

The Board and the Ethical and Religious Directives

presented by:

Charles Bouchard, O.P., S.T.D.
Senior Director, Theology and Ethics
Catholic Health Association

AND

Jenny Heyl, Ph.D.
Director, Ethics
Mercy Health, St. Louis

Today we will investigate these questions:

- What do we mean by the *ethical integrity* of an organization? Who is responsible?
- The ERDs and health care as *an employer*
- The ERDs and health care as *a provider*
- The ERDs and the health care *as partner*

What is “Ethics?”

- The scope of ethics:
 - Who I am
 - What I do
- There are no “ethics free zones.” Why?
- Ethics is not just about crisis decisions

Ethical Integrity: What Is It?

- The concerns of “ethics”: *being and doing*
 - *Who am I? Who are we as an organization?*
 - *What should I (we, our organization) do?*
- Ethical integrity: Consistency between *who* we claim to be and what we *do*.
 - Alignment between *character* and *action*

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Compliance and Ethics: Differences

COMPLIANCE	ETHICS
<ul style="list-style-type: none"> • Primarily related to laws and published standards • Usually clear and specific • Driven by rewards and punishment <ul style="list-style-type: none"> – Coercive element • At least in principle achievable 	<ul style="list-style-type: none"> • Primarily related to values and commitments • Can sometimes appear amorphous <ul style="list-style-type: none"> – Importance of moral imagination • Driven by the sort of person or organization we wish to become • Unfinished, evolving <ul style="list-style-type: none"> – Importance of discernment • Sometimes different valid ethical decisions are possible

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I can “follow *my* conscience,” but does an organization have a conscience?


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Ethical Integrity: Whose Responsibility?

- Often, responsibility for mission, values and ethics is *marginalized* or *relegated to individuals*.
- But, if we believe that our organizations must develop a culture of ethics, then responsibility for nurturing this culture is neither marginal nor one person's responsibility.
- **ETHICS IS AN ORGANIZATION-WIDE RESPONSIBILITY, BUT...**

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“The ultimate legal and moral responsibility for a health care organization rests with ... the board of trustees.

... No other group comes close to having this extent and degree of responsibility for impact on the dignity of persons.”
(John Glaser)

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Boards of Trustees are Entrusted With:

- Continuing *existence* of the organization (long term planning, budgeting, choice of CEO)
- The institution's *vocation*
- *Stewardship* of an apostolic work
- Organization's *character* and fidelity to *mission*
- Trustees are the *conscience* of the organization

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Ethical Integrity and the Ethical and Religious Directives (ERDs)

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What are the ERDs?

- A limited attempt to answer two questions:
 - Who are we? Who should we be? (Identity)
 - What should we do in light of this? (Integrity)
- Provide guidance on ethical issues encountered in the delivery of health care.

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For Whom Are the ERDs Intended?

Those entrusted with the identity and integrity of the ministry and the organization (e.g., sponsors, trustees and CEOs).

Those embodying the mission in the day-to-day operations of the organization.

Recipients of health care: patients, families, community.

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Who Should We Be?

Catholic health care ...

- Carries on God's life-giving and healing work (General Introduction, 5/4).
 - By imitating Jesus' concern for and service to the sick, suffering, and dying (4/3).
 - By responding to Jesus' challenge to "Go and do likewise" (33/16).
- Carries on Jesus' "radical" healing (4/3).
 - Being Christ's "healing compassion in the world" (33/16).
 - Restoring and preserving health and serving as a sign of final healing (33/16).
 - Being a ministry of the Church within the local Church (4/3).

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Who Should We Be?

- The common values that should distinguish Catholic health care ministry (Shared Statement of Identity):
 - Promote and defend human dignity
 - Attend to the whole person
 - Care for poor and vulnerable persons
 - Promote the common good
 - Act on behalf of justice
 - Steward resources
 - Act in communion with the Church
- Your organization's mission and values

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Three Ethical Roles for Boards

Fiduciary responsibility to assure ethical integrity as:

- Employer
- Provider
- Partner

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I. Integrity and the Organization as Employer

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- Directive #7: A Catholic health care institution must treat its employees respectfully and justly.
 - Equal employment opportunities
 - Employee participation
 - Environment that ensures safety and well-being
 - Just compensation and benefits
 - Right to organize and bargain collectively

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- Directive #2: Catholic health care should be marked by a spirit of *mutual respect* among care-givers that disposes them to deal with those it serves and their families with the compassion of Christ.

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II. Integrity and the Organization as Provider

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- Directive #1: A Catholic institutional health care service is a community that *provides care to those in need of it.*
- Directive #3: Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of society and makes them vulnerable to discrimination.

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- Directive #6: A Catholic health care institution should be a responsible steward of the health care resources available to it.
- Directive #23: The inherent dignity of the human person must be respected and protected regardless of the nature of the person's health problems or social status.



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- Honor patients' right to make their own healthcare decisions (#26 & 27)
- Honor informed consent (#26 & 27)
- Respect advance directives (#24)
- Respect choices of surrogate decision makers (#25)
- Minister to religious and spiritual needs (#10)
- Respect decision to forego treatment (#57)
- Manage pain and symptoms (#61)

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ERDs Most Applicable to Clinical Ethics

Part Three:
The Professional-Patient Relationship

Part Four:
Issues in Care for the Beginning of Life

Part Five:
Issues in Care for the Seriously Ill & Dying

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Part Three: The Professional-Patient Relationship

Part Three focuses on the type of relationship that should exist between the professional and the patient; it should reflect mutual **respect**, **trust**, **honesty** and **confidentiality**.

