



Exploring Legal Models To Preserve Catholicity

LISA GILDEN, JD

As the structures of U.S. health systems evolve, a number of Catholic systems have found it necessary to transfer ownership of their hospitals to other-than-Catholic entities. In such cases, the selling sponsors have a key decision to make: Can the hospital maintain its Catholic identity after the sale?

Against that backdrop, the Catholic Health Association Board of Trustees asked CHA staff to analyze the legal structures that have been used in these arrangements. The board hoped to learn if there were common practices that could help strengthen the ongoing Catholic identity of Catholic hospitals in other-than-Catholic systems.

THE ANALYSIS

Currently, there are 41 Catholic hospitals in the United States that belong to other-than-Catholic systems. Of these, 22 are no longer sponsored by a religious congregation or public juridic person, but instead remain Catholic as a result of an agreement between the secular buyer and the applicable diocesan bishop. This type of arrangement has become more common over the past several years, with 10 of the 21 Catholic hospitals sold to other-than-Catholic buyers remaining Catholic after the sale.

In some instances, Catholic systems and their sponsors have had to make the difficult decision to sell some or all of their hospitals. The preference would be to transfer the hospitals to another Catholic sponsor and health system, but sometimes financial circumstances, geographical location, market conditions or other factors make a match with an existing Catholic system unfeasible.

If the only option is to sell the hospitals to an

other-than-Catholic organization, there are two common scenarios: The hospitals will become secular under a new, non-Catholic owner; or the new, non-Catholic owner agrees to various commitments in order to maintain the hospitals' Catholic identity. Each scenario brings its own matters for discernment.

If the hospital no longer will be a sponsored work after the sale, then, in order for the hospital to maintain its ongoing Catholic identity, the selling Catholic health system and sponsors must work with the buyer and the local diocesan bishop to see if they can develop an agreed-upon oversight mechanism. Because the other-than-Catholic buyer cannot step into the sponsorship role, another way must be found to ensure ongoing Catholic identity.

In their discernment considering the transaction, the selling Catholic system and sponsors will focus on:

- Whether maintaining a Catholic presence in the communities served, albeit in a different form, is the preferable outcome
- If so, whether an acceptable buyer can be found that will agree to the responsibilities required for the hospitals to remain Catholic

For potential buyers, decisions will focus in part on:

- The perceived benefit of having a Catholic



INTERVIEW WITH SR. JUDITH ANN KARAM, CSA

In 2015, Cleveland's Sisters of Charity Health System decided to transfer ownership of its hospitals in Columbia, South Carolina and one hospital in Ohio to other-than-Catholic systems. Sr. Judith Ann Karam, CSA, congregational leader, Sisters of Charity of St. Augustine, describes the process the system engaged in to ensure that the hospitals' Catholic identity would remain vibrant under the new arrangements.

Lisa Gilden: When you decided to transfer your hospitals, were there any options to transfer them to another Catholic system? Would that have been a preference?

Sr. Judith Ann Karam, CSA: We had been working for several months with another Catholic health system with the hope that we could do a collaboration with them. Over time this was not feasible for the other party. In addition, after we moved from the earlier discussions, the prospective partners that were Catholic were invited to consider a transaction found it a challenge to consider moving into a market where there was not an established presence. The capital required was significant.

LG: Were you only interested in finding a buyer that would agree that the hospitals would remain Catholic? Why was this important?

JAK: We defined our faith obligations as a "nonnegotiable" in the request for proposal we sent out to both Catholic and other-than-Catholic prospective partners.

LG: Was it difficult to find a buyer that would agree to this arrangement?

JAK: We did not find it difficult in obtaining a buyer that would agree to implementation of the faith obligations. Significant time was spent in explaining the faith obligations, what it meant to the organization and how it was to be implemented. This was also requested by the potential buyer.



Sr. Judith Ann Karam, CSA

LG: How did you develop the items that became part of the faith obligations? Who in your organization worked with you to decide what needed to be included?

