

CHURCH LAW'S ROLE IN COLLABORATIONS

Principles to Guide Catholic Healthcare Providers Contemplating New Arrangements

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Because of all the changes taking place in healthcare, Catholic providers need to be aware of certain general prescriptions of Church law, which establish parameters that allow institutions to enter into certain types of contracts or agreements while forbidding others. They also need to know what canon law does *not* prescribe.

The Catholic Church, as a society or community of believers, functions in the midst of civil society, carrying out or sponsoring works that enable the Church to attain its goals. To do so, the Catholic Church needs to make use of its internal law to ensure that the rights of all persons involved in its works are duly respected. At the same time, however, the Church must take into account existing civil legislation if its works are to be protected in the eyes of the state and duly recognized.

THREE TYPES OF CHURCH LAW

The Catholic Church has at least three major types of law:

Summary To ensure the success of collaborative arrangements between Catholic and non-Catholic organizations, Catholic providers are advised to look at Church law in canonical and civil documents and at the role of Church law in arrangements between parties.

First, Catholic healthcare providers should identify persons subject to Church law as they become engaged in apostolic activities such as providing healthcare on behalf of the Church. They need to distinguish among physical persons, moral and juridic persons, and associations of the faithful and other persons. To verify whether a party is a juridic person, Catholic healthcare providers must turn to historical documents.

When cooperative arrangements are made

- "Common," or "universal," law, applicable to all Catholics everywhere. This law is found in the Code of Canon Law for Latin-rite Catholics, in the Code of Canons of the Eastern Churches for Catholics belonging to the Oriental rites, and in various documents issued by the Holy See after the promulgation of these codes.

- "Particular" law, identified with territory, such as the legislation passed by the National Conference of Catholic Bishops (NCCB) for the United States, as in the area of financial administration.¹

- "Proper" law, applicable to persons, such as the laws governing the members of a religious institute.

According to circumstances, all three types of law could govern one person or institution. For instance, in addition to applicable civil legislation, a Catholic hospital operating in the United States under the auspices of a religious institute would be subject to the general laws of the Church, to laws and policies applicable in the United States,

between parties, they must consider a number of elements of Church law if the work is to remain Catholic. These include acquired rights and obligations, administration of temporal goods, observance of moral teachings, and respect of applicable legislation.

The law places no limits on the types of arrangements that religious institutes can enter into. However, when cooperative arrangements are being considered between Catholic and non-Catholic religious institutes, the moral issues involved must be taken into consideration. In such arrangements all parties should clearly determine beforehand common purposes, structures, and rights and obligations involved, so that there will not be any misunderstandings along the way.

such as the *Ethical and Religious Directives for Catholic Health Facilities* approved by the NCCB,² and to the proper laws of the sponsoring institute.

A simple comparison can clarify these distinctions. Although subject to the general laws of the Church, a Catholic hospital operating in Canada or in some other country would not be subject to laws applicable only in the United States

(although similar ones might be in effect).³ As to the rules governing the sponsoring religious institute, if the same congregation sponsored works in both the United States and another country, then its proper law would apply equally to all members, no matter where they were working. Thus canon law is not one for all, nor is it uniform. Much depends on the persons involved and on where they are carrying out their mission.

In addition to being governed by canon law, institutions are also subject to applicable federal, state, and local statutes or laws. To determine which law is applicable in a given situation, the facts must be clearly stated and understood. Otherwise, we risk taking something that was appropriate in one set of circumstances and applying it literally to another on the mistaken presumption that canon law requires it. When it comes to civil law documents, we risk simply transcribing what was considered to be canon law for one institution into the operating principles governing another institution.⁴

PERSONS SUBJECT TO CHURCH LAW

To begin, it is worthwhile to identify persons subject to Church law as they become engaged in apostolic activities, such as providing healthcare on behalf of the Church.

Physical Persons In the Church, physical persons are those who have been baptized (c. 96). This does not mean that nonbaptized persons do not enjoy basic human rights and also certain specific rights in the Church (e.g., see c. 206). But the full exercise of rights and the corresponding obligations belong to those who are baptized and, more particularly, to those who are in full communion with the Catholic Church (c. 205). Physical persons will be directly involved in carrying out an apostolic activity either in their own name or on behalf of a sponsoring Church agency.

The Church uses canon law to protect the rights of all persons involved in its works.

Among such physical persons, the diocesan bishop holds a special place, as vicar of Christ in the particular church entrusted to his care (*Lumen Gentium*, no. 27). The 1983 Code of Canon Law tells us that any apostolic activity, if it is to be recognized as such, must be carried out in communion with the diocesan bishop (cc. 305, 394, 678). This does not mean that the diocesan bishop has to approve

every apostolic activity. But it does mean that if he objects to a given work or manner of proceeding, it might remain the charitable or philanthropic work of Catholics, but risks no longer being considered an apostolate, or a specific work of the Catholic Church.

