

Physicians in a New Health Care Context: Two Reflections

Editor's Note: The following reflection was delivered as part of a panel at the CHA-sponsored Theology and Ethics Colloquium on March 22, 2013.

Ethical Challenges and Opportunities in Physician Employment: A Brief Reflection

John Paul Slosar, Ph.D.
Vice President, Ethics Integration & Education,
Ascension Health
Vice President, Ethics
Ascension Health Care Network
jslosar@ascensionhealth.org

Whether due to an inevitable move toward population health management, the passage of the Affordable Care Act, or a combination thereof, there has been a significant trend of late toward physician employment by hospitals and health systems, including Catholic systems. As with most things, this trend brings both opportunities and challenges. In this brief reflection, I will offer an initial identification of what I see to be the most pressing challenges and opportunities related to physician employment. In addition to the ethical challenges and opportunities, I will begin by briefly exploring the concept of physician employment itself and end with a brief observation regarding a practical implication to which Catholic ethicists should attend.

The first question we must ask as we begin to think about this topic is how do we understand the very concept of

employment in the context of physicians? Physicians are indeed a special breed of persons (please don't take offense if you are a physician; I am heading somewhere with this). Likewise, one might assert that physicians are a special breed of professionals. Their authority to practice medicine, after all, does not come from their employment status but from the authority that states grant them through the licensure process. To put it more succinctly, physicians are physicians first and employees second. Likewise, nearly, if not all, states have some type of legal regulation prohibiting hospitals from engaging in the practice of medicine and from controlling the practice of medicine by any physician, including those employed by the hospital. This is true whether or not that hospital is in a state that has a formal anti-corporate practice of medicine statute. In this way, physicians have a greater sphere of professional and moral agency than other types of

employees might normally enjoy in their relationship with their employer. Physicians simply are not limited in their professional capacity to acting as an agent of their employer. This has implications for how we understand what physicians can do on their own, that is, as their own moral and professional agents, what we as Catholic health care can do with our employed physicians, and what we can, should, or must do for them.

While employment establishes greater opportunity for influence, this influence is not achieved through the direct exercise of control. The influence we gain through employment is primarily achieved in two other ways. First, as hospitals and health systems we have influence through the control of what *we as Catholic organizations* will or will not actively participate in, permit, or provide the means for within our facilities. Second, our influence is also established through the alignment with the employed physicians that comes from compensation structures and other non-financial benefits, such as alleviating physicians from the burden of managing the “business” of medical practice and allowing them more time to care for patients, which is why they went into medicine in the first place. These considerations give rise to conceptual questions regarding just how much control and how much influence is garnered through an employment relationship. Does it even make sense to speak in terms of control, or are physicians such a special breed of professionals that we must limit our conceptual understanding of the opportunities and

challenges that physician employment brings in terms of influence alone?

The fact that we inherently must partner with physicians, whether that partnership takes the form of employment or some other form of alignment, in order to live out our healing mission raises some classic questions of cooperation in intrinsically evil, i.e., objectively immoral, acts. Given that employment does not necessarily establish control over physicians’ practice of medicine, and physicians therefore retain some professional and moral agency independent of the employing institution, these issues will persist in the new landscape of health care. These are not new issues, and for the purpose of this brief reflection I need not spend substantial time on the cooperation questions related to employing physicians who might prescribe contraceptives in the course of a well-woman visit or physicians who might want to retain the ability to perform tubal ligations or vasectomies independently of and outside the scope of their practice with a Catholic health care institution. These questions alone could constitute the substance and breadth of an entire book. However, for the purpose of this reflection, all I really need to say is that whether our approach to structuring physician-employment agreements and the support services we provide to their practice will remain essentially the same in this respect or will need to be somehow different in the new health care landscape largely depends on how one understands the independence of physician agency in light of the balance between control and influence that results from a physician-employment relationship.

Of course, challenges are not the only consequence of physician employment. In fact, I would suggest that the challenges are not even the primary consequence. To the contrary, the alignment and influence that come along with physician employment bring about many more opportunities to advance the Catholic identity of the healing ministry than it does challenges. Ultimately, I would argue that these opportunities to have a positive moral influence on the practice of physicians strengthens the ability of the Catholic health ministry to be a prophetic voice and pay public witness to Catholic values within and for the good of society, which itself constitutes a proportionate good that justifies most (if not all) of the instances of *mediate* material cooperation that may result from employing physicians.

In particular, physician employment provides unique opportunities to have positive influence in three key areas of moral concern to the healing ministry. First, there is evidence, at least anecdotal, of an increasing trend in some markets of physicians who are unwilling to take Medicaid or Medical Assistance patients (and there are likely many rational reasons for this with two of the most significant being pressure to meet RVU goals and the cost of a medical education today). Along with this hesitancy comes difficulty in finding physicians to take on-call duty for the ED. Physician employment offers the opportunity to incentivize these physicians through their compensation structures to care for more patients who are poor and vulnerable. This will also be a significant advantage once reimbursement moves to a

pay for performance model in which many physicians may have concerns about caring for the underinsured who often present with greater acuity, multiple comorbidities and increased complexity.

Second, by providing a combination of more practice management services, quality and efficiency protocols, data analytics, network development and care-design models, we will be able to have significant influence on the type and way that employed physicians actually provide care to patients. Specifically, we will be able to offer physicians the environment and capabilities to provide holistic, person-centered care of the highest quality and safety. Of course, it takes more than just incentives and infrastructure to provide such care; it also takes the desire and will to do so.

This brings me to the third key area of opportunity for influence--physician formation in the context of Catholic culture and values. In addition to helping physicians see the value in holistic person-centered care, physician formation programs can offer opportunities to provide more adequate education around Catholic values, spirituality and anthropology as well as to restore the physician's connection to her original sense of vocation and to a robust understanding of the philosophy of medicine, all of which ultimately improves patient care. In the end, employment offers a meaningful context within which to care for the physicians who care for our patients.

FROM THE FIELD

I would like now to conclude with a brief observation regarding an important implication of physician employment, specifically, the question of values-compatibility. The question of whether and how we screen for values-compatibility in our processes of hiring physicians—whether we give these considerations serious weight in the selection process or simply leave the selection of physicians solely to the whim of market forces and referral patterns—becomes of increasing importance in the new landscape of health care. As Accountable Care Organizations, “Narrow Networks” and Integrated Delivery Systems become the norm, we will find ourselves doing even more with and for our employed-physician partners. As ethicists, we must be persistent in support of our strategy, business, and operations leaders to help them understand what it means for physicians to be values-compatible and the importance of selecting for values-compatibility, even as the concept of values-compatible physicians itself evolves in response to this new landscape.