U.S. Bishops Revise Part Six of the *Ethical and Religious Directives*

An Initial Analysis by CHA Ethicists[1]

On June 15, 2018 following several years of discussion and consultation, the United States Bishops discussed and approved the Sixth Edition of the *Ethical and Religious Directives for Catholic Health Care Services*. The vote was nearly unanimous.

Revisions are all found in Part Six, "Collaborative Arrangements with Other Health Care Organizations and Providers." This title differs slightly from the title used in the Fifth Edition, which was "Forming New Partnerships with Health Care Organizations and Providers."

The revision had two primary purposes. The first was to update the Directives to reflect the growing number and complexity of collaborative arrangements taking place throughout health care. The revisions are in clear continuity with previous editions of the ERDs and with the Catholic moral tradition. In our view, they do not contain any new teaching. Rather they are an attempt to provide clarification and more explicit direction to those who are considering collaborative ventures in order to increase efficiency, quality, range of services or access to health care. The revised Directives continue to support the value of collaborative arrangements in general.

The second goal of the revisions is to reflect "Principles for Collaboration" that were issued by the Congregation of the Doctrine of the Faith on February 17, 2014 in response to a question it had received from the U.S. bishops in April 2013. The full text can be found here.

As Peter Cataldo, Ph.D., senior vice president of theology and ethics at Providence-St. Joseph Health, said at the time, "While the CDF did not directly respond to the question, seeing it as a concrete application of established moral principles, it forwarded to the USCCB a set of 17 principles to guide the forming of partnerships with non-Catholic organizations" [and] intended to be of assistance to the bishops of the United States. (*Health Care Ethics USA*, "CDF Principles for Collaboration with Non-Catholic Health Care Entities: Ministry Perspectives," Summer 2014). Dr. Cataldo's analysis can be found here.

The Sixth Edition went through several drafts. During the drafting process, the USCCB through its Committee on Doctrine sought input from CHA, system ethicists and other stakeholders. The Sixth Edition contains a few minor changes in language, as well as five new Directives. Here is a summary with comments in italics. New Directives are shaded.

The Introduction

The Introduction to Part Six is an overview of the content. It is much longer than the Introduction to Part Six in the Fifth Edition.

The new Introduction differs in several important ways:

- It is more positive in tone. The new Introduction begins by highlighting "the unique and vitally important opportunities" collaborative opportunities present.

- It expresses preference for collaborative arrangements among Catholic organizations which is mentioned in Vatican Principle #7.

- It is clear about the possibility of scandal, but essentially maintains that some risk is appropriate for the sake of the opportunities, especially the common good.

- Cites the common good as a reason for collaborative arrangements three times. The term did not appear at all in the Fifth Edition.

- Includes a fuller introduction to formal and material cooperation and explains the difficulty of distinguishing licit from illicit material cooperation. Allows that there may be legitimate disagreements among experts in calculating what level of cooperation is acceptable. The description of cooperation differs somewhat from other descriptions. We will explore this more fully in a later column.

- Stresses the fact that collaboration with those who do not share our moral conviction offers many opportunities but always carries a risk of scandal. Both new and existing arrangements should be assessed to reflect the principle of cooperation.

Directives

#67. Each diocesan bishop has the ultimate responsibility to assess whether collaborative arrangements involving Catholic health care providers operating in his local church involve wrongful cooperation, give scandal, or undermine the Church's witness. In fulfilling this responsibility, the bishop should consider not only the circumstances of his local diocese, but also the regional and national implications of his decision.

#68. When there is a possibility that a prospective collaborative arrangement may lead to serious adverse consequences for the identity or reputation of Catholic health care services or entail a risk of scandal, the diocesan bishop is to be consulted in a timely manner. In addition, the diocesan bishop's approval is required for collaborative arrangements involving institutions subject to his governing authority; when they involve institutions not subject to his governing authority but operating in his diocese, such as those involving a juridic person erected by the Holy See, the diocesan bishop's nihil obstat is to be obtained.

