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## Assistance at Immoral Operations<sup>1</sup>

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The title of this chapter is more restrictive than its contents. For here we present those moral principles which govern, not only assistance at immoral operations, but also cooperation in any type of immoral action.

The importance of these moral principles can hardly be overemphasized. Every doctor and nurse realizes only too well how frequently the application of these principles is required in the medical field. And medico-moral problems of this type are often difficult to solve.

At the outset, it is to be acknowledged that the aid given by an assistant surgeon to a principal surgeon, or by nurses to doctors, in the commission of immoral acts is often rendered unwillingly.

Difficult situations of this type frequently arise because of neglect on the part of those who hold positions

of authority in the hospital. When hospital authorities rigidly forbid all immoral operations and place a strict sanction on their prohibition, few embarrassing situations will occur. If hospital authorities deliberately close their eyes to these matters, moral problems will constantly arise for the assistant surgeons and nurses on the staff.

In many cases, of course, the problems do not arise as the result of a malicious determination on the part of hospital surgeons to perform operations which they know to be immoral. Frequently, the problem has a deeper and more serious basis, namely, the attitude on the part of hospital authorities that certain truly immoral operations are not immoral at all. When the ethical code of a hospital and the superior members of its staff is deficient, the doctors and nurses in the institution who possess true moral ideals can expect no end to their problems.

This situation is unfortunately not at all rare. For instance, therapeutic abortion, and sterilization to make impossible future pregnancy which would endanger health, are regarded as

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1. Reprinted with permission from F. A. Davis Company. McFadden, Charles J.: *MEDICAL ETHICS*, Chapter 15 "Assistance at Immoral Operations", pp 357-370, 1967.

wholly justifiable by many secular hospital authorities. No doctor or nurse is morally free to accept such a view and their employment in institutions which hold such opinions is fraught with grave moral difficulties.

Situations which are difficult to handle will probably fall to the lot of the nurse more often than to the doctor. Throughout her professional training, the nurse is taught to obey authority without question. She is trained to carry out the commands of doctors and surgeons quickly, and without comment. The thought of taking exception to the moral character of an operative procedure of a surgeon is, for many nurses, a thought too fantastic to imagine.

The nurse remains, however, a person in her own right. She has her own spiritual nature with all of the moral obligations which are proper to it. The fact that she is a nurse does not mean that she may indiscriminately aid others in the commission of sin. She must be guided in such difficulties by the same moral principles which direct any member of society in problems of a similar type.

In order to determine accurately the moral principles which govern assistance at immoral operations, it is necessary to distinguish between several kinds of such assistance.

### THE NATURE OF COOPERATION

In a broad sense, any influence which is exerted upon the will of another, in an effort to have that other person commit sin, can be construed as cooperation. This influence would be *direct and positive* whenever it took

the form of command, counsel, enticement, or pleas to commit the act. It would be *indirect and negative* if one neglected to warn and impede a person contemplating sin when there was both the opportunity and obligation to do so.

In a strict sense, however, *cooperation is any real physical help given to another person in the commission of a sinful act*. It is in this strict sense that we shall use the term "cooperation" in the present chapter.

Cooperation is classified as *immediate* when the one cooperating intimately participates, under the direction of the principal agent, in the immoral act itself. Thus, an assistant surgeon who performs one or more parts of an immoral operation, by way of aiding the principal surgeon, is rendering *immediate* cooperation.

Cooperation is classified as *mediate* when the one cooperating supplies the means which make it possible for the principal agent to carry out his sinful act.

*Mediate cooperation* is called *proximate* or *remote*, according as it is more or less intimately connected with the act of the principal agent. Thus, a nurse who would stand beside a surgeon who was performing an immoral operation and hand him all of the required instruments and materials would be rendering *proximate assistance*. In contrast, a nurse who would prepare the patient in a hospital room for the forthcoming immoral operation, or the nurse who would sterilize and set out the instruments for the operation, would be rendering *remote assistance*.

Thus far, our analysis of cooperation has been solely from the objective standpoint; that is, we have considered only the physical nature of the aid given and its degree of proximity to the immoral act itself. A moral act, however, always involves knowledge and freedom. For this reason, it is necessary to distinguish between *formal* and *material* cooperation.

