

DECREE REVOKING THE CONSENT TO USE THE NAME "CATHOLIC"
IN A HEALTHCARE SETTING

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SUMMARY: 1. Early signs of a problem. 2. A case of abortion at Saint Joseph's Hospital? 3. The discovery of other precedents in hospital practice. 4. The decree revoking the consent to use the name "Catholic." 5. The intervention of the United States Conference of Catholic Bishops at the request of the national association of Catholic hospitals.

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DECREE

Revoking Episcopal Consent to Claim the "Catholic" Name according to Canon 216

By virtue of my Episcopal authority as the Ordinary of the Particular Church of the Diocese of Phoenix, and in accord with Canon 216 of the Code of Canon Law, I hereby revoke my consent for the following organization to utilize in any way the name "Catholic".

-St. Joseph's Hospital and Medical Center, Phoenix, AZ

After much time and effort in cooperation with the leadership of Catholic HealthCare West and having studied the matter carefully with the assistance of experts in medical ethics, moral theology, and canon law, it has been determined that the aforementioned organization no longer qualifies as a "Catholic" entity in the territory of the Diocese of Phoenix. For the benefit of the public good, particularly amongst the Christian Faithful, I decree that the organization listed above may not use the name Catholic or be identified as Catholic in the Diocese of Phoenix.

The reason for this decision is based upon the fact that, as Bishop of Phoenix, I cannot verify that this health care organization will provide health care consistent with authentic Catholic moral teaching as interpreted by me in exercising my legitimate Episcopal authority to

interpret the moral law.

This Decree of Removal of my consent goes into effect as of this day, and will remain in effect indefinitely, until such time as I am convinced that this institution is authentically Catholic by its adherence to the Ethical and Religious Directives of the United States Conference of Catholic Bishops, in addition to the standards of Catholic identity set forth in official church documents, catholic theology, and canon law.

Given this day, December 21, 2010 at the Chancery of the Diocese of Phoenix

+THOMAS J. OLMSTED—Bishop of Phoenix
Sr. JEAN STEFFES, CSA—Chancellor

* * *

With a decree of December 21, 2012, Bishop Thomas J. Olmstead of Phoenix, Arizona, withdrew his consent for Saint Joseph's Hospital and Medical Center to continue to be classified as a Catholic hospital.¹ The decree is of considerable interest, inasmuch as it is an important precedent concerning the possibility that a diocese bishop could revoke his consent for a healthcare organization to use the name "Catholic" when the services it offers can no longer be guaranteed from a moral perspective by the ecclesiastical authority.²

Moreover, the administrative act that we are presenting is of particular interest from the standpoint of institutional ecclesial communication. In fact, this decree was preceded, accompanied, and followed by a carefully-organized campaign from the Office of Communications of the Diocese of

¹ Cf. Code of Canon Law (CIC), c. 216; Code of Canons of the Eastern Churches (CCEO), c. 19.

² In February of the same year, Saint Charles Medical Center (Oregon, USA) ceased to be recognized as a Catholic hospital by the bishop of the Diocese of Baker, Robert S. Vasa, due to concern regarding the cases of sterilization which were performed in that healthcare center (additional information on the case may be found at <http://www.catholicnews.com/data/stories/cns/1000676.htm>).

Phoenix, with the goal of informing all involved of the reasons for the decision that was taken. The main content of this campaign is available on the diocese's website, permitting a reconstruction of the juridical outlines of the decision-making process that led to the present decree.³

1. *Early signs of a problem*

At the time of Bishop Olmsted's nomination in 2003 there were already various healthcare centers operating in the Diocese of Phoenix that were juridically linked to the Catholic Healthcare West (CHW) network of hospitals.⁴ From the beginning, the new bishop could observe that some of these centers might have been permitted to participate in the Catholic network without, however, following the directives issued by the United States Conference of Catholic Bishops (USCCB) in matters of healthcare ethics.⁵ In particular, Chandler Regional Hospital presented itself as a non-Catholic healthcare center, linked from the ethical point of view to the

³ Cf. <http://www.diocesephoenix.org>. The principle contents of this campaign are cited throughout our commentary. As is logical, in order to reconstruct the decision-making process, we have also taken note of the documents released by the Office of Communications of Saint Joseph's Hospital, which can be found on their web site (http://www.stjosephs-phx.org/Who_We_Are/Press_Center/211990).

