



NCPD

NATIONAL CATHOLIC PARTNERSHIP ON DISABILITY

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February 20, 2012

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Hon. Peter A. Hammen
Chair, Committee on Health and Government Operations
Maryland House of Delegates
House Office Building, Room 241
6 Bladen St.
Annapolis, MD 21401

Re: H.B. 449

Dear Chairman Hammen:

I am emeritus professor of Constitutional Law at Temple University in Philadelphia and past chair of the National Catholic Partnership on Disability (NCPD). NCPD was established thirty years ago to implement the *Pastoral Statement on People with Disabilities* of the U.S. Catholic bishops. On behalf of NCPD, I write in response to H.B. 449, pending before the House Committee on Health and Government Operations.

H.B. 449 requires physicians to extract certain non-vital organs from patients in persistent vegetative states for donation to others at a surrogate, family member, or friend's request. It authorizes invasive surgery and removal of spare kidneys and liver parts with no benefit to the patient and without clear evidence of the patient's consent. Simply put, it treats "vegetative" patients like vegetation, authorizing harvest of their body parts solely for the benefit of others, thus violating the first demand of justice: That we should always treat persons as ends in themselves and never alone as means.¹ H.B. 449 is a bad bill that the Committee should emphatically reject.

First, H.B. 449 authorizes invasive surgery and extraction of organs without clear evidence of the patient's consent. Indeed, a surrogate need only allege that the "donation is consistent with the patient's relevant religious and moral beliefs and personal values."² Thus, by merely stating that the

¹ See Kant, Immanuel, *Fundamental Principles of the Metaphysics of Morals* Sec. II (1785) (Abbott translation), available at <http://philosophy.eserver.org/kant/metaphys-of-morals.txt> (accessed Feb. 13, 2012).

² It is unclear whether this authorization applies only to the patient's surrogate or to any person who can make health care decisions for the patient. See H.B. 449, § 5n605(2)(E)(3).

patient belongs to a denomination that approves such donations or is known for his charitable contributions, a health care agent could authorize surgical removal of one of a patient's two functioning kidneys or a lobe of the patient's liver.³ In addition, it cannot be gainsaid that invasive surgery and organ extraction solely for the benefit of another is not in the best interest of a patient who has not given consent.

The amendment prepared by the Department of Legislative Services would only make matters worse. It adds the additional requirement that "THE PERSON AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR THE PATIENT ... HAS REQUESTED THAT THE PATIENT'S ATTENDING PHYSICIAN WITHHOLD OR WITHDRAW LIFE-SUSTAINING PROCEDURES [.]". There is no requirement that such person elect to have life-support withheld or withdrawn prior to and independent of the donation decision, and no safeguards to ensure that such person is disinterested. There is further no reference to existing provisions of Maryland law governing anatomical gifts. As enacted later in time, the Amendment could affect a repeal of such provisions⁴ as applied to non-vital organ donations from PVS patients.⁵ Rather than requiring clear evidence of intent, the Amendment would have the patient made dead instead.

Third, by requiring physicians to extract body parts solely for the benefit of others, without clear evidence of the patient's consent, H.B. 449 forces physicians to violate their ethical duty "to place patients' welfare ... above obligations to other groups" and to hold "the best interests of the patient as paramount."⁶ Moreover, H.B. 449 may in fact require physicians to compromise the lives of such patients since renal infections are not uncommon with PVS patients whose remaining kidneys could consequently fail.

Fourth, by targeting PVS patients as candidates for invasive surgery and organ removal solely to benefit others, H.B. 449 singles out a class of persons, disabled under civil rights law,⁷ for adverse treatment. This could constitute illegal discrimination.

Finally, if passed, only legislative fiat would stand in the way of expanding H.B. 449 to cover those with serious dementia or similar cognitive impairments on the grounds that, like those in PVS, such patients "would hardly feel the loss."

³ Notably, "Existing data suggest that surrogates are only somewhat better than chance at predicting patients' wishes at the end of life." Wendler, D. & Emanuel, E., *Assessing the Ethical and Practical Wisdom of Surrogate Consent for Living Organ Donation*, J.A.M.A. Vol. 291, No. 6 (Feb. 11, 2004), available at <http://www.bioethics.nih.gov/publications/emwe.pdf> (accessed Feb. 17, 2012).

⁴ The median survival time of PVS patients is approximately 2-5 years. See *id.* Under the Maryland Revised Uniform Anatomical Gift Act, however, perspective organ donors are limited to individuals who are "dead or whose **death is imminent** [.]" Md. Code, Estates and Trusts, § 4-501(w)(1) (emphasis added).

⁵ Even if the Anatomical Gift Act were applicable, health care agents could bootstrap their way into compliance by having life-support withheld or withdrawn, thus rendering the patient's death immanent.

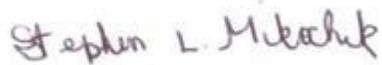
⁶ AMA Code of Medical Ethics, Op. 10.015 (Dec. 2001), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion10015.page> (accessed Feb. 13, 2012).

⁷ See Americans with Disabilities Act, 42 U.S.C. § 12102 (2009); HHS Regulations Implementing Section 504 of the Rehabilitation Act of 1973, 45 C.F.R. § 84.3(j) (2005).

Hon. Peter A. Hammen
February 20, 2012
Page 3

H.B. 449 literally enslaves a class of helpless patients by using them as living instruments solely for the benefit of others.⁸ By requiring removal of life-support before organs are harvested, the Department's amendment goes further and would render such patients lifeless commodities. On behalf of NCPD and the 14 million disabled Catholics it represents, I urge the Committee to reject H.B. 449 as a measure that has no place in a free and decent society.

Respectfully submitted,



Stephen L. Mikochik
Chair Emeritus
National Catholic Partnership on Disability

⁸ See Aristotle, *Politics* Bk. I, ch. 4 (350 b.c.) (Jowett translation), available at <http://philosophy.eserver.org/aristotle/politics.txt> (accessed Feb. 13, 2012).