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Part Three and Human Dignity

The directives in Part Three are all expressions of **respect for human dignity**, for example:

- Informed consent
- Advance directives
- Right to surrogate decision-maker
- Privacy and confidentiality

Many of these directives also represent legal obligations

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Part Three: Directives of particular note

28. Patient should have access to medical and moral information as well as counseling to form one's conscience.

36. Directs treatment for sexual assault.

37. Requirement for ethics committee or ethics consult to advise on particular ethical situations.




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Part Three: Directives which segue to Part Five

32. Introduces concept of weighing benefits against burdens in judging whether one is obliged to submit to a particular procedure.

33. Discusses appropriate use of therapeutic interventions or technology.



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Part Five: Care for the Seriously Ill and Dying

“Above all, as a witness to its faith, a Catholic health care institution will be a community of respect, love, and support to patients or residents and their families as they face the reality of death.”

➤ Introduction to Part Five

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Part Five: Seriously Ill and Dying

“...two extremes are avoided: on the one hand, an insistence on useless or burdensome technology even when a patient may legitimately wish to forgo it and, on the other hand, the withdrawal of technology with the intention of causing death.”

➤ Introduction to Part Five

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Part Four: Care for the Beginning of Life

Catholic health care organizations are called to honor the sanctity of human life from its beginning and honor the dignity of marriage and the marriage act.

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Part Four: Two key principles

1. *Respect for the sanctity of human life from conception through natural death*
2. *Respect for the marriage act which has two natural purposes whose inseparable connection cannot be violated:*
 - i. The **unitive** (expression of mutual love)
 - ii. The **procreative** (openness to possibility of life)

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Part Four: Care for the Beginning of Life

The maternal-fetal relationship is one of the most complex in medicine. Directive 47 gives guidance when there is a true clinical conflict between the two:

47. *Operations, treatments, and medications that have as their **direct purpose the cure of a proportionately serious pathological condition** of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child.*

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Emerging Role of Clinical Ethicist

- In general, a move from a reactive mode to early intervention by proactively screening for potential issues.

- Analysis of ethics consults to track trends in order to propose systemic changes to avoid issue or address farther upstream.

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- Such relationships can be important opportunities to extend the healing ministry and sustain the *common good*, but they can be difficult.

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How does the Catholic organization maintain its integrity when partnering with another organization to achieve some good when the partner does not share some or all of our basic values and/or may be engaged in wrongdoing?

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Challenges of Partnerships

- Some relationships are with organizations that do not share our values and beliefs
- We partner with them for the sake of the common good, BUT we must avoid *direct cooperation* with abortions, direct sterilizations, reproductive technologies, unjust labor practices, etc.
- Must also avoid *appearance* of illicit cooperation which causes scandal

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“We must exercise critical vigilance and, at times, refuse funding and partnerships that, directly or indirectly, foster actions and projects that are contrary to Christian anthropology.”

➤ Pope Benedict XVI, Address to Pontifical Council *Cor Unum*, January 19, 2013

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Importance of the Principle of Cooperation (ERD #69)

“... Participation in activities judged morally wrong by the church must be limited to what is in accord with the moral principles governing cooperation.”

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Integrity and the Principle of Cooperation

- The principle has been part of Catholic ethics for over 400 years; it helps determine whether and how one may be present to the wrongdoing of another, for the sake of the common good
- Modes of presence: ownership, governance, management, providing services (e.g., staffing, supplies, billing), financial benefit.



Integrity and the Principle of Cooperation

- To determine whether the cooperation with a wrongdoer is permissible, must analyze cooperator's *intention* and *action*.
 - Cannot approve of or intend the wrongdoing
 - Action must be non-essential
 - There must be a proportionate reason
 - Scandal must be avoided

- Importance of consulting with the diocesan bishop or his representative:



"Decisions that may lead to serious consequences for the identity or reputation of Catholic health care services, or entail the high risk of scandal, should be made in consultation with the diocesan bishop or his health care liaison" (#67).

- Consultation should occur early and often:
 - “Diocesan bishops and other church authorities should be involved as such partnerships are developed, and the diocesan bishop should give the appropriate authorization before they are completed. The diocesan bishop’s approval is required for partnerships sponsored by institutions subject to his governing authority; for partnerships sponsored by *religious institutes of pontifical right*, his *nihil obstat* should be obtained (#68).

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- There should be periodic review of the arrangement to assure that it is being observed as originally agreed upon (#72).
- In sum, the board of trustees has a critical role in ensuring that arrangements with other-than-Catholic organizations are consistent with Part Six of the ERDs and the principle of cooperation ... and do not weaken the identity and integrity of the organization.

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Concluding Remarks

- As stewards of the organization and the ministry, boards of trustees are the primary CER for ensuring the ethical integrity of the organization. This can be achieved:
 - In selection of the CEO (mission competence and fit)
 - In direction given to the CEO
 - In decision making
 - In oversight
 - Asking questions

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