*Formal cooperation* is said to be present when the one who is aiding the principal agent freely agrees with the latter's sinful intentions and freely chooses to help in the performance of the immoral act.

*Material cooperation* is unwilling aid given to another in the commission of an immoral act; that is, the one cooperating neither agrees with the sinful intentions of the principal agent nor desires the sinful effect to take place, but does actually render some aid because of some personal benefit that will be derived or because of some loss which will thereby be averted.

### THE MORALITY OF COOPERATION

*Formal cooperation* proceeds from a bad intention and involves approval of an immoral act. For this reason, *it is never morally permissible*, and it is a sin of the same nature as the immoral act of the principal agent.

*Material cooperation*, however, is not the result of a malicious will or desire to achieve an immoral objective. It is, instead, the fruit of a reluctant decision to help in the commission of an immoral act simply because, by so doing, a loss or inconvenience to

oneself will thereby be averted or a personal gain be procured.

Material cooperation which is *immediate* cannot, however, be permitted. It involves partial execution of the immoral act itself and is, therefore, intrinsically evil. Even though one is not interested in seeking the immoral objective and is motivated by purely extrinsic factors, *no reason, however grave, would ever allow a person to participate actively, as a partial efficient cause, in the immoral act itself*. For example, an assistant surgeon could never render *immediate* cooperation in a purely eugenic sterilization.

It is not often that a nurse will be called upon to give *immediate* cooperation. Usually, she stands outside the act itself and is simply called upon to hand over or prepare the required materials and instruments for the use of those who are performing the operation.

It is not unheard of, however, for nurses to be confronted with a request for immediate cooperation. Nurses working in the offices of doctors who do not hesitate to perform private therapeutic, and even criminal, abortions are sometimes called upon to render what is certainly immediate cooperation. *Such assistance is intrinsically evil, and no reason whatever would allow the nurse to participate so intimately in an immoral act.*

Material cooperation which is *mediate* involves an action which is *itself* morally indifferent. It is an action which one would ordinarily have a right to do, such as sterilizing

instruments or handing them to a surgeon. It is an action whose moral character here and now becomes questionable only *because it is being made to serve an immoral end.*

Both doctor and nurse must recall the all-important twofold effect principle. Actions which are morally indifferent in their own nature may be performed, *under due conditions*, even though they are productive of an evil effect, as well as a good effect. It is this principle which is involved in the morality of mediate cooperation.

The first condition of the twofold effect principle requires that the act which is productive of the good and bad effect be a morally indifferent act. This first condition is verified in all cases of mediate material cooperation.

The second condition demands that the good effect proceed directly from the indifferent act, not through the medium of the evil effect. This condition will probably be fulfilled in almost all cases of mediate material cooperation.

The third condition insists that the motive prompting the act must be a desire for the good effect and in no way a result of attraction toward the evil effect. This condition is presumably verified in most cases of mediate material cooperation.

The fourth condition states that the good effect must be at least equivalent in value to the evil which results. *It is this condition which will necessitate deep analysis in problems of this type.*

The evil effect in these cases is the

violation of moral law and the loss which will result from the violation (such as the injury to bodily integrity in eugenic sterilization or the destruction of innocent life in therapeutic abortion). The bad effect in these cases is the benefit which will be derived by the one cooperating as the result of rendering the aid, or the loss which that person would thereby avert.

With this background, we may now ask: *May a doctor or nurse ever give proximate or remote material assistance to one who is performing an immoral operation?*

The answer is that such assistance may be given *provided there is a sufficient reason for so doing.* The gravity of the reason must be in proportion to the proximity of the act to that of the principal agent. The closer and the more necessary such aid is, the more grave will the reason have to be to justify it.

