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Lying for Life? On Delayed Disclosure of Healthcare Limits

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ABSTRACT: This article considers the ethics of delayed disclosure of the limits of healthcare to abortion- or contraceptive-minded clients. It also describes and evaluates the current practices of pro-life crisis pregnancy centers that imitate abortion-providers' advertising techniques so as to attract abortion-minded clients. I argue that such delayed disclosure and advertising are within the limits of truthfulness and that they may be maintained as a legitimate response to a crisis of terminology in the abortion debate. This conclusion validates similar techniques of "benign misleading" as used by NFP-only or abstinence-only healthcare providers.

IS SOMEONE WITH A CERTAIN SET of commitments on the life issues best described as pro-life, anti-choice, or anti-abortion? Alternatively, is someone with the opposite set of commitments most fairly called pro-choice, pro-abortion, or anti-life? Besides the perennial conflict over the proper use of these terms in political matters, there is endless conflict over many other terms and definitions in healthcare. In such a context, the responsibility to speak and live truthfully often conflicts with the policies of various institutions, frequently putting governments and patients at odds with the truth.

When government agencies or private employers set their own terms and enforce them with the threat of financial, legal, or even criminal sanctions, the healthcare provider needs to reflect on how to respond truthfully and in good conscience. Similar challenges may arise from patients who claim the same definitions and institutional force to vindicate their perceived rights to healthcare. In the face of these

challenges, the virtue of prudence may suggest that an indirect response is more warranted than a direct confrontation or vying over terms. Benignly misleading the interlocutor is one such indirect technique.

This essay explores the legitimacy and limits of benign misleading in the clinical context. Cases of benign misleading arise frequently in pregnancy referral services, organizations that attempt to counsel abortion-minded clients without initially disclosing a pro-life motive. Benign misleading is likewise employed by healthcare practitioners who refrain from abortion or contraceptive services but wish nonetheless to treat patients who seek these services.

Having served as a crisis pregnancy counselor for several years, I will consider how abortion language is typically understood by women with crisis pregnancies and how these understandings are applied, and then argue that when warranted, benign misleading is legitimate. Benign misleading is also a legitimate means for clinicians who offer NFP-only or abstinence-only medical services. Although some may criticize benign misleading, these practices should not be abandoned, for doing so would unnecessarily require clinicians and counselors to dismiss morally at-risk patients in need.

An Account of Conscience

In his encyclical *Evangelium Vitae* (EV), John Paul II writes that "abortion is a sign of society's crisis of moral sense where men cannot distinguish between good and evil."[1] This document points to a misunderstanding of suffering that culminates in the "understandable fruit" of euthanasia (EV §30). The misunderstanding of suffering also leads to the increased practice of induced abortion when the demands of childbearing are exaggerated as justification for abortion. This exaggeration assumes an almost indisputable legitimacy when the case involves a child who is a fruit of rape or is suspected of bearing a deformity in

[1] John Paul II, *Evangelium Vitae* (Boston MA: Pauline Books, 1995), §94.

life. In the latter case the "humane" action for the child is taken to be a case of killing her to save her from the "meaningless" suffering that she would otherwise endure. The clouding of individual consciences on the basic question of the value of human life manifests itself in deeming objectively evil acts acceptable, and even laudable, when done with appropriate intentions and under certain circumstances.

Evangelium Vitae describes the paradoxical inversion of values in modern states that no longer consider many crimes against humanity to be crimes but rights (EV §25). After decades of legal protection, abortion acquires the appearance of a freedom protected by the state and permissible under any circumstances. This "freedom for abortion" already seems to be as sweeping as possible in the United States, but *Evangelium Vitae* noted an aggressive trend in the promotion of abortion. Often referred to as part of "reproductive rights," access to abortion and contraception is mandated in many states through free healthcare (EV §25). What had been protected as the right to pursue abortion is now being understood as a right to have access to it as an entitlement.[2]

The abortion industry's shift in strategy to this more aggressive approach is mirrored by a shift in its promotional language. In a position paper entitled "The Truth about Crisis Pregnancy Centers," the NARAL Pro-Choice America Foundation warns that crisis pregnancy centers "may endanger women's health by delaying access to legitimate health-care services."[3] "Reproductive health services" is NARAL's euphemism for abortion, and they maintain that those who oppose

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[2] For an analysis of this shift, see John J. Conley, S.J., "A New Assault on Conscience," *Life and Learning XIII: Proceedings of the Thirteenth University Faculty for Life Conference*, ed. Joseph W. Koterski, S.J. (Washington, D.C.: Univ. Faculty for Life, 2003), pp. 21-28.

