



Jon Conrad

Evolving Sponsorship and Corporate Structures

CANON LAW CONSIDERATIONS
FOR CHANGING ORGANIZATIONS

Many factors are forcing reexamination of the current structures in Catholic healthcare. For-profit organizations, insurance companies, and other provider groups are racing to gain market share, often at the expense of not-for-profit providers. Catholic

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healthcare organizations are under pressure to respond so they can continue to meet healthcare needs, through both institution-based delivery and new avenues.

They are partnering with physicians and other health professionals, as well as institutional providers, in ways they have never before contem-

plated, as local and regional combinations of providers become the order of the day.

At the same time, not-for-profits face challenges to their tax-exempt status from governments looking for additional sources of revenue and from for-profit organizations. The challengers argue that tax exemption is (1) unnecessary to guarantee good healthcare and (2) unfair to for-profit organizations and the community.

In meeting these challenges, Catholic healthcare organizations and sponsors are reviewing such concepts as sponsorship, corporate members, boards of directors (trustees¹), and reserved powers. They are reevaluating the structures based on these concepts to determine how they can make changes in these structures, which have proved useful over the years, and still abide by both canon and civil law.²

This article provides basic, factual information to help answer such questions as:

- What does canon law require?
- Why not become a for-profit entity?
- Who can be corporate members? Who can be directors? What reserved powers should those exercising Church authority hold?

In this article, I include opinions and observations from my experiences with many Catholic healthcare participants. My fundamental assumption is that not everything that is legal in Church or civil law is wise, will work, or makes sense.

This article explores the differences between not-for-profit³ and for-profit corporations and the application of state or federal tax-exemption to them. It also demonstrates the great flexibility not-for-profit corporate law allows in designing structures, as well as the flexibility of Church law, which, rather than describing how a civil corporation should be designed, sets out expectations that a Church steward⁴ should meet when organizing civil structures.

Corporate Structures: Tools for Religious Institutes

A religious institute⁵ is a grouping of individuals joined voluntarily for religious purposes. Once the Catholic Church recognizes the institute, it considers it a public juridic person⁶; in civil law the religious institute is usually considered an association. Because operating as an association is not practical for many reasons (such as the requirement that all members act together), religious institutes have established not-for-profit corporations (see **Box**). For-profit corporations, however, have been used for subsidiary operations in recent years.

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The structure responds to the requirements of the American legal system and the personal obligations of the vow of poverty⁷ by providing an entity that can own property and by giving legal recognition to the sponsor's activities.

Although they use corporate structures, religious institutes remain associations. The distinction between the association and its one or more corporations is important. To limit religious institutes' legal liability and to identify clearly who ministers in Church works, most religious institutes today have one corporation that holds the institute's property (e.g., motherhouse, investments) and one or more corporations that provide legal structures for hospitals, schools, healthcare systems, and other entities.

Furthermore, it is common today for religious institutes to restrict membership in and governance of the corporations to the leaders of the institute. Thus only a few of the members of the religious institute are also members of its different corporations.

The other members of the institute may relate to those corporations in a variety of ways, often playing multiple roles. They may serve as directors, officers, or staff of different corporations. Since religious frequently serve more than one role in corporate structures, it is important that religious institutes clearly define and understand these roles as they plan changes in structures.

For example, the religious institute's corporation (which holds its motherhouse and other assets) should not be the sponsor of ministry corporations. In such an arrangement the religious institute's corporation could be liable for the actions of the ministry corporation. Instead, the religious institute itself, acting as an association, should sponsor the ministry corporations.

Changing Descriptions of Sponsorship

In the 1970s and 1980s sponsors developed structures—governance structures, mission descriptions and statements—to educate themselves and the laity, who were assuming more responsibilities in governance and management as the number of sisters working in and directing the ministry declined.

To ensure that the sponsor could continue the mission in a way fitting for a Church organization, sponsorship descriptions concentrated on what controls the religious institute should have in place in its corporate ministries. Typical sponsorship descriptions crafted in these decades talked about:

- The roles of the **members** of the corporations, who were usually the leaders of the religious institute
- The division of authority within and among the sponsored corporations, which is usually called

reserved powers (see discussion, p. 39)

- Expectations of how the mission could be accomplished

A common misunderstanding developed that canon law mandated that these common elements exist in sponsorship descriptions. This is not true, although typical corporate reserved powers are derived from canon law concepts about a Church steward's ministry responsibilities. Reserved powers are delineations of civil law corporate powers and not a list from canon law.

