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LEGAL AND ETHICAL PROBLEMS PRESENT IN CATHOLIC HEALTH FACILITIES

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It is my sincere pleasure to address you at this time. I would like to speak to you on what I consider are some of the trends and concerns in the voluntary, non-profit health system, but specifically the Catholic health field during the past ten or fifteen years. This brings into focus some of the problems we are facing today and some of the problems we are going to face in the future. I am quite convinced those problems will be serious. So, if I sound a little bit pessimistic this morning, I do not mean to be, but I do mean to be realistic.

First of all, I would like to submit to you that it is my sincere hope and prayer that our Catholic health facilities will be able to weather the present storm and the future storms as they face the pressures of outside influences on the very basic Christian philosophy which we have maintained over the past several hundred years. The area being discussed, specifically here, is the decision of the United States Supreme Court on abortion. I intend to address myself to these problems. But in all fairness to you and to our Catholic health facilities, whom I represent here this morning, I cannot disregard problems other than abortion which have brought about the grave situations which have also attacked the very heart of what makes our institutions Catholic. Every Catholic hospital in our land faces a critical phase in its existence at the present time. Each hospital must decide if it can sincerely continue to function as a specifically Catholic health facility in a pluralistic society, exacting medical and surgical services in seemingly direct violation of the Ethical and Religious Directives for Catholic Health Facilities which were adopted by the body of bishops in November of 1971.

During the past ten to fifteen, perhaps twenty, years, Catholic hospitals have become deeply involved in community life in the admission of patients, regardless of color, race or creed. They have accepted public funds to build and expand their facilities.

They implicitly have agreed to conform to public authority as a community institution. They have constituted their boards of trustees with lay

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representatives and representatives from every religious denomination and from every shade of medical, moral and ethical conviction. Is this goal, that of community service and respect for pluralism, possible with the other traditional goal, that of maintaining its Catholic identity. I will submit to you now that many in our own field are in the midst of widespread dissent as to the correct response to this dilemma. It is a hard fact today that the Catholic hospital is fast becoming less of a religious island to itself where it was able to cater to those who believed in Catholic philosophy and to those who are willing to conform to Catholic standards.

Catholic health facilities, namely hospitals, which numbered 750 three or four years ago, number 715 in the United States today and control one-third of all privately owned hospital beds. I must admit this decrease in the number of Catholic hospitals has not come about because of our Ethical and Religious Directives, although perhaps a couple have, but many have come about through mergers, a lack of religious personnel and other problems. These hospitals are still a powerful, vital community resource. I might mention the solo Catholic hospital; there are 285 serving as the only hospital in a given geographic area. And these 285 hospitals are of great concern to all of us.

Traditionally our hospitals have been inspired with Catholic dynamism rooted in religious beliefs and expressed in the service and witness to Christ and the apostolate of the sick, the suffering, and the dying. They exemplified Christ's mission of mercy, forgiveness, in an environment heavily charged with Christian values, especially those of the sanctity of human life and the dignity of the human person. The loss of that Christian witness would be a considerable blow to the influence of the spiritual in an area of vital human concern. This witness, heretofore, has been staunchly guarded by Catholic philosophy and teachings, and its guidelines dictated in detail what could and could not be done in the practice of medicine in Catholic-sponsored health facilities. These guidelines were aimed at keeping our Catholic facilities truly Catholic.

What has happened in recent years which will have a direct effect on some of the decisions of our governing boards? As I mentioned, during the past ten to twenty years the Catholic hospital, as well as the practice of medicine itself, has been undergoing social, cultural and legal changes profoundly affecting its identity, moral responsibility and accountability. Community involvement, public health agencies, area-wide planning, government relations, civil rights legislation and many others establish the thesis and the mentality that since hospitals serve the general public, are supported directly or indirectly by state or federal funds and are of vital importance to the public welfare, these hospitals should be supervised by public authorities on a day-to-day basis. Government approval and supervision of the building, expansion of facilities, standards of record keeping and accrediting agencies now hold the lifeline of the institution at their pleasure. For if their standards are not met, accreditation is refused and this means loss of financial support, loss of important medical personnel,

educational programs and many other precarious professional programs now in existence.

Then again something new has come into vogue and that is the merging of Catholic health facilities with other medical institutions of different religious convictions and some with no religious convictions at all. The Catholic hospital has gradually ceased to be strictly a private institution under Catholic auspices, with a more or less tight relationship with the diocese or under the official aegis of the Catholic church. It has now become a quasi-public, pluralistic service, religiously and medically, with multiple moral accountability.

One of the problems we face is that a good many people, religious included, agree that in the future the Catholic hospital will struggle to be an institution under ecclesiastical authority for the enforcement of Catholic medical ethical policies. They believe that to maintain that status at all costs would mean to make the hospital dubiously viable and to rob it of its unique contribution to present day society. This is a real problem, not necessarily for the sponsoring groups, those who own it, but for many of our religious personnel working in our hospitals. I receive numerous calls on many of these problems. A call came through the other day and, after a fairly long conversation with the sister administrator, she admitted that rather than give up the impact she feels her Catholic hospital is having in that particular community, she would rather allow abortions to be done in that hospital. I truly believe that an educational theological program is extremely important for our priests, religious and laity. We are having—and it is important—more and more lay administrators, as well as lay boards, becoming greatly involved in our institutions, and they do not necessarily have the same degree of philosophy we have held for many, many years.

