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A Doctor Wants to Know . . .

About Medical Partnerships

Would you be so kind as to inform me whether a Catholic physician can ethically form a partnership with a non-Catholic who practices as follows contrary to the precepts of the Church: 1) advocates and performs direct sterilizations; 2) performs "therapeutic" abortions; 3) dispenses contraceptive devices. I would appreciate a reference to specific pronouncements of the hierarchy in regard to the ethics of such an association.

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Father John J. Lynch, S.J., Professor of Moral Theology at West College, Weston, Mass. and consultant for THE LINACRE QUARTERLY presents the moral aspects of this proposal for the benefit of our readers.

THE question as proposed is not one which can be answered without qualification, presenting as it does one of those situations in which even a moralist must say, "Circumstances alter cases." And since not all the pertinent circumstances can be inferred with certainty from the data available, no solution could claim to be more than suppositional until additional facts have been ascertained.

Before stating, however, the suppositions on which this answer is based, it would be well to forestall any possible misunderstanding which might be occasioned by the details of the problem itself. There are two such items, closely related to each other, which could distract one from the essential point of the solution. First: the fact that the other doctor in the partnership is a non-Catholic does not bear essentially on the decision of the case. The reason for this assertion lies in item number two, viz., that the specific procedures cited in the problem as immoral are not merely forbidden by the positive law of the Catholic Church, but are immutable tenets of the natural law binding every human individual regardless of religious creed. As Fr. Gerald Kelly, S.J., has pointed out in previous comments on the Catholic Hospital Code, "... a double standard cannot be admitted when there is question of the principles of natural law and of their application to medical cases. For since this law is the same for all human nature, it holds equally for

non-Catholic patients and Catholic patients, for Catholic doctors and non-Catholic doctors."¹ Hence, whatever the conclusion reached regarding a medical partnership of this kind, difference of faith is a substantially irrelevant factor.

Proceeding then on that understanding, these are the suppositions or assumptions of which I previously made mention. I presume, first of all, that medical "partnership" is intended to mean something substantially more than merely sharing an office. In other words, I understand that this is a partnership in the commonly accepted and legal sense of the word (to whatever extent legal partnership may be compatible with the established ethics of the medical profession)—the sort of thing which might be exemplified in a private clinic operated jointly by two or more doctors who "have joined together in the practice of medicine, and so hold themselves out to the public and patients, where all income and expenses are a joint account or joint venture."² I take for granted, too, that the Catholic physician would readily recognize the immorality on his part of any explicit approval, even only interior, of the illicit phase of his partner's practice, and would *a fortiori* realize that he could provide no physical assistance in any such medical or surgical procedures.

The problem then is reduced to that of being formally associated in partnership with a physician, some of whose common practices are admittedly immoral. In those immoral procedures the Catholic doctor does not participate physically, nor does he grant them explicit approval.

With regard to specific pronouncements of the hierarchy on that precise situation, there is none to my knowledge; unless possibly some directive on the point be included in a local hospital code with which I am not familiar. It would be simply impossible for Church authorities to legislate expressly for every conceivable moral situation; and hence it must frequently happen that the Church leave to theologians the task of providing solutions for concrete cases as they occur by applying standard moral rules. This, I would say, is one of those instances where, instead of enjoying the convenience of an explicit directive to solve a problem, we are left to work it out for ourselves in the light of general moral principles.

What answer, then, would a moralist give to this problem? On the basis of the above assumptions, my own opinion — with which I feel confident other moralists would agree substantially—is that there appear to be at least two serious reasons for saying that such a partnership is not morally permissible, while no reason occurs as sufficient to justify the association. (It should be apparent that this is not an apodictical and universal solution, but one which is based only on available infor-

mation, with the realization that other facts as yet undisclosed might possibly persuade me to qualify my decision in an individual case.)

