Commentary on the CDF *Responsum* of December 10, 2018

Ethicists of The National Catholic Bioethics Center

On December 10, 2018, the Congregation for the Doctrine of the Faith (CDF) issued a *responsum* to a *dubium* concerning hysterectomy in certain rare cases. The Holy See Press Office publicly released the document on January 3, 2019. The document speaks to sensitive issues that the Center routinely encounters in its consultation activity. In this initial statement, we provide a brief overview of the matter of the *responsum*, clarify what the *responsum* does not do, reaffirm relevant Church teachings tied to this document, and deduce several important criteria to help people discern whether a given medical scenario is covered by the 2018 *responsum*. At this time, the NCBC ethicists are not aware of concrete cases that would fit these criteria.

Overview of the *Responsum*

The 2018 *responsum* begins with an introduction that recalls and reaffirms a 1993 *responsum* of the CDF, "Responses to Questions Proposed concerning 'Uterine Isolation' and Related Matters." The CDF then notes that certain extreme cases, different from those addressed in 1993, have been brought to its attention. As a result, the CDF raises the following question: "When the uterus is found to be irreversibly in such a state that it is no longer suitable for procreation and medical experts have reached the certainty that an eventual pregnancy will bring about a spontaneous abortion before the fetus is able to arrive at a viable state, is it licit to remove it (*hysterectomy*)?" The CDF responds in the affirmative: "Yes, because it does not regard sterilization."[1]

This answer is followed by an "Illustrative Note" of five paragraphs that touches briefly on the following topics: the extreme and distinct cases that gave rise to the *responsum*, the moral object of sterilization, the relationship of the medical intervention (hysterectomy) to procreation, the need for expert medical advice and the highest degree of certitude, and the need for proper discernment. The phrasing of the question and its response, as well as several linguistic

[1] Congregation for the Doctrine of the Faith (CDF), Response to a Question on the Liceity of a Hysterectomy in Certain Cases (December 10, 2018).

formulations in the introduction and illustrative note, raise questions about how to interpret and apply the document.

What the *Responsum* Does Not Do

What does the 2018 CDF response *not* do? First, it does not overturn any previous Church teachings on direct contraception and direct sterilization or on the circumstances in which hysterectomy is immoral as a form of direct sterilization. Second, it does not reject the medical reality of the existence of human beings from the moment of fertilization. Third, it does not reject the moral reality, affirmed in the 1987 CDF Instruction *Donum vitae*, that "the human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life."[2] Fourth, it does not say that women who are unable to carry a child to the point of viability are, by that fact, unable to conceive or gestate a new human child in the womb. Finally, it does not specify the particular cases reviewed by the CDF that led to the issuing of the document.

The *Responsum* and Direct Sterilization

What does the 2018 response *do*? At the outset, the introduction makes clear that the long-settled teaching of the Catholic Church regarding the immorality of direct sterilization, even when performed for the purpose of avoiding harms associated with a future pregnancy, has not changed. It explicitly states that the 1993 CDF *responsa* "retain all of their validity." The 2018 *responsum* is addressing cases that "present a different issue from that which was examined in 1993," and therefore cannot be interpreted to mean anything that would be at odds with the 1993 *responsa*. It is important to recall, therefore, the three clarifications offered by the CDF in 1993, and the magisterial tradition in which both the 1993 and 2018 documents are rooted.

First, the CDF confirmed in 1993 that hysterectomy can be legitimate "when the uterus becomes so seriously injured (e.g., during a delivery or a Caesarian section) so as to render medically indicated even its total removal (*hysterectomy*) in order to counter an immediate serious threat to the life or health of the mother . . . notwithstanding the permanent sterility

[2] CDF, *Donum vitae* (February 22, 1987), I.1.

which will result."[3] This is an example of indirect sterilization: sterility that follows as a foreseen but unintended consequence from a legitimate, directly therapeutic intervention such as a hysterectomy to resolve significant uterine hemorrhaging. The CDF's reasoning is an application of the traditional principle of double effect: the act itself is good in its means and in its end, and there is a due proportion between the harmful and unwanted effect of sterility and the directly achieved therapeutic purpose of protecting the woman's health or life. It is also an application of the principle of totality—also called the "therapeutic principle"—by which it can be legitimate to remove an organ or tissue of the body if that organ or tissue poses or exacerbates a significant threat to the organism as a whole.

Second, and most important for interpreting and applying the 2018 *responsum*, the 1993 CDF statement clarified that it is not legitimate to perform a hysterectomy "in order to prevent a possible future danger deriving from conception," that is, "when the uterus (e.g., as a result of previous Caesarian sections) is in a state such that while not constituting in itself a present risk to the life or health of the woman, nevertheless is foreseeably incapable of carrying a future pregnancy to term without danger to the mother." Stated differently, a hysterectomy is not legitimate for the purpose of avoiding potential risks or dangers that would arise *only if the woman were to conceive a child*.

