UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

TONN AND BLANK CONSTRUCTION, LLC,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; HILDA SOLIS, in her official capacity as Secretary of the U.S. Department of Labor; TIMOTHY GEITHNER, in his official capacity as Secretary of the U.S. Department of Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF TREASURY,

Defendants.

Case No. 1:12CV325 JD

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

1. This lawsuit is about one of America's most cherished freedoms: the freedom to practice one's religion without government interference. It is not about whether people have a right to abortion-inducing drugs, sterilization, and contraception. Those services are, and will continue to be, freely available in the United States, and nothing prevents the Government itself from making them more widely available. But the right to such services does not authorize the Government to force Tonn and Blank Construction, LLC ("T&B") to violate its own conscience by making it provide, pay for, and/or facilitate those services to others, contrary to its sincerely held religious beliefs. American history and tradition, embodied in the First Amendment to the

United States Constitution and the Religious Freedom Restoration Act ("RFRA"), protect T&B from such overbearing and oppressive governmental action. T&B therefore seeks relief in this Court to protect this most fundamental of American rights.

2. This country was founded by those searching for religious liberty and freedom from religious persecution. And since the founding of this country, entities such as T&B have been free to exercise their religious faith through the conduct of their business affairs. As a result, T&B and other such entities have played a vital role in securing and protecting the civil liberties of all citizens.

3. The U.S. Constitution and federal statutes protect entities from governmental interference with their religious views—particularly minority religious views. The founders recognized, through their own experiences, that the mixture of government and religion is destructive to both institutions and divisive to the social fabric upon which the country depends. The Constitution and federal law thus stand as bulwarks against oppressive government actions, even if supported by a majority of citizens. This "wall of separation between church and state" is critical to the preservation of religious freedom. As the Supreme Court has recognized, "[t]he structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority." Through this lawsuit, T&B does not seek to impose its religious beliefs on others. It simply asks that the Government not impose its values and policies on T&B, in direct violation of its religious beliefs.

4. Under current federal law described below (the "U.S. Government Mandate" or "Mandate"), many Catholic organizations must provide, or facilitate the provision of, abortifacients, sterilization, and contraceptive services (hereinafter, "objectionable services") to

their employees in violation of the centuries' old teachings of the Catholic Church. Ignoring broader religious exemptions from other federal laws, the Government has crafted a narrow, discretionary exemption to this U.S. Government Mandate for "religious employers." Group health plans are eligible for the exemption only if they are "established or maintained by religious employers," and only if the "religious employer" can convince the Government that it satisfies four criteria:

(a) "The inculcation of religious values is the purpose of the organization";

(b) "The organization primarily employs persons who share the religious tenets of the organization";

(c) "The organization serves primarily persons who share the religious tenets of the organization"; and

(d) "The organization is a **nonprofit** organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended."

Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621, 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(1)(iv)(A)-(B)) (emphasis added).

5. The U.S. Government Mandate, including the narrow exemption for certain "religious employers," is irreconcilable with the First Amendment, RFRA, and other laws. The Government has not shown any compelling need to force T&B to provide, pay for, and/or facilitate access to objectionable services, or for requiring T&B to submit to an intrusive governmental examination of its religious mission. The Government also has not shown that the U.S. Government Mandate is narrowly tailored to advancing its interest in increased access to these services, since these services are already widely available and nothing prevents the Government from making them even more widely available by providing or paying for them

directly through a duly enacted law. The Government, therefore, cannot justify its decision to force T&B to provide, pay for, and/or facilitate access to these objectionable services in violation of its sincerely held religious beliefs.

6. Despite repeated requests from Church and business leaders, the Government has insisted that it will not change the core principle of the U.S. Government Mandate—that T&B must subsidize and/or facilitate providing its employees free access to drugs and services that are contrary to T&B's religious beliefs. If the Government can force T&B to violate its beliefs in such a manner, there is no apparent limit to the Government's power. Such an oppression of religious freedom violates T&B's clearly established constitutional and statutory rights.

7. The First Amendment also prohibits the Government from becoming excessively entangled in religious affairs and from interfering with a religious institution's internal decisions concerning the organization's religious structure, ministers, or doctrine. The U.S. Government Mandate tramples all of these rights.

BACKGROUND

I. PRELIMINARY MATTERS

8. Tonn and Blank Construction, LLC, is an Indiana limited liability corporation with its principal place of business in Michigan City, Indiana.

9. Defendant Kathleen Sebelius is the Secretary of the U.S. Department of Health and Human Services. She is sued in her official capacity.

10. Defendant Hilda Solis is the Secretary of the U.S. Department of Labor. She is sued in her official capacity.

11. Defendant Timothy Geithner is the Secretary of the U.S. Department of Treasury. He is sued in his official capacity.

12. Defendant U.S. Department of Health and Human Services ("HHS") is an executive agency of the United States within the meaning of RFRA and the Administrative Procedure Act ("APA").

13. Defendant U.S. Department of Labor is an executive agency of the United States within the meaning of RFRA and the APA.

14. Defendant U.S. Department of Treasury is an executive agency of the United States within the meaning of RFRA and the APA.

15. This is an action for declaratory and injunctive relief under 5 U.S.C. § 702; 28 U.S.C. §§ 2201, 2202; and 42 U.S.C. § 2000bb-1(c).

16. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(4), and 1346(a)(2).

17. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1).

A. Tonn and Blank Construction, LLC ("T&B")

18. Tonn and Blank Construction, LLC ("T&B")—an Indiana limited liability company, headquartered at 1623 Greenwood Avenue, Michigan City, Indiana—is a building construction company serving the entire Midwest region. It is wholly owned by Franciscan Holding Corporation and Franciscan Alliance, Inc. ("Franciscan"), the latter a non-profit health system with a total of thirteen hospitals in Indiana and Illinois.

19. T&B manages all aspects of construction services, from pre-planning to complete, design-build project delivery for its many customers.

20. As required by Art. I § 1.03 "Special Limitations" of the *Amended and Restated Operating Agreement of Tonn and Blank Construction, LLC* ("T&B Operating Agreement"),

> For all services to be provided by [T&B], [T&B] agrees to abide by and adhere to the Mission and Franciscan Values of Franciscan Alliance and the *Ethical and Religious Directives for Catholic Health Care Services* as promulgated by the United States Conference of Catholic Bishops ["USCCB"] of the Roman Catholic Church . . . .

See Exhibit A (attached hereto).

21. The Franciscan Values of Franciscan Alliance are as follows:

> *Respect for life*: The gift of life is so valued that each person is cared for with such joy, respect, dignity, fairness, and compassion that he or she is consciously aware of being loved;
>
> *Fidelity to [Franciscan's] mission*: Loyalty to and pride in the health care facility are exemplified by members of the health care family through their joy and respect in empathetically ministering to patients, visitors and co-workers;
>
> *Compassionate concern*: In openness and concern for the welfare of the patients, especially the aged, the poor and the disabled, the staff works with select associations and organizations to provide a continuum of care commensurate with the individual's needs;
>
> *Joyful service*: The witness of Franciscan presence throughout the institution encompasses, but is not limited to, joyful availability, compassionate, respectful care and dynamic stewardship in the service of the Church; and
>
> *Christian stewardship*: Christian stewardship is evidenced by just and fair allocation of human, spiritual, physical and financial resources in a manner respectful of the individual, responsive to the needs of society, and consistent with Church teachings.

See Franciscan Mission & Ministry, *available at* http://www.franciscanalliance.org/about/Pages/mission-and-ministry.aspx. These Franciscan Values are in keeping with the religious beliefs of the Roman Catholic Church.

22. The *Ethical and Religious Directives for Catholic Health Care Service* specifically provides guidance from the USCCB regarding the fundamentals of Catholic medical-moral teaching, with a specific emphasis on respect for life. *See* Exhibit B (attached hereto).

23. As required by Art. IV § 4.01(b), (c) of the T&B Operating Agreement (*see* Exhibit A):

> (b) [Franciscan] Net Profits and Losses generated by [T&B] shall be allocated ninety-five percent (95%) to [Franciscan] and five percent (5%) Franciscan Holding Corporation;
>
> (c) Non-[Franciscan] Net Profits and Losses generated by [T&B] shall be allocated ninety-five percent (95%) to Franciscan Holding Corporation and five percent (5%) to [Franciscan].

Franciscan uses those profits to help fund its medical care services to the poor and uninsured, thus, the work of T&B indirectly benefits those in need.

24. T&B also adds value to Franciscan by serving its construction, repair, and consulting needs. For example, when Franciscan plans construction projects, T&B conducts building assessments and facilitates Franciscan's selection of developers and architects. When Franciscan needs facility repairs, T&B provides quick, cost-effective repair services to minimize the amount of time that Franciscan's operations are in limbo.

25. Upon affiliation with Franciscan in 1998, T&B immediately demonstrated and practiced its commitment to the Catholic faith and aforementioned Franciscan Values by requiring that its employees attend Franciscan's new employee orientation where they were educated about the Franciscan Values.

26. Six of the seven current members of T&B's Board of Directors, two of which are also executives for T&B, have participated in Franciscan's Pilgrimage program, which involves traveling to Rome and Assisi, Italy in order to further educate them in the tradition of the Franciscan Values. One additional executive has also participated in that Pilgrimage.

27. T&B also requires its six key executives to attend Franciscan's annual leadership conference where they are further educated in the Franciscan Values.

28. T&B's chief executive officer is a member of Franciscan's Operating Committee and participates in capital allocation meetings. T&B's Vice President of Finance regularly participates in Franciscan's chief executive officer's ("CFO") meetings and conference calls, along with Franciscan's four regional CFO's.

29. T&B has been placed by the Sisters of St. Francis of Perpetual Adoration under the patronage of St. Joseph the Worker, who protects and watches over its business operations. T&B's corporate office displays a five-foot statue of St. Joseph, in addition to other religious symbols that reflect its Catholic faith.

30. T&B donates the supervision of labor and management services to the Diocese of Gary, Indiana, and to the Archdiocese of Indianapolis, Indiana, in addition to many, many other similarly religious organizations.

31. T&B declines construction projects that are not in keeping with its commitment to the Catholic faith and the Franciscan Values.

32. Sister Jane Marie Klein, O.S.F., and Kevin Leahy, President of Franciscan, have sat on the Board of Directors for T&B since its affiliation with Franciscan in 1998. Several other Sisters have sat on the Board, and Sister Mary Francis, O.S.F. now sits as an emeritus member of T&B's Board. T&B's two corporate members, Sisters of St. Francis Health Services, Inc. and Franciscan Holding Corporation, appoint T&B's Board Members, which include other Catholic professionals. T&B Operating Agreement (Ex. A) at Art. VI § 6.01(a); *Id.* at 5 ("Definitions").

33. Consistent with Church teachings on social justice, T&B makes health benefits available to its employees. Approximately sixty (60) of T&B's employees participate in the T&B health care plan.

34. T&B has concluded that in order to abide by and adhere to the aforementioned sincerely-held religious beliefs detailed in paragraphs 20-22, T&B cannot participate in, pay for, facilitate, or otherwise support objectionable services such as contraceptives, abortion-inducing drugs, sterilization, and related counseling services through the health care plan it offers to its employees.

35. T&B's health benefits plan (hereinafter, the "plan") is fully insured by UnitedHealthcare Insurance Company ("United"), and its plan year begins on May 1st.

36. T&B's plan does not qualify under the Affordable Care Act as a "grandfathered" plan. 26 C.F.R. § 54.9815-1251T(a)(2)(i).

37. T&B—a for-profit entity—does not satisfy the definition of a religious employer because "the purpose of the organization" is not "[t]he inculcation of religious values"; (2) T&B may not "primarily employ[] persons who share the religious tenets of the organization"; (3) T&B may not "serve primarily persons who share the religious tenets of the organization"; and (4) T&B is not "a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46,626 (codified at 45 C.F.R. § 147.130(a)(1)(iv)(A)-(B)).

38. T&B cannot qualify for the temporary enforcement safe harbor (described *infra*) because, among other reasons, it is a for-profit entity. *See* Ctr. for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor, at 3-4 (Feb. 10, 2012), *available at* cciio.cms.gov/ resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf.

39. T&B discovered in early August 2012 that it has been unwittingly providing coverage to its employees for the objectionable services. T&B promptly thereafter reached out

to United to ask either (1) for an amendment to its current plan to exclude the objectionable services, or (2) to replace its current plan with a new plan that excludes the objectionable services. On September 4, 2012, United informed T&B that it could not accommodate either request unless it can qualify for the religious employer exemption, which is a nonviable option given T&B's status as a for-profit employer.

40. Accordingly—because (1) August 1, 2012 has passed, (2) T&B is not grandfathered, (3) T&B does not satisfy the definition of a religious employer, and (4) T&B does not qualify for the safe harbor—T&B is immediately impacted by the Mandate's requirement to provide the objectionable services in violation of its sincerely-held religious belief, even if it amends or replaces its current plan.

II. Statutory and regulatory background

A. Statutory Background

41. In March 2010, Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 119 (2010) (collectively, the "Affordable Care Act" or the "Act").

42. The Affordable Care Act established many new requirements for "group health plan[s]," broadly defined as "employee welfare benefit plan[s]" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provide[] medical care . . . to employees or its dependents." 42 U.S.C. § 300gg-91(a)(1).

43. The Affordable Care Act requires an employer's group health plan to cover certain women's "preventive care," leaving the definition of that term up to an agency within HHS. Specifically, it provided that "[a] group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum[,] provide coverage for and

shall not impose any cost sharing requirements for—(4) with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph."

Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C. § 300gg-13(a)(4)).

44. Because the Act prohibits "cost sharing requirements," the health plan must pay for the full costs of these "preventive care" services without any deductible or co-payment.

45. Some provisions of the Affordable Care Act exempt individuals with religious objections. For example, individuals are exempt from the requirement to obtain health insurance if they are members of a "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds or are members of a "health care sharing ministry." 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii) (conscientious objectors); 5000A(d)(2)(b)(ii) ("health care sharing ministry").

46. Not every employer is required to immediately comply with the U.S. Government Mandate. "Grandfathered" health plans are exempt from the "preventive care" U.S. Government Mandate. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,276, 41,731 (July 19, 2010) ("Interim Final Rules"); 42 U.S.C. § 18011. Such plans cannot undergo substantial change after March 23, 2010. *Id.* HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

47. Violations of the Affordable Care Act can subject an employer and an insurer to substantial monetary penalties.

48. Under the Internal Revenue Code, employers who fail to provide all coverage required by the U.S. Government Mandate will be exposed to significant annual fines of $2,000 per full-time employee after the first thirty (30) employees. *See* 26 U.S.C. § 4980H(a), (c)(1).

49. Additionally, under the Internal Revenue Code, group health plans that fail to provide certain required coverage may be subject to an assessment of $100 a day per individual. *See id.* § 4980D(b); *see also* Jennifer Staman & Jon Shimabukuro, Cong. Research Serv., RL 7-5700, Enforcement of the Preventative Health Care Services Requirements of the Patient Protection and Affordable Care Act (2012) (asserting that this assessment applies to employers who violate the "preventive care" provision of the Affordable Care Act).

50. Under the Public Health Service Act, the Secretary of HHS may impose a monetary penalty of $100 a day per individual where an insurer fails to provide the coverage required by the U.S. Government Mandate. *See* 42 U.S.C. § 300gg-22(b)(2)(C)(i); *see also* Cong. Research Serv., RL 7-5700 (asserting that this penalty applies to insurers who violate the "preventive care" provision of the Affordable Care Act).

51. ERISA may provide for additional fines. Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700. Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the U.S. Government Mandate, as incorporated by ERISA. *See* 29 U.S.C. § 1132(b)(3); *see also* Cong. Research Serv., RL 7-5700 (asserting that these fines can apply to employers and insurers who violate the "preventive care" provision of the Affordable Care Act).

52. The Affordable Care Act limits the Government's regulatory authority. The Act and an accompanying Executive Order reflect a clear intent to exclude abortion-related services

from the Act and regulations implementing it. The Act itself provides that "nothing in this title (or any amendment made by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." 42 U.S.C. § 18023(b)(1)(A)(i). The ability "[to] determine whether or not the plan provides coverage of" abortifacients is expressly reserved for "the issuer of a qualified health plan," not the Government. *Id.* § 18023(b)(1)(A)(ii).

53. Likewise, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004—states that "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V., § 507(d)(1), 125 Stat 786, 1111 (2011).

54. The intent to exclude abortions was instrumental in the Affordable Care Act's passage, as cemented by an executive order without which the Act would not have passed. Indeed, the Act's legislative history could not show a clearer congressional intent to prohibit the executive branch from requiring group health plans to provide abortion-related services. For example, the House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak prohibiting the use of federal funds for abortion services. *See* H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, lacked that restriction. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009). To avoid filibuster in the Senate, congressional proponents of the Act engaged in a procedure known as "budget

reconciliation" that required the House to adopt the Senate version of the bill largely in its entirety. Congressman Stupak and other pro-life House members indicated that they would refuse to vote for the Senate version because it failed adequately to prohibit federal funding of abortion. To appease these Representatives, President Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. *See* Exec. Order No. 13,535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

55. The Act was, therefore, passed based on the central premise that all agencies would uphold and follow "longstanding Federal laws to protect conscience" and to prohibit federal funding of abortion. *Id.*

56. That executive order was consistent with a 2009 speech that President Obama gave at the University of Notre Dame, in which he indicated that his Administration would honor the conscience of those who disagree with abortion, and draft sensible conscience clauses.

B. Regulatory Background – Defining "Preventive Care" and the Narrow Exemption

57. Less than two years later, Defendants promulgated the U.S. Government Mandate, subverting the Act's clear purpose to protect the rights of conscience. Over that time, they issued interim rules and press releases—none of which followed notice-and-comment rulemaking—that required the federal funding of abortifacients, sterilization services, contraceptives, and related counseling services and commandeered religious organizations to facilitate those services as well.

58. Within four months of the Act's passage, on July 19, 2010, Defendants issued its initial interim final rules concerning section 300gg-13(a)(4)'s requirement that group health plans provide coverage for women's "preventive care." Interim Final Rules, 75 Fed. Reg. at 41,726.