⁴ At that moment, the Catholic Healthcare West (CHW) network was made up of 41 hospitals and healthcare centers, present in California, Nevada, and Arizona. In the hospitals and centers belonging to the network more than 7,500 doctors and 40,000 other workers were employed, and healthcare services were provided to more than four million persons each year. In CHW's governance structure the highest level was made up of "Corporate Members", a group of sisters who represented each of the religious congregations that sponsored the network.

(*Author's note:* After this article was originally published in Italian, Catholic Healthcare West, with the consent of the Bishop of San Francisco, changed its name in January 2012 to Dignity Health. For more information, cf. http://www.dignityhealth.org/stellent/groups/jsp/@xinternet_con_com/documents/webcontent/sysv2_m224501.pdf.)

⁵ United States Conference of Catholic Bishops (USCCB), *Ethical and Religious Directives for Catholic Health Care Services* (ERDs), document prepared by the Committee on Doctrine of the Conference and approved at the Plenary Assembly of June 15, 2001 (cf. <http://www.usccb.org/bishops/directives.shtml>).

Catholic Healthcare West Statement of Common Values, but not to the forenamed ethical directives of the USCCB.⁶

Bishop Olmsted then sought to convince the directors of CHW of the necessity of binding all healthcare centers affiliated with this network to the ethical directives of the USCCB as the only way to be able to guarantee that their services were coherent with Catholic morality. In any case, during the early years of his episcopal ministry in the Diocese of Phoenix no juridical initiatives of this nature were undertaken; this was due in part to the fact that CHW had its corporate headquarters in San Francisco, California, outside of his jurisdiction.⁷

2. A case of abortion at Saint Joseph's Hospital?

In November of 2009, Bishop Olmsted came to know of a new fact. It seemed that in Saint Joseph's Catholic Hospital – an officially Catholic

⁶ On the web site of Chandler Regional Hospital its relationship with the Catholic Healthcare West network was described thus: "In 1998, the hospital came to the decision that in order to continue to grow, it must affiliate with a larger system that shares the Chandler Regional Hospital non-profit, mission-driven philosophy. After months of considering possible partners, Chandler Regional Hospital chose to merge with Catholic Healthcare West (CHW), the parent company of St. Joseph's Hospital and Medical Center and Barrow Neurological Institute. The affiliation was completed in December 1999. Chandler Regional Medical Center is a non-Catholic community hospital. CHW has welcomed numerous non-Catholic hospitals into the system since its founding in 1986. By partnering with Chandler Regional and other hospitals in the community who share CHW's values and commitment to the poor, CHW is better able to build healthy communities in a complex and challenging operating environment. These hospitals joined CHW because they were looking for a strong, non-profit, values-based health care partner, and do not become Catholic by virtue of joining the system. Although non-Catholic community hospitals are not bound by the *Ethical and Religious Directives* for Catholic Health Care Services they do agree to abide by the CHW Statement of Common Values, a declaration of the commitments and values shared by CHW and the non-Catholic hospital. In all cases, affiliating non-Catholic hospitals agree not to perform abortions, euthanasia, or in vitro fertilization while part of CHW." (cf. http://www.chandlerregional.org/-Who_We_Are/History/index.htm).

⁷ Cf. <http://www.chwhealth.org/index.htm>: "Founded in 1986 and headquartered in San Francisco, Catholic Healthcare West is the eighth largest hospital provider in the nation and the largest hospital system in California."

institution headquartered in Phoenix, belonging to Catholic Healthcare West and formally bound by the *Ethical and Religious Directives* (ERDs) of the USCCB – a controversial surgical procedure might have been carried out. The patient was a woman who was 11 weeks pregnant and whose grave health condition – according to the doctors – would not have permitted her to carry the pregnancy to term without endangering her own life.

