

EXTERNAL

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MEDICAL CONCERN

**Death penalty legislation in Illinois
USA**

Legislation re-defining the role of doctors in the process of executions has been signed into law in Illinois. This bill appears to have been introduced in response to the widespread professional opposition to medical involvement in executions in Illinois. The effect (or at least the intent) of the bill is to remove doctors assisting in executions from the terms of the Medical Practice Act and by implication, to weaken the application of medical ethics to their activities.

On 22 March 1995, Illinois State Governor Edgar signed into law bill HB204. This bill amends the Medical Practice Act to state that the Act "does not apply to persons who carry out or assist in the implementation of a court order effecting the provisions...of the Code of Criminal Procedure". The Bill also states that "assistance, participation in, or the performance of ancillary or other functions pursuant to this Section, including but not limited to the administration of the lethal substance or substances required by the Section, shall not be construed to constitute the practice of medicine". The Medical Practice Act provides a number of avenues for the discipline of doctors who commit "dishonorable, unethical or unprofessional conduct". Concerned doctors used this section of the Act to argue in a legal submission that medical personnel involved in executions were in breach of the Act and that the Act prohibited physician participation.

In an effort to overturn the effect of this bill, state Senator Arthur Sherman introduced SB652 to the State Legislature Judiciary Committee Bill on 6 April 1995. This bill specifically prohibits physicians, nurses, and other health care practitioners licensed in Illinois from participating in any execution. However, the bill did not attract enough support to get listed for legislative debate. Its fate is uncertain but it may go no further unless renewed interest in the bill can be stimulated.

Amnesty International is seriously concerned that legislation could be passed to facilitate the involvement of doctors in executions in breach of state, national and international medical ethics.

Background

On 12 September 1990, 50-year-old Charles Walker was executed in Illinois by lethal injection. It was the first execution to take place in Illinois for 28 years and led to protest from members of the medical profession following disclosure of the role played by doctors in the execution. The state had hired three un-named physicians to assist. Their role was to administer any drugs given prior to execution, to establish the intravenous saline drip line through which lethal chemicals were then delivered, and to monitor the course of the execution by electrocardiogram at a monitor placed in an adjacent "control room". This was widely believed to be the first time that US doctors had played such an active role in a lethal injection execution by inserting the cannula into the condemned prisoner's arm.

(In November 1990, however, an article appeared in the *American Medical Association (AMA) News* which stated that this was not the first such instance and that at least two other executions had taken place in which doctors had played a similar role in the state of Missouri.)

Attempts to force the Illinois authorities to disclose the identities of the participating physicians failed and the state government, to ensure confidentiality for all personnel involved in executions (and thus to protect participating doctors from peer scrutiny), amended the Execution Statute to protect their identity.

In 1994, four doctors and the human rights organization, Physicians for Human Rights, undertook legal action against Howard Peters (the Director of the Illinois Department of Corrections), Salvador Godinez (the Warden of the Stateville Correctional Center), Nikki Zollar (the Director of the Department of Professional Regulations) and five physician members of the Illinois State Medical Disciplinary Board. The plaintiffs sought four objectives:

- that the court declare that participation by a licensed physician in executions of condemned criminals is a violation of the Medical Practice Act;
- that the court grant an injunction against Mr Peters and Mr Godinez requiring them to prohibit a physician from participating in any execution by pronouncing death as required by the Execution Statute;
- that the court grant an injunction against Mr Peters and Mr Godinez requiring them to disclose the names of any physician who would participate in the execution of John Wayne Gacy on May 10, 1994.
- that the court review Ms Zollar's dismissal of a complaint filed by the plaintiffs with the Department of Professional Regulations. The complaint had requested that the Disciplinary Board and the Department investigate "the misconduct that will occur on May 10 [i.e. Gacy's execution with medical participation] ...and to take all reasonable steps to advise Illinois physicians that participation in the execution will violate the [Medical Practice] Act"

The authorities sought dismissal of the plaintiffs' case on the grounds that they had no standing before the court [i.e. they were not directly liable to harm from the execution]. Gacy was executed on 10 May 1994 as scheduled, and subsequently in March 1995, after an earlier decision in their favour on the issue of legal standing, the appellate court ruled against the plaintiffs.

The current position in law is that doctors can participate in executions contrary to state, national and international medical ethics, are protected by law from being identified and disciplined by professional associations, and are declared to be non-doctors for the purposes of the Illinois Medical Practice Act whenever they assist in executions. This legislation is a retrogressive and regrettable response to a long and considered debate within the medical profession which has moved to a consensus on the unethical nature of medical participation in executions.

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As of 31 January 1995 there were 163 prisoners under sentence of death in Illinois. The last prisoners executed were James Free and Hernando Williams on 22 March 1995. A black man,

Girvies Davis, is scheduled to be executed on 17 May 1995 for a murder he denies having committed.

Attached are the AMA guidelines which are relevant to this debate.

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To: Medical professionals
From: Medical Office / Americas Regional Program
Date: 12 May 1995

LETTER WRITING ACTION FOR HEALTH PROFESSIONALS

**Death penalty legislation in Illinois
USA**

Keywords

Theme: death penalty / execution / legislation / medical ethics

Profession/association: Illinois State Medical Society / American Medical Association

Summary

Legislation signed into law in April 1995 provides for exemption of doctors assisting in executions from the Medical Practice Act. This would mean in effect that doctors could assist in executions in Illinois without being subject to legal and medical ethical requirements regulating medical conduct. AI believes this legislation represents a grave departure from acceptable practice. Legislation has been proposed to the legislature which would remove doctors from the execution process but this has been stalled through lack of support.

Recommended Actions

1) Letters from medical professionals, preferably written in English or your own language, should be sent to the *Governor and Attorney General* whose addresses are given below:

- stating that you are writing about the law exempting doctors who assist in executions from the provisions of the Illinois Medical Practice Act
- expressing astonishment that doctors acting in a public function should need to have their identity and behaviour protected from the scrutiny of their peers
- stating that the Illinois State Medical Society, American Medical Association and World Medical Association have all taken the position that it is not the function of medical practitioners to assist the State to execute prisoners
- urging that the legislation be repealed and brought into harmony with medical ethics

2) A separate letter could be sent to Senator Arthur Sherman

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- expressing support for the bill he tried to introduce
- urging him to attempt to re-introduce it at an opportune time
- seeking information on ways in which you might assist the process of restoring Illinois laws to a state where they do not conflict with international medical ethics

3) Letters to the Illinois State Medical Disciplinary Board could

- _ express extreme concern that participation by a physician in breach of state, national, and international codes of medical ethics is not seen as a matter of the utmost gravity by the Board
- _ urging them to review policy on physician participation in executions.

You should try to get your own professional association to write to the authorities or to the Illinois State Medical Society to express their concern at the current law. Letters to the State Medical Society should welcome their attempts to remove doctors from the execution process and encourage their continued action in this direction.

Addresses

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State Medical Disciplinary Board
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