I believe that perhaps the present situation (and I am not blaming it on Vatican II) has arisen from some of the principles that evolved out of Vatican II as the blueprint of the Church's place in the Modern World. These have affected our Catholic health facilities and the thinking of our personnel operating our Catholic health facilities. For instance, in the Declaration of Religious Freedom, pluralism was conceived as the normal, historical context in which Catholic life would evolve. The Decree on Ecumenism affirmed the ecclesiastical reality of other churches and the possibility of learning from their theological and ethical insights. We in this room could agree, but we are talking about thousands and thousands of health personnel who are running our institutions out there in the fifty states. Many ask the question: "Can we now insist that non-Catholics, be they patients or doctors, conform totally to our code of ethics in spite of their sincere convictions or their good faith to the contrary, when they freely choose or are forced by circumstances to use our health facilities? Could we now refuse certain health services which are legally permitted, commonly accepted in the medical world and not morally harmful according to the judgment of many prudent men?" These questions are asked by

many of our religious operating hospitals in the United States. Must we now alter the institutional identity of our Catholic hospitals to meet the demands of a pluralistic society by maximizing the freedom of all parties concerned and by relinquishing important values imposed by the medical and ethical Catholic code? These questions point out the heart of the contemporary dilemma brought about by cultural, religious and theological thinking. Without a delicately balanced solution emanating from an astute sense of policy and values, it would seem that the very presence of Catholic witness in the hospital world is threatened with extinction. I think the problem is clear enough on this particular point, but what is the solution? I think to those who wish the Catholic hospital to be owned by ecclesiastical authorities, dioceses or religious congregations, or to be a moral person with the Church and the guardian of Catholic ethical principles while fulfilling its medical mission, there does not seem to be any compromise. For them it is the institutional witness to Christ and I do not believe anything else could possibly be tolerated, unless changes are approved by the Church.

What are we doing specifically in regard to the decision of the United States Supreme Court of January 22? The Catholic Hospital Association, first of all, has assumed a leadership role for her hospitals and has kept them well-informed as to what their obligations are in supporting and reaffirming the Ethical and Religious Directives for Catholic Health Facilities, which were approved by the Body of Bishops in 1971. Each sponsoring group has been asked to adopt a corporate resolution and to reaffirm its position against abortion. In preparation for this paper, I surveyed by questionnaire the nearly 180 sponsoring groups who own and operate Catholic hospitals throughout the fifty states. In response to this questionnaire I received approximately a 70% return. One of my first questions was: "Have you adopted a corporate resolution reaffirming your stand against abortion? If you have separately incorporated hospitals, has each of these hospitals, with their governing board, adopted a corporate resolution?" All but ten who responded had adopted a corporate resolution reaffirming its stand against abortion. I had asked them to send me copies of the resolutions. All of them did. "Are you experiencing any problem in any of your institutions, either by pressure from physicians, legal implications or other problems regarding the decision of the United States Supreme Court?" As of my reading right at this moment, no lawsuit has been brought against a Catholic hospital in regard to the abortion issue. However, there is a great deal of activity in four or five states where the American Civil Liberties Union is active in planning the possibility of bringing about such an incident in one of our Catholic hospitals. As was probably presented to you, or will be, there is also activity in the area of the abortion issue in non-Catholic hospitals throughout the United States. At least in two or three instances, I am aware of such activity.

I would like to submit to you that in response to the inquiry to all of the major superiors in the United States who run Catholic health facilities,

without exception, the major problem is sterilization and family planning. Many of our religious believe that sterilization and family planning should take place within our institutions. My comment to you today is that we did not have this four or five years ago. The impact of the sterilization issue and especially the pressure which is being brought on our hospitals by many because of the problems that I have enumerated and some of the trends that have occurred is certainly great. I came to the United States Catholic Conference ten months ago and, prior to that time, I was a hospital administrator for eighteen years. In my eighteen years of service in a Catholic hospital, the pressure of the last four years by the medical staff to do sterilization and to carry out family planning in our teaching clinic was severe. It took a great deal of won't-power to withstand the pressure of the medical staff. I think this is one of the greatest pressures the Catholic hospitals in your diocese will have to face.

I would like to emphasize that the trend in the two areas of sterilization and family planning have increased, at least the pressures have increased. Maybe this is a bellwether of what is coming in the area of abortion. Some of these problems I mentioned before were alluded to in the questionnaire returned to me. As our Catholic hospitals attempt to become a stronger health facility within that given civic community coming under comprehensive health planning, building up their educational programs, their relationships with the university medical schools and so forth create a great pressure. Pressures are coming from these programs, especially in the areas I mentioned, family planning and sterilization. I receive at least two calls a week from hospital administrators asking if they can implement a family planning program within their institutions because of a teaching program. The same is true in many instances regarding sterilization.

