

# Ethics & Medics

A CATHOLIC PERSPECTIVE ON MORAL ISSUES IN THE HEALTH AND LIFE SCIENCES

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## PHYSICIAN COOPERATION IN PATIENT SUICIDE

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One of the enduring bulwarks of Christian morality is the fundamental conviction that some actions are always intrinsically evil. An intrinsically evil action is never morally justifiable for the primary agent, i.e., for the one who freely intends and then carries out the act. The phrase "never morally justifiable" indicates that the action is judged to be evil regardless of any extenuating circumstances surrounding the action. Put another way, in an intrinsically evil act there can be no exceptional circumstances that would allow the act to become morally acceptable. For example, euthanasia and direct abortion are classified as intrinsically evil acts. There are no circumstances that could make either mercy killing or the direct killing of an unborn child a moral act.

Intrinsically evil actions are part of the objective moral order that can be known by the intellect without reference to revelation. This fundamental concept of Catholic moral theology is one of the major teachings re-emphasized in John Paul II's encyclical *Veritatis splendor*. With the rise of state-approved physician-assisted suicide (PAS) in Oregon, and with efforts to expand the so-called "right to die" to other states, the possibility that physicians may be asked or even compelled to become involved in the intrinsically evil act of suicide is now upon us. Therefore, a careful consideration of how the Catholic moral principles govern cooperation with physician-assisted suicide is necessary.

### The Cooperator's Dilemma

In carrying out an intrinsically evil action, the primary agent (the Wrongdoer) may need or involve the assistance of another individual (the Cooperator). For example, when a physician acts as a Wrongdoer, he may involve the cooperation of many other members of a hospital staff: a hospital administrator, a nurse, a pharmacist, and possibly even an orderly if the orderly must retrieve the lethal dose from the pharmacy. These examples indicate a range of possible cooperation with the intrinsically evil act of suicide. Determining the exact type and degree of cooperation are the crucial

elements in the assignment of cooperator culpability. Whether or not an individual's actions fall into the realm of illicit cooperation with evil requires a careful analysis of three factors: the individual's intent, the degree of cooperation and the likelihood of scandal.

The first systematic effort to analyze the morality of cooperation with evil was that of St. Alphonsus Liguori over 200 years ago in 1787, though he relied upon an older tradition of moral analysis dating back to ancient times. Liguori identified the set of principles that govern cooperation by distinguishing between formal and material cooperation and by assessing the degree of scandal that may accompany cooperation with evil. Scandal is a serious invitation to others to sin and therefore is morally unacceptable. Since the 18th century, numerous texts and articles by Catholic moral theologians have sought to analyze the moral culpability of a wide range of cooperator scenarios.

To attempt to understand the writings of moral theologians on cooperation is quite formidable for the laity because of the discipline's technical language. Some of the more recent efforts to describe these principles can be found in the "Appendix" of the *Ethical and Religious Directives for Catholic Health Care Services* [1995], issued by the National Conference of Catholic Bishops; *The Gospel of Life and the Vision of Health Care*, edited by Russell E. Smith [Pope John Center (1996)]; *Medicine and Christian Morality*, 3rd ed., by Thomas J. O'Donnell, S.J. [New York (1996)]; *Difficult Moral Questions*, vol. 3, by Germain Grisez [Quincy, Illinois (1997)]; *Health Care Ethics*, 4th ed., by Benedict M. Ashley and Kevin D. O'Rourke [Wash. D.C. (1997)]; and articles in these pages, including "Formal and Material Cooperation," by Russell E. Smith [20.6 (1995)]; and "Cooperating with Non-Catholic Partners," by the Ethicists of the National Catholic Bioethics Center [1998 (23.11)].

### Formal Cooperation in PAS

The primary distinction within cooperation is between formal and material cooperation. Formal

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cooperation is a willing participation on the part of the Cooperator in an intrinsically evil act carried out by the Wrongdoer. In formal cooperation both the Wrongdoer and the Cooperator have the same intention, i.e., both will the evil act. Formal cooperation can be either explicit or implicit. Explicit formal cooperation occurs when the Cooperator enters into open agreement with the Wrongdoer's intention. Suppose the physician receives a request from the patient for assistance in suicide. A physician who agrees with a patient's request to commit suicide and writes out the prescription for the lethal dose engages in explicit formal cooperation.

