

Legal Protection for Administering Pain and Symptom Relief

Case Study



Peter's story

Peter is a resident of the Summer Gardens Residential Aged Care Facility. He has end stage Non-Small Cell Lung cancer. The cancer has metastasised to Peter's liver and bones, as well as his chest and spine, causing pain, discomfort and shortness of breath. Peter has been receiving therapeutic oxygen via nasal prongs for the last 6 months as his respiratory function has progressively deteriorated. Though he is still alert and can swallow, Peter has lost his appetite and has recently asked the staff to stop bringing him meals.

On Friday Peter's GP, Hannah, completes her routine visit to the facility. On review, she notes that Peter appears distressed. He complains of unbearable back pain and increased difficulty breathing despite receiving oxygen. Hannah believes the current background dosage of morphine Peter is receiving is no longer effective so she increases this dose on Peter's medication chart. She also requests that the nursing staff administer subcutaneous morphine and/or midazolam prn to control Peter's pain and reduce his shortness of breath, prescribing them on his medication chart with a dosage frequency of hourly.

Hannah contacts Peter's son Jeffrey to inform him that Peter's condition is deteriorating and that she believes Peter's life expectancy is short, likely days. She explains that she has instructed the staff to provide comfort care to manage Peter's symptoms and ensure he is comfortable at the end of his life.

Early on Saturday morning, Tilda, a Registered Nurse, is on duty. When Tilda visits Peter she notes that he is coughing, moaning and struggling to breathe. He tells Tilda 'I'm in agony', describing excruciating back and chest pain despite having a dose of morphine an hour ago. Following a review of Hannah's instructions in Peter's medication chart, Tilda administers a prn dose of subcutaneous morphine.

An hour later, Tilda checks on Peter. While Peter is more settled than before, he is still moaning and struggling to breathe. Jeffrey, who is visiting Peter, asks Tilda 'Is there anything you can give him? I just want him to be comfortable'. Tilda assesses Peter and in accordance with Peter's medication chart she decides to administer a further dose of prn subcutaneous morphine with a dose of midazolam, to control his pain and breathlessness as optimally as possible. A short time later, Tilda checks on Peter. Although he is now unconscious his breathing has settled and he appears comfortable.

When Tilda returns from her afternoon tea break, a colleague informs her that Peter has just died peacefully. Tilda is worried that the prn medications might have caused his death and fears that she could be held responsible.

Points for reflection

1. Was Tilda's provision of pain and symptom relief to Peter lawful?
2. Has Tilda assisted Peter to die?
3. Before his death, Peter asked the staff not to bring him meals. Was it lawful for him to do so?

1. Was Tilda's provision of pain and symptom relief to Peter lawful?

Providing medication for pain and symptom relief as part of palliative care is important to ease suffering and improve the quality of life of a person with a life-limiting illness.

Sometimes providing medication may have the 'double effect' of relieving pain and symptoms as well as hastening a person's death. Where this occurs, the doctrine of double effect ('double effect') may apply and protect the person providing the medication from legal liability. Double effect recognises that **giving medication is lawful so long as the intention of the person giving it (e.g. the doctor or nurse) is to relieve the person's pain and symptoms and not to cause death.**

Double effect is part of Australian law. Queensland, South Australia, Western Australia and the Australian Capital Territory also have legislation that recognises double effect.

Double effect is likely to apply only when the person's death is imminent. In South Australia, double effect will apply only where the person is in the terminal phase of a terminal illness.

Double effect can protect doctors, as well other health professionals and care givers including nurses, paid or unpaid carers, or family members, so long as the medication and/or medication plan is authorised or supervised by a doctor or nurse practitioner caring for the person, and the person's death was not intended.

In this case, Peter's death was imminent, and the focus of care was to keep Peter comfortable at the end of his life. Providing the medication was necessary to manage and relieve the symptoms Peter was experiencing. Tilda acted in accordance with Peter's medication chart in which Hannah authorised prn morphine and/or midazolam. Her intention in providing the medication was to relieve Peter's pain and symptoms. Tilda therefore acted lawfully, and is protected by double effect.

Find out more about the law on palliative medication at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/pain-relief>)

2. Has Tilda assisted Peter to die?

No. A common misconception about pain and symptom relief is that it is the same as voluntary assisted dying if it causes the person's death. **Giving medication with the intention of relieving pain and symptoms is not voluntary assisted dying.** Providing such care is lawful, so long as the health professional's intention is to relieve a person's pain and symptoms, and not to hasten death. The medication that Tilda administered to Peter was provided to control and relieve his pain and shortness of breath, and provide comfort. The law views this as appropriate palliative care, not assisting dying.

3. Before his death, Peter asked the staff not to bring him meals. Was it lawful for him to do so?

A person who is close to death will often lose their appetite, and may refuse food and water. If the person has decision-making capacity, it is lawful for them to make this decision. **Everyone has the right to refuse food and water even if this accelerates their death.** If the person experiences any pain or symptoms as a result of stopping eating and drinking, it is also lawful to provide medication to manage those symptoms.

Learn more about the law on providing pain and symptom relief in the **End of Life Law Toolkit's *Legal Protection for Administering Pain and Symptom Relief*** factsheet. (<https://www.eldac.com.au/Toolkits/End-of-Life-Law/Legal-Protection-for-Administering-Pain-and-Symptom-Relief/Factsheet>)

Final legal observations

Tilda did not intend for Peter's death to be hastened; rather she gave the prn medication to relieve his pain and breathlessness and provide comfort in accordance with Hannah's instructions. The law would recognise this as appropriate palliative care. Tilda would be protected by the doctrine of double effect in this case.