A doctor or nurse must have a *very grave cause* before it is morally permissible to render the *closer and more necessary forms of proximate material assistance.* Hence it would be morally permissible to give *close proximate and necessary* assistance in an immoral operation only if a refusal to assist would inflict a *very grave loss* on oneself or on some other person. Thus, one might render such assistance if refusal would involve a *risk to one's own life, grave personal harm, notable injury to one's reputation, serious financial setback, possible loss of life to the patient, or the loss of one's profession.* Reasons of lesser weight would justify the rendering of such assistance if it is *close but not necessary aid* for the one performing

the evil act (for example, if he could go on and perform the act alone or if someone else would immediately step in to help him as soon as we refused.)

A doctor or nurse must have a *grave cause* before it is morally permissible to render the more distant forms of proximate material assistance to one who is performing an immoral operation. A notable and permanent reduction in salary, a demotion in official position, or a long suspension would ordinarily constitute a grave loss. Only if refusal to render this aid would result in the above or similar losses would one be justified in granting such assistance. As mentioned above, however, not only the proximity of the assistance to the act of the principal agent should be taken into consideration but also his degree of dependence on it.

A doctor or nurse must have a *normally serious cause* before he or she is morally justified in rendering *remote material assistance* to one who is performing a sinful operation. If refusal to render such aid would result in suspension for a week, with consequent loss of salary, or some equivalent loss, one would usually be morally justified in giving this aid.

It cannot be emphasized too strongly that it is a most difficult matter to evaluate the causes which justify rendering the various types of material assistance. Each individual case, with all of its circumstances, must be given specific consideration. What would be a normally serious loss for one person might well be a grave loss for a second person, and a negligible loss for someone else.

For instance, the loss of a week's salary through suspension would

usually be a *normally serious loss.* But if a nurse were, for example, the sole support of herself and her aged parents, the loss of this salary might often be a *grave loss.* On the other hand, another nurse might have plenty of money and would welcome such a suspension as a splendid opportunity for a pleasant vacation.

The conscientious doctor and nurse might give full consideration to the details of each difficulty which they encounter. They will have to consider carefully the type of assistance which is demanded of them. They will have to weigh conscientiously the gravity of the loss which will come to them as the result of a refusal to render the material assistance. Then, and then only, will they be able to decide whether they are morally justified in doing what is asked of them, or whether they are morally obliged to refuse such aid in the particular case.

In summary, no one may *ever* render either *formal* or *immediate material cooperation.* *Doctors and nurses must have a very grave reason before they may give close proximate material aid. They must have a grave cause* to justify the rendering of the *somewhat more remote forms of proximate cooperation.* A *normally serious reason* must be present before they may give truly *remote* material assistance to an immoral operation.

*The rendering of aid to one who is acting immorally is more difficult to justify if it is foreseen that the demand will be habitual.* If the demand is not likely to recur, it is much more easy to permit the giving of the aid in a single case for an apparently proportionate reason.

The giving of aid to one who is acting immorally is likewise more difficult to allow when a refusal will mean that the principal agent will be unable to perform the action. On the other hand, if many persons are willing and capable of rendering the requested assistance, it is much more easy to justify the giving of such aid when there is present an apparently proportionate reason.

The rendering of aid to one who is acting immorally is more difficult to justify in proportion to the gravity of the contemplated evil. Thus, a "mercy killing" or an abortion would be a graver evil than an immoral sterilization.

The following observations should provide matter for serious reflection for many doctors:

It has come to our attention in enough cases to warrant mention here that Catholic physicians, sometimes in good faith because of ignorance or thoughtlessness, refer patients to other physicians for such things as therapeutic abortion, sterilization, advice about contraceptive devices and measurement for them, and the like. Their opinion seems to be that as Catholics they cannot do these things themselves, but that they can send their patients to others or call others into consultation for the purpose. This attitude is also found in non Catholic physicians who do not feel that they can do these things ethically. In referring patients in this way, the physician gives scandal to a serious degree both to the patient and to the physician to whom he refers the patient, since he gives other persons the opportunity to do the wrong which he knows in conscience he cannot do himself. This is true regardless of whether either the physician or the patient is a Catholic, since the Natural-Divine-Moral Law is binding on all. (Good-Kelly, "Marriage, Morals and Medical Ethics, p.

26) We might also add that a physician who acts in such a manner becomes a cooperator in the act of the other physician and in the interests of the patients referred to him.