[3] http://www.prochoiceamerica.org/assets/files/Abortion-Access-to-Abortion-CPC-truth.pdf (last visited September 1, 2009).

providing or receiving such services are intimidators and extremists.[4] By this redefining of the debate's terms, the abortion industry intends to marginalize any opposition to abortion.

This strategy of redefinition by abortion providers is supported by contraceptive access campaigns in public schools that are aimed at establishing a wide future client base and at framing the terms of the debate to its advantage. Although implementation of this campaign has not yet been accomplished throughout all of the United States, I would argue that it has been accomplished in some quarters, especially in urban areas among minority women. Many such women now take it for granted that abortion is their only option in cases of failed contraception and expect that the government will readily provide it. Abortion advocates thus consider opposition to "reproductive rights" as tantamount to denying them a necessity of life and a legal entitlement. Anyone who suggests that the decision to abort a child is wrong is viewed as a strange and inhumane threat. Opposition to abortion for such women may still come from their family or religion, but in urban centers among immigrant women these ties are often negligible.

This summary of the efforts to establish a "right to access to abortion" in the consciousness of women with crisis pregnancies has been intended to describe both the state of such "rights" as understood by the abortion providers and many of their clients, and the language that they use to protect and spread this culture. It is, in short, a view that is fundamentally misguided in seeing the legitimacy of abortion as a part of the "reproductive rights" to which the state guarantees free access. Clearly, those who would affirm human life must contest these redefinitions, so as to restore a sense of the pro-life meaning of the terms, lest the terms of the debate be definitively prejudiced against life.

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[4] Steven W. Mosher has written on international efforts to redefine "reproductive health" and other terms, e.g. "'Reproductive Health Care,' the 'Demographic Imperative,' and the Real Health Needs of Women in the Developing World (Part Two)," *The Linacre Quarterly* 76/2 (2009): 181-211.

The Response of Crisis Pregnancy Centers

Through their experiences with women who have been thoroughly deceived by the abortion industry on these fundamental questions of freedom, truth, and the good, crisis pregnancies centers and hotlines have developed a controversial strategy for reaching these women through "benignly misleading" them to consider the option of birth. It should be noted, however, that not all crisis pregnancies centers temporarily conceal their clinical and pastoral goals. Organizations like Birthright and many others clearly disclose their ethos in their advertising. However, many crisis pregnancy organizations have relied on advertising that conceals their purposes so as to better attract patients who might be abortion- or contraception-minded. In this essay I am concerned to show that these strategies of concealment are morally legitimate.

I would like to provide a sketch of the typical discourse used with women I counseled during a three year period in the Bronx. The women with whom I worked were from a culturally and racially pluralistic context. Almost every woman noted that she had used contraception in the past, but that it had failed or was not being used at the time of her current conception. Abortion would seem to her to be the logical back-up to failed contraception. Although some women sought their abortions with emotional heaviness, many acted as though they were undergoing a minor inconvenience, or were even light-hearted when they were pursuing their first abortions. They nearly always were completely ignorant of the abortion procedures and the basics of fetal development. For women who were post-abortive, there was typically an acknowledgment that their previous abortion was regrettable, but they nevertheless manifested a fatalistic drive to continue having abortions. Almost none of the women initially believed that they had any choice but abortion. Despite their abortion-mindedness, they inadvertently contacted people who intended to help them choose life–something that presumably stemmed from the advertising techniques of abortion-alternative agencies.

In advertising "free abortion alternatives," crisis pregnancy centers and hotlines throughout the United States are routinely contacted by clients seeking abortions. Unfamiliar with the meaning of "alternatives" in its use above, the women often assume that the phrase means that free abortions are offered. Although this strategy is deemed "deceptive advertising" by the abortion providers, I will argue that there is nothing morally unacceptable in this type of advertising. But I would also like to consider a more controversial technique used by those answering telephone calls for crisis pregnancy centers or pro-life pregnancy hotlines.

Pregnancy help-center calls often proceed as follows. The client says, "I would like to schedule an abortion." The telephone counselor typically replies: "We offer free abortion alternatives, which include a free pregnancy test, a consultation, and then we see what we can do." The final clause typically reassures the girl who is seeking an abortion and then presumes that she will be provided with one even though the counselor has not actually said so. The offer in the last clause is formally true in that the center will explore her pregnancy options, including the support that is available for her to carry the child to term. The counselor no doubt expects that the client might interpret the statement incorrectly to mean that the center will help her pursue an abortion. This technique is somewhat more controversial than the "free abortion alternatives" advertisement in that an informed interpretation of the advertisement would dissuade one who seeks an abortion from calling. But the expression used on the telephone leaves room for an incorrect or a correct interpretation.

