

# Assignment

## **MEDICINE AND THE LAW- ASSISTED DYING**

Name

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## Introduction

The issue of assisted dying has been controversial and extensively discussed over an extended period. The matter is multifaceted, encompassing both medical and legal aspects. It is intricate as it encompasses many ethical considerations and moral quandaries. Achieving an equilibrium between upholding an individual's right to self-governance and safeguarding susceptible individuals from possible exploitation or maltreatment is imperative. There is a schism within the medical community regarding this matter, with certain factions contending that it represents a compassionate approach enabling individuals to pass away with a sense of honour.<sup>1</sup> In contrast, others maintain that it compromises the ethical standards of the medical field and may be exploited to enable murder.<sup>2</sup> Balancing individuals' right to opt for assisted dying with the imperative to safeguard vulnerable populations against potential abuse or exploitation poses a legal challenge. The varying legal implications across different jurisdictions complicate assisted dying. The paper aims to examine the legality of the conduct of Dr Marshall and Anna in the matter of Paul, a patient in the terminal stage of his illness who was administered a fatal dose of heroin.

## Dr Marshall's Action

The objective of Dr Marshall was to mitigate the severe discomfort experienced by Paul through the administration of a substantial quantity of morphine. Nevertheless, he was aware that such an action would potentially accelerate the demise of Paul by a few days. The question pertains to the legality of Dr Marshall's conduct. Physicians can provide medication to mitigate pain in numerous countries, such as the US, the UK, and Canada, despite the possibility of accelerating the patient's demise. This concept is commonly referred to as the doctrine of double effect. For example, the case of *Washington v. Glucksberg* (1997) is a landmark ruling by the United States Supreme Court about the legality of assisted suicide.<sup>3</sup> The ruling established that the rights of citizens to commit suicide or seek assistance in doing so were not protected under the Due Process Clause of the Fourteenth Amendment. The court asserted that the Fourteenth Amendment does not guarantee a right to physician-assisted suicide. The ethical principle of double effect posits that the commission of an act that results in both favourable and unfavourable consequences is justifiable, provided that the favourable outcome is the intended goal and the unfavourable outcome is not the instrumentality to achieve the favourable outcome.<sup>4</sup> Regarding Dr Marshall's actions, his primary objective was to mitigate Paul's discomfort, which resulted in a positive

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<sup>1</sup> Jonathan Romain and George Carey, 'There is nothing holy about agony: Religious people and leaders support assisted dying too' (2021) *bmj* 374.

<sup>2</sup> Sarah Mroz and others, 'Assisted dying around the world: a status quaestionis' (2021) *Annals of Palliative Medicine* 3540.

<sup>3</sup> *Washington v Glucksberg* [1997] 521 US 702.

<sup>4</sup> Barbara Pesut and others, 'Nursing and euthanasia: A narrative review of the nursing ethics literature' (2020) *Nursing Ethics* 152.

outcome. The untimely demise of Paul, which was expedited by a few days, was an adverse outcome, albeit not the mechanism for the favourable outcome. Thus, it can be argued that Dr Marshall's conduct was permissible following the principle of double effect.

The legal precedent of *Airedale NHS Trust v Bland* (1993) supports the lawfulness of Dr Marshall's conduct.<sup>5</sup> The Court of Appeal rendered a verdict in which it was determined that it is legally permissible to administer medication to a patient in a persistent vegetative state to alleviate their discomfort, even if such medication may hasten their death. The Court's decision prioritized the patient's best interests as the foremost consideration to mitigate suffering taking precedence over preserving life. This legal precedent substantiates the lawfulness of Dr Marshall's actions, given that his foremost aim was to mitigate the intense discomfort that Paul was undergoing.

### **Anna's Action**

Anna, purportedly Paul's sibling, administered a fatal quantity of heroin to him after observing him weeping in his sleeping quarters and persistently requesting her assistance in ending his life. The question pertains to the legality of Anna's conduct. According to the law, it is impermissible for any individual, irrespective of their relationship with the victim, to deliberately induce the demise of another individual, regardless of whether the latter is in the final stages of a fatal illness and experiencing agony. Regarding Anna's situation, her conduct was deemed unlawful. The decedent's demise resulted from a deliberate act by the perpetrator, who administered a fatal quantity of heroin through injection. Her actions aimed not to mitigate his suffering but rather to terminate his life. Thus, Anna's conduct violated the law.

The case law of *R v Adams* (1957) is pertinent within UK jurisprudence as it supports the notion that Anna's conduct is unlawful.<sup>6</sup> This case law involves a defendant's conviction for administering a lethal dose of a drug to a patient who had solicited aid in terminating their life. The Court rendered a verdict of guilt against the defendant for the murder, notwithstanding the patient's plea to terminate their life, on the basis that the defendant had intentionally administered a lethal quantity of the substance. The legal precedent provides evidentiary backing for the unlawful nature of Anna's actions, as she knowingly and intentionally administered a lethal amount of heroin to Paul.

Section 2(1) of the Suicide Act 1961 renders aiding or abetting suicide a punishable offence within the jurisdiction of the UK.<sup>7</sup> Suppose Anna is found to have deliberately aided or abetted Paul in his act of suicide. In that case, she may be subject to legal proceedings and potentially be subjected to a maximum

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<sup>5</sup> *Airedale NHS Trust v Bland* [1993] 1 All ER 821 (HL)

<sup>6</sup> *R v Adams* [1957] Crim L R 773.

<sup>7</sup> Clark Hobson and Nataly Papadopoulou, 'Regulating Risk and Autonomy in Assisted Suicide: *Conway V Secretary of State for Justice*' (2021) *Medical Law Review* 128.

incarceration period of 14 years. Furthermore, if Anna is determined to have exhibited recklessness or a disregard for the deceased's life, she may face charges of manslaughter, which could result in a potential life sentence. Consequently, if Anna is discovered to have deliberately aided or abetted Paul in his suicide, she would be subject to legal prosecution.