Analysis of several typical cases will serve to illustrate the application of the moral principles presented in this chapter.

(1) A nurse engaged in social service work is ordered by her Superior to give instruction in the use of contraceptives. She hesitates and is told that if she does not give the instruction she will be dismissed from her position. May she give the instruction?

The answer is "No." To give such instruction is *formal cooperation* in the sin of the patient. To instruct a patient in a method of committing sin is in itself a morally evil act. Hence the nurse's role cannot possibly be regarded as one of material assistance. It is formal cooperation rendered to another in the commission of sin. Such assistance is always immoral and never permissible.

(2) A nurse, employed in a non-sectarian hospital, is told by the surgeon in what she knows is to be an immoral operation. It would be her duty to work by the side of the surgeon, handing him the instruments and materials which he would require. When she hesitates to comply with the order she is told that refusal will mean dismissal from the hospital. May she render the aid demanded of her?

The answer to this question must be determined by a further analysis of the case. At the outset it is clear that the nurse is confronted with giving *material* but not *formal* assistance. The material aid demanded from her is, however, of a most serious type, namely, very close proximate cooperation. Only a *very grave cause* will

justify her in giving aid which is so intimately connected with the sinful action itself.

The circumstances of the case must be studied before one can decide whether or not dismissal from her present position would be a very grave loss. In some cases, it appears that the loss of a position would constitute a very grave loss. For instance, in a period of severe economic depression, when there would be no reasonable expectation of getting another position, a nurse who was the sole support of aged parents might reasonably regard the loss of her present job as a very grave loss. If these or comparably severe circumstances are implied in the above case, the nurse may render the demanded assistance.

Secondly, let us assume that the nurse involved in the above case is a student nurse. Let us presume that her refusal would involve dismissal from the Nursing School and also make it impossible for her to gain entrance to another school. In such an instance, refusal would really deprive the girl of her life's profession. This might constitute a very grave loss. One is reluctant, however, to acknowledge that refusal to assist at an immoral operation would make it impossible to gain entrance to more ethically-minded institutions.

Thirdly, if we are to assume that the loss of her present position would be only a serious or grave matter, she may not render the aid demanded of her. This is the more likely possibility in the usual cases of this type.

The nurse is reminded that when the evil resulting from an immoral operation is the destruction of an

innocent life, as in criminal or therapeutic abortion, a much graver cause is needed to justify the rendering of assistance than when the immoral operation produces some lesser evil, such as the destruction of healthy vital organs in eugenic sterilization.

(3) A nurse enters upon an operation posted as an appendectomy. She is giving close proximate assistance to the surgeon. After the removal of the appendix, the surgeon goes on to an immoral operative procedure. Must the nurse leave the operation or may she continue to assist at it?

It must be said that the nurse is morally justified in continuing to assist at the operation. To leave the operation might well risk the life of the patient. Hence there is present a very grave cause which justifies the aid which she gives. If she believes that it would prevent either scandal or a recurrence of the problem, she should tell the surgeon and supervisor that she would not have entered on the operation had she previously known its character.

(4) A nurse is told to act as an anesthetist at an immoral operation. Refusal will bring dismissal from the hospital. She knows that economic conditions are such that it will be very hard to obtain another position. May she give the anesthetic at the operation?

The first point which must be decided is the nature of the assistance demanded of the nurse. Is the giving of an anesthetic during an immoral operation immediate or proximate assistance? Obviously, it is closer to the immoral act than the sterilizing and setting out of the instruments. It does appear to be somewhat comparable to the role of the nurse who hands the surgeon the instruments and

materials in the course of the operation.

The present writer has questioned many nurses of all types on their opinion on this matter. In practically all instances, the personal conscience of the nurse tells here that the giving of an anesthetic is close proximate material assistance.

In his *Moral and Pastoral Theology*, Father Davis holds the opinion that the role of the anesthetist is not one of immediate cooperation. He regards her position as on a par with the nurse who sets out the instruments for the operation. This reasonable opinion would classify her role as *close proximate* material assistance. In the light of this view, the threatened loss of a position, when another would be very hard to obtain, would justify the nurse in giving the anesthetic in the above case.

