



# THE NATIONAL CATHOLIC BIOETHICS CENTER

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## **NCBC Commentary on the "Phoenix Case"**

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The National Catholic Bioethics Center has refrained from any public comment on the procedure that took place at St. Joseph's Hospital, Phoenix, Arizona in November 2009 and the disagreement which arose between the hospital and the local Bishop, the Most Reverend Thomas Olmsted, as to whether the procedure constituted a direct abortion. Since The National Catholic Bioethics Center has provided counsel to both Catholic Healthcare West (CHW), the system of which St. Joseph's Hospital is a member, and to the Bishop of Phoenix, it previously made no public statement. However, the time has come that the Center should provide some commentary, particularly since portions of its confidential analysis have been circulated by CHW. It should be noted the following comments deal only with information that is public and not with any confidential information that may have been gained through the consultation services provided by The National Catholic Bioethics Center.

### **The Heroism of Mothers**

The tragic situation that occurred at St. Joseph's Hospital in Phoenix in November 2009 should be a reminder of the extraordinary courage and self-sacrifice that mothers take upon themselves in the service of new life. Although modern medical science has thankfully reduced the life-threatening risks that women may assume in becoming mothers to almost nil, there still can arise extraordinarily dangerous situations for the mother and the child she is carrying. Even if it does not come to situations threatening death, women must still bear many burdens and health risks in bringing a child to term. As a society, and as family members, our gratitude to mothers can surely know no bounds.

### **Difficult Pregnancies**

On occasion, life threatening risks can indeed still arise, even though rarely. As a Catholic health care institution treats and cares for both the mother and the unborn child it must commit itself never to crossing a clear, bright line: it may never directly take the life of an innocent human being as it cares for both patients. Those admitted to Catholic institutions know one indisputable fact about the care they receive: they and their children are safe from a direct assault upon their lives. This humane practice of medicine follows on the tradition of the great Greek physician Hippocrates whose oath states unequivocally: "I will never give a woman a medication to cause an abortion; I will give no one a deadly medicine even if asked, nor counsel any such thing." Such a commitment never to violate a human life has always been a hallmark of Christian health care as well.

As much as physician assisted suicide or euthanasia or direct abortion may appear to be the best way out of a difficult medical situation, Catholic health care institutions assure everyone coming to them for help that there are other options.

The *Ethical and Religious Directives for Catholic Health Care Services* have been written and approved by the United States Conference of Catholic Bishops to provide guidance to Catholic health care institutions

on what may or may not be done in order to protect and advance human dignity in the context of Catholic health care. The bishops are the authoritative interpreters of this document. One of the Directives makes provision for addressing conflict situations where it would appear that one person must die in order to save another in the course of a difficult pregnancy.

Directive 47 reads: "Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child. "

### **The Principle of Double Effect**

Directive 47 applies what is known as the moral Principle of Double Effect which asks whether one may perform a good action when it is foreseen that there might also be a bad effect resulting from that action (the "double effect".)

The Principle of Double Effect in the Church's moral tradition teaches that one may perform a good action even if it is foreseen that a bad effect will arise only if four conditions are met. 1) The act itself must be good. 2) The only thing that one can intend is the good act not the foreseen but unintended bad effect. 3) The good effect cannot arise from the bad effect; otherwise one would do evil to achieve good. 4) The unintended but foreseen bad effect cannot be disproportionate to the good being performed.

This principle has been applied to many cases in health care, always respecting the most fundamental moral principle of medical ethics, *primum non nocere*, "first, do no harm".

The classic case of a difficult pregnancy to which this principle can be applied is the pregnant woman who has advanced uterine cancer. The removal of the cancerous uterus will result in the death of the baby but it would be permissible under the Principle of Double Effect. One can see how the conditions would be satisfied in this case. 1) The act itself is good; it is the removal of the diseased organ. 2) All that one intends is the removal of the diseased organ. One does not want the death of the baby either as a means or an end. Nonetheless, one sees that the unborn child will die as a result of the removal of the diseased organ. 3) The good action, the healing of the woman, arises from the removal of the diseased uterus, not from the regrettable death of the baby which is foreseen and unintended. 4) The unintended and indirect death of the child is not disproportionate to the good which is done which is saving the life of the mother.

The Principle, however, cannot be applied to the following case in order to justify an action that would result in the death of the child. A mother is suffering from hypertension which is not caused by any pathology of the reproductive system but aggravated by the pregnancy. Almost always these pregnancies can be carefully managed and the child brought to the point of viability. The hypertension, if unchecked, however, may become a danger to the health or even the life of the woman. The child is removed from the uterus to eliminate the conditions contributing to hypertension. This action would generally not be justified by the Principle of Double Effect. 1) The first and immediate action performed by the physician is the destruction of the child by crushing or dismembering it and removing it from the uterus. Such a procedure would violate the first condition of the Principle of Double Effect, that is, the action itself must be good. 2) In a direct abortion the physician intends the death of the child as a means toward the good end of enhancing the woman's health. Therefore, the second condition is also violated. 3) Evil is done, the killing of the child, so that the good of the woman's health might be enhanced, protected or restored. In this case, evil is done that good might come of it. 4) One might argue that there is a proportionate reason to take the life of the child because the mother's life is at risk.

