

## **Psychiatry and the death penalty. Revised statement from the Ethics Sub-Committee.**

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This statement by the Royal College of Psychiatrists, England, follows a review of previous statements published in the Bulletin in 1992 (re-confirmed in 1997) and in 1994.

Although there is no death penalty in the UK, there are members in countries that still retain the death penalty and there are UK members, primarily from the Forensic Faculty, who may be asked overseas for professional opinions where the death penalty is a legal option. The purpose of this statement is twofold; first, to help members and other psychiatrists who may be faced with ethical dilemmas if their work is related to capital cases; and second, to contribute to the debate on the use of the death penalty. This statement is intended to apply to psychiatrists involved in the capital process as both clinicians and experts.

The College considers that the death penalty is not compatible with the ethic upon which medicine is based; to act in the best interests of the patient. It recognises the complexity of lawmaking, and the range of public and professional opinion. It also recognises that the state or other legal bodies might wish to have a professional opinion on a person where the death penalty may be an option. The issues raised are similar in kind to those faced by psychiatry when the duties to the patient and to society may be in conflict and when opinion is asked for by a court rather than by a patient. However, there are specific ethical issues when professional judgement relates to a person's death.

There are two general ethical principles when working as a doctor with social systems that might cause death or undue suffering. The first is to maximise patient welfare over the concerns of the social systems, which may have quite different goals. The second is that when involvement with the organisational process is inevitable, there is then a judgement as to how closely to participate in the decisions and actions that may lead to death. Both these principles are in play at different points in the process of medical involvement in the death penalty.

The College supports individual psychiatrists who do not wish to take any part in a process that might end in a person's death. It also believes that the law and citizens in conflict with the law should have access to highly qualified, well-trained and ethically sensitive psychiatrists. There is concern that where the death penalty is still practised that there will be division within professional bodies, leading to the withdrawal of some of the most skilled practitioners from the legal process. The College will support psychiatrists who become ethically involved in the legal process and also those who take an ethical stance in seeking changes in the law, even if this brings them into conflict with the authorities and with their colleagues.

In previous statements, the College identified the following stages of involvement and advice:

### 1. Legal proceedings before and during trials

These include:

Investigation

Assessment of fitness for trial

Assessments to enable legal authorities to arrive at an appropriate verdict

Sentencing

It may be ethically justifiable to give an opinion to the court on fitness to stand trial; even if the consequence of being fit were that a possible guilty verdict would lead to the death penalty. At this point, although acting for the organisation, there may be sufficient distance from the decision around death and it is in the interests of the individual to have a fair trial. The involvement of more experienced practitioners may elucidate mental disorders that others may not recognise. Each case should be judged on its merits. It is ethically justifiable to enter into the defence of a person with a mental disorder and/or to seek a lesser sentence than the death penalty when the individual or those acting for him/her seek this opinion. It may be reasonable to take such instruction from the court itself, but this then changes the relationship with the defendant and needs to be fully explained. The finding that there is no mental disorder leaves a serious dilemma for the psychiatrist, as this statement to the court may appear to be directly related to a person's death. Psychiatrists in this position must be aware of their own needs for support and opportunities to discuss with peers who have experience in this field.

It is quite contrary to the medical ethic for a professional opinion to recommend the death penalty. There is debate about the involvement of psychiatrists on the prosecution side. It can be argued that working for the prosecution seeking the death penalty is in reality working for the judicial system, the prosecution being an arm of the judicial process, and the point can thus be made that to exclude the psychiatric testimony for the prosecution is unjust as it perpetuates an unbalanced system. On the other hand, the concerns must be that the psychiatrist will provide evidence that will harm the defendant, which is contrary to traditional medical ethics. There is need for caution and sound legal advice when offering opinion about risks of further offending, as this may be used to justify the death penalty in sentencing. There is no ethical consensus on this issue of psychiatric testimony and it should remain a matter for the individual's conscience.

When dealing with capital cases, psychiatrists should be aware of the public interest likely to be aroused and the feelings of the victim's family.

## 2. The involvement of psychiatrists post-sentencing

These include:

- Therapies for a person awaiting execution
- Assessment of fitness for execution
- Execution itself
- Confirmation of death

It is appropriate to treat patients on a voluntary basis while they are awaiting execution. The sole purpose of treatment is the patient's best interest and there is no organisational involvement. Treating a patient on an involuntary basis requires careful consideration. If recovery means the person is then fit for execution then there is a dilemma. The psychiatrist may seek to treat on the conditions that the death sentence is commuted; if this is the case then the dilemma is resolved; if this cannot be obtained then each case needs to be assessed on its own merits. Discussion with peers is vital.

A psychiatrist should not certify that a person is fit for execution.

This is too close to the decision to end a person's life.

A psychiatrist should not take part in an execution, nor should he or

she confirm the death of an executed person.

## Conclusion

The College recognises the complexity of these issues, but maintains that the death penalty is contrary to the medical ethic. The College will support psychiatrists who refuse to be involved in the process and those who decide to take up limited involvement in an ethically justifiable manner as described above. The College also aligns itself with those organisations and individuals who seek abolition of the death penalty such as the Council of Europe Bio-ethics Committee.

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