

Sex and Senior Living: Ethical Questions for Catholic Housing and Long-Term Care

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Most senior living facilities, whether independent, assisted living or skilled nursing, have by now encountered questions about how to manage intimate or sexual relationships among residents. The simplest case is the elder couple who meet in assisted or nursing care and begin to develop a relationship or even fall in love. This raises issues of competence, safety and consent. But there are other cases as well. Together they suggest a number of ethical questions regarding the proper balance between patients' rights and our obligations to church teaching. I raise these questions only to help clarify the tasks that lie ahead as we encounter changing cultural attitudes toward sexuality and aging.

WHAT ARE THE ETHICAL QUESTIONS?

There are at least three questions involved. First, "Is a Catholic senior living facility *cooperating illicitly* in immoral activity if a) it allows physical or sexual intimacy among assisted living or nursing home residents who are not married; b) it admits as residents unmarried couples who wish to share an apartment; c) it admits divorced and re-married couples whose previous marriage has not been annulled, or d) it admits couples that have entered into a civil same-sex marriage?" Second, are we requiring inappropriate

cooperation of associates, if we ask them to assist patients with certain needs related to sexual intimacy; and third, do we *cause scandal* by admitting couples who will engage in such activities even if there is no significant moral cooperation. Let us address cooperation first.

We should encourage companionship and friendship for senior residents. But Catholic institutions cannot ignore our tradition on sexual morality and the virtue of chastity.

WHAT CONSTITUTES UNACCEPTABLE COOPERATION?

In considering this question of *physical or sexual intimacy among unmarried residents*, we must balance the requirements of our moral tradition with the patients' right to physical and sexual expression, which is guaranteed in some states

by law. These laws are based on a “right to privacy” and on the assumption that the state does not have an interest in limiting intimate expression unless it is non-consensual or involves a minor. It is these two principles that led to the abolition of laws prohibiting adultery or sex among two persons of the same sex. Even if such activities are legally sanctioned, Catholic institutions may not consider them as moral if they take place between unmarried persons. Do we insist on compliance or can we can *tolerate*¹ these activities and relationships in our facilities as long as the residents have the moral competency to enter into the relationship, the relationship is fully consensual, does not take place in a public area where it invades the privacy of others, and does not pose safety risks to either of the residents? (You may laugh at this last qualification but there have been cases of frisky seniors falling out of bed and incurring injury.)

Another situation is that of *unmarried but cohabitating residents*. One instance would be the case of friends, siblings or other family members who either have shared or wish to share an apartment and for whom there is no indication of any sexual or romantic involvement. This does not pose a problem unless the facility’s mission is focused in such a way that it would allow no unmarried couples at all. This might be the case, for example, if a facility is dedicated to “promoting married life for seniors” and if such a mission would be legal from the stand point of equal access and non-discrimination.²

A more complex case involves an unmarried, romantically involved couple whom we suspect will engage in sexual activity. Do we act on our suspicion, or do we refrain from asking questions and overlook suspected behavior

because our mission is to provide housing, which we consider to be a basic human right?

Even more complex is the case of a *couple in a second marriage when at least one of them has been divorced but has not received an annulment; and the case of a same-sex couple that has been married in a civil ceremony*.³ From a canonical perspective these marriages are essentially similar because neither of them is recognized as valid by the church. As far as the church is concerned, they are not married at all and would be, as we used to say “living in sin.”⁴ In cases such as these, does the facility consider marital status as irrelevant to their mission of providing appropriate housing and health care and therefore does not ask about marital status? What if the facility learns about the couple’s marital status by disclosure or some other means? Do we then become complicit in the illicit and invalid act of marriage?

If we rule out illicit cooperation⁵ in the act of getting married, a second issue is whether the facility cooperates in the ongoing sexual activity that may take place as part of the couple’s relationship.