Over the past 20 years, religious institutes have refined their descriptions of sponsorship; but no single description of the concept has ever developed in either canon or civil law. Common elements among institutes' descriptions, based on Church and civil law obligations, do exist, however.

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must include a reason for sponsoring healthcare ministries. In fact, this is the most important aspect of the concept of sponsorship (even though sponsors often expend more effort describing governance).

In Catholic healthcare, sponsorship is fundamentally a religious activity of the sponsor, whether the sponsor is a religious institute, a diocese, or laity. A sponsor's role is to carry out the mission of Jesus Christ, serving people in need. Years ago this concept meant direct service to individuals. In time, it led to the creation of healthcare institutions, which could both serve individuals and be forces for good in the community and in public policy.

Today sponsors are experiencing tension between the two types of ministry—personal service and institutional service. As sponsors ask

Evolving Corporate Structures

A flexible structure that developed in England toward the end of the Middle Ages, the corporation allowed business owners to protect personal assets by establishing a separate entity that acts as a person in many ways. Corporations have a body of powers, rights, and obligations provided by law and further described in their articles of incorporation and bylaws.¹

"Not-for-profit" corporations, which came into being for ecclesiastical or charitable purposes, have always been allowed to make a "profit," although law prohibits *individuals from profiting*. The distinction between *not-for-profit* and for-profit corporations is not an ability to make money, but rather what they each can do with their net earnings. Without "profits," not-for-profit corporations obviously could not long continue.

In the 1940s and 1950s Catholic healthcare organizations usually incorporated all the ministry activities of the religious institute in one corporation, which was simple and not obvious to the public. Governance took place through the religious institute's structures. Religious institutes were careful to observe civil law formalities in order to protect the ministry, but they did not emphasize typical corporate practices. Diocesan corporations, which were far fewer than today, were also simple.

In the 1960s and 1970s the advent of Medicare and changes in religious life and the Church precipitated changes in healthcare structures. In response, many Catholic hospitals became corporations separate from the sponsoring religious institutes, and the corporate form became a visible and deliberate means of governing a ministry. In most hospitals laypersons gradually moved into governance roles as directors or officers of the corporations. As this occurred, the distribution of corporate powers was often adjusted. During this era, the concepts of reserved powers and corporate members developed; they continue to evolve to this day.

As a result of intense debates within the Church on how

to structure civil corporations, especially when persons outside the diocese or religious institute were to share full governing authority,² corporate structures in Catholic healthcare became more complex and ensured significant control over the ministry by the traditional Church sponsors.³ Catholic healthcare organizations developed roles for the leaders of the religious institute (usually as members), for boards of directors, and for management staff. Toward the end of the 1970s, sponsors established multi-institutional systems to meet their mission responsibilities and coordinate ever more complex healthcare organizations.

NOTES

1. Older corporations of any type may have a charter rather than articles of incorporation. The content of both documents is similar, but when a legislature created the corporation, it gave it a charter. Now the executive branch of the state government, through an administrative office, processes and approves articles of incorporation as a delegation of legislative power and recognition of business efficiency.
2. In the 1960s and 1970s two theories addressed how Church organizations could structure corporate entities that were separate from the single entity over which the religious institute had full control. Msgr. John J. McGrath, a canon law professor at Catholic University, stated that a separate corporation resulted in an organization which was no longer part of the public juridic person that was the religious institute. In effect, according to the theory, establishing a separate corporation is an alienation, and the corporation is no longer subject to Church property rules. In contrast, Rev. Adam J. Maida, a canon and civil lawyer and now cardinal archbishop of Detroit, held that corporate restructuring done in civil law did not change the public juridic person that was the religious institute and its sponsored ministries. This theory perpetuated the elements of Church control over ministries that existed when members of *religious institutes staffed and totally directed their ministries without separate institutional incorporation*.
3. Until recent years, few dioceses directly participated in institutional healthcare. This article treats mainly the activities of religious institutes.

themselves whether they should continue to sponsor complex institutional healthcare ministries, they must describe clearly what form of sponsorship they are dealing with. This article discusses only sponsorship of institutional ministries.