Implicit formal cooperation occurs when the cooperator denies intending the Wrongdoer's act, but no other explanation can distinguish the Cooperator's act from that of the Wrongdoer (see "Appendix," *Ethical and Religious Directives* [1995]). Implicit formal cooperation would occur in the case of physician-assisted suicide if a physician should state, "I am personally opposed to PAS, but I believe in individual choice. Therefore, despite my personal opposition, I will write out a prescription for a lethal dose of a drug that my patient may take to commit suicide." Both types of cooperation in PAS, explicit and implicit, are always immoral regardless of any surrounding circumstances.

### Material Cooperation in PAS

The defining element in material cooperation is that the Cooperator does not intend the Wrongdoer's act, but nonetheless contributes in some manner to the circumstances of that act. The Cooperator's lack of agreement with the intention of the Wrongdoer is what

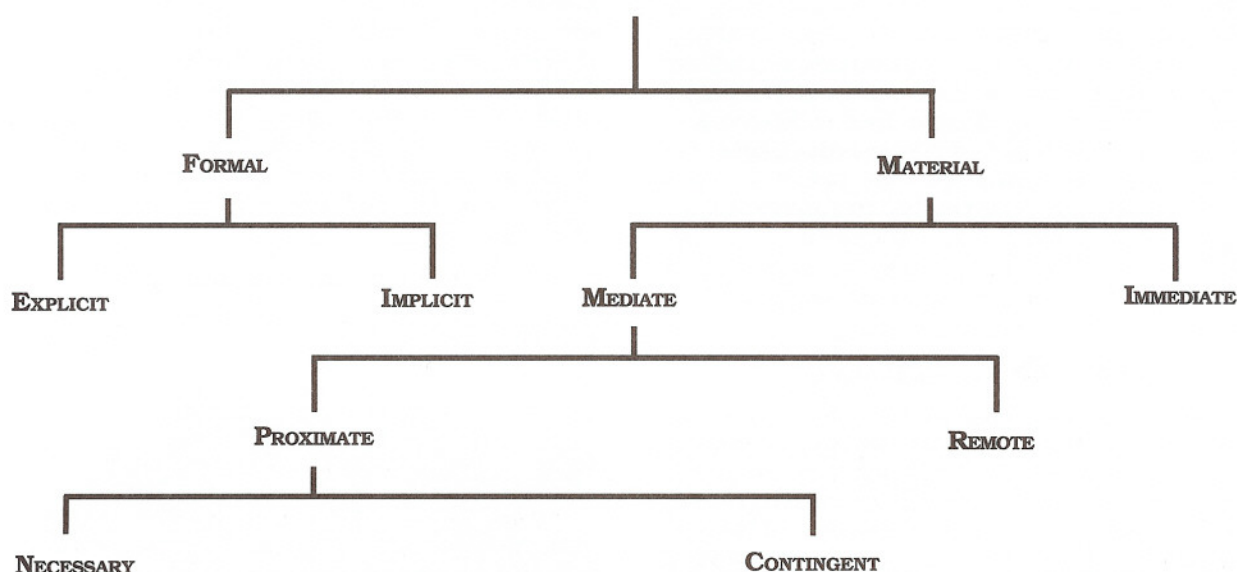
prevents his contribution from being formal cooperation. Subclassifications of material cooperation are needed in order to distinguish its different types. [See flow chart below.]

Whether an agent acts freely or under compulsion is an important consideration for all types of material cooperation. Suppose a physician who personally opposes PAS is told by an administrator of a Health Maintenance Organization that in order to remain an HMO provider he must write prescriptions for lethal doses if his patients request them. This external pressure constitutes force or duress. If the external force sufficiently impairs freedom of the will, then the culpability of the Cooperator may be diminished or even eliminated. It should be noted, however, that the diminishment or even complete elimination of moral culpability on the part of the Cooperator does not change the fact that PAS, in the objective moral order, is and remains intrinsically evil.

