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Catholic Health Care Cooperation: Why Rewrite the Ethical and Religious Directives?

by

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For over six years, I have served as chair of the Archdiocese of Detroit's Committee for Health Care Ethics Representatives. In this short period of time, Cardinal Maida has asked me to review a half dozen proposals for cooperative mergers involving Catholic health care systems. For this reason alone, the current discussion in the National Conference of Catholic Bishops on proposed changes to their 1995 *Ethical and Religious Directives for Catholic Health Care Services* is of major interest to me. The bishops' discussion seeks to clarify the moral principles involving formal and material cooperation with immoral activities relative to specific instances where those principles apply to such institutional cooperative ventures as the ones I have been asked to study and evaluate.

In recent years, the cost of health care has skyrocketed as health care systems have tried to contain costs and curtailing services. The creation of HMOs was aimed at cutting costs. The government, too, has put pressure on the health care market by limiting the number and amount of care it would reimburse. The result has been that individual health care systems have looked for other institutions to form cooperative relationships. Ventures have sometimes involved: 1) two Catholic institutions; 2) a Catholic and another denominational institution; or 3) a Catholic and a non-denominational (secular) institution. In almost every instance, the arrangements are unique with regard to board policy participation, assets, administrative structure, revenue sharing and the like. The details are complex. Often legally binding obligations are incurred.

Yet there are also far-reaching moral obligations that arise as well. The most common are sterilization and other contraceptive services offered by a non-Catholic partner. Can a Catholic health system be morally justified to enter into such a partnership? If so, what are the conditions that would ensure its moral justification? It is here that traditional Catholic principles of cooperation are invoked. However, it must be said from the outset that the present contemporary situation does not reflect the "traditional" moral circumstances under which those Catholic principles have hitherto been applied. Allow me to explain.

I might be aware that a close friend of mine is in dire financial difficulty. He comes to me and tells me that he has decided to rob a bank and asks if I would lend him a gun to do so. Agreeing to his request constitutes formal cooperation. But, given another scenario, the friend doesn't tell me his intentions, though I suspect in his desperation he may use the gun to do some harm. My cooperation would also be wrong. (The same could be said of a bartender who sells additional drinks to an inebriated client knowing that he plans to drive home.)

Formal cooperation is any form of assisting, advising or counseling that would directly cooperate in intending an immoral action. Material cooperation refers to any form of assisting, advising or counseling that seeks the good that is being done from an action and only indirectly the evil, which evil the cooperator would prevent if he could. In this case, the person does not join in the immoral intention of another. Immediate material cooperation, while not sharing in the intention of the agent, nevertheless provides the means whereby the agent is able to realize his evil purpose. Remote material cooperation, on the other hand, involves non-participation in the *intention* of the doer of the immoral deed and a cooperation that would not, in itself, assist the evil to occur. Lending my car to a friend without knowing his intentions to rob a bank would constitute remote material cooperation.

Material cooperation can be morally justified under three conditions:

- 1) Refusal to cooperate would result in a greater evil;
- 2) The cooperation is not immediate, but remote;
- 3) There is no serious degree of scandal involved.

The classic example used in the moral textbooks to illustrate legitimate material cooperation is that of a Catholic nurse whose only chance of employment as a nurse is in a secular hospital where, among other responsibilities, she is assigned to care for women after they have had

abortions. The nurse needs this job to feed her family. She finds herself in a situation of duress, brought about through no fault of her own. Since she does not directly assist the patient in the decision to have an abortion and the material cooperation she offers is remote, and while harm could come to her family if she refused this job, the textbooks indicate she could perform her role in good conscience, provided she avoids giving scandal, that is to say, the matter remains an internal judgment without publicity.

However, this same decision in favor of material cooperation cannot be considered a permanent one. Circumstances may change, i.e., a new Catholic hospital is opened in the local area; the nurse's children grow up and leave home; the hospital demands her more immediate cooperation in abortions. With changing circumstances, the cooperation of the individual must be morally reassessed. This is especially true of a situation where the person cooperates out of a sense of duress. That duress should never be judged as a permanent condition nor should the cooperation that it causes be considered permanent.

Up until now we have been applying the principles of cooperation to an individual with his/her own conscience. That person is able to weigh all the factors involved in his/her case and make a prudential moral judgment. That person is also free to reassess the situation in light of experience or changing circumstances.

The *Ethical and Religious Directives*, on the other hand, address themselves to *institutional* forms of cooperation. As a juridic person, the institution utilizes a different form of moral reasoning than that of the individual person. Policies govern actions and policies are decided collectively. A hospital board may make a decision by consensus, compromise, or majority vote. A trustee who objects to an immoral policy may be overruled and forced to go along with the board's decision or quit. But his resignation does not stop the implementation of the policy.

Moreover, hospital cooperative ventures are controlled over long periods of time by a contract, which is a public document specifying serious procedural and financial obligations. A Catholic health care system may be faced with financial duress at the time it seeks cooperation with another institution, but circumstances could well change, eliminating that duress. Afterwards, however, the Catholic institution finds itself locked into a contract from which it cannot escape.

When the Catholic principles of cooperation were devised, it would have been impossible to envision the complex moral challenge that faces us today with so many diverse cooperative ventures between health care systems. We are quite literally in a new area of moral reasoning where distinctions and details do make a difference. The principles of

cooperation do not readily apply in the same way or with the same moral results to an institution as they do to an individual.

The bishops are very much aware of this fact after five years' experience with the *Ethical and Religious Directives*. Together with the Catholic Health Association, they are providing the leadership for a reassessment of the moral soundness of Catholic health care cooperative ventures in order to ensure their reliability to lead Catholics and others closer to God and to salvation.

That reliability, however, rests on a clear articulation of what the Church believes in the area of contraception, sterilization and abortion. Obviously these concerns are not of the same medical weight, but they are of the same moral gravity. Each in its own way fails to uphold the dignity of the human person and frustrates the naturally intended ends of that person's reproductive potential, thus proving to be intrinsically "anti-life." In an age where the mind-body dichotomy is so pervasive, it is essential to assert that what one does with one's body either promotes or negates the good which one is called to achieve. Such a negation is what the Scripture objectively defines as sin.

This then brings us back to the overall point of this discussion: one may not cooperate with another in committing evil. To do so impedes the salvation of the moral agent as well as the one who cooperates. Pope John Paul II explains why this is so in his encyclical *Evangelium Vitae*:

Indeed, from the moral standpoint, it is never licit to cooperate formally in evil. Such cooperation occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it. This cooperation can never be justified either by invoking respect for the freedom of others or by appealing to the fact that civil law permits it or requires it. Each individual in fact has moral responsibility for the acts which he personally performs; no one can be exempted from this responsibility, and on the basis of it everyone will be judged by God Himself (cf Rom 2:6; 14:12).

(*Evangelium Vitae*, 74)

The concerns involved in the present discussion of the *Ethical and Religious Directives* are as serious as they are complex. Administrators, doctors, lawyers, nursing staffs, chaplains, religious, bishops and the laity alike have a stake in making sure that not only do Catholic health care institutions provide good medical treatment, but that the medical treatment provided is morally good in itself.