According to initial information, the hospital's Ethics Committee authorized the procedure on the fetus with the intention of saving the life of the mother. Sister Margaret McBride, member of the religious order entrusted with the direction of the hospital, presided over the committee. In the first information that came to Bishop Olmsted, it was not yet clear whether the medical procedure was an extreme case of the traditional moral doctrine of double effect, or if, on the contrary, it constituted a direct abortion as described in numbers 47 and 45, respectively, of the ERDs of the USCCB.⁸

Bishop Olmsted then decided to speak personally with the president of the hospital's Ethics Committee in order to ascertain the true facts of the case. After the conversation, and after consulting diocesan experts, it seemed clear to Bishop Olmsted that the members of the committee were morally and juridically responsible for a case of abortion, and he communicated to Sister Margaret McBride that by her act she had incurred an excommunication *latae sententiae* (CIC, c. 1398).⁹ As a result, and at

⁸ The procedure was performed on November 5, 2009. In this case, the threat to the mother stemmed from a case of serious pulmonary hypertension, and thus the situation upon which the hospital's Ethics Committee had to rule was not the more common case of danger due to the mother's having uterine cancer. The difficulties in knowing the facts of the case are accentuated by the fact that the hospital's internal report on the case has yet to be made public (cf. National Catholic Bioethics Center, *Commentary on the Phoenix Case*, December 24, 2010, <http://www.ncbcenter.org>). In fact, the web site of Saint Joseph's Hospital explains how some information may not have been released in order not to violate the patient's privacy: "Since no individually identifiable health information was ever given to the Bishop or anyone else, it was determined that the applicable privacy rules under the federal Health Insurance Portability and Accountability Act (HIPAA) were not violated" (cf. http://www.stjosephs-phx.org/stellent/groups/public/@xinternet_con_sjh/documents/webcontent/212144.pdf).

⁹ The official communication from the Diocese of Phoenix reads: "In this case, the baby was healthy and there were no problems with the pregnancy; rather, the mother had a disease that needed to be treated. But instead of treating the disease, St. Joseph's medical staff and the Ethics Committee decided that the healthy, 11-week-old baby should

the request of the bishop, Sister Margaret McBride resigned her post on the hospital's Ethics Committee. The directors of the hospital accepted her resignation and decided to transfer her to a different position within the same hospital.¹⁰

3. The discovery of other precedents in hospital practice: the dialogue with hospital management

In the months following there was a heated debate in the media as well as among experts in moral theology from several American universities. Indeed, the case did not seem clear, neither from a moral nor from a juridical perspective. But just as the debate in the media and in academia was reaching an impasse, new details came to light concerning the practice at Saint Joseph's Hospital of other medical treatments contrary to Catholic morality.¹¹

Bishop Olmsted decided to launch a new investigation, which confirmed these facts. At that point, Saint Joseph's Hospital had to admit to having formally cooperated for years in abortions, sterilizations, and contraceptive services. These services were administered under the Mercy Care Plan, a two billion dollar healthcare plan comprising nearly 368,000 persons of limited economic resources.¹²

be directly killed, which is contrary to the teaching of the Church (*Evangelium Vitae*, n. 62)" (Diocese of Phoenix Communication Office, *St. Joseph's Hospital No Longer Catholic*, Statement of Bishop Thomas J. Olmsted, December 21, 2010).

10 It must be emphasized that the information on Sister Margaret was not at first made public either by the Diocese of Phoenix or by Bishop Olmsted; rather, it was made public by the local media. The subsequent explanations by the ecclesiastical authority were necessary in order to clarify the situation concerning Saint Joseph's Hospital.

11 The data was put forth by American Life League as part of an in-depth study on all the services offered in the different healthcare centers belonging to the Catholic Healthcare West network (the full report may be found at <http://www.all.org/article/index/id/ODI4Nw>, *The Facts About Catholic Healthcare West's Catholicity*).

