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Letter ...

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Letter...

To the Editor:

Eugene F. Diamond, M.D., in his letter in the May, 1984, issue, raised significant questions concerning the widespread practice of Catholic hospitals retaining on their staffs physicians who perform abortions off the premises.

Section 300-a-7 of Title 42 of the United States Code prohibits hospitals receiving various forms of federal aid to:

- a) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or
- b) discriminate in the extension of staff or other privileges to any physician or other health personnel, because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.

This conscience provision, which protects abortionists as well as those who oppose abortion, is the main practical reason why Catholic hospitals have acquiesced in the granting of staff privileges to those who kill unborn babies elsewhere. There are also state laws in many states which prohibit such discrimination in varying terms. However, given the tenacity with which the American Catholic Church has pursued federal subsidies in general, it is fair to conclude that the fear of losing the federal buck is the principal motivation behind the subservience of the Catholic hospitals in this

respect. Moreover, they are generally disinclined even to challenge the requirement as an infringement of their free exercise of religion.

On March 27, 1973, the Senate approved the Church amendment, proposed by Sen. Frank Church (D-Idaho) which would have protected private or denominational hospitals from receiving federal funds against being forced to perform abortions and sterilizations. Sen. Jacob Javits (R-N.Y.) proposed an amendment to forbid those hospitals to discriminate as well against those who perform or favor abortions or sterilizations. The Javits amendment is embodied in the above-quoted language of Section 300-a-7. Not surprisingly, the Javits amendment was supported by the United States Catholic Conference (*The Wanderer*, April 12, 1973, p. 1, col. 1).

It is time for Catholic hospitals to refuse to comply with Section 300-a-7 and to challenge in court its constitutionality as well as that of state laws having a similar effect. The success of such a challenge cannot be assured and indeed, the prospect is doubtful in light of recent Supreme Court decisions, e.g., affirming the right of Congress to impose conditions on the receipt of federal subsidies (see *Bob Jones University v. U.S.*, 103 S. Ct. 2017 [1983]). Nevertheless, the effort should be made by Catholic hospitals on a concerted national scale. The preferred constitutional right to the free exercise of religion ought to insulate Catholic hospitals against state laws which forbid them to discriminate against abortionists and against the federal law which would penalize such discrimination by the forfeiture of federal grants, loans and contracts.

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