

## The CDF Principles

On February 17, 2014, Cardinal Gerhard Mueller, Prefect of the Congregation for the Doctrine of the Faith, responded to a question (a *dubium*) sent to the Congregation on April 15, 2013. The question had to do with whether a Catholic health care system could become a non-Catholic health care system. Cardinal Mueller did not directly respond to the question, stating that it was “framed around a particular set of circumstances to such a degree that it concerns more the application of moral principles to concrete situations and less an articulation or clarification of the operative moral principles.” Instead, the Congregation, in order to assist U.S. bishops in navigating collaborations and structures in Catholic health care, sent a document titled, *Some Principles for the Collaboration with Non-Catholic Entities in the Provision of Healthcare Services*, consisting of 17 principles.

Reaction to the principles has been varied. Some believe they offer nothing really new. Others believe that they go well beyond a traditional articulation of the principles governing cooperation with the wrongdoing of others and could raise challenges for Catholic health care in present and future partnerships. While CHA and the ministry are very interested in the meaning and implications of the principles, CHA is first awaiting clarification of the principles from the bishops.

## Jahi McMath and Brain Death

On December 12, 2013, physicians at Children’s Hospital in Oakland pronounced 13-year-old Jahi McMath brain dead as a result of profuse bleeding post-surgery for addressing her sleep apnea. Brain death was confirmed by several independent neurologic exams, but Jahi’s parents refused to accept that she had died. They went to court to prevent discontinuation of ventilator support. Per a court agreement, Jahi’s body was given to the family and, according to the family’s attorney, ventilator and nutritional support were provided to Jahi in an undisclosed location.

Several articles have since appeared in response to this situation. “Accepting Brain Death” by David Magnus et al appeared in the *New England Journal of Medicine* (370, no. 10 [March 6, 2014]: 891-894) and “Legal and Ethical Responsibilities Following Brain Death: The McMath and Munoz Cases” by Lawrence Gostin appeared in the *Journal of the American Medical Association* (311, no. 9 [March 5, 2014]: 903-904). Both articles describe the case (along with the Munoz case) and review the development of brain death criteria for determining that death has occurred. Both articles make salient observations.

Gostin points out that “once a patient has died, any conversation about the appropriate form of medical treatment is no longer relevant. This would mean, for example, that while Jahi’s mother could ask for ventilation for a short duration to

enable her to come to terms with her daughter's death, the very idea of 'treatment,' especially if it is of an indefinite duration, would be well beyond the bounds of prevailing ethical or legal thought" (904). The family's insistence on continued ventilation and artificial nutrition and hydration, and all that accompanies these, not only would have required physicians to violate their ethical responsibilities by treating a dead person, but also consumed resources that could have been used to provide effective treatment for other patients, according to Gostin. He concludes his short piece by observing that "at one level, the outcome of these cases seems so clear—both individuals have died and they have a right to a dignified burial; and the physician's ethical responsibilities to treat are finished. At another level, the sheer symbolism of a beating heart, together with the human emotions of a loving parent or spouse, suggest that these kinds of cases at the intersection of law, ethics, and medicine will continue" (904).

Magnus et al., after noting some opposition to the concept of brain death, reaffirm its validity. They write:

Given the brain's importance in determining who we are and its crucial role in driving the activity of bodily organs and systems, it is not surprising that loss of cortical and brain-stem function should be equated with death.

Seen in this light, the decision reached by the medical and particularly the neurology

community to articulate and promulgate the concept of brain death as the right place to draw the line between life and death is extremely reasonable. There are clear medical criteria that can be reliably and reproducibly utilized to determine that death has occurred. If professional standards are followed properly, there are no false positives. Brain-dead patients are clearly past the point of any possibility of recovery ... The law and ethics have long recognized that deferring to medical expertise regarding the diagnosis of brain death is the most reasonable way to manage the process of dying. Nothing in these two cases ought to change that stance (894).

A third analysis of the McMath case, "Jahi McMath and Determining Death," appeared in *Ethics and Medics* (39, no. 3 [March 2014]:3-4) and was authored by the ethicists of the National Catholic Bioethics Center. They too support the determination of death by neurological criteria. After quoting John Paul II's "Address to the 18<sup>th</sup> International Congress of the Transplantation Society" (August 29, 2000), they state: "The Catholic Church considers the application of these criteria to be a legitimate means of determining death and has always maintained that it is the competency of the medical profession to declare death" (4). Directive 62 of the *Ethical and Religious Directives* confirms this. At the point of declaration of death, "there would be no moral obligation for a hospital or physician to perform any

procedure on a corpse such as placing a feeding tube or trying to stabilize the bodily functions that are kept working using mechanical means ...” (4).

But as Magnus et al. point out, at one level, this is so clear, but at a human and emotional level what should be done becomes very difficult, and this is not likely to change no matter how clear are the concept of brain death and the criteria by which to determine that it has occurred.

### Ella

Several inquiries have come our way in recent months regarding the use of Ella for emergency contraception. In the next issue of HCEUSA, we will update our review of the literature on the drug’s mechanism of action.

### RH