Religious institutes considering changes in corporate structures must construct a description of sponsorship that specifies the institute's relationships with its sponsored institutions and keeps all members of the religious institute informed and supportive of the mission. This is especially important today, as religious institutes examine the institutional dimension of their mission and its conformity with the spirit that motivated the institute's founding.

By providing common knowledge of who and what the sponsor is and the role corporate structures play in sponsorship, this description will promote understanding among the laity about the religious institute's concerns about ministry. In turn, the religious will learn about the complexity and benefits of institutional ministry.

Not-for-Profit Structures and Tax Exemption

Catholic healthcare organizations that are thinking of changing their structures to for-profit must be well versed in state laws governing not-for-profit corporations. They must also work with federal tax laws.⁸ At times these two areas of law support one another; at other times they differ.

Federal tax exemption does not accrue automatically to a not-for-profit corporation. Corporate structure does not determine whether a corporation is tax exempt. In fact, many tax-exempt organizations (e.g., religious institutes, charitable trusts) are not even corporations. Federal tax exemption depends, rather, on an organization's satisfying some basic organizing conditions and then conforming to the conditions.

Most not-for-profit corporations (including healthcare organizations) are charitable, but a variety of other entities may also be not-for-profit corporations—for example, country clubs, trade associations,⁹ fraternal organizations, and lodges. Many types of not-for-profit corporations may qualify for tax exemption, but the tax law does not treat all of them alike. Some not-for-profit corporations may have to pay either federal or state taxes; others may be exempt from one form of state or federal taxation.

The Internal Revenue Code (IRC) of 1986 spells out the rules for federal tax exemption. These apply to exemption from income taxes, not necessarily other federal taxes. In general, however, organizations meeting the conditions of this section of the code are also exempt from some (but usually not all) other federal taxes, such as

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excise taxes and estate and gift taxes.¹⁰

Most Catholic healthcare organizations receive tax exemption by virtue of their qualifying for the category called "IRC 501(c)(3)," which contains the largest number of income-tax-exempt organizations.

Organizations in this category satisfy the Internal Revenue Service's (IRS's) definition of charitable activities. Public charities (as distinct from private foundations¹¹) have other benefits. Catholic-sponsored public charities (which includes all the organizations listed in the *Official Catholic Directory*) may benefit from charitable contributions from tax-paying donors, who may receive a tax break for their donation.¹²

The not-for-profit, tax-exempt corporate structure has been a useful vehicle for sponsors of the Church's ministries to carry out their stewardship responsibilities. It offers flexibility as ministry needs change, and canon law supports that flexibility.

Switching from Not-for-Profit to For-Profit

Some Catholic healthcare organizations and other not-for-profits are exploring switching to for-profit status for several reasons: For-profit entities appear to operate with fewer constraints on their activities; and individuals or groups may make money from a for-profit business (private inurement), which thus makes it easier for such businesses to attract capital from investors.

The mechanics of changing the organization's status are relatively easy, but the consequences can be severe. Not only are the cultures and motives of not-for-profit Catholic organizations in conflict with those of for-profit entities, but also the financial penalties may outweigh the attractiveness of greater operational flexibility and the ability to obtain capital.

First, the organization must pay taxes—all sorts of taxes. Second, it may have to pay off any tax-exempt bonds it has sold, since they become taxable to the holders. Bond agreements may require paying off bonds that become taxable, although the IRS does not. Even if no such requirement exists, the organization will have to deal with angry bondholders who find their formerly tax-exempt interest now is taxable.

In federal and state law, the assets of a not-for-profit, tax-exempt corporation, while owned by the corporation, are considered to be held in trust for the benefit of the public. Therefore, when an organization switches from not-for-profit to for-profit status, its assets cannot inure to stockholders (private individuals). The assets cannot be transferred to the new for-profit entity. A not-for-profit corporation contemplating a switch to for-profit status must weigh how much of its equity the for-

profit entity will own (if any) against how much must be distributed to charity.

