ETHICS & MEDICS
A Commentary of The National Catholic Bioethics Center on Health Care and the Life Sciences

# UNDERSTANDING COOPERATION WITH EVIL

Collaboration is the present and future reality of health care in the United States. Changes in health care delivery, medical standards, technology, insurance, market dynamics, legal regulations, and overhead costs have contributed to the need for economies of scale. Small, independent health care institutions are disappearing rapidly. Following the guidance of the *Ethical and Religious Directives for Catholic Health Care Services* (*ERDs*), Catholic health care organizations rightly pursue collaborative opportunities with fellow Catholic institutions, but practical difficulties can make this impossible.[1] Catholic institutions lacking a viable Catholic partner look to non-Catholic organizations, which often sanction intrinsically immoral actions, such as abortion, in vitro fertilization, sterilization, and contraception. This raises the problem of institutional cooperation with evil and the moral principles that govern it.

Given the complexity of the principles, and the difficulties associated with their application,[2] the *ERDs* contain only two points of practical guidance: participation in activities judged morally wrong by the Church "must be limited to what is in accord with the moral principles governing cooperation,"[3] and "reliable theological experts should be consulted in interpreting and applying the principles governing cooperation, with the proviso that, as a rule, Catholic partners should avoid entering into partnerships that would involve them in cooperation with the wrongdoing of other providers."[4] This leaves administrators largely in the dark regarding a thorny subject that causes even seasoned moral theologians and ethicists to struggle. In good faith, health care executives may end up with plans for collaboration based on erroneous definitions of the principles, having wasted countless hours of labor and financial resources building on false premises.

Directors, sponsors, and administrators should have a basic understanding of the principles of cooperation as they begin investigating corporate structure changes. This provides a proper sense of direction early on and a means for evaluating the advice they receive. Waiting until the deal has already closed can be financially devastating: no one wants to hear "this is illicit" with a multi-million dollar non-performance penalty already in place. This article aims to assist leaders of Catholic health care organizations by providing a description of the principles and a concise summary of the way the principles apply to decision making.

Moral analysis always presumes a moral agent. The only true moral agents are individual persons. "Group agents" exist by analogy: a family, team, corporation, government, or nation. Health care organizations are moral agents by analogy.[5] Their intentions and actions can be identified in charters, bylaws, regulations, protocols, policies, guidelines, investments, and revenue. In this sense, it can be said that the governance, administration, operation, and financial transactions of an organization reflect its intentions.[6] If a tubal ligation is allowed to occur in a hospital, it is by virtue of the immoral policies or protocols of the institution. Not only is the sterilization wrong, but so is its active approval and facilitation by the organization. This is akin to the understanding of unjust laws: not only is abortion wrong, for example, but the government commits a grave injustice by legalizing it.

"Cooperating with evil" is freely and knowingly providing assistance to the present or future evil action(s) of another.[7] In the case of institutions, the "other" is a group entity such as a hospital or health care system. The principles can be summarized in four points: (1) do not directly intend to contribute to evil, even if your goal is good; (2) do not contribute to evil indirectly, if you can avoid it; (3) do not contribute to evil indirectly, unless better options are exhausted and the chosen goods outweigh the expected evils; and (4) do not cause public confusion about Catholic teaching or identity.

## Formal Cooperation

*Do not directly intend to contribute to evil, even if your goal is good.* Formal cooperation is directly intending a contribution to the evil action of another. It expresses approval for that evil and is always illicit. There are two types, explicit and implicit, which reflect the difference between intending as a goal or acknowledged means and intending as an unacknowledged means.

Explicit formal cooperation is straightforward: the Catholic institution acknowledges that it intends the evil actions of the non-Catholic institution, violating the natural moral law and contradicting its mission, values, and identity. For example, if a Catholic institution enters

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into a collaborative arrangement with a non-Catholic one with the acknowledged *aim* of expanding access to contraception and direct sterilization for its patients, then it is engaged in explicit formal cooperation with those evils. Likewise, if a Catholic system brings a non-Catholic institution into its health system and openly acknowledges that it intends to expand its market share, or even to avoid the demise of the system, *through* increased patient traffic and revenue benefits deriving from the non-Catholic institution's in vitro fertilization program, then it too is engaged in explicit formal cooperation.

