

THE NATIONAL CATHOLIC BIOETHICS CENTER



THE BISHOP'S RELATIONSHIP TO CATHOLIC HEALTH CARE AND ITS STRUCTURE: CANONICAL, LEGAL, AND CORPORATE

PREPARED BY THE ETHICISTS OF THE NCBC
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“To the extent that such activities are promoted by the Hierarchy itself, or are explicitly supported by the authority of the Church’s Pastors, there is a need to ensure that they are managed in conformity with the demands of the Church’s teaching and the intentions of the faithful, and that they likewise respect the legitimate norms laid down by civil authorities. In view of these requirements, it became necessary to establish in the Church’s law certain essential norms inspired by the general criteria of canonical discipline, which would make explicit in this sector of activity the legal responsibilities assumed by the various subjects involved, specifying in particular the position of authority and coordination belonging to the diocesan Bishop.”—Pope Benedict XVI, *Motu proprio*

On the Service of Charity (November 11, 2012), introduction

“[Within the local church], the diocesan bishop exercises responsibilities that are rooted in his office as pastor, teacher, and priest. As the center of unity in the diocese and coordinator of ministries in the local church, the diocesan bishop fosters the mission of Catholic health care. . . . As pastor, the diocesan bishop is in a unique position to encourage the faithful to greater responsibility in the healing ministry of the Church. As teacher, the diocesan bishop ensures the moral and religious identity of the health care ministry in whatever setting it is carried out in the diocese. As priest, the diocesan bishop oversees the sacramental care of the sick. These responsibilities will require that Catholic health care providers and the diocesan bishop engage in ongoing communication on ethical and pastoral matters that require his attention.”—USCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed. (2009), general introduction

❖ SUMMARY ❖

Canons of the 1983 Code of Canon Law that are relevant for the bishop’s exercise of oversight over Catholic health care entities in his diocese: 381, 394 § 1, 391 § 1, 392, 216, 396, 397 § 1, and 398.

Catholic Entities

- There may be several kinds of Catholic health care entities in a diocese. If an entity considers itself Catholic and is intended to be publicly known as such, the bishop has a canonical obligation to exercise some level of oversight to assure it functions in accordance with Catholic principles and canon law. • Institutions that are or want to be identified as Catholic are acts of the apostolate carried out in the name of the Church, or at least identified as works of the Church. Therefore, the bishop has some degree of oversight over the manner in which these acts of the apostolate are carried out: “Persons, Catholic institutions, and sacred things and places, which are located within the area of the diocese, are subject to ordinary episcopal visitation” (Canon 397 §1). • No undertaking is to claim the name “Catholic” without the consent of the competent ecclesiastical authority (in a particular diocese, the bishop). • While this will always be enforceable canonically, it may not be the same in civil law: under civil law an institution may include the title “Catholic” in its own name without the consent of the Catholic Hierarchy, and civilly it may be able to keep it. This depends on how issues of civil and canon law were addressed and included in the Articles of Incorporation and Bylaws or other civilly governing documents of the entity; inclusion of such provisions in these documents are critical to facilitate the bishop’s ability to fulfill his proper duty.

Civil and Canon Law

- Of legal significance is the so-called Joint Ruling agreed to by the USCCB and the U.S. International Revenue Service, by which all organizations listed in the Kenedy Directory as Catholic institutions are entitled to tax-exempt status under civil law. A particular entity may not be added in that directory if the Ordinary forbids it, and an

entity may be removed if he so requests. However, an institution may be able to regain tax-exempt status by re-incorporating as an independent charitable enterprise, whether or not it is acknowledged as Catholic by the Catholic Hierarchy. • Canonical legal thinking is heavily influenced by canon law's Roman Law origins, and many of the presuppositions of Anglo-American law are quite different. Thus, the rights and obligations in civil law of entities and of individuals involved in them can be very different from their rights and obligations in canon law. • Therefore, it is incumbent on whoever creates or establishes entities intended to be called Catholic, and on those who have a legitimate interest in them, to assure that the entities are created in such a way under civil law, independently of canon law, as to establish the obligations and rights that the creators and those interested expect the entity to have.

❖ FAQ ❖

Question 1. Is there a moral obligation to protect the civil status of Catholic corporations?

Reply: Civil law will recognize only those rights and obligations created in civil law. Canonical status has no authority under civil law. Regardless of whatever status has been chosen for an ecclesial entity, such as a parish, a diocese, a school, a hospital, or a health care system, under American civil law the relevant entity comes into being only under the rules of civil law. Therefore, it is incumbent on the vested parties to assure that these entities are created in such a way in civil law as to establish the obligations and rights that the vested parties wish the entities to have as a Catholic institution.

Question 2. What legal issues frequently cause conflict between ecclesiastical and civil law?

Reply: First we must determine whether the existing entity has a canonical ecclesial identity; if it does, then its civil status must also be ascertained:

- If a hospital or health care system is wholly owned and operated by the diocese or a religious congregation, it would constitute temporal goods of the public ecclesiastical juridic person who owns it and be under the oversight and governance of that authority. If the entity has also been incorporated civilly, the Articles of Incorporation and Bylaws should contain provisions that establish the same kind of supervision and governance by the competent authority as are contained in canon law; if they do not, conflicts arise. • If the owner is a religious congregation or other public ecclesiastical juridic person, the supervisory authority of the bishop would only be that which he has over that juridic person. However, in dealing with institutions, including health care entities, that are identified as Catholic, the bishop is dealing with acts of the apostolate carried out in the name of the Church, or at least identified as works of the Church. As such, he has some separate degree of oversight over the manner in which these acts are carried out. • If the facility or system has been civilly incorporated in a way that does not conform to canon law or the wishes of the bishop, the civil courts will enforce only the provisions of the Articles of Incorporation and Bylaws. In that case, the question will be, can the bishop persuade the Board of the entity to bring its Articles of Incorporation and Bylaws into conformity with canon law and his wishes? If not, his options may be limited, ultimately only to declare canonically (not civilly) that the entity may not identify itself as Catholic, with the ensuing consequences. The entity might lose its tax-exempt status as a Catholic charitable corporation, even though no court would be likely to prohibit it from using the name "Catholic" or holding itself out as Catholic.

Question 3. What is the canonical standing of sponsorships?

Reply: A health care facility or system may be affiliated with a Catholic institution under an arrangement referred to as sponsorship, with varying degrees of ownership and/or control by the Catholic party, including no ownership and very little control beyond an agreement by the entity to abide by certain principles and practices referred to as Catholic. Sponsorship does not exist in the canonical realm. It has no well-understood or defined meaning in canon law.

Question 4. Some health care entities want to remain entirely independent of Church authority in their administration and governance and yet keep or obtain the name "Catholic." Is this permissible?

Reply: The relevant questions here are whether the bishop will consent to the entities' being identified as Catholic and whether his wishes will be enforceable in civil law. Canon law anticipates that an entity may be Catholic in fact independently of the bishop's consent or lack thereof. However, canon law does not allow even this type of institution to claim the title "Catholic" without the bishop's consent.