Ethical Decisions in Health Care

A Seven-Step Ethical Discernment Process Can Help Organizational Leaders Make Wise Choices

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It is sometimes said that health care ethics as a profession is in an early stage of its maturation process.[1] If this is true, it can also be said that organizational ethics in health care is just now beginning to emerge from its earliest stage of development. In its infancy, organizational ethics was generally viewed as synonymous with "corporate compliance," in part because a primary impetus for the development of organizational ethics programs has been governmental pressure.[2] Although governmental compliance pressure continues to be a factor, organizational ethics in Catholic health care has been evolving independently of that pressure.

By developing and integrating a view of organizational ethics that transcends its original compliance context, Catholic health ministries are transforming the role of values in organizational decision making. Integral to this transformation is a combination of the existing emphasis on mission in organizational decision making,[3] the distinct moral method found in the Catholic moral tradition (or, at least, in one interpretation of it), and a corresponding conception of ethical discernment.

Moral Method and Organizational Ethics

Though not immediately obvious, a connection exists between the way one thinks about ethics generally and the way in which one conceives of organizational ethics. For example, the view that organizational ethics is synonymous with corporate compliance is consistent with the prevailing tendencies in our acculturated moral reasoning. In contemporary society, people tend to base their actions either on what they think will result in the most good or on certain rules of right action, no matter what the outcome of the action might be. Whereas some people recognize the moral significance of both pragmatic results and rules, most emphasize one of these considerations more than the other. Others focus *only* on consequences, or *only* on rules of right action, when trying to decide what they ought to do.[4] Although these observations provide some insight into everyday moral reasoning, they also reflect the nature and character of the predominant moral methods of our day, namely, "consequentialism" and "deontology."

According to Samuel Scheffler, consequentialism is "in its purest and simplest form . . . a moral doctrine which says that the right act in any given situation is the one that will produce the best overall outcome, as judged from an impersonal standpoint which gives equal weight to the interests of everyone."[5]

Viewed from a consequentialist perspective, one of the primary purposes of an organizational ethics program is to ensure that the organization is not penalized for the actions of its individual employees and to avoid the bad consequences that might result from such actions (e.g., fines, lawsuits, etc). Indeed, this goal is the underlying premise of "due diligence," one of the early practical manifestations of organizational ethics in the compliance context. However, due diligence was originally developed not as an organizational ethics program, but as a legal defense strategy intended to show that the behavior of a few rogue employees was neither encouraged nor sanctioned by an organization's policies and procedures.[6] Thus, the purpose of due diligence is to distinguish what an organization does from what its employees might do.

Deontological theories of ethics (Kantian ethics, for example) view the moral status of an action as dependent on its being in accord with a duty or rule of right action. In this framework, consideration of consequences is irrelevant.[7] This conception of ethics can be summarized by the common phrase, "The ends never justify the

means." From a deontological perspective, as from that of consequentialism, organizational ethics is primarily about compliance with existing rules and regulations. The primary difference between a consequentialist conception and a deontological conception of organizational ethics is that, according to the latter, there is an inherent value in ensuring that associates are treated fairly and their rights respected. Though it is much less a "carrot and stick" approach, organizational ethics from a deontological perspective still fundamentally means "compliance."

Organizational ethics is concerned with creating a positive climate or culture.

In contrast, it can be argued that the conception of ethics that provides the methodological basis for the Catholic moral tradition is neither strictly consequentialist nor strictly deontological. Rather than consequences or rules of right action, the Catholic conception of ethics is primarily concerned with human dignity and human well-being—with asking whether our actions promote and respect human dignity.[8] In broad terms, there are three basic ways in which one can promote and respect human dignity:

- By respecting the basic human rights of individuals that arise from human dignity and refraining from actions that interfere with or are contrary to human well-being
- By acting as an advocate for those who cannot speak for themselves, by being a "voice for the voiceless"
- By actively fostering the ability of individuals and communities to function in characteristically human ways that enable human flourishing

One characteristic of this teleological approach is that it requires one to act both to maximize good consequences (i.e., those that foster human flourishing in oneself and in others) *and* in accord with rules of right action (e.g., respecting the fundamental rights of individuals that arise directly from human dignity).

