EUTHANASIA AND THE BEST INTEREST OF THE PATIENT: LEGAL CONSENSUS ON THE MEDICAL RULES OF PROFESSIONAL CONDUCT

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Abstract

Euthanasia is the act of putting a person painlessly to death as an act of mercy. However, there is need to curtail the abuse of equivocal confidence enjoyed by doctor's patients. There is also need to ensure optimal care by medical doctors. Hence some rules of law were formulated to serve as guides in directing the services of medical doctors towards their patients. The objective of this paper is to examine the medical rules of professional conduct and the oath that enjoin medical doctors neither to give a deadly drug to anybody who ask for it or make a suggestion to that effect. The researcher adopted the doctrinal and non doctrinal methods of research. The author concludes that it is in the best interest of the suffering and pain stricken patient that euthanasia be administered.

Keywords: person, death, doctors, patients, care.

Introduction

Medicine is a highly regulated profession practiced by people who enjoy unequivocal confidence of their patients. Such confidence must not be abused by medical doctors. However, the quest to curtail abuse of such confidence and to ensure optimal care by medical doctors necessitated the formulation of some rules of law to serve as guides in directing the services of medical doctors towards their patients. These rules are referred to as the rules of

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professional conduct. The great physician, Hippocrates who is referred to as the father of modern medicine was the first to make statements that was administered as an oath [1] to the practitioners of medicine. The Oath states in part that, "To please no one will I prescribe a deadly drug, nor give advice which may cause his death".

Thus, the Oath enjoins medical doctors neither to give a deadly drug to any body who ask for it or make a suggestion to that effect. The Word Medical Association has made some modifications to this Oath in order to bring it in line with the practice and language of modern medicine[2]. The modified version is referred to as the Geneva Declaration of 1949. This enjoins the physician to maintain utmost respect for human life from the time of conception, even under threat, and not to use his medical knowledge contrary to the laws of humanity. The scope of this declaration has been expanded by other conventions[3]. In 2001, the Netherlands became the first nation to legalize euthanasia.[4] This however, affects the concept of euthanasia or mercy killing. This is because the medical condition of some patients could lead to a breach of this Oath by medical doctors. Since, certain medical conditions could lead to the act of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy. After all, what will be the value of a person's life who is incapacitated mentally and physically and sustained medically through artificial means while suffering under great pains with no hope of recovery? In such a case, it may be convenient to terminate such life in the interest of the patient. But the sanctity of human life which advocates the preservation of life and not destruction of same does not support

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[1] The Hippocratic Oath

[2] Okolo, P.I. "Medical Ethics in Nigeria" in Umerah B.C. (ed) Medical Practice and the Law in Nigeria 1st e.d. (Nigeria: Longman Publishers, 1989) at 9.

[3] Examples are International Code of Medical Ethics (as amended at Venice, 1983); Declaration of Geneva (as amended at Stockholm, 1994); Declaration of Tokyo 1975, Declaration of Oslo, 1970;

[4] Black's Law Dictionary, Eight Edition, p. 594

such act termed Euthanasia or mercy killing. Therefore, this article seeks to consider the meaning of Euthanasia and the concept of the best interest of patients.

The Meaning of Euthanasia

Euthanasia which is also termed mercy killing is the act of putting a person painlessly to death as an act of mercy, following the fact that he is suffering from an incurable and distressing disease. Thus, it is defined as the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy.[5] It is also, defined as the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reasons of mercy[6].

Euthanasia is sometimes regarded by the law as second – degree murder, manslaughter, or criminally negligent homicide[7]. There are about five types of Euthanasia. They are:

1. Involuntary euthanasia: This is the mercy killing of a competent, non - consenting person.
2. Non - voluntary euthanasia: This is the mercy killing of an incompetent, and therefore non – consenting person.
3. Passive euthanasia: This is the act of allowing a terminally ill person to die by either withholding or withdrawing life sustaining support such as a respirator or feeding tube.
4. Active Euthanasia: This is the mercy killing performed by a facilitator, such as a healthcare practitioner who not only provides the means of death but also carries out the final death causing act.
5. Voluntary Euthanasia: This is the mercy killing performed with the terminally ill person's consent.

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[5] (Blacks Law Dictionary with Pronunciations, Sixth Edition, P. 554)
[6] (Black's Law Dictionary, Eight Edition, P. 594).
[7] (Ibid).

