PALLIATIVE CARE: AN ETHICAL & LEGAL DUTY

THE GLOBAL NEED: AN “ACCESS ABYSS”

61 million people

More than 61 million people per year, including 5 million children, are affected by serious health-related suffering, of whom 80% live in low- and middle-income countries.\(^1\)

Alleviating this suffering is a "global health and equity imperative."\(^2\)

$145 million

The cost of alleviating this suffering is an estimated $145 million per year\(^3\)—the annual budget of one, medium-sized hospital in the USA.\(^4\)

THE DUTY TO ENSURE EQUITABLE ACCESS:

AN ETHICAL CONSENSUS\(^5\)

1) NATURAL LAW

Relieving suffering, so as to help patients enjoy the goods of life, is an important goal of medicine, and it is required by the ethical principle of care. Moreover, the principle of justice requires the equitable, global distribution of healthcare resources.\(^6\)

2) UTILITARIANISM

Minimizing pain and suffering is required by the principle of utility: promote the greatest happiness for the greatest number.

3) PRINCIPLISM

Providing adequate relief to all is required by the principles of respect for autonomy, non-maleficence, beneficence, and justice.

It is "shocking...that the global health community has not seized the opportunity and responded to the ethical imperative to close the access abyss in the relief of pain and other types of suffering both at the end of life and across the course. What does this say about our values as a global society?"\(^7\)

THE LEGAL DUTY\(^8\)

CIVIL

possible liability for negligence

CRIMINAL

possible liability for neglect/harm

There is a good case for legislation that would impose a clear duty on physicians and healthcare institutions to provide reasonable palliative care to all who could benefit from it.

A HUMAN RIGHT?\(^9\)

HUMAN RIGHTS

"Access to medicines for the relief of pain is a human right."\(^10\)

Everyone has the right to ‘life, liberty, and security of person.’\(^11\)

No one shall be subjected to torture or to ‘cruel, inhuman or degrading treatment’ or punishment.\(^12\)

Everyone has the right to the ‘highest attainable standard of physical and mental health.’\(^13\)

Everyone has the right to respect for ‘private and family life...’\(^14\)

KEY POINTS

— 1 —

There is a massive, global need, especially in poorer countries, for palliative care.

— 2 —

There is an obvious ethical duty on the global community, especially wealthier countries, to meet that need, which could be met at little cost.

— 3 —

There may well be (depending on the jurisdiction) a legal duty on physicians and on healthcare institutions to provide reasonable palliative care.

— 4 —

A failure to provide palliative care may also constitute a breach of human rights.

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2. NCD Alliance. (Emphases added.)


5. See generally John Keown, The Law and Ethics of Medicine (Oxford University Press, 2012); chapter 11.


8. See generally Keown, chapter 11.


12. The International Covenant on Economic, Social and Cultural Rights, Article 12(1).


14. NCD Alliance. (Emphases added.)

15. See generally Keown, chapter 11.