The legal precedent established by *R v Cox* (1992) holds significant relevance in UK jurisprudence, as it upholds the principle that any deliberate act to hasten a patient's death is deemed illegal.<sup>8</sup> This case pertains to the conviction of a defendant who administered a fatal quantity of medication to a patient who had sought assistance in ending their life. The Court rendered a verdict of guilt for murder against the defendant, notwithstanding the patient's request for life termination, due to the defendant's deliberate administration of a fatal dose of the substance. The legal precedent offers evidence for the illegality of deliberately hastening a patient's demise, irrespective of the underlying intention. The legal precedent established by *R v Brown* (1993) holds relevance in UK jurisprudence due to its affirmation of the illegality of inflicting severe bodily harm.<sup>9</sup> This legal precedent pertains to a defendant's conviction for inflicting severe physical harm upon a patient who had sought assistance in ending their life. The Court rendered a verdict of guilt against the defendant for inflicting grievous bodily harm upon the patient, notwithstanding the patient's request for life termination. The Court's decision was based on the fact that the defendant had deliberately caused harm to the patient by administering a substance. The established legal precedent offers evidential support for the illegality of inflicting severe physical harm, irrespective of the underlying intention.

## **Ethical Considerations**

Although Dr Marshall's actions were permissible under the doctrine of double effect, it is essential to consider the ethical implications of his actions. There is a debate surrounding the ethical implications of intentionally accelerating a patient's death, even if the intention is to mitigate their suffering. The issue of assisted dying entails numerous ethical considerations that necessitate careful contemplation. Although legal regulations may offer some direction regarding the permissibility of specific behaviours, it is crucial to contemplate the wider ethical ramifications of such actions. The principle of autonomy emerges as a crucial ethical consideration in the case of Paul. The principle of autonomy posits that individuals possess the right to make decisions regarding their personal lives, encompassing decisions concerning their healthcare. Paul exhibited a persistent inclination to terminate his own life, signifying his autonomy in determining his healthcare choices. The ethical principle of autonomy necessitates a need for equilibrium with other ethical principles, including the principle of non-maleficence.<sup>10</sup>

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<sup>8</sup> *R v Cox* [1992] 12 BMLR 38

<sup>9</sup> *R v Brown* [1993] UKHL 19, [1994] 1 AC 212

<sup>10</sup> Basil Varkey, 'Principles of clinical ethics and their application to practice' (2021) *Medical Principles and Practice* 17.

The principle of non-maleficence dictates that healthcare practitioners must refrain from causing harm to their patients. Regarding Dr Marshall's actions, he intended to mitigate the pain experienced by Paul, resulting in a positive outcome. The acceleration of Paul's death by a few days prompts questions about the conformity of Dr Marshall's conduct with the principle of non-maleficence. The principle of beneficence is an additional ethical consideration that arises in the case of Paul. The principle of beneficence dictates that healthcare practitioners act in their patient's best interests.

Regarding Paul's situation, it is evident that his affliction was inducing significant discomfort. One could contend that terminating his life was the optimal course of action for his well-being. Nevertheless, it is imperative to maintain equilibrium between the principle of beneficence and the principle of justice. The principle of justice entails the equitable distribution of healthcare resources. The issue of assisted dying raises apprehensions regarding the possibility of disparate allocation of healthcare resources. Specific individuals may have a higher probability of obtaining aid in dying than others if assisted dying were legalized.<sup>11</sup>

There is apprehension that the legalization of assisted dying may foster a cultural ideology devaluing human life. The potential adverse effects on society at large necessitate a comprehensive examination of the broader ethical ramifications in the decision-making process concerning assisted dying. A culture of death refers to a circumstance wherein the worth of human life is reduced. The phenomenon can present itself in diverse forms, ranging from a reluctance to provide life-preserving interventions to specific individuals to endorsing euthanasia or aided self-destruction. In assisted dying, the normalization and acceptance of this practice could potentially give rise to a culture of death, wherein the act of ending a life is viewed as a socially acceptable course of action.<sup>12</sup> The potential consequence of this scenario is the possibility of inequitable distribution of healthcare resources, resulting in specific individuals being more predisposed to receiving end-of-life care than others. There may be a reduction in the perceived worth of human life.

## Conclusion

In conclusion, assisted dying is a multifaceted and disputed topic encompassing medical and legal deliberations. Although Dr Marshall's actions may have been permissible under the doctrine of double effect, it is essential to consider the ethical implications of his actions. Anna's conduct is potentially unlawful, and she may be subject to criminal charges if it is determined that she deliberately aided or abetted Paul in his suicide. When deliberating on matters about assisted dying, it is crucial to consider the

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<sup>11</sup> Rosalind McDougall and others, 'This is uncharted water for all of us: Challenges anticipated by hospital clinicians when voluntary assisted dying becomes legal in Victoria' (2019) *Australian Health Review* 399.

<sup>12</sup> Jocelyn Downie and Udo Schuklenk, 'Social determinants of health and slippery slopes in assisted dying debates: Lessons from Canada' (2021) *Journal of medical ethics* 662.

legal ramifications alongside the ethical aspects such as autonomy, non-maleficence, beneficence, and justice. Acknowledging the possibility of a culture of death emerging during the normalization of assisted dying is crucial.

## References

### Cases

Airedale NHS Trust v Bland [1993] 1 All ER 821 (HL)

R v Adams [1957] Crim L R 773.

R v Brown [1993] UKHL 19, [1994] 1 AC 212

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### Legislation

Suicide Act 1961, s 2(1)

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