

CANON LAW & IMPAIRED PROFESSIONALS IN THE CATHOLIC CHURCH

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INTRODUCTION:

One media source recently claimed that there are approximately twenty-four million plus addicts within the United States of America. If only one person among this number were a priest, deacon, or religious man or woman in our Catholic Church, he or she should receive our attention and care. This is so for a number of reasons. First, their vocation as a call from God as well as the difficulties often encountered today to live the vowed or priestly life are personal reasons for our attention. Their position of honor and public recognition, however, also suggest that their actions, whether good or bad, are not simply a private issue but also public matters. In a world continually shrinking through the knowledge explosion of the electronic media, abusive behavior by anyone impacts many. Our world is one that no longer reasons from the general to understand the particular; rather, a particular case leads to a general understanding. Moreover, logic is often clouded by emotions in particular cases. For example, the old joke about one's priest having "a wee bit too much to drink" tends to be replaced with "all priests drink too much."

Our conference theme, *God Calling: Spirituality, Addictions, and Clergy and Religious*, calls Roman Catholics to recall that we are a hierarchically constituted ecclesial community. As such, we are the recipients of certain responsibilities as well as certain rights, both arising by reason of baptism and incorporation into this ecclesial body. Moreover, clergy by ordination and religious by their definitive incorporation in their community have additional responsibilities and rights with regard to leadership by reason of their ecclesiastical incorporation. Being human beings, however, the clergy person or the religious is not immune from developing impairments from substances and other addictions. For ecclesiastical authorities and others assisting leadership, such impairments today deserve special concern.

Changes in society and development in treatment programs over the last fifty years make any discussion of the impaired religious professional, whether diocesan cleric or male and female religious, complex. Society today is much more litigious; there is often a blurring of the lines

between resolution and revenge. Sadly, some impaired religious seem a “gold mine” for some and an opportunity to others for wide scale changes to foster their own agendas to alter the public face of the Catholic Church.

The impaired religious professional has personal problems which need to be addressed; but his or her public identification as a representative of the Catholic Church are not easily separated. The professional’s status as an authority, or a power, within the Church make aberrant behavior by the impaired religious professional not only medical and psychological issues but also a moral topic, a violation of vows and trust! In some situations, some abusive behavior, such as internet pornography is or can be a crime in the civil society. The question today is no longer “how” but rather “can” this person be forgiven, reconciled, and reintegrated into active church life?

Any answer to this question, at present, no longer seems confined to the domain of the religious professional’s superior, i.e. bishop or major superior, or even the small cadre of his or her advisors. One only has to visit a blog on the internet to view the ideas, demands, and judgements of individuals, far and wide, who know only the “labeled problem” and the simple solution which must be applied as opposed to the often tortured history of the impaired person. Often that solution appears more as “we don’t want them around, but you must be forever responsible for their future conduct.” Sometimes, the cherished civil rights which all citizens enjoy are sacrificed for the impaired religious professional. It is not infrequent that one reads about religious authorities being asked to “seize” a person’s passport! Equally common are the calls for a man to be dismissed from the clerical state and for the man’s bishop or religious superior to continue to monitor and be responsible for his future life.

The focus of these comments examine structures and procedures applicable to church members when behavior of an impaired religious professional becomes problematic. Despite the fact that law cannot address each and every aspect of life, I firmly believe that church law, in the form of policies, procedures, and, at times, ecclesiastical trials can provide guidance that is preventative as well as remedial. Their necessity today and for the future seems self-evident. When one is actually involved in a situation of aberrant behavior is no time to “make” law! And yet, policies, procedures and laws, will change and adapt as needs dictate. Constant monitoring of life situations as well as refinement of possible remedies go hand in hand.

LIFE SITUATIONS

Certain behaviors become problematic for the individual and the community when personal control is lost or severely impaired. Some impairments may be more easily identified. Where one crosses the line between abusive drinking and addiction, for example, treatment seems to be more properly within the province of the medical professional. Substance abuse -- addiction problems seem similar to alcohol. Other abuses and addictions such as gambling and sexual ones are problematic not only for the individual and the medical professional but they impact upon other third, sometimes very innocent, parties. These impairments are not as easily identified nor, I believe, corrected.

Addictive behaviors are seldom simple problems. Even where a person's abusive or addictive drinking may seem a personal problem, the drinking influences other behaviors which can lead to societal consequences. An impaired religious professional, for example, who operates an automobile while intoxicated and injures another person can be liable to civil, criminal, and, perhaps, ecclesial action. Moreover, the diocese or religious community may be accused of negligence before the civil courts. An impaired religious professional's behavior with respect to sexual matters may be professional boundary crossings at the least or actual professional boundary violations and even grooming behaviors at the extreme. Such behaviors range from making unwanted comments to others, actual touching behavior, or the conscious methodical seduction of a vulnerable person. Even the "private" act of viewing pornography on one's home computer can be criminal action punishable by the federal government, state and the ecclesiastical community as in the case of downloading and disseminating child pornography.

In my experience, an individual's recognition of impaired behavior may be sensed or realized, but more often than not, there is a strong reluctance or an inability to admit either one's behavior or one's responsibility for one's actions. It is difficult to accept that one's behavior attracts the attention of others or raises alarm within the community. One or more of three items may block the individual's ability to recognize.