59. Defendants dispensed with notice-and-comment rulemaking for these rules.

60. Even though federal law had never required coverage of abortifacients, sterilization, or contraceptives, Defendants claimed both that the APA did not apply to the relevant provisions of the Affordable Care Act and that "it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed." *Id.* at 41,730.

61. The interim final rules did not resolve what services constitute "preventive care"; instead, they merely track the Affordable Care Act's statutory language. They provide that "a group health plan . . . must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services: . . . (iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration." Interim Final Rules, 75 Fed. Reg. at 41,759 (codified at 45 C.F.R. § 147.130(a)(1)(iv)).

62. The interim final rules did not identify the women's "preventive care" that Defendants planned to require employer group health plans to cover, nor give any notice as to how it would identify those services. 42 U.S.C. § 300gg-13(a)(4). Instead, Defendants noted that "[t]he Department of HHS [was] developing these guidelines and expects to issue them no later than August 1, 2011." Interim Final Rules, 75 Fed. Reg. at 41,731.

63. Defendants permitted concerned entities to provide written comments about the interim final rules. *See id.* at 41,726. But, as Defendants have conceded, they did not comply with the notice-and-comment requirements of the APA. *Id.* at 41,730.

64. In response, several groups engaged in a lobbying effort to persuade Defendants to include various contraceptives and abortion-inducing drugs in the "preventive care" requirements for group health plans. *See, e.g.*, http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-supports-initial-white-house-regulations-preventive-care-highlights-need-new-33140.htm.

65. Other commenters noted that "preventive care" could not reasonably be interpreted to include such practices. These groups explained that pregnancy was not a disease that needed to be "prevented," and that a contrary view would intrude on the sincerely held beliefs of many religiously affiliated organizations by requiring them to pay for services that violate its religious beliefs. *See, e.g.*, Comments of United States Conference of Catholic Bishops, at 1-2 (Sept. 17, 2010), *available at* http://old.usccb.org/ogc/preventive.pdf.

66. On August 1, 2011, HHS issued the "preventive care" services that group health plans would be required to cover. *See* HHS, *Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost*, *available at* http://www.hhs.gov/news/press/2011pres/08/20110801b.html. Again acting without notice-and-comment rulemaking, HHS announced these guidelines through a press release rather than enactments in the Code of Federal Regulations or statements in the Federal Register. The press release made clear that the guidelines were developed by a non-governmental "independent" organization, the Institute of Medicine ("IOM"). *See id.* In developing the guidelines, IOM invited certain groups to make presentations on preventive care. On information and belief, no groups that oppose government-mandated coverage of contraception, abortifacients, and related education and counseling were among the invited presenters. Comm. on Preventive Servs. for Women, Inst. of Med., Clinical

Preventive Services for Women app. B at 217-21 (2011), http://www.nap.edu/openbook.php?record_id=13181&page=R1.

67. The IOM's own report, in turn, included a dissent that suggested that the IOM's recommendations were made on an unduly short time frame required by politicians without the appropriate transparency for all concerned persons.

68. The IOM also did not adhere to the rules governing federal agencies, including the notice-and-comment rulemaking process.

69. In stark contrast with the central premise necessary for the Affordable Care Act's passage and President Obama's promise to protect religious liberty, HHS's new guidelines required insurers and group health plans to cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *See* Health Res. Servs. Admin., Women's Preventive Services: Required Health Plan Coverage Guidelines, *available at* http://www.hrsa.gov/womensguidelines/.

70. FDA-approved contraceptives that qualify under these guidelines include drugs that induce abortions. For example, the FDA has approved "emergency contraceptives" such as the morning-after pill (otherwise known as Plan B), which can operate by preventing a fertilized embryo from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or Ella), which likewise can induce abortions of living embryos.

71. A few days later, on August 3, 2011, Defendants issued amendments to the interim final rules that they had previously enacted in July 2010. *See* Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011).

72. The Government issued the amendments again without notice-and-comment rulemaking on the same grounds (namely that it would be "impracticable and contrary to the public interest" to delay putting the rules into effect) that they had provided for bypassing the APA with the original rules. *See id.* at 46,624.

73. When announcing the amended regulations, Defendants ignored the view that "preventive care" should exclude abortion-inducing drugs, sterilization, or contraceptives that do not prevent disease. Instead, they noted only that "commenters [had] asserted that requiring group health plans sponsored by religious employers to cover contraceptive services that its faith deems contrary to its religious tenets would impinge upon its religious freedom." *Id.* at 46,623.

74. Defendants sought "to provide for a religious accommodation that respect[ed]" only "the unique relationship between a house of worship and its employees in ministerial positions." *Id.*

75. Specifically, the regulatory "religious employer" exemption ignored definitions of religious employers already existing in federal law, and, instead, is available only to those employers whose purpose is to inculcate religious values, and who employ and serve primarily individuals with the same religious tenets. It provides in full:

> (A) In developing the binding health plan coverage guidelines specified in this paragraph (a)(1)(iv), the Health Resources and Services Administration shall be informed by evidence and may establish exemptions from such guidelines with respect to group health plans established or maintained by religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers with respect to any requirement to cover contraceptive services under such guidelines.
> (B) For purposes of this subsection, a "religious employer" is an organization that meets all of the following criteria:
> (1) The inculcation of religious values is the purpose of the organization.

> (2) The organization primarily employs persons who share the religious tenets of the organization.
> (3) The organization serves primarily persons who share the religious tenets of the organization.
> (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

Id. at 46,626 (codified at 45 C.F.R. § 147.130(a)(1)(iv)(A)-(B)).

76. The regulation delegates to the Government the job of issuing exemptions, on an *ad hoc* basis, based on a determination of whether an organization is sufficiently "religious" to qualify for the exemption.

77. Defendants ignored all other religiously-affiliated employers and insurance issuers, excluding from the narrow exemption all religious organizations that view its missions as providing charitable, educational, and employment opportunities to all those who request it, regardless of the requesters' religious faith.

78. When issuing this interim final rule, Defendants did not explain why they issued such a narrow religious exemption. Nor did Defendants explain why they refused to incorporate other "longstanding Federal laws to protect conscience" that President Obama's executive order previously had promised to respect. *See* Exec. Order No. 13535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

79. ERISA, for example, has long excluded "church plans" from its requirements, more broadly defined to cover civil law corporations, including organizations like many of the T&B, that share common religious bonds and convictions with a church. *See* 29 U.S.C. §§ 1002(33)(C)(iv), 1003.

80. Nor did Defendants consider whether they had a compelling interest to require religiously affiliated employers' health plans to include services that violate the employers'

religious beliefs, or whether Defendants could achieve its views of sound policy in a more religiously accommodating manner.

81. Suggesting that they were open to good-faith discussion, Defendants once again permitted parties to provide comments to the amended rules. Numerous organizations expressed the same concerns that they had before, noting that abortifacients, sterilization, and contraceptive services could not be viewed as "preventive care." They also explained that the religious exemption was "narrower than any conscience clause ever enacted in federal law, and narrower than the vast majority of religious exemptions from state contraceptive mandates." Comments of United States Conference of Catholic Bishops, at 1-2 (Aug. 31, 2011), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf.

82. On October 10, 2011, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. She told the pro-choice audience that "we are in a war," apparently with opponents of either federal funding of abortion-related services or federal mandates requiring coverage for abortion-related services in health care plans.

83. Three months later, allegedly "[a]fter evaluating [the new] comments" to the interim final rules, Defendants gave its response. They did not request further discussion or make attempts at compromise. Nor did they explain the basis for its decision. Instead, Defendant Sebelius issued a short, Friday-afternoon press release. *See* HHS, A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html.

84. The press release announced a one-year "safe harbor" from enforcement. With little analysis or reasoning, HHS opted to keep the exemption unchanged, but indicated that

"[n]onprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in its insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law." *Id.* The safe harbor also applies to student health plans. 77 Fed. Reg. 16,453, 16,457 (Mar. 21, 2012).

85. Taken together, these various rules and press releases amount to a U.S. Government Mandate that requires most religiously affiliated organizations to pay, sponsor, and facilitate abortifacients, sterilization services, contraceptives, and related counseling services through its health plans. As noted by Cardinal Timothy Dolan, the "safe harbor" effectively gave objecting religious institutions "a year to figure out how to violate [its] consciences."

C. The White House Has Refused To Expand The Exemption

86. On February 10, 2012, given the continued public outcry to the U.S. Government Mandate and its exceedingly narrow conscience protections, the White House held a press conference and issued another press release about the U.S. Government Mandate, announcing that it had come up with a "solution" to the religious objections based on First Amendment protections for religious freedom.

87. According to the White House, Defendants planned to issue regulations at some unspecified date prior to August 1, 2013, to exempt religious organizations that have religious objections to providing abortifacients, sterilization, or contraception services from *directly* paying for those services under the terms of its health plans.

88. When such religious organizations provide health plans, the "insurance company will be required to directly offer . . . contraceptive care free of charge." White House, *Fact Sheet: Women's Preventive Services and Religious Institutions* (Feb. 10, 2012), *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html.

89. Despite continued objections that this "accommodation" did nothing of substance to protect the right of conscience, when asked if there would be further room for compromise, White House Chief of Staff Jacob Lew responded: "No, this is our plan." David Eldridge & Cheryl Wetzstein, *White House says contraception compromise will stand*, THE WASHINGTON TIMES, Feb. 12, 2012, *available at* http://www.washingtontimes.com/news/2012/feb/12/white-house-birth-control-compromise-will-stand/print/.

90. Defendants have since "finalize[d], without change," the interim final rules containing the religious employer exemption, 77 Fed. Reg. at 8729, and issued guidelines regarding the previously announced "temporary enforcement safe harbor" for "non-exempted, non-profit religious organizations with religious objections to such coverage." *Id.* at 8725; *see* Ctr for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Feb. 10, 2012), *available at* http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf.

91. The U.S. Government Mandate is therefore the current, operative law.

92. On March 16, 2012, the Government announced an Advance Notice of Proposed Rulemaking ("ANPRM"), seeking comment on various ways to structure the proposed accommodation. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501 (Mar. 21, 2012). The Government has indicated that a similar arrangement will apply to student health plans. *Id.* at 16,457.

93. The ANPRM launches a 90-day comment period, to be followed by several other steps in the rulemaking process; it offers no clear end date other than repeating the assurance that an accommodation will be in place by August 1, 2013. *See id.*

94. The ANPRM's recurring theme is that the Government has not found a solution to the problems it created when it promulgated its U.S. Government Mandate.

95. In fact, the ANPRM contains little more than a recitation of proposals, hypotheticals, and "possible approaches." It offers almost no analysis of the relative merits of the various proposals. It is, in essence, an exercise in public brainstorming.

96. This "regulate first, think later" approach is not an acceptable method of rulemaking when the Government is regulating in a way that may require monumental changes of the regulated entities.

97. The ANPRM does not alter existing law. It merely states that it may do so at some point in the future. But a promise to change the law, whether issued by the White House or in the form of an ANPRM, does not, in fact, change the law.

98. Nor does the ANPRM alter the scope of the narrow religious employer exemption.

99. In promulgating the U.S. Government Mandate, the Government rationalized that the time-sensitive nature of the issue justified dispensing with notice and comment. This justification is inconsistent with the Government's subsequent delays in implementing the U.S. Government Mandate.

100. The ANPRM does nothing of substance to avoid involving T&B in the subsidy, provision and/or facilitation of abortifacients, sterilization services, contraceptives, and related counseling services or otherwise eliminate the constitutional infirmity of the U.S. Government Mandate.

D. The Temporary Enforcement Safe Harbor is Expanded

101. In order to meet the temporary enforcement safe harbor the government implemented in early 2012, entities must comply with four requirements:

1. The organization is organized and operates as a non-profit entity.

2. From February 10, 2012 onward, contraceptive coverage has not been provided at any point by the group health plan established or maintained by the organization, consistent with any applicable State law, because of the religious beliefs of the organization.

3. [T]he group health plan established or maintained by the organization . . . must provide to participants . . . notice . . . which states that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.

4. The organization self-certifies that it satisfies criteria 1-3 above, and documents its self-certification in accordance with the procedures detailed herein.

Ctr. for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Feb. 10, 2012), *available at* cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf.

102. On August 15, 2012, the Center for Consumer Information and Insurance Oversight (CCIIO) and the Centers for Medicare and Medicaid Services (CMS) issued additional guidance expanding the temporary enforcement safe harbor. The Government clarified that a group health plan that otherwise would have qualified for the safe harbor will get the benefit of the safe harbor if it "took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action." The bulletin offers no guidance as to what actions will qualify as "some action." *See* Ctr. for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Aug. 15, 2012), *available at* cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf.

103. Despite expanding its ad hoc "safe harbor" from enforcement, the Government's retroactive revision of the requirements to qualify for the safe harbor did nothing for religious

entities with plan years starting on August 1, 2012, because it did not remove the requirement that "notice must be in any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of the first plan year that is on or after August 1, 2012." *Id.* Religious entities with plan years beginning on August 1, 2012 cannot retroactively comply with the newly expanded safe harbor by sending out revised notices to their plan participants.

104. The newly expanded safe harbor scheme creates yet another hole in the Government's enforcement of the U.S. Government Mandate, this time disfavoring religious entities who have the misfortune of having plan years that started between August 1, 2012, when the original safe harbor provision went into effect, and August 15, 2012, when the newly expanded safe harbor guidance was issued. The Government cannot reasonably justify this arbitrary system of enforcement of and exemptions from the U.S. Government Mandate

E. The U.S. Government Mandate Has Harmed And Continues To Harm T&B

105. The U.S. Government Mandate is right now causing serious, ongoing hardship to T&B that merits judicial review.

106. T&B remains committed to Catholicism's core values. *See supra* at I.A.

107. But T&B's religious liberties have no shield of protection from the gross violation inflicted upon them by the U.S. Government Mandate. T&B's health plan is not grandfathered and T&B is a for-profit entity, thus it does not satisfy the definition of a religious employer and does not qualify for the safe harbor.

108. T&B wants to amend or replace its current plan to exclude the objectionable services, but cannot do so without being forced by the Government to make the Hobson's Choice of either violating its conscience and commitment to the Franciscan Values, or paying crippling fines.

109. Indeed, the Government does not even provide T&B the option to attempt to avoid the U.S. Government Mandate by exiting the health care market. Eliminating its employee group health plan or refusing to provide plans that cover the objectionable services would expose T&B to substantial annual fines. It is no "choice" to leave those employees scrambling for health insurance while subjecting T&B to significant fines for breaking the law. Yet that is what the U.S. Government Mandate requires for T&B to adhere to its religious beliefs.

110. Forcing T&B to choose between violating its religious beliefs or violating the law constitutes a substantial burden on T&B's exercise of religion, which is protected by the Constitution and RFRA.

111. The U.S. Government Mandate thus imposes a present and ongoing hardship on T&B.

III. The U.S. Government Mandate Violates T&B's Religious Beliefs

A. The U.S. Government Mandate Is Not The Least Restrictive Means Of Furthering An Alleged Government Interest

112. The Catholic Church's well-established religious beliefs are articulated in the Catechism of the Catholic Church. One of the central tenets of the Catholic faith is belief in the sanctity of human life and the dignity of all persons. Thus, the Church believes that the "dignity of the human person is rooted in his creation in the image and likeness of God." Catechism of the Catholic Church ¶ 1700.

113. One outgrowth of belief in human life and dignity is the Church's well-established belief that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* ¶ 2270. As a result, the Church believes that abortion is prohibited and that it cannot facilitate the provision of abortifacients. *Id.* ¶¶ 2271-72.

114. Catholic teachings prohibit any action which "render[s] procreation impossible" and, more specifically, regard direct sterilization as "unacceptable." *Id.* ¶¶ 2370, 2399.

115. These Catholic teachings have been reaffirmed as doctrine at various times including on July 25, 1968, when his holiness Pope Paul VI issued his encyclical *Humanae Vitae* (Human Life) and again on March 25, 1995, when his holiness Pope John Paul II issued his encyclical *Evangelium Vitae* (The Gospel of Life).

116. Partially quoting *Humanae Vitae*, the Catechism states that "'every action which, whether in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible' is intrinsically evil." Catechism of the Catholic Church ¶ 2370.

117. Catholic teachings also prohibit the use of contraceptives to impede conception. As articulated by the Catechism of the Catholic Church, the sexual union of spouses "achieves the twofold end of marriage: the good of the spouses themselves and the transmission of life. These two meanings or values of marriage cannot be separated without altering the couple's spiritual life and compromising the goods of marriage and the future of the family." *Id.* ¶ 2363. Consequently, artificial contraception and sterilization cannot be used for the purpose of impeding procreation. *Id.* ¶ 2370.

118. The Church, however, does not oppose the use of non-abortifacient contraceptives when a physician prescribes the medication not for the purpose of acting as a contraceptive, but rather with the intent of remedying another medical condition.

119. T&B wants to make its plan consistent with Church teachings on objectionable services such as abortifacients and sterilization.

120. Consistent with the Church's teachings, T&B wants its plan to cover non-abortifacient drugs commonly used as contraceptives, but only when prescribed with the intent of treating another medical condition, not with the intent to prevent pregnancy.

121. T&B cannot, without violating its sincerely held religious beliefs, subsidize, facilitate, and/or sponsor coverage for abortifacients, sterilization services, contraceptives, and related counseling services, which are inconsistent with the teachings of the Catholic Church.

122. The U.S. Government Mandate irreconcilably conflicts with T&B's well-established, sincerely held beliefs that strictly forbid the subsidy, facilitation, and/or sponsorship of abortifacients, sterilization, and contraception that the U.S. Government Mandate forces upon them.

123. All of the required "contraceptive methods" and "sterilization procedures" violate T&B's well-established and sincerely held religious beliefs that prohibit contraception and sterilization to inhibit procreation.

124. The U.S. Government Mandate also seeks to compel T&B to fund "patient education and counseling for all women with reproductive capacity." It therefore compels T&B to pay for, provide, and/or facilitate speech that is contrary to its firmly held religious beliefs.