However, this condition is not applicable because proportionality applies only to a foreseen and unintended evil, not one that a physician has chosen to bring about.

Of course, there are many complications that can arise with a pregnancy which would morally permit an intervention that would result in the death of the child. They are too numerous to consider here. Also, one must weigh all the factors that are part of a given situation, some of which may never arise again. But as another example of what would be morally licit under the Principle of Double Effect, one can mention a case in which there is an early rupture of the membrane and the placenta becomes infected. In such a case, the uterus may indeed be evacuated, that is, the infected material threatening the life of the mother may be removed, even though it is foreseen that the child will die.

### **The Case at St. Joseph's Hospital**

It must be said that The National Catholic Bioethics Center does not know the clinical facts of the case; rather it was asked to comment on the analysis initially submitted to the bishop by Catholic Healthcare West. The Center was not given access to the clinicians involved, and it can only be presumed that it was a very difficult situation in which the physicians had to act with dispatch and undoubtedly with regret. Consequently, without the clinical facts the Center can only articulate again the moral teachings of the Church and their proper application rather than speaking directly to the case.

Portions of a moral analysis of the case have been circulated by CHW. However, they really have to do with debates over moral theory rather than the specifics of the St. Joseph's case, the precise details of which remain unknown. However, one factor which certainly appears to have contributed to the difficulties in Phoenix is that the hospital was not in consultation and communication with the bishop regarding the appropriate interpretation and application of the *Ethical and Religious Directives*.

One of the most dismaying facts to come to light as a result of the Bishop withdrawing the Catholic status of the hospital is the hospital's involvement in and profit from the Mercy Health Plan which provides contraceptive drugs and devices (some of which have abortifacient properties) and also provides for abortion under certain circumstances. Also, by its own admission, the hospital has performed other abortions in the past and will not promise to refrain from performing abortions in the future. Who knows what the nature of those procedures were? Some might have conformed to the moral law as indirect abortions, others may not have. It is impossible to know without the facts. What is quite remarkable is that such procedures were apparently never subjected to ethical review by ecclesiastical authority.

### **Catholic Owned "Community Hospitals"**

There was another disputed issue between CHW and the Bishop of Phoenix. Chandler Medical Center in the Diocese of Phoenix is a "community hospital" which is part of the CHW system. The Bishop insisted that Chandler Medical Center also abide by the *Ethical and Religious Directives* since it was a member of a Catholic health care system which was clear from its literature, website and promotional material. The United States Conference of Catholic Bishops agreed with the judgment of Bishop Olmsted, that is, "community hospitals" owned, operated, financed or managed by a Catholic health care system were to be considered Catholic hospitals and subject to the *Ethical and Religious Directives*. The refusal of CHW to have Chandler Medical Center comply with the *Directives* would have been sufficient grounds for the Bishop of Phoenix to deny CHW the privilege of operating in his Diocese as a Catholic system even without the tragic incident that occurred at St. Joseph's Hospital. The Bishop has final responsibility for all the Catholic ministries that operate in his jurisdiction and is ultimately accountable for their fidelity to Catholic faith and practice which guarantees humane and compassionate practices.

### **Humane and Compassionate Care**

Individuals approaching Catholic social service and health care institutions should be able to have the assurance that what takes place in such facilities will be consistent with Catholic moral beliefs and teachings.

The day the Bishop of Phoenix removed the Catholic status of the hospital, a hospital spokesman wanted to assure the public that pregnant women were safe in St. Joseph's Hospital. But what of their unborn children? And what of mothers who desperately want to be able to bring their children to term? Do they have the assurance that physicians will not encourage, urge, or even pressure them into aborting their children when a difficulty arises? We are not suggesting that the physicians practicing at St. Joseph's Hospital would do any such thing. But the value of solemn promises, such as the Hippocratic Oath or commitment to the *Ethical and Religious Directives*, is that the assurance that such pressures would never be brought to bear, even in difficult situations.

Women in the United States have known since 1973 that they can go into most hospitals in the country and have an abortion if they desire. Yet expectant mothers have still chosen Catholic hospitals. Why? Certainly one reason is that Catholic hospitals have publicly committed themselves to the *Ethical and Religious Directives* which promise compassionate and sound medical care and a commitment never to violate human dignity through surgically mutilating procedures or through the direct killing of the unborn or the elderly. The public is free to choose the kind of health care they want. In the United States they have the options. Since 1973 religious health care institutions and personnel have been protected from having to perform abortions through various legal protections such as the Church and Hyde Amendments. The majority of Catholic hospitals are thoroughly committed to state-of-the-art health care which is also uncompromisingly respectful of human dignity.