According to Alexander Morgan Capron:[8]

> "The translation of the Greek word euthanasia – "easy death" – contains an ambiguity. It connotes that the means responsible for death, are painless, so that the death is an easy one. But it also suggests that the death sought would be a relief from a distressing or intolerable condition of living (or dying), so that death, and not merely the means through which it is achieved, is good or right in itself. Usually, both aspects are intended when the term euthanasia is used; but when that is not the case, there can be consequences in legal analysis."

Euthanasia is the act of bringing about the death of a patient by a physician, by whatever means so attained, in the interest of the patients. It was asserted by Davies[9] that the term may best be described as an umbrella term connoting decisions made in relation to the ending of the life of the patient. It involves both positive and passive acts which lead to the death of the patient.

Euthanasia is administered in the interest of the suffering and pain stricken patient. The primary aim of administering euthanasia is to ease the pains and suffering of the patient who is confronted with an imminent death without any or foreseeable medical solution. Thus, it is the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy.[10]

The Concept of the Best Interest of Patient

The obligation of the physician to preserve human life as contained in the Code of Medical Ethics raises questions as to whether life

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[8] "Euthanasia", in 2 Encyclopedia of Crime and Justice 709, 709 (Sanfor H. Kadish ed., 1983).

[9] Davies, M .. Text Book on Medical Law, 2nd e.d. . (Great Britain: Black Stone Press. Ltd., 1998, p. 344).

[10] Black, St. Paul Minn – West Publishing C o. 1991)at 554.

must be preserve at all times even against the expressed wish of the patient. A physician in whose care a patient who is permanently incapacitated mentally and physically, who is sustained medically through artificial means is placed, is often in a dilemma whether to continue to prolong the death of such a patient by sustaining his or her life through artificial medical treatment or to withdraw such treatment and leave the patient to die having regard to the physician's oath and ethics of practice. What informs the decision of the physician in such a case has always been the best interest of the patient.

In the case of *Airedale NHS Trust v. Bland,*[11] Anthony Bland was crushed at Hillsborough football stadium in April 1989. He sustained severe brain damage. As a result, he relapsed in 'persistent vegetative state'. He remained in that condition till September 1992. The pathetic condition of Mr. Bland caused the doctors in the Hospital to take a unanimous opinion that the condition of the patient would never improve and advised the hospital to seek declarations from the court empowering it to discontinue all forms of life – sustaining treatment and medical support measure except those which would allow the patient to die with dignity and freed from pain and suffering. The relief was granted by the court of first instance on the ground that it is in the patient's best interest that treatment be discontinued. This decision prompted the official solicitor to appeal to the court of Appeal which dismissed the appeal.

At the Court of Appeal, the pathetic condition of Mr. Bland was lucidly set out in the judgment of Hoffman, L.J. as follows:

> He lies in Airedale General Hospital in Keighley, fed by a pump through a tube passing through his nose and down the back of his throat into the stomach. His bladder is emptied through a catheter inserted through his penis, which from time to time

[11] (1993) 1 All ER. 821.

> has caused infections requiring dressing and antibiotic treatment. His stiffened joints have caused his limbs to be rigidly contracted so that his arms are tightly flexed across his chest and his legs is unnaturally contorted. Reflex movements in his throat cause him to vomit and dribble. Of all these, and the presence of members of his family who take turns to visit him, Anthony Bland has no consciousness at all… [12]

Furthermore, it was considered by Hoffmand L.J. that the court must reach a decision which would be both morally and legally acceptable because:

> This is not an area in which any difference can be allowed to exist between what is legal and what is morally right. The decision of the court should be able to carry conviction with ordinary person as being based not merely on legal precedent but also upon acceptable ethical values.[13]

A further appeal was made to the House of Lords based on the ground that to withdraw treatment would be a breach of the duty of the doctor to the patient and a criminal offence. It is believed that, the doctor's duty of care to his patient ought not extend beyond the administration of medical treatment which should be of some benefit to his patient in view of providing some relief from pain and suffering with prospects of recovery and not merely that of prolonging the death of the patient. Thus, it was stated by Lord Keith in Bland's case that:

> In general it would not be lawful for a medical practitioner who assumed responsibility for the care of an unconscious simply to give up treatment in circumstances where continuance of it would confer

[12] (1993) AC. 789 at 824 – 825
[13] (1993) 1 All E.R. 821 at 850

> some benefit on the patient. On the other hand, a medical practitioner is under no duty to treat such a patient where a large body of informed and responsible medical opinion is to the effect that no benefit at all would be conferred by continuance[14]

