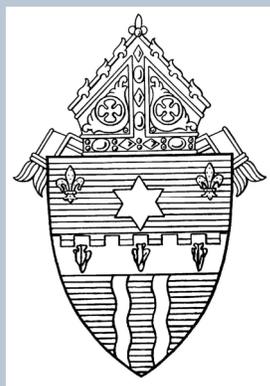


Kentucky's Advance Health Care Directives
And
Organ Donation:
A Catholic Perspective



Revised September 2005



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September 22, 2005

Dear People of God in the Commonwealth of Kentucky,

After careful review and in consultation with the appropriate committees of the Catholic Conference, we are publishing an updated edition of the guidelines on advance medical directives and end-of-life decisions.

Along with spiritual guidance on death and dying, this expanded document provides ethical principles in conformity with Roman Catholic moral teaching on facing end-of-life decisions.

Human life is sacred, the gift of a gracious God who loves each of us into existence and calls us to eternal life. We are stewards of life, not masters, for God is the Lord of life.

Since life on earth is not an ultimate reality, Christians live their earthly lives on the horizon of eternal life. In faith, death is not the end but a call from life to life, to eternal communion with God. In the liturgy, the Preface for Christian Death (I) strikingly proclaims this vision of faith: "Lord, for your faithful people, life is changed, not ended. When the body of our earthly dwelling lies in death we gain an everlasting dwelling place in heaven." (CCC n. 1012) The Paschal Mystery --- the Cross and Resurrection of Jesus --- assures us that death and suffering will not have the last word. There is life in the midst of death, for the saving love of God in the death and resurrection of Jesus is stronger than death.

Rooted in these convictions of faith, Christian spirituality has always integrated prayerful reflection on death, as well as responsible preparation for its inevitability in the context of faith, hope, and love. Such Christian realism is a sound dimension of Christian prayer and life. As the guidelines point out, since Catholic belief on the sanctity of life does not absolutize physical life in itself, death should be accepted as part of the human condition. In a word, death need not be avoided at all costs.

In this regard, the Catholic moral tradition has set forth principles and norms for making judgments concerning initiating, continuing, or withdrawing medical treatments and procedures. That tradition is clear that refusing or discontinuing ethically extraordinary or disproportionate means to prolong life is not the willful causing of death tantamount to euthanasia and assisted suicide. Issued in 1980 by the Congregation for the Doctrine of the Faith, the Declaration on Euthanasia states that such decisions should be considered "as an acceptance of the human condition, or a wish to avoid the application of a medical procedure disproportionate to the

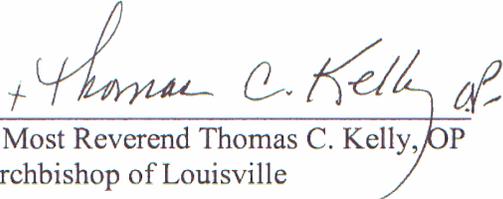
results that can be expected, or a desire not to impose excessive expense on the family or the community." This is a recognition that cure-oriented procedures can become non-beneficial or burdensome in the judgment of the patient. In any event, the duty to provide company, comfort, and care remains a sign of covenantal love with the sick and the dying and is not to be abandoned.

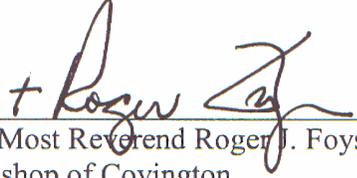
Confronting serious or terminal illness and deliberations about treatments can be stressful and confusing. The advances in hi-tech medicine and the rapid rise of an aging population are factors that can occasion intense dilemmas not only for patients but also for family and friends. In all cases, communication with loved ones, physicians, and health care providers before those times of crisis is of paramount importance for anticipating and preparing for crucial decisions. The execution of an advance directive can be helpful in that process of communication by clarifying a patient's religious beliefs, values, and intent in these matters. More specifically, a legally enacted advance medical directive can be supportive of the right of patients to make an informed decision to refuse or discontinue a medical procedure or therapy in future situations when they have lost decision making capacity.

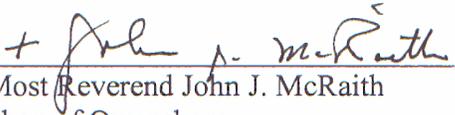
The Catholic Conference has consistently recommended the designation of a proxy decision-maker or health care surrogate as the preferable and more effective form of advance directive since a surrogate can be more responsive to the complexity of treatment options.

As pastors, we offer these considerations from Catholic teaching to serve as a basis for responsible stewardship of the gift of life and for supplying a morally appropriate and life-affirming context for decision-making in grave or terminal illness.

