ABSTRACT: When religious hospitals, particularly those of the Catholic faith, merge or otherwise affiliate with nonreligious hospitals, or those of another faith, religious doctrine almost always influences patient care. Where the affiliated hospital is of a secular nature, its patients are unaware that their health care will be governed by religious dictates they may not share. Often, there is little that the community can do about such hospital alliances, but when one of the hospitals is owned by a government entity, the First Amendment of the U.S. Constitution can protect against religious entanglement with a publicly owned institution.

KEY WORDS: HOSPITAL, RELIGION, DIRECTIVES, HEALTH CARE

The following history is just one example of the growing menace of religious dictates in otherwise secular hospitals and their pernicious effects on the health care of unknowing patients nationwide.

As a civil rights attorney who often represents the interests of those whose constitutional rights have been violated by government entities, I received a call from the President of our local National Organization for Women (NOW) chapter, telling me that a NOW member had discovered that Bayfront Medical Center in St. Petersburg, Florida was no longer performing abortions. We learned that this was because the hospital had joined an alliance of hospitals known as BayCare, which included some Catholic hospitals. The Catholic hospitals had insisted that the secular hospitals in the alliance, chiefly Bayfront Medical Center and Morton Plant in Clearwater,1 abide by the Catholic Ethical and Religious Directives for Health Care (referred to as the ERDs), and that many of Bayfront’s health care policies
had changed as a result.

Given that Bayfront’s land and main buildings were owned by the City of St. Petersburg and leased to Bayfront’s nonprofit corporation, I advised NOW that this appeared to be an unconstitutional religious entanglement in violation of the First Amendment.

We then arranged a meeting with the Bayfront CEO and some of her staff. Present were representatives of NOW and others concerned about the elimination of reproductive health care services at Bayfront. I was there as Legal Counsel for Florida NOW. The CEO told us that Bayfront would not change its policies as its financial survival was connected to membership in BayCare. We asked for documents effectuating the hospital’s joinder of the alliance and Bayfront refused to give them to us. Bayfront leased its facility from the City, so we went to see the Mayor and some City staff. Bayfront’s agreement to abide by the Catholic Directives came as a big surprise to them, and the City made a formal public records request of Bayfront asking for the hospital’s Joint Operating Agreement with BayCare among other documents. Bayfront refused to turn them over to the City as well.

In its first editorial about the Bayfront matter, the local newspaper was critical of Bayfront for refusing to part with the documents. Bayfront’s attorney notified the City that it had no right to the Joint Operating Agreement and that, if Bayfront was forced to leave BayCare, it may lead to the demise of the hospital. The City then considered suing Bayfront under the public records law.

In its next editorial, the paper seemed to support the City’s concerns, stating that the City and community had a “right to expect that medical procedures at their secular and quasi-public hospital will not be subject to religious doctrine.” The position of the paper was to change greatly in the months to come.

As the City Council debated suing Bayfront, its CEO pleaded that if Bayfront had to leave BayCare, the result would be “devastating” to the hospital. Bayfront finally agreed to provide the City with the Joint Operating Agreement and the City, for the first time, was aware of Bayfront’s promises to abide by the ERDs, promises that Bayfront omitted to mention when asking the City to agree to Bayfront’s joinder of BayCare. In an about-face edito-
rial, the paper told the City it should not sue Bayfront because the religious
directives only caused Bayfront to stop performing what it termed a “handful
of elective abortions.” The editorials repeated that terminology a number of
times throughout the year.

After the City decided to sue Bayfront, the newspaper bemoaned the
decision, warning that “financial harm is the likely outcome and a closed
hospital could result.” Given that the American Civil Liberties Union
(ACLU) was now involved in challenging the religious entanglement, the
paper blamed the ACLU and NOW for “demanding the City put an end
to church-state entanglement” saying “abortion is the galvanizing issue.”
Nonetheless, at the end of that year, the City filed suit against Bayfront and
BayCare alleging unconstitutional religious entanglement.

During the ensuing months, a coalition was formed of four major civil rights
organizations: NOW, the ACLU of Florida, Americans United for Separation
of Church and State, and Planned Parenthood of Southwest and Central Florida, as well as four brave individual plaintiffs. We had a lot of help
from attorneys for the civil rights organizations and the National Women’s
Law Center in Washington, DC.