For a hospital, being no longer recognized as Catholic could affect patients, taxation benefits, and other interested persons (e.g., donors and sponsors). For this reason, when new arrangements are being contemplated between Catholic and non-Catholic partners, the diocesan bishop should be informed early in the process of any impending innovations that could affect the Catholicity of the work. At the same time, the 1983 Code of Canon Law also provides that laypersons, by virtue of their baptism and confirmation (c. 225), are called on to exercise an apostolate, and they do not need immediate and direct approval for their activities.

A third category of physical persons includes religious men and women who carry out an apostolate on behalf of their institute. While carrying out the common work of the Church, they must remember that they have committed themselves to certain standards and are bound by specific congregational norms and policies.

Moral and Juridic Persons Moral persons are those which come into existence without any operation of the law, such as the Catholic Church itself or the Holy See (c. 113, sec. 1). Juridic persons are those which are recognized either by virtue of the law (e.g., a religious institute, a diocese, or a seminary) or by a special decree of the competent ecclesiastical authority (as when a diocesan bishop grants juridic personality to a hospital or college).

Canon 116 distinguishes between two types of juridic persons: public and private. Public juridic persons operate "in the name of the Church," their statutes have been approved, and their tem-

DECREE ESTABLISHING A PUBLIC JURIDIC PERSON

The following elements are appropriate when establishing or recognizing a public juridic person:

- The prescribed relationships to hierarchical authorities (c. 117). These could be spelled out in the approved statutes of the juridic person and simply be referred to in the decree. They could address such matters as consultation on proposed structural and administrative changes and dissolution clauses.
- Any elements required to retain recognition as a Catholic work (see cc. 216, 300; and F. G. Morrissey, "What Makes an Institution Catholic?" *Jurist*, vol. 47, 1987, pp. 531-544; J. H. Provost, "The Canonical Aspects of Catholic Identity in the Light of *Ex Corde Ecclesiae*," *Studia Canonica*, vol. 25, 1991, pp. 155-191; L. Orsy, *The Church: Learning and Teaching: Magisterium, Assent, Dissent, Academic Freedom*, M. Glazier, Wilmington, DE, 1987, pp. 113-121). Among these elements are, for example, submitting an annual report of activities to the diocesan bishop, adhering to the Church's doctrinal and moral teachings, providing for periodic visitations by the diocesan bishop or his delegate, and ensuring that some particular work is carried out in favor of the poor or the underprivileged.
- Elements required for the proper administration of ecclesiastical goods (cc. 94, 1,257). If the juridic person is public, the statutes could also provide, among other things, for an annual financial report to the diocesan bishop, either for information or approval. The diocesan norms relating to the collection of funds would also apply (c. 1,265).

poral goods are subject to the Church's laws relating, among other things, to administration and alienation. Private juridic persons carry out their activities in the name of those involved, but nevertheless enjoy a type of recognition by the Church that does not entail as many norms to follow.

The Code of Canon Law provides that temporal goods belong to the juridic person that has lawfully acquired them (c. 1,256) and not to the sponsoring institute. This does not always correspond with civil realities because a work could have distinct civil personality (corporate status) and not have canonical status, or vice versa. If all the goods were registered civilly under one corporation, that corporation, not the subsidiary, would be considered the legitimate civil owner.

Not every work has acquired separate juridic personality, just as not every work has been separately incorporated civilly. Just as they did a few years ago when they incorporated works separately, today—in part because of the financial consequences—many religious institutes and dioceses are trying to determine which of their works and institutions have received canonical juridic personality. The task can be difficult, particularly if the works date back some time. Records were not

kept in the 1800s as they are today. It is not always easy to determine whether a convent was established to which a hospital was attached, or whether a hospital was first established and recognized and a local religious house set up within it. This can call for painstaking historical research.

In spite of the difficulties, it would be *most* important to know whether works and apostolic institutions have acquired such juridic personality distinct from that of the sponsoring diocese or religious institute in order to determine which temporal goods belong to the works and which belong to the sponsor. This will also enable them to make certain that their rights and obligations are duly respected.

Associations of the Faithful and Other Persons The Church recognizes the existence of associations of the faithful (see c. 298 and following) whereby certain apostolic works are carried out jointly, either in the name of the Church (public associations) or collectively (private associations).