Yours in Christ,


+ Most Reverend Thomas C. Kelly, O.P.
Archbishop of Louisville


+ Most Reverend Roger J. Foys
Bishop of Covington


+ Most Reverend John J. McRaith
Bishop of Owensboro


+ Most Reverend Ronald W. Gainer
Bishop of Lexington

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Edward C. Monahan
Executive Director

Preface

In order to protect the rights of its citizens, Congress passed the Patient Self-Determination Act in 1991. This law makes it clear that you have the right to make decisions regarding your medical care including the right to accept or refuse treatment and the right to make an advance directive. The law also requires health care facilities/agencies to discuss advance health care directives with you as you enter their system.

It is advisable to make these health care decisions at a time when you are competent to do so. Making such health care decisions can become confusing for an individual. Technology is available that can respond effectively in many life-threatening situations. Sometimes this same technology that is intended to assist in restoring a person to health can become a mechanism that prolongs the very dying process.

Many seriously ill persons are not competent to make decisions about their care. For this reason many states have passed laws that encourage advance health care directives. By means of such a document, you are able to determine now about the kind of treatment you wish to receive should you become incompetent to make those determinations at the time of your illness. Kentucky passed such legislation in 1990 and refined these laws in 1994, 1998 and 2004. The intent of the laws, as stated within, is to allow adults to delegate the right that is properly theirs to a designated surrogate to make health care decisions. The law does not intend to encourage or discourage any particular health care treatment or to legalize euthanasia, suicide or assisted suicide. Because this is a very serious matter, the Catholic Conference of Kentucky has developed this booklet to offer you guidance from the authentic teachings and traditions of the Catholic faith.

Advance Health Care Directives

With the passage in Kentucky of The Living Will Directive and Health Care Surrogate Designation of 1994, you have two options in preparing your Advance Health Care document. Either decision can be accommodated in a single form created by the General Assembly. The Living Will Directive enables you to make your wishes known regarding life-prolonging treatment in advance of the time when you are no longer able to participate actively in decisions concerning your medical care. The Health Care Surrogate Designation provides the same powers as does the Living Will Directive but, in addition, allows you to designate one or more persons to serve as "surrogate," such as a family member or close friend, to make health care decisions for you if you lose the ability to decide for yourself in the future. This is done by designating a "health care surrogate." A person designating a surrogate is known as a "grantor" under the law.

You...

1. have the right to make all of your own health care decisions so long as you retain the capacity to make decisions. The Advance Health Care Directive only becomes effective should you become incapacitated through illness or accident.
 2. have the right to challenge your doctor's determination that you are unable to make your own medical decisions.
 3. can give special instructions about your medical treatment to your surrogate and can forbid that surrogate to make certain treatment decisions. You must communicate your wishes, values, religious beliefs, and instructions to your
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surrogate so that the surrogate will be able to act appropriately on your behalf if you become unable to make medical decisions at a later date. Specific instructions about any treatment/procedures which you desire under specified conditions can be written in your surrogate designation.

4. have the right to sign a directive without designating a surrogate. In this case the attending physician is required to follow the directions for care that you state in your Living Will Directive.
5. may revoke your Advance Directive document and the appointment of your surrogate at any time while competent.
6. may NOT designate as your surrogate, at the time of or subsequent to admission, an employee, owner, director or officer of any health care facility or agency where you, as grantor, reside or are treated, unless that person is a member of the same religious order or is a blood relative within the fourth degree to the grantor.

Options to Consider When Preparing an Advance Directive

The basic difference between a Living Will Directive and a Health Care Surrogate Designation rests in the fact that:

1. the determinations you make in a Living Will Directive will be carried out according to your written statements by the health care provider who cares for you at the time you are unable to make your own decisions. This may or may not be a person you know.
2. the determinations you make in a Health Care Surrogate Designation will be carried out by the person or persons you specifically select to act on your behalf. The Health Care Surrogate Designation allows for decisions to be made in light of the existing circumstances which you perhaps could not foresee at the time you create your Advance Health Care Directive.
3. Catholics are encouraged to use the surrogate designation approach because it involves personal interaction, first between the grantor and the surrogate(s), and later between the surrogate(s) and the health care providers. The fact is, however, that some people may not have family members or friends who are able or willing to become surrogates for the patient. In those cases, the Living Will Directive may be helpful in providing direction relative to the patient's wishes regarding care in terminal illness.

Your Surrogate...