12 Bishop Olmsted's statement reads, "This information was given to me in a meeting which included an administrator of St. Joseph's Hospital who admitted that St. Joseph's and CHW are aware that this plan consists in formal cooperation in evil actions which are contrary to the Church teaching" (Diocese of Phoenix Communication Office, *St. Joseph's Hospital No Longer Catholic*, Statement of Bishop Thomas J. Olmsted, December 21,

The hospital's management said that such procedures were not carried out directly by Saint Joseph's Hospital, but by third-party professionals who were part of the Mercy Care Plan and who, moreover, received compensation for such services directly from the state medical agency. Moreover, they explained that the agreement between the state medical agency and the various healthcare centers participating in the Mercy Care Plan required that this type of practice be included among the services offered.¹³ In any event, not even these clarifications appeared to be in keeping with the ERDs of the USCCB, which affirm that in partnership relationships between institutions, Catholic healthcare centers must ensure that the principles of the Church's moral doctrine are respected.¹⁴

After new talks with the management of Saint Joseph's Hospital, and after an exchange of moral opinions about the aforementioned abortion case, Bishop Olmsted sent a letter to the president of CHW containing the conditions to which the hospital would have to adhere in order to continue to be qualified as "Catholic."¹⁵ The conditions were as follows: 1. CHW had to

2010).

13 An overview statement on the agreement between Saint Joseph's Hospital and the Arizona state medical agency may be found in the *Mercy Care Plan Fact Sheet*, at the hospital's web site (cf. http://www.stjosephs-phx.org/Who_We_Are/Press_Center/211-990). It includes: "Mercy Care Plan (MCP) was formed as a not-for-profit managed care corporation in 1985, after representatives of the state's Medicaid agency (the Arizona Health Care Cost Containment System – AHCCCS) invited Catholic hospitals to participate in the state's Medicaid program. The sponsors of the hospitals strongly believed that the formation of MCP was an important extension of the Catholic mission to serve the poor and persons with special needs. As a state Medicaid plan, Mercy Care Plan does not directly provide health care to members; instead, it contracts with physicians and other health care providers to deliver care. Federal law and state requirements mandate that Medicaid plans administer family planning services, which are in conflict with traditional Catholic values (...). The goal is to find a way to address the federal and state requirements, while complying with the Catholic Ethical and Religious Directives."

14 In this regard, number 68 of the ERDs determines the following: "Any partnership that will affect the mission or religious and ethical identity of Catholic health care institutional services must respect Church teaching and discipline. Diocesan bishops and other Church authorities should be involved as such partnerships are developed, and the diocesan bishop should give the appropriate authorization before they are completed. The diocesan bishop's approval is required for partnerships sponsored by institutions subject to his governing authority; for partnerships sponsored by religious institutes of pontifical right, his *nihil obstat* should be obtained."

15 The letter is dated November 10, 2010, and was received by the President of

acknowledge in writing that the medical procedure which had caused the abortion at Saint Joseph's Hospital was a violation of the ERDs, and hence it would not occur again in that hospital; 2. CHW had to accept a process of review and certification conducted by the Medical Ethics Board of the Diocese of Phoenix to guarantee full compliance with the ethical and religious directives of the USCCB. To this end, the bishop and one of his representatives from the diocesan Medical Ethics Board had to have adequate access to the hospital's facilities and protocols so as to be able to review them;¹⁶ 3. CHW had to agree to provide ongoing formation on the ERDs for the medical personnel of Saint Joseph's Hospital, under the supervision of the National Catholic Bioethics Center or the Medical Ethics Board of the Diocese of Phoenix.

4. The decree revoking the consent to claim the title "Catholic"

As the hospital's management was unwilling to adhere to these conditions, Bishop Olmsted decided to issue a decree by which he withdrew his consent for Saint Joseph's Hospital to use the name "Catholic." The decree, after explaining the reasons that led to such a decision, establishes that according to canon 216 of the Code of Canon Law, Saint Joseph's Hospital may no longer call itself or be identified in any way as Catholic.¹⁷ The basis of the decision is found in the impossibility – on the part of the diocesan ecclesiastical authority – to guarantee any longer that the healthcare center's services are in conformity with Catholic moral doctrine. For this same reason, according to the decree, the decision will remain in

Catholic Healthcare West on November 29, 2010. The full text may be found at <http://www.azcentral.com/ic/community/pdf/bishopletter.pdf>.