125. As T&B's plan is fully-insured, even if its insurer were to cover the objectionable services, T&B would be facilitating and indirectly paying for contraception and sterilization in direct conflict with its religious beliefs.

126. Refusal or failure to provide the objectionable services to employees in any amended or new plan will expose T&B to substantial fines. *See* Cong. Research Serv., RL 7-5700 (analyzing some of the available fines).

127. This unprecedented, direct assault on the religious beliefs of T&B and all Catholics is irreconcilable with American law.

128. Since the founding of this country, one of the basic freedoms central to our society and legal system is that individuals and institutions are entitled to freedom of conscience and religious practice. *See, e.g.*, James Madison, *Memorial and Remonstrance Against Religious Assessments*, ¶ 1 (1785).

129. Requiring T&B to provide, subsidize, and/or facilitate objectionable services that violate its beliefs constitutes a substantial burden on T&B's free exercise of religion.

130. The Government has no compelling interest in forcing T&B to violate its sincerely held religious beliefs by requiring it to provide, pay for, and/or facilitate access to objectionable services. The Government itself has relieved numerous other employers from this requirement by exempting grandfathered plans and plans of employers it deems to be sufficiently religious. Moreover, these services are widely available in the United States. The U.S. Supreme Court has held that individuals have a constitutional right to use such services.

131. Furthermore, the U.S. Government Mandate is not narrowly tailored to promote a compelling governmental interest. Even assuming the interest was compelling, the Government has numerous alternatives to furthering that interest other than forcing T&B to violate its religious beliefs.

132. For example, the Government could provide or pay for the objectionable services through expansion of its existing network of family planning clinics funded by HHS under Title X or through other programs established by a duly enacted law. Or, at a minimum, it could create a broader exemption for religious employers, such as those found in numerous state laws throughout the country and in other federal laws.

133. The Government therefore cannot possibly demonstrate that requiring T&B to violate its consciences is the least restrictive means of furthering the Government's interest.

134. The U.S. Government Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the charitable construction services that T&B provides. As President Obama acknowledged in his February 10th announcement, religious organizations like T&B do "more good for a community than a government program ever could."

B. The U.S. Government Mandate Is Not A Neutral Law Of General Applicability

135. The U.S. Government Mandate is not a neutral law of general applicability. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling. For example, the U.S. Government Mandate exempts all "grandfathered" plans from its requirements. Moreover, the legislative history indicates that the U.S. Government Mandate was implemented at the behest of individuals and organizations who disagree with certain religious beliefs regarding abortifacients and contraception, and thus it targets religious organizations for disfavored treatment.

136. The Government has also crafted a religious employer exemption to the U.S. Government Mandate that favors certain religions over others. As noted, it applies only to plans sponsored by religious organizations that have, as its "purpose," the "inculcation of religious values"; that "primarily" serve individuals that share those religious tenets; and that "primarily" employ such individuals. 45 C.F.R. § 147.130(a)(1)(iv)(B).

137. The U.S. Government Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose Catholic

teachings and beliefs regarding marriage and family. For example, on October 5, 2011, after Defendants announced the interim final rule but before they announced the final rule, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. Defendant Sebelius has long been a staunch supporter of abortion rights and a vocal critic of Catholic teachings and beliefs regarding abortifacients and contraception. NARAL Pro-Choice America is a pro-abortion organization that likewise opposes many Catholic teachings. At that fundraiser, Defendant Sebelius criticized individuals and entities whose beliefs differed from those held by her and the other attendees of the NARAL Pro-Choice America fundraiser, stating: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much."

138. Consequently, on information and belief, T&B alleges that the purpose of the U.S. Government Mandate, including the narrow exemption, is to discriminate against religious entities that oppose contraception, sterilization, and abortifacients.

139. An actual, justiciable controversy exists between T&B and Defendants. Absent a declaration or injunction resolving this controversy and the validity of the U.S. Government Mandate, T&B faces the impossible choice between paying crippling fines and paying for prescriptions and procedures in violation of the Catholic Church's moral teaching, or discontinuing its health plans in violation of the Catholic Church's social teaching.

IV. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

140. T&B repeats and realleges each of the foregoing allegations in this Complaint.

141. RFRA prohibits the Government from substantially burdening an entity's exercise of religion, even if the burden results from a rule of general applicability, unless the Government

demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

142. RFRA protects entities as well as individuals from Government-imposed substantial burdens on religious exercise.

143. RFRA applies to all federal law and the implementation of that law by any branch, department, agency, instrumentality, or official of the United States.

144. Abortifacients, sterilization, and contraception violate the Franciscan Values and *Ethical and Religious Directives for Catholic Health Care Services* to which T&B must adhere according to the T&B Operating Agreement.

145. T&B's religious beliefs preclude it from offering health care plans to its employees that include or facilitate coverage for abortifacients, sterilization, and contraception, or related education and counseling about those practices.

146. T&B wants to exercise its religious beliefs by not offering a health care plan to its employees that includes or facilitates coverage for abortifacients, sterilization, and contraception, or related education and counseling about those practices.

147. The U.S. Government Mandate requires T&B to provide, pay for, and/or facilitate practices and speech that are contrary to its religious beliefs concerning abortifacients, sterilization, and contraception.

148. The U.S. Government Mandate exposes T&B to substantial monetary fines if it offers an employee health care plan that does not include or facilitate coverage for abortifacients, sterilization, contraception, and related education and counseling about those practices.

149. T&B's plan is not grandfathered.

150. T&B as a for-profit entity is not eligible for the religious employer exemption.

151. T&B as a for-profit entity is not eligible for the safe harbor.

152. The U.S. Government Mandate substantially burdens T&B's exercise of religion.

153. The Government has no compelling governmental interest to require T&B to comply with the U.S. Government Mandate.

154. Requiring T&B to comply with the U.S. Government Mandate is not the least restrictive means of furthering a compelling governmental interest.

155. By enacting and enforcing the U.S. Government Mandate against T&B, the Government has violated RFRA.

156. T&B has no adequate remedy at law.

157. The U.S. Government Mandate and its current enforcement impose an immediate and ongoing harm on T&B that warrants relief.

COUNT II
Substantial Burden on Religious Exercise in Violation of the Free Exercise Clause of the First Amendment

158. T&B repeats and realleges each of the foregoing allegations in this Complaint.

159. The Free Exercise Clause of the First Amendment prohibits the Government from substantially burdening an entity's exercise of religion.

160. The Free Exercise Clause protects entities as well as individuals from Government-imposed burdens on religious exercise.

161. Abortifacients, sterilization, and contraception violate the Franciscan Values and *Ethical and Religious Directives for Catholic Health Care Services* to which T&B must adhere according to the T&B Operating Agreement.

162. T&B's religious beliefs preclude it from offering health care plans to its employees that include or facilitate coverage for abortifacients, sterilization, and contraception, or related education and counseling about those practices.

163. T&B wants to exercise its religious beliefs by not offering a health care plan to its employees that includes or facilitates coverage for abortifacients, sterilization, and contraception, or related education and counseling about those practices.

164. The U.S. Government Mandate requires T&B to provide, pay for, and/or facilitate practices and speech that are contrary to its religious beliefs concerning abortifacients, sterilization, and contraception.

165. The U.S. Government Mandate exposes T&B to substantial monetary fines if it offers an employee health care plan that does not include or facilitate coverage for abortifacients, sterilization, contraception, and related education and counseling about those practices.

166. T&B's plan is not grandfathered.

167. T&B as a for-profit entity is not eligible for the religious employer exemption.

168. T&B as a for-profit entity is not eligible for the safe harbor.

169. The U.S. Government Mandate therefore substantially burdens T&B's exercise of religion.

170. The U.S. Government Mandate is not a neutral law of general applicability, because it is riddled with exemptions. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate coverage for abortifacients, sterilization, contraception, and related education and counseling.

171. The U.S. Government Mandate is not a neutral law of general applicability, because it discriminates against certain religious viewpoints and targets certain religious organizations for disfavored treatment. Defendants enacted the U.S. Government Mandate despite being aware of the substantial burden it would place on T&B's exercise of religion.

172. The U.S. Government Mandate implicates constitutional rights in addition to the right to free exercise of religion, including, for example, the rights to free speech and to freedom from excessive government entanglement with religion.

173. The U.S. Government Mandate offers discretionary exemptions for certain religious entities and types of entities, but not for others.

174. In its practical effect, the U.S. Government Mandate targets and predominantly burdens religiously motivated conduct.

175. The Government issued the U.S. Government Mandate to suppress the religious exercise of T&B and other entities with analogous religious beliefs.

176. The U.S. Government Mandate is not a neutral law of general applicability, and so is subject to strict scrutiny.

177. The U.S. Government Mandate infringes not simply the Free Exercise Clause, but also the Free Speech Clause, and so is subject to strict scrutiny.

178. The Government was aware of the substantial burden the U.S. Government Mandate would place on T&B's exercise of religion, but the Government did not identify any compelling governmental interest for requiring T&B to comply with the U.S. Government Mandate.

179. The Government has no compelling governmental interest to require T&B to comply with the U.S. Government Mandate.

180. The U.S. Government Mandate is not narrowly tailored to further a compelling governmental interest.

181. By enacting and threatening to enforce the U.S. Government Mandate, the Government has burdened T&B's religious exercise in violation of the Free Exercise Clause of the First Amendment.

182. T&B has no adequate remedy at law.

183. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on T&B that warrants relief.

COUNT III
Religious Discrimination in Violation of the
Free Exercise and Establishment Clauses of the First Amendment

184. T&B repeats and realleges each of the foregoing allegations in this Complaint.

185. The First Amendment mandates the equal treatment of all religious faiths and institutions without discrimination or preference.

186. The Free Exercise Clause and the Establishment Clause of the First Amendment mandate the equal treatment of all religious faiths and institutions without discrimination or preference.

187. This mandate of equal treatment protects entities as well as individuals.

188. The U.S. Government Mandate offers exemptions from its requirement that health plans include coverage for abortifacients, sterilization, contraception, and related education and counseling for some religious institutions on the basis of stated criteria.

189. The religious employer exemption from the U.S. Government Mandate discriminates on the basis of status as a for-profit or non-profit religious entity.

190. The U.S. Government Mandate discriminates on the basis of religious views or religious status.

191. The U.S. Government Mandate's narrow exemption for certain "religious employers" but not others discriminates on the basis of religious views or religious status.

192. The U.S. Government Mandate's definition of religious employer likewise discriminates among different types of religious entities based on the nature of those entities' operations as for-profit or not-for-profit.

193. The U.S. Government Mandate's definition of religious employer likewise furthers no compelling governmental interest.

194. The U.S. Government Mandate's definition of religious employer likewise is not narrowly tailored to further a compelling governmental interest.

195. The enactment and impending enforcement of the U.S. Government Mandate violate the Free Exercise Clause and the Establishment Clause of the First Amendment.

196. T&B has no adequate remedy at law.

197. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on T&B that warrants relief.

COUNT IV
Compelled Speech in Violation of
the Free Speech Clause of the First Amendment

198. T&B repeats and realleges each of the foregoing allegations in this Complaint.

199. The First Amendment protects against the compelled affirmation of any religious or ideological proposition that the speaker finds unacceptable.

200. The First Amendment protects organizations as well as individuals against compelled speech.

201. Expenditures are a form of speech protected by the First Amendment.

202. The First Amendment protects against the use of a speaker's money to support a viewpoint that conflicts with the speaker's religious or ideological beliefs.

203. Abortifacients, sterilization, and contraception, including related speech, violate the Franciscan Values and *Ethical and Religious Directives for Catholic Health Care Services* to which T&B must adhere according to the T&B Operating Agreement.

204. The U.S. Government Mandate compels T&B to provide or sponsor health care plans for its employees that include or facilitate coverage for abortifacients, sterilization, and contraception services, practices that violate its religious beliefs.

205. The U.S. Government Mandate compels T&B to subsidize, promote, and facilitate education and counseling services to its employees on abortifacients, sterilization, and contraception services.

206. By imposing the U.S. Government Mandate, Defendants are compelling T&B to publicly subsidize or facilitate the activity and speech of private individuals that are contrary to its religious beliefs.

207. T&B's decisions about health care for its employees should be guided by its commitment to the Franciscan Values and *Ethical and Religious Directives for Catholic Health Care Services*, not artificial government guidelines.

208. The U.S. Government Mandate is viewpoint-discriminatory and subject to strict scrutiny.

209. The U.S. Government Mandate furthers no compelling governmental interest.

210. The U.S. Government Mandate is not narrowly tailored to further a compelling governmental interest.

211. T&B has no adequate remedy at law.

212. The U.S. Government Mandate imposes an immediate and ongoing harm on T&B that warrants relief.

COUNT V
Failure to Conduct Notice-and-Comment Rulemaking and Improper Delegation in Violation of the APA

213. T&B repeats and realleges each of the foregoing allegations in this Complaint.

214. The Affordable Care Act expressly delegates to an agency within Defendant HHS, the Health Resources and Services Administration, the authority to establish guidelines concerning the "preventive care" that a group health plan and health insurance issuer must provide.

215. Given this express delegation, Defendants were required to engage in formal notice-and-comment rulemaking in a manner prescribed by law before issuing the guidelines that group health plans and insurers must cover. Proposed regulations were required to be published in the Federal Register and interested persons were required to be given an opportunity to participate in the rulemaking through the submission of written data, views, or arguments.

216. Defendants promulgated the "preventive care" guidelines without engaging in formal notice-and-comment rulemaking in a manner prescribed by law.

217. Defendants, instead, wholly delegated its responsibilities for issuing preventive care guidelines to a non-governmental entity, the IOM (the Institute of Medicine).

218. When crafting its guidelines recommendations, the IOM did not permit or provide for the broad public comment otherwise required under the APA concerning the guidelines that it would recommend. The dissent to the IOM report noted both that the IOM conducted its review in an unacceptably short time frame, and that the review process lacked transparency.

219. Within two weeks of the IOM issuing its guidelines, Defendant HHS issued a press release announcing that the IOM's guidelines were required under the Affordable Care Act.

220. Defendants have never explained why they failed to enact these "preventive care" guidelines through notice-and-comment rulemaking as required by the APA.

221. Defendants also failed to engage in notice-and-comment rulemaking when issuing the interim final rules and the final rule incorporating the guidelines.

222. Defendants' stated reasons for promulgating these rules without engaging in formal notice-and-comment rulemaking do not constitute "good cause." Providing public notice and an opportunity for comment was not impracticable, unnecessary, or contrary to the public interest for the reasons claimed by Defendants.

223. Defendants have since undertaken the first step toward a prolonged notice and comment process to promulgate amended regulations, which undermines its claims that good cause warranted abandoning notice and comment for the current regulations.

224. By enacting the "preventive care" guidelines and interim and final rules through delegation to a non-governmental entity and without engaging in notice-and-comment rulemaking, Defendants failed to observe a procedure required by law and thus violated 5 U.S.C. § 706(2)(D).

225. T&B has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

226. T&B has no adequate remedy at law.

227. The enactment of the U.S. Government Mandate without observance of a procedure required by law and its impending enforcement impose an immediate and ongoing harm on T&B that warrants relief.

COUNT VI
Arbitrary and Capricious Action in Violation of the APA

228. T&B repeats and realleges each of the foregoing allegations in this Complaint.

229. The APA condemns agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

230. The APA requires that an agency examine the relevant data and articulate an explanation for its action that includes a rational connection between the facts found and the policy choice made.

231. Agency action is arbitrary and capricious under the APA if the agency has failed to consider an important aspect of the problem before it.

232. A court reviewing agency action may not supply a reasoned basis that the agency itself has failed to offer.

233. Defendants failed to consider the suggestion of many commenters that abortifacients, sterilization, and contraception as well as counsel and education for these services could not be viewed as "preventive care."

234. Defendants failed adequately to engage with voluminous comments suggesting that the scope of the religious exemption to the U.S. Government Mandate should be broadened.

235. Defendants did not articulate a reasoned basis for its action by drawing a connection between facts found and the policy decisions it made.

236. Defendants failed to provide any standards or processes for how the Administration will decide which religious institutions will be included in the religious exemption.

237. Defendants failed to consider the use of broader religious exemptions in many other federal laws and regulations. Defendants' promulgation of the U.S. Government Mandate violates the APA.

238. T&B has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

239. T&B has no adequate remedy at law.

240. The enactment of the U.S. Government Mandate that is not in accordance with law and its impending enforcement impose an immediate and ongoing harm on T&B that warrants relief.

COUNT VII
Acting Illegally in Violation of the APA

241. T&B repeats and realleges each of the foregoing allegations in this Complaint.

242. The APA requires that all government agency action, findings, and conclusions be "in accordance with law."

243. The U.S. Government Mandate and its exemption are illegal and therefore in violation of the APA.

244. The Weldon Amendment states that "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat 786, 1111 (2011).

245. The Affordable Care Act states that "nothing in this title (or any amendment by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year."

42 U.S.C. § 18023(b)(1)(A)(i). It adds that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion.]" *Id.* § 18023(b)(1)(A)(ii).

246. The Affordable Care Act contains no clear expression of an affirmative intention of Congress that employers with religiously motivated objections to the provision of health plans that include coverage for abortifacients, sterilization, contraception, or related education and counseling should be required to provide such plans.

247. The U.S. Government Mandate requires employer based-health plans to provide coverage for abortion-inducing drugs, contraception, sterilization, and related education. It does not permit employers or issuers to determine whether the plan covers abortifacients, as the Act requires. By issuing the U.S. Government Mandate, Defendants have exceeded their authority, and ignored the direction of Congress.

248. The U.S. Government Mandate violates RFRA.

249. The U.S. Government Mandate violates the First Amendment.

250. The U.S. Government Mandate is not in accordance with law and thus violates 5 U.S.C. § 706(2)(A).

251. T&B has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

252. T&B has no adequate remedy at law.

253. The enactment of the U.S. Government Mandate that is not in accordance with law and its impending enforcement impose an immediate and ongoing harm on T&B that warrants relief.

