ETHICS & MEDICS

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

ON-LINE PHYSICIAN-PATIENT CARE

We love our modern technologies—and what new technology has hooked us more quickly than e-mail? And yet, when e-mail is added to the complicated present-day physician/patient relationship, moral theologians in the Catholic tradition see ironies, contradictions, and caution flags. It all sounds so modern and efficient, so brave new world. What could be the problem?

Perhaps we can simplify our answer by using three broad lines of reasoning:

- First, and surely the least morally complicated issue, are the logistical kinks that need to be worked out.
- Second are the issues of confidentiality and privacy that are held sacred by both Catholic teaching and American traditions.
- Last, but most important, is the danger of further eroding the physician/patient relationship.

These serious concerns notwithstanding, the use of e-mail in medical treatment is very enticing to large segments of the population. According to a 2001 survey, only 13 percent of doctors use the Internet to communicate with patients, but many more hope to in the near future, if the security and privacy of e-mails are guaranteed.[1] A surprising number of patients—an astonishing 90 percent of those who use the Internet, according to one recent survey—would like to use e-mail to communicate with their physician, and many would even use this as a criterion in choosing a physician or health plan.[2]

And who can deny the compelling appeal of online communication? Some of the more obvious benefits of using e-mail are that it: saves time from telephone conversations; avoids telephone tag; provides more concise messages; can be answered at anytime; and preserves a record of the conversation. Using e-mail could also improve the patients' knowledge in issues regarding their health, because they can be referred to physician-approved web sites for additional educational information.[3]

The use of e-mail could also alleviate some of the difficult access issues that so often occur in the tangled web that is today's managed care system. It would allow the patient to be treated or have questions answered in a timely manner. For example, it has been used successfully in cases of diabetes management and in some pediatric practices.[4] Some physicians have even turned to a practice model based almost entirely on telephone and e-mail contact.[5] In one practice, a patient who was out of town used e-mail to notify the physician's office that he had an eye infection and included a digital photo. He was advised to see a medical office where he was located, as it was probably not something that could wait until he got home.[6] Conveniences such as these make a compelling argument that the use of e-mail would add to the overall efficiency of the physician's practice and therefore could have a positive influence on the patient's health.

Potential Pitfalls

So what's the problem? First, computer problems that include crashes, viruses, and spyware affect the overall success of using e-mail in general. There could also be problems with communication regarding diagnosis, and misinterpretations that can always occur with dialogue that is not immediately reciprocal. And there is also the concern of individuals who are not computer-proficient and would become disenfranchised and left behind. Given the fact that all new technologies are imperfect in some sense, e-mail should be able to find its appropriate place in the scheme of things. But then again, we cannot make light of these problems, because they all relate to the quality of patient care.

All of us as Americans believe that we have the right to privacy. While there is actually no specific constitutionally based right to privacy, the Supreme Court has inferred such a right in a number of decisions, and people now take it for granted. Witness the public outcry over the matter of whether banks and other companies have the right to sell your information to other entities.[7] With issues regarding health care and patient privacy, this right becomes more urgent, more problematic, and more personal. E-mail correspondence can survive forever and, if not transmitted on a secure server, can be viewed by anyone.

There is also a long medical tradition that respects patient confidentiality. The Hippocratic Oath states, "Whatever, in connection with my profession, or not in connec-

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ON-LINE PHYSICIAN-PATIENT CARE
THE FUTURE OF ELECTRONIC MEDICINE
Mary Sims, J.D., M.A.

THOUGHTS ON THE PAPAL ADDRESS & MANH
REFLECTIONS ON POST-COMA UNRESPONSIVENESS
Rev. Norman M. Ford, S.D.B., S.T.L., Ph.D.

tion with it, I may see or hear in the lives of men which ought not to be spoken abroad I will not divulge as reckoning that all should be kept secret." The American Medical Association's "Principles of Medical Ethics" concurs: "A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law."[8]

There are a number of laws that attempt to deal with this matter. Perhaps the most influential is the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which attempts to protect privacy in the electronic transactions used in the health-care industry.[9] The Standards for Privacy of Individually Identifiable Health Information (which implement the privacy requirements of HIPAA) took effect on April 14, 2001, and cover health plans, health-care clearinghouses, and those health-care providers who conduct certain financial and administrative transactions electronically.[10]

Physicians have also taken measures to police e-mails and other forms of communication, and there have been many articles which address the risks involved in using e-mail and ways to mitigate them.[11] The most comprehensive solution has been proposed by Medem, Inc., a company which markets systems of online secure messaging and consultation for physicians and their patients. At present, there are over 80,000 physicians who use Medem's services to ensure secure doctor-patient e-mails and to receive support from the Medem network.[12] In conjunction with the Cerner Corporation, they also have an arrangement to provide integrated online patient/physician services from both companies, ensuring privacy and confidentiality and thereby decreasing liability to the physician.[13] Other organizations, such as the American Medical Association and the American Medical Informatics Association, address the liability issue as well.