The promise to "see what we can do" is made to the client in light of her authentic needs and desires as a woman with a crisis pregnancy, where those desires and needs cannot possibly include abortion. The pregnant mother's unborn child has a right to life, and the mother has a duty to carry that child to birth. Notwithstanding, the counselor recognizes the probability that the expectant mother does not understand her rights and duties, and that if she remains in this ignorance, she will

likely pursue the abortion and suffer various psychological, spiritual, and possibly physical harms. The counselor also recognizes that she will be more able to inform the client of her rights, duties, and options in an in-person conference than in a telephone call. Thus, the counselor does not disabuse her on the telephone of the mistaken assumption that she will be provided with an abortion when she comes to the counseling center. She is in fact often only disabused of this notion after twenty minutes of consultation on abortion procedures, risks, and alternatives. Given the various dispositional factors and educational disadvantages typical of these women, turning them from their abortion-mindedness to a state of desiring to bring their children to birth tends to require a minimum of a one-hour in-person consultation and subsequent weekly follow-up phone calls as needed.

Despite the exigencies of crisis pregnancy care, the good consequences of benign misleading do not necessarily justify its use. If good consequences are obtained by means of an intrinsically evil act, they must not be pursued.[5] The Catholic Christian tradition has also generally accepted St. Augustine's condemnation of lying as an intrinsic evil, and as such lying is morally unacceptable under any circumstances.[6] That one may not lie even to protect an innocent person from being killed seems to most people to be morally obtuse. The problem of the lie's intrinsic evil is beyond the scope of this essay, but it may be said that St. Augustine's ban presupposes the need for grace to refrain from lying, and that the God of truth gave language for leading others to truth. If one should sooner die than commit a mortal sin, which earns eternal death,

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[5] The initiatives of Mark Crutcher, and more recently, Lila Rose, President of an organization called Live Action, likely violate the limits of truthfulness. In her efforts to expose the deceptive practices of Planned Parenthood workers by covering up statutory rape cases, Rose declares that she is fifteen years old when she is actually in her twenties.

[6] Paul J. Griffiths recently defended St. Augustine's ban on lying in *Lying: An Augustinian Theology of Duplicity* (Grand Rapids MI: Brazos Press, 2004).

then this conclusion seems more reasonable.[7] At the same time, neither St. Augustine nor St. Thomas Aquinas regards all lies as having equal gravity, and the latter believes that lies to protect the innocent are at most venial sins.[8] But the Catholic tradition tends to discourage all lying. Two definitions of lying in the most recent editions of the *Catechism of the Catholic Church* help assess the context and limits of lying.

Promising to "see what we can do," a technique that allows for a misinterpretation of one's statement, is a permissible use of speech in light of the rights, duties, and ends of the woman and the counselor's truthful care for her, as understood by the *Catechism*. Since truth for the human person must be compatible with the person's ultimate good, truthfulness must necessarily be tied to the rights and duties that lead them to this good. Thus, the first edition of the new *Catechism* defines lying as leading another into error who "has a right to know the truth" (CCC §2483). This definition's reference to the recipient's right to know the truth takes into account the global dimensions of truth-telling. First, the woman has no moral right to have an abortion, nor to know where she can have one. Since the child's right to life should prevail over any alleged right to control over her body that would involve abortion, she even has a duty *not* to pursue his death. Thus there is no denial of truthful information that the hearer has a right to know, and no one is led into error about information to which she has a right.

In a particular conversation, it may become apparent that the person with whom one is speaking has subscribed to erroneous notions of rights, duties, and entitlements. Upon recognizing the other's confusion, it is

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[7] Alasdair MacIntyre appeals to agents' duties to justify lying to protect an innocent in "Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Kant and Mill" in *The Tanner Lectures on Human Values 16*, ed. Grethe B. Peterson (Salt Lake City UT: Univ. of Utah Press, 1995), pp. 307-61. In this paper, I argue that such duties inform the meaning of terms but cannot justify lies.

[8] Lawrence Dewan, O.P., "St. Thomas, Lying and Venial Sin," *The Thomist* 61/2 (1997): 279-99.

often of value to inform or correct the other. However, prudence may dictate that the other's good may be better served by refraining from correction at that time. What is most critical in these contexts is *not* to adopt the false terms of the other. This justification comes from what was stated above about the need to resist hostile discourse laden with false terms and concepts.[9] Accepting the terms of the erroneous party in this way for the sake of a further good was considered and rejected by St. Augustine in his consideration of the problem of lying to trap heretics.[10] The true sense of terms establishes the limits of the agents' rights to know, and the terms that may be used in truthful discourse. Thus, the client's right to know the truth has its reference to the true meanings of the discourse, which is broader than the particular conversation. Provided that one's statements are consistent with this broader context of discourse, one cannot be found to be lying.

