

## **Exhibit 36**

Presentation on the ERDs by Peter Cataldo

# ERDS, Part Six

## “Collaborative Arrangements with Other Health Care Organizations and Providers”: An Overview

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CMC ETHICS COMMITTEE

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PETER J. CATALDO, PH.D.



# Pope St. John XXIII

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“In their economic and social activities, Catholics often come into contact with others who do not share their view of life. In such circumstances, they must, of course, bear themselves as Catholics and do nothing to compromise religion and morality. Yet at the same time they should show themselves animated by a spirit of understanding and unselfishness, ready to cooperate loyally in achieving objects which are good in themselves, or can be turned to good.” (*Mater et Magistra*, n. 239)

# ERDs, Part Six: Basic Concepts

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- Principle of Cooperation
  - A moral guide
    - Assist the identification of different types of cooperation in the wrongdoing of others and the conditions under which cooperation may or may not be tolerated.
  - An instance of the basic moral obligation to avoid evil/wrongdoing while pursuing the good.
- “Cooperation”
  - Any specific contribution to, or participation in, what the Catholic Church considers the immoral act of another person or institution.
  - Knowingly and freely provided

# ERDs, Part Six: Basic Concepts

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## “Cooperator”

- Person or institution whose action contributes to the morally wrong action of another.

## “Principal agent” and “Principal Act”

- Person or institution whose morally wrong action is assisted by the cooperator.
- Act of a principal agent is the “principal act”

# Principle of Cooperation

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## **Formal Cooperation**

- Contribution to immoral act of another that is intended by the cooperator
- Specific and intrinsic relation to the principal act
- Explicit or implicit
- Always impermissible

## **Material Cooperation**

- Unintended contribution to immoral act of another by the cooperator
- Relation to the principal act is incidental or lacks the specificity of formal cooperation
- Can be justified for a proportionate reason

# Principle of Cooperation

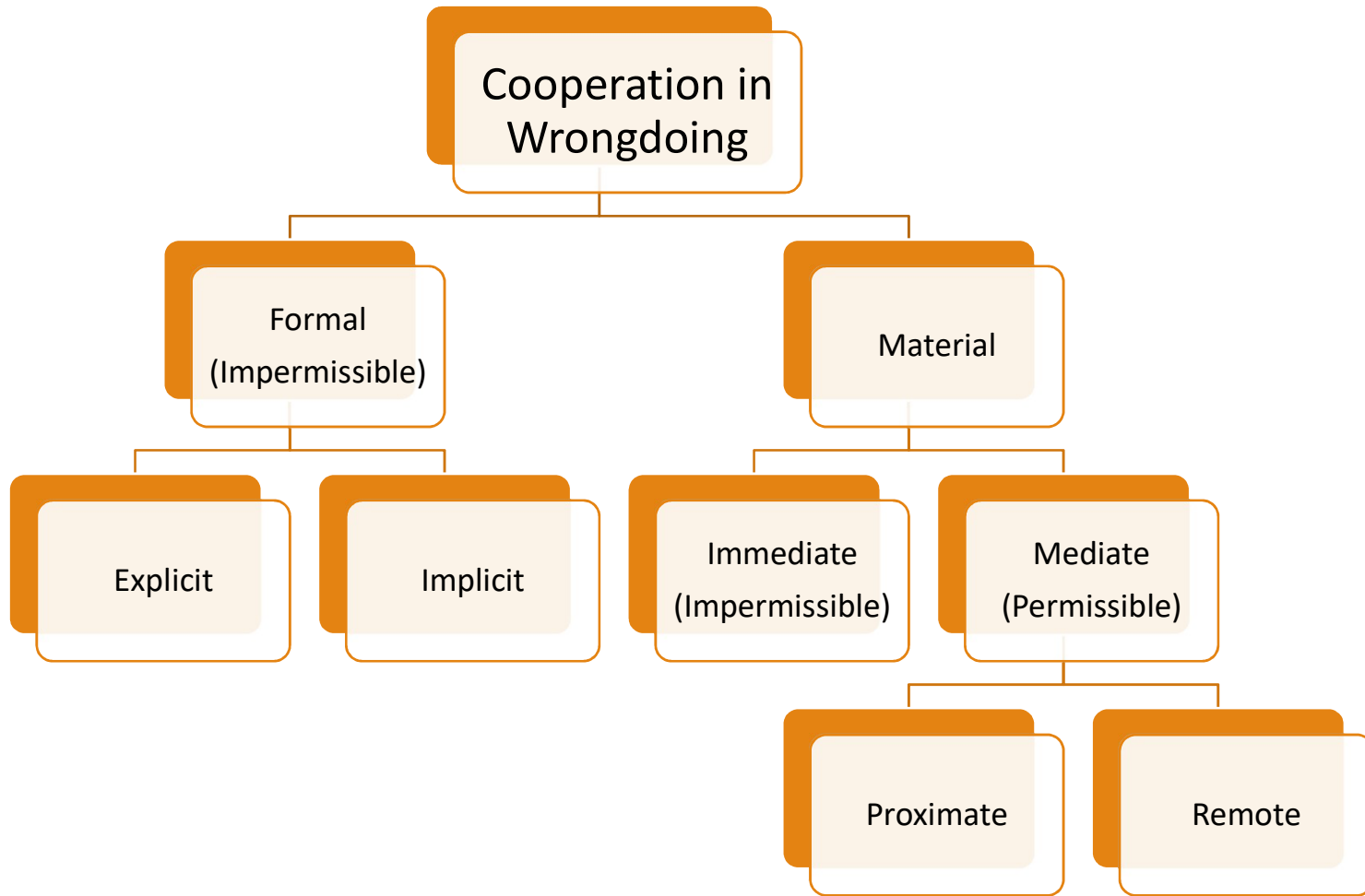
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## **Impermissible (“immediate”) material cooperation**

