

Employed Health Care Providers and the Provision of Direct Contraception

The National Catholic Bioethics Center

Abstract. This March 2018 document replaces an earlier template policy, “Model Clinical Practice Ethics Guidelines for Affiliated Health Care Professionals with Respect to Prescription of Contraceptives,” drafted by The National Catholic Bioethics Center in the 1990s. Instead of a template policy, the new document provides definitions and principles to help health care institutions apply Catholic moral teachings if, for whatever reason, they happen to employ providers who prescribe contraception. The three basic principles are (1) distinguishing responsible agents and maintaining organizational integrity, (2) avoiding immoral cooperation, and (3) avoiding and resolving theological scandal. *National Catholic Bioethics Quarterly* 18.2 (Summer 2018): 247–251.

In the 1990s, The National Catholic Bioethics Center drafted a template policy, “Model Clinical Practice Ethics Guidelines for Affiliated Health Care Professionals with Respect to Prescription of Contraceptives,” to assist Catholic health care institutions concerned that they would be unable to survive unless they could enter into employment and contractual relationships with physicians in a health care marketplace marked by consolidation pressures. The template policy was published in early editions of the Center’s manual, *Catholic Health Care Ethics*. To respond to significant changes in health care financing and delivery in the intervening years, and to clarify some elements of the guidance provided, including the concept of a “limited private practice capacity,” the NCBC updated this resource in March 2018. Rather than a template policy, the NCBC now provides definitions and principles to help Catholic health care institutions apply Catholic moral teachings, including the *Ethical and Religious Directives for Catholic Health Care Services (ERDs)*, with integrity while employing health care providers who may desire, or face demands, to provide, prescribe, or refer for direct contraception. The updated document follows.

Definitions

1. *Contraceptive* means a drug, device, or surgical procedure, the use of which prevents conception or impairs fertility.
2. *Direct contraception* refers to the use of a drug, device, or surgical procedure for the intended effect or purpose of preventing conception or impairing fertility.
3. *Indirect contraception* refers to the use of a drug, device, or surgical procedure for the intended effect or purpose of treating a medical pathology when there is a foreseeable but unintended (side) effect of preventing conception or impairing fertility. Indirect contraception is not the focus of this resource. Health care providers should recognize, however, that safe and effective treatments for gynecologic problems are available that do not have the side effect of impairing fertility.
4. *Health care provider* refers to a physician, physician assistant, advanced nurse practitioner, or any other health care provider who is legally qualified (licensed) to provide, prescribe, or refer for drugs, devices, or procedures which can be used for contraception.
5. *Cooperation* is any specific assistance knowingly and freely given to the immoral act of another person or institution, whether sharing in the wrongdoer's intention or not. A "cooperator" is the person or institution that provides this assistance, and a "principal agent" is the person or institution whose immoral action is assisted by the cooperator.
6. *Formal cooperation* occurs when the cooperator wills the same immoral action as the principal agent. Even if a cooperator intends a good end, the cooperation is formal if the cooperator intends the principal agent's immoral act as a means to achieve that good end. Formal cooperation in the immoral actions of others is always immoral because it involves willing evil as an end or a means. Formal cooperation can include authorizing, approving, or giving specific direction for implementing immoral action(s) of the principal agent. Prescribing drugs in particular doses for particular uses or goals (such as synthetic hormones for direct contraception) entails these elements of authorization, approval, and specific direction. Prescribing, providing, or referring for direct contraception is formal cooperation with contraceptive acts of patients by an individual health care provider *and* by the institution for whom the individual provider is acting as an agent. Such formal cooperation is wrong in itself, whether or not it is the sole purpose of, or the sole activity within, a clinical encounter between a patient and a health care provider.
7. *Material cooperation* occurs when the contribution to the immoral act of the principal agent is not intended, but rather comes as a side effect of the cooperator's own act, which is in itself morally good or indifferent. Some types of mediate material cooperation can be tolerated under certain conditions. Material cooperation can be tolerated only if there is a proportionate good to be achieved by the cooperator's morally good act, which would allow the cooperator to tolerate the foreseen immoral acts of the principal agent. Determining what constitutes a sufficient reason for pursuing such a proportionate

good in relationship to the unintended evil ensuing from the cooperator's act involves assessing factors such as causal proximity to the immoral action, the gravity of the moral evil, the ability to prevent the immoral action, the dependence of the immoral action on the cooperator's act, any role or office with moral authority held by the cooperator, and scandal. The traditional criteria for assessing the reasons for material cooperation should be consulted.

8. *Models of Employment or Contracting.* Decades ago, most health care providers were not employed by Catholic health care institutions. Those (independent) health care providers who provided medical care to their patients within a Catholic institution had to agree (and still must agree) to respect the ethical standards of the Catholic institution as a condition of the privilege to practice there (see directive 5 and the introduction to part 3 of the *ERDs*). Since the early 1990s, many models of employing or contracting for services from health care providers by Catholic health care institutions have been created. When a health care provider agrees to be employed by or to contract with a Catholic health care institution, that health care provider acts not only as a health care professional but also as an agent of that Catholic institution when providing medical treatment and services under the terms of the agreement. Thus, to an even greater extent than those with privileges, employed or contracted health care providers must respect the ethical standards of the Catholic institution when acting under its auspices.