The subsequent implications of a teleological moral method for organizational ethics are twofold:

- Organizational ethics is concerned not primarily with distinguishing the actions of the organization from those of its associates through due diligence, but, rather, with creating a positive organizational climate or culture in which associates are positively encouraged to behave in certain ways and empowered to contribute to the greater good of the organization and community.[9]
- Organizational ethics is fundamentally concerned with fostering the well-being of the organization itself, its associates, those it serves, and the larger community in which it exists, through means that are themselves morally valuable.

Although fostering institutional and human well-being in this way retains a necessary and "value-added" role for corporate compliance and due diligence programs, organizational ethics is most appropriately viewed from this perspective as a tool for making the best possible decisions on behalf of the organization, as judged from the standpoint of its mission, vision, and values. In this way, a teleological conception of organizational ethics is more closely aligned with strategic decision making than with corporate compliance. Critical to the ability to make this conception of organizational ethics operational is a structured process of ethical discernment.

Ethical Discernment: A Structured Process

Discernment engages our spirituality, intellect, imagination, intuition, and beliefs. It is decision making that reaches into the heart of our beliefs about ourselves, about those with whom we live and work, about God, and about all creation. Particularly in a situation in which a group of leaders must come together to make a collective decision, a structured process of discernment can help discipline decision making; ensure that relevant dimensions of a decision are considered adequately; elicit a multiplicity of perspectives; allow decision makers to reflect on their moral intuitions; align moral sensibilities and intuitions with the deliberative intellect; and foster an ability to articulate and communicate the rationale for organizational decisions.

Discernment, therefore, requires structured time for reflection and prayer. Such time may include but not be limited to considerations such as: What would God have me do in this situation? How is God speaking through events, other people, and authority? How would a particular decision help us to serve others better? How would it advance our mission? How do my personal biases and precon-

ceived plans influence my decision making?

The particular process with which I have had some experience was developed for use at Ascension Health, St. Louis, and explicitly relates decisions back to that organization's mission, vision, and values; reinforces its "preferred culture"; and promotes consistency with existing organizational structures and processes and with its Catholic identity. The process itself consists of seven steps that follow an initial period of prayer and reflection. Prayer and reflection should be engaged, not just at the beginning, but throughout the process as is appropriate. Though how much and at what point prayer and reflection are appropriate will vary according to the issue's complexity and significance, they are in fact integral to the process. In group or committee situations, the group need not complete each of the seven steps as a whole, but it should consider each step explicitly before a final decision is implemented. The group may need to consider each step more than once, and it may need to revisit earlier steps in light of responses to later ones. Though the steps are represented sequentially, the process of discernment is in fact more like a downward spiral movement through which the decision makers drill deeper into the issue.

The steps are:

• *Step One: Identify the Central Question(s)* Decision makers articulate clearly and succinctly what they perceive to be the issue at hand; consider its organizational, ethical, and strategic dimensions, including its potential short- and long-term impact on the organization; and determine whether this is the appropriate time to address it. This step is critical insofar as those participating in the process must clearly understand the central issue(s) before they can adequately consider the subsequent steps of the process. Identifying the central issue will, for example, help determine who should be invited to the decision-making table.

• *Step Two: Consider Subsidiarity* Subsidiarity requires that those in positions of authority recognize that all associates have a right, in accord with their human dignity and responsibility to the common good, to participate in decisions that directly affect them. This step asks decision makers to consider who will be affected by a particular decision and, of those, who will be *most* affected. Subsidiarity does not necessarily imply that those with the most at stake should automatically be given *sole* responsibility for the decision, only that the relevant "community of concern" should be appropriately involved.[10] This step ensures that those who are most directly affected by a decision will be appropriately consulted by those who have the ultimate accountability for the decision and expertise to make it. It may happen that additional people will need to be brought into the decision-making process or that responsibility for the decision making will ultimately be delegated to a more appropriate level (whether higher or lower) in the organization.

• *Step Three: Identify the Relevant Facts* Such facts may include state and federal statutes and regulations; case law; existing institutional policies; and professional standards. One might also include here consideration of possible outcomes from a particular decision. This is a particularly pivotal step insofar as new facts regarding a specific issue may force decision makers to reconsider whether they are asking the right questions and whether the relevant communities of concern are appropriately represented. This step will often take participants back to (or be combined with) Step One, because the situational particulars of a given case will influence what the decision makers can and should try to accomplish in that situation.