However, the obligation to preserve life should be based on consideration such as the value of such life to the individual, as well as his will for self determination and human dignity and the value of such life to the society. As it is doubtful whether a man who had lived and enjoyed a healthy life, would prefer to sustain such life in a persistent vegetative state, permanently incapacitated mentally and physically with great pains and suffering not just to himself, but also to his relations and the society. Certainly, continuance of treatment in such a situation is of no benefit to the person as there is no hope of recovery but prolonging of pain and suffering and finally the death of the person. But the general belief in the sanctity of human life which advocates the preservation of life and not the destruction of life does not support euthanasia. This is why abortion was equated with euthanasia by Ronald Dworkin when he stated that:

> Abortion is a waste of the start of human life. Death intervenes before life in earnest has even begun. Now we turn to decisions that people must make about death at the other end of life after life in earnest has ended. We shall find that the same issues recur that the moral questions we ask about the two edges of life have much in common[15]

It is argued that, life is a gift from God. Therefore, no man has a right to terminate what he did not bring into existence. Thus, all forms of suicide were condemned by Saint Thomas Aquinas because:

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[14] (1993) 1 All ER. 821 at 859

[15] Dworkin R. ; Life's Dominion (London, Harpercollis, 1993) at 179.

1. It violates one's natural desire to live.
2. It harms other people.
3. Life is the gift of God and is thus only to be taken by God.[16]

Moreover, Pope John Paul II, denounced the concept of abortion and Euthanasia, which was described by him as crimes which no human law can claim to legitimized. He urged the religious not to obey such laws, but to oppose them by conscientious obligation. According to him:

> In the case of an intrinsically unjust law such as a law permitting abortion or euthanasia, it is therefore never licit to obey it, or to take part in a propaganda campaign in favour of such a law or vote for it.[17]

Contrary to this view is the recognition by Pope Pius XII that life must not be preserved at all cost. To him:

> Man has a right and a duty in case of severe illness to take the necessary steps to preserve life and heath. That duty devolves from charity as ordained by the Creator, from social justice and even from strict law. But he is obliged at all times to employ only ordinary means…That is to say, those means which do not impose an extraordinary burden on himself or others.

The above statement is useful in the determination of when a physician's obligation to continue the preservation of life or prolonging the death of a terminally-ill patient should cease. In such situation, factors like the physical and psychological pain involved in the treatment, its claim on scarce resources and the

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[16] http://www.Religioustolerance.org/euthl.htm

[17] Pope John Paul II: On the value and inviolability of human life, Evangelium Vitae, 73

general prospect for the patient and his family may all be taken into account in deciding whether or not a treatment is productive.[18]
But those who oppose euthanasia rejects any act leading to death. Thus, it was stated by Bingham, MR in the case of Airedale NHS Trust v. Bland[19]

> That the practice of removing life support from a patient in a persistent permanent vegetative state: is not about euthanasia, if by that it is meant the taking of positive action to cause death. It is not about putting down the old and infirm, the mentally defective or the physically imperfect. It has nothing to do with the eugenic practices associated with fascist Germany.

However, in the case of *Vacco v. Quill*[20]the court emphasized that "the distinction between assisting suicide and withdrawing life sustaining treatment in hopeless cases is logical, widely recognized and endorsed by the medical profession and by legal tradition."

Thus, euthanasia which is the practice of providing a 'good' death or easing the passing[21] is justified. It is for this reason that Mason and McCall Smith made a succinct deduction of the guiding principle from the decision of the House of Lords in the case of *Airedale NHS Trust v. Bland* that:

a. Treatment of the incompetent is governed by necessity whicn is in turn defined in terms of the patients' best interest.
b. Once there is no hope of recovery any interest in being kept alive disappears and with it the justification for invasive therapy also disappears.

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[18] Mason & McCall Smith: Law and Medical Ethics 4th Edition (London: Butterworths, 1994)at 431.
[19] (1993) A.C. 789 at 808
[20] (1997) 117 SC. 2293
[21] Mason & McCall Smith opcit. At 413

c. In the absence of necessity there can be no duty to act, and in the absence of a duty there can be no criminality in an omission.[22]

However, the Nigerian Criminal Law criminalizes any act or omission that leads to the death of a person. For example it is provided by Section 311 of the Criminal code[23] that:

> A person who does any act or makes any omission which hasten the death of another person who, when the act is done or omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that person.

There is no doubt as to the fact that a physician owes a duty to his patient to administer the best treatment which will make the patient's pain and suffering less severe. But where the patient's condition unequivocally suggests that such treatment has ceased to be of any curative value to the patient, must the doctor's duty persist. In such a case, the withdrawal of treatment by a physician from the patient is not primarily aimed at bringing about the death of the patient, but to ease the patient's pains and suffering and putting an end to the prolongation of life which has become completely worthless and absolutely unnecessary from the patient's point of view.