The designation "free" is frequently taken for granted by moral theologians and therefore may not appear with the terms "material cooperation" in either its "immediate" or "mediate" forms. Historically, most theologians have maintained that immediate material cooperation in intrinsic evil is equivalent to implicit formal cooperation and therefore always immoral. Immediate material cooperation arises when the Cooperator makes a contribution to circumstances that are essential for the performance of the Wrongdoer's act.

Thus, to return to the previous example, if a physician personally opposed to PAS were to prescribe a lethal dose for a patient because his HMO tells him that he must,

## Various Forms of Cooperation with Physician-assisted Suicide





then it would seem that he would not be able to claim duress. The loss of one's livelihood could not possibly justify immediate material cooperation in the intrinsically evil act of suicide. Nor are there any circumstances that would permit this type of act. To take another example, if a physician were to allow his name to appear in an advertisement for a Health Maintenance Organization that advertises PAS as one of its "services," then even though he may refuse to participate in PAS himself, the use of his name in the advertisement would be a case of immediate material cooperation.

### Mediate Cooperation in PAS

In mediate material cooperation the Cooperator does not contribute to circumstances essential to the commission of the Wrongdoer's act, but nonetheless makes a contribution that somehow promotes that act. Thus suppose there is a health care worker who is employed in a secular hospital that provides PAS, but that does not require conscientious objectors to participate. The worker who uses the conscientious objector clause may nonetheless unintentionally give assistance to others who provide PAS, for example, by taking on the work of others while they assist in the suicide. Though the worker does not directly participate in PAS, he nonetheless contributes circumstantially through work for the secular hospital.

This type of cooperation can be justified provided that two conditions are met. First, a sufficient reason must exist for the Cooperator's actions. For example, employment at this hospital may be the only employment opportunity available. If so, then there would seem to be sufficient reason for cooperation. If, however, other work is readily available, then continued employment in a secular hospital that provided PAS would not be moral.

Second, the cooperation must occasion no scandal. If others will conclude that the health care worker agrees with the hospital's policy to provide PAS, then working in such a setting may lead others to commit immoral acts themselves. The resulting scandal would make the cooperation immoral.

Mediate material cooperation divides into proximate and remote. Proximate material cooperation would occur if a physician personally opposed to PAS were to advise others to buy stock in a pharmaceutical firm because it soon will come out with a lethal mixture of drugs to be used in PAS. Giving financial advice, of course, is not an intrinsically evil act, but this advice encourages other to profit from immorality. Also, the physician would cause scandal to others who (quite rightly) cannot understand why he would give this advice if he opposes PAS. There are other companies that could offer similar returns.

Remote cooperation would occur if a physician opposed to PAS were to write prescriptions for the therapeutic use of drugs whose manufacturer is also the leading producer of a lethal mixture marketed for PAS. This cooperation is sufficiently distant (or remote) from the practice of PAS and would be moral.

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## A NOTE ON THE "VEGETATIVE" STATE

Father Kevin O'Rourke's presentation "On the Care of 'Vegetative' Patients" [*Ethics & Medics* 24.5 and 24.4] raises an issue that is appropriate to any discussion of the persistent vegetative state (PVS) and its relationship to the severe degree of brain damage that occurs at a cerebral cortical level. Everyone, it seems, that writes or speaks on the subject of fluid and nutritional support presumes that these individuals are totally incapable of cognitive, effective performance, and will, in all probability, never regain the capability associated with voluntary activity. While in general this is true, it always must be remembered that PVS is an umbrella diagnosis.

In reality "PVS" is both a neurological and a psychological definition covering a wide range of neuropathological damage involving multiple areas of the human brain. It can certainly be argued that in the majority of these cases, the individuals do not appear to have any or, at best, extremely little capability, of responding appropriately to stimulation. Nevertheless, this diagnosis is really an all-inclusive diagnosis since some of these individuals may have some capacity of performing, limited as it may be, at a cognitive level, while at the other end such patients are correctly described as capable of only involuntary activity reflecting functioning limited to a brain stem level.