• *Step Four: Identify the Salient Values and Moral Concerns* For Catholic organizations, such concerns will include the foundational principles of Catholic moral and social teaching, such as human dignity, the common good, justice, and stewardship, as well as other, less foundational moral principles.

Yet such concerns go beyond moral principles to encompass considerations that relate directly to the organization's well-being and culture. These additional considerations might, for example, include the organization's strategic priorities, its institutional identity, integrity, and conscience, as well as the personal and professional values of its associates and their rights and responsibilities. Of course, simply identifying the salient moral concerns and values at stake will not by itself resolve any given issue. Decision makers must then engage in a nonlinear process of balancing the salient moral concerns and values, arriving thereby at a practical judgment regarding the best possible alternative.

• *Step Five: Consider Alternatives* Questions that may help decision makers identify possible alternatives include: What do other organizations do in this situation? What are other organizations not doing—but maybe *should* be doing—in this situation? What would I as an individual do in this situation? What would the prudent person do in this situation? Are there other possibilities not yet considered? These questions are intended to elicit a multiplicity of perspectives, to generate fresh ideas, and to get the decision makers "thinking outside the box."

• *Step Six: Decide and Justify* In fact, a decision may well have been reached by the time the previous five steps are completed. The value of this step is that it forces the decision makers to articulate clearly the rationale for their decision and to relate it back to the organization's mission, values, and Catholic identity. This step also highlights the essential and integral role of prayer and reflection in the discernment process a final time, because it requires decision makers to ask themselves whether the particular decision is adequately grounded in prayer and reflection and whether everyone is at peace with the decision. Finally, this step requires decision makers to formulate a communication plan for explaining the decision and its rationale to the members of the relevant communities of concern.

• *Step Seven: Follow-Up and Review* This step actually occurs after the decision has been made and is (or soon will be) in the process of being implemented. It is, therefore, both retrospective and prospective. Retrospectively, the step asks whether all parties responsible for implementing the decision have followed through, whether they consulted and reviewed the implementation plan with the primary decision makers and those with the relevant expertise, whether the plan was implemented in a timely manner, and whether there were any unforeseen consequences.

Prospectively, the step asks whether the decision should be revised in light of new information, what can be learned from the decision and its outcome, and whether anything should be done differently the next time the organization is faced with a similar issue. In this way, Step Seven reinforces the importance of ethical discernment before, during, and after the decision-making process and fosters the ability of leaders to make well-reasoned decisions in a consistent manner.

> The discernment process can be used by a leader or team as a checklist.

Ethical Discernment in Practice

There are many ways in which this discernment process might be used to address an issue. It might, for example, be used by a single decision maker as a checklist to ensure that he or she is considering all the relevant dimensions of a complex issue. It might be used by a leadership team working through a particularly complex and significant strategic decision. Indeed, the process was designed to be used in many different types of health care delivery organizations, in many different types of situations, and at the many different levels in such an organization. As a result, decision makers are left to determine for themselves how best to work through the process. A hypothetical case example may help illustrate how the process can facilitate the integration of values and strategic priorities in the decision-making process.

In light of the recent approval by the U.S. Food and Drug Administration of the Cypher drug-eluting coronary stent (DES) and numerous patient requests for the stent, the chief medical officer (CMO) of "St. Peter's," a large Catholic acute care facility widely known for its cardiac services, has decided that a protocol for determining which patients will receive the new stent is needed. The CMO (who happens to be a Catholic) calls a meeting with the chief operating officer (an Episcopalian) and the chief of cardiac services (a Muslim) to begin considering what such a protocol might look like. Though not sure that the development of a clinical protocol is an appropriate issue for the discernment process, the CMO asks each of them to prepare for the meeting by reflecting on how the use of a limited resource influences allocation decisions and on how this particular issue provides an opportunity to contribute to St. Peter's mission.

At the meeting, the CMO begins by stating what he believes to be the central issue, namely, that a protocol to limit DES utilization is necessary to control costs and to support physician responses to patients who request the new DES but for whom it may not be clinically appropriate. The CMO then asks the others how they think the availability of the highly anticipated stents might affect the organization and what other organizational, ethical, and strategic considerations the protocol should address. During this discussion, several other issues are identified, including whether patients should be allowed to pay for the new DES out-of-pocket; what impact the increased expenditures will have on the organization's ability to provide "charity care" (of which it is the largest provider in the communi-

ty); and how the new technology might affect the already significant disparities in health between the area residents who have adequate insurance and those who are underinsured.