JAK: Faith obligations had been developed in 1981 when we did a 50/50 joint venture partnership with a not-for-profit partner for a new hospital and in 1995 when we partnered with an investor-owned corporation. As chair of the PJP, I led the effort to assure inclusion of the faith obligations in the most recent transactions with a team of the president and CEO, the CFO, financial consultant, and legal counsel working on the transactions. These were updated to present-day needs and reviewed by both our canonical consultant and ethicist. The buyer wanted to understand the provisions so that they would be able to implement and be accountable for what they said they would do. It was actually the buyer who invited us to their corporate offices so that we could again explain each provision of the faith obligations. The provision by our system of the vice president for mission [position] was another safeguard in a mission and ministry agreement that the culture of Catholic health care would continue.

LG: When did you bring the local diocesan bishop into the process?

JAK: The local diocesan bishop was brought in at the beginning in order to understand the need to move into a transaction and the process for selection. Areas of concern involved the accountability question long term, but they knew of the safeguards that were in the definitive agreements. A summary of existing similar transactions was shared with the bishops, including those involved in the deals. The local diocesan bishops were involved throughout the process. Key

was that both bishops, based on the extensive faith obligations, agreed to keep the hospitals Catholic post closing.

LG: Did you get any questions from Rome about this arrangement when you requested permission to alienate the hospitals?

JAK: There were just a few questions that were sent back to us from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life once the petition was sent to Rome. I believe the due diligence done by our local bishops using their own canonical and ethical consultants supported their recommendations for approval, and these were sent with the petitions.

LG: Any words of wisdom for others that might be seeking to enter into this type of arrangement?

JAK: I believe that putting all of the provisions important to Catholic identity in the definitive agreements of the transaction is critical to accountability. In addition, the people chosen to lead the organization are critical to the success. Evaluation of leadership as to how they implement the faith obligations is essential. They are required to attend leadership development, etc. We have placed mission competencies as a requirement of the faith obligations.

When we forged a new relation with the purchaser of our hospitals in South Carolina, we found individuals that were anxious to do it right. The buyer was a company that wanted to get to know the Sisters of Charity and the Catholic Church. The president and CEO actually visited our motherhouse in Cleveland to meet our sisters and visit our archives, etc. There were shared values. There was a strong desire for accountability for carrying forward this ministry. Paying attention to the human dynamics is very important. Shared vision and values are critical to finding the right partner.

— Lisa Gilden



hospital join its system.

- What obligations and responsibilities will be required to maintain the hospital's Catholic identity.

If the buyer determines there is value in preserving the goodwill that the Catholic hospital has built over the years within the community — goodwill often is associated with the hospital's existing name, mission, culture and other intangibles — it may be more likely to agree to assume the obligations necessary for the hospital to remain Catholic.

COMMONALITIES

CHA's research concluded that there is not a one-size-fits-all approach to these transactions. However, a review of the various models revealed many commonalities which, over time, might lead to the development of best practices. The most common mechanism used to ensure that the new owner will undertake the obligations necessary to maintain the hospital's Catholic identity is a legal agreement between the new owner and the bishop for the diocese where the hospital is located.¹ These documents go by various names such as "Stewardship Agreement," "Mission and Ministry Services Agreement" and "Catholicity Covenant."

The key provisions fall into three categories:

1. Structure: What structural components must be in place to support Catholic identity?
2. Elements of Catholic Identity: What are the "indicia" of Catholic identity that must be preserved?
3. Reporting/Issue Resolution: What oversight mechanisms must be in place to ensure adherence to Catholic identity, and what happens if an issue arises?

STRUCTURE

There are various structural components outlined in the legal agreements to support a hospital's Catholic identity. In most, the diocesan bishop has the right to appoint at least one designee to sit on the hospital's board of directors. In addition, in some instances, the new owner agrees that if an issue affecting Catholic identity is brought to the hospital board for review, it will require the affirmative vote of the diocesan bishop's designate or designates on the board in order to be approved.