Sometimes "*hubris*" or a sense of insolence or arrogance resulting from excessive pride or from passion, is a difficulty that leads one to believe his or her behavior is mistakenly "hidden" or that everything can be "explained away." At other times the individual suffers from an *egocentric personality*, viewing everyone in relation to oneself, or an "*ego inflation*" where his sense of self-esteem or self-importance does not allow him or her correctly to interpret the reality or recognize the impairment to their sense of self. Sometimes an individual is caught up in *self-aggrandizement* where he or she ruthlessly seeks to make themselves more powerful in their addictive behavior. Many sexual impairments have less to do with sexual activity and more to do with power and control of someone else.

Basically, any one or all of these lead to a self-deception on the part of the impaired professional that blinds the person to a realization that his or her behavior can, or will, no longer be accepted nor tolerated by ecclesiastical authority. Some entertain a false sense of security from future discovery and responsibility. Clergy and the definitively incorporated religious realize their incardination gives them protection. It is not uncommon to hear statements such as "what are they going to do, kick me out?" Such comments, filled with bravado and bluff, need to be clearly and unequivocally answered in the affirmative if the impaired professional refuses to be cooperative with civil and ecclesiastical authority!

It should be no surprise that the initial reaction when one's behavior is confronted is denial. Asserting that something alleged is not true is a first response. There may be pain in one's addictive behavior; but the unknowns and the fears of possible revelations are more painful. When confronted, the professional person realizes that his or her career is in jeopardy. He or she may feel "boxed in" and overwhelmed by the response of authority. Confrontation creates a whole new layer of mistrust and fear. Issues of an organization's guidelines or policies,

even ideas about treatment and care, are no longer theoretical, they are personal and very present! Self preservation is a strong and a deeply rooted motivator in anyone!

The impaired professional priest or religious is not all that different from the unimpaired profession in holding to the general belief that he or she is in control of their own life. But their impairment blinds their judgment about the situation of life in which they are now embroiled. They are wise enough to know that their protestations of innocence are falling on deaf ears. Similarly, outbursts of angry bravado or anguished tears to the point of threatening self-destruction are actually expressions that he or she is out of control. Somehow realization of their life situation must move them from the loneliness and despair of the moment to at least the glimmer of hope that the pain will lessen or go away. Like a modern day Dante Alighieri, they must move from Hell through Purgatory in the hope of reaching Paradiso! It is at this point that issues of treatment and care must be introduced, not as theories, but as needed necessities.

TREATMENT/ CARE

Until the clergy sexual abuse crisis became a focus of attention in the Catholic Church, issues of treatment and care of the impaired professional priest or religious too often were left to the insurance companies and, if necessary, to the civil lawyers. Such an approach is acceptable if the concern of ecclesiastical authority is one primarily on the organization or institution, especially if attention is focused on matters relating to outside the Church. The magnitude and depth of outrage arising within the people of God, however, forces ecclesiastical authority to look at issues of treatment and care from an additional perspective, the effect of aberrant behavior by the impaired professional on members within the Catholic Church. In a sense ecclesiastical authority must now address two interested groups.

Today, it seems clear that most dioceses and religious communities of men and women have detailed policies and planning for cases dealing with a wide variety of abuse situations which arise among all members of the people of God, especially the impaired priest and/or religious. Similarly, personnel are in place to address the needs of those victims and family impacted by abusive behavior. Finally, there is increasing recognition that cases of impaired behavior differ. Those differences cover not only cases where there are admissions or protests of innocence by the impaired professional, but also the nature of the abuse and its immediate and/or remote impact upon third parties.

Concerning the variety of abuse situations, the media over the last few months have commented upon Father Fitzgerald and the work of the Servants of the Paraclete in Jemez Springs, New Mexico. Father Fitzgerald was a holy and prayerful pioneer in the treatment of impaired clergy in the 1960s, but some of his ideas such as purchasing an island in the Carribean, appeared eccentric, then and now. Fifty years ago, care and treatment for alcoholism was the primary focus of care and treatment. Pure confinement, or incarceration, did not and still does not fall into Christian understanding and theology. In the years afterwards, other abuses such as substance abuse as well as eating and gambling abuses were the focus of treatment. At present,

focus is upon “exploitative conduct” by religious professionals.¹ In sum, the passage of time has moved recognition, treatment and care from an individual to a multi person considerations. The variety of abusive situations suggest that one policy can not fit all situations. There is a need to tailor responses.

Personnel who work with the impaired religious professional today come from a variety of professions who collaborate to provide the best of care. Each of those personnel must create and maintain trust with the impaired person. Perhaps the old adage of “hate the sin and love the sinner” is an appropriate way to describe the goal of these professionals.

Cases of impaired behavior differ and therefore responses will have also to differ. In approaching the variety of possible responses, however, it is clear that we must differentiate from the beginning between an impaired religious who assumes a cooperative position and seeks healing and one who is non-cooperative and/or a recidivist. No one can force another to choose healing and resolution, to accept responsibility for one’s actions and the determination to reform.

Various types of immediate treatment and care seem available for the impaired professional, whether clergy or religious. The longest running and most commonly known is the twelve step program first modeled by AA. The program, known primarily by those recovering, should be understood by ecclesiastical authority as well as the Christian faithful. Many of its program principles may even serve a preventative function before impairment reaches the level needing intervention. Participation in a residential program is another important response in allegations of impairment where intervention is required. Addictive behavior impairs a person in mind, body, and soul; residential programs often have had great success in addressing professionals at their particular level of difficulty and guiding them as they seek adjustments. A third type of response would be that of treatment or care that could take place in an “out source” setting, depending upon the nature of the impairment and local circumstances.

