STRUCTURES IN HEALTHCARE MINISTRY IN THE CHURCH

Canon Law Offers Options and Flexibility

BY REV. JORDAN HITE, TOR, JD

Church law developed out of the life and ministry of the Church and is at the service of ministry. Church law also provides a means by which ministries can both fulfill their own specific mission in the Church and take their place as organizations in the Church. The law provides structures that help each organization relate to other parts of the Church, whether at a higher level, on the same level, or subject to another organization.

The Code of Canon Law of 1983 is the primary legislation for the universal Church; however, the Church has additional laws that implement and supplement the code, such as the norms for celebrating the sacraments. Dioceses, religious institutes, and other Church organizations have laws—known as particular or proper law—that specifically provide for their organization and ministry.

The rapidly changing healthcare ministry challenges the creativity and adaptability of both the code and those drafting statutes that govern healthcare organizations.

How do organizations determine the most appropriate juridic status for their healthcare ministry?

The ministry is primary; the structure is the means or instrument by which the ministry can best achieve its purpose. Therefore, when considering which juridic status to use for a healthcare organization, a group needs to first ask itself (without reference to canon law) what structure would best suit its purpose and help it fulfill its goals in the healthcare ministry.

After a group understands how it wishes to function, it can explore the canonical options to determine which one best fits the organization's vision of itself. As it compares its characteristics with those of a juridic person or an association of the faithful, it can readily see if it is more like one or the other.

It is worth noting, however, that associations of the faithful—given their emphasis on a group of persons joining together and some of their defining characteristics—may be less flexible than juridic persons. This is probably the reason that recent choices for canonical structure for healthcare ministry have been juridic persons.

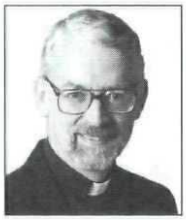
What factors should be considered in choosing a structure for healthcare ministry in the Church?

The first step is to identify the group's organizational status:

- Is the organization beginning a new healthcare ministry?
- Is the organization already in existence and considering entering the healthcare ministry?
- Is the organization already engaged in healthcare ministry and reorganizing to better achieve its purpose, or beginning a new area of healthcare ministry?

Important factors to consider in choosing an option include:

- Does the group want its ministry publicly identified as doing its work in the name of the Church?
- What level of control does the group desire over its property—complete control or shared



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control with Church authority?

- What level of Church supervision would help the group achieve its purposes?
- What process for choosing leaders would be best for the group?
- Does the organization desire juridic status?

Once an organization has answered these questions, it can compare the options of public juridic person, private juridic person, or noncanonical status and see which is most appropriate (see Table, p. 45).

Should every ministry have a canonical structure?

Canons 208-223 of the Code of Canon Law describe the rights and obligations of all the Christian faithful. Canons 216-217 state that the Christian faithful have the right to promote and support apostolic action by "their own initiative," and they may "freely" establish and direct associations that serve charitable or pious purposes.

Although the canons include the right to form organizations enumerated in canon law (juridic persons and associations of the faithful), the Christian faithful are free to form organizations not specifically described in the Code of Canon Law. Thus every ministry need not have a juridic structure described in the Code of Canon Law.

Does the fact that an organization does not have a juridic structure mean that it is not connected to a Church authority?

An organization that is neither a juridic person nor an association of the faithful may or may not have a connection to a Church authority. For example, if nurses of several parishes form a regional parish nurses' association, they may have the support of the regional pastors and the local bishop, but not have any canonical structure. They would be exercising their right to organize for a charitable purpose. By the same token, they may choose to form an association of the faithful and be praised, recommended, or established by the diocesan bishop, but it is not necessary to do so.

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Can a healthcare ministry that is organized as a juridic person or an association of the faithful, or is sponsored by a juridic person or association of the faithful, change to noncanonical status?

Yes. For example, if a group of rural hospitals sponsored by different religious institutes wanted to form a separate organization, but not be a juridic person or an association of the faithful, the religious institutes could transfer control to a Catholic physicians' group whose purpose was to follow Catholic principles (including the *Ethical and Religious Directives for Catholic Health Care Services*), form a corporation or partnership, and operate the facilities. This would require the permission of the religious institutes. If certain alienations of property were involved, it could also require the "nihil obstat" ("no objection" letter) of the bishop and the permission of the Holy See. Even if alienation were not involved, communication with the local ordinaries and their support would be appropriate and helpful, but it is not required by any canon or protocol currently followed in the Church.