1. can begin making decisions for you only when your doctor determines that you are no longer able to make health care decisions for yourself.
 2. may make any and all health care decisions for you within the boundaries of reasonableness, including treatments for physical and mental conditions and decisions regarding life-sustaining procedures . . . UNLESS you limit the power of your surrogate.
 3. subject to certain exceptions in the law, will have power to authorize the withholding or withdrawal of life-prolonging treatment and decisions about the artificial provision of nutrition and hydration (feeding tubes).
 4. is protected from legal liability when acting in good faith.
 5. must make a decision based on your expressed wishes and values or your "best interests"; this will take precedence over other decisions, regardless of family relationships.
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6. may have his or her decision challenged if your family, health care provider or close friend believes the surrogate is acting in bad faith or is not acting in accord with your wishes and religious/moral beliefs.

Your Health Providers...

Neither your health professional nor your health care facility or agency is required to honor your surrogate's decision if it is contrary to their religious beliefs or sincerely held moral convictions. In such event, they may not prevent or impede your transfer to another facility/health professional willing to honor your surrogate's decision.

Both your health care professional and health care facility or agency are protected from legal liability when acting in good faith.

Considerations from Catholic Teaching

Roman Catholic teaching celebrates life as a gift of a loving God and respects each human life because each is made in the image and likeness of God.¹

It is consistent with church teaching that each person has the right to make his or her own health care decisions.² Further, a person's family or others may have to assume that responsibility for someone who has become incapable of making these decisions.² Accordingly, it is morally acceptable to designate health care surrogates, as long as they conform to the teachings and traditions of the Catholic faith. In this regard, the Catechism of the Catholic Church notes that decisions to discontinue medical procedures "should be made by the patient if he is competent and able or, if not, by those legally entitled to act for the patient, whose reasonable will and legitimate interests must always be respected." (CCC n. 2278).

While the health care surrogate law allows us to designate someone to make health care decisions for us, life is a sacred trust over which we have been given stewardship. We have a duty to preserve it, while recognizing that we have no unlimited power over it. Therefore, the Church encourages us to keep the following considerations in mind if we decide to develop a document creating a living will or designating a health care surrogate.

1. As Christians, we believe that our physical life is sacred and that our ultimate goal is everlasting life with God. Therefore, we should accept death as a part of the human condition. Death need not be avoided at all costs.
 2. Moreover, ". . . suffering is a fact of human life, and has a special significance for the Christian as an opportunity to share in Christ's redemptive suffering. Nevertheless, there is nothing wrong in trying to relieve someone's suffering as long as this does not interfere with other moral and religious duties. For example, it is permissible in the case of terminal illness to use pain killers which carry the risk of shortening life, so long as the intent is to relieve pain effectively rather than to cause death."³
 3. "Euthanasia in the strict sense is understood to be an action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering. Euthanasia's terms of reference, therefore, are to be found in the intention of the will and in the methods used."⁴
 4. Everyone has the duty to care for his or her own health and to seek necessary medical care from others, but this does not mean that all possible remedies must be used in all circumstances. One is not obliged to use 'extraordinary' means, that is, means which offer no reasonable hope of benefit or which involve excessive hardship."⁵ Decisions regarding treatment or refusal of treatment should be made in accordance with the principle that there should be some reasonable proportion between the benefit of the treatment and the bur
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den (e.g. pain, risk, cost) it imposes on the patient.⁶

In the light of the moral tradition of the Church, the Vatican Declaration on Euthanasia (1980) sets forth key concepts for guiding end-of-life decisions --- proportionate ("ordinary") and disproportionate ("extraordinary") means to preserve life. In explaining the traditional norm based on the principle of benefit and burden, namely, that it is not obligatory to use disproportionate means to preserve life, the Declaration states:

... it will be possible to make a correct judgment as to the means by studying the type of treatment to be used, its degree of complexity or risk, its cost and the possibilities of using it, and comparing these elements with the result that can be expected, taking into account the state of the sick person and his or her physical or moral resources.

Moreover, the Declaration observes that a procedure which carries a risk or is burdensome cannot be imposed on a patient even if it is already in use.

According to the Declaration, a refusal of disproportionate treatment ought not be viewed as "the equivalent of suicide." Rather, such decisions should be "considered as an acceptance of the human condition, or a wish to avoid the application of a medical procedure disproportionate to the results that can be expected, or a desire not to impose excessive expense on the family or the community." (Jura et Bona, IV - "Due Proportion in the Use of Remedies.")

Consistent with that traditional moral teaching, the United States Conference of Catholic Bishops issued appropriate guidelines in the current edition of the Ethical and Religious Directives for Catholic Health Services (ERDs) in 2001. The ERDs formulate the following moral guidelines concerning the obligatory or optional nature of treatments to preserve one's life:

Directive n. 56 - A person has a moral obligation to use ordinary or proportionate means of preserving his or her life. Proportionate means are those that in the judgment of the patient offer a reasonable hope of benefit and do not entail an excessive burden or impose excessive expense on the family or the community.

