Assisted suicide, coercion and elder abuse: What are the facts?

The proposition being advanced by Draft Bill for New South Wales for a bill to legalise assisted suicide is likely to include provisions seeking to ensure that any request for assisted suicide is voluntary and made without coercion.

How successful have other jurisdictions been in ensuring assisted suicide is voluntary? How practical is it to ensure that a person requesting assisted suicide is not being coerced or subject to undue influence?

To be truly voluntary a request would need to be not just free of overt coercion but also free from undue influence, subtle pressures and familial or societal expectations.

A regime in which assisted suicide is made legal, and in which the decision to ask for assisted suicide is therefore positively affirmed as a wise choice, in itself creates a framework in which a person with low self-esteem or who is more susceptible to the influence of others may well express a request for assisted suicide that the person would otherwise never have considered.

OREGON AND WASHINGTON

The data from Oregon shows that **in 2016 nearly one out of two (48.87%) people who died after taking prescribed lethal medication cited concerns about being a "*Burden on family, friends/caregivers*" as a reason for the request**.[1]

Does the concern about being a burden originate solely from the person or is it generated by subtle (or not so subtle) messages from family, friends and caregivers - including physicians - who find the person to be a burden or a nuisance or just taking too long to die?

Elder law expert Margaret Dore comments:

In both Washington and Oregon, the official reporting forms include a check-the-box question with seven possible "concerns" that contributed to the lethal dose request. These concerns include the patient's feeling that he was a "burden." The prescribing doctor is instructed: "Please check 'yes,' 'no,' or 'don't know' depending on whether or not you believe that a concern contributed to the request."

*In other states, a person being described as a "burden" is a warning sign of abuse. For example, Sarah Scott of Idaho Adult Protection Services describes the following "warning sign": "*Suspect behaviour by the caregiver . . . [d]escribes the vulnerable adult as a burden or nuisance.*" The recommendation is that when such "warning signs" exist, a report should be made to law enforcement and/or to the local adult protective services provider.*

Washington and Oregon, by contrast, instruct its doctors to check a "burden" box. Washington and Oregon promote the idea that its citizens are burdens, which justifies the prescription of lethal drugs to kill them. ***Washington's and Oregon's Acts do not promote patient "control," but officially sanctioned abuse of vulnerable adults.***[2]

BELGIUM

Claire-Marie Le Huu-Etchecopar is a French nurse who has worked in Belgium since 2008. She has written about her experience with euthanasia in Belgium.

She describes the actions of the friends of a patient:

Those close to her are locked in the emotion of seeing their friend disabled. They cannot bear to see her different. Any other solution than euthanasia seems unimaginable to them. In a small notebook where they leave her messages while she's sleeping, the question of euthanasia is on every page. You can read words such as: "Do not forget your euthanasia, it is your right, you have to ask the doctors or they'll never do it for you…"[3]

ELDER ABUSE AND UNDUE INFLUENCE

Undue influence is increasingly being seen as a relevant factor in the financial abuse of elders. Seniors Rights Victoria provides a useful summary of case law and best practice on undue influence in the financial abuse of elders.[4]

It is clear from this summary that **undue influence can easily be missed and may be difficult to identify**. Of course, the courts can apply the remedy of rescission if undue influence is established. However, **in the case of assisted suicide, a failure to identify undue influence before writing a prescription for a lethal dose will be incapable of remedy once the lethal dose is ingested**.

A recent parliamentary report on Elder Abuse in New South Wales also referenced the failure of professionals to identify undue influence and so unwittingly facilitate elder abuse.[5]

It cites the Council on the Ageing NSW as observing that the *NSW Interagency policy on preventing and responding to abuse of older people* "*does not address the more common cases where elder abuse is perpetrated by a family member or carer 'in an environment of isolation, dependence and undue influence*"'. (para 5.13 on p. 54)

The report also notes that "*Capacity Australia observed that financial abuse is often fuelled by ignorance and family conflict, as well as 'inheritance impatience'... It further noted that undue influence by one family member over another is commonly facilitated by legal professionals because of their failure to detect when an older person is struggling to manage their financial affairs, that is, when they lack financial capacity*." (para 6.6 on p. 80) The report furthered noted that *"Ms Lise Barry, Senior Lecturer at the Macquarie Law School has conducted research specifically on how lawyers assess the capacity of older people to instruct them.*

Lawyers sometimes have a very limited understanding of the interview skills required to determine an older person's capacity to appoint a power of attorney or enduring guardian, and that they are doing so free of undue influence." (paras 7.8 and 7.11 on p. 107).

There is no evidence that medical practitioners are any better at identifying undue influence on a patient's decision making.

British neurosurgeon and advocate for assisted suicide Henry Marsh has argued that it does not matter **"Even if a few grannies get bullied into [assisted suicide], isn't that the price worth paying for all the people who could die with dignity?"**[6]

IF THE PERSON STRUGGLED WHO WOULD KNOW?

In Oregon in 2016 in four out of five cases (79.4%) there was no physician or other healthcare provider known to be present at the time of ingestion.[7] So **there is no independent evidence that the person took the lethal medication voluntarily**. It may well have been administered to them by a family member or other person under duress, surreptitiously or violently. We can never know.

As Baroness Ilora Findlay recently observed:

"But my experience with thousands of patients is that, as doctors, we cannot detect coercion behind closed doors. People are vulnerable when in the crisis of a devastating diagnosis."

"Changing the law to license doctors to provide or administer lethal drugs to seriously ill patients would represent a major change. It requires doctors to pass judgement on social issues of which, in many cases, they have no knowledge."

CONCLUSION

It is clear from this evidence that simply requiring a physician to tick a box stating the person requesting assisted suicide is doing so voluntarily is no guarantee that the physician has the competence or has undertaken the extensive and careful inquiries necessary to establish that the person is not subject to undue influence or subtle pressure (albeit unwittingly) from family, friends or society to request assisted suicide so as not to burden others.

[1] Oregon Public Health Division, *Oregon Death With Dignity Act: Data Summary 2016, Table 1. Characteristics and end-of-life care of 1,127 DWDA patients who have died from ingesting a lethal dose of medication as of January 23, 2016 [sic = 2017], by year, Oregon, 1998-2016,* p.10, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year19.pdf

[2] Dore, Margaret K. (2010) ""Death With Dignity": A Recipe for Elder Abuse and Homicide (Albeit Not by Name)," *Marquette Elder's Advisor:* Vol. 11: Iss. 2, Article 8. http://scholarship.law.marquette.edu/elders/vol11/iss2/8

[3] Claire-Marie Le Huu-Etchecopar, *Lifting the veil on euthanasia: what really happens in Belgium's healthcare system - a nurse's story,* 28 May 2014, http://alexschadenberg.blogspot.com.au/2014/05/lifting-veil-on-euthanasia-what-really.html ; Originally published in French under the title *" Euthanasie: le model Belgie a la derive,* http://plusdignelavie.com/?p=2773

[4] https://assetsforcare.seniorsrights.org.au/relationship-breaks-down/equity/undue-influence-unconscionable-dealing/

[5] NSW Legislative Council, General Purpose Standing Committee No. 2, *Elder Abuse in New South Wales,* June 2016, https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6063/Report%2044%20-%20Elder%20abuse%20in%20New%20South%20Wales.pdf

[6] Z. Chustecka , " Renowned Neurosurgeon on Assisted Dying and His 'Suicide Kit'" *Medscape*, Apr 27, 2017, http://www.medscape.com/viewarticle/879187

[7] Oregon Public Health Division, *Oregon Death With Dignity Act: Data Summary 2016,* p.7, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year19.pdf

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