

Danny M. Clark, M.D., President  
Kentucky Board of Medical Licensure  
310 Whittington Parkway  
Louisville, KY 40222

November 3, 2004

Dear Dr. Clark,

The undersigned hereby submit to the Kentucky Board of Medical Licensure a request for a ruling on the following question of ethics.

Is it unethical for Ernie Fletcher, M.D. the elected Governor of Kentucky to sign a death warrant as Governor that will cause the execution and death of Thomas Bowling, convicted of a capital crime?

We submit this request under the general authority of the board, including KRS 311.565(h). In the event Ernie Fletcher, M.D. does sign a death warrant we ask that this be considered a grievance under the board's procedures.

We respectfully submit with this request a statement of facts and a discussion of the issues, on behalf of the undersigned.

Yours truly

Rev. Kathy Costanzo  
Chaplain, University of Louisville School  
Of Medicine

Stuart Urbach, M.D.  
Associate Professor, University of  
Louisville

Carl Wedekind, J.D.  
Louisville

Steven Lippmann, M.D.  
University of Louisville School of Medicine

## STATEMENT OF FACTS

1. Ernest Fletcher, M.D. is a duly licensed physician in Kentucky on active status under the authority of the Kentucky Board of Medical Licensure.

2. Dr. Fletcher is bound by the tenets of the Hippocratic Oath and the Code of Ethics adopted by the American Medical Association and by the Kentucky Board of Medical Licensure.

3. Dr. Fletcher is bound by his oath of office as Governor to follow the law:  
“I will support the constitution of the United States and the constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of Governor, according to law...”

4. Dr. Fletcher, as Governor, is empowered by Section 77 of the Kentucky Constitution:

“He shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in cases of impeachment, and he shall file with each application therefore a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection.”

5. Kentucky Revised Statutes, Section 431.220 Execution of Death Sentence, Subsection (3) provides:

“No physician shall be involved in the conduct of an execution except to certify cause of death provided that the condemned is declared dead by another person.”

6. Dr. Fletcher, as Governor, has received a letter dated October 12, 2004 from the Attorney General of Kentucky advising that the appeals of inmate Thomas Bowling, convicted of a capital crime and sentenced to be executed, have been completed and requesting that an “execution date be set immediately.” If Thomas Bowling is now to be executed, a death warrant must be signed by the Governor, “under his hand”, directing the Warden at the Kentucky State Penitentiary at Eddyville to carry out the execution by lethal injection on a date set by the Governor.

## DISCUSSION

The basic question is whether or not a physician who voluntarily takes on an additional role in life, that of an elected Governor, is thereby shed of the responsibilities and ethical duties he has assumed in his role as physician. Do medical ethics apply only to the doctor-patient relationship? Can Dr. Fletcher while maintaining his medical license simply say, “Thomas Bowling is not my patient,” and ethically sign his death warrant?

The ancient Hippocratic Oath includes, “I will give no deadly medicine to anyone if asked nor suggest any such counsel.”

The AMA Code of Ethics, E-2.06, provides:

“An individual’s opinion on capital punishment is the personal moral decision of the individual. A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution. Physician participation in execution is defined generally as actions which would fall into one or more of the following categories: (1) an action which would directly cause the death of the condemned; (2) an action which would assist, supervise, or contribute to the ability of another individual to directly cause the death of the condemned; (3) an action which could automatically cause an execution to be carried out on a condemned prisoner.”

Section E-2.20 provides:

“The social commitment of the physician is to sustain life and relieve suffering.”

Section E-1.01 provides:

“The term ‘ethical’ is used in the opinions of Ethical and Judicial Affairs to refer to matters involving (1) moral principles or practices and (2) matters of social policy involving issues of morality in the practice of medicine. The term ‘unethical’ is used to refer to professional conduct which fails to conform to these moral standards or policies.”

The World Medical Association, the American College of Physicians, the American Public Health Association and the National Commission on Correctional

Health Care all have deemed it unethical for physicians to participate in executions.

The Kentucky Board of Medical Licensure Information on Filing a Grievance provides:

“Acting through the Kentucky Board of Medical Licensure physicians have adopted high standards of ethics and professional competence. A license to practice medicine in Kentucky obligates a physician to uphold the laws and to abide by the Medical Practice Act set forth by the Kentucky General assembly. Those who violate these professional obligations are subject to discipline.”

The question may be compounded by the fact that in his campaign for Governor and while serving as Governor, Dr. Fletcher has naturally enough expressed pride in being a physician, and has on occasions rendered medical treatment to those in need.

The law gives the Governor/Doctor authority to sign the death warrant, but neither the law nor the Governor’s oath of office require him to do so. He also has the authority not to sign a death warrant. He has the authority to commute the death sentence to life without possibility of parole, or to life without possibility of parole for a term of years. The Constitution and the law recognize the Governor both as an official and as a human being with moral judgment, and give him the flexibility and the right not to execute.

In this instance the human being is Dr. Ernie Fletcher. Is it a violation of medical ethics for him to sign a death warrant for Thomas Bowling?