Comment: Numbers 68 and 69 affirm the unique role of the bishop in assessing cooperation, scandal, integrity of the Church's witness and the importance of consulting the bishop about arrangements that affect Catholic identity or reputation of the ministry "in a timely manner." This seems to mean sooner rather than later and also regularly as negotiations proceed.

The Directive also distinguishes between approvals given for institutions under his control from those pertaining to institutions of pontifical right (i.e., those established by the Holy See). #67 introduces the phrase "undermine the Church's witness" as a negative criterion for the first time. It appears twice in #71 and again in #76. The phrase is not found in the Fifth Edition, which cites only scandal (#71) but it appears in Vatican Directive #10, when it describes uses of authority that "diminish the entity's – and the Church's – prophetic witness to the Faith."

#69. In cases involving health care systems that extend across multiple diocesan jurisdictions, it remains the responsibility of the diocesan bishop of each diocese in which the system's affiliated institutions are located to approve locally the prospective collaborative arrangement or to grant the requisite *nihil obstat,* as the situation may require. At the same time, with such a proposed arrangement, it is the duty of the diocesan bishop of the diocese in which the system's headquarters is located to initiate a collaboration with the diocesan bishops of the dioceses affected by the collaborative arrangement. The bishops involved in this collaboration should make every effort to reach a consensus.

Comment: This new directive recognizes the fact that many systems have ministries in a number of dioceses and tries to balance the rights and responsibilities of the local ordinary where the collaboration actually occurs with the "regional and national" implications mentioned in #67. It directs the bishop of the diocese in which the system's headquarters is located to "initiate collaboration" and seek consensus among bishops affected by new arrangements. This reflects language in Vatican Principle #17.

#70. Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral, such as abortion, euthanasia, assisted suicide and direct sterilization.

Comment: #70 reiterates the prohibition on immediate material cooperation in acts that are deemed to be intrinsically evil. The list of examples is the same as in previous editions. Accompanying footnote #48 is exactly the same as #44 in the Fifth Edition.

#71. When considering opportunities for collaborative arrangements that entail material cooperation in wrongdoing, Catholic institutional leaders must assess whether scandal[2] might be given and whether the Church's witness might be undermined. In some cases, the risk of scandal can be appropriately mitigated or removed by an explanation of what is in fact being done by the health care organization under Catholic auspices. Nevertheless, a collaborative arrangement that in all other respects is morally licit may need to be refused because of the scandal that might be caused or because the Church's witness might be undermined.

Comment: #71 notes the risk of scandal even in cases of licit cooperation. It allows that in some instances the possibility of scandal can be reduced by explanation and draws on language used in Vatican Principle #10. As in #67, this

Directive cites both "scandal" and "because the Church's witness might be undermined" as reasons to avoid collaboration. It is not clear whether these two are the same or if undermining the Church's witness implies a new criterion. It seems to us that scandal has a negative effect on someone else (e.g., leads an observer into sin), whereas "undermining the Church's witness" harm's the Church's integrity, whether or not there is any direct effect on others.

This Directive omits mention of some of the specific justifications for cooperation in Vatican Principle #5, viz., "the institution must be under grave pressure to cooperate." It says that gaining financial advantage or financial stability do not constitute grave pressure, but the ability of the institution to survive and carry out its mission do.

#72. The Catholic party in a collaborative arrangement has the responsibility to assess periodically whether the binding agreement is being observed and implemented a way that is consistent with the natural moral law, Catholic teaching and canon law.

Comment: This Directive states the need to periodically reassess cooperative agreements for consistency with "natural moral law, Catholic teaching and canon law." This differs from #72 in the Fifth Edition, which required only consistency "with Catholic teaching." We do not believe that this Directive nor the mention of "arrangements that already exist" in the Introduction is more restrictive than the Fifth Edition, and we do not believe that it calls for automatic re-evaluation of existing arrangements but only routine periodic review as is our practice now. It seems the bishop may ask for a new review of an existing arrangement, or a provision of an existing arrangement.