The second definition of lying in the *editio typica* of the *Catechism* permits a more local evaluation of an act of lying. This second definition can be seen to supersede the previous definition, which arguably provides too lax of a definition of lying, though it does appreciate the hearer's right to the truth. The second definition distinguishes lying from inculpably giving incorrect information in that lying is "speaking a falsehood with the intention of deceiving" (CCC §2482). But the expression "We will see what we can do" is not a falsehood. It is a vague assurance. The problem arises around the alleged "intention to deceive" in speaking these words. I will argue that one need not intend to deceive

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[9] Alexander Pruss argues for the acceptability of a form of deception that is based on accepting the false terms of the interlocutor in "Lying and Speaking Your Interlocutor's Language," *The Thomist* 63/3 (1999): 439-53. This seems to conflict with the good of personal integrity that Grisez correctly defends. It also misappropriates words, implicitly denying the gift of speech, as Paul J. Griffiths argues in *Lying: An Augustinian Theology of Duplicity*, p. 85.

[10] See William E. Mann, "To Catch a Heretic: Augustine on Lying," *Faith and Philosophy* 20/4 (2003): 479-95.

with this utterance, and that it is permissible to use.

Near Lying and Intentional Difference

Crisis pregnancy centers, primary care physicians, and selected other specialists routinely receive requests for "birth control." The likely sense of this term for the client is one that includes contraception. However, an NFP-only physician will likely take "birth control" and "family planning" to exclude contraceptives. Is the care provider required to announce this aspect of his or her practice? What if the care provider wishes to offer the client NFP or abstinence education? I would like to suggest that the care provider can schedule the client seeking "birth control" with no intention of providing her with contraception.

A look at the intentions of the speaker and the interlocutor reveal why this is not intentional deception. Given that the speaker and interlocutor have different definitions of "birth control," the care provider must either adopt the client's definition, or inform the client of the definitional disparity, or simply act in accord with his own definition. As was argued above, it is imperative that one not adopt the faulty definition of the interlocutor. I would also like to argue that the care provider need not inform the client of the definitional disparity. Classical Catholic ethical theory recognizes the duty of a person to seek the truth, but not necessarily to inform the ignorant at all times and in all ways. Thus, the duty to determine what a term means rests with the client. The care provider may wish to avoid a possibly irate client who came expecting something different. However, the care provider may elect to risk this response for the sake of reaching out to a client who has lost her way. Thus, the care provider may simply act in accord with his definition of, for instance, birth control, even while he suspects that the client has a different understanding of the term. The care provider need not intend that the client have the definition that she does, even though he foresees that she will act in accord with it. Happily, her false definition should in this instance ultimately lead her towards truth and goodness.

Does this solution to ethical healthcare in the context of a crisis of

definitions open the door to creative re-definitions for the sake of pro-life goals? If a patient calls to ask that her pregnancy be terminated, can one instruct one's scheduler to reply by saying something like: "Okay, how would Tuesday at 8AM work for you?" while understanding "pregnancy termination" to be another way of saying "bringing a pregnancy to term"? The answer seems to be no. This is ruled out because "termination of pregnancy" clearly has a current sense of abortion in the conversation. One cannot equivocate on "termination of pregnancy," for instance, by mentally applying the qualifier "through the natural birth process," which depends on a future sense of "termination of pregnancy." The definitions of terms must legitimately correspond to what a speaker knows about the relevant context.

Conclusion

In this essay we have examined the customary practice of benign misleading in the context of crisis pregnancy or clinical settings. We have seen that the true sense of an expression must take into account the duties and ends of the human person. In light of these ends and duties, it is licit and sometimes necessary to lead the misguided person to the truth through the use of ambiguous language or of terms of which she has an inadequate definition. One has a responsibility not to concede controversial terms to the opponent and to challenge these terms. The client should not be abandoned to a dangerous course of action with only a rejection or word of disapproval. At the same time, if one is unable to attract and convince the client of ethical healthcare goals within the limits of truthfulness, subsequent moral evils that are pursued by the client are not the responsibility of the one who offered no active support for them.

It has been clear in my experience that nearly all women who are experiencing crisis pregnancies can be told what they need to hear to be brought in for a consultation without any telling of falsehoods. While most cases are handled by assurances like, "We will see what we can do," even more specific requests can be handled by using the opponent's

words but maintaining a true definition of them. Thus, when a woman calls specifically wanting to know whether one carries the morning-after pill or not, one might reply "We carry the full range of reproductive health options" or "We are able to take care of all of your pregnancy needs." Since these sentences are perfectly true, it is then left to the clinician or counselor to help the client discover her best option in an interview that progressively leads her into greater truth in language and life.