Formal cooperation involves sharing the intention of a wrongdoer. If someone were to rent to an unmarried couple a one-night “honeymoon suite” complete with videos, champagne and various pleasure aids, it seems the intent is to further or promote the (illicit) sexual union. However, a senior living center that rents an apartment with bare walls and no furniture is in the business of providing a safe, secure and age-appropriate residence for senior citizens. The residence is not sharing in, encouraging, or providing any essential requirement for sexual activity. They are renting to the couple as persons, not as sexual

partners. So if there is any level of cooperation here at all, it is minimal (mediate material) and morally justifiable long as there is proportionate reason for it. I believe it is likely that the fundamental importance of adequate housing, especially for the elderly, provides a proportionate reason to consider applications from persons in either of these groups despite the possibility that they might engage in extra-marital sex or in other activities that may be immoral. However, this is a question that requires further discussion.

ASSOCIATE INVOLVEMENT

There is a related question about cooperation on a micro level when it involves specific tasks that staff, particularly CNAs, are asked to do. For instance, what if a staff member is asked to assist a resident in getting dressed, or in getting into bed (maybe with the assistance of a mechanical lift as one administrator suggested to me) in preparation for what appears to be an intimate encounter, or to provide peri care afterwards? Some employees may feel uncomfortable or unprepared to do this. Paula Span raises this question and wonders whether CNAs are capable of assessing these requests, or if they should even be asked to do so.⁶ She notes that while many residences have no policies to deal with sexual behavior, others “train staff to ask people about their relationships – how they feel, whether they are comfortable,” to determine if the relationships are safe and mutual. How much can we ask of associates without violating their consciences?

If associates have a religious or moral objection to patient behavior, do we excuse them from any kind of participation if possible, just as we would do in other situations that cause moral distress? Should we provide training to help

staff understand the importance of emotional and physical intimacy for the elderly? If we encourage them to respect patient self-determination and to be cautious about judging or assuming they know what level of intimacy has or is about to take place, are we promoting moral indifference?

WHAT ABOUT SCANDAL?

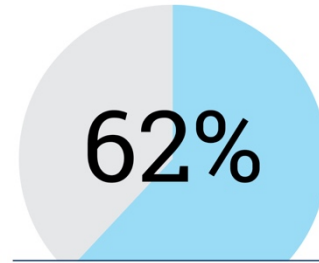
Let’s assume that there is no formal and no significant material cooperation involved in renting to or caring for same-sex or divorced and re-married couples. The last question we must deal with is the issue of scandal. Scandal may be defined as an act, behavior, attitude or even proximity to evil that leads others to do evil, causes confusion or weakens their faith.⁷ The word “scandal” appears repeatedly in church documents that deal with joint ventures and partnerships in health care. While renting an apartment surely has less potential for scandal than a collaborative arrangement between two large health care systems, it is nonetheless a concern.

Scandal may be given to other residents or to outsiders who are aware that some of the residents are not married or are in marriages the church does not recognize. Sometimes scandal is the result of a *deliberate* attempt to lead another to do wrong; but often it is the result of a cooperator getting too close, or appearing to get too close, to the wrongdoing of another so that they *unintentionally* lead others astray, causing confusion and giving the impression that we approve of an immoral act.

Is there a risk of giving scandal by *appearing* to condone illicit marriage or sex outside of marriage even if technically, from the perspective of moral cooperation, we do not?

The Revised Part Six of the *Ethical and Religious Directives for Catholic Health Care* notes that we must carefully evaluate the danger of scandal in each case. It notes that we can sometimes avoid or mitigate the risk of scandal by providing an explanation, for example, by emphasizing our mission is to protect human dignity and contribute to the common good by providing quality housing or long-term health care to those in need of it. We could explain that we do this as Catholics out of our faith commitment, but we do so without regard to social or personal status. Just as we do not ask patients when their last confession was when they come to the emergency room, we do not base admission to our residential facilities on presumed immoral behavior. Treating a criminal in an emergency room does not mean we condone his criminal acts, but that we are responding to human suffering.

Meeting these basic human needs is an obligation in justice generally, but it is particularly important for vulnerable seniors who are devalued by a society obsessed with youth and beauty. The elderly are sometimes perceived as non-contributing, inefficient members of a society that highly values economic success. Providing a safe, welcoming place for them enables them to flourish and to experience God's grace in old age. Is it appropriate to exclude those who may not be living a fully virtuous life?



of nursing home residents
have Medicaid

SOURCE: KFF

#MEDICAIDPOSSIBLE

Medicaid makes
it possible.