Such legal issues can be managed in both civil and canon law. The real concern, however, is whether the culture of a for-profit corporation will be in tension with the formerly not-for-profit organization's culture. Will the for-profit culture prevail to the detriment of the charitable work that not-for-profit, tax-exempt structures promote? Many Catholic organizations gained their tax-exempt status as a response to the good they do in the public arena and not as a government benefit.

This has not often been a significant problem when healthcare organizations, as not-for-profit corporations, have used for-profit subsidiaries. But when there are multiple stockholders, cultural conflicts can arise if some stockholders demand that the corporation meet its fiduciary duty to them and make money, regardless of the mission values of other stockholders. Even if a large majority of stockholders support the mission, they will not be excused from their fiduciary duty to earn profits for those who may care less about the mission.

Sponsors' Future Role: Influence or Control?

Many religious institutes that sponsor healthcare ministries are discussing whether sponsors' role in the future may be one of influence rather than control. But the concepts of influence and control are not universally understood in the same way. For some people, "influence" means that religious institutes give away many of their powers and depend on moral suasion to promote their mission. If taken to extremes, this concept could result in the sponsor having no influence.

Unquestionably, in some instances of collaboration a weak form of influence may be all a sponsor can retain. In that case the sponsor has no choice but to use all means it has to exert influence and make its values real in a new organization—and be willing to walk away if this fails.

Many ways are available, however, to ensure that the sponsor has the influence it needs to gain compliance with its values and retain the organization's Catholic identity.¹³ Reserved powers (discussed below) are the best means, but enforceable agreements could also be effective. In either case, the sponsor should seek the middle ground between attempting to hold too many controls and giving up effective ways to see that those who operate the ministry in its name do so in accordance with its values.

Sponsors should be cautious, too, about accepting weak influence and being "less Catholic" so that an organization can avoid the Church's reproductive prohibitions or pursue questionable market activities.

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Reserved Powers of the Religious Institute

In the simplest form of corporation, the board of directors exercises all the corporation's power, unless the directors delegate power to officers and employees or unless the governing documents reserve power to others. Thus "reserved powers" provide an exception to the presumption that a corporation's board holds all the corporation's powers. (Even in for-profit corporations, stockholders, who may not be part of the board, hold reserved powers, which they exercise by voting stock proxies.)

Many Catholic healthcare organizations sponsored by religious institutes reserve to the institute's leaders the role of members of the corporation. These members hold key (reserved) powers that allow them ultimate authority over their ministry. The range of powers can be limited or, as has usually been the case, very broad. Reserved powers have been a way for sponsors to ensure that they would be able to fulfill their stewardship responsibilities.

Although vesting ultimate power in the institute's leaders made sense, Church law does not mandate this. In recent times, corporate structures have been changed to allow a sharing of power with the laity, and the roles of members and the board of directors have been clearly distinguished. Institutes are free to name whomever they choose as corporate members, as long as the choice satis-

CHA Offers Services for Sponsors

The Catholic Health Association offers services and materials to aid sponsors of the Catholic health ministry:

- Consultation on canon law, articles of incorporation, bylaws, and alienation of Church property
- Orientation for new sponsors
- Meeting facilitation for congregational leadership teams, religious communities, and trustees
- "How to Approach Catholic Identity in Changing Times" (a *Health Progress* reprint)
- *The Search for Identity: Canonical Sponsorship of Catholic Healthcare* (book)
- *Inventorying Church Property* (workbook)

For information, contact Br. Peter Campbell, CFX, JD; Sr. Maureen Lowry, RSM; Sr. Barbara McMullen, CDP; or Mary Lee Werner at 314-253-3413.

fies the sponsor's stewardship responsibilities and provides a process for the religious institute to handle internal Church issues, such as alienation requests, changes that might threaten an organization's Catholic identity, and relations with the local diocesan bishop.

In cases where an institute's leaders give some powers formerly reserved to them to a board of directors, those powers should be carefully specified. It is incorrect to say, either on organization charts or in written descriptions, that the corporation's members are outside the corporation. To do so can only cause confusion about the roles of members¹⁴ when structural changes are being planned.