The most that can be said of these early efforts is that they are very much a work in progress. Probably the best we can hope for is that with a lot of hard work and a large dose of Jeffersonian "eternal vigilance," Americans will be able to have their medical privacy safeguarded. But even though confidentiality and privacy are important considerations and provide the framework for a relationship based on trust, they alone are not the most crucial issues regarding the healing connection between physician and patient.

Healing as a Vocation

Healing is always seen in the Catholic tradition as a vocation, one that is given by God to man to imitate Christ's healing mission. The commitment to help the sick is a covenant between physician and patient and should not be placed in jeopardy in order to save time or money or to operate a business more efficiently, particularly if such efforts devalue the dignity of the person. In addition, no form of communication should prevent an individual from receiving spiritual healing from his/her physician. Healing for the Christian is often more than bodily repair; it also embodies the hope that God does not leave us alone in suffering and that recovery can be accomplished in both body and spirit.

Part three of *The Ethical and Religious Directives for Catholic Health Care Services* also gives guidance here. Even though a patient may receive care from a team of providers, that does not weaken the duties of the individual physician, nor should it be allowed to undermine the relationship or separate it in any way. The patient relies on the expertise of the physician to make decisions regarding health and to act as a responsible steward of the patient's body. The focus is on the dignity of the human person, and there should be an interpersonal professional-patient bond which respects that core concern.[14] This bond comes about over time by a judicious combination of three elements: concern, knowledge, and skill in medicine and communication, which establishes trust in that relationship.[15] The bond will not come about if this communication is conducted disproportionately through e-mail, without safeguards, or does not maintain a sense of concern and commitment. Trust will prevail if it is always recognized that the Christian physician should be modeled after Christ: "This Christian attitude cannot be a matter of mere pious words; rather it is a profound dependence on God, who gives the physician and nurse the *inspiration, insight, and courage to carry out their work as professionally and as skillfully as possible.*"[16] Health care should never be like a business transaction that can be dealt with over the Internet, and compiled of "simply words"; it should take into consideration the physical and spiritual character of the person.

Health-care professionals in the Catholic moral tradition should give witness to Christ. The medical field has already been depersonalized to a great extent due to a number of factors, including specialization, elitism, financial interests, and the practices of HMOs and other managed-care organizations. The danger is that the overuse of e-mail, perhaps even to the exclusion of other types of communication, would further depersonalize it and relegate the healing professions to a purely business endeavor. As Ashley and O'Rourke have stated, "Certainly the technologies should educate their practitioners to be more sensitive to the human uses to which their product will be put. *This humanization of technology, however, will be hindered if industrial society continues the previous tendency of lumping the technologies and the person professions together under one name and to judge them all in terms of productivity.*"[17]

In the Catholic tradition, helping and healing the sick are not products, but services. Health issues are deeply personal and should be dealt with in a manner that is life giving and takes into account the dignity of the person, who is made in the image of God. The physician does this through appropriate attention, concern, presence, touch, responsiveness, care, and humility. "Whatever you did for one of these least brothers of mine, you did for me." (Mt 25:40).

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Notes

[1]Humphrey Taylor and Robert Leitman, eds., "New Data Show Internet, Website and E-mail Usage by Physicians All Increasing," *Health Care News* (newsletter by Harris Interactive) 1.8 (February 26, 2001): 1–2.

[2]Humphrey Taylor and Robert Leitman, eds., "Patient/Physician Online Communication: Many Patients Want It, Would Pay For It, and It Would Influence Their Choice of Doctors and Health Plans," *Health Care News* 2.8 (April 10, 2002): 1.

[3]Tom Ferguson, "Online Patient-Helpers and Physicians Working Together: A New Partnership for High Quality Health Care," *BMJ* 321 (November 4, 2000): 1129–1132.

[4]Betsy McKay, "Medem to Launch Service to Monitor Diabetes Online," *Wall Street Journal* (September 9, 2003); Pam Difiglio, "Why Can't You E-mail Your Doctor?" *The Daily Herald* (Arlington Heights, IL; August 4, 2003).