At present there appears to be attempts at providing supervision, or what might be termed long term after care, for those recovering from certain impairments where the clergyman or religious is cooperative. Diocesan priests should not be sent to “monasteries” but to residences specifically designed to minister to them. That might mean, as it does in St. Louis, housing a handful of priests in the local archdiocesan retirement home. Or, as in the Chicago archdiocese, designating a facility just for priests with sexual disorders - a model several dioceses might be looking to emulate. Still others, like the Belleville priests removed from ministry in that diocese’s mid-1990s sexual abuse scandal, simply live on their own in private residences. In a sense, all three approaches seem designed to meet objectives enunciated in the *Code of Canon Law* about daily life for clergy, that is canon 280 which speaks of “some practice of common life” and

¹Richard Irons, MD, of the Professional Renewal Center of Lawrence, Kansas writes of exploitative behavior. “The array of conduct considered exploitive includes sexual innuendoes, derogatory comments, verbal or physical improprieties (such as non therapeutic hugs), erotically charged encounters with present or former congregants in or out of the sanctuary or office, overt sexual activities, and abuse through perpetration analogous to rape or molestation.”

canon 283's injunction that diocesan clergy not be *vagi*, that is "wanderers" absent from their diocese. Both provisions seek to correct the "big three" of addictive behavior and relapses: loneliness, isolation, and lack of accountability.

The situation for impaired religious priests and brothers differs somewhat based on the fact that religious can still live a life in community while not doing public ministry. There are a variety of works available in the order or congregation with no outside contact. This was a position discussed by the conference of Major Superiors of Men in August of 2002 at their meeting in Philadelphia, Pennsylvania.² This is a decision which attempts to reconcile two principles enunciated in the *Code of Canon Law*, canon 576 which speaks the competent authority of the Church to interpret with respect to the evangelical counsels and canon 586 which speaks of a just autonomy of life for religious.

Issues of treatment and care today are much more complex than yesterday. Medical issues, civil issues, and now ecclesial issues are intertwined in concrete cases of aberrant behavior by impaired professional priests or religious men or women. Church authority can no longer rely on the "Will of God" answer to actual situations. Likewise, moral outrage and condemnation of sinful activity type of answers require more. The whole Church from the family unit which Pope John Paul II spoke about in *Familiaris Consortio* to the Diocese or Religious Institute to the Church universal are affected by choices of care and treatment. No one person can "fix" the situation on his watch!

I. PROVIDING A CONTEXT – RULE BY LAW

How can canon law help with any or all of the above items? This is an easier question to ask than to answer in some respects. With respect to the human elements involved, there is often not much that canon law can do to alleviate situations. Some people will "live and die" believing that secrecy, non-disclosure, cover-up, any attempts at accountability will be deficient. Who needs proof when an accusation is sufficient? In the area of sexual abuse by clergy and religious, for example, the fear will always be present that these men might still find ways to gain access to children or vulnerable adults even in ministries that don't provide them easy access. Eradication rather than treatment and eternal damnation rather than redemption sometimes seem the unspoken message behind their words. On the other side of the picture, those impaired professionals who simply "walk away" from situations that come to light, or those who refuse to admit responsibility for their actions, are equally unreachable by members of the ecclesial community. They are truly dangerous in their irresponsibility and non-acceptance. Basically, both groups operate outside of the law in the sense that they themselves constitute what is the law and its consequences.

For the rest of us, canon law has and continues to create both the structures and the procedures which level the "playing field." as to determining responsibility for aberrant

²"Religious Orders take different view of abuse policy, *National Catholic Reporter*, available at <http://www.natcath.org/crisis/o81602j.htm>.

behavior. Just as in civil society, an accusation against a professional, or any other member of the society, requires more than the accuser's words, it is the same in church society. Not all accusations can be proven just as not all accusations can be disproved. People may not like it that criminals sometimes evade responsibility for their actions in civil society, but they accept the fact this sometimes happens. The same seems true in ecclesiastical society. Nonetheless, canon law provides the authorities in the Catholic Church with the administrative and judicial structures to deal with behavior by impaired clergy and religious. Canon law also provides the procedures by which those entrusted with the administration of justice are to come to the truth on a particular matter. It may not be a perfect system, but it is better than allowing individuals to solve "problems" or than seeking another external system to destroy the internal structures and procedures in the name of seeking a solution by which they "win."

Rule by law can be helpful in addressing the needs of the community and the impaired professional, priest or religious, in three separate stages if such need arises.

- § Intervention & Evaluation
- § Vocational Rehabilitation
- § Administration of Justice

Structuring guidelines and/or policies to implement these actions in a fair and consistent manner lessens perceived feelings of injustice. They provide criteria by which one can realize and assess personal responsibility. They may even provide help to the impaired professional as to how to end their "nightmare" of addiction.

As a *caveat*, however, neither guidelines nor policies will be helpful in the face of personal intransigence, especially in terms of the first two items above. Some impaired professionals, priest or religious, will continue to deny either the impaired activity or their responsibility for their activity. Some impaired professionals will "stonewall" while others will respond like "jail house lawyers" to demonstrate that the policy or guidelines do not apply to them. In a few cases, the professional accused of aberrant activity will seek civil counsel or move an accusation into a larger venue, such as public opinion, in an attempt to stop any consideration of accused impaired activity. Reduction of a questionable activity to "he said – he said" makes any issue a personal matter. Many professionals realize that it is impossible to prove a negative, that is, I did not do something; but moving a defense to one's word against another person's word, often seems a viable response. Intransigency and intentionally blocking resolution within the ecclesial community should not paralyze church authority. Canon law provides tools for the administration of justice in such situations. These may be the tools of "last resort," but they are tools which at times must be employed for the sake of the common good of the people of God.