Given these considerations, the three leaders determine that the issue would be appropriate for the discernment process, insofar as it has complex organizational, clinical, and ethical dimensions and potentially significant operational implications. In considering Step Two, they decide that they should have another meeting and invite the CEO, the vice president for mission, and another physician staff member to ensure that the clinical and organizational dimensions are adequately considered. The CMO then asks the chief of cardiac services to gather any pertinent facts. In preparation for the next meeting, each participant is again asked to have a few moments of private prayer.

A new coronary stent offers a hypothetical case for the discernment process.

At the beginning of the second meeting, the vice president for mission leads the group through a reflective exercise focused on Jesus' parable of the talents and how its message relates to St. Peter's, its mission, and the particular issue with which they are now faced. The CMO then summarizes the issues that were identified as central in the previous meeting, and everyone agrees that the protocol should attempt to address these issues. The chief of cardiac services then relates the key findings of his fact gathering, in particular that:

- A DES costs approximately $2,000 more than a bare metal stent.
- The demand for DES is currently greater than the supply.
- A DES generally results in a dramatic reduction in the need for repeat percutaneous cardiac intervention because of restenosis.
- The U.S. Centers for Medicare & Medicaid Services have created a new DRG for the DES that will reimburse at a higher rate, thereby covering most (but not all) of the increased cost.
- Existing utilization protocols specify the inclusion criteria for the SIRIUS Study, which is considered the gold standard because of its large subject population and the way it closely approximated "real world" clinical application.[11]

In light of this discussion, the group quickly identifies stewardship and patient autonomy as particularly salient moral concerns. The CEO then notes that, as she understands it, the principle of stewardship requires not only that resources be used in a way that maximizes medical utility (i.e., that minimizes costs and maximizes clinical benefit) but used also with an eye to promoting equity, respecting basic human rights, and fostering the common good.[12] The vice president for mission points out that, as interpreted from a Catholic moral perspective, the concept of respect for patient autonomy is not purely individual-centered and that the autonomy rights of individuals must be understood and responded to in the context of membership in community, solidarity, and the goods of public life.

After considering various alternatives for structuring the protocol, the group decides that the protocol should, at least initially, limit DES utilization to the two subgroups of patients most likely to benefit from them: diabetics with longer lesions and small vessels and nondiabetics with shorter lesions and large vessels.[13] The protocol does not, moreover, allow the new stents to be used in patients outside these two groups even if they are able and willing to pay for the procedure out-of-pocket.

In justifying its decision, the group emphasizes several considerations:

- Restricting utilization in this way will help to reduce the temptation for physicians to overutilize the new stents.
- The protocol will provide institutional support for physicians responding to inappropriate patient requests for the DES and help ensure that the new technology is available for those most likely to benefit from it.
- The protocol is an example of prudent stewardship, insofar as it will constrain costs more than would other protocols, ensure that the new stents are distributed on the basis of need and potential benefit rather than on the ability to pay, and thereby prevent the widening of health disparities between the rich and poor that might result from less restrictive allocation criteria.

Finally, all members of the group agreed that the protocol is consistent with the organization's focus on the poor and vulnerable who are

marginalized by society.

The group's members then engage in a final, collective prayer and ask if anyone has any remaining objections or concerns. Once satisfied that all are at peace with the decision, the chief operating officer volunteers to work with the vice president for communications to develop a plan to explain the decision and its rationale to the physicians, other medical staff, and the larger community.

Experience Is the Best Guide

People considering a structured process of ethical discernment should recognize that any such process will, in its one-dimensional representation, appear deceptively simplistic and artificially linear. Particularly in difficult and complex cases, ethical discernment resists being reduced to a simple formula. Decision makers should not, therefore, get discouraged if they have a difficult time following the steps in sequential order or in getting through any particular step, although they should also be careful not to get mired in one step for too long.

Experience at Ascension Health suggests that the value of its structured process resides not in its formulaic representation on paper but, rather, in the depth and breadth of the considerations it guides decision makers to reflect upon.