Whether the transfer *should* be done when alienation is not involved, even over the objection of the bishop, is another question, but canonically it could be done. If the bishop did object, he could, of course, seek recourse to the Church office with authority over the religious institutes and/or publicly state the ministry is no longer connected with the Church.

Obviously, the questions attending the transfer of existing facilities that are under a degree of Church control to an organization with no Church control, except its pledge to do ministry in accord with Catholic principles, are different from those which arise when beginning a new ministry that never was under any form of Church control.

Does the Code of Canon Law allow for the development of new structures?

Since the Christian faithful are free to found organizations on their own initiative, the broadest possible avenue is open to develop new structures. As the history and development of Church law show, most Church structures are a result of the experience of the Church community, and were gradually codified because they

PROCESS FOR ESTABLISHING A JURIDIC STRUCTURE

1. Agree on the organization's purpose.
2. Draft statutes and regulations.
3. Communicate with the competent Church authority at an appropriate time. This means, at the least, communicating with the Church authority before the appearance of any information in the media or before any information is likely to be communicated to the Church authority by other sources. Communication with the Church authority must certainly be made well before requesting approval of the statutes.
5. Submit the statutes and the request for a decree.
6. Receive approval of the statutes and a decree.

While seeking canonical status, the organization should also be developing or amending its civil law structure for the operation of its ministry.

served the community well.

Present Church law protects the fundamental right of the Christian faithful to organize for charitable and religious purposes and thus foresees the possibility of the development of new structures.

Are there limits to the adaptation of present Church structures for healthcare ministry purposes?

The 1983 Code on Juridic Persons and Associations of the Faithful establishes norms that identify these particular organizations. The norms represent a series of choices that necessarily limit the nature of the organizations.

Practical experience in adapting the 1983 code to the healthcare ministry is in its beginning stages. The use of public and private juridic persons as freestanding sponsors of ministries sponsored by multiple religious institutes, religious and lay partnerships, and lay-controlled ministries has been accomplished by creatively using the 1983 code. To date, it has not proved too confining.

What is the relationship between sponsorship and canonical sponsorship for juridic structure?

As Adam J. Maida and Nicholas P. Cafardi explain in *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, canonical sponsorship describes a situation in which the sponsoring juridic person maintains sufficient civil law control of the incorporated apostolate to be able to exercise its faith and administrative obligations over the affairs of the incorporated apostolate (Catholic Health Association, St. Louis, 1984, pp. 155-163). This relationship is often expressed in the corporate documents in the form of reserved powers, usually to approve an institution's philosophy and mission; to appoint trustees; to amend articles of incorporation and bylaws; to approve acquisitions, mergers, and dissolutions; to approve the indebtedness and mortgaging of property; and, sometimes, to approve the appointment of the chief executive officer.

"Sponsorship" has come to describe a variety of different relationships.

As Maida and Cafardi point out, the key phrase here is "*canonical* sponsorship." In fact, the term "sponsorship" has grown to describe a variety of different relationships between religious groups and incorporated apostolates. It may refer to situations in which a religious group does not maintain sufficient legal control over an apostolate to exercise canonical stewardship, but may have something less, such as the right to approve or appoint some of the members of the board of trustees.

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CHARACTERISTICS OF PUBLIC JURIDIC PERSON, PRIVATE JURIDIC PERSON, AND NONCANONICAL STATUS

	Public Juridic Person	*Private Juridic Person*	*Noncanonical Status*
Is the group publicly identified as doing its work in the name of the Church?	Yes	No	No
How is its juridic status obtained?	Public juridic status is obtained by law or decree.	Private juridic status is obtained by decree only.	Has no juridic status.
Who controls the property?	The group and the Church.	The group, unless the statutes provide otherwise.	The group, in accord with its regulations.
What is the level of supervision?	Statutes are approved and amended by Church authority. The group is accountable to Church authority in accord with canon law.	The group approves and amends statutes. The group is accountable to Church authority in accord with canon law.	The group approves and amends its regulations.
How are leaders chosen?	Elections are held according to canon law, unless otherwise provided for by statute.	Elections are held according to canon law, unless otherwise provided for by statute.	Leaders are selected according to regulations.

MISSION TO CROATIA

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Private investing would likely strengthen Croatia's geriatric care.

example of France and Canada, Croatia should merge the geriatric services currently divided between two government ministries. An effective continuum of geriatric care will require coordination at the highest government levels.