[5]Mike Norbut, "Doctor Redefines Visits with Phone, E-mail," *American Medical News* (October 20, 2003), www. ama-assn.org/amednews/2003/10/20/bil21020.htm.

[6]"Making the Most of Your E-time: How to Make Online Patient Communication Work for You," *Oncology net guide*, Breast Cancer Suppl. (July/August 2003), http://www.mdng.com/oncology/breastedition/Tech101_be.shtml.

[7]Linda Stern, "Is Orwell Your Banker?" *Newsweek* (April 8, 2002): 59.

[8]American Medical Association, "Principles of Medical Ethics," n. IV, http://www.ama-assn.org/ama/pub/category/print/2512.html.

[9]*Health Insurance Portability and Accountability Act of 1996*, Public Law 104-191, 104th Congr. (August 21, 1996).

[10]"Standards for Privacy of Individually Identifiable Health Information," 45 CFR, Parts 160 and 164, *Federal Register*, 67.59 (March 27, 2002).

[11]For example, see Dixie Baker, "Provider-Patient E-mail: With Benefits Come Risks," *Journal of AHIMA* 74.8 (September 2003): 22–29.

[12]Medem, Inc., "Medem-Cerner Agreement Delivers Online Consultation Income and New Patients to Physician Practices," press release, February 3, 2003, http://www.medem.com/press/press_medem inthenews_detail.cfm?ExtranetPress newsKey=149.

[13]Ibid.

[14]United States Conference of Catholic Bishops, *Ethical and Religious Health Care Directives for Catholic Health Care Services*, 4th ed., (2001), 17–22.

[15]Benedict M. Ashley and Kevin D. O'Rourke, *Health Care Ethics: A Theological Analysis*, 4th ed. (Washington, D.C.: Georgetown University Press, 1997), 94–95.

[16]Ibid., 81 (emphasis added).

[17]Ibid., 73 (emphasis added).

Thoughts on the Papal Address & MANH

The full text of the Pope's address to the International Congress on "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas"(March 20, 2004) has been published in part in *Ethics & Medics*.[1] It was meant to close the moral debate over the need to provide medically administered nutrition and hydration (MANH) to patients in a persistent vegetative state (PVS), also (better) called post-coma unresponsiveness (PCU). The central ethical passage reads as follows:

> I should like particularly to underline how the administration of water and food, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*. Its use, furthermore, should be considered, 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 alleviation of his suffering....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.[2]

Human life is a special divine gift of the Creator that enables human persons to exist in this world, including patients in a state of PCU. Indeed, life is a morally inviolable fundamental good which is necessary for human flourishing, without which we could not have other basic goods, such as knowledge, practical reasonableness, and friendship.[3] Referring to these goods, Pope John Paul II wrote:

> It is precisely these [goods] which are the contents of the natural law and hence that ordered complex of "personal goods" which serve the "good of the person": the good which is the person himself and his perfection. These are the goods safeguarded by the commandments.[4]

In his address, the Pope morally equates the deliberate withdrawal of MANH from patients in PCU with euthanasia by omission, because their death is the only result of its withdrawal. His address would have the same moral standing as comparable speeches of Pope Pius XII on bioethics in the 1950s.[5] Father Maurizio Faggioni, O.F.M., a theological expert on life issues and a consultor to the Vatican's Congregation for the Doctrine of the Faith, said this teaching is "authoritative without being definitive."[6]

Practical Implications

Patients in PCU are usually stable and not dying. They can survive for years if they are given MANH. They are persons with their own inherent dignity. They breathe spontaneously and should be given ordinary treatment and normal nursing care, including MANH. MANH is a means of sustaining their lives, and it may prevent suffering from hunger and thirst. Life should be preserved by the use of *ordinary and proportionate means* that are reasonably warranted in the circumstances. An exact translation of the Pope's address in Italian spells out precisely the limits of the moral obligation to provide MANH to patients in PCU. MANH is morally obligatory

> to the extent in which and as long as it is seen to be achieving its proper purpose [*nella misura in cui e fino a quando esso dimostra di raggiungere la sua finalità propria*], which in the present case consists in providing nourishment to the patient and alleviation of his suffering.[7]

Hence it would no longer be morally necessary to provide MANH if the patient is unable to assimilate it, or if it fails to alleviate suffering, or if it causes suffering. The insertion of a tube or a percutaneous endoscopic gastrostomy (PEG) is a medical procedure, subject to the normal criteria for medi-

