

HOSPITAL NOT TO USE THE TERM "CATHOLIC"

Catholic owners of real estate often require, by imposition of written use restrictions in leases, deeds and recorded covenants, adherence to the *Ethical and Religious Directives for Catholic Health Care Services* (the "ERDs"). The ERDs were promulgated, and are occasionally modified by, the United States Conference of Catholic Bishops. The ERDs are binding upon all Catholic hospitals and other Catholic health care providers and compliance by the Catholic provider is not discretionary. For this reason, when a Catholic landlord includes adherence to the ERDs as a lease covenant, violation of the covenant by the tenant constitutes a default under the lease. Although there are 72 enumerated directives making up the ERDs, the ones that relate to or constitute health care services are relatively few and fall broadly into two (2) categories: beginning of life matters (directives 38-54) and end of life matters (directives 55-66). The relevant beginning of life directives prohibit the following procedures and activities: direct abortion, contraception, sterilization, embryo destruction and fertility techniques that separate the unitive from the procreative aspects of the marital act (e.g., in vitro fertilization). The relevant end of life directives prohibit euthanasia and assisted suicide procedures.

Questions of interpretation and application of the ERDs to a particular case ultimately fall to the local ordinary (bishop) even though a particular Catholic hospital may have a medical ethics committee charged with the task of determining what to do in a particular case. As a recent example from the Diocese of Phoenix made clear, however, the determination of the medical ethics committee is not determinative of the question whether the ERDs have been violated. [\[link to press release\]](#). Some cases, are difficult because they involve either (a) complicated principles of moral theology including application of the moral principle called the "law of double effect", or (b) life-threatening conditions making time of the essence, or (c) both. Nevertheless, failure to comply with the ERDs can result in sanctions by the local bishop. Sanctions were levied against St. Joseph's Hospital in Phoenix by the bishop where he decreed that the hospital, after permitting an abortion in 2009, could no longer consider itself Catholic. [\[link to decree\]](#). Defending its decision to permit the abortion, the hospital maintained that it did the right thing making a difficult decision to "save the only life that could be saved" (the mother's). The ACLU weighed in on the Phoenix case too arguing that failing to provide the abortion could have been a violation by the hospital of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, and the Conditions of Participation of Medicare and Medicaid, 42 C.F.R. § 482.13.

The ACLU's [argument](#) is that the mother, under EMTALA, may have had a right to "emergency reproductive health care" (i.e., an abortion) to save her own life. The counter argument is that under the moral principle of the law of [double effect](#), some abortions are morally wrong even though they have the "good" effect of saving the life of the mother. Although it is clear that both hospital and bishop were concerned about balancing the rights of both mother and child, the ACLU letter does not advocate for, or mention, the rights of the child in the case implying that those rights should not be considered. Directive 47 of the ERDs attempts to balance the rights of the unborn with the rights of the mother and recognizes the moral legitimacy in certain proportionate cases of indirect abortions.

The Phoenix situation illustrates the tension between the moral principles embodied by the ERDs, the requirements of law and the continued controversy surrounding the abortion issue. Catholic hospitals will undoubtedly continue to be on the front line wrestling with and trying to properly balance these competing interests.