

Palliative Care as a Human Right

Using the Law to Advance Palliative Care
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Overview

- Introduction
- What is palliative care?
- Legal barriers to palliative care
- What are the central human rights arguments in favor of access to opioid analgesics for palliative care?
- How might palliative care and human rights advocates work together to advance access to pain medication?



Introduction

- Access to essential pain medication for people suffering from life-limiting illnesses such as AIDS and cancer is a basic human right embodied in International conventions.
- In 2006, the WHO invited the International Association for Hospice and Palliative Care to develop an essential medicines list for palliative care, in recognition of the centrality of pain management medication to basic health care.
- WHO and the International Narcotics Control Board have called on governments to ensure availability of essential pain medication for all those who need it.



Introduction continued...

- The United Nations Committee on Economic, Social and Cultural Rights, the expert body responsible for overseeing implementation of the International Covenant on Civil and Political Rights (ICESCR), has stated that access to essential medicines is part of the minimum core content of the right to the highest attainable standard of health, enshrined in article 12 of the ICESCR.
- Despite this, access to pain medication remains out of reach to the vast majority of people who need it:
 - largely as a result of the stigma associated with using narcotic drugs for pain medication; and
 - exaggerated fears about the diversion of narcotics into illicit markets, and avoidable barriers to drug procurement and distribution.
- Also, governments tend to focus more on prevention of diversion of narcotic drugs into illicit markets without necessarily facilitating access to opioids such as oral morphine for pain management.

What is palliative care?



- "Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual. Palliative care:
 - provides relief from pain and other distressing symptoms;
 - affirms life and regards dying as a normal process;
 - intends neither to hasten or postpone death;
 - integrates the psychological and spiritual aspects of patient care;
 - offers a support system to help patients live as actively as possible until death;
 - offers a support system to help the family cope during the patients illness and in their own bereavement;
 - uses a team approach to address the needs of patients and their families, including bereavement counseling, if indicated; will enhance quality of life, and may also positively influence the course of illness;

-WHO

Legal Barriers to Palliative Care

- Legislation (including the punitive and prohibitive nature of the 1994 narcotic act);
- Palliative care patients often face complicated legal challenges such as:
 - protecting and disposing of property;
 - planning for children and other dependents;
 - and securing access to health and social benefits;
 - lack of knowledge on rights as trial participants;
 - empowering others to make medical decisions; and
 - writing of wills
- Nurses are not allowed to prescribe opioids;
- High taxation on morphine powder undermines access;
- Inadequate awareness and education on palliative care;



Legal Barriers continued...

- Internationally, public policy regarding opioids has been affected by concerns about illicit drug use;
- A policy based only on such concerns has the effect of denying access to opioids altogether and is not reasonable;
- Such concerns require a balanced policy that ensures sufficient controls are in place to manage the prescription and administering of opioids;
- This can be achieved through ensuring sufficient regulation, as it has been done in the maternal health context, in respect of midwives prescribing pethadine; and
- Stock outs of morphine due to single sourcing leads to unnecessary and avoidable pain.

Human rights arguments in favor of access to opioid analgesics for palliative care

- Legal and human rights advocacy for persons with life-limiting illnesses is a recognized element of a comprehensive and holistic approach to palliative care.
- The right of access to health care services in section 43(1) (a) of the Kenya Constitution includes the right of access to morphine for pain relief for terminally ill patients as an effective part of palliative care;
- There are insufficient medical practitioners and pharmacists to assist with the prescription of and dispensing of opioids for palliative care treatment; and
- Nurses are currently unable to prescribe morphine and other opioids required for palliative care, and as a result their patients, for whom such opioids are indicated, are denied adequate pain relief.

Human rights violation in access to palliative care



- The omission by the State to allow nurses to prescribe morphine to patients in circumstances where they have no access to doctors and pharmacists, amounts to a violation of section 43 of the Constitution;
- It is arguable that the policy also discriminates against poor people as the effect of the omission by government is that only people who are poor (in rural areas or with limited access to healthcare services), are unable to obtain pain relief when terminally ill.
- The failure to provide morphine to terminally ill patients as part of palliative care leads to unnecessary suffering and painful deaths.
- This is in breach of the constitutional right to life and the right to human dignity contained in sections 26 (1) and 28 of the Constitution.

Some Legal strategies to advance access to opioid analgesics



- Analysis of policies and laws that limit access to opioids for pain management.
- Develop the arguments necessary to take a complaint of denial of pain medication to a national, regional or international human rights body or court.
- Strategic litigation- using the constitutional provisions- The only known lawsuit for access to pain medication has occurred in India, despite the fact that dozens of countries around the world fail to provide these medications on a significant scale.
- Advocacy for enactment of new laws e.g. cancer bill and change of existing ones.
- Provision of legal aid to palliative care patients human rights body.
- Writing shadow reports to treaty bodies.
- Partnerships between palliative care practitioners and human rights advocates to advance access e.g. provision of legal aid on legal challenges confronting patients with life limiting illnesses.

Thank You