As religious institutes feel obliged to withdraw from certain works, they have a number of options to consider. They can turn the work over to another institute, to a diocese, or to an association of the faithful, which then assumes responsibility for running it. Or they can arrange to have an autonomous juridic person established (if one does not already exist) and a board of directors selected to operate the work on behalf of the juridic person. A third possibility, of concern here, is for institutes to enter into collaborative arrangements with other groups, Church-related or not, to ensure the work's continuation.

JURIDIC PERSONS' HISTORICAL DOCUMENTS

Before entering any collaborative arrangements, Catholic healthcare providers must know what they are dealing with: Is it an independent work? Or has a distinct juridic person been established? If so, under what conditions?

Juridic persons, like corporations, do not simply come into existence. They are constituted either by prescription of law or by decree of the competent authority (c. 114, sec. 1). If someone claims that a juridic person has been established, it will thus be necessary to present either the decree of establishment whereby juridic personality was recognized by law, or the special decree of the diocesan bishop or other competent authority.⁵ In rare instances such personality might be considered to have been acquired through custom (see cc. 25, 26).

The decree of establishment should have spelled out the rights and obligations of the juridic person. Otherwise, these would have had to be derived from the general prescriptions of law. From a practical point of view, one of the

most important rights is that of receiving and administering temporal goods independently from other juridic persons.

The Decree Establishing a Juridic Person Canon 116, section 1 provides that public juridic persons fulfill, within the limits set for them, a proper function entrusted to them in view of the common good. The diocesan bishop (or, occasionally, other Church authorities) will be responsible for overseeing this function. For this reason, when a decree is issued establishing or recognizing a juridic person, ideally it would contain the elements described in the **Box** on p. 26.

The Equity of the Sponsoring Institute A clear distinction should be made between goods belonging directly to the juridic person and goods entrusted to it by some other authority for a given work. This amounts to a clear determination of the sponsoring group's "equity" in the institution. Thus, if a healthcare institution receives capital or operating funds from some public authority, these are not necessarily given to the ecclesiastical juridic person, but might simply have been entrusted to the institution to provide healthcare for area citizens. These latter funds are not ecclesiastical goods because they do not belong to the stable patrimony of the juridic person (see c. 1,291). The sponsoring institute would not list such funds in its equity or have a claim on them were it to withdraw someday from the work.

Reserved Powers The documents could also refer to "reserved powers," that is, certain decisions

reserved to the canonical stewards of a juridic person, even though technically the civil corporation could operate independently of such control.⁶ The method has enabled the Church to ensure sponsorship of numerous works that otherwise would have operated simply on a civil law basis. However, canon law does not require these reserved powers as such. No canon specifically refers to them by name. Nevertheless, they have been found to be a most appropriate means of expressing the interrelation between canonical and civil documents, and until a better solution is found, they should be maintained.⁷ These powers should be clearly spelled out and not unduly multiplied.

Canonical Interrelationships Once the canonical documents establishing and recognizing the juridic person have been set in place, the next step would be to examine the canonical interrelation of this juridic person with other juridic persons or entities that do not have such legal personality.⁸

CHURCH LAW IN ARRANGEMENTS BETWEEN PARTIES

When cooperative arrangements are made between parties, they must consider a number of elements of Church law if the work is to remain Catholic.⁹ However, few matters are prescribed as such; the door is left open for cooperative agreements. For instance, the terms of the agreement, the determination of membership on boards of directors, and practical financial arrangements (such as sponsorship fees and determination of

THE SEARCH FOR IDENTITY

The Search for Identity: Canonical Sponsorship of Catholic Healthcare was published by the Catholic Health Association (CHA) in 1993 to draw out the implications of Church sponsorship of the healthcare ministry. The text's authors—CHA's Canon Law Committee—begin by discussing the long history of Catholic healthcare in the United States. There are many types of institutions, each with its own character and legal status. As new conditions arise, certain points must be retained to preserve Catholic identity; these are not necessarily the ones that have traditionally been considered essential.

The authors distinguish between canonical Catholicity and the civil expression of such identity. Canonical Catholicity will be determined primarily

by the relation of the work to the diocesan bishop and the observance of the conditions spelled out in the documents establishing the work. Few prescriptions of canon law must be observed as such; rather, more depends on how the diocesan bishop views the work and its part in the overall mission of the diocese.

Currently, it seems that if a work is to remain Catholic in the civil sphere, certain powers or decisions should be reserved to the canonical stewards. These include:

- Establishing the philosophy according to which the corporation operates
- Amending the corporate charter and bylaws
- Appointing or approving the appointment of the board of trustees
- Leasing, selling, or encumbering

corporate real estate in excess of the approved sum

- Merging or dissolving the corporation

Other reserved powers that have been commonly used are not absolutely required, even though they are helpful in maintaining Catholic identity.