Directive n. 57 - A person may forgo extraordinary or disproportionate means of preserving life. 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 community. The ethical concepts of "benefit" and "burden" are patient-centered, not treatment-centered, and are applied on a case-by-case basis.

5. No surrogate is authorized to deny comfort care which every patient can rightfully expect, such as appropriate food, water, bed rest, room temperature and hygiene. (See Catechism of the Catholic Church n. 2279).
6. The patient's condition, however, may affect the moral obligation of providing artificial nutrition and hydration. Factors that should be weighed in making this judgment include: the patient's ability to assimilate the artificially provided nutrition and hydration, the imminence of death and the burden of the procedures for the patient.⁷

Directive n. 58 of the Ethical and Religious Directives for Catholic Health Services sums up the official teaching of the Church regarding the provision of artificial nutrition and hydration (AN/H):

There should be a presumption in favor of providing nutrition and hydration to all patients, including those who require medically as-

sisted nutrition and hydration, as long as this is of sufficient benefit to outweigh the burdens involved to the patient.

The Pro-Life Activities Committee of the United States Conference of Catholic Bishops proposed several ethical duties entailed in this complex medical-moral question of provision of AN/H:

- 1) a rejection of "any omission of N/H intended to cause a patient's death";
- 2) establishment of "a presumption in favor of providing medically assisted nutrition and hydration to patients who need it, which presumption would yield in cases where such procedures have no medically reasonable hope of sustaining life or pose excessive risks or burdens." (See USCCB Committee for Pro-Life Activities, "Nutrition and Hydration: Moral and Pastoral Reflections," 1992).

The principle of burden and benefit allows judgments, in case by case situations, that AN/H are not morally required.

Decisions about AN/H and obligations to patients in a persistent vegetative state (PVS) [post-coma unresponsiveness] are of special moral concern. In March 2004, Pope John Paul II delivered a speech on the issue of artificial nutrition and hydration at a conference on patients in a condition diagnosed as a persistent vegetative state. The Holy Father stated that for patients in this condition AN/H should be regarded "in principle, ordinary and proportionate, and as such, morally obligatory, insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment to the patient and the alleviation of his suffering."

Accordingly, the assessment of AN/H as being "in principle, ordinary and proportionate" grounds a presumption in favor of providing AN/H except when death is imminent or the patient is unable to assimilate the AN/H, or the procedure is unduly burdensome for the patient. Decisions to discontinue AN/H because the life of a patient in this condition is judged not to be of value or in order to cause the death of the patient intentionally are morally wrong.

In effect, morally justified decisions to discontinue treatment entail an intention to remove a burdensome or non beneficial procedure, not the death of a patient. In all cases, palliative or comfort care is always in order. (See November 12, 2004 address of Pope John Paul II to the Pontifical Council for Pastoral Care).

7. Life-sustaining treatment must be maintained for a pregnant patient if continued treatment may benefit her unborn child.⁸

Such principles and guidelines from our Christian heritage should guide Catholics and others as they strive to make responsible health care decisions and designate health care surrogates. These Christian principles and guidelines should also guide Catholic health care facilities and providers in deciding when to accept and when to refuse to honor a surrogate's decision.

Practical Considerations for Those Choosing to Designate a Surrogate

1. When possible, prior to or upon entering a health care institution, you should request a copy of the facility's principles and policies related to advance medical directions.
 2. Both you and your surrogate are encouraged to seek sound pastoral guidance before making decisions about life-sustaining treatment. Discuss your questions and beliefs with your pastor or other spiritual advisor.
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3. Be prepared to present your advance directives when you enter a health care system. If their policies or principles indicate that they refuse to comply with your advance directive, they are responsible to inform you immediately of the refusal and allow you to transfer to another health care system.
4. Discuss your choices and the reasons for these choices and share copies of your Living Will Directive or Health Care Surrogate Directive with your doctor, your surrogate (if one is named), family members, close friends, your pastor, or anyone else who should be aware of your wishes.
5. As stated above, Catholics are encouraged, where possible, to name a surrogate or surrogates because it involves personal interaction, first between the grantor and the surrogate(s), and later between the surrogate(s) and the healthcare providers.