V. PRAYER FOR RELIEF

WHEREFORE, T&B respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates T&B's rights under RFRA;

2. Enter a declaratory judgment that the U.S. Government Mandate violates T&B's rights under the First Amendment;

3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;

4. Enter an injunction prohibiting Defendants from enforcing the U.S. Government Mandate against T&B;

5. Enter an order vacating the U.S. Government Mandate;

6. Award T&B attorneys' and expert fees under 42 U.S.C. § 1988; and

7. Award all other relief as the Court may deem just and proper.

VI. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, T&B hereby demands a trial by jury of all issues so triable.

Respectfully submitted, this the 20th day of September, 2012.

By: _____

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Crown Point, IN 46307
(219) 662-3754

Counsel for Tonn and Blank Construction, LLC

VERIFICATION

I, Sister Jane Marie Klein, O.S.F., declare as follows:

1. I am over the age of eighteen (18) years, have personal knowledge of and am competent to testify to the foregoing stated matters. I submit this Verified Complaint in support of Plantiff's Motion for a Preliminary Injunction in this matter.

2. I am a member of the Board of Directors for Tonn and Blank Construction, LLC ("T&B"). I have held that position since 1998, when T&B affiliated Franciscan Alliance, Inc., f/k/a Sisters of St. Francis Health Services, Inc. ("Franciscan"), for which I have been Chair since 1993.

3. Based upon my experience, I am very familiar with T&B's business and operations. The facts set forth herein are based upon my personal knowledge and information available to me in the above-referenced capacity , and if I were called upon to testify to them, I could and would competently do so.

4. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 19, 2012.

Sister Jane Marie Klein, O.S.F.

Sister Jane Marie Klein, O.S.F.

STATE OF INDIANA)
)
COUNTY OF LAKE)

Sworn to and subscribed before me
this 19th day of September, 2012.

JANET A. ROLLEY
Notary Public- Seal
State of Indiana
My Commission Expires Jul 25, 2015

Janet A Rolley

Notary Public in and for the State of Indiana
Commission Expires: 7-25-2015

Exhibit A

AMENDED AND RESTATED

OPERATING AGREEMENT OF

TONN AND BLANK CONSTRUCTION, LLC

TABLE OF CONTENTS

Definitions

The terms used in this Agreement with their initial letters capitalized shall have, unless the context otherwise requires or unless otherwise expressly provided in this Agreement, the meanings specified herein. Any term used but not defined in this Agreement shall have the meanings set forth in the Act or defined in the Agreement itself.

"**Act**" shall mean the Indiana Business Flexibility Act, as amended from time to time.

"**Additional Member**" Any Person admitted as a Member pursuant to Section 3.05.

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts that such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) ; and

(ii) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(*d*)(4), 1.704-1(b)(2)(ii)(*d*)(5), and 1.704-1(b)(2)(ii)(*d*)(6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(*d*) and shall be interpreted consistently therewith.

"**Affiliate**" shall mean, with respect to any Member, (i) any Person that directly, or indirectly through any other Person or Persons, controls or is controlled by or is under common control with the Member; or (ii) any Person that is an officer of, member in or trustee of, or serves in a similar capacity with respect to the Member, or with respect to which the Member serves in such a capacity. The term "control" shall mean, with respect to any non-individual Person, the direct or indirect ownership of fifty percent (50%) or more of the voting stock or other voting interests of or in such Person.

"**Agreement**" or "**Operating Agreement**" shall mean this Operating Agreement as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

"**Board of Directors**" has the meaning provided in Section 6.01.

"**Capital Account**" has the meaning provided in Section 3.03.

"**Capital Contribution**" shall mean any contribution of cash or other property which has been or hereafter is made to the Company by a Member.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time or any corresponding or succeeding law.

"**Company**" shall mean Tonn and Blank Construction, LLC, as such Company may from time to time be constituted.

"**Fiscal Year**" shall mean the calendar year or such other fiscal year of the Company as may be determined by the Members for federal income tax reporting purposes. Such term shall also refer to any short taxable year of the Company.

"**Franciscan Alliance**" shall mean Franciscan Alliance, Inc, an Indiana nonprofit corporation formerly known as Sisters of St. Francis Health Services, Inc. and a Member of the Company.

"**Gain From a Disposition**" shall mean any net gain determined in accordance with the Code included in the Company's Net Profit or Net Loss for any fiscal year resulting from (a) the sale, foreclosure, exchange or other disposition of all or a substantial portion of any asset of the Company and (b) the condemnation or taking of or casualty to all or a substantial portion of any asset of the Company.

"**Gross Asset Value**" shall mean, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values as of the following times: (a) the acquisition or issuance of an additional Member's Interest by or to any new or existing Member; (b) the distribution by the Company to a Member of more than a de minimis amount of Company property (including cash) as consideration for an Interest, if the Board of Directors reasonably determine that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-l(b)(2)(ii)(g).

(2) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph to the extent the Board of Directors shall determine that an adjustment pursuant to paragraph (1) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph.

"**Interest**" shall mean the entire ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which it may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all the terms and provisions of this Agreement. A Member's Interest may be expressed as a percentage of the total Interests in the Company.

"**Loss From a Disposition**" shall mean any net loss determined in accordance with the Code included in the Company's Net Profit or Net Loss for any Fiscal Year resulting from (a) the sale, foreclosure, exchange or other disposition of all or a substantial portion of any asset of the Company and (b) the condemnation or taking of or casualty to all or a substantial portion of any asset of the Company.

"Majority In Interest" means the Members who hold more than fifty percent (50%) of the total Units held by all Members (regardless of class designation), as stated in the records of the Company.

"**Members**" shall mean those Persons set forth on Exhibit A attached hereto.

"**Members Interest**" has the meaning provided in Section 3.06.

"**Net Cash Flow**" shall mean, with respect to any fiscal period, the sum of all cash receipts of the Company from fees for services or other activities, and any and all other sources (excluding, however, Capital Contributions and transactions the proceeds from which are included for purposes of determining Net Proceeds of any Sale or Net Proceeds of Financings) less the sum of the following expenditures paid out of such cash receipts:

(i) payments of salaries, advertising and promotion, rental, insurance, management expenses, utilities, repairs and maintenance, accounting services, equipment, supplies, and any and all other items which are customarily considered to be "operating expenses;"

(ii) payments of interest, principal and other charges with respect to any and all loans or other indebtedness of the Company, including loans or other indebtedness of the Company to the Members incurred in accordance with the provisions of this Agreement;

(iii) payments made in connection with the organization of the Company;

(iv) payments of any and all amounts of compensation to Members and Affiliates;

(v) any and all other cash expenditures of the Company, except distributions to the Members pursuant to Articles V or IX; and

(vi) amounts set aside as additions to reasonable reserves established by the Members for working capital, contingent liabilities or as otherwise deemed by the Members as reasonably necessary to meet the current and anticipated future liabilities, obligations and operating and capital expenditures of the Company.

"**Net Proceeds of Any Sale**" shall mean the gross proceeds arising from a sale, exchange, or other disposition of all or a substantial portion of any property of the Company, or from any other transaction giving rise to Gain from a Disposition or Loss from a Disposition less the sum of:

(i) the amount of funds disbursed or to be disbursed (including amounts deducted for adjustments) in connection with or as an expense of such sale, including without limitation all broker's fees and attorneys' fees;

(ii) the amount necessary for the payment of all debts and obligations of the Company arising from or otherwise related to such sale or to which the property is subject and which are then to be paid; and

(iii) amounts set aside as additions to reasonable reserves established by the Members for working capital, contingent liabilities or as otherwise deemed by the Members as reasonably necessary to meet the current and anticipated future liabilities, obligations and operating and capital expenditures of the Company.

"**Net Proceeds of Financing**" shall mean the gross proceeds of any borrowings by the Company, less the sum of:

(i) any amounts used to repay then existing indebtedness of the Company or to pay or provide for any and all liabilities and obligations of the Company then due;

(ii) all expenses of such borrowings including, without limitation, all commitment fees, broker's commissions, and attorneys' fees;

(iii) any amounts paid to acquire or in connection with the acquisition of any real or personal property of the Company;

(iv) any amounts used for any purpose in order to satisfy conditions to or established in connection with such borrowings; and

(v) amounts set aside as additions to reasonable reserves established by the Members for working capital, contingent liabilities or as otherwise deemed by the Members as reasonably necessary to meet the current and

anticipated future liabilities, obligations and operating and capital expenditures of the Company.

Net "**Profits**" and "**Losses**" shall mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(l) shall be included in taxable income or loss), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Losses pursuant to this paragraph shall be added to such taxable income or loss.

(2) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-l(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Losses pursuant to this paragraph, shall be subtracted from such taxable income or loss.

(3) At any time the Gross Asset Value of any Company property is adjusted, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property for purposes of computing Net Profits or Losses.

(4) Depreciation and amortization with respect to, and gain or loss resulting from the disposition of, any Company asset shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

(5) Notwithstanding any other provision of this paragraph, any items which are specially allocated pursuant to Sections 4.02, 4.03, 4.04, and 4.05.

"**Non-Franciscan Alliance Net Profits and Losses**" shall mean, for each Fiscal Year or other period, an amount equal to that portion of the Company's Net Profits and Losses that represent the revenue derived from the sale of goods or provision of services to individuals and entities other than Franciscan Alliance less (1) the expenses incurred by the Company that are directly related to the sale of goods or provision of services to such individuals or entities and (2) any indirect expenses incurred by the Company to provide such goods or services to such individuals or entities, provided that such expenses are allocated based upon a reasonable basis.

"**Partner Nonrecourse Debt**" has the same meaning as the term "partner nonrecourse debt" set forth in Regulations Section 1.704-2(b)(4).

"**Partner Nonrecourse Debt Minimum Gain**" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such

Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"**Partner Nonrecourse Deductions**" has the same meaning as the term "partner nonrecourse deductions" set forth in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"**Partnership Minimum Gain**" has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"**Percentage Interest**" shall mean, with respect to any Member as of any date, the ratio (expressed as a percentage) of the number of Units held by such Member on such date to the aggregate Units held by all Members on such date. The Percentage Interest of each Member immediately after the Effective Date is set forth in Schedule A hereof.

"**Person**" shall mean an individual, corporation, company, limited liability company, joint venture, partnership, limited partnership, limited liability partnership, trust, estate or unincorporated business association or organization or other legal entity.

"**Franciscan Alliance Net Profits and Losses**'' shall mean, for each Fiscal Year or other period, an amount equal to that portion of the Company's Net Profits or Losses that represent the revenue derived from the sale of goods or provision of services to Franciscan Alliance less (1) the expenses incurred by the Company that are directly related to the sale of goods or provision of services to Franciscan Alliance and (2) any indirect expenses incurred by the Company to provide such goods or services to Franciscan Alliance, provided that such expenses are allocated based upon a reasonable basis.

"**Treasury Regulations**" means the income tax regulations promulgated under the Code as in effect on the date of this Agreement, or as hereinafter amended or supplemented (including corresponding provisions of such succeeding regulations)

OPERATING AGREEMENT OF TONN AND BLANK CONSTRUCTION, LLC

TONN AND BLANK CONSTRUCTION, LLC (the "Company"), an Indiana limited liability company, was formed on December 10, 2003 as Alverno Construction Company, LLC when its Articles of Organization were filed with the Indiana Secretary of State in accordance with the Indiana Business Flexibility Act, as amended from time to time (the "Act"). The sole initial Member of the Company was Franciscan Holding Corporation, an Indiana corporation. Subsequently, the following amendments have been adopted: (1) the name of the Company was changed to Tonn and Blank Construction, LLC, Sisters of St. Francis Health Services, Inc. was admitted as a Member of the Company, and the Company's Operating Agreement was amended, effective January 1, 2010, to reflect the name change of the Company, the admission of Sisters of St. Francis Health Services, Inc. as a Member and to make certain other amendments with respect to the Company and the Members; (2) the legal name of the member, Sisters of St. Francis Health Services, Inc., was changed to Franciscan Alliance, Inc. ("**Franciscan Alliance**"), amendments in respect to Director Emeriti status were added, and the Company's Operating Agreement was amended, effective February 3, 2011, to reflect the name change of the Member and to make certain other amendments with respect to the Company; and (3) the Members approved the reduction of the minimum number of Board Members on the Company's Board of Directors and the Company's Operating Agreement was amended , effective December 9, 2011 to incorporate such reduction.

NOW, THEREFORE, in consideration of the preamble hereof, the mutual covenants and benefits herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby adopt this Amended and Restated Operating Agreement of the Company as of December 9, 2011 pursuant to the provisions of the Act and agree to be bound by the terms hereinafter set forth:

ARTICLE I

PURPOSES, POWERS, PROHIBITED ACTIVITIES AND MISSION

1.01. **Purposes.** As set forth in the Articles of Organization, the purpose of the Company is to engage in and do any act in furtherance of any and all lawful businesses and activities for which limited liability companies may be formed under the Act. The Company may directly carry on any such activities or may do so as a joint venturer or partner with any other Person or Persons.

1.02. **Authorized Activities.** In carrying out the purposes of the Company, but subject to all other provisions of this Agreement, and without limitation, the Company is authorized to:

(a) Acquire, hold, rent, lease and otherwise manage, operate, construct, reconstruct, improve, renovate, rehabilitate, maintain, finance, sell, transfer, convey, exchange, assign, mortgage or otherwise deal with or

dispose of any real or personal property or interests therein that may be necessary, convenient, or incidental to the accomplishment of the purposes of the Company;

(b) Borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to extend, repay, and renegotiate the terms of any such indebtedness, and to secure the same by mortgage, assignment, pledge, or grant of other security interest on assets of the Company;

(c) To make contributions to any organization that has qualified for exemption from federal income tax under the provisions of Section 501(c)(3) of the Code, and then qualify the contributions to such organization as deductions under Section 170(c)(2), Section 2055(a)(2), Section 2522 and Section 2106(a)(2) of the Code.

(d) Enter into, perform, and carry out contracts and agreements of any kind, including contracts with either of the Members or any of their Affiliates, necessary or convenient or incidental to the accomplishment of the purposes of the Company;

(e) Bring and defend actions at law or in equity;

(f) Make prudent interim investments in accordance with the Company investment policy as amended from time to time; and

(g) Engage in any kind of lawful activity, including but not limited to engaging in the construction and contracting business, and perform and carry out contracts of any kind, and execute, acknowledge, and deliver instruments of any kind, that are necessary or convenient and permitted by the Act in connection with the accomplishment of the purposes of the Company.

1.03. **Special Limitations.**

(a) For all services to be provided by the Company, the Company agrees to abide by and adhere to the Mission and Franciscan Values of Franciscan Alliance and the *Ethical and Religious Directives for Catholic Health Care Services* as promulgated by the United States Conference of Catholic Bishops of the Roman Catholic Church or its successor, as the same may be amended or revised from time to time, and as interpreted by the local Bishop.

(b) The Members agree that the Company at all times shall be operated and managed in a manner that will not cause Franciscan Alliance to act other than exclusively in furtherance of its tax exempt purposes or adversely

affect its tax exempt status under Code Section 501(a) by reason of being described in Code Section 501(c)(3). Such prohibited activities include participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office and engaging in more than insubstantial lobbying activities.

ARTICLE II

ORGANIZATION MATTERS

2.01. **Name of the Company.** The name of the Company shall be "TONN AND BLANK CONSTRUCTION, LLC," or such other name as the Members may from time to time select. The Company shall cause to be filed on behalf of the Company such assumed or fictitious name certificate or certificates as may from time to time be required by law.

2.02. **Formation.** The Company was formed pursuant to the Act upon the filing of Articles of Organization ("Articles") with the Secretary of State of the State of Indiana. The rights and obligations of the Members and the Company shall be as provided under the Act, the Articles, and this Agreement. The Members agree to each of the provisions of the Articles.

2.03. **Principal Office.** The principal office of the Company shall be at 1623 Greenwood Avenue, Michigan City, Indiana 46360 or such other address as may be established by the Members.

2.04. **Registered Office and Registered Agent.** The Company's registered office shall be 1515 Dragoon Trail, Mishawaka, Indiana 46546-1290 and the name of its initial registered agent at such address shall be Sister Jane Marie Klein, O.S.F. The Company may designate another registered office or agent at any time by following the procedures set forth in the Act.

2.05. **Duration of the Company.** The Company shall be perpetual, until dissolution in accordance with Article IX hereof.

2.06. **Title to Company Property.** All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and not the Members, individually. The Company may hold any of its assets in its own name or in the name of a nominee, which nominee may be one or more individuals, companies, corporations, trusts and other entities.

2.07. **Taxation of Company.** Notwithstanding any other provision(s) of this Agreement and so long as the Company continues to have more than one (1) Member, the Company shall be treated for federal and state income tax purposes as a partnership.

ARTICLE III

MEMBERS, CAPITAL STRUCTURE, AND RESERVED POWERS

3.01. **Name and Address of Members.** The name of the Members and the Members' business addresses are listed on the attached Exhibit A. The Company shall update Exhibit A from time to time as necessary to accurately reflect the information herein.

3.02. **Additional Capital Contributions.** The Company acknowledges that each of the Members has paid in full the initial Capital Contribution required to be made in exchange for such Member's Interest in the Company. The Members shall not be obligated to make any additional Capital Contributions to the Company.

3.03. **Members' Capital Account.** The Company shall maintain a separate capital account for each Member in accordance with Subchapter K of the Code and the Treasury Regulations thereunder, including but not limited to Reg. §1.704-1 and all other Treasury Regulations under section 704(b) of the Code, as determined by the Tax Matters Member.

3.04. **Member Loans.** In the event that funds are needed by the Company for its operations, the Members may loan such funds to the Company under such terms and conditions as may be agreed to between the Members and the Company.

3.05. **Admission of Additional Members.** The Members may admit Additional Members to the Company, who will be entitled to participate in the rights of Members as described herein, with admission thereof on such terms as are determined by the Members. Any such Additional Members shall be allocated net income, gains, losses, deductions and credits by such method as may be provided in the Agreement or any successor agreement hereto.