It was stated by Taylor L.J. in the case of *Re J (a minor)* that:

> The court never sanctions steps to terminates life. That would be unlawful. There is no question of approving, even in a case of the most horrendous disability, a course aimed at terminating life or accelerating death. The court is concerned only with

[22] Ibid at 398
[23] Criminal Code Act, Laws of the Federation of Nigeria, 2004

the circumstances in which steps should not be taken to prolong life.

The decision of Taylor L.J. was informed by the dissension's which followed the decision reached in the case of R. v. Arthur,[24] where Dr. Arthur withheld treatment from a baby suffering from Dawn's syndrome on the ground that the parents did not want the baby to live. He was later acquitted on a charge of attempted murder.

However, there is a world of difference between the withholding of treatment from a dying patient and refusing to sustain one who shows evidence of a will to live. Thus, there should not be any obligation to administer treatment, which will not in any way enhance the patient's quality of life. The obligation to treat on the part of the physician must yield to the patient's right of self-determination. Any treatment of an adult who is of sound mind against the person's wish may result to a civil wrong of assault and battery.[25]

Thus, in the case of Malette v. Schutman,[26] a medical doctor who administered blood transfusion contrary to his patient's instruction was found liable in an action for battery. Also of importance, is the case of the Medical and Dental Practitioners Disciplinary *Tribunal v. Okorie,*[27] *which is* a case that recognized a patient's right of self determination as guaranteed by the 1999 Nigerian Constitution[28], *In this case,* Mrs. Martha Okorie required blood transfusion which she refused on ground of her religious belief. She died five days after she was admitted to the hospital. And Dr. Okonkwo was arraigned before the Medical and Dental Practitioners Tribunal on a charge of attending to a patient in a negligent manner contrary to "Medical Ethics".

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[24] (1990) 3 All ER 930 at 943.
[25] R. v. Cox (1992) 12 BMLR 38
[26] (1990)67. DLR (4th) 321
[27] (2001) 7NWLR (Pt. 711) 206 SC.)
[28] Section 37 & 38

The tribunal convicted him and suspended him from practice for a period of six months. He appealed to the court of Appeal and was successful. The Tribunal then appealed to the Supreme Court. The Tribunal's appeal to the Supreme Court was dismissed. While delivering the Supreme Court judgment, Ayoola J.S.C. emphasized the helpless position of the physician whose patient has refused to receive a particular treatment and stated that:

> Since the patient's relationship with the practitioner is based on consensus, it follows that the choice of an adult patient with a sound mind to refuse informed consent to medical treatment… leaves the practitioner helpless to impose a treatment on the patient. [29]

In a concurring decision, Uwaifo, J.S.C. stated that:

> I am completely satisfied that under normal circumstance no medical doctor can forcibly proceed to apply treatment to a patient of full and sane faculty without the patient's consent, particularly if the treatment is of a radical nature such as surgery or blood transfusion. So the doctor must ensure that there is a valid consent and that he does nothing that will amount to a trespass to the patient. Secondly, he must exercise a duty of care to advise and inform the patient of the risk involved in the contemplated treatment and the consequences of his refusal to give consent. [30]

Furthermore, Achike, J.S.C in Okonkwo's case, stated that:

> It was at best, an omission to do something by a caring medical officer in respect of a complex matter which involved respecting personal decision

[29] Ibid at 245.
[30] Ibid at P. 255.

> – albeit, of religious beliefs – of a patient in the face of the patients abduracy in being treated. I was relieved that I found nothing deliquent, not to mention infamous, about the conduct of the respondent throughout the circumstances of the case.[31]

Thus, a medical doctor cannot be held liable for any fatal consequence arising from withholding or withdrawing of treatment due to the patient's refusal or withdrawal of consent as Nigerian Judicial decisions support this concept of euthanasia. However, a person whose life is devastated and rendered meaningless by terminal ailment, whose breath is sustained by advanced medical technology, groaning under severe pain and suffering with no hope of recovery, may prefer to die. In such a case, it will be in the patient's best interest that treatment be discontinued.

Conclusion

This paper discloses the fact that euthanasia is the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy. It hastens and facilitates the death of the terminally ill patient.

Although the concept of euthanasia is beclouded by the general belief in the sanctity of life, it is in the best interest of the suffering and pain stricken patient that euthanasia be administered. However, with some trepidation, it is suggested that in appropriate cases, "euthanasia" should be justified on grounds of necessity, although medical doctors may argue that they took the vow to preserve life and not to destroy it.

[31] Ibid at P. 254.