Principles

Distinguishing Responsible Agents and Maintaining Organizational Integrity

Health care providers affiliated with Catholic health care institutions who provide, prescribe, or refer for direct contraception may not do so as agents of the Catholic health care institution, though the Catholic institution may be unable to prevent them from doing so in an independent capacity outside the scope of the affiliation. In the past, the term “limited private practice capacity” was used to distinguish the moral agency of an employed health care provider from that of the employer Catholic health care institution. This term, or another like it, can be used legitimately so long as the term describes a *real distinction or independence* in the professional activities of a health care provider. In an employment or contractual relationship, in which a health care provider provides health care services on behalf of a Catholic health care institution, such a health care provider would not qualify as an independent agent. If an employed or contracted health care provider provides, prescribes, or refers for direct contraception within the scope of his or her employment or contracted duties for a Catholic health care institution, the Catholic health care institution shares responsibility for these immoral actions. This is inconsistent with integrity in Catholic mission and identity.

Catholic institutions must ensure that their employees or contractors meet a number of legal, policy, and mission-based standards of behavior. For example, all employees, including clinicians, must obey federal laws and regulations regarding organizational integrity and Joint Commission standards for health care delivery. Similarly, Catholic health care institutions must ensure that all employees, including employed or contracted health care providers acting on their behalf, uphold the

mission of the institution and Catholic moral teachings, including teachings which bear on the provision or prescription of direct contraceptives.

Since an employer bears responsibility for actions performed within the scope of employment duties, a Catholic institution must provide specific guidance for employed or contracted health care providers. A Catholic institution should specify in contract and policy language the requirement to respect Catholic moral teachings and should provide the education necessary for health care providers to understand and implement this guidance with integrity, that is, how to properly integrate Catholic moral teachings, professional judgment, and other ethical or professional standards. There is an appropriate zone of respect for professional judgment about prudential treatment decisions. However, a Catholic institution must formally proscribe, and act appropriately to prevent, abuses of that discretion (such as prescribing or providing direct contraception) just as it must enforce standards ranging from federal law and regulations to the appropriate use of its equipment and facilities.

Avoiding Immoral Cooperation

In collaborating with unaffiliated health care providers who intend to provide, prescribe, or refer for direct contraception, a Catholic health care institution should fully respect the norms regarding legitimate cooperation by avoiding all formal cooperation and by limiting any material cooperation as explained below.

Formal cooperation in evil, whether explicit or implicit, should be excluded in any contractual or working relationship. Since acts of direct contraception are immoral, Catholic institutions may not intentionally contribute to, or engage in immediate material cooperation with, the provision of direct contraception. In establishing a contract with one or more health care providers other than in an employment relationship, a Catholic health care institution must not set up or agree to specific conditions which enable or facilitate the prescription or provision of direct contraception, since this would constitute formal cooperation. Material cooperation is not tolerable when a Catholic institution supplies, or is responsible for, elements necessary for prescribing or providing direct contraception in contemporary health care delivery, including compensation, prescription services (paper pad or electronic system), medical documentation services (whether on a paper record or an electronic health record), and billing and collecting services. Liability insurance coverage for actions which contradict the moral teachings of the Church should be excluded as a rule, particularly for actions of the highest gravity, such as abortion. However, it may be difficult in practice to separate liability insurance for actions involving indirect contraception (which is not wrong in principle) from those involving direct contraception.

In establishing a contract with one or more health care providers who intend to provide, prescribe, or refer for contraception, a Catholic health care institution may tolerate only mediate material cooperation, only for a sufficient reason, only when scandal can be avoided or addressed, and only temporarily (that is, only as long as is necessary to find other means of achieving its good and legitimate ends). However, a Catholic institution should not agree to contract terms which facilitate the provision of direct contraception within its facilities or under its auspices. Prudence in

applying the principles of cooperation, and due regard for integrity in witness and for theological scandal, are essential for addressing this issue appropriately.

Finally, it should be noted that the graver the evil, the greater must be the causal distance between the material cooperators and the principal agent. The *ERDs* themselves make distinctions between intrinsically evil actions by singling out abortion as particularly grave (directive 45) since it involves the direct taking of innocent human life. Direct contraception, while intrinsically evil and therefore always immoral, is not as grave as abortion insofar as it does not entail the direct taking of innocent human life. However, there are medications and devices generally regarded as contraceptives today which in fact can function as abortifacients, such as combined oral contraceptives, progestin-only oral contraceptives, vaginal rings and patches, and intrauterine devices (IUDs). This must be kept in mind by Catholic health care institutions when assessing the terms of material cooperation.

Avoiding and Resolving Theological Scandal

Beyond avoiding formal or immoral material cooperation, a Catholic health care institution—even when legitimately cooperating with health care providers who are prescribing or providing direct contraception—should engage in appropriate efforts to prevent theological scandal and to resolve such scandal where it arises. Efforts to prevent scandal should include educating providers about the reasons for Catholic moral teachings and their relationship to professional judgment and optimal health care as well as improving the quantity and quality of morally acceptable alternatives to contraceptives for patients served by the Catholic health care institution. If serious scandal cannot be avoided or resolved by providing appropriate explanations of what is being done or not done, then the cooperation on the part of the Catholic institution would be rendered immoral. In such a case, the cooperation should be deferred or terminated. Continually expanding the availability and improving the quality of natural family planning education and resources for patients, the public, and employed or contracted health care providers can be viewed not only as a duty of Catholic health care institutions but as an important measure for avoiding or resolving theological scandal.

THE ETHICISTS OF THE NATIONAL CATHOLIC BIOETHICS CENTER