3.06. **Units Representing Membership Interests**. The Interests of Members in the Company ("**Member's Interest**") are divided into and represented by units ("Units"), and each Unit represents a one percent (1%) Interest in the Company. Each Member's respective Units shall be set forth on the attached Exhibit A, as the same shall be amended from time to time to reflect any changes in the number of Units of Members. The Members agree that each Unit shall entitle the Member possessing such Unit to:

(a) equal governance rights per Unit and to one vote per Unit on matters on which the Members may vote under the Articles, this Agreement and/or the Act; and

(b) an equal proportionate share per Unit of amounts distributed to the Members in respect of their Interests upon dissolution of the Company.

3.07. **Meetings of Members.** The Members are not required to hold regular meetings except to the extent required by the Act. From time to time, each Member shall provide the Secretary/Treasurer with a written designation naming one or more individuals who shall attend Members' meetings as a representative of such Member.

3.08. **Annual Meetings**. Annual meetings of the Members shall be held within the first one hundred twenty (120) days of each calendar year at the principal offices of the Company, or at such other place as may be determined by the Members. Failure to hold an Annual Meeting of the Members at the designated time does not affect the validity of any Company action.

3.09. **Special Meetings**. A special meeting of the Members shall be called by the Secretary/Treasurer or the Chairperson (a) upon the written request of any Member or (b) upon a simple majority vote of the Board of Directors. Not less than ten (10) days before the date of a special meeting of the Members, the Secretary-Treasurer or the Chairperson shall issue to each Member a written notice stating the date, place, and time of the meeting and a plain, concise statement of the agenda items to be covered or considered at the meeting. Members may participate in a meeting by conference call or any other means of communications that permits all participants to hear each other in real time during the meeting.

3.09. **Quorum Requirements**. At any meeting of the Members, a quorum is satisfied only by the presence or participation of Members who hold more than fifty percent (50%) of the total Units held by all Members as stated in the records of the Company.

3.10. **General Voting Requirements**. Subject to the reserved powers set forth in this Agreement, the affirmative vote of a Majority in Interest of the Members is necessary for the approval of actions of the Members.

3.11. **Member Written Consents**. Any action required or permitted to be taken by the Members at a meeting may be taken without a meeting and without a vote if the action is evidenced by one or more written consents describing the action taken, signed by a Majority in Interest of the Members unless a higher percentage is necessary to take such action under this Agreement or the Act, and included in the minutes of Members' meetings. Any such action taken upon the written consent is effective upon the date on which the last signing Member signs the written consent, unless the written consent specifies a different prior or subsequent effective date.

3.12. **Member Proxies**. A Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney-in-fact. An appointment of a proxy is effective when received by the Chairperson, Secretary or other officer or agent of the Company authorized to tabulate votes. A proxy appointment is valid for eleven (11) months unless otherwise expressly stated in the appointment form.

3.14 **Tax Matters Member.** The Members hereby designate Franciscan Alliance as the Company's Tax Matters Member for all purposes under the Code. From time to time, and without amending this Section, the Members may designate a different or successor Tax Matters Member. The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6231, *et seq*. The Tax Matters Member may rely upon the advice of its accountants and/or tax counsel. The Tax Matters Member on behalf of the Company may make, but is not

required to make, all elections for federal income tax purposes. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing its duties.

3.15 **Reserved Powers of Member.** In addition to all other action and approvals required of members by the Act or by the Articles of Organization and this Operating Agreement, the Members must unanimously approve and consent to the following actions:

(a) Approving any non-budgeted capital expenditure in excess of $100,000;

(b) Approving any capital call or contribution to the Company;

(c) Approving debt incurred by the Company as required by Canon Law;

(d) Approving and amending the Articles of Organization, Operating Agreement and any statement of philosophy, purpose or mission of the Company;

(e) Approving the merger, dissolution, consolidation or reorganization of the Company;

(f) Approving the acquisition, sale, lease, transfer or other alienation of property of the Company, other than in the usual and regular course of the Company's business, when such acquisition, sale, lease, transfer or other alienation is within the above specified financial levels set in accordance with the policies set from time to time by the Members;

(g) Approving any activities with respect to Mission, Franciscan Values, and Ethical and Religious Directives review;

(h) Approving the admission of any Person as an Additional Member; and

(i) Recommending and approving the Chairperson of the Board of Directors.

ARTICLE IV

ALLOCATION OF NET PROFITS AND LOSSES

4.01. **Allocation of Profits and Losses**

Except as otherwise provided in Sections 4.02, 4.03, and 4.04, the Net Profits and Losses of the Company shall be allocated among the Members in the following order and priority:

(a) After giving effect to the special allocations set forth in Sections 4.01(b) and 4.01(c) Net Profits and Loses for any Fiscal Year shall be allocated to the Members in proportion to their Percentage Interests.

(b) Franciscan Alliance Net Profits and Losses generated by the Company shall be allocated ninety-five percent (95%) to Franciscan Alliance and five percent (5%) Franciscan Holding Corporation;

(c) Non-Franciscan Alliance Net Profits and Losses generated by the Company shall be allocated ninety-five percent (95%) to Franciscan Holding Corporation and five percent (5%) to Franciscan Alliance.

4.02. **Special Allocations.**

The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback: Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this ARTICLE IV, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Partner Minimum Gain Chargeback: Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this ARTICLE IV, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Allocation Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made

in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.02(b) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset: In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(*d*)(4), Section 1.704-1(b)(2)(ii)(*d*)(5), or Section 1.704-1(b)(2)(ii)(*d*)(6), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 4.02(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this ARTICLE IV have been tentatively made as if this Section 4.02(c) were not in the Agreement.

(d) Gross Income Allocation: In the event any Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 4.02(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this ARTICLE IV have been made as if Section 4.02(c) and this Section 4.02(d) were not in the Agreement.

(e) Nonrecourse Deductions: Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated among the Member in proportion to each Member's Interests.

(f) Partner Nonrecourse Deductions: Any Partner Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) Code Section 754 Adjustment: To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, as a result of a distribution to a

Member in complete liquidation of his interest in the Company the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specifically allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

4.03. **Curative Allocations.**

(a) The allocations set forth in Sections 4.02(a), 4.02(b), 4.02(c), 4.02(d), 4.02(e), 4.02(f), and 4.02(g) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Member that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 4.03. Therefore, notwithstanding any other provision of this ARTICLE IV (other than the Regulatory Allocations), the Member shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 4.01. In exercising their discretion under this Section 4.03, the Member shall take into account future Regulatory Allocations under Sections 4.02(a) and 4.02(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 4.02(e) and 4.02(f).

4.04. **Other Allocation Rules**

(a) Net Profits and Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this ARTICLE IV as of the last day of each Fiscal Year; provided that Net Profits, Losses and such other items shall also be allocated at such times as the Gross Asset Values of Partnership Property are adjusted pursuant to subparagraph (ii) of the definition of "Gross Asset Value".

(b) The Member are aware of the income tax consequences of the allocations made by this ARTICLE IV and hereby agree to be bound by the provisions of this ARTICLE IV in reporting their shares of Company income and loss for income tax purposes.

(c) For purposes of determining the Net Profits, Losses, or any other items allocable to any period, Net Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Member using any permissible method under Code Section 706 and the Regulations thereunder.

(d) To the extent permitted by Regulations Section 1.704-2(h)(3), the Members shall endeavor not to treat distributions of cash as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt.

4.05. **Tax Allocations; Code Section 704(c).**

(a) Except as otherwise provided in this Section 4.05, each item of income, gain, loss, and deduction of the Company for federal income tax purposes shall be allocated among the Member in the same manner as such items are allocated for book purposes under this ARTICLE IV. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with subparagraph (i) of the definition of "Gross Asset Value").

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of "Gross Asset Value", subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Any elections or other decisions relating to such allocations shall be made by the Member in any manner that reasonably reflects the purpose and intention of this Agreement, provided that any items of loss or deduction attributable to property contributed by a Member shall, to the extent of an amount equal to the excess of (A) the federal income tax basis of such property at the time of its contribution over (B) the Gross Asset Value of such property at such time, be allocated in its entirety to such contributing Member and the tax basis of such property for purposes of computing the amounts of all items allocated to any other partner (including a transferee of the contributing partner) shall be equal to its Gross Asset Value upon its contribution to the Company. Allocations pursuant to this Section 4.05 are solely for purposes of federal, state, and local taxes and shall not affect, or

in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Losses, other items, or distributions pursuant to any provisions of this Agreement.

4.06. **Intent of Allocations**

The Members intend that the tax allocation provisions contained herein shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with the final Capital Account balances. To the extent that the tax allocation provisions of this Agreement would fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Members if and to the extent necessary to produce such result and (ii) taxable income and taxable loss of the Partnership for prior open years (or items of gross income and gross deductions of the Partnership for such years) shall be reallocated among the Members to the extent it is not possible to achieve such result with allocations of items of income and deduction for the current year and future years. This section shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

ARTICLE V

DISTRIBUTIONS

5.01. **Distribution of Net Cash Flow.** The Members shall cause distributions of Net Cash Flow to be made at such times and in such amounts as the Members may determine.

ARTICLE VI

MANAGEMENT OF THE COMPANY

6.01. **Board of Directors.**. The Company shall be managed, except as may be limited by this Agreement, the Articles of Organization or the Act, by a Board of Directors. The Board of Directors shall have authority over the general management of the day-to-day business and affairs of the Company in the ordinary course and shall have any other powers and duties as the Members may from time to time designate and assign. The Board of Directors shall be a "manager" of the Company as defined under the Act. The Board of Directors may adopt rules and regulations for the conduct of its meetings and the management of the Company not inconsistent with this Operating Agreement, the Articles of Organization, and the Act.

(a) **Number, Election and Term of Office**. Except for those actions and approvals reserved to the Members under the Act, Articles of Organization or this Operating Agreement, the business and affairs of the Company shall be managed and conducted by the Board of Directors, the members of which shall be elected by the Members. The number of directors of the Company shall be no less than six (6) and no more than nine (9) unless

changed by amendment of this Section. The Members shall select one director to serve as the Chairperson of the Board of Directors. The role of the Chairperson shall be to preside at the Board of Directors' meetings in the conduct of all the business of the Company to be brought before the Board of Directors, as contemplated by this Agreement and the Act. The Members shall determine the qualifications for membership on the Board of Directors, subject to the requirements that a prospective member of the Board of Directors be an individual who is a resident of the United States of America and over the age of twenty-five (25) years. The term of office of each director shall be for a period of one (1) year and until his or her successor is duly appointed and qualified.

(b) **Vacancies**. Any vacancy occurring on the Board of Directors caused by an increase in the number of directors by amendment of this Operating Agreement, or by resignation, removal, death or incapacity, shall be filled by the Members until the next annual meeting of the Board of Directors.

(c) **Resignations**. A director may resign at any time by giving written notice to the Board of Directors or the President. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective.

(d) **Annual Meeting**. The annual meeting of the Board of Directors for the transaction of such business as may properly come before the meeting shall be held within or without the State of Indiana no later than six (6) months after the end of the Company's fiscal year (or on such other date as the Board of Directors may fix by resolution) at such time and place as the President shall determine and cause to be communicated to the directors by the Secretary. Failure to hold the annual meeting during such month shall not work any forfeiture or dissolution of the Company and shall not affect otherwise valid acts of the Company. The annual meeting of directors shall be held in place of one of such regular meetings.

(e) **Regular Meetings**. Regular meetings of the Board of Directors shall be held not less frequently than quarterly each year or on a more frequent schedule as may be fixed by the directors, either within or without the State of Indiana. Such regular meetings may be held without notice or upon such notice as may be fixed by the directors.

(f) **Special Meetings**. Special meetings of the Board of Directors may be called by the President, any two (2) directors or either Member. Unless the Act requires a longer notice period, notice of the time and place, either within or without the State of Indiana, of a special meeting shall be served personally upon or telephoned to each director at least two (2) days, or

mailed, telecopied, telegraphed or cabled to each director at his or her usual place of business or residence at least three (3) days, prior to the time of the meeting. Directors, in lieu of such notice, may sign a written waiver of notice either before the time of the meeting, at the meeting or after the meeting. Attendance by a director in person at any such special meeting shall constitute a valid and binding waiver of notice.

(g) **Conference Telephone Meetings**. A member of the Board of Directors may participate in any meeting of the Board by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation by these means constitutes presence in person at the meeting.

(h) **Quorum**. A majority of the actual number of directors elected and qualified, from time to time, shall be necessary to constitute a quorum for the transaction of any business. The act of a majority of the directors present at the meeting, at which a quorum is present, shall constitute the act of the Board of Directors, unless the act of a greater number is required by the Act, by the Articles of Organization, or by this Operating Agreement. A director of the Company who is present at a meeting at which action on any Company matter is taken shall be presumed to have assented to the action taken unless such director's dissent shall be entered in the minutes of the meeting or unless such director shall file a written dissent to such action with the secretary of the meeting before adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action and did not change his or her vote prior to the time that the result of such vote was announced by the Chairperson of such meeting.

(i) **Consent Action by Directors**. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all directors or all members of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee. Action taken under this Section 6.01(i) is effective when the last director signs the consent, unless the consent specifies a different prior or subsequent effective date.

(j) **Directors Emeriti**. From time to time, the Chairperson of the Board of Directors may nominate, and the Board of Directors by majority vote may confer upon, one or more individuals who have served on, but are retiring or have retired from, the Board of Directors, the title and position of "Director Emeritus". A Director Emeritus shall be invited to attend the meetings of the Board of Directors but shall not have any right to vote on any matter coming before the Board for action and shall not be a "director" or "member of the Board of Directors" of the Company for any purpose whatsoever under the Act, the Company's Articles of Organization or this Operating Agreement, it being understood that the title "Director Emeritus" shall be conferred to honor the past service of a former director of the Company.

6.02. **Officers.**

(a) **Appointment and Term of Office**. The officers shall be elected by the Members and shall serve continuously until resignation or removal and replacement by action of the Members.

(b) **President**. The President shall serve under the direction of the Board of Directors and shall have general charge and management of the property, business, and affairs of the Company. All powers of the Company shall be exercised by or under the authority of the President. Decisions of the President within the President's scope of authority shall be binding upon the Company and the Members. Subject to the powers reserved to the Members in this Agreement, the President shall have the full power to execute, for and on behalf of the Company, any and all documents and instruments which may be necessary to carry on the business of the Company, including, without limitation, any and all deeds, contracts, leases, mortgages, deeds of trust, promissory notes, security agreements, and financing statements pertaining to the Company's assets or obligations. No person dealing with the President need inquire into the validity or propriety of any document or instrument executed in the name of the Company by the President, or as to the authority of the President in executing the same.

(c) **Vice-President**. The Vice-President of the Company shall, in the absence of the President perform the duties and exercise the powers of the President; and shall have such other powers and duties as the President may assign from time to time.

(d) **Secretary/Treasurer**. The Secretary/Treasurer of the Company shall have the general powers and duties usually vested in the office of Secretary and Treasurer of a corporation, including the powers and duties to:

(1) keep Company records;

(2) keep minutes of meetings of the Board of Directors;

(3) provide proper notice in accordance with this Agreement;

(4) care for and deposit monies received in the name of the Company in banks or other depositories as directed by the President;

(5) have charge of the disbursement of the monies of the Company in accordance with the directions of the President, except that by resolution of the Board of Directors, another individual may be designated and authorized to sign checks on behalf of the Company;

(6) enter or cause to be entered regularly in books a complete and correct account of all monies received and disbursed by the Company;

(7) submit a full financial report to the Members on a monthly basis;

(8) file annually any and all fiscal reports with fiscal agencies including the Indiana Secretary of State, Indiana Department of Revenue and the Internal Revenue Service;

(9) file annual reports with the Indiana Secretary of State and prepare a final Audit or Report of the Company's books, records and taxes; and

(10) perform such other duties and exercise such other powers as the President may assign from time to time.

The Members may, in their discretion, elect separate persons to act as Secretary and Treasurer with each officer performing their customary functions.

(e) **Other Officers or Officials**. All other officers or official assistants shall perform such duties as may be assigned from time to time by the President. Any officer may be removed, either with or without cause, at any time, by the Members.

(f) **Removal**. Any officer may be removed, with or without cause, at any time, by the Members.

(g) **Resignations**. Any officer may resign at any time by giving written notice to the Members or the Chairperson of the Board of Directors. Any such resignation shall take effect upon receipt of such notice or at any later

time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(h) **Vacancies**. Any vacancy in any office for any cause may be filled for the unexpired portion of the term by the Members.

(i) **Salaries**. The salaries of the officers of the Company shall be fixed from time to time by the Board of Directors, and the salaries of any subordinate officers may be fixed by the President.

6.03. **Exculpation and Indemnification.**

(a) Any current or prior director or officer shall not be liable, responsible, or accountable, in damages or otherwise, to the Members or to the Company for any act performed within the scope of the authority conferred on such director or officer by this Agreement, except for fraud, willful misconduct or recklessness, and actions or failures to act that constitute violations of fiduciary duty.

(b) Any current or prior director or officer shall not be liable to the Members under this Agreement for any diminution in the Members' interest as a result of the exercise or non-exercise of any power given to the director or officer by this Agreement, except for fraud, willful misconduct or recklessness, and actions or failures to act that constitute violations of fiduciary duty. Any prior or current President or other officer shall be deemed to have acted within the scope of the President's authority, to have exercised reasonable care, good faith, diligence, and prudence in the services provided as the President or other officer, and to have acted without malfeasance unless the contrary be proved by affirmative evidence. The Company shall indemnify and hold harmless and defend any prior or current President or other officer against and from all claims, losses, costs (including any costs of defense incurred by such President or other officer), expenses, damages and liabilities, joint or several, real or asserted, incurred or suffered or asserted against any prior or current President or other officer by any person or entity, arising from the services provided as and the activities of the prior or current President or other officer (other than for such President's or other officer's own malfeasance), provided, however, that any indemnity under this Section 6.03 shall be provided out of and to the extent of the assets of the Company only; and in case any action or proceeding be brought against such prior or current President or other officer by reason of any such claim, loss, costs, expenses, damages and liabilities, the Company shall resist or defend, such action or proceeding by counsel reasonably satisfactory to such President or other officer. No amendment to this

Agreement may retroactively alter the rights of any prior or current President or other officer under this Section 6.03(b).