The authors maintain that we should not be afraid to investigate new means of entering into agreements to preserve the Catholic identity of our works in ever-changing times. It is usually not the canon law that is preventing such research, they state.

The Search for Identity is available from CHA at a cost of \$7.50 each for 1 to 4 copies; \$6.50 each for 5 to 9 copies; and \$5.50 each for 10 or more copies. To order, call 314-253-3458.

equity) are subject to negotiation between the parties involved.

Acquired Rights and Obligations Acquired rights and obligations—and thus the intentions of donors—must be respected (c. 1,267, sec. 3). If these intentions can no longer be respected in a new cooperative venture, then the goods must be returned to the donors or their successors, unless other appropriate arrangements are made. For this reason, it is recommended that each juridic person have a list of all conditions attached to donations. Before accepting new donations, the organization must ascertain whether these conditions can be observed, not only now but in the future as well. A clause must be included that allows the administrator to change the purpose if necessary (see c. 1,310, sec. 1). Indeed, gifts entailing *perpetual* conditions probably should not be accepted because of the difficulties they may cause down the road.

Administration of Temporal Goods Church goods are to be administered properly (c. 392). Principles of accountability and subsidiarity come into play here, but an administrator must be ready to show to proper ecclesiastical authorities that the temporal goods are being prudently and carefully administered.

Observance of Moral Teachings The Church's moral

teachings are to be respected (c. 305). For instance, a Catholic healthcare institution could not enter into an agreement that would keep it from respecting the *Ethical and Religious Directives for Catholic Health Facilities* or some similar document.

Respect for Applicable Legislation The institution would have to respect applicable binding legislation, whether it is the common law of the Church, the particular law of the place, or the proper law of the sponsoring institute.

ARRANGEMENTS BETWEEN RELIGIOUS INSTITUTES

The law places no limits on the types of arrangements that religious institutes can enter into. Joint ventures, the organization of systems, contracts for shared services, and the like can be considered. Likewise canon law does not prescribe that a work be not-for-profit if it is to be Church sponsored. The important issue is where the profits go. If they are applied to one of the recognized purposes (c. 1,254, sec. 2), such as works of charity or works of the apostolate, there seems to be no canonical problem in a for-profit undertaking.

The purpose of such arrangements—to promote apostolic works or to ensure their continuity—ought to be clearly stated. The Box below de-

ARRANGEMENTS BETWEEN RELIGIOUS INSTITUTES

Before religious institutes enter cooperative arrangements, they should take the following preliminary steps.

SPONSORING INSTITUTES

- See whether the works involved have canonical juridic personality, distinct from that of the sponsoring institute, thus allowing for distinct accounts.
- Ensure protection of donors' rights and other acquired rights.
- Distinguish carefully between goods belonging to the sponsoring institute and those belonging to the distinct juridic persons.
- Determine whether certain operating decisions are to be reserved to one or both of the sponsoring authorities (special reserved powers). In other words, outline any "nonnegotiables" before considering new arrangements. Among these are observing the principles of Catholic doctrine and moral practice, observing the rights of others,

establishing some form of communion with the diocesan bishop, and providing for quality control relating to the use of the title "Catholic."

DIOCESAN BISHOP

- Grant juridic personality to the works if it has not already been done.
- Arrange for the unity of apostolic activity in the diocese. For instance, see that Catholic healthcare is provided in the various parts of the diocese and is not concentrated in one particular area.

OTHER INTERESTED PARTIES

- Determine whether civil law prescriptions can be observed (e.g., antitrust statutes, zoning regulations).
- Make appropriate arrangements with funding agencies to determine whether they can continue funding under the new arrangements.
- Contact past and potential donors to ensure their continued interest in the

reorganized works.

- Prepare suitable public relations materials explaining clearly and openly the reasons for the new cooperative arrangement.

DOCUMENTATION

The documentation should refer to the decisions of each major superior and council involved, as well as to the opinion of the diocesan bishop. Obviously, the partnership agreement itself would be part of the package. If necessary, appropriate civil recognition (such as a new corporation) should be obtained.

It would also be helpful to arrange beforehand the steps to be taken to dissolve the partnership, to avoid undue hardship and further misunderstanding if things do not work out as planned. Such arrangements should provide for the distribution of assets and liabilities and, if possible, for the continuation of the apostolic work.

scribes what steps to take when arrangements between religious institutes take place.