Because ethical discernment is not a rule-based and linear form of practical judgment, its value cannot be gleaned from simply reflecting on the individual steps—it must be illustrated through experience. In other words, the best way for leaders to gain an appreciation for any discernment process is to use one in addressing a real-life issue. However, the issue chosen for the initial experience must be one appropriate for an involved and sometimes time-consuming process. What constitutes an appropriate issue will vary according to a number of factors, such as the inherent complexity and significance of the issue, the number of people and departments affected by the decision, the potential impact on the organization and community, the authority structure of the organization, and the interpersonal dynamics of those involved in the decision-making process.

Organizations may find it helpful to develop their own set of guidelines for determining when the use of a structured process of discernment is appropriate. It is not necessary that someone with formal ethics training lead the discernment process, though consultation with an ethicist may be helpful, particularly in Step Four. Finally, experience at Ascension Health suggests that the greatest value of the discernment process is not so much as a tool for identifying alternatives (though decision makers are guided to do that), but rather as a tool for selecting the *best* alternative—the alternative that, as judged from the standpoint of promoting and defending human dignity, best serves the organization as a whole, its associates, the individuals it serves, and the larger community. □

NOTES

1. Edmund D. Pellegrino, "Bioethics at Century's Turn: Can Normative Ethics Be Retrieved?" *Journal of Medicine and Philosophy*, vol. 25, no. 6, December 2000, pp. 655-657.
2. E. Petry, A. Mujica, and D. Vickery, "Sources and Consequences of Workplace Pressure," *Business and Society Review*, vol. 99, no. 1, 1998, pp. 25-30.
3. As was illustrated by Paul Marceau, in "Lessons of Moral Discernment," *Health Progress*, July-August 2003, pp. 40-42, 53.
4. For a more robust discussion of the tension between pragmatic results and idealistic principles in common moral reasoning, see John F. Kavanaugh, *Who Count as Persons? Human Identity and the Ethics of Killing*, Georgetown University Press, Washington, DC, 2001, pp. 73-77.
5. Samuel Scheffler, *Consequentialism and Its Critics*, Oxford University Press, New York City, 1988, p. 2. See also Philip Pettit, "Consequentialism," in Peter Singer, ed., *A Companion to Ethics*, Blackwell Publishers, Malden, MA, 1991, pp. 230-240, and J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against*, Cambridge University Press, Cambridge, England, 1973, p. 4.
6. John Abbott Worthley, *Organizational Ethics in the Compliance Context*, Health Administration Press, Chicago, 1999, p. 35.
7. For a brief introduction to deontology, see C. D. Broad, *Five Types of Ethical Theory*, Harcourt and Brace, New York City, 1930, pp. 206-207.
8. On human dignity as the centerpiece of ethical decisions, see John W. Glaser, "The Community of Concern," *Health Progress*, March-April 2002, p. 17-20.
9. See, for example, Daniel O'Brien and David Smith, "Creating a Positive Work Climate," *Health Progress*, March-April 2002, pp. 46-49, 62.
10. For a detailed discussion of this concept, see Glaser, pp. 17-18.
11. Regarding the technical dimensions of the new drug-eluting stents, see J. M. Hodgson, et al., "Society for Cardiac Angiography and Interventions (SCAI) Statement on Drug-Eluting Stents: Practice and Health Care Implications," *Catheterization and Cardiovascular Interventions*, vol. 58, no. 3, March 2003, pp. 397-399; P. Lemos, P. Serruys, and J. E. Sousa, "Drug-Eluting Stents: Cost versus Clinical Benefits, *Circulation*, vol. 107, no. 24, June 2003, pp. 3,003-3,007; and J. E. Sousa, P. Serruys, and M. Costa, "New Frontiers in Cardiology—Drug Eluting Stents: Part I," *Circulation*, vol. 107, no. 17, May 2003, pp. 2,274-2,279.
12. Regarding this element of stewardship, see G. Magill, "Organizational Ethics in Catholic Health Care: Honoring Stewardship and the Work Environment," *Christian Bioethics*, vol. 7, no. 1, April 2001, pp. 67-93.
13. See the abstract for the SIRIUS trial, available in *Circulation*, vol. 106, supplement II, July 2002, p. 393.