There is another major problem of which, I think, all of you should be aware. Our Catholic hospitals, especially in our large metropolitan centers and with federal legislation directed toward health maintenance organizations and closed medical staffs, are building professional office buildings. The question posed to me is, can we really enforce and control our Ethical and Religious Directives in the lease agreement, especially in the areas of sterilization and family planning? This is a real dilemma. The sister may put a section in her contract asking the physician to follow the medical staff by-laws. But can any of you in this room tell me how she is going to supervise and control what is occurring in the offices of those physicians housed on property belonging to or owned by the sisters?

On the one hand, our Catholic health facilities need to be a bulwark within the community, need to stand for the principles which we have adopted. On the other hand, they need to develop a large, strong medical center which encompasses all of these outside forces.

There are other areas we need to be concerned about in contractual, legal agreements with outside agencies, such as shared services, shared services regarding obstetrical services and numerous other types of cooperative shared services. Contractual agreements with physicians, either on a

part-time or full-time basis is a problem to be considered. What is the philosophy of that physician? What will he stand for within the Catholic health facility?

What about comprehensive health planning, certificate of need? You are all probably aware of what the State of Maryland has stated, as of April 12, in granting Bon Secour Hospital their certificate of need to build-to enter into a long-range program, the first part of which will be a 12 million dollar facility. In their letter of agreement, granting Bon Secour permission, Comprehensive Health Planning stated conditions which need to be included, and they need to have written assurance that the services to be provided by the Howard County Bon Secour Hospital will include all of those shared services, listed on each page of the agreement of the April 12, 1973 letter. Listed are emergency services, obstetrics, pediatrics, abortions, sterilizations, physical therapy, medicine, pathology, etc. They have inserted abortions and sterilization, listing them as part of the services which this hospital needs to perform directly or contract with another institution, in order to be granted the certificate of need to build their hospital. This is being discussed at great length by the Board of Trustees of Bon Secour Hospital and by others in the planning mechanism in the Maryland area, especially those who are related to the Diocesan Coordinators of Catholic hospitals, as well as the Cardinal of the diocese. This, to my knowledge, is the first time a certificate of need has stated in its decision the need to include abortion and sterilization. It is true they can contract with other agencies, but this gets into the whole area of contractual agreements, and will the hospital do that or can the hospital do that? All of you are aware of legislation that is being introduced in the various legislatures throughout the country. There is no need to be repetitious here but we are very much involved and concerned about the bill in Oregon, which would have forced all hospitals entitled to a tax exemption of any kind under state law, or supported in whole or in part by state or local grants or subsidies, to admit persons seeking sterilization or abortion. This bill has been tabled at the present time. But little by little we see a trend, and a lot of it is based on what has happened the last ten to fifteen years in how we have become very much involved in becoming a partner with government and other outside agencies. I come from a community of Sisters of Providence who have many, many hospitals in Canada, which have been taken over by the Canadian government. I would like to conclude by telling you that, through our office at the United States Catholic Conference, we are certainly closely involved with the Catholic Hospital Association, as well as individual Catholic hospitals. We are in close contact with the 120 Diocesan Coordinators of Health Affairs. You work with one in your diocese. We have disseminated to them all the information that has come out of the Pro-Life Committee and the Administrative Board of Bishops.

I would like to conclude with what I think is an important process and one which you, too, think is important, or you would not be sitting here at this time. An educational program is needed to develop in Catholic health-

facilities for Catholic personnel in order to relate to them some of the facts, some of the pitfalls and certainly some of the basic and on-going theology that has gone into the Directives and which is still in existence today. I think that so often our people are swept up with the times and are influenced by their peers. There are differences in opinion among our theologians. Our personnel in Catholic health facilities are getting a variety of opinions. There is confusion in the field.

I would like you to know that we in the Division of Health Affairs are open to suggestions from the diocesan attorneys. We are going to do everything within our power to cooperate in working with the Catholic Hospital Association to make sure that our Catholic hospitals do remain viable, that they do not become so legally involved and so discouraged that they will want to give up. There is definitely a place in Christ's mission for the Catholic hospitals and Catholic personnel. There is definitely a place for Catholic health facilities in each of our dioceses throughout the country. There is definitely a place for legal expertise for our hospitals. Many of our hospitals have been involved in malpractice litigation. I think one of the big problems which you face, which the attorneys face who work for our hospitals and work for our sponsoring groups, is the lack of experience in defending cases where moral and ethical issues are involved. In the very, very small communities where we have a solo hospital, one of the great weaknesses is a lack of legal expertise to advise and assist these hospitals.

I certainly wish you well for the rest of your meeting. It has been a sincere pleasure being with you this morning. Certainly, I hope that I have brought out some of our concerns, some of the trends which are taking place and some of the problems which we may not be facing today, as of May 7, as far as litigation in the area of abortion. Hopefully, we will not face any in the future.

Thank you very much.