Understanding the consequences of legal action is one of the roles that canon law helps to educate the people of God. Removal from active ministry and removal from the clerical state, or "defrocking" as it popularly known in the English speaking world, are two distinct realities with distinct consequences. Canon 290 of the *Code of Canon Law* provides that a cleric loses the

clerical state in one of two ways: one is by a judicial sentence or administrative decree which declares the invalidity of the sacred ordination; the second, by penalty of dismissal for a crime legitimately imposed by a judicial sentence or administrative decree. Canon 292 explains further:

A cleric who loses the clerical state according to the norm of law loses with it the rights proper to the clerical state and is no longer bound by any obligations of the clerical state, without prejudice to the prescript of canon 291. He is prohibited from exercising the power of orders, without prejudice to the prescript of canon 976. By the loss of the clerical state, he is deprived of all offices, functions, and may delegated power.

Aside from the two exceptions mentioned in the canon, the “defrocked” priest is no longer bound by the responsibilities of clergy enumerated in canons 273-289. Leaving theological considerations aside, he is no longer recognized, or accepted, as a functioning priest or a deacon. He is no longer a clergyman! The “defrocking process,” however does not take away his civil rights and responsibilities as a citizen in a particular country. Moreover, these limitations need to follow the laws and procedures of the civil government.³

II. INTERVENTION & EVALUATION – THE FIRST AND ESSENTIAL STEP

For both ecclesiastical authority and the impaired professional, the two steps of intervention and evaluation are key moments to begin a path toward recovery. Regardless of the type of abuse encountered, it affects many more people than the impaired professional. Just as alcoholism by a parent in a family, for example, affects the other spouse, children, relatives and friends so abuse by a religious professional, because he or she is in a position of honor and authority, affects a wide circle of people: adults and children, Catholics and non-Catholics, friends of the ecclesial community as well as those hostile to religion. Abusive behavior is not simply an individual problem; it is also a community problem.

For the individual the intervention process is extremely threatening. I noted above that an individual’s recognition of his or her impaired behavior is often difficult to accept. When an accusation of abusive behavior is made, the professional person is faced with the reality that his or her professional career may be ended. Tearing down all of the illusions that maintained a false facade of proper professional behavior and revealing one’s brokenness is similar to looking into a mirror without averting one’s gaze. Similarly, the evaluation process where in others

³One hears rather frequently the call for bishops and religious superiors to seize or take away the civil passports or a driver’s license of an accused clergy or religious or limit his civil freedoms. The proper authority for such action is the civil power granting the passport. The ecclesiastical authority, however, is not completely powerless. A religious superior can forbid a member to drive a community car with the warning that any violation will result in a stolen car report being made to the police and prosecution. With respect to diocesan priests, the ecclesiastical authority may have even less moral authority to persuade a person.

enter into our most intimate and hidden histories is not a process akin to turning on and off the faucets of a sink. Faith, in the sense of its definition in the Letter to the Hebrews as “assurance of things hoped for” is the essential condition for the individual impaired professional to accept. It is also the moment which first indicates the promise of recovery, that movement off center, for the individual.

For the community, represented by ecclesiastical authority, the intervention and evaluation process are equally essential. The personnel doing either step must be men and women who are not threatening to the impaired person; people who are able to elicit trust in each other either at the intervention stage or the evaluation stage. These representatives of the ecclesial community require not only innate abilities but also skills and training to address the impaired professional from the perspective of their profession. Moreover, in this day and age, it seems that many abusive situations require interdisciplinary approaches; therefore, these representatives also need to be collaborative.

Establishment of goals underlying our policies and procedures with respect to intervention and evaluation must be in place long before there is an act of intervention or before one embarks on the process of evaluation. Is our goal one of pastoral solicitude for the impaired individual or the first step for medical care? Is our goal to win the cooperation of the impaired professional or win his or her submission to our will in this matter? Are we seeking professional care for the individual or the safety of the community as a goal of our intervention and/or evaluation? Is vocational rehabilitation a realistic goal in a particular case of abusive behavior? Is the goal of the intervention and/ or evaluation process to provide data for punitive measures? Sometimes, our goals are not always clear despite pious rhetoric and statements of good will.

Answers to these questions by ecclesiastical authority and the people of God are essential if cases of impaired professional behavior are resolved. Rehabilitations and re-integration into active ministry, either fully or in some limited capacity is one possibility. The other possibility is the application of penal remedies in the Church. The choice of which approach to pursue depends on the success of the intervention and evaluation.