ARTICLE VII

BOOKS, RECORDS AND BANK ACCOUNTS

7.01. **Books and Records.** The Secretary/Treasurer shall keep at the Company's principal place of business true and accurate books of account with respect to the operation of the Company. The Members and the Board of Directors shall at all reasonable times have access to such books. The books of the Company shall be kept on the cash basis of accounting, or on such other basis of accounting as the Tax Matters Member may determine, and otherwise in accordance with accounting methods employed for federal income tax reporting purposes, and shall be closed and balanced at the end of each Fiscal Year of the Company and at such other times as the Members may determine is appropriate.

7.02. **Fiscal Year.** The Fiscal Year of the Company shall be the calendar year.

7.03. **Bank Accounts.** The Secretary/Treasurer shall be responsible for causing one or more accounts to be maintained in a bank (or banks), which accounts shall be used for the payment of the expenditures incurred in connection with the business of the Company, and in which shall be deposited any and all cash receipts. All such amounts shall be and remain the property of the Company, and shall be received, held and disbursed by the Secretary/Treasurer for the purposes specified in this Agreement. There shall not be deposited in any of said accounts any funds other than funds belonging to the Company, and no other funds shall in any way be commingled with such funds.

7.04. **Annual Tax Information.** The Company shall use its best efforts to deliver to the Members within 90 days after the end of each fiscal year all information necessary for the preparation of the Members' federal and state income tax returns as determined by the Tax Matters Member. The Company shall also use its best efforts to prepare, within 90 days after the end of each fiscal year, a financial report of the Company for such fiscal year containing a balance sheet as of the last day of the year then ended, an income statement for the year then ended, a statement of sources and applications of funds, and a statement of reconciliation of the capital account of the Members.

7.05. **Accounting Decisions.** All decisions as to accounting matters, except as otherwise specifically set forth in this Agreement, shall be made by the Tax Matters Member. The Tax Matters Member may rely upon the advice of its accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

7.06. **Federal Income Tax Elections.** The Tax Matters Member shall have the power to make all appropriate elections for federal income tax purposes unless the Member elects otherwise, and so long as the Company continues to have two (2) or more Members, the Company shall be treated for federal and state income tax purposes as a partnership.

ARTICLE VIII

TRANSFER OF MEMBER'S INTEREST

8.01. **Transferability.** A Member may transfer all or any portion of its Interest to another Person at any time, subject to compliance with applicable state and federal securities laws. If a Member transfers its entire Interest to another Person and such Person is admitted as an Additional Member of the Company in accordance with Section 3.05, the transferring Member shall cease to be a Member and shall not have any power to exercise any rights of a Member.

ARTICLE IX

DISSOCIATION AND DISSOLUTION

9.01. **Dissociation.** A Member ceases to be a Member upon the occurrence of any of the following events (each an "Event of Dissociation"):

(a) The Member voluntarily withdraws from the Company;

(b) The Member is dissolved under Indiana law; or

(c) The Member transfers its entire Interest to another Person and such Person is admitted as an Additional Member of the Company.

9.02. **Dissolution.** The Company shall be dissolved upon the earliest to occur of the following:

(a) The affirmative vote of both of the Members;

(b) The unilateral decision of the last remaining Member of the Company following the withdrawal of the other Member;

(c) The cessation of the carrying on by the Company of any and all business, financial operations, and ventures of the Company;

(d) The entry of a decree or order by a court of competent jurisdiction adjudging the Company a bankrupt or insolvent; or the institution by the Company of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or similar proceeding under the law of any jurisdiction; or the institution of any such proceedings against the Company which shall remain undismissed for a period of sixty (60) days; or the application for or consent to the appointment of any receiver, trustee, custodian or similar officer for the Company, or for all or any substantial part of its property; or the appointment of any such receiver, trustee, custodian or any similar officer without the application or consent

of the Company, as the case may be, and such appointment shall continue undischarged for a period of sixty (60) days; or

(e) the happening of any other event resulting in dissolution under the Act or any other applicable law of the State of Indiana.

9.03. **Winding Up and Distribution Upon Dissolution.**

(a) Upon the dissolution of the Company, its affairs shall be wound up and it shall be liquidated and the proceeds of such liquidation and the Company's other assets shall be distributed as follows:

(i) All of the Company's ascertained debts and liabilities to creditors shall be promptly satisfied in the order provided by applicable law, whether by payment or by the establishment of adequate reserves.

(ii) A reserve shall be set aside in an amount reasonably required to provide for contingent or other liabilities.

(iii) The Company's Net Profit or Net Loss (including without limitation any Gain from a Disposition or Loss from a Disposition resulting from any sales or other dispositions of Company property in connection with the liquidation of the Company) shall be computed and shall be allocated to the Member in accordance with Article IV hereof, and the Member's capital account shall be adjusted in accordance with Section 3.03 hereof.

The balance, if any, to the Members in accordance with their positive Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods.

(b) of cash or property to the Members in accordance with the provisions of paragraph (a) hereof shall constitute a complete return to the Member of its Interest in the Company assets.

(c) The winding up of the Company's affairs and the liquidation and distribution of its assets shall, subject to the provisions of the Act, be conducted by the President, who is authorized to do any and all acts authorized by law for these purposes, or by a duly authorized liquidator.

ARTICLE X

MISCELLANEOUS

10.01. **Notices.** Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by a Member, officer or director giving such notice, election or demand and shall be delivered personally, sent by an overnight carrier service or sent by registered or certified mail, return receipt requested, to the recipient, at its or their address(es) set forth in the Company's records, or at such other address(es) as may be supplied by written notice given in conformity with the terms of this Section 10.01. The date of personal delivery or the date of mailing, as the case may be, shall be deemed to be the date of such notice.

10.02. **Successors and Assigns**. Subject to the restrictions on transfer set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Member, its respective successors, successors-in-title, heirs and assigns, and each and every successor-in-interest by way of gift, purchase, foreclosure, or any other method, shall hold such interest subject to all of the terms and provisions of this Agreement.

10.03. **Amendment of Operating Agreement**. No amendment shall become effective unless it has been approved in writing and executed by both Members.

10.04. **Applicable Law**. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Indiana.

10.05. **Complete Agreement.** This Agreement and the Articles constitute the complete and exclusive statement of agreement between the Members and the Company with respect to its subject matter. This Agreement and the Articles replace and supersede all prior agreements by and among the Members and the Company. This Agreement and the Articles supersede all prior written and oral statements and no representation, statement, or condition or warranty not contained in this Agreement or the Articles will be binding on the parties or have any force or effect whatsoever.

10.06. **Headings; Interpretation.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires.

10.07. **Severability.** If any provision of this Agreement is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, unreasonable, or enforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, unreasonable, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar to terms to such illegal, invalid, unreasonable, or unenforceable provision as may be possible and be legal, valid, reasonable, and enforceable.

10.08. **Additional Documents and Acts**. Each party agrees to promptly execute and deliver such additional documents, statements of interest and holdings, designations, powers of attorney, and other instruments, and to perform such additional acts, as the other party may determine to be necessary, useful or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement, and to comply with all applicable laws, rules and regulations.

10.09. **No Third Party Beneficiary**. This Agreement is made solely and specifically among and for the benefit of the parties and their respective successors and assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other third party. No creditor or other third party will have any rights, interests, or claims under the Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

10.10. **Title to Company Property**. Legal title to all property of the Company will be held and conveyed in the name of the Company.

10.11. **No Remedies Exclusive**. To the extent any remedies are provided herein for a breach of this Agreement, the Articles or the Act, such remedies shall not be exclusive of any other remedies the aggrieved party may have, at law or in equity.

IN WITNESS WHEREOF, the Members and the Company have adopted this Agreement to be effective as of December 9, 2011 .

"MEMBERS"

FRANCISCAN HOLDING CORPORATION

By:_____
Kevin D. Leahy, President

FRANCISCAN ALLIANCE, INC.

By:_____
Kevin D. Leahy, President & CEO

EXHIBIT A

to the Operating Agreement of Tonn and Blank Construction, LLC

(as of January 1, 2010)

Member	Percentage Interest	Units
Franciscan Holding Corporation 1201 South Main Street Crown Point, Indiana 46307	94.08 %	94.08
Sisters of St. Francis Health Services, Inc. 1515 Dragoon Trail Mishawaka, Indiana, 46544	5.02 %	5.02

Exhibit B

Issued by USCCB, November 17, 2009

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Ethical and Religious Directives for Catholic Health Care Services

Fifth Edition

United States Conference of Catholic Bishops

CONTENTS

PREAMBLE

Health care in the United States is marked by extraordinary change. Not only is there continuing change in clinical practice due to technological advances, but the health care system in the United States is being challenged by both institutional and social factors as well. At the same time, there are a number of developments within the Catholic Church affecting the ecclesial mission of health care. Among these are significant changes in religious orders and congregations, the increased involvement of lay men and women, a heightened awareness of the Church's social role in the world, and developments in moral theology since the Second Vatican Council. A contemporary understanding of the Catholic health care ministry must take into account the new challenges presented by transitions both in the Church and in American society.

Throughout the centuries, with the aid of other sciences, a body of moral principles has emerged that expresses the Church's teaching on medical and moral matters and has proven to be pertinent and applicable to the ever-changing circumstances of health care and its delivery. In response to today's challenges, these same moral principles of Catholic teaching provide the rationale and direction for this revision of the *Ethical and Religious Directives for Catholic Health Care Services.*

These Directives presuppose our statement *Health and Health Care* published in 1981.[1] There we presented the theological principles that guide the Church's vision of health care, called for all Catholics to share in the healing mission of the Church, expressed our full commitment to the health care ministry, and offered encouragement to all those who are involved in it. Now, with American health care facing even more dramatic changes, we reaffirm the Church's commitment to health care ministry and the distinctive Catholic identity of the Church's institutional health care services.[2] The purpose of these *Ethical and Religious*

Directives then is twofold: first, to reaffirm the ethical standards of behavior in health care that flow from the Church's teaching about the dignity of the human person; second, to provide authoritative guidance on certain moral issues that face Catholic health care today.

The *Ethical and Religious Directives* are concerned primarily with institutionally based Catholic health care services. They address the sponsors, trustees, administrators, chaplains, physicians, health care personnel, and patients or residents of these institutions and services. Since they express the Church's moral teaching, these Directives also will be helpful to Catholic professionals engaged in health care services in other settings. The moral teachings that we profess here flow principally from the natural law, understood in the light of the revelation Christ has entrusted to his Church. From this source the Church has derived its understanding of the nature of the human person, of human acts, and of the goals that shape human activity.

The Directives have been refined through an extensive process of consultation with bishops, theologians, sponsors, administrators, physicians, and other health care providers. While providing standards and guidance, the Directives do not cover in detail all of the complex issues that confront Catholic health care today. Moreover, the Directives will be reviewed periodically by the United States Conference of Catholic Bishops (formerly the National Conference of Catholic Bishops), in the light of authoritative church teaching, in order to address new insights from theological and medical research or new requirements of public policy.

The Directives begin with a general introduction that presents a theological basis for the Catholic health care ministry. Each of the six parts that follow is divided into two sections. The first section is in expository form; it serves as an introduction and provides the context in which concrete issues can be discussed from the perspective of the Catholic faith. The second section is

in prescriptive form; the directives promote and protect the truths of the Catholic faith as those truths are brought to bear on concrete issues in health care.

GENERAL INTRODUCTION

The Church has always sought to embody our Savior's concern for the sick. The gospel accounts of Jesus' ministry draw special attention to his acts of healing: he cleansed a man with leprosy (Mt 8:1-4; Mk 1:40-42); he gave sight to two people who were blind (Mt 20:29-34; Mk 10:46-52); he enabled one who was mute to speak (Lk 11:14); he cured a woman who was hemorrhaging (Mt 9:20-22; Mk 5:25-34); and he brought a young girl back to life (Mt 9:18, 23-25; Mk 5:35-42). Indeed, the Gospels are replete with examples of how the Lord cured every kind of ailment and disease (Mt 9:35). In the account of Matthew, Jesus' mission fulfilled the prophecy of Isaiah: "He took away our infirmities and bore our diseases" (Mt 8:17; cf. Is 53:4).

Jesus' healing mission went further than caring only for physical affliction. He touched people at the deepest level of their existence; he sought their physical, mental, and spiritual healing (Jn 6:35, 11:25-27). He "came so that they might have life and have it more abundantly" (Jn 10:10).

The mystery of Christ casts light on every facet of Catholic health care: to see Christian love as the animating principle of health care; to see healing and compassion as a continuation of Christ's mission; to see suffering as a participation in the redemptive power of Christ's passion, death, and resurrection; and to see death, transformed by the resurrection, as an opportunity for a final act of communion with Christ.

For the Christian, our encounter with suffering and death can take on a positive and distinctive meaning through the redemptive power of Jesus' suffering and death. As St. Paul says, we are "always carrying about in the body the dying of Jesus, so that the life of Jesus may also be manifested in our body" (2 Cor 4:10). This truth does not lessen the pain and fear, but gives confidence and grace for bearing suffering rather than being overwhelmed by it. Catholic

health care ministry bears witness to the truth that, for those who are in Christ, suffering and death are the birth pangs of the new creation. "God himself will always be with them [as their God]. He will wipe every tear from their eyes, and there shall be no more death or mourning, wailing or pain, [for] the old order has passed away" (Rev 21:3-4).

In faithful imitation of Jesus Christ, the Church has served the sick, suffering, and dying in various ways throughout history. The zealous service of individuals and communities has provided shelter for the traveler; infirmaries for the sick; and homes for children, adults, and the elderly.[3] In the United States, the many religious communities as well as dioceses that sponsor and staff this country's Catholic health care institutions and services have established an effective Catholic presence in health care. Modeling their efforts on the gospel parable of the Good Samaritan, these communities of women and men have exemplified authentic neighborliness to those in need (Lk 10:25-37). The Church seeks to ensure that the service offered in the past will be continued into the future.

While many religious communities continue their commitment to the health care ministry, lay Catholics increasingly have stepped forward to collaborate in this ministry. Inspired by the example of Christ and mandated by the Second Vatican Council, lay faithful are invited to a broader and more intense field of ministries than in the past.[4] By virtue of their Baptism, lay faithful are called to participate actively in the Church's life and mission.[5] Their participation and leadership in the health care ministry, through new forms of sponsorship and governance of institutional Catholic health care, are essential for the Church to continue her ministry of healing and compassion. They are joined in the Church's health care mission by many men and women who are not Catholic.

Catholic health care expresses the healing ministry of Christ in a specific way within the local church. Here the diocesan bishop exercises responsibilities that are rooted in his office as pastor, teacher, and priest. As the center of unity in the diocese and coordinator of ministries in the local church, the diocesan bishop fosters the mission of Catholic health care in a way that promotes collaboration among health care leaders, providers, medical professionals, theologians, and other specialists. As pastor, the diocesan bishop is in a unique position to encourage the faithful to greater responsibility in the healing ministry of the Church. As teacher, the diocesan bishop ensures the moral and religious identity of the health care ministry in whatever setting it is carried out in the diocese. As priest, the diocesan bishop oversees the sacramental care of the sick. These responsibilities will require that Catholic health care providers and the diocesan bishop engage in ongoing communication on ethical and pastoral matters that require his attention.

In a time of new medical discoveries, rapid technological developments, and social change, what is new can either be an opportunity for genuine advancement in human culture, or it can lead to policies and actions that are contrary to the true dignity and vocation of the human person. In consultation with medical professionals, church leaders review these developments, judge them according to the principles of right reason and the ultimate standard of revealed truth, and offer authoritative teaching and guidance about the moral and pastoral responsibilities entailed by the Christian faith.[6] While the Church cannot furnish a ready answer to every moral dilemma, there are many questions about which she provides normative guidance and direction. In the absence of a determination by the magisterium, but never contrary to church teaching, the guidance of approved authors can offer appropriate guidance for ethical decision making.

Created in God's image and likeness, the human family shares in the dominion that Christ manifested in his healing ministry. This sharing involves a stewardship over all material creation (Gn 1:26) that should neither abuse nor squander nature's resources. Through science the human race comes to understand God's wonderful work; and through technology it must conserve, protect, and perfect nature in harmony with God's purposes. Health care professionals pursue a special vocation to share in carrying forth God's life-giving and healing work.

The dialogue between medical science and Christian faith has for its primary purpose the common good of all human persons. It presupposes that science and faith do not contradict each other. Both are grounded in respect for truth and freedom. As new knowledge and new technologies expand, each person must form a correct conscience based on the moral norms for proper health care.

PART ONE

The Social Responsibility of Catholic Health Care Services

Introduction

Their embrace of Christ's healing mission has led institutionally based Catholic health care services in the United States to become an integral part of the nation's health care system. Today, this complex health care system confronts a range of economic, technological, social, and moral challenges. The response of Catholic health care institutions and services to these challenges is guided by normative principles that inform the Church's healing ministry.

First, Catholic health care ministry is rooted in a commitment to promote and defend human dignity; this is the foundation of its concern to respect the sacredness of every human life from the moment of conception until death. The first right of the human person, the right to life, entails a right to the means for the proper development of life, such as adequate health care.[7]

Second, the biblical mandate to care for the poor requires us to express this in concrete action at all levels of Catholic health care. This mandate prompts us to work to ensure that our country's health care delivery system provides adequate health care for the poor. In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured, and the underinsured.[8]

Third, Catholic health care ministry seeks to contribute to the common good. The common good is realized when economic, political, and social conditions ensure protection for the fundamental rights of all individuals and enable all to fulfill their common purpose and reach their common goals.[9]

Fourth, Catholic health care ministry exercises responsible stewardship of available health care resources. A just health care system will be concerned both with promoting equity of care—to assure that the right of each person to basic health care is respected—and with promoting the good health of all in the community. The responsible stewardship of health care resources can be accomplished best in dialogue with people from all levels of society, in accordance with the principle of subsidiarity and with respect for the moral principles that guide institutions and persons.

Fifth, within a pluralistic society, Catholic health care services will encounter requests for medical procedures contrary to the moral teachings of the Church. Catholic health care does not offend the rights of individual conscience by refusing to provide or permit medical procedures that are judged morally wrong by the teaching authority of the Church.