CONCLUSION

The good of human accompaniment is important to all of us and becomes even more important as we age and begin to experience diminishment, increasing physical limitations and isolation. In fact, human companionship is perhaps the most important part of quality senior life. We should encourage companionship and friendship for senior residents. But Catholic institutions cannot ignore our tradition on sexual morality and the virtue of chastity. These are, to be sure, matters that should be addressed first with a pastor or spiritual director, but in many cases our residents or patients do not have access to spiritual advice, or they may not feel any need for it.

The administrators of our Catholic residential facilities must also be mindful of organizational ethics. This is not just about the virtue of patients, or even providers, but of the organization itself. How do we model Gospel values of respect for human dignity? How do

operationalize our teachings on morality and virtue? How do we show that there is a difference between Catholic elder care and elder care offered by others?

I fear that this short analysis provides far more questions than answers. I present them not to foreclose dialogue, but to open a discussion about responding to basic human needs in a rapidly changing society. I am confident our tradition has the resources to respond with integrity.



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Creating Dialogue

1. Describe various ethical questions you have encountered in Catholic senior housing and long-term care facilities regarding the sexual behavior of residents.
2. What responsibility does management have to employees and associates of these facilities who have religious or moral objections to patient behavior?
3. How do we balance the basic human need for housing and the human dignity of patients in the context of church teaching and social practice?

ENDNOTES

¹ “Toleration” is used here as a technical moral term that means to allow, for some good reason, a sinful action by another, without approving of it.

² There are federal rules prohibiting discrimination in housing which are found in the Fair Housing Act of 1968 (The Fair Housing Act [FHA], [42 U.S. Code §§ 3601-3619 and 3631](#)). The FHA prohibits discrimination in housing based on seven factors: race, color, religion, national origin, sex, disability, and familial status. It does not currently prohibit discrimination based on sexual orientation or marital status, but many states and municipalities do. This analysis is concerned primarily with the ethical argument derived from Catholic moral teaching. Local laws must also be considered, but we would not want to allocate housing unjustly even if it is legally permitted.

³ See “A Retirement Community Turned Away These Married Women,” which recounts the story of two women who were married, who were refused admission to a non-denomination but faith-based retirement community in St. Louis. The couple filed suit claiming alleging sex discrimination in violation of the federal Fair Housing Act and the Missouri Human Rights Act. *The New York Times*, August 17, 2018
<https://www.nytimes.com/2018/08/17/health/lgbt-discrimination-retirement.html>

⁴ “The remarriage of persons divorced from a living, lawful spouse contravenes the plan and law of God as taught by Christ.” See Catechism of the Catholic Church, #1665. In 2003, the Congregation for the Doctrine of the Faith made it clear that gay marriage was not marriage in any sense and was in no sense to be condoned. See *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*.

⁵ Cooperation is a technical term that refers to various levels of participation in the wrongdoing of another. The ERDs (*Ethical and Religious Directives for Catholic Health Care*) describe *formal* cooperation as “an action, either by its very nature or by the form it takes, can be defined as a direct participation in an immoral act, or a sharing in the immoral intention of the person committing it.” The cooperation is only *material* if the one cooperating “contributes to the immoral activity in a way that is causally related but not essential to the moral act.” The ERDs also note that several factors go into determining the level of cooperation, including “how important the goods to be preserved or the harms avoided by cooperating.” *Ethical and Religious Directives for Catholic Health Care*, Sixth Edition, Part Six, Introduction.

⁶ Paula Span, “Sex in Assisted Living: Intimacy Without Privacy,” *New York Times* (June 10, 2014). The author mentions the Hebrew Home in Riverdale, the Bronx, which has had a sexual rights policy for older adults since 1995.

⁷ The Catechism of the Catholic Church defines scandal as “an attitude or behavior which leads another to do evil” (CCC, n. 2284) and says “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” (CCC, n. 2287).