

Physician participation in lethal injection executions should not be banned, ethicists argue

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Should physicians be banned from assisting in a lethal injection execution, or lose professional certification for doing so? A recent ruling by the American Board of Anesthesiology will revoke certification of anesthesiologists who participate in capital punishment, and other medical boards may act similarly. An article in the [Hastings Center Report](#) concludes that decertification of physicians participating in lethal injections by a professional certifying organization goes too far—though individual physicians and private medical groups like the AMA are entitled to oppose the practice and may censure or dismiss members who violate it.

Physician participation in execution by lethal injection has always been controversial. All 34 death-penalty states use lethal injections for executions—and 33 of these allow or require physicians to participate. Kentucky is the only state that forbids physicians from participating in lethal injection executions. In 2008, when the Supreme Court upheld, in *Baze v Rees*, Kentucky's execution process as constitutional, the path seemed clear for lethal injections to proceed without physician involvement. But this didn't happen. As Lawrence Nelson and Brandon Ashby report in their article, "the protocols for almost all states still leave a place for physicians, apparently on grounds that physicians have the special ability to help the prisoner die swiftly and quietly, making the execution more humane for the prisoner, more efficient overall, and (to be frank) less disturbing for everyone who witnesses or has a hand in it."

The authors review the arguments against physician participation, particularly that it is inconsistent with the goals of medicine to help and not harm people—and that the record of botched executions constitutes one of the strongest arguments in favor of participation.

"Acknowledging the ability of physicians to reduce needless risk to the condemned," they conclude, "we believe the most that can be fairly said is that physician participation neither fully advances the ethical ideals of medicine nor is strictly anathema to them."

Lawrence Nelson is an associate professor of philosophy at Santa Clara University and a faculty scholar in the Markkula Center for Applied Ethics. Brandon Ashby is a graduate student with the faculty of philosophy at Oxford University, Lady Margaret Hall.

In their report, the authors find that arguments for and against physician participation in executions often get conflated with arguments about the broader question of the ethics of capital punishment. While they acknowledge that "reasonable people of good faith may disagree on the morality and efficacy of capital punishment," the fact is that lethal injection executions continue to occur-- with little prospect of ending soon. Forty such executions took place in the United States in 2010 and eight during the first two months of 2011. Over 20 are scheduled for the remainder of 2011.

The report examines the role that the state expects the physician to play. A newly opened facility in California, for instance, cost over \$800,000 and is designed solely for performing executions efficiently, humanely, and in accordance with constitutional requirements. Yet the roles specified for the physicians in the California regulations involve activities expressly barred by the American Medical Association's Code of Ethics.

"As far as we can determine," Nelson and Ashby write, "no physician

has lost his or her ability to practice medicine or been dismissed from a professional medical organization as a result of participation in executions." But this may change. In February 2010, the American Board of Anesthesiology ruled that no [anesthesiologists](#) may "participate in capital punishment if they wish to be certified by the ABA." And other specialty boards may follow suit.

Such new sanctions go beyond losing membership in a medical society. "Loss of board certification directly affects a physician's ability to practice medicine and attract patients, given that many institutions and patients will not enter into a relationship with a physician lacking this credential of professional competence and accomplishment. . . The ABA's action creates a significant conflict between the important interest of professional certifying boards in enforcing ethical standards and the commitment of the state to the effective, humane, and just administration of the criminal law," the article states.

Will states be able to get physicians into the death chamber if by doing so they lose their practice? The authors cite the states of Washington and Oregon as offering one possible solution. As part of the Death with Dignity laws authorizing physician-assisted suicide, these states have included provisions explicitly forbidding organized medicine from punishing participating physicians.

Nelson and Ashby support the need for medical associations to establish professional guidelines, but they believe that depriving a physician of his or her livelihood is too onerous a penalty. There are other ways for professional associations to achieve their goals: "If a profession's ethical standards ought to emerge out of a dialogue between the profession and the larger community it serves, then organized medicine, individual [physicians](#), and the people in the thirty-four state that allow or require physician participation in executions out to engage in public debate aimed at reaching a practical and principled resolution of this chronic

conflict."

Provided by The Hastings Center

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