16 During the drafting of this second condition, an important final note was added in parentheses: "As hospitals and health care organizations submit to similar kinds of certifications from the government or from medical oversight organizations, it should not be unusual to have a group from the Catholic Diocese to certify that hospitals run by CHW are in full compliance with Catholic moral teaching."

17 CIC, c. 216: "Since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition. Nevertheless, no undertaking is to claim the name Catholic without the consent of competent ecclesiastical authority." The text of c. 19 of the CCEO is almost identical.

force until such time as the conditions for giving such a moral guarantee might return.

Until now it seems that the consequences of the decree may not have had any formal significance. On the Saint Joseph's Hospital web site there is still the claim that the services they provide follow the ERDs of the USCCB.¹⁸ Obviously, after the decree, such a connection no longer rests upon the guarantee of the local ecclesiastical authority; but this detail is not mentioned in the general information about the hospital.¹⁹ From the material standpoint, however, the relevant measures contained in the decree have now been carried out: the removal of the Blessed Sacrament from the hospital chapel and the prohibition of celebrating Holy Mass. Both actions have the goal of not leading the patients of the hospital into error concerning its character.²⁰

In addition, the decree contains two observations of particular interest. In the first place, it explains that with the measures undertaken it does not wish to limit the freedom of the faithful to use the hospital's services; rather, it wishes to protect their right to know that those services no longer enjoy the doctrinal and moral guarantee of the competent diocesan ecclesiastical authority. In the second place, it clarifies that the priests of the diocese continue to be available for pastoral attention to the faithful who are patients of the hospital – as usual, whenever requested.

¹⁸ http://www.stjosephs-phx.org/stellent/groups/public/@xinternet_con_sjh/documents/webcontent/212135.pdf.

¹⁹ http://www.stjosephs-phx.org/stellent/groups/public/@xinternet_con_sjh/documents/webcontent/212144.pdf:

"Although we are deeply disappointed by the bishop's decision to no longer recognize St. Joseph's as a Catholic hospital, we will continue to operate in the Catholic tradition, as we have for the last 115 years. Our operations, policies, and procedures will not change. At the bishop's direction, we will remove the Blessed Sacrament from the hospital's chapel and will no longer celebrate Mass there."

²⁰ These measures were announced by Bishop Olmsted in an official communication prior to the decree: "In addition, other measures will be taken to avoid the impression that the hospital is authentically Catholic, such as the prohibition of celebrating Mass at the hospital and the prohibition of reserving the Blessed Sacrament in the Chapel" (Diocese of Phoenix Communications Office, *St. Joseph's Hospital No Longer Catholic*, Statement of Bishop Thomas J. Olmsted, December 21, 2010, n. 2).

5. The intervention of the United States Conference of Catholic Bishops at the request of the national association of Catholic hospitals

In June of 2010, the USCCB intervened for the first time in the case of Saint Joseph's Hospital by means of a doctrinal note, in which the difference between direct abortion (ERDs, n. 45) and procedures of double effect (ERDs, n. 47) was explained in detail.²¹ The initial paragraphs of the note explained the reasons for the intervention by the Doctrinal Commission of the USCCB, due in large part to the confusion generated in American public opinion concerning the teaching of the Church on the legitimacy of different types of medical procedures in cases where, during a pregnancy, the health or the life of the mother is at risk.²²

The second USCCB intervention on the Saint Joseph's Hospital case arose from a consultation held in January of 2011 with the Catholic Health

²¹ USCCB, Committee on Doctrine, *The Distinction between Direct Abortion and Legitimate Medical Procedures*, June 23, 2010 (cf. <http://www.usccb.org/doctrine/direct-abortion-statement2010-06-23.pdf>). Among other things, it is emphasized – in reference to the content of the document – that intentionally procured abortion is never morally admissible. Nevertheless, it is stressed that in some special situations certain medical procedures that apply for pregnant women with serious health problems might lead even to the death of the unborn child.