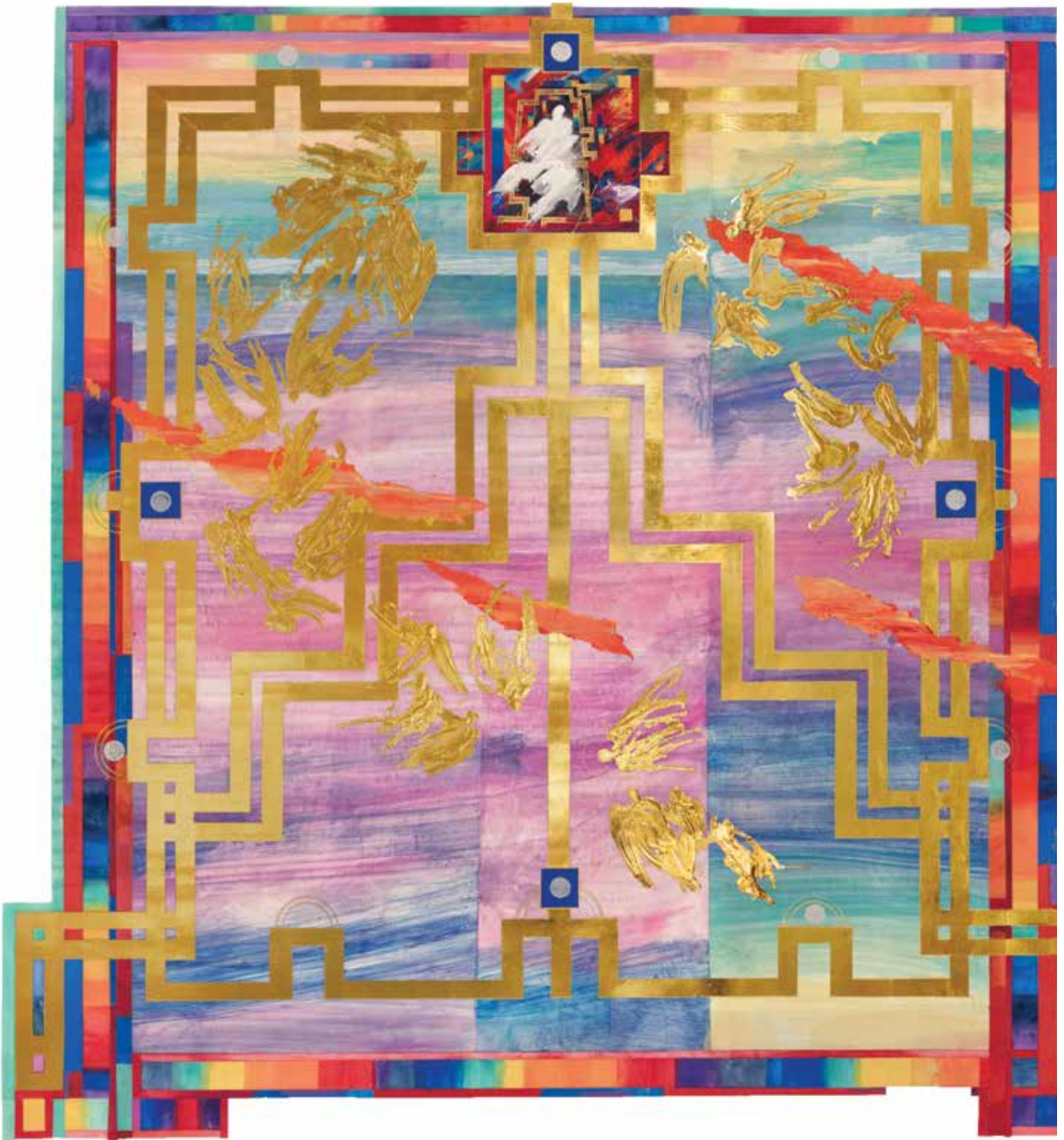
Moreover, the new owner generally agrees that there will be a senior vice president of mission/ethics on staff whose position description often is negotiated as part of the deal and who is subject to the approval of the diocesan bishop.