(5) A nurse is assigned to a patient and told to prepare her for an operation. The nurse knows that the operation is immoral in character. It is to be her duty to give the patient medicines which will prepare her for the operation. May she render such assistance?

The giving of these drugs for the above purpose is remote material assistance in the forthcoming immoral operation. The nurse may not give such aid if refusal would bring simply displeasure or a reprimand from her superior. If, however, refusal would result in a normally serious loss, the nurse would be morally justified in giving the medicine.

Before going on the next phase of our topic, a few unrelated thoughts should be mentioned:

First, both doctors and nurses who work in an institution wherein they are periodically asked to assist at immoral operations should look for another position. They may continue temporarily to hold their present position and even assist proximately and remotely at immoral operations provided they have a proportionately grave cause each time to justify the type of assistance requested of them. But they should remain constantly on the lookout for a position in a more respectable institution.

Second, doctors or nurses may find themselves holding superior positions in nonsectarian institutions with the burden of selecting personnel for operations falling on their shoulders. They may know only too well that some of these operations are immoral. It would appear that, by virtue of their office, they are giving material cooperation in these operations. It is true, of course, that the assigned personnel need not be guilty of formal cooperation and are not often asked to render immediate material cooperation. Their roles usually involve proximate and remote types of assistance, and in many cases they will have reasons which will justify them in giving such aid. It would appear to be a sound moral principle that one may legitimately designate persons to do that which it is morally permissible for them to do. Since their office demands it, the doctor or nurse holding such a position could assign medical personnel to these operations. They should endeavor, however, to assign only those who, to the best of their knowledge, have sufficient reasons to justify the type of assistance which they render. If, through continuance in their office, they can achieve some worthwhile good for religion and morality, *without any danger of*

*scandal being given*, they should retain their post. If this is not the case, they should remain constantly on the lookout for a comparable position in a more respectable institution.

Third, if a doctor or nurse is in doubt about the morality of an operation, he or she may render any form of material assistance. But they should have the matter cleared up as soon as possible for their future guidance.

Occasionally, one hears the remark that nurses are incapable of deciding on the moral character of an operation. Such a decision frequently depends upon medical judgment which is beyond the capacity of a nurse. For instance, the excision of diseased vital organs is morally justifiable, while the excision of healthy vital organs is almost always immoral. But we are told, only a skilled surgeon is capable of deciding whether or not an organ is diseased.

As frequently happens, there is just sufficient truth in the above argument to make it quite attractive. The fact of the matter is that many operations, such as therapeutic abortions, are known by nurses to be immoral. As a matter of fact, surgeons frequently state that they are doing a purely therapeutic abortion or eugenic sterilization.

In the comparatively few cases wherein a surgeon professes that he is removing an organ because it is diseased and the nurse doubts the sincerity of his statement, she may render whatever assistance is requested of her. In these few cases, she is truly incapable of knowing that the operation is immoral. She may then

give the surgeon the benefit of the doubt.

The present chapter has probably made it very clear that conscientious doctors and nurses should seek employment in a hospital which respects the moral precepts of the Natural Law. *The best solution in these difficult moral problems is to avoid working in an environment which creates them.*

When a doctor or nurse, who is employed in a secular institution, is told to assist at an immoral operation they should act in a prudent manner. There is no need to insult the surgeon or hospital authorities. They should state respectfully that assistance at this type of operation is contrary to their moral ideals and that they would appreciate being excused. When approached tactfully, most hospital authorities will be found sufficiently considerate.

If, in exceptional cases, someone in authority insists on participation in an immoral operation, there is no alternative left but to apply the moral principles explained in the present chapter. If there is a sufficiently grave reason to justify the type of assistance demanded, such aid may be given. If there is lacking a sufficiently grave cause, one must refuse to participate in the operation.

## CIVIL LAW AND ILLEGAL OPERATIONS

In concluding the chapter on *Assistance at Immoral Operations*, it is fitting to recall the attitude of civil law on these matters. In general, immoral operations are also illegal operations. This is exactly as it should be. Civil

law should certainly prohibit immoral operations and severely prosecute all offenders. Unfortunately, there are a number of immoral operations which, under certain circumstances, are not banned by civil law. Therapeutic abortion and eugenic sterilization, for instance, are not always opposed to civil law.

