

## Proportionality in determining intention

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### Abstract

**Background:** This article aims to explore the idea of proportionality within the context of the application of continuous deep sedation in end-of-life care, and to evaluate its importance in discerning intention.

**Methods:** Two case studies are used to explore the concept of proportionality and the ‘Doctrine of the Double Effect’. The first highlights the importance of a holistic appreciation of a patient’s clinical, social, emotional, psychological, spiritual and cultural contexts. The second case study evaluates the appropriateness of a proportional response to continuous deep sedation.

**Results:** The case studies show that the responses made by a patient’s multidisciplinary care teams ought to ‘fit’ the situation. This highlights the need for proportionate, appropriate measures that are in keeping with the wishes and goals of the patient, and suggests a need to consider individuals’ narratives and a holistic appreciation of their situations.

**Conclusions:** Application of the Theory or Principle of Proportionality is imperative to expound the intentions of the physician, and the multidisciplinary care team as a whole. The idea of proportionality encapsulates the idea of appropriate use and, in keeping with the patient’s wishes, echoes the central ethos of a palliative care approach.

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## Introduction

In discussions about the position of proportionality in end-of-life care, more than the idea of simply safeguarding commensurability in response to the requirements of the situation is explored. The idea that the application of continuous deep sedation (CDS) should be consistent with patients needs is also discussed, and the need to take into account the viewpoints of specialists caring for an individual, who through close consideration, monitoring and responsiveness are able to provide a holistic appreciation of the context specifics of individual cases [1–10]. The case studies presented here will explore the idea of proportionality within the context of the application of CDS, and explicate its

importance in discerning intention during end-of-life care.

## Proportionality

### *Holistic appreciation of proportionality*

Yuznisa was a 21-year old female of Indian descent. She converted to Islam not long after receiving a diagnosis of Stage 4 ovarian cancer, with which that she struggled to come to terms. Yuznisa was alone in Singapore and had a lack of family support, as well as a difficult financial situation, having few savings and only recently started a new job. She found strength, support and financial assistance in the mosque, yet still held to some of her Hindu beliefs. For example,

when she was suffering from the pain of her bowel obstruction, she insisted on only a small amount of analgesia in order to ‘pay off’ her karma.

It could be argued that the application of adequate analgesia, or even the rapid titration of opioids to ameliorate Yuznisa’s pain would, on balance, be better for her overall, rather than – as argued by the mosque elders who visited her – leaving her under some ‘misplaced’ illusion of penance and ‘good’ suffering that would effectively attenuate her life. The rapid titration of opioids and the application of more analgesia would both be considered appropriate to the guidelines set out for the management of pain, and proportionate to her needs. Similarly, it could be argued that because she was suffering from cancer and in pain, she might actually be delirious. Thus, acting in her best interests would be to ameliorate her pain, and then to sensibly reassess her pain and wishes. If she then chose reduce the dose of painkillers, that would be respected.

However, holistic appraisal of her background and psychological state by medical social workers, psychologists, psychiatrists and the palliative care physicians and nurses within the MDT, ascertained that her choices were very much in keeping with her previously stated beliefs and wishes. Here, the balancing of good effects over bad effects is justified by a thorough appreciation of the context, and the patient’s own definition of ‘good’ and ‘bad’. In Yuznisa’s case, ‘good’ was symptom amelioration, but ‘paying off her karma’ was her priority.

Yuznisa’s case highlights that intention plays an important role in the application of proportionality, in that it requires an appropriate appreciation of the contexts of the individual, and their respective choices and goals. Intention becomes clear in light of the fact that the MDT aimed to appropriately balance considerations, rather than simply apply clinical considerations. Conversely, some may suggest that such holistic balancing is integral to meeting proportionality standards and does not really reflect intention; rather it merely meets the requirements of the conditions. Such balancing of good and bad could still be viewed as a ‘wider’ consideration of a consequentialist dictate. On the other hand, it might also be said that the very act of meeting such goals and stipulations of the balancing of good and bad

itself highlights the intention to bring about the best balanced outcome, given the awareness of the consequences.

