

Bucklew v. Precythe:

Supreme Court May Weigh Medical Ethics, the Death Penalty

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One of the American Medical Association's ethical opinions may affect a case presently before the United States Supreme Court. That case is *Bucklew v. Precythe*, and the ethical opinion is 9.7.3, which prohibits physician participation in capital punishment. The case and opinion draw attention to larger themes in the practical application of physician ethics, some more clear-cut than others. The AMA's Code of Medical Ethics makes clear that physicians owe a duty first and foremost to the patients they treat, not to the government to serve as executioners. But thornier questions emerge when physicians must determine where they could cross that line, especially for physicians who may treat patients sentenced to death.

In the case described below, a physician who previously examined a patient on death row was asked to give his medical opinion on which method of execution would cause the patient less suffering, given the patient's rare and severe medical opinion. The physician determined that to do so would go against medical ethics. The AMA filed a brief before the United States Supreme Court to support and give context to his decision.

The Case Before the Supreme Court

The State of Missouri found Mr. Russell Bucklew guilty, among other crimes, of murder, attempted murder, kidnapping, rape, burglary, assault, and escape from jail. He has been

in jail since 1996, and he has been sentenced to death. Following multiple appeals, Mr. Bucklew no longer contests his guilt. Also, he does not contest the death sentence. Mr. Bucklew does contest Missouri's proposed form of execution, which, unless the Supreme Court says otherwise, will be administered by lethal injection.

Mr. Bucklew suffers from cavernous hemangioma, which causes blood-filled tumors to grow throughout his body. Most significantly, he has a particularly large tumor growing inside of, and partially obstructing, his airway. He must control this tumor in order to manage his breathing.

Mr. Bucklew contends that if the State is allowed to proceed with execution by lethal injection, the process of inserting the intravenous line and the time it will take for the drug to take effect will cause his tumor to rupture and cause him to choke on his own blood. This choking, he claims, would constitute cruel and unusual punishment, which is forbidden under the Eighth Amendment to the United States Constitution. Mr. Bucklew has instead asked that the State execute him via lethal gas, which, he asserts, will cause him significantly less pain.

The State, on the other hand, is arguing that the pain Mr. Bucklew might suffer from poisonous gas is no less – or at least not significantly less -- than the pain he might suffer from lethal injection. The State asserts that it is Mr. Bucklew's burden to prove that death by poisonous gas will be less painful than

death by lethal injection, and he had not met that burden. Mr. Bucklew countered that he has gone as far as he can to prove his case, because the physician who examined him said that it would violate medical ethics if he were to opine in favor of death by poisonous gas. So far, the lower courts have found in favor of the State. The Supreme Court, though, is apparently not so sure, and it granted Mr. Bucklew a stay of execution while it hears his case. The justices heard oral argument in November of last year, and the Court could deliver a decision at any time.

The AMA's Amicus Brief to the Court

The AMA's amicus curiae brief—filed last summer—supported neither Mr. Bucklew nor the State of Missouri. Instead, the brief was submitted to educate the Court on the ethical standards physicians must follow when becoming involved with patients on death row.

Opinion 9.7.3 prohibits physicians from participating in legally authorized executions. While it does not explicitly state that a physician may not give a medical opinion that will allow the state to facilitate an execution, the AMA's Counsel on Ethical and Judicial Affairs believes, and the brief forthrightly said, that that is the proper inference. The brief gave three basic justifications for this position.

First, it pointed out the general, historical prohibition against physicians' participation in executions. This started with the Hippocratic injunction against physicians' dispensing a lethal drug or advising such a plan. The prohibition against physician assistance in executions, including the development of protocols for executions, has been adopted by every significant professional medical group that has considered this issue.

Second, the brief pointed out that the physician owes a single-minded obligation to the patient, which could be undermined if there were a suggestion that the physician owes a superseding obligation to a government prosecutor.

This is considered a "slippery slope" argument. Governments throughout history have coopted physicians in pursuit of their goals, which are often different from the goals of patients. The most notorious example is of course Nazi Germany.

But there are too many painful examples throughout history, from the Soviet Union utilizing psychiatrists to imprison political dissidents and then to immobilize them with psychotropic medications, to the present, with reports that the Cuban government uses physicians to advance political purposes by rationing care according to the patients' favor with the current regime.


Physicians should shun these situations. Patients need to know that physicians are their advocates, and physicians put patients' interests above parochial government objectives.

Third, the brief asserted that physician endorsement of one form of execution over another would give a false impression that executions can be carried out humanely or with minimal pain. This is a delusion, and the medical profession should have no part of it. Physicians believe in the scientific method, which requires that fact is accepted as true only after carefully

gathered evidence has confirmed its truth. American physicians have no training in killing people, and no scientific experiments quantify how much pain prisoners experience according to which method is used to put them to death.

Governments continually try to convince their citizens that state-mandated executions are conducted with scientific techniques, which somehow makes them appear to be more humane or more civilized.

For example, some states have pressured condemned prisoners to sign Do Not Resuscitate orders in anticipation of execution, and they have mandated the presence of physicians with white coats and stethoscopes to give an air of "seriousness and safety" at executions.

The AMA takes no position on whether capital punishment should continue. This is a moral judgment, which goes beyond medical expertise. What the AMA does feel, though, is that capital punishment is an extreme action, and the public should not be led to believe that it is an acceptable practice because physicians are there to make sure it is carried out in a scientific way. 

This article was written prior to the Bucklew v. Precythe decision on April 1, 2019.



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