The usual reserved powers fit into three categories: documents, people, and property.

Control of Basic Documents

It is crucial that sponsors control the corporation's foundations in order to ensure their participation in a corporate ministry. These foundations are stated in the corporation's articles of incorporation¹⁵ and bylaws, which determine the corporate structure, the mission, and who has authority to act. The corporation's mission and philosophy statements can be separately reserved, but their essence should appear in the articles of incorporation.

Reserved Powers Regarding Board of Directors

Once the corporate foundation is set, people have to carry out the organization's mission. The board of directors is critical in this endeavor. Commonly, corporate members hold reserved powers to select the board of directors. They may also hold power to select key corporate officers and members of subsidiary boards.

No specific canon laws or Church guidelines determine the extent of reserved powers to select people. This is a policy choice that depends on the members' confidence in others to select people to share in governance. As some Catholic healthcare organizations narrow the members' reserved powers to select people, sponsors must effectively communicate the meaning of their ministry to all who share in it so that the people operating the ministry sustain it.

Reserved Powers Regarding Property

Unlike other reserved powers, those regarding property are more completely spelled out in canon law. The sponsors are expected to carry out their obligations as stewards for stable patrimony of the Church and its alienation. Reserved powers need not grant members sole control of all property matters; that would render the sharing of power with others meaningless. Fortunately, reserved powers regarding property usually concentrate on major transactions such as the sale of property or the placing of major encumbrances on property. In canon

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law these are known as "alienation issues." Boards of directors commonly can exercise corporate powers over many other property matters—even significant decisions concerning budgets, spending of liquid assets, and equipment purchases.

Alienation of property. Leaders of the religious institute must seek the Holy See's approval for transactions that constitute alienation.¹⁶ One way to ensure institute leaders' involvement in alienation matters is to reserve the handling of such matters to the corporate members, if they are also the leaders of the institute. If the members and the institute's leaders are not identical, corporate policies should include procedures to involve the leaders to seek approval of the transaction within the Church.¹⁷

Alienation is not determined by the transaction's value. Instead, the value of the transaction determines what level of approval is necessary. Significant transactions (currently over \$3 million in the United States) require approval of the Holy See because, in the Church, as in any other organization, prudent management requires higher levels of approval for more important transactions. Because alienation applies to a class of property (usually fixed assets), it can occur with property of any value.

Distribution of assets after dissolution. In Catholic organizations it is common for corporate members to hold reserved powers regarding distribution of assets, even when corporate documents¹⁸ do not address this issue. The disposal of assets can fundamentally affect the sponsor's mission and may even involve an alienation. Corporate documents should clearly specify who controls dissolution plus asset distribution and how the sponsor may take part in decision making.

The extent of the corporate members' powers is determined by several considerations. In a merger or consolidation, the doors of a ministry are closed, but the corporation that holds the ministry lives on, even though its character may change. Thus no dissolution and subsequent distribution of assets take place (although the transaction may be an alienation). Before making decisions on reserved powers, then, organizations must not presume an outcome until they have ascertained all the facts.¹⁹

Who Should Hold Reserved Powers

Streamlining reserved powers—that is, reducing the numbers of reserved powers the members hold—is one way to speed decision making plus share power with the laity. In some corporations today, many reserved powers may no longer serve the ministry well. Organizations should review their corporate documents to determine how

many, or how few, reserved powers should exist.

Members can streamline their reserved powers by sharing them with one or more classes of board members (discussed below), while retaining final approval of some decisions. Even if members retain exclusive authority on some matter, however, they should have a system to obtain board input. A caveat: How the members and boards actually conduct the ministry is more important than what the corporate documents contain. A corporate culture that encourages mutual respect and shared responsibility will contribute more to an organization's success than will a list of reserved powers in the bylaws.

Another reason to streamline reserved powers is that exercising them is difficult, especially when the list of powers is long. Sponsors need to decide which reserved powers they can effectively carry out. To maintain respect, it is important that a sponsor not be merely a rubber stamp. In addition, in choosing reserved powers, sponsors must remember that those who have the last say on a matter also bear the legal liability for the decision.