Third, the CDF in 1993 applied the same moral reasoning to tubal ligation that it applied to hysterectomy, since tubal ligation entails "the same end . . . of averting the risks of a possible pregnancy." As such, both hysterectomy and tubal ligation, when intended to prevent harms associated with possible future pregnancy, "fall into the moral category of direct sterilization" and are thus not morally permissible.[4]

By reaffirming the validity of the 1993 *responsa*, the 2018 document also reaffirms the Church's perennial condemnation of direct sterilization, as expressed in the CDF's 1975 *responsum* on sterilization in Catholic hospitals and in the broader moral tradition on

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[3] CDF, Responses to Questions Proposed concerning "Uterine Isolation" and Related Matters (July 31, 1993).

[4] The explanation in the 1993 document cites the definition of direct sterilization provided in the 1975 *responsa* of the Congregation for the Doctrine of the Faith (CDF): "Any sterilization which of itself, that is, of its own nature and condition, has the sole immediate effect of rendering the generative faculty incapable of procreation." CDF, *Quaecumque sterilizatio*, Responses to Questions concerning Sterilization in Catholic Hospitals (March 13, 1975), n. 1.

contraception and sterilization.[5] Question 2 of the 1993 *responsa* dealt specifically with hysterectomy in cases where the purpose was to avoid maternal dangers associated with future "conception" and "carrying a future pregnancy to term." Its explanation, and the 1975 *responsum* that it cites, identified the nub of the moral problem: one may not perform any action that results in sterility in order to prevent dangers that would arise only in the event of pregnancy.[6] Such dangers are always the result of freely chosen sexual activity, and therefore can be avoided through the determination to practice abstinence. Causing sterility in order to prevent them constitutes direct sterilization.[7] Given this, the 2018 *responsum* does not allow for

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[5] For some of the most significant teachings of the moral tradition on this subject in the past century, see CDF, July 31, 1993; SCDF (now CDF), *Quaecumque sterilizatio*, 1975, n. 1; Paul VI, *Humanae vitae* (July 25, 1968), n. 14; Pius XII, Address to Participants in the Seventh Conference of the International Hematology Society (September 12, 1958); Pius XII, Allocution to Delegates at the Twenty-Sixth Congress of Urology (October 8, 1953); Pius XII, Address to Participants in the Conference of the Italian Catholic Midwives Union (October 29, 1951); Holy Office (now CDF), Decree of February 24, 1940, in *AAS* 32 (1940): 553; and Pius XI, *Casti connubii* (December 31, 1930), n. 56. The description of direct sterilizations in n. 3(a) of *Quaecumque sterilizatio* is particularly clear: "actions which are in themselves, that is, by their nature and condition, directed to a contraceptive end, namely, in order that the natural effects of sexual actions deliberately performed by the sterilized subject be impeded." The same document confirms that direct sterilizations are prohibited "notwithstanding any subjectively right intention of those whose actions are prompted by the care or prevention of physical or mental illness which is foreseen or feared as a result of pregnancy" (n. 1). The "illness" mentioned here is not limited to the mother.

[6] The explanation in the 1993 CDF responses states the following about the case described in question 2: "*The uterus in and of itself does not pose a pathological problem for the woman. Therefore, the described procedures* [hysterectomy and tubal ligation] do not have a properly therapeutic character but *are aimed in themselves at rendering sterile future sexual acts freely chosen.* The end of avoiding risks to the mother, deriving from a possible pregnancy, is thus pursued by means of a direct sterilization, in itself always morally illicit, while other ways, which are morally licit, remain open to free choice" (emphasis added). The lack of a pathological problem in the uterus itself (apart from future pregnancy) thus implies that its removal is a direct sterilization when the goal is to avoid risks associated with pregnancy. The operative words are not "risks to the mother" but "risks . . . deriving from a possible pregnancy": avoiding risks to the possibly conceived child would not change the moral assessment, since those risks are, by definition, "deriving from a possible pregnancy."

[7] Pius XII spoke clearly to a common misapplication of the principle of totality in his address to urologists in 1953, stressing the significance of freely chosen sexual activity in the moral analysis: "It not rarely happens that, either when gynecological complications demand an operation, or quite independently of such complications, the healthy Fallopian tubes are removed or put out of action to prevent any new conception and the grave dangers which could arise therefrom either to the health or life of the mother; these dangers arise from other unhealthy organs – kidneys, heart, lungs – whose condition would be aggravated in case of childbearing. To justify the removal of the oviducts, appeal is

hysterectomy in cases where its purpose is to prevent dangers, whether physical or psychological,[8] whether to the mother or to the child,[9] that would be expected to arise as a result of a possible future pregnancy. Indeed, the 2018 CDF response is not addressing scenarios involving dangers to life or health, stating explicitly that "here it is not a question of difficulty, or of risks of greater or lesser importance," and "we are not dealing with a defective, or risky, functioning of the reproductive organs."