Directives

1. A Catholic institutional health care service is a community that provides health care to those in need of it. This service must be animated by the Gospel of Jesus Christ and guided by the moral tradition of the Church.

2. Catholic health care should be marked by a spirit of mutual respect among caregivers that disposes them to deal with those it serves and their families with the compassion of Christ, sensitive to their vulnerability at a time of special need.

3. In accord with its mission, Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable to discrimination: the poor; the uninsured and the underinsured; children and the unborn; single parents; the elderly; those with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees. In particular, the person

with mental or physical disabilities, regardless of the cause or severity, must be treated as a unique person of incomparable worth, with the same right to life and to adequate health care as all other persons.

4. A Catholic health care institution, especially a teaching hospital, will promote medical research consistent with its mission of providing health care and with concern for the responsible stewardship of health care resources. Such medical research must adhere to Catholic moral principles.

5. Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel.

6. A Catholic health care organization should be a responsible steward of the health care resources available to it. Collaboration with other health care providers, in ways that do not compromise Catholic social and moral teaching, can be an effective means of such stewardship.[10]

7. A Catholic health care institution must treat its employees respectfully and justly. This responsibility includes: equal employment opportunities for anyone qualified for the task, irrespective of a person's race, sex, age, national origin, or disability; a workplace that promotes employee participation; a work environment that ensures employee safety and well-being; just compensation and benefits; and recognition of the rights of employees to organize and bargain collectively without prejudice to the common good.

8. Catholic health care institutions have a unique relationship to both the Church and the wider community they serve. Because of the ecclesial nature of this relationship, the relevant

requirements of canon law will be observed with regard to the foundation of a new Catholic health care institution; the substantial revision of the mission of an institution; and the sale, sponsorship transfer, or closure of an existing institution.

9. Employees of a Catholic health care institution must respect and uphold the religious mission of the institution and adhere to these Directives. They should maintain professional standards and promote the institution's commitment to human dignity and the common good.

PART TWO

The Pastoral and Spiritual Responsibility of Catholic Health Care

Introduction

The dignity of human life flows from creation in the image of God (Gn 1:26), from redemption by Jesus Christ (Eph 1:10; 1 Tm 2:4-6), and from our common destiny to share a life with God beyond all corruption (1 Cor 15:42-57). Catholic health care has the responsibility to treat those in need in a way that respects the human dignity and eternal destiny of all. The words of Christ have provided inspiration for Catholic health care: "I was ill and you cared for me" (Mt 25:36). The care provided assists those in need to experience their own dignity and value, especially when these are obscured by the burdens of illness or the anxiety of imminent death.

Since a Catholic health care institution is a community of healing and compassion, the care offered is not limited to the treatment of a disease or bodily ailment but embraces the physical, psychological, social, and spiritual dimensions of the human person. The medical expertise offered through Catholic health care is combined with other forms of care to promote health and relieve human suffering. For this reason, Catholic health care extends to the spiritual nature of the person. "Without health of the spirit, high technology focused strictly on the body offers limited hope for healing the whole person."[11] Directed to spiritual needs that are often appreciated more deeply during times of illness, pastoral care is an integral part of Catholic health care. Pastoral care encompasses the full range of spiritual services, including a listening presence; help in dealing with powerlessness, pain, and alienation; and assistance in recognizing and responding to God's will with greater joy and peace. It should be acknowledged, of course, that technological advances in medicine have reduced the length of hospital stays dramatically. It

follows, therefore, that the pastoral care of patients, especially administration of the sacraments, will be provided more often than not at the parish level, both before and after one's hospitalization. For this reason, it is essential that there be very cordial and cooperative relationships between the personnel of pastoral care departments and the local clergy and ministers of care.

Priests, deacons, religious, and laity exercise diverse but complementary roles in this pastoral care. Since many areas of pastoral care call upon the creative response of these pastoral caregivers to the particular needs of patients or residents, the following directives address only a limited number of specific pastoral activities.

Directives

10. A Catholic health care organization should provide pastoral care to minister to the religious and spiritual needs of all those it serves. Pastoral care personnel—clergy, religious, and lay alike—should have appropriate professional preparation, including an understanding of these Directives.

11. Pastoral care personnel should work in close collaboration with local parishes and community clergy. Appropriate pastoral services and/or referrals should be available to all in keeping with their religious beliefs or affiliation.

12. For Catholic patients or residents, provision for the sacraments is an especially important part of Catholic health care ministry. Every effort should be made to have priests assigned to hospitals and health care institutions to celebrate the Eucharist and provide the sacraments to patients and staff.

13. Particular care should be taken to provide and to publicize opportunities for patients or residents to receive the sacrament of Penance.

14. Properly prepared lay Catholics can be appointed to serve as extraordinary ministers of Holy Communion, in accordance with canon law and the policies of the local diocese. They should assist pastoral care personnel—clergy, religious, and laity—by providing supportive visits, advising patients regarding the availability of priests for the sacrament of Penance, and distributing Holy Communion to the faithful who request it.

15. Responsive to a patient's desires and condition, all involved in pastoral care should facilitate the availability of priests to provide the sacrament of Anointing of the Sick, recognizing that through this sacrament Christ provides grace and support to those who are seriously ill or weakened by advanced age. Normally, the sacrament is celebrated when the sick person is fully conscious. It may be conferred upon the sick who have lost consciousness or the use of reason, if there is reason to believe that they would have asked for the sacrament while in control of their faculties.

16. All Catholics who are capable of receiving Communion should receive Viaticum when they are in danger of death, while still in full possession of their faculties.[12]

17. Except in cases of emergency (i.e., danger of death), any request for Baptism made by adults or for infants should be referred to the chaplain of the institution. Newly born infants in danger of death, including those miscarried, should be baptized if this is possible.[13] In case of emergency, if a priest or a deacon is not available, anyone can validly baptize.[14] In the case of emergency Baptism, the chaplain or the director of pastoral care is to be notified.

18. When a Catholic who has been baptized but not yet confirmed is in danger of death, any priest may confirm the person.[15]

19. A record of the conferral of Baptism or Confirmation should be sent to the parish in which the institution is located and posted in its baptism/confirmation registers.

20. Catholic discipline generally reserves the reception of the sacraments to Catholics. In accord with canon 844, §3, Catholic ministers may administer the sacraments of Eucharist, Penance, and Anointing of the Sick to members of the oriental churches that do not have full communion with the Catholic Church, or of other churches that in the judgment of the Holy See are in the same condition as the oriental churches, if such persons ask for the sacraments on their own and are properly disposed.

With regard to other Christians not in full communion with the Catholic Church, when the danger of death or other grave necessity is present, the four conditions of canon 844, §4, also must be present, namely, they cannot approach a minister of their own community; they ask for the sacraments on their own; they manifest Catholic faith in these sacraments; and they are properly disposed. The diocesan bishop has the responsibility to oversee this pastoral practice.

21. The appointment of priests and deacons to the pastoral care staff of a Catholic institution must have the explicit approval or confirmation of the local bishop in collaboration with the administration of the institution. The appointment of the director of the pastoral care staff should be made in consultation with the diocesan bishop.

22. For the sake of appropriate ecumenical and interfaith relations, a diocesan policy should be developed with regard to the appointment of non-Catholic members to the pastoral care staff of a Catholic health care institution. The director of pastoral care at a Catholic institution should be a Catholic; any exception to this norm should be approved by the diocesan bishop.

PART THREE

The Professional-Patient Relationship

Introduction

A person in need of health care and the professional health care provider who accepts that person as a patient enter into a relationship that requires, among other things, mutual respect, trust, honesty, and appropriate confidentiality. The resulting free exchange of information must avoid manipulation, intimidation, or condescension. Such a relationship enables the patient to disclose personal information needed for effective care and permits the health care provider to use his or her professional competence most effectively to maintain or restore the patient's health. Neither the health care professional nor the patient acts independently of the other; both participate in the healing process.

Today, a patient often receives health care from a team of providers, especially in the setting of the modern acute-care hospital. But the resulting multiplication of relationships does not alter the personal character of the interaction between health care providers and the patient. The relationship of the person seeking health care and the professionals providing that care is an important part of the foundation on which diagnosis and care are provided. Diagnosis and care, therefore, entail a series of decisions with ethical as well as medical dimensions. The health care professional has the knowledge and experience to pursue the goals of healing, the maintenance of health, and the compassionate care of the dying, taking into account the patient's convictions and spiritual needs, and the moral responsibilities of all concerned. The person in need of health care depends on the skill of the health care provider to assist in preserving life and promoting

health of body, mind, and spirit. The patient, in turn, has a responsibility to use these physical and mental resources in the service of moral and spiritual goals to the best of his or her ability.

When the health care professional and the patient use institutional Catholic health care, they also accept its public commitment to the Church's understanding of and witness to the dignity of the human person. The Church's moral teaching on health care nurtures a truly interpersonal professional-patient relationship. This professional-patient relationship is never separated, then, from the Catholic identity of the health care institution. The faith that inspires Catholic health care guides medical decisions in ways that fully respect the dignity of the person and the relationship with the health care professional.

Directives

23. The inherent dignity of the human person must be respected and protected regardless of the nature of the person's health problem or social status. The respect for human dignity extends to all persons who are served by Catholic health care.

24. In compliance with federal law, a Catholic health care institution will make available to patients information about their rights, under the laws of their state, to make an advance directive for their medical treatment. The institution, however, will not honor an advance directive that is contrary to Catholic teaching. If the advance directive conflicts with Catholic teaching, an explanation should be provided as to why the directive cannot be honored.

25. Each person may identify in advance a representative to make health care decisions as his or her surrogate in the event that the person loses the capacity to make health care decisions. Decisions by the designated surrogate should be faithful to Catholic moral principles and to the person's intentions and values, or if the person's intentions are unknown, to the person's best interests. In the event that an advance directive is not executed, those who are in a position to

know best the patient's wishes—usually family members and loved ones—should participate in the treatment decisions for the person who has lost the capacity to make health care decisions.

26. The free and informed consent of the person or the person's surrogate is required for medical treatments and procedures, except in an emergency situation when consent cannot be obtained and there is no indication that the patient would refuse consent to the treatment.

27. Free and informed consent requires that the person or the person's surrogate receive all reasonable information about the essential nature of the proposed treatment and its benefits; its risks, side-effects, consequences, and cost; and any reasonable and morally legitimate alternatives, including no treatment at all.

28. Each person or the person's surrogate should have access to medical and moral information and counseling so as to be able to form his or her conscience. The free and informed health care decision of the person or the person's surrogate is to be followed so long as it does not contradict Catholic principles.

29. All persons served by Catholic health care have the right and duty to protect and preserve their bodily and functional integrity.[16] The functional integrity of the person may be sacrificed to maintain the health or life of the person when no other morally permissible means is available.[17]

30. The transplantation of organs from living donors is morally permissible when such a donation will not sacrifice or seriously impair any essential bodily function and the anticipated benefit to the recipient is proportionate to the harm done to the donor. Furthermore, the freedom of the prospective donor must be respected, and economic advantages should not accrue to the donor.

31. No one should be the subject of medical or genetic experimentation, even if it is therapeutic, unless the person or surrogate first has given free and informed consent. In instances of nontherapeutic experimentation, the surrogate can give this consent only if the experiment entails no significant risk to the person's well-being. Moreover, the greater the person's incompetency and vulnerability, the greater the reasons must be to perform any medical experimentation, especially nontherapeutic.

32. While every person is obliged to use ordinary means to preserve his or her health, no person should be obliged to submit to a health care procedure that the person has judged, with a free and informed conscience, not to provide a reasonable hope of benefit without imposing excessive risks and burdens on the patient or excessive expense to family or community.[18]

33. The well-being of the whole person must be taken into account in deciding about any therapeutic intervention or use of technology. Therapeutic procedures that are likely to cause harm or undesirable side-effects can be justified only by a proportionate benefit to the patient.

34. Health care providers are to respect each person's privacy and confidentiality regarding information related to the person's diagnosis, treatment, and care.

35. Health care professionals should be educated to recognize the symptoms of abuse and violence and are obliged to report cases of abuse to the proper authorities in accordance with local statutes.

36. Compassionate and understanding care should be given to a person who is the victim of sexual assault. Health care providers should cooperate with law enforcement officials and offer the person psychological and spiritual support as well as accurate medical information. A female who has been raped should be able to defend herself against a potential conception from the sexual assault. If, after appropriate testing, there is no evidence that conception has occurred

already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.[19]

37. An ethics committee or some alternate form of ethical consultation should be available to assist by advising on particular ethical situations, by offering educational opportunities, and by reviewing and recommending policies. To these ends, there should be appropriate standards for medical ethical consultation within a particular diocese that will respect the diocesan bishop's pastoral responsibility as well as assist members of ethics committees to be familiar with Catholic medical ethics and, in particular, these Directives.

PART FOUR

Issues in Care for the Beginning of Life

Introduction

The Church's commitment to human dignity inspires an abiding concern for the sanctity of human life from its very beginning, and with the dignity of marriage and of the marriage act by which human life is transmitted. The Church cannot approve medical practices that undermine the biological, psychological, and moral bonds on which the strength of marriage and the family depends.

Catholic health care ministry witnesses to the sanctity of life "from the moment of conception until death."[20] The Church's defense of life encompasses the unborn and the care of women and their children during and after pregnancy. The Church's commitment to life is seen in its willingness to collaborate with others to alleviate the causes of the high infant mortality rate and to provide adequate health care to mothers and their children before and after birth.

The Church has the deepest respect for the family, for the marriage covenant, and for the love that binds a married couple together. This includes respect for the marriage act by which husband and wife express their love and cooperate with God in the creation of a new human being. The Second Vatican Council affirms:

> This love is an eminently human one. . . . It involves the good of the whole person. . . . The actions within marriage by which the couple are united intimately and chastely are noble and worthy ones. Expressed in a manner which is truly

> human, these actions signify and promote that mutual self-giving by which spouses enrich each other with a joyful and a thankful will.[21]

> Marriage and conjugal love are by their nature ordained toward the begetting and educating of children. Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents. . . . Parents should regard as their proper mission the task of transmitting human life and educating those to whom it has been transmitted. . . . They are thereby cooperators with the love of God the Creator, and are, so to speak, the interpreters of that love.[22]

For legitimate reasons of responsible parenthood, married couples may limit the number of their children by natural means. The Church cannot approve contraceptive interventions that "either in anticipation of the marital act, or in its accomplishment or in the development of its natural consequences, have the purpose, whether as an end or a means, to render procreation impossible."[23] Such interventions violate "the inseparable connection, willed by God . . . between the two meanings of the conjugal act: the unitive and procreative meaning."[24]

With the advance of the biological and medical sciences, society has at its disposal new technologies for responding to the problem of infertility. While we rejoice in the potential for good inherent in many of these technologies, we cannot assume that what is technically possible is always morally right. Reproductive technologies that substitute for the marriage act are not consistent with human dignity. Just as the marriage act is joined naturally to procreation, so procreation is joined naturally to the marriage act. As Pope John XXIII observed:

> The transmission of human life is entrusted by nature to a personal and conscious act and as such is subject to all the holy laws of God: the immutable and

> inviolable laws which must be recognized and observed. For this reason, one cannot use means and follow methods which could be licit in the transmission of the life of plants and animals.[25]

Because the moral law is rooted in the whole of human nature, human persons, through intelligent reflection on their own spiritual destiny, can discover and cooperate in the plan of the Creator.[26]

Directives

38. When the marital act of sexual intercourse is not able to attain its procreative purpose, assistance that does not separate the unitive and procreative ends of the act, and does not substitute for the marital act itself, may be used to help married couples conceive.[27]

39. Those techniques of assisted conception that respect the unitive and procreative meanings of sexual intercourse and do not involve the destruction of human embryos, or their deliberate generation in such numbers that it is clearly envisaged that all cannot implant and some are simply being used to maximize the chances of others implanting, may be used as therapies for infertility.

40. Heterologous fertilization (that is, any technique used to achieve conception by the use of gametes coming from at least one donor other than the spouses) is prohibited because it is contrary to the covenant of marriage, the unity of the spouses, and the dignity proper to parents and the child.[28]

41. Homologous artificial fertilization (that is, any technique used to achieve conception using the gametes of the two spouses joined in marriage) is prohibited when it separates procreation from the marital act in its unitive significance (e.g., any technique used to achieve extracorporeal conception).[29]

42. Because of the dignity of the child and of marriage, and because of the uniqueness of the mother-child relationship, participation in contracts or arrangements for surrogate motherhood is not permitted. Moreover, the commercialization of such surrogacy denigrates the dignity of women, especially the poor.[30]

43. A Catholic health care institution that provides treatment for infertility should offer not only technical assistance to infertile couples but also should help couples pursue other solutions (e.g., counseling, adoption).

44. A Catholic health care institution should provide prenatal, obstetric, and postnatal services for mothers and their children in a manner consonant with its mission.

45. Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo. Catholic health care institutions are not to provide abortion services, even based upon the principle of material cooperation. In this context, Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers.

46. Catholic health care providers should be ready to offer compassionate physical, psychological, moral, and spiritual care to those persons who have suffered from the trauma of abortion.

47. Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child.

48. In case of extrauterine pregnancy, no intervention is morally licit which constitutes a direct abortion.[31]

49. For a proportionate reason, labor may be induced after the fetus is viable.

50. Prenatal diagnosis is permitted when the procedure does not threaten the life or physical integrity of the unborn child or the mother and does not subject them to disproportionate risks; when the diagnosis can provide information to guide preventative care for the mother or pre- or postnatal care for the child; and when the parents, or at least the mother, give free and informed consent. Prenatal diagnosis is not permitted when undertaken with the intention of aborting an unborn child with a serious defect.[32]

51. Nontherapeutic experiments on a living embryo or fetus are not permitted, even with the consent of the parents. Therapeutic experiments are permitted for a proportionate reason with the free and informed consent of the parents or, if the father cannot be contacted, at least of the mother. Medical research that will not harm the life or physical integrity of an unborn child is permitted with parental consent.[33]

52. Catholic health institutions may not promote or condone contraceptive practices but should provide, for married couples and the medical staff who counsel them, instruction both about the Church's teaching on responsible parenthood and in methods of natural family planning.