III. DETERMINING QUESTIONS OF VOCATIONAL REHABILITATION

Recovery, as we are coming to learn and accept, is a life long process with effective therapy as a first crucial step. Therapy involves stripping away layers of justification, rationalizations, and excuses for offensive behavior. “At some point there must occur a deep and genuine acknowledgment that one has breached trust and, through the use of power and position for personal gratification, has engaged in a transgression of not only ethical but also spiritual principle and law.”⁴

Vocational rehabilitation is a concept which may well deserve some new or revised considerations. In the past, the topic was primarily focused upon an individual alone, how he or

⁴Irons, op cit., 2.

she might be aided to return to society. Today, vocational rehabilitation has a focus which is two fold: the individual and the community. This aspect of vocational rehabilitation may make it more difficult to achieve. Similarly in the past, rehabilitation efforts focused on the past to address and or “cure” the problem; today, the focus for vocational rehabilitation may be better served by focusing on possibilities for future courses of action. Finally, it the past vocational rehabilitation focused on the problem alone, but today, consideration must also be given to determine whether or not the behavior of the impaired professional generated impediments to the exercise of orders received.⁵

If vocational rehabilitation seems a real possibility in a particular case, attention also needs to focus on the impaired professional’s ability to handle three items. The first of those items is stress! The ability to handle the stress involved in personal growth is an item not to be lightly dismissed. Change involves pain, and the temptation to become a recidivist has to be considered as a real danger. A second item is to introduce and maintain a focus on the future, that is, strategies must be developed to give direction to the individual for real choice on his or her part for future life. Finally, the impaired professional clergyman or religious needs a goal of determining whether or not it is possible to become a “person of communion,” a reference from John Paul II’s *Pastores dabo vobis*.⁶

Three preliminary steps should take place in any attempts at vocational rehabilitation. Unfortunately, the individual strengths and weaknesses of each impaired professional as well as the people of God among whom they live and minister, are unique so that no definitely determined timetable seems possible. A cooperative attitude seems a *conditio sine qua non* for both ecclesiastical authority and the impaired professional as a candidate for possible rehabilitation. Ecclesiastical authorities must be favorably inclined about the actual possibility of future vocational rehabilitation as active priestly ministry; it would be wrong, for example, to hold out the possibility of future re-integration into active ministry if that authority had already decided for whatever reason that such will not happen. Equally required is the fact that the impaired professional truly cooperate in one’s own growth and development rather than meet some minimal standard of others to be re-integrated.

⁵It should be determined, for example, that during his problem years he did not hold a position forbidden to clerics, (Canons 285-286; 289; 1042, 2□ and 3□); that he does not “labor under some form of insanity or psychic defect (Canon 1041, 1□ and 2□); that he has not committed apostasy, heresy, or schism (Canon 1041, 2□); that he has not committed homicide, cooperated in an abortion (Canon 1041, 4□); mutilated himself or another, attempted suicide (Canon 1041, 5□); or simulated an act reserved to priests or bishops (Canon 1041, 6□).

⁶One will find this phrase employed by *Program for Priestly Formation* as applied to candidates for the priesthood; it refers to the task of being responsible for a community. In the words of the document, “This demands that the priest not be arrogant or quarrelsome, but affable, hospitable, sincere in his words and heart, prudent and discreet, generous and ready to serve, capable of opening himself to clear and brotherly relationship and of encouraging the same in others and quick to understand, forgive, and console.” Cf: footnote 41.

To these preliminary steps are added other issues which are not easily resolved. One is the protection of privacy and reputation issues of the impaired professional. The impaired professional in the Catholic Church is a public figure, and his or her removal from whatever tasks they previously exercised will attract attention among the people of God. The insufficiency of such comments as “medical leave of absence” or “administrative leave” are often like “blood in the water attracting sharks.” This is especially true in some cases involving impaired religious where laws require reporting.⁷ Related to this issue is the fact that behavior by the impaired professional makes good copy for the media whose news reporting efforts require more and more detail in the name of “transparency” in ways which make accusations definitive. Recall, for example, cases of impaired professional misbehavior determined not to be able to be tried in civil or criminal court cases which are tried and convicted in the court of public opinion.

The success or failure of vocational rehabilitation is dependent upon more than personal decisions and resolution of the three preliminary steps identified above. Positive implementation of two other steps is essential. The first is professional diagnosis and prognosis; the second is identification and training for future options.

Diagnosis today at assessment centers requires the collaborative team efforts of a number of professionals to construct a causal hypothesis that reasonably explains why the events that lead to impaired behavior may have transpired. Diagnostic criteria such as the *DSM – IV* can lead to a determination of the presence and level of professional impairment present in an individual. Both efforts can lead to a recommended course of action. A fair, thorough, and

⁷Reporting to the larger church community of unacceptable behavior by a particular religious professional is an extremely thorny question about which refinement remains. There are a few tentative ideas which may be raised for deliberation. *What is the bishop, or major superior’s obligation to make people aware when an issue arises?* If the matter falls under the jurisdiction of the civil authorities, the reporting laws pertinent to that place must be followed. In cases where a religious professional is removed, even temporarily, from active ministry, the people whose immediate pastoral care is entrusted to him should be notified; furthermore, others affected by earlier similar conduct should be informed of the removal. In all three situations, the religious professional should have prior specific knowledge that an announcement will take place! *What needs to be said?* The reason for the removal should be stated, at least in general terms. Whether or not the religious professional maintains his innocence or admits his responsibility should be stated if pertinent, and all of this should be done in a way that highlights issues of privacy and good reputation. *How should notification take place?* In those cases under civil jurisdiction, according to the law of the place. To members of the church community immediately affected, the bishop or major superior should do this personally; to the broader church community and the civil society, an authorized representative could make the notification. *Where should notification take place?* The location most immediately affected by the announcement unless another venue is judged more appropriate. *Why must others be notified?* Three considerations might be: our theology of church as a real community, our commitment to professional responsibility, the rights of third parties may be affected by the impaired professional’s behavior.

comprehensive assessment provides the individual professional, as well as his or her ecclesiastical authority, some realistic and actual possibilities for vocational rehabilitation.