THE MALICE OF COOPERATING IN ANOTHER'S SIN

The first reason is derived from the natural law prohibition against cooperating with the sinful acts of others or, to put it another way, against helping others to commit sin. It stands to reason that if one person willingly assists another in the actual performance of an intrinsically evil act, his cooperation is sinful on two scores: first because of his willful approval of the evil intrinsic to the sinful act itself, and secondly because of his violation of fraternal charity in being a willing instrument of another's sin. Love of neighbor obliges us to refrain, insofar as is reasonably possible, from allowing evil to befall others, even when they themselves are intent upon it. And what greater evil than that of sin can be alleged? Thus, for instance, the doctor, who would agree actually to assist in an illicit operation, would stand in conscience accused of this two-fold malice: of having violated, first, the fifth commandment and, secondly, his grave duty of fraternal charity. However, we are supposing that this manner of cooperation is not verified in the present case.

But it frequently happens that one's cooperation with another's sin consists, not in a participation in the very act which is sinful, but rather in some more remote action which, though innocent perhaps in itself, does make it possible or less difficult for the other to commit his sin. If that sinful possibility is foreseen as a likely result of my innocent action I am still obliged by charity to refrain, *as far as is reasonably possible* from allowing another to perpetrate that moral evil. In other words there must be good and substantial reason for my performing even an act innocent in itself, if that act is recognized as one which will help another to sin. The gravity of the reason required to justify my acting and thus permitting him to perform the evil on which he is intent, will vary according to the gravity of the sin foreseen and according to the relative importance of my act to his opportunity for sinning. And under no circumstances may one *intend* that his act be of assistance to another's sin. Here again we have application of the familiar principle of double effect to justify our doing something, good or indifferent in itself, which will have two immediate results, one good and the other evil. And among the conditions requisite for the legitimate use of that principle are absence of all evil intention on the part of the agent, and moral proportion between good and bad effect.

Is there verified in the case at hand this concept of cooperation in another's sin; and if so, is it a permissible or illicit form of cooperation? According to our original assumption, the Catholic doctor does not cooperate with his partner by participating physically in the actual procedures mentioned, nor does he in any way explicitly approve them. Theologians therefore would admit that his cooperation, if any, is not *immediate* in that sense, but at most *mediate*, i.e. contributing to the partner's sin *through the medium* of other actions perhaps good or indifferent in themselves. They would then attempt to determine whether the fact of partnership facilitates the unethical practices of the one, and whether even that degree of mediate cooperation on the other's part is sincerely unintended to be such and only grudgingly permitted because of some other necessary good to be achieved through the medical partnership. They would, in short, be vitally concerned about the Catholic doctor's real attitude towards the moral deviations of his associate, whether it be one of genuine or only simulated disapproval. For as was said before, to approve of sin, either one's own or another's, is in itself sinful.

And under such scrutiny the conduct of the "innocent" partner might easily provide cause for moral criticism on such grounds, for example, as the following:

- a) Unquestionably any two doctors, who enter into a partnership, do so for the mutual advantages entailed, and each thereby expresses himself as willing that the other benefit from their association. Now one advantage to be expected for the non-Catholic in this case is that his confrere's known religion should attract a certain number of patients who prefer to entrust their medical treatment to a Catholic conscience, and who in good faith would presume as guarantee sufficient against immoral advice or procedures that lone fact of a Catholic's associating himself with the partnership. Let us suppose that in continued good faith, or after suasion by the non-Catholic doctor, some of these patients are submitted to illicit treatment. Those evils are in some sense the responsibility of the Catholic partner, whose religion and presumed integrity provided the initial attraction for those patients and made possible those specific sins on the part of his associate.
- b) How would the Catholic react to direct requests from any of his own patients for contraceptive advice or illicit surgery? Morally he is obliged to refuse all such requests, nor can he refer them, even by implication, to his less scrupulous associate. If he should, he would again be helping others to sin, and could scarcely deny that he does

not intend their sinful act. Presumably the non-Catholic would be unwilling that these patients be turned away, and normally would demand that they at least be referred to him. How would the Catholic solve that situation to the satisfaction of his partner and without compromising moral principles?

