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No direct abortion at Phoenix hospital, theologian says

Jerry Filteau | Dec. 23, 2010

This historic image shows nuns on the porch of St. Joseph's Hospital, founded in Phoenix in 1895. (CNS)

The controversial operation on an 11-week pregnant mother at a Phoenix hospital last year that caused the local bishop to excommunicate a Catholic woman religious and led him this week to declare the hospital no longer Catholic was not a direct abortion, according to a moral theologian called in to review the case.

"The mother and fetus were both in the process of dying ? It was not a matter of choosing one life *or* the other. The child's life, because of natural causes, was in the process of ending," wrote theologian M. Therese Lysaught in a 24-page analysis of the medical procedure performed by St. Joseph's Hospital and Medical Center in November 2009.

"The only morally good thing that can be *chosen* here is to save the life of the mother,'" wrote Lysaught, who reviewed the case at the request of Catholic Healthcare West, a three-state system of mainly Catholic hospitals to which St. Joseph's belongs.

NCR received a copy of Lysaught's report Dec. 21.

In a Nov. 22 letter to Catholic Healthcare West, Phoenix Bishop Thomas J. Olmsted said he appreciated Lysaught's analysis of the issue, but "I disagree with her conclusion." Olmsted described the 2009 case as a direct abortion in violation of church moral teaching and the U.S. bishops' "Ethical and Religious Directives for Catholic Health Care Services."

On Dec. 21, Olmsted informed Catholic Healthcare West that he believes it "is not committed to following the teaching of the Catholic church and therefore this hospital cannot be considered Catholic."

Explaining his reasoning, Olmsted cited the November 2009 abortion and added that Catholic Healthcare West and St. Joseph Hospital "have been formally cooperating with a number of medical procedures that are contrary to the [U.S. bishops' health care directives], for many years," through their partnership in the Mercy Care Plan, a managed care organization that provides health care services to people in Arizona's Medicaid program. He also raised concerns about Chandler Regional Hospital, in Phoenix, which is also affiliated with Catholic Healthcare West, but has not complied with the bishops' health care directives for many years.

Olmsted said that through the Mercy Care Plan, the hospital and its parent company had been "formally responsible" for contraceptive counseling and supplies, voluntary sterilizations and "abortions due to the mental or physical health of the mother or when the pregnancy is the result of rape or incest."

It was last May that Olmsted told Mercy Sr. Margaret McBride, a hospital vice president and part of the hospital ethics committee, that she "had incurred an excommunication by her formal consent to the direct taking of the life of this baby."

The case involved a 27-year-old woman in the 11th week of a pregnancy who was near death because of acute pulmonary hypertension. "The patient's attempt to continue the pregnancy in order to nurture the child's life led to two negative physiological outcomes: the failure of the right side of the patient's heart and cardiogenic shock," Lysaught wrote.

"On Nov. 5, 2009, the mother and fetus were both in the process of dying," she said. "Due to the age of the fetus, there was no possibility that it could survive outside the womb. Nor, due to the mother's heart failure and cardiogenic shock, was there any possibility that the fetus could survive inside the womb. In short, in spite of the best efforts of the mother and of her medical staff, the fetus had become terminal, not because of a pathology of its own but because of a pathology in its maternal environment. There was no longer any chance that the life of this child could be saved. This is crucial to note insofar as it establishes that at the point of decision, it was not a case of saving the mother *or* the child. It was not a matter of choosing one life *or* the other. The child's life, because of natural causes, was in the process of ending."

Lysaught, an associate professor of moral theology and director of graduate studies at Marquette University in Milwaukee, also noted that what exacerbated the woman's pulmonary hypertension and was causing heart failure and cardiogenic shock was not the fetus, but the placenta, an organ shared by the mother and the child in her womb.

"The placenta was producing the physiological changes that imperiled the mother's and child's lives. ? Although in one respect the placenta was functioning 'normally,' it was also functioning pathologically in two ways," she said. "First, once the placenta initiated its normal function at week ten, a crisis was created. Second, once the patient entered cardiogenic shock, the placenta also became hypoxic [unable to get enough oxygen]. In these two ways, then, the placenta not only initiated a threat to the mother's life; it also became the immediate/presenting cause of the inevitably fatal threat to the fetus."

In acting to remove the placenta, the hospital knew that this intervention would inevitably also cause the death of the child -- just as the child's death is inevitable when a mother's fallopian tube is removed in an ectopic pregnancy or when a pregnant woman's cancerous uterus is removed -- both classic examples of licit medical procedures in moral theology and church teaching.