- Contributes to the essential aspects of the immoral act

## **Permissible (“mediate”) material cooperation**

- Contributes to non-essential circumstances associated with the immoral act
- Justified by good(s) to be preserved or harm(s) to be avoided proportionate to the cooperation





# Five Traditional Standards for Evaluating the Reasons

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The reason(s) for mediate material cooperation should be morally greater:

- 1) the graver the wrongdoing committed by the principal agent,
- 2) the greater the causal influence on the principal act by the cooperator's act,
- 3) the greater the dependence of the principal act on the cooperator's act,
- 4) the more certain it is that the principal act will occur with the assistance of the cooperation,
- 5) the more of an obligation that the cooperator has to avoid or prevent the principal act.

# Principle of Theological Scandal

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- Word or deed that either
  - intentionally, or through the appearance of wrongdoing, directly leads another to do wrong (active), or
  - unintentionally and indirectly leads another to do wrong (passive).
- Scandal and cooperation in wrongdoing are related but distinct acts.
- “Preserving witness” the Church’s to the faith

# Directive 73—A Comparison

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## CDF 2014 *PRINCIPLES* DOCUMENT

9. “A Catholic hospital contemplating joining a health care system that permits immoral procedures must, before entering into any such agreement, ensure that neither its administrators nor its employees will be ***involved directly*** in immoral procedures undertaken by other institutions within the system. It must also ensure that its facilities and other resources will not be utilized in such procedures . . .” (emphasis added).

## ERDS, DIRECTIVE 73

73. “Before affiliating with a health care entity that permits immoral procedures, a Catholic institution must ensure that neither its administrators nor its employees will manage, carry out, assist in carrying out, make its facilities available for, make referrals for, or benefit from the revenue generated by immoral procedures.” (emphasis added)

# Directive 73

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- Designed for, and only applies to, the Catholic parties in a collaborative arrangement.
- Prohibition against managing, carrying out, assisting, making facilities available for, or referring proscribed procedures does not apply to entities that are affiliated but independent.
- “Managing” means management of the procedures that have a direct, specific, or intrinsic relation to the procedures.
- Board members of a system with Catholic and non-Catholic components do not provide direct management.
- “Referral” does not include the provision of general information that is in the public domain.
- Helping to set up an accounting mechanism to segregate revenue is not a violation of n. 73.

# Directive 74—A Comparison

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## CDF 2014 *PRINCIPLES* DOCUMENT


8. “A Catholic healthcare system cannot ethically accept into itself an institution that has not agreed to abide by the ethical principles regarding healthcare articulated by the Church, for this would result in formal cooperation, at the very least on the part of the system’s directors, in the immoral practices conducted within the incoming institution.” (emphasis added)

## ERDS, DIRECTIVE 74

“In any kind of collaboration, whatever comes under the control of the Catholic institution—whether by acquisition, governance, or management—must be operated in full accord with the moral teaching of the Catholic Church, including these Directives.”

# Directive 74

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- The meaning of “control” refers only to control of entities that are indistinguishable from the Catholic institution.
  - Being affiliated does not entail that the Catholic institution controls the affiliate.
  - Prohibition against control should not be conflated with indirect influence on or association with the procedures.
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# Directive 75—A Comparison

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## CDF 2014 *PRINCIPLES* DOCUMENT

12. Board members of a healthcare system or institution do not avoid cooperating formally by setting up—or helping to set up—an administrative body, such as a board of directors, independent or supposedly independent of the system or institution, that will oversee the provision of immoral services. The act of setting up such a body is itself formal cooperation in the prospective immoral procedures . . . [provided] under the authority of the subordinate body.” (emphasis added)

## ERDS, DIRECTIVE 75

“It is not permitted to establish another entity that would oversee, manage, or perform immoral procedures. Establishing such an entity includes actions such as drawing up the civil bylaws, policies, or procedures of the entity, establishing the finances of the entity, or legally incorporating the entity.”

# Directive 75

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- The entity is one whose sole purpose is the provision of immoral procedures.
- Catholic party does not set up such an entity if
  - the other-than-Catholic partner does so prior to and apart from the affiliation transaction.
  - New entity is not a “subordinate body”
  - Catholic party has no authority or influence



# Collaborations with For-Profit Institutions: Morally Prohibitive?

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- Moral preference is for affiliations with Catholic entities, but is not required. (Part Six, Introduction)
- Affiliation with for-profit entities *is not in principle* wrong or impermissible.
- For-profit health care can commit to
  - human dignity
  - justice
  - those who are poor and vulnerable
  - labor as a priority
  - not sacrificing health services to profit for shareholders
  - institutional operations that are consistent with the ERDs
- Financial and operational advantages