Endnotes:

¹See the Encyclical *Evangelium Vitae (The Gospel of Life)* of Pope John Paul II, March 25, 1995

²See *Declaration on Euthanasia*, Sacred Congregation for the Doctrine of the Faith, May 5, 1980, n.IV

³Guidelines for *Legislation on Life-Sustaining Treatment*. National Conference of Catholic Bishops Administrative Committee, November 10, 1984. Also *Evangelium Vitae*, #65, 2.

⁴*Evangelium Vitae*, #65, 2. See also the Catechism of the Catholic Church nn. 2276-2279.

⁵Guidelines for *Legislation on Life-Sustaining Treatment*. National Conference of Catholic Bishops Administrative Committee, November 10, 1984

⁶*Evangelium Vitae*, #65, 2

7. Ibid.

⁸Guidelines for *Legislation on Life-Sustaining Treatment*. National Conference of Catholic Bishops Administrative Committee, November 10, 1984

The following form is based on the form set out in the Kentucky statute KRS 311.625 but with some changes to that form. In using the form that follows you may be restricting some decisions by your surrogate more than state or federal law require. You may want to seek ethical or legal advice.

Living Will Directive and Health Care Surrogate Designation

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, and have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below.

I designate _____ (name of surrogate) as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity.

If _____ (surrogate named above) refuses or is not able to act for me, I designate _____ (name of alternate surrogate) as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below.

Life-Prolonging Treatment (check only one)

A. _____ (check and initial, if desired) I direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain; or

B. _____ (check and initial, if desired) I DO NOT authorize that life-prolonging treatment be withheld or withdrawn. (Note: Do not check and initial both Section A and Section B.)

Artificial Nutrition and Hydration (check only one)

C. _____ (check and initial, if desired) I authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids; or,

D. _____ (check and initial, if desired) I DO NOT authorize the withholding of artificially provided food, water, or other artificially provided nourishment or fluids; or,

E. _____ (check and initial, if desired) I authorize my surrogate, designated above, to withhold or withdraw artificially provided food, water, or other artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

My Health Care Surrogate is authorized to receive protected information under the Health Insurance Portability and Accountability Act of 1996 (HIPPA), and to authorize the disclosure and use of my protected health information as provided in 45 CFR Part 164, to the greatest extent allowed by federal law. It is my intent for my health Care Surrogate to be considered my personal representative under 45 CFR 164.502(g), and, therefore, my Health Care Surrogate will be treated as I would be with respect to my rights regarding the use and disclosure of my protected health information or other medical records.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this _____ day of _____, 20____.

Signature of Grantor:

Print Name:

Address:

In our joint presence, the grantor, who is of sound mind and eighteen years of age or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

Signature of witness

Signature of witness

Print Name

Print Name

Address

Address

-OR-

State of Kentucky, _____ County

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age or older, and acknowledged that he or she voluntarily dated and signed this writing or directed it to be dated and signed as above.

Done this _____ day of _____, 20____

Signature of Notary Public

Date commission expires:

NOTE: Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney.

Organ Donation: The Gift of Life

Pope John Paul II, writing in *Evangelium Vitae*, suggested that one way of nurturing a genuine culture of life "is the donation of organs, performed in an ethically acceptable manner, with a view to offering a chance of health and even of life itself to the sick who sometimes have no other hope." (No. 86). Organ donation constitutes an act of charity by which donors make it possible for recipients to continue their earthly life while they themselves receive the reward promised to the generous.

The Catechism of the Catholic Church, 2296 states: "Organ transplants are in conformity with the moral law if the physical and psychological dangers and risks to the donor are proportionate to the good that is sought for the recipient. Organ donation after death is a noble and meritorious act and is to be encouraged as an expression of generous solidarity. It is not morally acceptable if the donor or his proxy has not given explicit consent. Moreover, it is not morally admissible directly to bring about the disabling mutilation or death of a human being, even in order to delay the death of other persons."

In the hope that I may help others, I hereby make this anatomical gift for any purpose authorized under Kentucky law.

I give: (initial one choice)

(a) _____ any needed organs or tissues;

(b) _____ any of the following organs or tissues (*Specify the organ(s) or tissues*);

(c) _____ my body for anatomical study if needed.

Limitations or special wishes, if any:

Signed by the donor and the following witnesses in the presence of each other:

Signature of Donor and Date of Birth

Date Signed and City, State

Witness

Witness

The Catholic Conference of Kentucky offers this Advance Directive publication to include recent changes in Kentucky's law. This Advance Directive is acceptable for Catholics and conforms with Kentucky's law. The Roman Catholic Church in the State of Kentucky is committed to promoting Catholic values in the health care apostolate. The Catholic Conference of Kentucky reaffirms the Church's belief in the value of human life and the respect due to each individual person.