With respect to prognosis, we are dealing with a different matter. In some cases, there will be no possibility for vocational rehabilitation. Sexual abuse of minors by those in active ministry, for example, that is admitted or proven is one category where the individual must seek a new way of living. Particular church law in the United States is very clear on this item. Norm Eight (8) of the *Essential Norms* mandates that “when even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.” In other cases, it may be advisable that a sufficient period of time pass between treatment and re-integration into active ministry.

It is at this point where the second step of vocational rehabilitation must be tackled, the issue of future options. A recovering individual must become aware of choices before him or her as opposed to receiving directives from ecclesiastical authority. Just as assessment and treatment have revealed to the individual his or her responsibility for their impaired behavior, each must be assisted and supported in defining and implementing personal courses of life and action open in the future. This may mean an entire career change for some and an alteration or limited implementation of their previous professional career. New choices certainly suggest that educational and financial resources will need to be set aside for new training.

The question remains, however, in situations where the elements previously discussed are thwarted? The impairment remains too great to resolve? When should matters of the impaired professional be forwarded to formal legal process in the ecclesial community?

IV. ADMINISTRATION OF JUSTICE IN CERTAIN CASES

One of the perplexing problems which ecclesiastical authority always has struggled with is the topic of application of penalties upon certain individuals. One on hand, there is long standing recognition that many of the abuses which impair a professional are illnesses which would more properly benefit from a therapeutic approach. On the other hand, we are more conscious today of the long-term suffering which abusive behavior can and does inflict upon third parties, as for example sexual abuse of a child or an adolescent. Today, ecclesiastical authority must address healing issues of both the impaired professional and any victim. In addition, it is not for the victims to determine the ecclesiastical punishment of an offender. As one respected commentator noted, “the victims must be heard, listened to attentively, but they must not be allowed to dictate Church policy and the application of penalties for offenses committed.”⁸

⁸William H. Woestman, O.M.I., *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, (Ottawa: Faculty of Canon Law, St. Paul University, 2003), 67.

Current Catholic Church Law since 1983

Catholic Church law requires that in the application of penal laws, a strict interpretation must take place for the imposition of *ferendae sententiae* penalties and the declaration of *latae sententiae* penalties.⁹ Such an interpretation is necessitated by the fact that some penalties are “medicinal,” that is, designed and imposed for the correction of the offender while others are “expiatory” penalties which are designed for repairing the social order by punishing the individual for a certain action.

What this legal terminology means for the ordinary Catholic is sometimes difficult to explain. Some laws, for example, state that a penalty is to be applied automatically if the offense is committed, as for example, the penalty of excommunication for procuring an abortion of an unborn child. Other laws call for a judicial process to determine whether or not a person is to be punished in a specific way or “by other just penalties.”¹⁰ Moreover, to safeguard victims, offenders, and the church community, church law limits judicial discretion defining matters of the application of penalties in canons 1342 – 1353; the cessation of penalties in canons 1354 – 1363, especially “prescription” or “statute of limitations” found in canon 1362. This terminology protects against any one individual authority applying penalties based on personal feelings of self and others while the terminology provides for the protection of the offender to be punished in accord with the norm of law.

Given the complexities of canon law in the application of penalties, certain items stand out. First, whether one is the alleged offender or the ecclesiastical authority, the services of canon lawyers trained in penal law are highly recommended.¹¹ Secondly, proper application requires the careful collection of the facts of a case as opposed to hearsay opinions and conjectures. Related to the collection of facts is, thirdly, the verification of these facts by evidence which at times requires the input of expert testimony. A fourth item concerns trial procedures which should be scrupulously adhered to regardless of time needed for a trial. All four of the previous items are essential if the actual judgment is to be based upon “moral certitude,” a concept in church law similar to civil law’s “beyond a reasonable doubt” as opposed to a simple “preponderance of proofs.” Finally, the application of penalties requires that the institute of appeal be followed should one of the parties feel “aggrieved” as well as to maintain the integrity of the whole process.

⁹A penalty is *latae sententiae* if it is attached to the law or the precept in such a way that the offender incurs it simply by committing the offense; it is *ferendae sententiae* if it is necessary that a judge or superior apply it. *Code of Canon Law Annotated*, p. 1024.

¹⁰Canon 1373, for example, states: “A person who publicly incites among subjects animosities or hatred against the Apostolic See or an Ordinary [bishop or religious superior] because of some act of power or ecclesiastical ministry or provokes subjects to disobey them is to be punished by an interdict or other just penalties.”

¹¹Canon lawyers are like other professionals in the sense that one or the other may be more knowledgeable in specialties. Not all canon lawyers have the temperament, experience nor even the inclination to be involved in penal trials.

The question arises as to what types of penalties could be applied to the impaired professional should the law dictate a penalty or a situation require such application? The *Code of Canon Law* recognizes three *censures*, excommunication, interdict, and suspension whose primary goal is the conversion and rehabilitation of the delinquent.¹² Different than censures are *expiatory penalties* whose primary goals are the restoration of the just order that was damaged by the offense.¹³ A third type of penalties are *penal remedies* and *penances*; the first of which is designed to prevent a future offense while the second serves to impede the commission of offenses, to correct the delinquent, and to repair scandal and disturbances to the public order. Both are discussed in canons 1339 to 1340 of the *Code of Canon Law*.

