

Patient Deaths in New Orleans: Mercy Killing or Palliative Care?

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Citation

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Abstract

On July 18, 2006 Dr. Anna Pou, a surgeon and respected medical school professor, and two nurses, Cheri A. Landry and Lori L. Budo were arrested on suspicion of second degree murder. Charles C. Foti, the Louisiana Attorney General, accused them of using lethal injections to kill four elderly patients at Memorial Medical Center in New Orleans in the aftermath of hurricane Katrina. The case has been turned over to the Orleans Parish District Attorney, who will present it to a grand jury before deciding whether to bring charges. Thirty-four patients died at Memorial Medical Center as a result of hurricane Katrina and this has led to intense speculation about how some of them died. According to newspaper accounts many of the patients were evacuated from the hospital, which was surrounded by five feet of water, had no electricity, dwindling food and medical supplies and was baking in 100-degree-plus heat. The sickest, however, were left behind. "The four victims were actually patients of LifeCare Hospital, an intensive-care unit that leased space from Memorial Hospital and had a separate staff. With chaotic evacuations taking place, many by boat, Dr. Pou and a Memorial Hospital official who has not been charged by Mr. Foti told witnesses that the LifeCare patients 'were probably not going to survive,' according to the affidavit released from the office of Attorney General Foti."¹ The affidavit further states that the arrests grew out of accusations by four supervisors for LifeCare Hospitals. "As hopes for a full rescue seemed to fade on the third day after the storm, three of the LifeCare employees say that Dr. Pou told them she was going to inject a 'lethal dose' into patients who seemed unlikely to survive. The affidavit goes on further to state that witnesses saw Dr. Pou and the two nurses fill syringes and go into patient's rooms."² Medical tests revealed that morphine and another powerful sedative, Versed, were found in tissue samples of the four patients. Medical records show that none of the four patients had been

receiving either drug in their regular medical treatment.³ In reality, it appears there is little direct knowledge of what actually happened inside the rooms of these patients. The defense lawyers have questioned the credibility of the LifeCare employees. The company has acknowledged that 24 of its 55 patients died as a result of the storm, and that its top administrator and medical director were not present during these days.⁴ The affidavit also suggests that many staff members at the hospital were familiar with Dr. Pou's plan and that it was openly discussed; and portrays witnesses as being barred by staff members from entering an area on the second floor where LifeCare patients were housed in the final days.⁵ Again, much of this is speculation and has not been confirmed. Numerous medical, legal and ethical questions have arisen as a result of these findings. Were Dr. Pou and the two nurses scapegoats for the delays in evacuating the hospital? Were they scapegoats to cover-up the incompetence of the top administrators at LifeCare? Were Dr. Pou and the two nurses heroes for having volunteered for storm duty and remaining at the hospital for five days or are they criminals who took the law into their own hands and committed homicide? Was this an act of homicide or were the patients suffering and in need of high doses of pain medication for palliation?

At the present time no one has been charged in the investigation. Investigators have subpoenaed more than 70 witnesses and are examining volumes of evidence. Lawyers for the three accused health care professionals argue that "the facts will reveal heroic efforts by the physician and the staff in a desperate situation."⁶ This situation comes down to determining whether the pain medication was given with the direct intention to ease the pain of these patients in a desperate situation or to directly terminate the patients. Unfortunately, according to New Orleans Coroner Frank

Minyard, the bodies of the four patients were not retrieved from the hospital until two weeks after the storm and were in advanced stages of decomposition. This undermines the accuracy of toxicology tests.⁷ Therefore, there are real questions about the reliability of the forensic evidence. This incident has prompted a national debate about mercy killing and the role of physicians in hopeless situations. Was this an example of medical professionals attempting to “play God” or was it a form of palliative care? This case hinges on knowing the precise facts of the case. One ethical principle that can be used to understand this case is the principle of double effect.

THE FUNCTION OF THE PRINCIPLE OF DOUBLE EFFECT

The principle of double effect is a fundamental principle in Roman Catholic moral theology. As the name implies it refers to one action with two effects. One effect is intended and morally good; the other is unintended and morally evil. It is not an inflexible rule or mathematical formula, but rather an efficient guide to prudent moral judgment in solving difficult moral dilemmas.⁸ Historically, many ethicists believe the premises for the principle can be found in the writings of Thomas Aquinas in his famous explanation of the lawful killing of another in self-defense in the *Summa Theologiae* II, q. 64, a. 7c. However, other ethicists argue that the four conditions of the principle were not finally formulated until the mid-nineteenth century by Jean Pierre Gury.⁹ The principle of double effect specifies four conditions that must be fulfilled for an action with both a good and a bad effect to be morally justified.