- c) If medical partnership is correctly interpreted as a situation where "all income and expenses are a joint account and joint venture," the fact of cooperation in and approval of illicit practices is again difficult to evade. A portion of those expenses and a portion of the income are presumably due to immoral medical procedures. To help meet those expenses, or to share in those proceeds, surely betrays spirit of cooperation and approval which cannot be condoned.

Those are but some of the objections which might be leveled against a partnership of this kind. It cannot of course be said with certainty that all, or even any, of the above instances of cooperation are necessarily verified in every such medical partnership. But it is difficult for me to see how the Catholic doctor in such a situation can entirely avoid cooperating in one such serious way or another with the illicit practices of his associate. Hence, as I stated originally, I see here a grave reason militating against this type of partnership, while no reason occurs to me as sufficient to justify it. Furthermore (and this is possibly of even greater importance), even if the Catholic doctor were, both in word and in fact, totally unsympathetic and uncooperative with the immoral phases of his partner's practice, *that is not the interpretation which people in general commonly make of such an association*. And that brings us to the second consideration, that of scandal.

THE MALICE OF SCANDAL

Scandal is a much underestimated moral concept among those who do not appreciate its theological implications. Because of the comparatively mild significance which our common usage has attached to the words, we are inclined to interpret "scandalize" in the sense of shocking or horrifying others, and the substantive "scandal" comes to mean either the fact at which they are shocked or the defamatory gossip by which they are informed of the shocking fact. The theological truth of the matter goes deeper than that, and "to give scandal" means technically to provide another through one's own example with an inducement or enticement to sin. Clearly, scandal is as much contrary to fraternal charity as is cooperation in another's sin. In fact, some theologians might consider it more so; for whereas they consider the cooperator as one who assists another, already intent on sin and hence already a

sinner, to carry out his determined purpose, they see in scandal a decisive factor in bringing the will of another to its original sinful decision. But in any event, scandal in its theological sense can be a serious moral matter.

This inducement to sin, which is scandal, may have its effect in any one or more of several ways. What one says or does may, for example, provide a direct temptation for others, as might the risqué story, which may perhaps be a relatively harmless thing when told in a group of normal adults, but which could easily be a source of impure thoughts for impressionable adolescents. Or one's example may serve to persuade another that something actually sinful is permissible; or that committing a sin is not such a terrible thing after all; or that the alleged ideals of our religion are mere sham and hypocrisy, and that therefore the faith we profess is to be despised and shunned. Suppose a priest were to be seen eating meat on Friday in a public restaurant: would not there be danger that some Catholics, observing this anomaly, would be tempted to think less of the Church's law of abstinence and to argue, "if he can do it, so can I"? And might not non-Catholics, who are commonly quite aware of our Friday obligation, have reason to despise and ridicule the hypocrisy of the priest who professes one thing and practices another, and thus be further alienated from Catholicism which he represents? Examples of scandal are almost without number, but they all share in common that element of presenting another with an inducement to sin.

Now it cannot be denied that even the most innocent of human actions will at times be subject to misinterpretation because of either ignorance or even sheer malice on the part of others. Thus the priest, in the example cited above, may be legitimately dispensed or excused from the law of abstinence because of seriously poor health. Yet if those who observe him eating meat on Friday do not advert to that possibility (ignorance of sorts on their part), or stubbornly refuse to consider it as a likely explanation of his acting as he does (malice), there still remains the possibility of their being scandalized by an act which is objectively good and lawful. Must we therefore refrain from even permissible actions whenever we foresee that scandal may be taken from them? Common sense tells us that we are not always so obliged, and moral theology ratifies common sense by conceding that if we have good and sufficient reason for our action, a reason proportionate to the harm which may result in the form of unintended scandal, we may legitimately act and permit the unintended evil effect. Hence the moralist's rule governing unintended scandal represents still another application of the principle of double effect, and requires, together with the other usual

conditions, a reason in proportion to the evil which may result from one's innocent manner of acting.