The Case of Permanent Removal from Ministry & Dismissal from the Clerical State

Canon lawyers have long known that the application of either item under church law was often difficult in a particular case because of the requirements of imputability on the part of the offender as well as limitations placed on ecclesiastical authority. Few were the number of cases actually implemented by ecclesiastical authority against impaired clergy or religious who were, and perhaps still are, reluctant to proceed legally against sick individuals.

The landscape has changed, and from items arising through out the world and in many nations, the sexual abuse of minors and vulnerable adults demonstrates a world wide abhorrence of such behavior. In the United States at this moment, two items need to be realized by any who are caught up in situations involving this impaired behavior. Norm Six (6) of the *Essential Norms*, particular law of the United States Catholic Conference of Bishops, requires that when an allegation of sexual abuse of a minor by a priest is received, a diocesan investigation in harmony with canon law in accord with Canon 1717 of the *Code of Canon Law* take place. For cases determined to possess “at least a semblance of truth,” Article 4, §1 of the Apostolic Letter, *Sacramentorum Sanctitatis Tutela*, states that such cases shall be reserved to the Congregation for the Doctrine of the Faith for further determination. Moreover, Norm Eight (8) of the *Essential Norms* also mandates that “when even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.”

The adequacy or inadequacy of these particular provisions in the hearts and minds of all

¹²The 1983 *Code of Canon Law* does not include a definition of a censure, but 1917 code did provide one. “A censure is a penalty by which a delinquent and obstinate person is deprived of some spiritual goods or of temporal goods annexed to the spiritual, until the individual recedes fro obstinacy and is absolved.”

¹³Canon 1336 lists five different expiatory penalties, but this list is not meant to be an exhaustive list. Among these are a prohibition or order with respect to residence; nine different possible penal deprivations; prohibitions concerning teaching or preaching or wearing of clerical garb; dismissal from the clerical state whose effects are set forth in canons 290-293.

Catholics, lay or clergy, as well as the general population remains to be determined. Even more problematic are those old cases whose civil statute of limitations have passed which prohibit either civil or criminal prosecution. And there are those older cases where the passage of time and the availability of witnesses make it impossible to either prove or disprove the allegation. Add to the mix the “demands” of victims and their families and supporters as well as the determination of others to advance other agendas create conflicting and at times irreconcilable items which defy mutual agreement. Most importantly, the various conflicts create a climate of mistrust among members of the Church. Among clergy, there is a growing sense of “vulnerability” that anyone, but especially those with some other impairment, could be accused of misconduct and one’s inability to prove or disprove the accusation still results in a priest’s or deacons ministry being ended.

Recent Developments

On 30th January 2009, Pope Benedict XVI granted certain special faculties to the Congregation for the Clergy to address three types of cases.¹⁴ The Congregation presented in their circular letter of 18 April 2009 these faculties to all Ordinaries so that the “reasoning behind them and the ends which they seek to accomplish are clearly understood in the manner in which they were originally intended.” The Circular letter also supplies an eight point procedure for the instruction of cases by administrative procedure.¹⁵ While the jurisprudence of actual *praxis* remains to be enunciated, the operable theory seems clear.

1. The imposition of dismissal from the clerical state (with dispensation from the obligations of celibacy) as a penalty for priests and deacons who are guilty of one or more of the following violations of ecclesiastical law:

- a) Clerics who have attempted marriage, even if only civilly, and who have not withdrawn from the relationship after admonition to do so (Canon 1394, §1)
- B) Clerics guilty of other grave sins against the Sixth Commandment as indicated in canon 1395, §§1 - 2 (excluding the more grave delict of clerical sexual abuse of minors which remains reserved to CDF)

The *Code of Canon Law* already allows a bishop to address the two situations mentioned above. However under the Code such dismissal must take place through a formal judicial trial, and the

¹⁴The Circular Letter does not derogate from, or otherwise modify, the provisions of *Sacramentorum sanctitatis tutela*, the *motu proprio* that reserves jurisdiction over more grave delicts to the Congregation for the doctrine of the faith. In short, the CDF retains exclusive competence in the external forum for cases of violations of the Sixth Commandment by clerics with minors under the age of 18 as well as for other more grave delicts. Likewise, the Circular Letter does not derogate from or abrogate the provisions of the Essential Norms of the USCCB, i.e. number 20, because the decree of *recognitio* for the norms indicates these remain in force *donec aliud provideatur*.

¹⁵See Appendix I for this procedure.

imposition of the penalty of dismissal does not bring with it dispensation from the obligations of celibacy. This must still be requested of the Holy See. The Circular letter now allows the dismissal when warranted to take place through an abbreviated administrative process that does bring with it the dispensation.¹⁶

2. The imposition of penalties, including dismissal from the clerical state, on priests and deacons who have committed grave violations of other divine or ecclesiastical laws and where there is an urgency to act so to avoid objective scandal (see Canon 1399).¹⁷ This is granted along with the derogation from the prescriptions of canons 1317, 1319, 1342, 2 and 1349 of the *Code of Canon Law* with respect to the application of perpetual penalties, to be applied to deacons only for grave reasons and to priests for the gravest reasons, always requiring that such cases are presented to the Holy Father for His approval *in forma specifica* and for His decision.

3. Declaration of the dismissal from the clerical state, with dispensation from the obligations of celibacy, of clerics who 1) have illicitly abandoned the ministry by their own choice, 2) for a period of at least five years, and 3) who choose to persist in this illegitimate status following admonitions to cease from it. The provision addresses situations where bishops find it difficult to resolve the juridic status of priests and deacons who have long left the ministry and who are unwilling voluntarily to seek resolution of their status.