Implicit formal cooperation is often not recognized because of good intentions and specific attempts to avoid illicit cooperation: the Catholic institution sincerely denies that it intends the evil actions of the non-Catholic institution, seeking to obey the moral law and the *ERDs* in pursuit of morally good objectives, but actually intends those evils as a means to achieving a good aim. This is usually the most challenging moral concern in the development of collaborative arrangements. If a Catholic organization claims it adheres to the *ERDs* and denies any approval of sterilization, yet becomes a controlling member of a non-Catholic institution that continues to perform tubal ligations, then the Catholic entity intends that evil *implicitly*. The evil is neither desired nor openly acknowledged but is an intended means for attaining other beneficial ends. This applies all the way up the chain of control when non-Catholic institutions come under the governance of Catholic ones: a Catholic entity that is the sole corporate member of a non-Catholic organization cannot allow institutional policies that conflict with the *ERDs* at the non-Catholic organization or any of its controlled members.

If a non-Catholic organization wishes to join a Catholic one but will not agree to stop direct sterilizations, then a licit arrangement invoking the principle of material cooperation might be worked out if the illicit procedures are fully separated from the non-Catholic organization prior to an agreement. For example, if the non-Catholic health care organization, of its own initiative, creates an independent maternity hospital that will govern, manage, and finance sterilizations, then the non-Catholic health care organization could join the Catholic system so long as the independently-run maternity hospital were not part of the agreement. This could avoid implicit formal cooperation.

However, if the Catholic organization contributes money, planning, approval, or resources to the establishment of the maternity hospital so that the non-Catholic organization may join the Catholic system, it will be guilty of implicit formal cooperation. This is because the Catholic health care organization shows that it intends the establishment of a structure that provides sterilizations, to make it easier to provide an incentive for the non-Catholic organization to join it and so benefit the Catholic health care organization in turn. While it surely does not desire sterilizations or aim to assist in them, the Catholic entity intends the perpetuation of sterilizations as a means to achieving its goal of improving Catholic health care. This mistake can be made in good faith as the Catholic organization makes every effort to avoid an illicit arrangement but ends up establishing or helping to establish the means of perpetuating the very evil it seeks to limit or avoid.

### Illicit Material Cooperation

*Do not contribute to evil indirectly, if you can avoid it.* Foreseen contributions to the evil actions of others do not necessarily become morally tolerable once formal cooperation is ruled out. Contributions to evil that are not directly intended may occur through shared resources, financial savings, and other "material" assistance that ultimately benefits the organization responsible for an immoral policy. Such assistance is not inherently or exclusively connected to the immoral policies or procedures. Thus, material cooperation occurs when the evil is not directly willed, either explicitly or implicitly, yet its commission is facilitated through an indirect contribution by the cooperator.[8] Master services agreements regarding ambulances, laundry, cleaning, maintenance, and so forth, may be examples of material cooperation if one of the partners authorizes sterilizations. The shared services are unrelated to the sterilizations, but indirect benefits permit the perpetuation and perhaps the increase of sterilizations.

In principle, material cooperation with evil is wrong; it violates the positive obligation of charity. It is licit only by exception.[9] Material cooperation is either immediate or mediate. Immediate means the contribution of the cooperator is direct or essential to the evil act.[10] An example would be a Catholic health care organization providing the surgical team for a direct sterilization at the non-Catholic health care organization. Mediate means the contribution is indirect or nonessential.[11] An example would be a Catholic health care organization that shares cleaning services with the non-Catholic health care organization at which sterilizations are performed.

Immediate material cooperation is never licit for institutions.[12] While some moral theologians and ethicists claim it may be justified for individuals in situations of duress, such as when one's life is at stake, the Congregation for the Doctrine of the Faith clarified that this does not apply to institutions.[13] Nothing on the institutional level—not even financial ruin or failure—is analogous to the loss of one's life. Institutional decisions become enshrined in contractual agreements that may have no definitive end in sight. This perpetuates a supposedly "tolerated" evil, making it part of daily operations in a long-term sense—unlike the temporary duress an individual may experience when his life is threatened. No prudential weighing of goods and evils can justify institutional immediate material cooperation.[14]

Mediate material cooperation is the form typically referenced when discussing licit material cooperation. It can be proximate or remote. The more direct or causally connected is the material contribution, the more proximate is the cooperation. Combined scheduling services for the two organizations would be proximate cooperation: scheduling entails allocating a time and place specifically for the direct sterilizations. The more indirect or causally unrelated is the material contribution, the more remote is the cooperation. Combined building maintenance services would be remote material cooperation, since the causal

link between building maintenance and sterilization procedures is indirect and distant.