²² "On November 5, 2009, medical personnel at the St. Joseph's Hospital and Medical Center in Phoenix, Arizona, performed a procedure that caused the death of an unborn child. Most Reverend Thomas Olmsted, the Bishop of Phoenix, has judged that this procedure was in fact a direct abortion and so morally wrong. Some have argued that the procedure was an indirect abortion and therefore a legitimate medical procedure. Still others have said that even the direct killing of an unborn child is sometimes permitted by Catholic teaching, and that this position is supported by certain provisions of the Ethical and Religious Directives for Catholic Health Care Services, a document issued by the United States Conference of Catholic Bishops containing moral principles to be applied in such cases. The position that Church teaching supports the direct taking of unborn life has been widely reported at the national level by media outlets, which has caused some confusion among the faithful as to what the Church teaches regarding illegitimate and legitimate medical procedures used in cases where the mother's health or even life is at risk during a pregnancy. In order to clarify doubt regarding the Church's teaching on this important matter, the Committee on Doctrine, following its mandate to provide expertise and guidance concerning the theological issues that confront the Church in the United States, offers the following observations on the distinction between medical procedures that cause direct abortions and those that may indirectly result in the death of an unborn child."

Association (CHA), the largest Catholic healthcare association in the United States.²³ The consultation was followed with an exchange of letters between the CHA president, Sister Carol Keehan, and the USCCB president, the Archbishop of New York, Timothy M. Dolan, in which it was reasserted that the local bishop is the authentic interpreter of the ethical and religious directives that guide the Catholic healthcare system in the United States.²⁴ But then, this important function of diocesan bishops had already been set forth in the Introduction to the ERDs, and previously, in a general way, in the Directory for the Pastoral Ministry of Bishops, *Apostolorum Successores*.²⁵

23 Cf. <http://www.usccb.org/comm/archives/2011/11-024>, where it reads: "In response to questions raised about the authority of the local bishop in the interpretation and implementation of the Ethical and Religious Directives for Catholic Health Care Services (ERDs), conversations have taken place among Sister Carol Keehan, DC, president of the Catholic Health Association (CHA); Archbishop Timothy Dolan of New York, president of the United States Conference of Catholic Bishops (USCCB) and Bishop Robert Lynch of St. Petersburg, Florida, who is a member of the CHA Board of Directors. Bishop Kevin Vann of Fort Worth, Episcopal liaison to the CHA, was also part of the consultation." Cf. also *L'Osservatore Romano*, daily online edition, February 2, 2011.

24 Cf. <http://old.usccb.org/comm/archives/2011/11-024.shtml>: "Following those conversations, Sister Keehan and Archbishop Dolan exchanged letters to underscore the agreement evident in their conversations. In her January 18 letter, Sister Keehan affirmed to Archbishop Dolan CHA's acknowledgement of the role of the local bishop as the authoritative interpreter of the ERDs in such Catholic facilities. In a January 26 response, Archbishop Dolan thanked Sister Keehan for making clear that CHA and the bishops share this understanding of the Church's teaching." Archbishop Dolan restated, in particular, what follows: "It is the diocesan bishop's authentic interpretation of the ERD's that must then govern their implementation. Where conflicts arise, it is again the bishop who provides the authoritative resolution based on his teaching office. Once such a resolution of a doubt has been given, it is no longer a question of competing moral theories or the offering of various ethical interpretations or opinions of the medical data that can still be legitimately espoused and followed. The matter has now reached the level of an authoritative resolution."