#73. Before affiliating with a health care entity that permits immoral procedures, a Catholic institution must ensure that neither its administrators nor its employees will manage, carry out, assist in carrying out, make its facilities available for, make referrals for, or benefit from the revenue generated by immoral procedures.

Clarifies the responsibility of the Catholic entity to assure that illicit cooperation is avoided at all levels of organization and specifies in greater detail what the Fifth Edition referred to in #72 as "what is in accord with the moral principles governing cooperation." Reference to administrators and employees reflects Vatican Principle #1, which says that cooperation "is ultimately about the actions of individual human beings," and #9, which specifically mentions administrators and employees. The prohibition on referrals needs to be carefully explained so that we do not abandon patients.

#74. In any kind of collaboration, whatever comes under the control of the Catholic institution – whether by acquisition, governance, or management – must be operated in full accord with the moral teaching of the Catholic Church, including these Directives.

Requires "full accord" with moral teaching and the ERDs for organizations under the control of the

Catholic institution, whether they acquire, govern or manage them. The term "full accord" does not appear in the Fifth Edition, but seems clearly implied in #72 "in a way that is consistent with Catholic teaching" and in #69 "in accord with the moral principles governing cooperation." We believe this is a reiteration of the teaching in the Fifth Edition rather than something new. At least in some cases, if there was "full accord" with the ERDs, there would be no issue of cooperation.

#75. It is not permitted to establish another entity that would oversee, manage, or perform immoral procedures. Establishing such an entity includes actions such as drawing up the civil bylaws, policies, or procedures of the entity, establishing the finances of the entity, or legally incorporating the entity.

Comment: #75 prohibits any involvement in the creation of another entity that would perform immoral procedures. This Directive reflects Vatican Principle #12, which says that a system or institution engages in formal cooperation with evil by "setting up an administrative body" that will oversee the provision of immoral services or by setting up "an entity such as a clinic" that will be engaged in immoral procedures. We must also be aware that even if we do not participate in the establishment of such an entity, we would have to explain to those who do what the limitations on our involvement are.

#76. Representatives of Catholic health care institutions who serve as members of governing boards of non-Catholic organizations that do not adhere to the ethical principles regarding health care articulated by the Church should make their opposition to immoral procedures known and not give their consent to any decisions proximately connected with such procedures. Great care must be exercised to avoid giving scandal or adversely affecting the witness of the Church.

Comment: This new Directive clarifies the responsibility of representatives of a Catholic institution on governing boards of non-Catholic organizations and stipulates that they must distance themselves from actions that are immoral or that may appear to be so. Vatican Principle #11 says that the statutes of such an institution must "isolate" the representatives of the institution from such policy decisions. Board members would need to decide about whether they should cast a negative vote, abstain, or recuse themselves from the discussion entirely.

#77. If it is discovered that a Catholic care institution might be wrongly cooperating with immoral procedures, the local diocesan bishop should be informed immediately and the leaders of the institution should resolve the situation as soon as reasonably possible.

Comment: This new Directive seems to allow anyone to discover wrongful cooperation and report it. This possibility was not mentioned in the Fifth Edition, but may allude to some cases in which a physician, nurse or media outlet alleges illicit cooperation.

The language differs from that found Vatican Principle #14, which says the institution must "extricate itself from this situation at the earliest opportunity." The Directive does not include language from Vatican Principle #16 which says that if a

Catholic institution extricates itself from the direction of another system, it must "do what it can to ensure that the system is left adhering as closely as possible to the principles of the natural moral law."

Conclusion

The Conclusion is identical to the Conclusion in the Fifth Edition. It places these directives in a Scriptural and eschatological light by reminding the reader that Jesus healed, that this healing was a sign of our final healing and that the special "guests" of Jesus' attention were the poor, the crippled, the lame and the blind.

C.B. and N.H.

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[1] We do not consider this analysis to be either exhaustive or definitive. We invite others to submit additional comments, analyses, or questions about the revised Part Six. We will publish them in the Fall issue.

[2] See *Catechism of the Catholic Church*: "Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged" (no. 2287).