Lysaught quoted Pope John Paul II defining procured abortion as "the *deliberate and direct* killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth."

She also quoted Pope Pius XII, who also emphasized the significance of "direct."

"It has been our intention here to use always the expressions '*direct* attempt on the life of the innocent person,' ' *direct* killing.'" Pius said in a 1951 address. "The reason is that if, for example, the safety of the future mother, independently of her state of pregnancy, might call for an urgent surgical operation, or any other therapeutic application, which would have as an accessory consequence, in no way desired or intended, but *inevitable*, the death of the fetus, such an act could not be called a *direct* attempt on the innocent life.

"In these conditions," Pius continued, "the operations can be lawful, as can other similar medical interventions, provided that it be a matter of great importance, such as life, and that it is not possible to postpone it till the birth of the child, or to have recourse to any other efficacious remedy."

Lysaught explored at length Thomas Aquinas' distinctions concerning the "moral object" of an act and unintended, even if inevitable, other consequences of the act.

She also analyzed what occurred at St. Joseph's through the writings of two noted conservative theologians today: Fr. Martin Rhonheimer, an Opus Dei priest who teaches at the Pontifical University of the Holy Cross in Rome, and Germain Grisez, professor emeritus of Christian ethics at Mount St. Mary's University in Emmitsburg, Md., and author of a major study on Christian morality, *The Way of the Lord Jesus*.

She said Rhonheimer, in his 2009 book *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*, confronts two situations -- obstructed delivery and ectopic pregnancy -- in which "medical personnel are faced with a situation in which it is certain that without medical intervention, both mother *and* child will die."

(In today's medicine, she noted, advances in Caesarian section have made the 19th-century moral debate over craniotomy moot, but it is instructive to see how moralists addressed it when it was a life-or-death issue.)

She said Rhonheimer -- whose book was written and published at the request of the Vatican Congregation for the Doctrine of the Faith -- clearly rejects direct abortion or any "weighing" of one life against another, but seeks to assess cases in which "the child's chance of survival is negligibly small or, in fact, non-existent."

"These cases, he argues, have a distinguishing, morally relevant feature, namely, that '*only the life of the mother* is at the disposal of another human being -- the fetus is no longer even subject to a decision between "killing or allowing to live"; the only morally good thing that can be *chosen* here is to save the life of the mother,'" Lysaught wrote.

She added, "He also states clearly that 'the decision to allow both mother *and* child to die ? at least when the mother can be saved and the child will die *in any case* -- is simply irrational'; this is not an *ad hominem* comment but rather a very specific Thomistic critique, based on the critical role of reason in moral discernment and action."

She said Rhonheimer further argues that the principle of double effect does not apply here "because there are not in fact two effects. Given that no action can save the life of the child, its death effectively falls outside the scope of the moral description of the action. Moreover, since there are not two effects, one cannot argue that the death of the child is a means to the end of saving the life of the mother."

She quoted the priest: "Only if the fetus would otherwise survive could its death be said to be chosen as a means -- and thus caused 'directly' in a morally relevant way. But in our case the death of the fetus is not *willed in order to* save the mother; as far as the life of the fetus is concerned, it is beyond any kind of willing."

She said Grisez holds that it would be licit to accept the baby's death to save the mother's life "only when certain conditions are met."

She quoted from volume two of *The Way of the Lord Jesus*: "Sometimes the baby's death may be accepted to save the mother. Sometimes four conditions are simultaneously fulfilled: (i) some pathology threatens the lives of both the pregnant woman and the child, (ii) it is not safe to wait or waiting will surely result in the death of both, (iii) there is no way to save the child, and (iv) an operation that can save the mother's life will result in the

child's death."

[Jerry Filteau is NCR Washington correspondent.]

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Dec. 22: **Catholic Health Association backs Phoenix hospital** [2]

Dec. 21: **Phoenix bishop removes hospital's Catholic status** [3]

Dec. 16 and 17: **Phoenix bishop gives ultimatum to hospital** [4].

For Olmsted's full statement, **click here** [5] for a PDF file.

For a copy of Olmsted's official decree removing the hospital's Catholic status, **click here** [6].

For a copy of the bishop's letter of demands to the hospital, **click here** [7] for a PDF file.

For the hospital's full statement, **click here** [8] for a PDF file.

For the hospital's answers to frequently asked questions about Bishop Olmsted's announcement, **click here** [9] for a PDF file.

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