THE NATIONAL CATHOLIC BIOETHICS CENTER
6399 Drexel Road, Philadelphia, PA 19151 ▪ Tel 215-877-2660 ▪ Fax 215-877-2688 ▪ www.ncbcenter.org

# Transfer of Care v. Referral: A Crucial Moral Distinction

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Catholics working in the field of health care increasingly encounter conflicts between living out their religious convictions in good conscience and submitting to the immoral demands of patients, employers, or even the state. Requests for abortion, contraceptive drugs and devices, surgical sterilization, physician-assisted suicide, withdrawal or withholding of ordinary and proportionate treatments or basic human care, or other immoral procedures cannot be followed. This is clearly articulated in more than one directive of the *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed. (Washington, D.C.: USCCB, 2009). Directives 27, 28, and 59 speak to this matter most directly:

"Free and informed consent requires that the person or the person's surrogate receive all reasonable information about the essential nature of the proposed treatment and its benefits; its risks, side-effects, consequences, and cost; and *any reasonable and morally legitimate alternatives*, including no treatment at all." (Directive 27, emphasis added)

"The free and informed health care decision of the person or the person's surrogate is to be followed *so long as it does not contradict Catholic principles*." (Directive 28, emphasis added)

"The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, *unless it is contrary to Catholic moral teaching*." (Directive 59, emphasis added)

A fundamental question arises when it becomes clear that the person cannot carry out such a request: what can be done if the patient, an employer or supervisor, or the law insists on a referral to another provider who will carry out the procedure? The National Catholic Bioethics Center regularly receives consultation requests regarding these challenging cases, which require the understanding and application of the moral principles governing cooperation with evil. These principles can be very complex and difficult to apply, but for this type of case the fundamental distinction is between *formal cooperation*, which is always immoral because the cooperator implicitly or explicitly wills the other's evil action, and *material cooperation*, in which the cooperator does not will the other's evil action.

Any form of referral constitutes formal cooperation, and would therefore be immoral. A "referral" in moral terms is when the person who refuses to do the immoral procedure directs the requesting person to another individual or institution *because the other individual or institution is known or believed to be willing to provide the immoral procedure in question*. Even if the person objecting does

not explicitly command the requesting person to act, the provision of information *because it is known or believed to enable the other to receive the immoral procedure* amounts to a referral in moral terms. The objector implicitly wills the requestor's accomplishment of the evil act. This would include an action such as providing a list of nearby providers who are known or believed to offer the immoral procedure.

The moral assessment of the referral does not change even if the action is required by one's employer or by a state law. For example, a hospital regulation requiring a health care provider who objects to prescribing contraception to provide a patient with a list of other gynecologists in the network who will prescribe contraception would not exculpate the physician from formal cooperation with evil. A state law mandating that Catholic hospitals provide patients who request abortion with a list of other facilities or providers that it knows or believes will perform abortions would not exculpate the hospital from formal cooperation with evil.

What can a Catholic health care provider or institution do in these cases without becoming involved in immoral cooperation? First, every attempt should be made through a professional and pastoral effort, using reasonable and prudential judgment, to dissuade the patient from the harmful and morally problematic choice. This imperative is found in the call to explain "any reasonable and morally legitimate alternatives, including no treatment at all" (Directive 27) and to provide "access to medical and moral information and counseling so as to be able to form his or her conscience" (Directive 28); in other words, it is a call to help the patient understand the magnitude of the harms of the immoral procedure, taking into account "the well-being of the whole person" (Directive 33), so as to provide the patient with genuine and holistic health care.

When all else has failed, if the patient is insistent on pursuing the immoral and harmful choice, health care providers and institutions may be unable to prevent this. Ultimately, the patient is an independent moral agent who is free to decide where and from whom he or she will seek care. The provider or institution may remind the patient of this, and may offer to assist the patient with accomplishing a transfer of care to another provider or institution *of the patient's choosing*, without stating where the patient might go to receive the immoral procedure or otherwise directing the patient to it. A general list of other providers or institutions based on geographic vicinity or even area of specialty might be provided; however, the list may not be developed based on the criterion of whether they are known or believed to offer the immoral procedure. In practice, this means that the list must include any providers or institutions that fit the chosen criterion (geography, specialty, both, or other) and also oppose the immoral practice. In the case of objections to contraception, for example, a list of local gynecologists should include those who offer only natural family planning.