ELEMENTS OF CATHOLIC IDENTITY

Legal agreements vary quite a bit regarding the list of Catholic identity elements the new owner must maintain. A few agreements simply state that the hospital will continue to abide by the *Ethical and Religious Directives for Catholic Health Care Services*. Some add only a few obligations beyond adherence to the ERDs, while others contain a long list of specific requirements. The most common elements are:

- Maintain at least the same level of charity care/community benefit as prior to the transaction
- Fund and support a "vibrant" pastoral care department
- Maintain religious symbols, signage and logo to identify the hospital as Catholic
- Maintain the hospital's chapel and daily Mass
- Support ongoing formation and education of board and employees on Catholic identity (including orientation and continuing education of employees regarding the religious founders, history of the hospital, its mission and the philosophy of Catholic health care)
- Uphold fair-minded and just labor relations
- Include prayer or reflection at all meetings
- Maintain membership in the Catholic Health Association
- Add mission competencies to hospital leadership's annual evaluation
- Commit to stewardship and the common good
- Use a values-based decision process

Most of the items on this list can be shown to derive from the ERDs. Thus, there may not be vastly different legal obligations between those arrangements that state only that the hospital must abide by the ERDs and those that contain a list of specific requirements. Nevertheless, the list approach makes the obligations clear to a buyer unfamiliar with the ERDs. This up-front education may help keep misunderstandings from arising over the course of the agreement.





REPORTING AND ISSUE RESOLUTION

All of the legal agreements contain some type of process for reporting a buyer's adherence to the various Catholic identity commitments and for resolving any issues that might arise between the hospital and the diocesan bishop. Usually the senior vice president for mission and ethics chairs an oversight or ethics committee responsible for monitoring day-to-day adherence to the requirements. Most often the committee includes one or more representatives appointed by the diocesan bishop, and the legal agreement typically requires the hospital to submit periodic reports to the bishop describing how the hospital is living by its commitments.

The legal agreements also contain processes to be followed if there ever is a question about the hospital's adherence to its Catholic identity obligations. Most such processes require a period of consultation and dialogue between the hospital

and the diocesan bishop to attempt to resolve any problems that arise. If, after the discussion period, the issue cannot be resolved to the bishop's satisfaction, the bishop then may exercise his right to withdraw the hospital's Catholic identity.

In most cases, the agreement specifically states that upon such withdrawal, the new owner has to change the name of the hospital to one that does not indicate a relationship to the Catholic Church. In addition, some agreements require return of certain religious artifacts to the previous sponsors.

CONCLUSION

Maintaining a community's Catholic hospital allows it to continue to serve as a witness to Jesus' mission of love and healing. As both an employer and provider, Catholic hospitals answer God's call to foster healing, act with compassion and promote wellness for all persons and communities, with special attention to those who are poor, underserved and most vulnerable.

The Catholic health ministry continues to seek new ways to carry on its mission of providing services to all those in need. Creating a structure by which a Catholic hospital can remain Catholic, even when it is not owned by a Catholic organization, offers sponsors a path forward. As time passes, there will be lessons to be learned for all Catholic hospitals to see how Catholic identity can be kept alive in these arrangements.

LISA GILDEN is vice president, general counsel/compliance officer, the Catholic Health Association, Washington, D.C.

NOTE

1. In a few of the earlier transactions, there was not a separate legal agreement between the diocesan bishop and the buyer, but instead the transaction documents between the buyer and seller required the buyer to continue to operate the hospital in accordance with the ERDs. Even without such an agreement, the diocesan bishop always has the right to withdraw a hospital's Catholic identity.



JOURNAL OF THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES

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