

Moral Analysis of the Affiliation Agreement between CMC Healthcare System and Dartmouth-Hitchcock Health Executive Summary

After carefully examining the Affiliation Agreement, there does not appear to be either formal cooperation or immediate material cooperation on the part of CMC Healthcare System (for purposes of this analysis, composed of Catholic Medical Center [CMC] and Alliance Health Services [AHS], a non-profit operator of clinical services), both of which would constitute morally unacceptable cooperation. There also does not appear to be any mediate material cooperation.

The following eight points support this conclusion.

- In joining the Regional System (composed of Dartmouth-Hitchcock Health [DHH], CMCHS, and other provider organizations), CMCHS retains its separate corporate status both civilly and canonically. CMCHS will remain a public juridic person of diocesan right under canon law, and the Bishop of Manchester retains reserved powers that are critical to preserving the Catholic identity of the Catholic parties. Because of its separate status, CMCHS is able to avoid unacceptable forms of cooperation in the affiliation.
- In forming the Manchester System, (comprised of CMCHS and AHS), although DHH will be the sole member of CMCHS, CMCHS and AHS are clearly and legally bound to follow the *Ethical and Religious Directives for Catholic Health Care Services* (ERDs) and to be in compliance with the Bishop's reserved powers. Furthermore, the reserved powers of DHH relative to CMCHS are limited in nature and scope such that DHH cannot affect the Catholic identity or integrity of CMCHS. DHH explicitly acknowledges that some of its reserved powers must be exercised concurrently with the reserved powers of the Bishop. DHH also explicitly acknowledges that it will respect CMCHS's need to assure its continued authenticity as a Catholic health care system. Further ensuring the Catholic identity of CMCHS and its subsidiaries—Catholic Medical Center and Alliance Health Services—is that CMCHS retains reserved powers over AHS, and AHS will continue to be bound by the ERDs.

In addition, the future appointment of the CEO of CMCHS is subject to the approval of the Bishop (and DHH) respectively, the Chief Physician Executive (CPE) of AHS will be approved by the CMCHS Board (as well as the DHH Board), and the compensation of the CEO of CMCHS, of CMC, as well as the CPE of AHS are determined in part by their compliance with the ERDs.

In forming the Manchester System, there is provision for the DHH Board of Trustees to appoint three representatives nominated by the CMCHS Board to

participate on the DHH Board. The presence of representatives from the CMCHS Board on the DHH Board does not constitute morally unacceptable cooperation for the following reasons:

- The DHH Board will not be involved in the actual operations of its provider organizations. Clinical and operational decisions will be made at the local level by the provider organizations that deliver the health care and have the most direct contact with patients and community members. For this reason, it is unlikely that issues would arise that are contrary to the ERDs. The Board is concerned with broader strategic issues;
- The CMCHS members will be permitted to recuse themselves in the unlikely event that there are issues presented to the DHH Board that are inconsistent with the ERDs.
- The CMCHS President and CEO will sit on the Leadership Council of the Regional System. However, this will not constitute a morally unacceptable form of cooperation for the same reasons noted above: the Council will not be dealing with activities contrary to Church teaching and, in the unlikely event that that it does, the CMCHS President and CEO will be permitted to recuse him or herself.
- The Manchester System will not engage in any *explicit formal cooperation* because it will not own, govern, administer, manage, or reap financial benefit from any activities or procedures not in accordance with Church teaching outside of the Manchester System.
- Nor will the Manchester System engage in any *implicit formal cooperation* because the System will not contribute anything to make possible activities or procedures outside of the System that are contrary to Church teaching.
- Nor will the Manchester System engage in *immediate material cooperation* because it will not be contributing anything essential to the performance of activities or procedures outside of the System that are not in accordance with Church teaching.
- There are significant goods to be achieved through the Affiliation that CMCHS would not be able to achieve, or achieve to the same extent, on its own. Among them are:
 - Availability of additional specialized, tertiary, and primary care services in the Manchester area;
 - Expansion of Catholic health care for the poor and underserved in the greater Manchester area;
 - Increase in administrative efficiencies and avoidance of duplication of services;
 - Enhancement of clinical collaboration;

- Benefit from innovative and best practices in quality improvement, clinical services, research, and information technology, etc.;
- Preservation and enhancement of CMC's Community Health Services.

Conclusion

In my judgment, based on my reading of the Affiliation's core documents, the Affiliation has been structured in a way that is in accord with the Catholic Church's moral teaching and with the ERDs. Every effort has been made to retain and strengthen the Catholic identity of the Catholic Parties, to promote adherence to the ERDs, and to make necessary provisions in the documents and create the necessary "firewalls" to prevent morally unacceptable cooperation. I do not believe there is any evidence of formal cooperation, explicit or implicit, nor of immediate material cooperation. The possibility of remote mediate cooperation exists in Dartmouth-Hitchcock Clinic-controlled conversations that are not billable and will not be a part of the AHS lease for services or space, but this seems justified because of the significant goods that can be achieved by the Affiliation and the significant harms avoided by it. Given all of this, it does not seem that the Affiliation, if it is adequately understood, should be a cause of theological scandal. Good and on-going educational efforts of various types should be sufficient to dispel the possibility of scandal for anyone who is willing to listen and open to understanding.

Respectfully submitted,

Ronald P. Hamel, PhD
Senior Director, Ethics
The Catholic Health Association
St. Louis, MO

1/19/2010