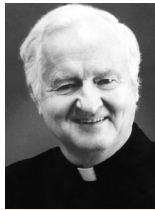


# THE *ETHICAL AND RELIGIOUS DIRECTIVES* AS PARTICULAR LAW

The Archbishop of Chicago, Cardinal Francis George, recently stated that the fifth edition of the *Ethical and Religious Directives for Catholic Health Care Services* is particular law for the Archdiocese of Chicago.<sup>1</sup> In a few other dioceses, diocesan bishops have acted in a similar manner, and indeed, according to the *Code of Canon Law* of 1983, they have the right to promulgate particular laws for their dioceses.<sup>2</sup>



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In canon law, “particular law” applies to a certain group. Do these declarations in Chicago and elsewhere give any more authority to the *Directives*? Why weren’t the *Directives* declared to be particular law in the past?

The current *Directives* “were approved as the national code”<sup>3</sup> by the U.S. Conference of Catholic Bishops (USCCB) in November 2009. For the most part, they are a repetition of the *Directives* issued in 1994 and slightly revised in 2001. The only change in the 2009 edition is in Directive 58, which treats in greater detail the use of assisted hydration and nutrition for dying patients.

It seems the USCCB approval implies that the *Directives* are the moral code for all Catholic hospitals, nursing homes and social agencies in all dioceses in the United States. Indeed, Directive 5 states explicitly: “Catholic health care services must adopt these *Directives* as policy, require adherence to them within the institution as a condition for medical privileges and employment and provide appropriate instruction regarding the *Directives* for administration, medical and nursing staff and other personnel.”

However, unless it has a special mandate from the Holy See, the USCCB does not have the right to legislate formally for individual dioceses. Because of the USCCB approval, “the present edition is recommended for implementation by the diocesan bishop.”<sup>4</sup> Hence, to be officially promulgated in an individual diocese, the *Directives* should be

declared explicitly by the diocesan bishop as the official norms for medical care in the diocese. But legislation as particular law does not seem to bestow added authority to the *Directives*.

In the history of the *Directives* in the United States, local diocesan bishops have seldom formally declared that the *Directives* be particular law for their dioceses. Usually, the bishops have been satisfied with the general approval of the *Directives* and have rightly assumed that Catholic health care facilities would observe them in accord with Directive 5 quoted above.

As I recall, Cardinal John Krol of Philadelphia, then chairman of the National Conference of Catholic Bishops/United States Catholic Conference (as the bishops’ conference was known at the time), recommended in 1973 that each diocesan bishop declare the 1971 *Directives* to be the official law for each diocese. He did this in order to ensure

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each Catholic hospital and nursing home would be safeguarded under the Church amendments, legislation named after former Sen. Frank Church (D-Idaho) and enacted after the U.S. Supreme Court’s *Roe v. Wade* and *Doe v. Bolton* decisions. The Church amendments recognized the rights of conscience of health care institutions that did not wish to allow abortions but still wished to participate in the federal Medicare and Medicaid programs.

It does not seem that many diocesan bishops followed Cardinal Krol's recommendation. Nonetheless, the *Directives* were accepted by all Catholic health care facilities as a binding obligation, even though they had not been declared the particular law for many dioceses.<sup>5</sup> Moreover, to date Catholic health care facilities have been able to participate in all federal health care programs.

There seems to be a two-fold purpose in making a formal declaration concerning the *Directives* at this time. Cardinal George and other diocesan bishops were not changing the nature of the *Directives* when they declared them to be particular law for their dioceses. They were "dotting the i's and crossing the t's."

What's more, stating explicitly that the *Directives* are particular law may be an acknowledgment of contemporary America's more contentious attitude toward rights of conscience. Contrary to the attitude of professionals in law, medicine and sociology one or two generations ago, a more common attitude today is that everyone who offers service to another must do anything requested, provided it is legal. There is even a move afoot to prevent those who withhold legal services from participating in federal programs. The fact that a professional considers some actions immoral, even if legal, is no longer sufficient grounds to refuse to perform the service, according to some social commentators.

When the *Directives* are promulgated as particular law, it is important that they not be presented as a series of negative precepts. Unfortunately, many in and outside health care do not realize the *Directives'* positive values and goals.

There are seven essays of introduction to the various sections of the *Directives* and 72 individual directives. Of these, only eight state prohibitions. The others are positive value statements designed to help institutions and individuals offer health care in the name of Jesus Christ.

Because of the care and ingenuity exercised by the theologians and bishops who edited the text in the 1994 edition (repeated for the most part in the 2001 and 2009 editions), the *Directives* are a compact and positive reaffirmation of what they are intended to be: "the ethical standards of behavior in health care that flow from the church's teaching about the dignity of the human person."<sup>6</sup>

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#### NOTES

1. Archdiocese of Chicago Policies and Procedures, Policy 2000 — Archdiocesan Healthcare Protocol, (2001.1) <http://policy.archchicago.org/policies/bk1num2000.pdf>.
2. John P. Beal, James A. Cordon and Thomas J. Green, eds., *New Commentary on the Code of Canon Law for the Latin Church*; (Mahwah, N.J.: Paulist Press, 2000).
3. *The Ethical and Religious Directives for Catholic Health Care Services*, 2009, p. 43 [http://www.usccb.org/meetings/2009Fall/docs/ERDs\\_5th\\_ed\\_091118\\_FINAL.pdf](http://www.usccb.org/meetings/2009Fall/docs/ERDs_5th_ed_091118_FINAL.pdf).
4. *Directives*, 2009, p. 43.
5. Fr. Kevin D. O'Rourke, Ron Hamel, Fr. Thomas Kopfensteiner, "A Brief History: Development of the Ethical and Religious Directives," *Health Progress* 82, no. 6 (2001): 18.
6. *Directives*, 2009, Preamble.

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