

lowing its use has become progressively more restrictive. It is very difficult to get penitents to meet the conditions required for its valid reception. On the other hand, when an "act of perfect contrition" is used, it is much easier for people to understand and accept the need for individual, integral confession. Therefore, an act of perfect contrition is an obvious option in many pastoral situations such as when there is a Rite II celebration of the sacrament of penance and there are insufficient confessors to hear the confessions of those present. The priest, having explained the situation, could lead the congregation in making an act of perfect contrition, and then hear as many confessions as he could. The act of perfect contrition would provide for those in grave sin, until they next had an opportunity to confess.

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## CANON 1041

### IRREGULARITY FOR ABORTION

*A young man who is considering applying to the seminary disclosed to me, in spiritual direction but outside of confession, that, several years ago, shortly after their having engaged in sexual intercourse, the man's girlfriend demanded that he drive her immediately to an abortion clinic to secure a "morning after pill." He did so and is certain that the woman took the drug(s) she acquired there, and is likewise sure that the woman did not later have a child that could be his. Three questions: (1) has this man incurred the irregularity of abortion under canon 1041, 4°; (2) even if he has not, should he still disclose this matter to his bishop; (3) would I be obligated in any way to bring this matter to the attention of the man's bishop?*

### OPINION

To your first question, no irregularity for orders can be incurred unless the *fact* upon which the irregularity is proposed is established.<sup>1</sup> Here it is highly questionable whether the woman was even pregnant when she took the "morning-after pill";<sup>2</sup> moreover, it cannot be determined now whether the specific "morning-after pill" the woman took worked as a contraceptive or as an abortifacient;<sup>3</sup> finally,

<sup>1</sup> See, e.g., Robert Geisinger commenting on canon 1041, 4° in *New Commentary on the Code of Canon Law*, ed. John P. Beal, et al. (New York/Mahwah, NJ: Paulist Press, 2000) 1217-1218, wherein "The [homicide or abortion] must have been completed and one must be seriously culpable in the planning or execution of it"; and John Abbo and Jerome Hannan, *The Sacred Canons* (St. Louis, MO: Herder Book Co., 1952) II: 130, commenting on 1917 *CIC* 985, 4° (predecessor to 1983 *CIC* 1041, 4°), wherein "The intention to commit voluntary homicide or to procure abortion, no matter how gravely sinful, does not result in an irregularity unless it accomplishes its end."

<sup>2</sup> Human conception can only occur within the narrow time frame each month that a female is fertile (approximately one day in thirty). See generally J. Leikin and M. Lipsky, eds., *American Medical Association Complete Medical Encyclopedia* (New York: Random House, 2003), s.v. Conception, at 392. Even under optimal conditions, fertilization usually requires the passage of several hours after coitus. See, e.g., Marie Hilliard, "Ulipristal and Catholic Hospitals," *Ethics & Medics* 35/9 (September 2010) 1-2.

<sup>3</sup> See R. Pease, ed., *Merriam-Webster's Medical Desk Dictionary* (Springfield, MA: Merriam-Webster, 2005) s.v. "Morning-after pill", at 525, describing the MAP as "an oral drug containing high dosages of estrogen ... that interferes with pregnancy by *inhibiting ovulation* or by blocking implantation of a fertilized egg in the human uterus." Emphasis added. While an *abortifacient* drug could result in what canon law would recognize as abortion, per Pontifical Council for the Interpretation of Legislative Texts, authentic interpretation of canon 1398, May 23 1988: *AAS* 80 (1988) 1818-1819, an *anti-ovulant* drug would not have that canonical consequence.

even if the woman were pregnant and the drugs she took were abortifacient, due to the high spontaneous abortion rates common to early pregnancy,<sup>4</sup> it could not be determined whether the drug(s) she took actually *caused* an abortion.<sup>5</sup> Given the cumulative uncertainties about whether an abortion even occurred in this case and if so what caused it, there is no need to analyze the scope of the man's cooperation in the woman's action in order to determine whether such cooperation could have brought him within the reach of canon 1041, 4°. He incurred no irregularity as a result of his actions that morning.

To your second question, while a candidate for orders is free to bring to the attention of his bishop (or formation personnel) any matters he wishes, I see no civil, canonical, or moral obligation on the part of the man to disclose this episode to anyone. Simply put, one is not obliged to expose one's conscience *per se* in the external forum, which is what this disclosure would amount to. But, with that being understood, it seems to me that the man consented to what he *thought* was the sin of abortion and, even if his culpability were diminished by the suddenness of the pressure exerted on him, the haste of his decision, and the indirectness of the assistance he rendered, the issue should be dealt with as a moral matter in sacramental confession (canons 916 and 988). Assuming, however, that you have already advised him of this possibility or are otherwise confident that the matter has been addressed in the sacramental forum, the only other area that might require attention would be possible psychological repercussions arising from seeing one's willingness to have been involved in such a deed in the first place. Nothing suggests this to be an on-going issue in this case, but I mention it for completeness.

To your third question, because there is no irregularity to report here, you are under no obligation to bring this matter to the attention of anyone, including the man's pastor or ordinary in accord with canon 1043. Indeed, even though you indicate that the information came to you outside of confession, I would consider you bound to confidentiality in regard to what amounts to an "entrusted" or "professional" secret (see *Catechism of the Catholic Church* [2<sup>nd</sup> ed], par. 2491) arising from a formal spiritual direction relationship, that is, exchanges oriented

<sup>4</sup> See C. Blakemore and S. Jennett, eds., *The Oxford Companion to the Body* (New York: Oxford University Press, 2001) s.v. "Abortion", at 1, wherein: "Approximately 50-70% of pregnancies end in spontaneous abortion. Most of these losses are unrecognized because they occur before or at the time of the next expected menstrual period."

<sup>5</sup> That penal liability does not attach for abortion unless the means used to attempt an abortion *in fact caused* an abortion, is explained in, e.g., Owen Cloran, *Previews and Practical Cases: Code of Canon Law, Book Five Delicts and Penalties* (Milwaukee: Bruce, 1951) Case 60, 265-274.

to, albeit extra-sacramentally, the internal forum. Had the information come to you in confession, you would have been flatly prohibited, of course, from disclosing it to any one for any reason under pain of excommunication per canons 983 and 1388.

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