New (Lay) Sponsorship Roles

Lay sponsorship of Catholic health ministries is likely to increase in the coming years. Any among the people of God can sponsor a ministry that the Church can recognize as Catholic. The lay sponsorship may be through a formal Church entity—public juridic person, private juridic person, or private association of the Christian faithful.²⁰ Or it may conform to none of these structures and still be recognized as Catholic. Canon law has never required that the official Church own or control a ministry for it to be Catholic. The Church's wisdom in the Second Vatican Council and the ensuing 1983 revision of canon law may have been prophetic in preparing for the laity to assume important roles in governing Church ministries.

Lay sponsorship will force Church officials (who too often in the past were complacent in knowing a diocese or religious institute controlled a ministry) to determine what is really important about being Catholic and how an organization must operate to support those essentials.

New Member Roles

The roles of corporate members are also changing, as sponsors' roles change. Trying to include all the leaders of the sponsoring religious institute as members of the corporation is unworkable in arrangements in which several sponsors come together. To facilitate the sponsors' working together, the member group needs to be small. Selecting one, two, or three members (depending on the number of sponsors) from each institute makes sense. It is also pos-

sible to include nonleaders from the sponsoring institutes or to choose laypeople.

Board of Directors Model

Another emerging membership structure does away with a separate member level and gives all corporate power to a board of directors. This board is usually made up of different classes of directors, who hold different powers and responsibilities. Certain directors hold some reserved powers formerly held by members. Corporate bylaws identify how the board is selected and define who is in each class of directors.

This model can speed decision making and enhance the laity's role as partners in the ministry. On the other hand, it can also sow discord among directors and allow for plotting among them to usurp the sponsors' rights to continue the ministry. Bylaws can spell out ways of voting and establish different kinds of majorities that can in theory protect the sponsors' rights, but it is possible for directors to influence outcomes in ways other than by voting. Having different classes of directors is legal in civil and canon law (which does not address this issue), but the verdict on its future success is yet to come.

Sponsors considering a change from their traditional member-board structures to this "two-tier board of directors" model need to examine their motives for making such a change and answer many questions:

- Are persons within the religious institute, a health system, or a facility promoting the change in order to shift power from one group to another?
- Will the new structure isolate the sponsors' leaders?
- If the leaders are included, will their lack of healthcare expertise put them at a disadvantage, causing them to lose the respect of board members with greater knowledge?
- If leaders are excluded, will the mission suffer?

With the proper motivation, selecting members in ways that can enhance the ministry makes good sense. Using healthcare expertise as the defining criterion for inclusion on the board, however, is a mistake. Most members of current boards have business experience but little healthcare experience. Religious who lack business expertise can bring critical expertise in mission, even if they are not institute leaders. Adjusting structures carefully to redefine corporate membership can be a valuable contribution to the continued sponsorship of the healthcare ministry.

Phasing in Changes

Corporate structures may be changed in multiple ways; choosing how to change need not be done overnight. Sponsors should proceed with caution to ensure that changes will accomplish their goals

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in the long run. They can reduce reserved powers, change the definition of members, and modify corporate structures in phases. For example, if a religious institute plans to withdraw its sponsorship, it needs to prepare its successors to assume full governance. Shifts in power and control can be slowly phased in, making change a process, not a single event. In a time when the pace of change is beyond their control, sponsors of Catholic healthcare organizations, working within a Church tradition that does not make decisions quickly, have the tools to adjust Church and civil structures to meet the needs of the times. □