As we were getting ready to file our lawsuit, the newspaper got wind of it
and quoted me as saying that Bayfront and BayCare were “trampling on the
rights of non-Catholic citizens” and were “forcing their views on unwilling
patients and staff.” Its disapproval was clear.

We filed suit in federal district court, alleging violations of the First Amend-
ment and Florida’s public records and open meetings laws.2 The newspaper
was again critical, accusing us of being “wrapped up in abortion and con-
stitutional scripture.” The scripture, however, was all at Bayfront, which
sprouted signs in the lobby and elevator that the city-owned hospital was a
mission of the Sisters of Allegheny. The St. Anthony’s logo, which incorpo-
rated a cross, was emblazoned with Bayfront’s logo at the top of the hospital,
which was now known as Bayfront/St. Anthony’s.

During this time, we had many meetings and telephone discussions with our
opposing counsel in an attempt to find agreement on the basic principle of
religious entanglement. They made it clear that if Bayfront was to stay in the
BayCare alliance, it must abide by the ERDs.
The paper continued to be critical of our efforts to free Bayfront from religious control, complaining that it was only about abortion. But indeed restoring reproductive health care at Bayfront was only a small part of what we were trying to do. The Ethical and Religious Directives were much broader than a proscription of abortion.

There were approximately 80 Directives that governed health care decisions at Bayfront while it was a member of the BayCare alliance. Here are some of them:

- All medical research must adhere to Catholic moral principles.
- All health care services must adopt the ERDs as policy and require adherence to them within the hospital as a condition for medical privileges and employment.
- Newly born infants in danger of death, including those miscarried, should be baptized Catholic.
- The hospital may not honor an advance directive that is contrary to Catholic teaching.
- Decisions by a designated health care surrogate must be faithful to Catholic moral principles.
- The health care decision of the patient or his surrogate is to be followed so long as it does not contradict Catholic principles.
- For victims of sexual assault, it is not permissible to initiate or recommend treatments that have as their purpose or effect the removal, destruction, or interference with the implantation of a fertilized ovum.
- Artificial insemination by a donor who is not married to the donee is prohibited.
- In vitro fertilization is prohibited, even if sperm and egg come from a married couple.
- Participation in contracts or arrangements for surrogate motherhood is not permitted.
Abortion is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before or after viability is an abortion. There is a danger of scandal in any association with abortion providers. In case of extrauterine pregnancy, no intervention is morally licit which constitutes a direct abortion. Prenatal diagnosis is not permitted when undertaken with the intention of aborting an unborn child with a serious defect.

- The hospital may not promote or condone contraceptive practices.
- Direct sterilization of either men or women, whether permanent or temporary, is not permitted.
- The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures will be respected unless it is contrary to Catholic moral teaching.
- Euthanasia is an action or omission that of itself or by intention causes death in order to alleviate suffering. Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way.
- Patients experiencing suffering that cannot be alleviated should be helped to appreciate the Christian understanding of redemptive suffering.

Obviously, Bayfront’s promise to abide by the ERDs entailed more than just elimination of a “handful of elective abortions.”

Due in large part to our lawsuit’s allegations under the Florida public records and open meetings laws, BayCare ejected Bayfront from the alliance, a consequence of its reluctance to expose its financial records to public scrutiny.4

The newspaper predicted doom for Bayfront. In one editorial, it characterized our lawsuit and that of the City as “reckless” and predicted that Bayfront’s quality of care was now in jeopardy. Once again, it remarked that the lawsuits were all about abortion.

A year later, the City settled its lawsuit against Bayfront and BayCare and shortly thereafter we did too. As a condition of settlement, Bayfront promised to restore all reproductive health care and not to rejoin BayCare without the City’s permission. The hospital was once again known as Bay-
front Medical Center and the signs describing it as a mission of the Sisters of Allegheny came down. Bayfront agreed to be free of all religious influence.

Thanks to the ACLU, Planned Parenthood, NOW and Americans United for safeguarding our city-owned hospital and opening its doors to top notch medical care without regard for the religion of its patients and staff, where medical decisions are made by patients and their doctors on the basis of the best medical advice and are not governed by the tenets of any particular religion.

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End Notes

1. Morton Plant is not owned by a governmental entity and was unaffected by our lawsuit.
2. For the complaint, see https://www.aclufl.org/pdfs/bayfront%20complaint.pdf