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# Marriage Counseling and The Physician

James T. McHugh

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During the past three to five years, there has been a continual effort to revise and update the marriage laws throughout the United States. In too many cases this has become simply an effort to replace current divorce laws with the so-called no-fault statute, and in many other states, the more important aspects of domestic relations law receive less attention because of the debate about no-fault divorce.

No-fault divorce laws will receive increasing public attention for the next few years, principally because some type of no-fault legislation has been introduced in several states and has already been adopted in some. Thus it is worth considering this specific legal proposal and the anticipated effects it will have in terms of marriage counseling and the physician's role.

A model no-fault divorce statute has been developed by the National Conference of Commissioners on Uniform State Laws. The model statute was referred by the American Bar Association to its Family Law Section in 1971. After careful study, the Family Law Section recommended that the ABA withhold endorsement of the model law pending more extensive study, and as of the February, 1972, meeting of the ABA, no endorsement was given.

No-fault divorce is looked upon as a radical departure from the past system. There are no grounds for divorce other than the irretrievable breakdown of the marriage. There is no necessity to determine who is guilty for the breakdown of the marriage, but simply the necessity to verify that it has irretrievably broken down. Most often, this is ascertained from the affirmation by the couple.

The basic difficulties of the breakdown theory are:

1. Establishing objective criteria that can be applied to indicate the breakdown of marriage.
2. Establishing some manageable

procedure to verify that the criteria have been met in each case. (Without some cooling off period for counseling or attempted reconciliation, the court may never be able to verify the reasons for the declaration. Moreover, the speed with which the dissolution can be accomplished allows little chance for a sober re-evaluation by the parties.)

### Difficulties

Granting that our present legal system for divorce is inadequate in many respects, these new proposals at least try to avoid the ideological pitfalls of the fault system. However, their weakness lies in the fact that they assume a social system and patterns of behavior that do not presently exist. The following are some of the specific weaknesses of the new proposals:

1. The presumption is that both husband and wife can separate and begin a new life on equal grounds. In fact, a woman who has been away from her profession, previous employment, or area of skill for a five to ten-year period does not easily find a way to support herself.

2. The emphasis in the new divorce laws is placed on the relationship between husband and wife. There is an assumption that a fair process decreases the possibility of anyone being hurt. But the child always suffers some harm, and these proposals really do not come to grips with that.

3. Although recognition of reconciliation and counseling is inherent in the new laws, very little provision

is generally made by the state to assure availability of services. Indeed, there is little more than a token acknowledgement of the value of a broad-based domestic court system with adequate social services.

4. Any serious attempt to revise divorce laws should also include some attempt to get at the sources of marital instability. Age at marriage, degree of preparation, extenuating circumstances (e.g. out-of-wedlock pregnancy) are factors that society must also consider in granting the marriage license.

5. Because children suffer greater emotional and material deprivation from divorce, perhaps some form of independent representation should be arranged to protect their rights and assure them of future opportunities that they might otherwise have enjoyed.

6. Since other sections of the law are not always brought up to date with the divorce law, there is the danger that a fair and equitable financial arrangement will not be achieved.

7. In any case, enforcement of the court's mandate should be ensured to protect the rights of all concerned, and this remains extremely difficult when individuals can move from one state to another rather easily, making enforcement of separation and divorce agreements tenuous at best.

### Pastoral Suggestions

Divorce and divorce laws are a fact of life in contemporary America. It is hardly likely that any divorce law can be looked upon as good, because its very existence

is a testimony to the breakdown of "the intimate partnership of married life and love [that] has been established by the Creator and qualified by His laws, and is rooted in the conjugal covenant of irrevocable personal consent." (*Gaudium et Spes*, No. 48). Regrettably, however, some marriages do in fact break down, and the Church must take this into account in attempting to fulfill her pastoral responsibilities in the area of marriage and family life. Consequently, without entering upon the question of pastoral care for the divorced and for those in second marriages, the following recommendations are proposed:

1. On the strength of the statistical evidence regarding the breakdown of marriage for those marrying young, for the poor, and for migrants, the Church should increase her pastoral commitment for these groups. A system of special counseling for the young and for those pregnant before marriage should be established in every diocese. This would delay hasty marriages, perhaps permanently for some. It is not so much a question of refusing the sacrament as taking definite steps to insure its proper reception.

Pre-marriage programs such as pre-Cana and high school marriage programs should be increased. Some specialized programs should be set up for the poor and for migrants.

Although family stability seems stronger in the Spanish-speaking

population, we should expect an erosion here because there is so much mobility and migration in this population. Definite programs to compensate for the mobility will strengthen family life.

2. Marriage counseling services should be increased at every level. In addition to professional counseling services, priests and seminarians should be given the opportunity to learn basic counseling skills and to recognize the causes of marital instability.

3. In every diocese, and certainly in every state conference, a special committee of lawyers, counselors, physicians and family life personnel should be established to monitor state domestic relations laws. This committee should be able to detect trends that will lead to legal change and should anticipate legislative initiatives sufficiently in advance to comment knowledgeably or formulate alternatives.

### Implications for Physicians

1. Many of the new marriage and divorce laws require some counseling prior to marriage or prior to divorce. Because of the positive emphasis given to counseling, it can be expected that more people will seek counseling assistance from their family physician. This counseling may have to do with personal problems of the man or woman, with problems attendant on the marriage relationship, or with sexual problems. In some cases, it will involve all three. Is the physician

prepared for this, and does he have the time and energy required?

2. The divorce statistics indicate that increasing numbers of married couples are failing in their married lives. Because of the increased availability of easily obtainable divorce, many couples will be predisposed to terminate their marriage, making counseling more difficult and less effective.

3. Where a serious and irresolvable problem exists, it frequently happens that what begins as marriage counseling almost imperceptively becomes divorce counseling. This creates conflicts for the counselor who began the relationship in behalf of both persons and now becomes the advocate or supporter of only one person.

4. In the no-fault atmosphere, a couple may attempt (with legal advice) to draw up the agreement of divorce in a non-hostile fashion. This can easily wreak havoc on the children. How can the physician speak in behalf of the children, and may he do so if it involves the violation of confidences from earlier counseling sessions?

5. Given the increased demands for counseling, many counselors are utilizing group counseling techniques. Should a physician adopt this style of counseling? Can he do

so without endangering his practice, or without threats to confidentiality?

Joseph B. Trainer, M.D., in an article entitled "The Physician as Marriage Counselor" (*The Family Coordinator*, January, 1973) observes that physicians are spending much of their time as marriage counselors. "They become such," Dr. Trainer states, "neither from inclination nor training, but from the inescapable fact that a sickness in any family member does induce a dislocation within that family and the doctor is the resource actually on the spot. He becomes a counselor from the sheer weight of the counseling demand inherently associated with the treatment of disease."

Because of the complexity of the problems and the increased demands on his professional life, the physician will have to refer more of the counseling work to psychologists, psychiatrists and counselors. There seems to be little reason why physicians, counselors and the clergy cannot join together in developing new resources to assist people with mental, emotional or marital problems. Good medicine and good pastoral care may both be improved, to the immense benefit of the people of God.