In the Double Doctrine Effect (DDE), an action that may result in two effects, good and bad, may be allowed if it satisfies the four criteria of the DDE - the action itself is not immoral; only the good effect is intended; the good effect does not arise from the bad effect; there is reasonable justification for allowing the bad effect to occur. The aforementioned case study about Yuznisa holds that the principle of proportionality is not simply a part of the four principles contained within the DDE, but is an important element in its own right. It cannot simplistically be elucidated by the determination that the good effects of the process outweigh the bad, leaving more than a hint of a consequentialist framework that discards the importance of intention [1–4]. Rather, intention can be elucidated by clarifying the notion that the values of ‘good’ and ‘bad’ must be ascertained from a closer appreciation of the specifics of individual cases within the context of the application of CDS [2–4]. Intention can be ascertained if the physician and the multidisciplinary team (MDT) apply interventions in a proportional manner that is in immediate and appropriate response to the needs of the patient within that specific context, congruent to a risks and benefits appraisal of the situation, and in full light of a holistic appreciation of the situation. Whether or not the interventions are carried out appropriately and in keeping with guidelines must also be considered. This article will show that the concept of proportionality – bearing in mind the empirical data provided – replaces the need for the DDE.

#### *Appropriateness of proportional response*

To consider the issue of the propriety of a proportional response we present the case of Hairol. Hairol was a 28-year old HIV positive female with cancer of the cervix. As she became weaker and knew that her death was imminent she became concerned that her son should not see her distressed and in pain. However, she wished to remain as alert as possible while in his presence. Guidelines set out upon the titration of analgesics would dictate that for optimal pain control, incremental amounts of analgesia should

be applied and patient responses assessed [5]. While simple compliance to such pain titration appears proportional and in keeping with guidelines, it was not appropriate for Hairol as it left her drowsy.

In this case, proportional response to the pain was not the appropriate response. It may be argued, in this case, that proportionality ought to be viewed as a titration of opioids not in response to pain, but to the level of sedation, reflecting the point made previously, which is that a good appreciation of the holistic concerns of the goals of the patient is needed, and that such goals may over ride physical considerations. However, this misses the point. In this case, such an approach would leave the patient in a state of suboptimal treatment and unable to reach one of her two goals: to be comfortable yet remain alert. The application of adjuvants would have helped, and did somewhat. The appropriate response was also to realign her expectations and redress her concerns.

In keeping with Quill's interpretation of the Theory of Proportionality, consideration must be made not only of the balance between good and bad effects, or the net benefits and net disadvantages that may arise as a result of a given treatment, but also a consideration of viable alternatives [2, 3, 6, 7]. Sulmasy and Jansen added that response ought to 'fit' the situation, stressing that measures must be proportionate, appropriate and in keeping with the patient's wishes and goals [9, 10]. This last point, within this context, alludes once more to the need for narratives and a holistic appreciation of the situation, both of which we shall see carried out aptly by the MDT.

It might also be argued that *not* providing Hairol with adequate analgesia, as a result of her misplaced fear of hastening death, and then attempting to redress her expectations, may arrive at the same outcome as the first, but for the difference in the physicians' intentions. Within the ethical evaluation of the action, the latter would be deemed in conflict with the physicians' duties to the patient, and shows the need to consider the overall intention of the action rather than each separately. In the latter case, the overall intention would not be found wanting; yet still applied within the DDE [2]. It becomes clear that proportionality must be considered in tandem with the propriety of the response, within the context of the

clinical scenario, and in doing so to illuminate the intentions of the physician and the MDT.

### *Doctrine of double effect*

Aside from the requisite of stating that intention should be considered as a whole rather than piecemeal, we have suggested in this article that the DDE should be neglected. As presented earlier, there is ample empirical data to address the rationale for this viewpoint, i.e. that the risks of CDS – when applied appropriately – are not a significant concern upon the life expectancy of the patient. Such a position negates the need to invoke the DDE if, as presented, CDS poses such a low risk to the patient when it is applied appropriately, monitored effectively, and the patient's needs are responded to proportionately and effectively [11–17]. It would seem that the only element of the DDE that is significant within the very specific setting of CDS use in Singapore remains the elucidation of intention within the wider context of the clinical scenario.

## Conclusions

The Theory or Principle of Proportionality, as described within this case report, is imperative to expound the intention of the physician and the MDT as a whole. Here the concept of proportionality encapsulates the idea of appropriate use and being in keeping with the patient's wishes, thus echoing the central ethos of a palliative care approach.

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