With regard to the administrative procedure (Cf. Canons 35-38, 1342, 1720), such cases are to be instructed only by clerics, and it must be insured that:

1. The accused is notified of the accusations alleged against him and of the relevant proofs giving him the opportunity to produce a defense, unless, having been legitimately cited, he has neglected to make himself available;
2. A careful examination is carried out, with the help of two assessors (Cf. canon 1424) of all the proofs and the elements that have been gathered, as well as of the defense presented by the accused;
3. a Decree is issued, according to the provisions of canons 1344 – 1350, if there be no doubts about the delict having been committed and the criminal action has not become extinct according to the provisions of

¹⁶Two important items need to be highlighted. The bishop must instruct the case according to the administrative penal process outlined in the *Code of Canon Law*. This includes the use of two assessors and the assurance of the right of defense to the cleric. Secondly, since the dismissal when granted by the Congregation takes place by the Holy Father *in forma specifica*, there is no appeal of the decision by the cleric.

¹⁷This faculty involves derogations from existing laws in the *Code of Canon Law*. The penalty attached to a violation of canon 1399 does not allow for dismissal from the clerical state. Nor does the *Code of Canon Law* permit dismissal from the clerical state or other perpetual penalties by means of an administrative process.

canon 1362. The Decree, issued according to the norm of canons 35 – 38, must contain the reasons motivating it, and have expounded therein, even if only in summary fashion, the reasons in law and in fact pertaining to the particular situation.

“Moreover, it must always be shown that a situation exists in which discipline has been gravely breached by the cleric, and every attempt to resolve the problem through the pastoral and canonical measures already provided in the *Code of Canon Law* have not brought about a positive result, and no end is foreseen to this situation, thus causing grave scandal to the faithful and damaging the common good for the Church and Her spiritual mission.”

CONCLUDING REMARKS:

First, Canon Law will not solve human problems, but it can provide a context, or common ground, for people to work out their problems and difficulties in a way to restore peace and maintain harmony.

Secondly, a failure to follow “rule by law” in situations involving the “impaired professional” leads to no other option than “rule by person” which for human problems often opens “Pandora’s Box,” leading to increased dissension and alienation.

Thirdly, a change is needed in our Catholic thinking about addressing addictive behavior in two ways. The first is to implement a therapeutic focus upon the health of the impaired professional; the second is the health of the community, whether large or small, associated with, and affected by, the activity of the impaired professional priest or religious.

Fourthly, intervention is the first of a number of critical steps; and while it is primarily dependent upon the skill of the interveners, it is made easier by widely understood and disseminated policies and guidelines.

Fifthly, evaluation by an inter disciplinary team of professionals from a number of appropriate fields and specialties is a *conditio sine qua non* for any determination of vocational rehabilitation or future course of action for a recovering impaired professional priest or religious.

Finally, only when attempts to resolve problems by the pastoral and canonical means, foreseen in the *Code of Canon Law*, are shown to be insufficient or unable to repair scandal, to restore justice or to reform the offender should ecclesiastical authority invoke the judicial procedures of the Code or the administrative procedures now in place with respect to an impaired professional priest or religious.

Thank you for your consideration of these comments and ideas.

APPENDIX I

The Circular letters requires that cases in which the administrative procedure is employed, even those cases pre-existing the granting of this faculty, must be instructed according to the following procedure:

- Art. 1 The Ordinary of Incardination may request a Rescript of the Apostolic See by which dismissal from the clerical state is declared, along with the related dispensations from the obligations consequent to ordination, including that of celibacy, for a cleric who has abandoned ministry for a period of longer than five consecutive years, and who after careful verification of the facts, insofar as this is possible, persists in the voluntary and illicit absence from ministry.
- Art. 2 §1 The competent Ordinary is that of the incardination of the cleric.
§2 The competent Ordinary can entrust the instruction of such procedures either in a stable manner, or on a case by case basis, to a suitable priest from his own or another Diocese.
§3 In this procedure the Promoter of Justice, who has a duty to protect the public good, must always be involved.
- Art. 3 The declaration mentioned in Art. 1 can be obtained only after the competent Ordinary, having completed the relevant investigation has reached moral certainty regarding the irreversible abandonment from ministry on the part of the cleric, from either the declaration of the cleric himself, and/or from the depositions of witnesses, from well founded public knowledge or other indications.
- Art. 4 The notification of any of the acts must e made through the postal service or by other secure means.
- Art. 5 The instructor, having completed the instruction, should transmit all of the acts to the competent Ordinary with his appropriate summary, expounding his *votum* according to the objective facts of the situation.
- Art. 6 The competent Ordinary should transmit to the Apostolic See all of the acts together with his own *votum* and the observations of the Promoter of Justice.
- Art. 7 If, in the judgment of the Apostolic See, supplementary instruction is required, that will be indicated to the competent Ordinary, with directions as to how to complete the “Acts.”

Art. 8 the Rescript of dismissal from the clerical state, with the related dispensation from the obligations attendant upon Holy Orders including that of celibacy is transmitted from the Holy See to the competent Ordinary, who will provide for making it known in an appropriate fashion.

The Circular Letter of the Congregation closes with the final direction with respect to the procedure. “After the dismissal from the clerical state, *in exceptional cases*, [Emphasis Italics mine] a cleric who might wish to seek rehabilitation, must present that request to the Apostolic See through a benevolent Bishop.”