How is scandal, in the sense of enticement to sin, verified in the situation under discussion? People commonly assume that declared partners in medical practice are in substantial agreement as to both medical procedures and medical morals. When it becomes known (and it would not long remain a secret) that one partner advocates and indulges in practices contrary to natural law, it will be presumed either that the Catholic party is in sympathy with those immoral practices, or at least that he condones them in his partner (even while righteously disclaiming any part in them himself) and is sharing in the proceeds from them. Because of this seeming bad example on the part of one who represents himself as a Catholic — and remember that a doctor is a person of prestige in any community and that his example is more than ordinarily influential—it is not unlikely that some of the faithful might be induced to think lightly of birth-control, abortion, etc.; while non-Catholics, knowing well our professed stand on such practices, might find confirmation for their own erroneous convictions, and grounds for ridiculing Catholicism for preaching one doctrine and condoning its contrary. "How is it that Dr. So-and-So can be associated in something the Church claims to be gravely sinful and yet be allowed to receive the Sacraments? Either the Church's doctrine is hypocrisy, or else we have been too credulous in believing that those practices are so very wrong." That in general could easily be common reaction to such a situation, and that is serious public scandal.

And for the physician to say, "I am not responsible for the misinterpretations which ignorant and suspicious people make of my innocent actions" would be to miss entirely the point regarding scandal. By creating a situation which makes such an interpretation likely, and by doing so without a sufficiently grave reason, one makes himself responsible for contributing somewhat to the sin of others—something which, as we have said, charity forbids if it can be reasonably avoided.

Hence to the original question, as supplemented by the several assumptions which it seemed necessary to make, I would conclude that medical partnership of this nature would be morally reprehensible, unless possibly because of an extraordinary and grave reason. So great would be the expectancy of serious scandal, and so difficult to avoid all manner of sinful cooperation and approbation, that I for one cannot suggest a practical situation in which such a partnership might seem to be permissible. Perhaps, however, conscientious physicians, who are more aware than myself of medical realities, could cite circumstances

which would require modification of that conclusion. Meanwhile, if I may be permitted to apply to this question a bit of sound advice which Fr. John C. Ford, S.J., includes in his discussion of psychoanalysis,³ I would suggest that the best practical way to avoid the moral problem is to choose a medical partner whose principles and practices are known not to offend against Christian morality.

REFERENCES

1. *Medico-Moral Problems*, I, p. 7. (The Catholic Hospital Asso., 1438 So. Grand Blvd., St. Louis 4, Mo.)
2. JAMA, 153: 1552. This description of "legal partnerships of doctors or clinics of doctors" occurs in a resolution introduced during the clinical meeting in St. Louis of the House of Delegates of the American Medical Association, Dec. 1-4, 1953. I have made use of it in an attempt to express as accurately as possible a doctor's concept of medical partnership.
3. John C. Ford, S.J., "May Catholics Be Psychoanalyzed?", *THE LINACRE QUARTERLY*, Aug., 1953, pp. 57-70.

THE MARIAN YEAR

YET this centenary... of the solemn definition of the Immaculate Conception... should not only serve to revive Catholic faith and earnest devotion to the Mother of God in the souls of all, but Christians should also, in as far as possible, conform their lives to the image of the same Virgin. Just as all mothers are deeply affected when they perceive that the countenance of their children reflects a peculiar likeness to their own, so also our Most Sweet Mother wishes for nothing more, never rejoices more than when she sees those whom, under the cross of her Son, she has adopted as children in His stead portray the lineaments and ornaments of her own soul in thought, word, and deed.

But if this devotion is not to consist of mere words, is not to be counterfeit coin of religion or the weak and transitory affection of a moment, but is to be something sincere, true and efficacious, it is necessary that each one of us should, according to his condition of life, avail of it for the acquisition of virtue. The commemoration of the mystery of the Most Holy Virgin, conceived immaculate and immune from all stain of original sin, should, in the first place, urge us to that innocence and integrity of life which flees from and abhors even the slightest stain of sin.

... *Fulgens Corona* (The Radiant Crown)
encyclical letter of His Holiness,
Pope Pius XII on *The Marian Year*