Mediate material cooperation can be licit, but only by exception: "the principle of cooperation *is a limiting principle . . . not an expansive one*."[15] This goes back to the obligation of charity: evil is to be prevented, eliminated, or corrected. The obligation is powerful but not absolute, because we cannot stop all evil at all times and in all places: no one is obliged to do what is impossible.[16] Evil need not always be corrected—it may be tolerated—with a sufficient reason. If it can be avoided, if there are other options, if innovative solutions have not been sought diligently, then material cooperation with evil could well be wrong. If a Catholic health care organization decides to seek a collaborative arrangement with a non-Catholic health care organization that performs sterilizations merely because it will be more profitable than working with one or more of its several Catholic competitors, then the Catholic organization may be guilty of illicit material cooperation with evil.

### Licit Material Cooperation

*Do not contribute to evil indirectly, unless better options are exhausted and the chosen goods outweigh the expected evils.* If other options have been exhausted, then material cooperation with evils conducted by another organization may be justified by a proportionate reason. When a Catholic health care organization looks to partner with a non-Catholic health care organization, two general outcomes are possible: (1) for the sake of partnering, the non-Catholic organization agrees to abide by the natural moral law as articulated in the *ERDs*, or (2) the non-Catholic health care organization refuses to relinquish one or more objectionable activities.

In the first case, evils are prevented as a non-Catholic organization comes into full accord with the natural moral law that it previously rejected in some part. The mission of Catholic health care is advanced. A health care organization that previously oversaw abortions, direct sterilizations, and contraceptive practices has decided to cease these harms to human persons and to the common good, promoting only authentic health care.

In the second case, the Catholic health care organization must demonstrate that it is not involved in implicit formal or immediate material cooperation, that it has made a diligent effort to find better alternatives, and that there is a proportionate reason for tolerating the wrongful policies of the non-Catholic institution. A proportionate reason could be the soundly reasoned expectation that failing to partner would cause greater harm, or some other prudential assessment. Since the concept of a "proportionate reason" lacks specificity in order to allow for case application, the virtue of prudence and prayerful guidance from the Holy Spirit are essential for weighing the facts in terms of the goods sought and the evils to be avoided. The planning process and contractual details must be carefully scrutinized.

Proportionate reason assessments involve the subcategories of mediate material cooperation: proximate and remote. The more proximate the cooperation, the greater the proportionate good needed. The gravity of the evil in question is also relevant; abortion can never be tolerated by Catholic health care organizations based on material cooperation.[17] Other factors such as the urgent need to partner, the expected benefits of the arrangement, the expected harms of no arrangement, and the affect on Catholic identity must be weighed. These considerations pertain to the present and the future: if short-term economic benefits to a Catholic health care organization were expected to accrue but serious long-term damage would be dealt to Catholic mission and identity, cooperation may be illicit. In short, if it can be shown that the collaborative arrangement will bring about a greater good or avoid a greater evil that would offset the tolerated evil, then mediate material cooperation may be justified.

If the arrangement is licit, it is not a license to become comfortable with the tolerated evil. Justifiable material cooperation entails the obligation to limit cooperation as much as possible moving forward, to seek better solutions, and to work toward the prevention, reduction, and elimination of that evil or of one's contribution to it. If no such efforts are made, licit material cooperation may slip into tacit approval and become illicit.

### Scandal

*Do not cause public confusion about Catholic teachings or identity.* A Catholic health care institution must ensure the public visibility of its opposition to tolerated evils. Explanation to the public through press releases, hospital documents, building signage, or other means may be appropriate. If it appears that the Catholic institution is promoting contraception or illicit "reproductive technologies," such as in vitro fertilization, by virtue of a licit arrangement with a non-Catholic institution or system, then signage and public relations should make clear that it is not. If an inadequate effort is made to correct public misperceptions, it will lead to confusion about the teachings of the Catholic Church, about the practical applicability and relevance of Church teachings, or about the very identity of the Catholic organization. In short, it may cause scandal: an attitude or behavior that at least has the appearance of evil and occasions another to commit evil.[18]

As Pope Paul VI perceptively noted, "Modern man listens more willingly to witnesses than to teachers, and if he does listen to teachers, it is because they are witnesses."[19] Catholic organizations are witnesses of Catholicism to the broader public. If a public witness acts contrary to the gospel mission, it corrupts, confuses, and cripples the transmission of the Word. As Pope Benedict XVI made clear in a motu proprio, "In carrying out their charitable activity . . . Catholic organizations . . . exercise a valuable educational function within the Christian community, helping people to appreciate the importance of sharing, respect and love in the spirit of the Gospel of Christ."[20] It may be necessary to forgo even what is morally licit in order to avoid the harm of scandal.[21] As the *ERD*s point out, "Cooperation, which in all other respects is morally licit, may need to be refused because of the scandal that might be caused."[22]