Thus, I would submit that in using this clinical definition of PVS we be careful, realizing that this is not a precise diagnosis and we may, under certain circumstances, really have no way of precisely defining what a patient's neuropsychological performance really is (especially under conditions in which there is considerable cortical tissue remaining). We must remember that when Karen Ann Quinlan's brain was examined it was a surprise to everyone how much of the cortical mantle was retained!

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Communications regarding articles and editorial policy should be addressed to The Editor, *Ethics & Medics*, 159 Washington Street, Boston, MA 02135. *Ethics & Medics* is a peer-reviewed publication, faithful to the Catholic Magisterium, that seeks short but definitive essays on contemporary moral issues affecting medicine and the life sciences. Manuscript submissions (not returned) should include either a phone number or an e-mail address.



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Formerly "The Pope John Center"

## Ethics & Medics

Vol. 24, No. 7  
July 1999

Views expressed are those of individual authors and may advance positions that have not yet been doctrinally settled. *Ethics & Medics* makes every effort to publish articles consonant with the Magisterial teachings of the Catholic Church.

The presence of additional facets further subdivides material cooperation into the necessary and contingent. Necessary material cooperation arises when the Wrongdoer's act would not occur without the contribution of the Cooperator. The refusal to engage in necessary cooperation, in effect, prevents the act from occurring; therefore, necessary cooperation is more serious than contingent cooperation.

Thus, if a physician were the only one available to substitute for another physician while he assisted in a suicide, then the cooperation would be necessary to the performance of the Wrongdoer's intrinsically immoral act. If, however, there were other physicians available who could equally attend to the physician's patient, then a refusal to do so would not prevent the carrying out of that act.

### Asking the Right Questions

Proper understanding of the principles of cooperation is crucial to assessing the culpability of the physician who finds himself faced with a request to assist directly or indirectly in an act of physician-assisted suicide. A determination must be made whether withholding cooperation would effectively prevent the patient from committing suicide or prevent someone else from assisting in the patient's suicide.

If prevention is not possible, then the physician should determine whether his cooperation is formal by asking whether his intention in cooperation is the same as that of the patient. If he believes that it is not, then he should analyze any apparent or implicit agreements that may exist between himself and all others who are involved with a patient's request.

If the physician is certain that he does not intend the patient's suicide, then he ought to inquire whether his cooperation is so closely tied to that act of self-destruction that it is immediate material cooperation. When assured that his contribution falls into the category of mediate material cooperation, he should determine how closely associated his actions are to the circumstances surrounding the immoral act. If his actions can be viewed as cooperation with PAS without sufficient reason for him to do so, or if his actions might

give scandal to others, then he is also to avoid carrying out those actions.

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## From the Catechism

2277 Whatever its motives and means, direct euthanasia consists in putting an end to the lives of handicapped, sick, or dying persons. It is morally unacceptable. Thus an act or omission which, of itself or by intention, causes death in order to eliminate suffering constitutes a murder gravely contrary to the dignity of the human person and to the respect due to the living God, his Creator. The error of judgment into which one can fall in good faith does not change the nature of this murderous act, which must always be forbidden and excluded.

2278 Discontinuing medical procedures that are burdensome, dangerous, extraordinary, or disproportionate to the expected outcome can be legitimate; it is the refusal of "over-zealous" treatment. Here one does not will to cause death; one's inability to impede it is merely accepted. The decisions should be made by the patient if he is competent and able or, if not, by those legally entitled to act for the patient, whose reasonable will and legitimate interests must always be respected.

2279 Even if death is thought imminent, the ordinary care owed to a sick person cannot be legitimately interrupted. The use of painkillers to alleviate the sufferings of the dying, even at the risk of shortening their days, can be morally in conformity with human dignity if death is not willed as either an end or a means, but only foreseen and tolerated as inevitable. Palliative care is a special form of disinterested charity. As such it should be encouraged.