Clinical Application

What does all of this mean for real-world situations and applications? Although additional guidance from the CDF would be of great assistance here, there are several conclusions that can be deduced from the existing document and the broader moral tradition on which it draws. First, if there were a danger to the woman arising from the uterus itself, apart from possible future pregnancy, it could be legitimate to perform a hysterectomy under the principle of totality, in accord with the first response of the CDF in 1993. Second, if there were no danger arising from the uterus itself in the non-pregnant state, and no physiological benefit from its removal, then there would seem to be no therapeutic rationale to justify its removal under the principle of totality. Third, if there were instead a danger that would arise only in the

made to the principle of totality, and it is asserted that the removal of healthy organs is permitted when the good of the whole organism demands it. The appeal to this principle here is unjustified, for in this case, the danger which threatens the mother does not derive at all – either directly or indirectly – from the presence or normal functioning of the oviducts, nor from the influence they exercise over the diseased organs – kidneys, heart, or lungs. *The danger comes only when free sexual intercourse causes a conception which can menace the organs mentioned, because these are too weak or diseased*. But the conditions which permit a part to be disposed of in favor of the whole, in virtue of the principle of totality, do not exist. Therefore the operation on the healthy oviducts is morally illicit." Pius XII, Allocution to Delegates at the Twenty-Sixth Congress of Urology (October 8, 1953), in *The Human Body*, ed. Monks of Solesmes (Boston: St. Paul Editions, 1960), 279, emphasis added.

[8] CDF, *Quaecumque sterilizatio*, n. 1: "Therefore, notwithstanding any subjectively right intention of those whose actions are prompted by the care or prevention of physical or mental illness which is foreseen or feared as a result of pregnancy, such sterilization remains absolutely forbidden according to the doctrine of the Church."

[9] The removal of the uterus only serves the end of preventing danger to a child by impeding the natural effects of the sexual act: the conception and gestation of a child. A hysterectomy in order to avoid dangers to the child that would arise during pregnancy is therefore immoral in accordance with the 1993 *responsa* and the broader moral tradition. See note 6 above.

event of future pregnancy, whether to the woman or to the child, it would be unethical to perform a hysterectomy in order to avoid such a danger, following the second response of the CDF in 1993.

With all this in mind, the 2018 *responsum* would seem to apply only in cases where all of the following conditions apply: (1) the uterus itself presents no danger to the woman in the non-pregnant state; (2) it is known with moral certitude that, in the event of future pregnancy, the child would be miscarried before the point of viability; and (3) there is no intention to avoid any dangers to life or health that would be expected to arise as a result of future pregnancy. This means that any dangers to the health or life of the woman expected to arise as a result of future pregnancy, and any dangers to a potentially conceived child, should play no role in establishing a therapeutic rationale or "proportionate reason" for performing a hysterectomy in the non-pregnant state.

This leaves open the question about what medical conditions might satisfy the criteria of the 2018 *responsum*. It would seem that they must be conditions that make hysterectomy medically indicated neither *on the basis of dangers arising from future pregnancy* nor *on the basis of dangers in the non-pregnant state*. As such, some scenarios that do not fit the criteria include removing the uterus in order (1) to avoid life-threatening, pregnancy-induced maternal complications caused by preexisting pulmonary hypertension or peripartum cardiomyopathy; (2) to avoid uterine rupture prior to viability due to implantation in previous Caesarian scars or similar; (3) to avoid preterm previability rupture of membranes (PPROM); (4) to avoid severe pre-viability preeclampsia; (5) to avoid any pregnancy-induced uterine rupture prior to viability; (6) to avoid serious congenital defects of a child; or (7) to avoid prenatal loss of a child. Other examples of scenarios that do not meet the criteria—because they already could be legitimate under the principle of totality and the 1993 responses—include hysterectomy either to prevent uterine cancer in cases of elevated risk or to stop uterine hemorrhage following delivery. The Center looks forward to further clarification regarding medical cases that would unambiguously fulfill the criteria outlined in the *responsum*.

Confirmation of Tradition and Need for Specificity

Nothing contained in the 2018 *responsum* can be properly understood as modifying previous Church teachings on the topics of contraception and sterilization, and the document

does not imply any rejection of the dignity of the human being from the moment of conception or any denigration of the real participation of the man and woman in the generation of a new human life starting from that moment. While the response affirms that removing a uterus that is incapable of carrying a child to viability is not *per se* a direct sterilization, it does not offer a comprehensive rationale and explanation—including a full and specific medical scenario—under which performing such a hysterectomy would, in practice, be morally legitimate.