In practical terms, leaders of Catholic organizations should be in open communication with the diocesan bishop, who "has final responsibility for assessing and

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addressing issues of scandal." [23] This is especially true if the proposed arrangement would involve any sort of physical contiguity between the Catholic organization and the non-Catholic one or if there would be any leasing of property. Engaging in partnership discussions without involving the bishop could waste time, resources, and energy, since his assessment could scuttle the whole effort. The bishop's approval, or *nihil obstat*, is necessary for any partnership involving an institution under his governing authority.[24]

### Do Good and Avoid Evil

The principles of cooperation are complex and thus can be easily misunderstood, misarticulated, or misapplied. The greatest danger is implicit formal cooperation, which may occur despite the best explicit intentions and the most careful planning. Immediate material cooperation is never permissible, and mediate material cooperation must be scrupulously justified in order to be licit: all better options should be exhausted and a proportionate reason must be identified and supported. The Catholic health care organization should be in regular communication with the diocesan bishop in order to ensure the proper avoidance of scandal and to avoid surprise assessments that might undermine the entire effort.

In sum, the principles of cooperation with evil expound on these basic moral concepts: do good, do not do evil, do not contribute to evil so that good may come as a result of that evil, and do not even contribute to evil indirectly without having sought alternatives and without a good reason. Given that every institutional partnership is unique, case-specific guidance in applying the principles remains crucial. This article can serve as a basic framework and practical reference for approaching individual cases.

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[1] See US Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed. (Washington, DC: USCCB, 2009), part 5, introduction.
[2] The 2001 and 2009 editions of the *ERDs* omit the appendix to the 1995 edition, which contained an articulation of the principles of cooperation. Regarding this omission, the introduction to part 5 of the 2001 edition states, "Experience has shown that the brief articulation of the principles of cooperation that was presented there did not sufficiently forestall certain possible misinterpretations and in practice gave rise to problems in concrete applications of the principles."
[3] USCCB, *Ethical and Religious Directives*, n. 69.
[4] Ibid., part 6, introduction.
[5] See Peter J. Cataldo and John M. Haas, "Institutional Cooperation: The *ERDs*," *Health Progress* 83.6 (November–December 2002): 53.
[6] See Ibid., 51.
[7] See NCBC Ethicists, "Cooperating with Non-Catholic Partners," in *Catholic Health Care Ethics: A Manual for Practitioners*, ed. Edward J. Furton, Peter J. Cataldo, and Albert S. Moraczewski, 2nd ed. (Philadelphia: The National Catholic Bioethics Center, 2009), 265–266.
[8] See NCBC Ethicists, "Cooperating with Non-Catholic Partners," 267.
[9] See John A. McHugh and Charles J. Callan, *Moral Theology: A Complete Course Based on St. Thomas Aquinas and the Best Modern Authorities*, vol. 1 (New York: Wagner, 1958), 620.
[10] See NCBC Ethicists, "Cooperating with Non-Catholic Partners," 267.
[11] See Ibid.
[12] See USCCB, *Ethical and Religious Directives*, n. 70.
[13] Congregation for the Doctrine of the Faith, "The Presentation of the Permissibility of Material Cooperation in Intrinsically Evil Actions Developed by the Catholic Health Association," June 13, 1997, cited in Cataldo and Haas, "Institutional Cooperation," 53.
[14] See Cataldo and Haas, "Institutional Cooperation," 52–53.
[15] Ibid., 56, original emphasis.
[16] *Ad impossibilia nemo tenetur*. See *Summa theologiae*, I-II q. 13, a. 5.
[17] See USCCB, *Ethical and Religious Directives*, n. 45.
[18] See Thomas Slater, *A Manual of Moral Theology for English-Speaking Countries*, vol. 1 (New York: Benziger Brothers, 1908), 198.
[19] Paul VI, *Evangelii nuntiandi* (December 8, 1975), n. 41.
[20] Benedict XVI, "On the Service of Charity," November 11, 2012.
[21] See 1 Cor. 8:13.
[22] USCCB, *Ethical and Religious Directives*, n. 71.
[23] Ibid., n. 71.
[24] Ibid., n. 68.



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