53. Direct sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution. Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.[34]

54. Genetic counseling may be provided in order to promote responsible parenthood and to prepare for the proper treatment and care of children with genetic defects, in accordance with Catholic moral teaching and the intrinsic rights and obligations of married couples regarding the transmission of life.

PART FIVE

Issues in Care for the Seriously Ill and Dying

Introduction

Christ's redemption and saving grace embrace the whole person, especially in his or her illness, suffering, and death.[35] The Catholic health care ministry faces the reality of death with the confidence of faith. In the face of death—for many, a time when hope seems lost—the Church witnesses to her belief that God has created each person for eternal life.[36]

Above all, as a witness to its faith, a Catholic health care institution will be a community of respect, love, and support to patients or residents and their families as they face the reality of death. What is hardest to face is the process of dying itself, especially the dependency, the helplessness, and the pain that so often accompany terminal illness. One of the primary purposes of medicine in caring for the dying is the relief of pain and the suffering caused by it. Effective management of pain in all its forms is critical in the appropriate care of the dying.

The truth that life is a precious gift from God has profound implications for the question of stewardship over human life. We are not the owners of our lives and, hence, do not have absolute power over life. We have a duty to preserve our life and to use it for the glory of God, but the duty to preserve life is not absolute, for we may reject life-prolonging procedures that are insufficiently beneficial or excessively burdensome. Suicide and euthanasia are never morally acceptable options.

The task of medicine is to care even when it cannot cure. Physicians and their patients must evaluate the use of the technology at their disposal. Reflection on the innate dignity of human life in all its dimensions and on the purpose of medical care is indispensable for

formulating a true moral judgment about the use of technology to maintain life. The use of life-sustaining technology is judged in light of the Christian meaning of life, suffering, and death. In this way two extremes are avoided: on the one hand, an insistence on useless or burdensome technology even when a patient may legitimately wish to forgo it and, on the other hand, the withdrawal of technology with the intention of causing death.[37]

The Church's teaching authority has addressed the moral issues concerning medically assisted nutrition and hydration. We are guided on this issue by Catholic teaching against euthanasia, which is "an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated."[38] While medically assisted nutrition and hydration are not morally obligatory in certain cases, these forms of basic care should in principle be provided to all patients who need them, including patients diagnosed as being in a "persistent vegetative state" (PVS), because even the most severely debilitated and helpless patient retains the full dignity of a human person and must receive ordinary and proportionate care.

Directives

55. Catholic health care institutions offering care to persons in danger of death from illness, accident, advanced age, or similar condition should provide them with appropriate opportunities to prepare for death. Persons in danger of death should be provided with whatever information is necessary to help them understand their condition and have the opportunity to discuss their condition with their family members and care providers. They should also be offered the appropriate medical information that would make it possible to address the morally legitimate choices available to them. They should be provided the spiritual support as well as the opportunity to receive the sacraments in order to prepare well for death.

56. A person has a moral obligation to use ordinary or proportionate means of preserving his or her life. Proportionate means are those that in the judgment of the patient offer a reasonable hope of benefit and do not entail an excessive burden or impose excessive expense on the family or the community.[39]

57. A person may forgo extraordinary or disproportionate means of preserving life. Disproportionate means are those that in the patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or the community.

58. In principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally. This obligation extends to patients in chronic and presumably irreversible conditions (e.g., the "persistent vegetative state") who can reasonably be expected to live indefinitely if given such care.[40] Medically assisted nutrition and hydration become morally optional when they cannot reasonably be expected to prolong life or when they would be "excessively burdensome for the patient or [would] cause significant physical discomfort, for example resulting from complications in the use of the means employed."[41] For instance, as a patient draws close to inevitable death from an underlying progressive and fatal condition, certain measures to provide nutrition and hydration may become excessively burdensome and therefore not obligatory in light of their very limited ability to prolong life or provide comfort.

59. The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, unless it is contrary to Catholic moral teaching.

60. 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. Dying patients who request euthanasia should receive loving care, psychological and spiritual support, and appropriate remedies for pain and other symptoms so that they can live with dignity until the time of natural death.[42]

61. Patients should be kept as free of pain as possible so that they may die comfortably and with dignity, and in the place where they wish to die. Since a person has the right to prepare for his or her death while fully conscious, he or she should not be deprived of consciousness without a compelling reason. Medicines capable of alleviating or suppressing pain may be given to a dying person, even if this therapy may indirectly shorten the person's life so long as the intent is not to hasten death. Patients experiencing suffering that cannot be alleviated should be helped to appreciate the Christian understanding of redemptive suffering.

62. The determination of death should be made by the physician or competent medical authority in accordance with responsible and commonly accepted scientific criteria.

63. Catholic health care institutions should encourage and provide the means whereby those who wish to do so may arrange for the donation of their organs and bodily tissue, for ethically legitimate purposes, so that they may be used for donation and research after death.

64. Such organs should not be removed until it has been medically determined that the patient has died. In order to prevent any conflict of interest, the physician who determines death should not be a member of the transplant team.

65. The use of tissue or organs from an infant may be permitted after death has been determined and with the informed consent of the parents or guardians.

66. Catholic health care institutions should not make use of human tissue obtained by direct abortions even for research and therapeutic purposes.[43]

PART SIX

Forming New Partnerships with Health Care Organizations and Providers

Introduction

Until recently, most health care providers enjoyed a degree of independence from one another. In ever-increasing ways, Catholic health care providers have become involved with other health care organizations and providers. For instance, many Catholic health care systems and institutions share in the joint purchase of technology and services with other local facilities or physicians' groups. Another phenomenon is the growing number of Catholic health care systems and institutions joining or co-sponsoring integrated delivery networks or managed care organizations in order to contract with insurers and other health care payers. In some instances, Catholic health care systems sponsor a health care plan or health maintenance organization. In many dioceses, new partnerships will result in a decrease in the number of health care providers, at times leaving the Catholic institution as the sole provider of health care services. At whatever level, new partnerships forge a variety of interwoven relationships: between the various institutional partners, between health care providers and the community, between physicians and health care services, and between health care services and payers.

On the one hand, new partnerships can be viewed as opportunities for Catholic health care institutions and services to witness to their religious and ethical commitments and so influence the healing profession. For example, new partnerships can help to implement the Church's social teaching. New partnerships can be opportunities to realign the local delivery system in order to provide a continuum of health care to the community; they can witness to a

responsible stewardship of limited health care resources; and they can be opportunities to provide to poor and vulnerable persons a more equitable access to basic care.

On the other hand, new partnerships can pose serious challenges to the viability of the identity of Catholic health care institutions and services, and their ability to implement these Directives in a consistent way, especially when partnerships are formed with those who do not share Catholic moral principles. The risk of scandal cannot be underestimated when partnerships are not built upon common values and moral principles. Partnership opportunities for some Catholic health care providers may even threaten the continued existence of other Catholic institutions and services, particularly when partnerships are driven by financial considerations alone. Because of the potential dangers involved in the new partnerships that are emerging, an increased collaboration among Catholic-sponsored health care institutions is essential and should be sought before other forms of partnerships.

The significant challenges that new partnerships may pose, however, do not necessarily preclude their possibility on moral grounds. The potential dangers require that new partnerships undergo systematic and objective moral analysis, which takes into account the various factors that often pressure institutions and services into new partnerships that can diminish the autonomy and ministry of the Catholic partner. The following directives are offered to assist institutionally based Catholic health care services in this process of analysis. To this end, the United States Conference of Catholic Bishops (formerly the National Conference of Catholic Bishops) has established the Ad Hoc Committee on Health Care Issues and the Church as a resource for bishops and health care leaders.

This new edition of the *Ethical and Religious Directives* omits the appendix concerning cooperation, which was contained in the 1995 edition. Experience has shown that the brief

articulation of the principles of cooperation that was presented there did not sufficiently forestall certain possible misinterpretations and in practice gave rise to problems in concrete applications of the principles. Reliable theological experts should be consulted in interpreting and applying the principles governing cooperation, with the proviso that, as a rule, Catholic partners should avoid entering into partnerships that would involve them in cooperation with the wrongdoing of other providers.

Directives

67. Decisions that may lead to serious consequences for the identity or reputation of Catholic health care services, or entail the high risk of scandal, should be made in consultation with the diocesan bishop or his health care liaison.

68. 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.

69. If a Catholic health care organization is considering entering into an arrangement with another organization that may be involved in activities judged morally wrong by the Church, participation in such activities must be limited to what is in accord with the moral principles governing cooperation.

70. Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral, such as abortion, euthanasia, assisted suicide, and direct sterilization.[44]

71. The possibility of scandal must be considered when applying the principles governing cooperation.[45] Cooperation, which in all other respects is morally licit, may need to be refused because of the scandal that might be caused. Scandal can sometimes be avoided by an appropriate explanation of what is in fact being done at the health care facility under Catholic auspices. The diocesan bishop has final responsibility for assessing and addressing issues of scandal, considering not only the circumstances in his local diocese but also the regional and national implications of his decision.[46]

72. The Catholic partner in an arrangement has the responsibility periodically to assess whether the binding agreement is being observed and implemented in a way that is consistent with Catholic teaching.

CONCLUSION

Sickness speaks to us of our limitations and human frailty. It can take the form of infirmity resulting from the simple passing of years or injury from the exuberance of youthful energy. It can be temporary or chronic, debilitating, and even terminal. Yet the follower of Jesus faces illness and the consequences of the human condition aware that our Lord always shows compassion toward the infirm.

Jesus not only taught his disciples to be compassionate, but he also told them who should be the special object of their compassion. The parable of the feast with its humble guests was preceded by the instruction: "When you hold a banquet, invite the poor, the crippled, the lame, the blind" (Lk 14:13). These were people whom Jesus healed and loved.

Catholic health care is a response to the challenge of Jesus to go and do likewise. Catholic health care services rejoice in the challenge to be Christ's healing compassion in the world and see their ministry not only as an effort to restore and preserve health but also as a spiritual service and a sign of that final healing that will one day bring about the new creation that is the ultimate fruit of Jesus' ministry and God's love for us.

Notes

1. United States Conference of Catholic Bishops, *Health and Health Care: A Pastoral Letter of the American Catholic Bishops* (Washington, DC: United States Conference of Catholic Bishops, 1981).

2. Health care services under Catholic auspices are carried out in a variety of institutional settings (e.g., hospitals, clinics, outpatient facilities, urgent care centers, hospices, nursing homes, and parishes). Depending on the context, these Directives will employ the terms "institution" and/or "services" in order to encompass the variety of settings in which Catholic health care is provided.

3. *Health and Health Care,* p. 5.

4. Second Vatican Ecumenical Council, *Decree on the Apostolate of the Laity* (*Apostolicam Actuositatem*) (1965), no. 1.

5. Pope John Paul II, Post-Synodal Apostolic Exhortation *On the Vocation and the Mission of the Lay Faithful in the Church and in the World* (*Christifideles Laici*) (Washington, DC: United States Conference of Catholic Bishops, 1988), no. 29.

6. As examples, see Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* (1974); Congregation for the Doctrine of the Faith, *Declaration on Euthanasia* (1980); Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day* (*Donum Vitae*) (Washington, DC: United States Conference of Catholic Bishops, 1987).

7. Pope John XXIII, Encyclical Letter *Peace on Earth* (*Pacem in Terris*) (Washington, DC: United States Conference of Catholic Bishops, 1963), no. 11; *Health and Health Care,* pp. 5, 17-18; *Catechism of the Catholic Church,* 2nd ed. (Washington, DC: Libreria Editrice Vaticana– United States Conference of Catholic Bishops, 2000), no. 2211.

8. Pope John Paul II, *On Social Concern, Encyclical Letter on the Occasion of the Twentieth Anniversary of "Populorum Progressio"* (*Sollicitudo Rei Socialis*) (Washington, DC: United States Conference of Catholic Bishops, 1988), no. 43.

9. United States Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* (Washington, DC: United States Conference of Catholic Bishops, 1986), no. 80.

10. The duty of responsible stewardship demands responsible collaboration. But in collaborative efforts, Catholic institutionally based health care services must be attentive to occasions when the policies and practices of other institutions are not compatible with the Church's authoritative moral teaching. At such times, Catholic health care institutions should determine whether or to what degree collaboration would be morally permissible. To make that judgment, the governing boards of Catholic institutions should adhere to the moral principles on cooperation. See Part Six.

11. *Health and Health Care,* p. 12.

12. Cf. *Code of Canon Law,* cc. 921-923.

13. Cf. ibid., c. 867, § 2, and c. 871.

14. To confer Baptism in an emergency, one must have the proper intention (to do what the Church intends by Baptism) and pour water on the head of the person to be baptized, meanwhile pronouncing the words: "I baptize you in the name of the Father, and of the Son, and of the Holy Spirit."

15. Cf. c. 883, 3°.

16. For example, while the donation of a kidney represents loss of biological integrity, such a donation does not compromise functional integrity since human beings are capable of functioning with only one kidney.

17. Cf. directive 53.

18. *Declaration on Euthanasia,* Part IV; cf. also directives 56-57.

19. It is recommended that a sexually assaulted woman be advised of the ethical restrictions that prevent Catholic hospitals from using abortifacient procedures; cf. Pennsylvania Catholic Conference, "Guidelines for Catholic Hospitals Treating Victims of Sexual Assault," *Origins* 22 (1993): 810.

20. Pope John Paul II, "Address of October 29, 1983, to the 35th General Assembly of the World Medical Association," *Acta Apostolicae Sedis* 76 (1984): 390.

21. Second Vatican Ecumenical Council, *Pastoral Constitution on the Church in the Modern World* (*Gaudium et Spes*) (1965), no. 49.

22. Ibid., no. 50.

23. Pope Paul VI, Encyclical Letter *On the Regulation of Birth* (*Humanae Vitae*) (Washington, DC: United States Conference of Catholic Bishops, 1968), no. 14.

24. Ibid., no. 12.

25. Pope John XXIII, Encyclical Letter *Mater et Magistra* (1961), no. 193, quoted in Congregation for the Doctrine of the Faith, *Donum Vitae,* no. 4.

26. Pope John Paul II, Encyclical Letter *The Splendor of Truth* (*Veritatis Splendor*) (Washington, DC: United States Conference of Catholic Bishops, 1993), no. 50.

27. "Homologous artificial insemination within marriage cannot be admitted except for those cases in which the technical means is not a substitute for the conjugal act but serves to facilitate and to help so that the act attains its natural purpose" (*Donum Vitae,* Part II, B, no. 6; cf. also Part I, nos. 1, 6).

28. Ibid., Part II, A, no. 2.

29. "Artificial insemination as a substitute for the conjugal act is prohibited by reason of the voluntarily achieved dissociation of the two meanings of the conjugal act. Masturbation, through which the sperm is normally obtained, is another sign of this dissociation: even when it is done for the purpose of procreation, the act remains deprived of its unitive meaning: 'It lacks the sexual relationship called for by the moral order, namely, the relationship which realizes "the full sense of mutual self-giving and human procreation in the context of true love"'" (*Donum Vitae,* Part II, B, no. 6).

30. Ibid., Part II, A, no. 3.

31. Cf. directive 45.

32. *Donum Vitae,* Part I, no. 2.

33. Cf. ibid., no. 4. (Washington, DC: United States Conference of Catholic Bishops, 1988), no. 43.

34. Cf. Congregation for the Doctrine of the Faith, "Responses on Uterine Isolation and Related Matters," July 31, 1993, *Origins* 24 (1994): 211-212.

35. Pope John Paul II, Apostolic Letter *On the Christian Meaning of Human Suffering* (*Salvifici Doloris*) (Washington, DC: United States Conference of Catholic Bishops, 1984), nos. 25-27.

36. United States Conference of Catholic Bishops, *Order of Christian Funerals* (Collegeville, Minn.: The Liturgical Press, 1989), no. 1.

37. See *Declaration on Euthanasia.*

38. Ibid., Part II.

39. Ibid., Part IV; Pope John Paul II, Encyclical Letter *On the Value and Inviolability of Human Life* (*Evangelium Vitae*) (Washington, DC: United States Conference of Catholic Bishops, 1995), no. 65.

40. See Pope John Paul II, Address to the Participants in the International Congress on "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas" (March 20, 2004), no. 4, where he emphasized that "the administration of water and food, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*." See also Congregation for the Doctrine of the Faith, "Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration" (August 1, 2007).

41. Congregation for the Doctrine of the Faith, Commentary on "Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration."

42. See *Declaration on Euthanasia*, Part IV.

43. *Donum Vitae,* Part I, no. 4.

44. While there are many acts of varying moral gravity that can be identified as intrinsically evil, in the context of contemporary health care the most pressing concerns are currently abortion, euthanasia, assisted suicide, and direct sterilization. See Pope John Paul II's *Ad Limina* Address to the bishops of Texas, Oklahoma, and Arkansas (Region X), in *Origins* 28 (1998): 283. See also "Reply of the Sacred Congregation for the Doctrine of the Faith on Sterilization in Catholic Hospitals" (*Quaecumqu Sterilizatio*), March 13, 1975, *Origins* 6 (1976): 33-35: "Any cooperation institutionally approved or tolerated in actions which are in themselves, that is, by their nature and condition, directed to a contraceptive end . . . is absolutely forbidden. For the official approbation of direct sterilization and, *a fortiori*, its management and execution in accord with hospital regulations, is a matter which, in the objective order, is by its very nature (or intrinsically) evil." This directive supersedes the "Commentary on the Reply of the Sacred Congregation for the Doctrine of the Faith on Sterilization in Catholic Hospitals" published by the National Conference of Catholic Bishops on September 15, 1977, in *Origins* 7 (1977): 399-400.

45. See *Catechism of the Catholic Church*: "Scandal is an attitude or behavior which leads another to do evil" (no. 2284); "Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged" (no. 2287).

46. See "The Pastoral Role of the Diocesan Bishop in Catholic Health Care Ministry," *Origins* 26 (1997): 703.

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