1. The action, considered by itself and independently of its effects, must not be morally evil. The object of the action must be good or indifferent.
2. The evil effect must not be the means of producing the good effect.
3. The evil effect is sincerely not intended, but merely tolerated.
4. There must be a proportionate reason for performing the action, in spite of its evil consequence.¹⁰

It should be noted that a number of moral theologians known as proportionalists have argued that the first three conditions of the principle of double effect are incidental to the principle, and that in reality it is reducible to the fourth

condition of proportionate reason. While this is a legitimate argument, it is not the purpose of this article to reopen the controversy on the validity of the first three conditions. This article will remain within the framework of the four conditions of the principle of double effect, as it exists in fundamental moral theology, and apply these conditions to the use of morphine as an ethical means of palliative care.¹¹

The use of narcotics to control pain was sanctioned by Pope Pius XII under the principle of double effect. In answer to a group of doctors who posed the question: “Is the suppression of pain and consciousness by the use of narcotics permitted by religion and morality to the doctor and the patient (even at the approach of death and if one foresees that the use of narcotics will shorten life)?” The Pope stated: “If no other means exist, and if, in the given circumstances, this does not prevent the carrying out of other religious and moral duties: Yes.”¹² According to the principle of double effect “in this case, of course, death is in no way intended or sought, even if the risk of it is reasonably taken; the intention is simply to relieve pain effectively, using for this purpose painkillers available to medicine.”¹³ The Church believes that suffering is part of the human condition and has a special place in God's plan of salvation. However, the Church also believes that effective management of pain and suffering is necessary so that the person can die comfortably and with dignity and respect.

The use of morphine to manage pain effectively is ethically justified because it meets the four conditions of the principle of double effect. The first condition allows for the injection of morphine because the action in and of itself is good, in that it effectively alleviates or manages the pain of the patient. According to the State's affidavit these patients were suffering and needed palliative care. While morphine may endanger the patient's life by suppressing respiration, the injection will not directly terminate the patient's life. The second condition allows for the injection of morphine because the good effect is not caused by means of the evil effect. The patient's pain is alleviated by the morphine not by the patient's death. The good effect and the evil effect happen simultaneously. The third condition allows for the injection of morphine because even though there is the possibility that the morphine may harm the patient, the intention of the physician is to alleviate or manage the patient's pain. Dr. Steven Miles, professor of medicine at the University of Minnesota argues that “morphine and Versed are not all that deadly and may not even have been what killed the patients. Many patients develop tolerances to the

drugs and can handle high doses. Barbiturates, readily available at the hospital, would be a far more efficient way to kill somebody if that was the intent.”¹⁴ Finally, the argument for the ethical justification of morphine for medical use by the principle of double effect focuses on whether there is a proportionately grave reason for allowing the foreseen but unintended possible consequences. Proportionate reason is the linchpin that holds this complex moral principle together.

Proportionate reason refers to a specific value and its relation to all elements (including premoral evils) in the action.¹⁵ The specific value in using morphine and other pain analgesics is to relieve pain and suffering associated with treatment for specific illnesses. The premoral evil, which can come about by trying to achieve this value, is the foreseen but unintended possibility of the potential harmful effects of depressing the respiratory system and hastening death. The ethical question is: does the value of relieving pain and suffering outweigh the premoral evil of the potential harmful effects? To determine if a proper relationship exists between the specific value and the other elements of the act, ethicist Richard McCormick proposes three criteria for the establishment of proportionate reason:

1. The means used will not cause more harm than necessary to achieve the value.
2. No less harmful way exists to protect the value.
3. The means used to achieve the value will not undermine it.¹⁶

The application of McCormick's criteria to the use of morphine supports the argument that there is a proportionate reason for allowing physicians to prescribe it for palliative care. First, the use of morphine to control the pain and suffering of these patients in this situation did not cause more harm than necessary. The medical professionals were in a desperate situation and the only way to relieve the pain of the patients was to use morphine knowing the unintentional side effects. Not treating the pain and suffering of these patients would violate their right to being treated with dignity and respect. Second, the situation at Memorial Hospital was that the water was rising, there was no electricity, food and medical supplies were running low and the hope of evacuation for these patients was unclear. The use of morphine was the only way to respect the value of the patient's life. “In underdeveloped nations, doctors have to make decisions every day about how to proceed when

nothing more can be done for a patient. The hospital in New Orleans was reduced to those conditions.”¹⁷ Third, the use of morphine if intended for palliative care, gave these patients the dignity and respect they deserved under these desperate conditions. Palliative care is given to respect the value of the patient's life. “Two million deaths a year occur in medical settings, and 85% to 90% of those are preceded by decisions to withhold or end life support. The vast majority involve sedation.”¹⁸ Therefore, it would have been ethically justified under the principle of double effect for the medical professionals at Memorial Hospital to give these four patients adequate doses of morphine or other pain medications if it was for palliative care. All individuals, but especially the seriously ill, have the right to effective pain management. To deny them access to such therapies is to deny them the dignity and respect all persons deserve. The greater good is promoted in spite of the potential evil consequences.

CONCLUSION

As of November 21, 2006, Judge Calvin Johnson in New Orleans said that Dr. Anna Pou and Nurses Cheri Landry and Lori Budo accused of killing four desperately ill patients should be formally charged or exonerated. According to Judge Johnson, “The case needs to either go forward or end.”¹⁹ The real issue in this case is to determine the precise facts of what happened during those dark days following hurricane Katrina at Memorial Hospital. The general rule is that health care professionals do not intentionally kill patients. They are trained to heal and cure and when this is not possible to care for their patients by giving them comfort measures. If the intention of Dr. Pou and the two nurses was to give doses of morphine, under these desperate conditions, to provide comfort care, then it was not only medically appropriate but ethically required. It is now for the law to determine the precise facts in this case and the intentionality of these three individuals.

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