NOTES

1. "Trustees" is used here in the context of corporate structures; the term does not refer to those who administer trusts.
2. "Civil law" refers to federal and state law found in the United States. In almost all instances, civil law is based on English common law.
3. The term "not-for-profit," which is synonymous with "nonprofit," is used throughout this article. Legal documents should use whichever term is found in the state's corporation statutes.
4. A steward, in Church structures, is responsible for all the resources of a public juridic person. This responsibility is not restricted to the usual property and financial resources. It extends to the people involved in the entity and to its heritage. Finally, it includes an obligation to enhance the organization's resources in furtherance of the Church's mission.
5. The term "religious institute" encompasses religious congregations, societies, and orders. Although Church law distinguishes among these entities, the distinctions are seldom relevant in civil law.
6. In canon law a public juridic person is a basic and common unit of organization. Although a public juridic person is similar in concept to a civil corporation, its scope is not always the same as that of civil corporations sponsored by a religious institute. For more information on public juridic persons, see two Catholic Health Association publications: *Inventorying Church Property and Other Administrative Matters* (1994) and *The Search for Identity: Canonical Sponsorship of Catholic Healthcare* (1993).
7. The vow of poverty that religious men and women take precludes their owning the resources of the religious institute.
8. In addition, state not-for-profit corporate law and state tax law may also be relevant. Most states' taxing structures are similar to federal ones; this article considers only federal tax law.
9. Sometimes the Catholic Health Association of the United States (CHA) is incorrectly referred to as a trade association. In federal tax law, however, CHA is a public charity under IRC 501(c)(3). Trade associations may be exempt from paying income taxes, but they are not public charities.
10. However, this is not always the case. For example, Catholic hospitals have to pay the federal excise tax on telephone service since Congress narrowed the list of those exempt from this tax.
11. "Private foundation" is a term of art in the IRC. Such an entity is usually an IRC 501(c)(3) exempt organization, but it is not a public charity. Its operating rules and tax obligations are different from public chari-

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ties'. Foundations that are commonly found in Catholic healthcare (if they are set up correctly) are public charities.

12. IRC 170, not IRC 501(c)(3), governs who qualifies for a tax deduction and the size of the deduction.
13. Determining Catholic identity requires hard work; it is not a matter of simply following a list of prescriptions, nor is it defined by who controls the organization. The local diocesan bishop decides whether an organization is Catholic. For more information on defining Catholic identity, see "How to Approach Catholic Identity in Changing Times," *Health Progress*, April 1994, pp. 23-29.
14. The corporation's articles of incorporation or bylaws define the members. Like board directors, members are insiders no matter where they reside or conduct their business as members. It is nonsensical to suggest that religious leaders exercising their role as members have an inherent conflict of interest simply because their corporate duty is similar to their duty as leaders of the institute. It is these leaders' duty to promote the corporation's charitable mission.
15. A not-for-profit, charitable corporation's articles of incorporation should spell out the corporation's purposes. The articles should conform to the organization's mission and philosophy statements. When the sponsor wishes to specify only minimal reserved powers, the mission and philosophy statements can be put in the bylaws, especially in a preamble. Then one statement that reserves to the members control over the articles and bylaws will suffice, and a separate listing of reserved powers covering mission and philosophy is not necessary.
16. For further information on alienation and property matters, see the references in note 6.
17. An alienation request that is subject to Church approval, whether or not it is approved by the Holy See, is a canon law transaction. Often, however, it is expressed in terms that suggest it is the last part of a civil law process to sell property or bonds. Such terms confuse the actual circumstances, which are that Church approval provides authority to Church actors to finalize a civil transaction.
18. The IRS expects dissolution and property distribution provisions to appear in the articles of incorporation even if state corporate law does not require inclusion. Given the significance of obtaining tax exemption, organizations should be certain to comply with this expectation.
19. Sometimes debate arises on who may benefit from the dissolution and distribution of assets from a sponsored work. The simple answer may be in the corporate documents. The state's corporate law and federal tax law also control the answer. Generally, those who hold the distribution power can give any assets to another charitable work anywhere. Law rarely supports the claim that proceeds from a sale or dissolution of, for example, a hospital need to stay in the local community. The sponsor, in order to further the religious and charitable works of the religious institute, can be a recipient of the proceeds of a sale or distribution. A California court case, *Queen of Angels* (66 Cal.App.3rd 359), has assumed mythic qualities since 1977, when it was decided. Some incorrectly believe that the case established law that would confine the distribution of assets to only a local community, which supposedly held them in "trust." The local issues deserve attention, but not because that is the law.
20. Although these formal Church structures are similar, they differ in various respects. A canon lawyer can help distinguish among them and determine which might be appropriate in a given situation. Lay control in these structures is rare but increasing.