

## **SB 85 and HB 2307- Simon's Law - 2017 Kansas Legislature**

Testimony from the Center for Practical Bioethics

John G. Carney, President

Senate Hearing - Federal and State Affairs Committee, Thursday, February 16, 2017

### **Overall Concerns with [SB 85](#) and [HB2307](#)**

- 1. Subordinates the Sanctity of Life position to the Vitalist position**
- 2. Upsets the balance between clinician and parent by improperly assigning clinical responsibility for treatment efficacy to the parent and guardian for shared decision making.**
- 3. Adopts a legislative remedy to a problem that has no substantiation in Kansas.**
- 4. Overreaches - legislatively and judicially**

1. There are generally three positions used to describe the "good" associated with the furthering and protection of human life. They are:
  - a. Vitalist Position: Human life is viewed as a supreme value. We must never do anything to shorten it.
  - b. Sanctity or Sacredness Life Position: Life is viewed as an intrinsic good — a good no matter what form it takes. It is always wrong to intentionally end it.
  - c. Instrumental Position: Life is viewed as an instrumental good. It is good in so far as it allows for valuable experiences and relationships. When a life no longer has a minimum of quality to it, then it is permissible to end it.

The proposed legislation creates confusion as to whether the predominate and accepted sanctity of life view within traditional healthcare and most religious traditions is being subordinated to the Vitalist position because the measure uses only the criteria of imminent death or hastening of death as the mechanism for determining the value of life, or the "good" in protecting of human life. The valuing of human life as an absolute good prevents clinicians from exploring with parents and guardians the emotional and spiritual dimensions of care, the meaning of suffering and the burden of disease from the patient's individual perspective, within the wider human family and in contemplation of the purpose of an afterlife.. For example, the societal good that derives from organ and tissue donation is commonly dismissed when the Vitalist position is adopted.

2. Interferes the with practice of medicine and the clinician's and hospital's Duty of Care
  - a. Parents and guardians should always be involved in the treatment decisions for their children especially in the most difficult treatment decisions to prevent death, suffering and harm.
  - b. Parents and guardians should always be involved in setting and modifying the goals of care for their children, especially those who are most vulnerable.
  - c. The use of the term "written permission" and the written "revocation" of permission is problematic. Forcing parents to sign documents to follow a medical standard of care is cruel. In addition, "written" permissions and revocations in an environment that relies on electronic clinical documentation does not allow for effective care delivery.
  - d. The principle of protecting the sacredness and sanctity of life recognizes human life as a fundamental intrinsic good and the obligation of medicine to embrace that good. The physician's oath recognizes that obligation by vowing:
    - i. "I will apply, for the benefit of the sick, all measures [that] are required, avoiding those twin traps of overtreatment and therapeutic nihilism.