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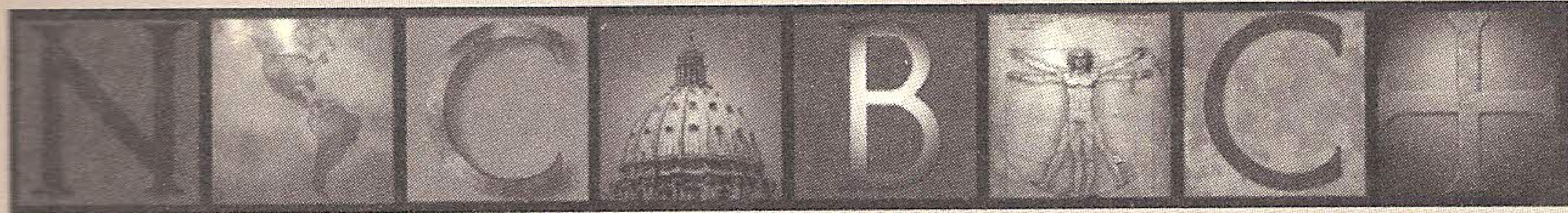

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cal intervention or treatment (although the feeding and its assimilation are natural acts).[8]

Bishop Elio Sgreccia, vice president of the Pontifical Academy for Life, put it well: "As long as nutrition and hydration are a support, as long as it is food and thirst-quenching drink that helps avoid suffering, it is obligatory."[9] These criteria also apply to other life-sustaining treatments. Thus, respect for the true good and inherent dignity of patients in PCU determines when MANH should be given to them and when it should cease. This position differs from that of advocates of euthanasia, who see no moral difference between withdrawing unwarranted MANH from patients in PCU and giving them a lethal injection.

The Pope's teaching applies *in principle*, but doctors and health-care providers still need to make clinical assessments to correctly determine when patients are being truly nourished and their sufferings alleviated, or when complications or other medical counter-indications arise. Regrettably, in some poor countries, facilities are lacking to provide MANH, but health professionals cannot be blamed for this.

The Pope's speech is directed specifically to the care of patients in PCU, but it would also apply in principle to other unconscious or incompetent patients who are not dying. It would not apply to fatal degenerative conditions when MANH only prolongs a painful dying process. Nor was his speech meant to modify the normal ethical practices of palliative care for patients as they approach death. Dying patients are known to lose appetite, and they should not be force-fed against their wishes, but they should always be kept comfortable by continuing normal palliative care.

Taking Positive Actions

The Pope also said, "it is necessary to promote the *taking of positive actions* as a stand against pressures to withdraw hydration and nutrition as a way to put an end to the lives of these patients."[10] Catholic health-care facilities need to heed this teaching and to implement it. The public should be made aware of the general policy of Catholic health-care facilities to continue MANH for patients in PCU. Careful attention will need to be given to situations in which Catholic hospital staff or patients' agents find they are in conscience unable to follow the Pope's teaching, especially if they are legally entitled to refuse MANH. Some legal agents may decide to transfer their patients elsewhere if their requests to cease MANH are not granted. Catholic ethicists should discuss with relevant doctors and care providers how to solve such future difficult problems that may arise in clinical practice.

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Notes

[1]John Paul II, "Papal Address on Food and Water: Excerpts from the March 20, 2004 Statement," *Ethics & Medics* 29.6 (June 2004): 1–2.

[2]Ibid., 1–2, n. 4. See also John Paul II, *Evangelium vitae* (March 25, 1995), n. 65.

[3]John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 85–97; John Finnis, *Fundamentals of Ethics* (Oxford: Clarendon Press, 1983), 50–53.

[4]John Paul II, *Veritatis splendor* (August 6, 1993), n. 79.

[5]For example, see Pius XII, "Address to an International Congress of Anesthesiologists," November 24, 1957, *The Pope Speaks* 4.4 (Spring 1958): 393–398.

[6]John Thavis, "Experts Say Pope's Speech on Feeding Tubes Settles Some Key Issues," *Catholic News Service*, April 7, 2004.

[7]John Paul II, "Papal Address on Food and Water," n. 4; author's translation of the original Italian text.

[8]Bishops Committee for Doctrine and Morals (Australia), Bishops Committee for Health Care (Australia), and Catholic Health Australia, "Briefing Note on the Obligation to Provide Nutrition and Hydration," Implications, n. 4, www.cha.org.au.

[9]John Thavis, "Experts Say Pope's Speech."

[10]John Paul II, "Papal Address on Food and Water," n. 6.

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