25 Cf. Congregation for Bishops, Directory for the Pastoral Ministry of Bishops, *Apostolorum Successores*, May 22, 2004, n. 205: "Within his own diocese each bishop, with the help of suitably qualified persons, is called to work for an integral proclamation of the 'Gospel of Life'. As medical practice and care of the sick become more humane, this closeness to those who suffer brings into clearer focus for every person the image of Jesus, healer of body and soul. Among the instructions entrusted to his Apostles, the Lord included an exhortation to heal the sick (cf. *Mt* 10:8). The organization of adequate pastoral provision for health care workers, with the good of the sick ever in mind, should

Archbishop Dolan thanked the president of the CHA for having confirmed in her letter the will of the association to carry forward its mission in complete fidelity to Catholic moral teachings. In the letter, Archbishop Dolan further affirmed, "As we look to the future, there are many moments on the horizon that could present a challenge to both Catholic health care and to the USCCB. But these are also opportunities for us, as a Church, to reaffirm our commitment, especially to the poor and needy, as well as to our Catholic respect for the right to life, and for religious liberty."²⁶

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As was said in the beginning, this case represents an important precedent concerning the possibility of a diocesan bishop's revoking consent for a healthcare organization to use the name "Catholic", when its services can no longer be guaranteed from a moral standpoint.²⁷

thus be a priority close to the heart of every bishop. Such pastoral care ought to be characterized by the following: an outspoken defense of human life in the areas of biogenetic engineering, palliative care and opposition to euthanasia; a renewed pastoral approach to the Sacrament of the Anointing of the Sick and Viaticum, without neglecting the Sacrament of Penance; the witness of consecrated persons who devote their lives to the care of the sick and the contribution of volunteer health care workers; the attentiveness of pastors to those parishioners who are sick. The bishop gives his support to Catholic hospitals, and opens new ones where appropriate, maintaining their Catholic identity even when, for whatever reason, they come under secular direction. In Catholic faculties of medicine, the bishop sees to it that medical ethics are taught in accordance with the Magisterium of the Church, particularly in questions of bioethics."

²⁶ Cf. <http://old.usccb.org/comm/archives/2011/11-024.shtml>, Letter of Archbishop Timothy M. Dolan, President of the USCCB.

²⁷ In the North American context, the principal juridical problematics on the identity of Catholic institutions can be found already outlined in F. Morrissey, "What Makes an Institution 'Catholic'?", *The Jurist* 47 (1987), pp. 531-544; E.A. Rinere, "Catholic Identity and the Use of the Name 'Catholic'", *The Jurist* 62 (2002), pp. 131-158. Regarding the healthcare field in particular, one can make an initial approach by reading two articles of F. Morrissey: "Church law's role in collaborations. Principles to guide Catholic healthcare providers contemplating new arrangements", *Health Progress*, 1993, 74 (9), pp. 24-29; "Catholic Identity in a challenging environment", *Health Progress*, 1999, 80 (6), pp. 38-42.

Number 24 of the conciliar decree *Apostolicam Actuositatem* states that, "As regards works and institutions in the temporal order, the role of the ecclesiastical hierarchy is to teach and authentically interpret the moral principles to be followed in temporal affairs." Moreover, the same number of the decree reminds that each and every bishop has both the right and the obligation to judge – with careful consideration, and availing of the help of experts – "whether or not such works and institutions conform to moral principles, and to determine what is required for the protection and promotion of values of the supernatural order."²⁸

The possible intervention of the diocesan bishop concerning the conformity to Catholic moral principles of institutions operating in his diocese will be different according to the type of institution. On the one hand, in Catholic institutions that depend upon the diocese or upon a diocesan public juridical person, the measures taken by the bishop will be of an executive nature, given his direct responsibility in the governance of the institution. With regard to institutions that are not officially Catholic but present themselves equivocally as such, or present themselves as having Catholic or Christian inspiration, the bishop cannot revoke consent to use the name "Catholic" because they do not operate officially under that name. However, he can always issue a public judgment in order to protect the rights of the faithful, as foreseen by canon 747 § 2 of the Code of Canon Law.