Encourage Private Investment Croatia's Ministry of Labor and Social Welfare would like to see private companies invest in that country's geriatric services. Unfortunately, though, its cumbersome funding/reimbursement system discourages investors. The ministry should consider adopting funding that encourages investors to build multitiered nursing/retirement communities, community care clinics, and hospice/home health agencies. Given centralized policymaking and localized resource allocation, private investing would likely strengthen the nation's geriatric care.

Create an International Exchange Program The Ministry of Labor and Social Welfare should fund an exchange program in which key leaders of Croatia's retirement services would study those in the United States and American leaders would do the same in Croatia.

View Croatia as a Laboratory Social scientists in other countries should view Croatia as a laboratory in national geriatric policymaking. The growth predicted in its elderly population there will be a preview of the explosion set to occur over the next 20 years in Western Europe. Surveys conducted in Croatia would be useful in planning geriatric healthcare for both that nation and its neighbors.

IMPROVING INTERNATIONAL HEALTHCARE

Croatia has agreed to fund a program to exchange healthcare leaders with the United States. Cheered by this and the other positive results of its association with that country, the FHS team urges the State Department to continue its healthcare grant program. A collegial effort rather than a political club, the program helps improve healthcare on the international level. □

For more information call Tom Kerkhoff, 352-338-0091, ext. 5820; or Brian Forschner, 513-825-9300.

NOTES

1. *Croatian Health Development Policy and Strategy Master Plan: Republic of Croatia Policy: Health for All by the Year 2005*, Zagreb, Croatia, 1996.
2. System Health Information Service, *Final Report: Health Surveillance Project*, University of Zagreb Medical School and United Nations High Command on Refugees, Zagreb, Croatia.
3. Republic of Croatia Ministry of Health, *Report of the Health System in the Republic of Croatia and Its Development: 1990-1995*, Zagreb, Croatia, 1996.
4. B. Forschner, T. Kerkhoff, and J. Labar, "The Challenge of Elder Healthcare in a Changing Croatia," *Medica Jadertina*, no. 27, 1997, pp. 1-4, 93-102.
5. H. Hoenig, N. Nusbaum, and K. Brummel-Smith, "Geriatric Rehabilitation: State of the Art," *Journal of the American Geriatric Society*, no. 45, 1997, pp. 1,371-1,381.
6. Hoenig, Nusbaum, and Brummel-Smith.
7. Commission on Accreditation of Rehabilitation Facilities, *Standards Manual and Interpretive Guidelines for Medical Rehabilitation*, Tucson, AZ, 1996.
8. Germany in particular has given Croatia a good deal of assistance, including medical technology, since 1990.
9. Money from the AIHA grant funded the conference.
10. D. Leibovici, S. Curtis, and K. Ritchie, "The Application of Disability Data from Epidemiological Surveys to the Development of Indicators of Service Needs for Dependent Elderly People," *Age and Aging*, no. 24, 1995, pp. 14-20.

STRUCTURES IN MINISTRY

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Sponsorship has also grown to include the idea of fidelity to mission and purpose. In many Catholic healthcare organizations, executive positions exist to promote and monitor the values of the sponsor. Most of these positions have a wider responsibility than the elements of canonical sponsorship.

What does the future hold for the adaptation of present juridic structures and the development of new structures for a Catholic healthcare ministry?

The exploration of the use of the structures described in the Code of Canon Law began almost immediately after its promulgation in 1983. The majority of Catholic healthcare sponsors in the United States are religious institutes of women. Since 1983 these institutes have focused their efforts on combining or jointly sponsoring their ministries. The recently established pontifical juridic persons, both public and private, have invested a large measure of authority in their lay members; however, the religious institutes have maintained control over who is a member of the juridic person. It remains to be seen if religious and lay cooperation is the final stage for these organizations or whether it is a step toward ultimate lay control.

There are diocesan private juridic persons and associations of the faithful that are true examples of lay sponsorship. At this time, however, they sponsor only a few facilities.

The immediate future appears to lie in lay and religious cooperation. One obvious question for the continuation of this partnership is the ability of religious institutes to contribute resources, especially personnel (which for most institutes is very limited), to partnerships. Another question is the interest and ability of laity to participate in the Catholic healthcare ministry. The dynamic quality and changing landscape of healthcare, including healthcare ministry, make it difficult to predict the future. □