The deficiencies of civil law in these matters are very regrettable and productive of grave evils. On one hand, civil law does not classify all immoral operations as illegal. On the other hand, civil law is frequently very lax in enforcing the laws which do exist.

It is essential, however, for both doctors and nurses to understand the attitude of civil law on those operations which it regards as illegal.

Civil law reminds the nurse that when a doctor's illegal act results in the death of a patient, any nurse who assisted him is regarded as equally guilty if, in the light of her training, she could and should have foreseen that the doctor's act was going to harm the patient. This is true even though criminal intent never entered her mind. The nurse must stamp indelibly on her mind the resolution that she will never assist any doctor in any action which she feels certain will result in harm for the patient.

When civil law holds a nurse legally responsible for assistance given to a doctor in the commission of a criminal act, it is proceeding on sound moral principles. The graduate nurse has had a definite professional training which implies the acquisition of certain knowledge. Those who directly or indirectly engage her services are fully justified in expecting her to exercise

the professional knowledge and skill which she claims to possess. If she assists in an act which endangers the life of her patient, there are only two possible explanations: either she does not possess the knowledge and skill which she is obliged to have, or she has deliberately failed to use this knowledge and skill in a situation which requires it. In either case, the nurse is obviously at fault. She has committed a sin and has made herself liable to criminal prosecution.

The nurse must remember, moreover, that civil courts are held that anyone who is present at the commission of a criminal act and aids the principal in any way is legally regarded as a principal in the second degree to the commission of the crime. Thus, a nurse who would assist a doctor in any way in a criminal abortion would be subject to prosecution by civil law.

In the performance of an immoral and illegal operation, there are usually several parties to the commission of the act. Normally, the surgeon who actually performs the operation is held by civil law as the principal agent, the others being regarded as assistants. Under certain circumstances, however, some other party may be regarded as the principal agent of the crime. Thus, when a crime is committed by a person under duress or coercion, the author of the duress is legally regarded as the real perpetrator of the crime. If a hospital authority should force a member of the staff to perform an immoral operation under threat of dismissal for refusal, the hospital official would be liable to criminal prosecution.

It is quite to the point to remark that a nurse may face criminal

prosecution without even being present at the illegal operation. For instance, a nurse who would tell an expectant mother where she could procure a criminal abortion would immediately become liable to civil prosecution. Even though the nurse were not present when the offense was committed, even though the woman never had the abortion performed, the mere advice of the nurse is all that civil law requires in order to hold her as an accessory before the fact in an attempt to procure a criminal abortion.

Similarly, a nurse might be aware of the fact that a certain doctor had performed a criminal abortion which had resulted in the death of the patient. The nurse may neither have assisted the doctor in any way in this act nor advised the woman to seek this operation. Actually, she may have had nothing whatsoever to do with the matter beyond the fact that she has accidentally learned about it. Yet, if the nurse withholds her knowledge before a civil court investigating the case, she immediately becomes subject to criminal prosecution. Civil law regards her as an accessory to the crime. The courts have held that all that is necessary to render a person an accessory to the crime is the knowledge

of the crime and the use (or non-use) of that knowledge in any way that obstructs justice.

The nurse should fully realize that a plea that coercion or threat forced her to assist in an illegal operation will rarely save her from criminal prosecution. Before such a defense will be accepted by a court, the nurse will have to present clear and convincing evidence that she was forced to assist in the operation. Even though such compulsion was exerted on the nurse, she will usually find it a very difficult matter to prove convincingly that she was the victim of coercion. When she does fail to prove that she was forced to assist in the illegal operation, she must expect to receive the penalties of civil law for the imprudent assistance she gave.

The present chapter should stamp one thought indelibly on the minds of both doctors and nurses. In the eyes of both moral law and civil law, each one is a person in his or her own right with very definite personal obligations. They must have the moral courage to resist any attempt by anyone to force them into participation in any immoral or illegal action.