An intermediate case is that of institutions operating in the temporal order that depend upon non-diocesan public juridical persons (normally upon institutes of consecrated life), or which are promoted by groups of lay faithful who request the consent of the bishop to operate as officially-Catholic entities. These are the cases – just like that of Saint Joseph's Hospital – in which it would make sense to revoke consent for the use of the name "Catholic", according to canon 216 of the Code of Canon Law, when the bishop can no longer guarantee the conformity of the institution's activities with Catholic doctrine. The exercise of the bishop's right/obligation acquires singular importance when, in circumstances analogous to those of the present case, there is at stake the right of the faithful to know the truth concerning the relationship between an officially-Catholic institution and the

²⁸ Second Vatican Council, Decree *Apostolicam Actuositatem*, November 18, 1965, n. 24.

bishop responsible for guaranteeing the conformity of its services with the Magisterium of the Catholic Church.²⁹

In fact, John Paul II underscored the necessity of making timely use in these cases of concrete juridical measures in favor of the protection of the faithful in his encyclical *Veritatis Splendor*, with respect not only to healthcare facilities and social services, but also to educational institutions at every level:

“We have the duty, as bishops, to *be vigilant that the word of God is faithfully taught*. My Brothers in the Episcopate, it is part of our pastoral ministry to see to it that this moral teaching is faithfully handed down, and to have recourse to appropriate measures to ensure that the faithful are guarded from every doctrine and theory contrary to it. In carrying out this task we are all assisted by theologians; even so, theological opinions constitute neither the rule nor the norm of our teaching. Its authority is derived, by the assistance of the Holy Spirit and in communion *cum Petro et sub Petro*, from our fidelity to the Catholic faith which comes from the Apostles. As bishops, we have the grave obligation to be *personally* vigilant that the “sound doctrine” (1 *Tim* 1:10) of faith and morals is taught in our dioceses. A particular responsibility is incumbent upon bishops with regard to *Catholic institutions*. Whether these are agencies for the pastoral care of the family or for social work, or institutions dedicated to teaching or healthcare,

29 Benedict XVI has reaffirmed on various occasions the important of protecting the rights of the faithful and of all who benefit from the services of Catholic institutions. In his discourse at the Catholic University of America – with reference to educational institutions at every level, extendable to Catholic institutions in other settings – he said: “Teachers and administrators, whether in universities or schools, have the duty and privilege to ensure that students receive instruction in Catholic doctrine and practice. This requires that public witness to the way of Christ, as found in the Gospel and upheld by the Church’s Magisterium, shapes all aspects of an institution’s life, both inside and outside the classroom. Divergence from this vision weakens Catholic identity and, far from advancing freedom, inevitably leads to confusion, whether moral, intellectual or spiritual.” And previously, with respect to academic freedom, he explained to the university professors: “In regard to faculty members at Catholic colleges [and] universities, I wish to reaffirm the great value of academic freedom. In virtue of this freedom you are called to search for the truth wherever careful analysis of evidence leads you. Yet it is also the case that any appeal to the principle of academic freedom in order to justify positions that contradict the faith and the teaching of the Church would obstruct or even betray the university’s identity and mission; a mission at the heart of the Church’s *munus docendi* and not somehow autonomous or independent of it.” (Benedict XVI, *Meeting with Catholic Educators*, Catholic University of America, Washington, D.C., April 17, 2008).

bishops can canonically erect and recognize these structures and delegate certain responsibilities to them. Nevertheless, bishops are never relieved of their own personal obligations. It falls to them, in communion with the Holy See, both to grant the title "Catholic" to Church-related schools (cf. CIC, c. 803 § 3), universities (cf. CIC, c. 808), healthcare facilities and counseling services, and, in cases of a serious failure to live up to that title, to take it away."³⁰

In any event, as we have shown in the case just described, the juridical measure of revoking consent to use the title "Catholic" should always be preceded by other measures, with which the bishop should seek ever to carry forward his task of guaranteeing the services of Catholic institutions operating in his diocese. Lastly, consideration must be given to the concrete juridical-civil context in which there come together the rights and obligations – not only ecclesial – of the subjects affected by the measure; it is important that when this type of intervention unfortunately becomes necessary, the bishop and the experts who assist him keep this context in mind.

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³⁰ John Paul II, Encyclical Letter *Veritatis Splendor*, n. 116, AAS 85, 1993, p. 1224; original emphasis.