Arrangements with Non-Catholic Parties When cooperative arrangements are being considered between a Catholic and a non-Catholic institution, the same principles as mentioned in the **Box** on p. 28 should be kept in mind. However, one additional area has to be considered: the moral issues involved.

All parties should clearly determine beforehand common purposes, structures, and rights and obligations involved to avoid any misunderstanding along the way. The diocesan bishop would have special input on issues of cooperation, potential scandal, and the like. Because these issues can vary from place to place and according to circumstances, no one specific form meets all requirements. The involvement of competent ethicists and moral theologians would be important at this point.

At times, such arrangements will fail to materialize, not because of the canon law as such, but rather because of moral issues. This is why it is important not to wait until the last moments to determine the moral issues involved in cooperation and to seek the opinion of the diocesan bishop. What is allowed in one diocese or in one part of the country is not necessarily allowed in another. Similarly, some states allow certain types of transactions while others do not.

PURPOSE OF APOSTOLIC ACTIVITIES

Collaborative efforts among healthcare providers will be increasingly required if certain works are to continue. Although many institutions would like to remain independent for as long as possible, it is not realistic to believe they can continue operating as they do today. The **Box** to the right lists the most important preliminary steps. Catholic healthcare providers must prepare the groundwork now so that they can move forward when collaborative possibilities arise.

Those contemplating new sponsoring arrangements with other institutes or with other entities should keep these principles in mind. But in all such actions, the key is not to lose sight of the purpose of such apostolic activities—the “salvation of souls which is the supreme law in the Church” (c. 1,752). □

NOTES

1. See National Conference of Catholic Bishops, *Implementation of the 1983 Code of Canon Law: Complementary Norms*, Washington, DC, 1991, p. 52.
2. These directives and a commentary on them can be found in O. N. Griese, *Catholic Identity in Health Care: Principles and Practice*, Pope John Center, Boston, 1987, p. 537.
3. For instance, in Canada, see Catholic Health

THE MOST IMPORTANT STEPS TO COLLABORATION

- Determine clearly what the diocesan bishop's position is relating to future collaborative arrangements.
- Determine whether the apostolic work has distinct juridic personality. If not, make suitable arrangements for its acquisition.
- Distinguish clearly those goods which belong to the sponsoring institute and those which belong to the work.
- Among the goods belonging to the work, distinguish clearly which ones truly belong to it and which have been entrusted to it on behalf of some other funding source.
- Establish clearly the equity of the sponsoring religious institute in the current operations.
- Agree on the points the sponsoring institute would consider non-negotiable in any potential transaction, and distinguish these from present reserved powers that could be transferred to the new operation.

Association of Canada, *Health Care Ethics Guide*, Ottawa, 1991, p. 91.

4. For instance, refer to *St. Vincent Infirmity Medical Center v. Director of Labor*, Court of Appeals of Arkansas, October 31, 1990 (797 S.W.2d 460, 32 Ark. App. 156, 32 Ark. App. 71): “Evidence indicated that although hospital provided health care, it was operated primarily to carry out religious mission and would not have continued to operate but for religious motivation and purpose.”
5. Canonists disagree as to whether major religious superiors can grant juridic personality to a work. There is no doubt, however, that the diocesan bishop can issue such a decree for works in his diocese. Until the matter is resolved, it would be prudent to have the decree issued by the diocesan bishop.
6. In particular, the work of A. J. Maida and N. P. Cafardi, *Church Property, Church Finances, and Church-related Corporations*, Catholic Health Association, St. Louis, 1984, pp. 167-169, develops this approach.
7. See, for instance, R. J. Kennedy, “McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-related Institutions in the United States,” *Jurist*, vol. 50, 1990, pp. 351-401.
8. See, in particular, Catholic Health Association, *The Search for Identity: Canonical Sponsorship of Catholic Healthcare*, St. Louis, 1993, pp. 55-58.
9. In *The Search for Identity: Canonical Sponsorship of Catholic Healthcare* (p. 56), the Catholic Health Association mentions six characteristics: (1) The institution is to be under the sponsorship of the competent ecclesiastical authority or acknowledged as Catholic (see, by analogy, c. 803, sec. 1). (2) The principles of Catholic moral theology and medical ethics must underlie all activity in the hospital or healthcare center (see, by analogy, c. 803, sec. 2). (3) The competent authority has authorized the recognition as Catholic (see, by analogy, cc. 803, sec. 3; 300; 305; 313; and 325). (4) Pastoral care and practice are subject to the authority of the Church (see, by analogy, c. 804, sec. 1). (5) The diocesan bishop or his delegate has a right of visitation (see, by analogy, c. 804, sec. 1). (6) The institution's temporal goods are administered according to the applicable canonical principles.