CANADIAN CATHOLIC BIOETHICS INSTITUTE
INSTITUT CANADIEN CATHOLIQUE DE BIOÉTHIQUE

BIOETHICS MATTERS
ENJEUX BIOÉTHIQUES

March 2017 Volume 15, Number 2

Referrals, Assessments and Transfers When Assisted Death is Requested

Moira McQueen, LLB, MDiv, PhD

Catholic institutions and many physicians and nurse practitioners are opposed to assisted death procedures and will not perform them. [1] These institutions and practitioners make it clear that they do not perform such procedures and that they do not offer any such procedure as part of a spectrum of care. They should also state clearly that they do not allow these procedures on their premises. Nor may they refer patients directly to another physician, institution or to any third party agency or care coordination service that provides or arranges assisted death.

Patients themselves must initiate any steps towards contacting such a service if they wish to obtain assisted death. Catholic institutions and conscientiously objecting physicians will not and cannot do that for them, since they cannot refer directly for procedures they deem to be morally wrong. They must not impede the patient, however, and must transfer the patient and/or patient files if the patient or someone acting legally on his or her behalf requests this, since these are obligations which arise any time a patient wishes to transfer to another physician for any reason.

ASSESSMENT IN GENERAL

One of the legal requirements in obtaining assisted death is that the person requesting the procedure must have the capacity to understand its implications and must fulfill the legal requirement about being able to consent to the procedure. The person must be assessed for competence in this regard.

This raises some moral questions. On the one hand, assessment for capacity to understand treatment options and to consent to any treatment is necessary before any medical procedure may be performed, although there is apparently no standardized method for doing so. Every physician and nurse is involved in making such an assessment from their first conversation with the patient. Every patient or substitute decision maker must be judged able to consent to the treatment for which he/she approached a physician or facility in the first place, and judged capable of giving consent by signing the necessary treatment forms. This type of assessment occurs on a regular basis.

ASSESSMENT FOR ASSISTED DEATH

Is a request for assessment for capacity to access assisted death procedures different from the more preliminary and non-standardized assessment which happens when patients first come into contact with health care professionals? It is true that discussing the request might allow some time for the physician or nurse practitioner to

dissuade the patient from moving towards assisted death, and that would be morally acceptable.

On the other hand, if the patient persists in requesting assisted death or makes use of the government forms issued to help patients gain access to the procedures, of which the first step is assessment, then that would be a "standardization" that formalizes the assessment. [2] The actual method of assessment in these cases *per se* may be similar, but there is a difference in the reason for which it is sought: one is for treatment of an illness, the other is for assisted death. If a patient is asking for the assessment that is specifically required as the first step in obtaining assisted death, then a conscientiously objecting institution, physician or nurse practitioner cannot comply.

THIRD PARTY AGENCIES

Recognizing that the parties above object conscientiously to assisted death procedures and therefore will not refer patients directly for them, some provincial authorities have established a third party agency, a body removed from the patient-doctor/ patient-institution situation, which will help those who seek assisted death. This has been arranged in Alberta, and appears to be effective. The possibility of providing such a third party agency or care coordination service has been raised in Ontario. If such services were to be established, patients would be able to apply for access to assisted death procedures on their own, and that would then recognize and respect the conscience rights of health care professionals who will not refer them.

INFORMATION ABOUT ACCESS TO ASSISTED DEATH

A legal requirement may arise to post notices or provide pamphlets about the possible availability of third party agencies in public hospitals, long term care homes, doctors' offices, etc., where staff do not all object conscientiously to assisted death. While seemingly posing moral problems for staff who do object, the posting of such notices in offices, waiting rooms, etc., does not constitute a direct referral. Legally required notices concerning other issues which pose moral questions for some are frequently posted in public sections of doctors' offices, hospitals, clinics and long term care homes. While they often give information concerning sex education, family planning, IVF and so on, this does not mean that those who conscientiously object to those practices endorse or specifically contribute to the acts advertised by other agents or agencies, since, if they did, they would be cooperating in evil.

PATIENTS WHO NEED HELP TO ACCESS ASSISTED DEATH

Some patients may have difficulty in achieving access to a third party agency or care coordination service on their own, perhaps because of their physical condition. Must the physician or nurse practitioner in a non-conscientiously objecting office or facility assist such a patient? Must they do so in a Catholic facility? Even if some patients demonstrate some difficulty in pursuing their request for assisted dying, we should remember that the onus of achieving access does not lie on, and should not be transferred to, those who conscientiously object to the procedure requested. It is up to the patient to find a way or to find someone else ready to help. The same response can be made in non-

objecting facilities where a conscientiously objecting physician or nurse practitioner works.

COMPETENCE AND CONSENT

An important factor in these situations that is not considered enough is that, since competence to consent to assisted death procedures is legally necessary, then patients who make an initial request to a physician or nurse practitioner should also be able to demonstrate competence to request a transfer and to follow through with requirements on their own as autonomous persons. If patients cannot do that or say they need help to find assistance, then concerns about overall competence should be raised.

A competent patient may need some physical assistance for many matters, but the very nature of competency means he or she should be able to enlist help from someone who will carry out their wishes. It is not 'abandoning' a patient if a physician or nurse practitioner finds the patient's request morally repugnant and cannot comply. Clearly, if patients cannot arrange anything further through their own initiative, they are not competent and should not be granted legal access to assisted death procedures in any event.

RESPONSES TO REQUESTS FOR TRANSFERS

In conscientiously objecting facilities, the wording of the negotiation of requests for transfers, etc., is of prime importance. Such wording as "...WE will facilitate a transfer of care of a patient at the request of the patient to an alternate care provider who can meet their desired care needs in another facility or in the home..." is wrong in its emphasis.

There is no onus on conscientiously objecting providers to *do* anything. They are legally obliged to respond in some way to requests, but they should avoid wording that indicates a willing readiness to transfer patients to another facility which will carry out the patients' wishes.

"At the patient's request..." should be the key words in these scenarios, and it should be clear that a transfer of a patient and/or files is being done on that basis. Some wording seems to offer no resistance whatsoever to procedures that institutions hold to be morally wrong and, while a transfer at the request of the patient to an accommodating facility does not constitute cooperation in evil, physicians and institutions must be prudent in how they state these matters, to avoid being seen as condoning procedures and becoming a cause of scandal.

SUMMARY

Overall, patients who request assisted death must be able to direct the whole process. Every step should be initiated by the patient, and nothing should be offered by way of direct assistance, although their self-initiated requests must be respected. Conscientiously objecting facilities will not post notices nor have pamphlets available offering information about assisted death. Patients may be told about the existence of third party agencies or care-coordination services, where they exist. That information is in the public domain and readily accessible, and there is no "abandonment" of a patient in not assisting him or her every step of the way towards achieving access to assisted death procedures. He or she is not seeking medical treatment to cure an illness but rather a

medical means of ending life, and that is never morally right.

***Moira McQueen, LLB, MDiv, PhD,** is the Executive Director of the Canadian Catholic Bioethics Institute. Prof. McQueen also teaches moral theology in the Faculty of Theology, University of St. Michael's College. In 2015 Pope Francis appointed Dr McQueen as an Auditor at the Synod of Bishops on Marriage and the Family (October 4-25), and in September 2014, he appointed her as a member to the International Theological Commission for a five-year term.*

[1] I use the term assisted death throughout because I refuse to use the legal term MAID, which I think is inaccurate.

These procedures are not assistance in dying, but assistance to die, and this is a fundamental distinction. A secondary reason is that is easier to repeat than constantly saying "Euthanasia and Assisted Suicide," which is what I mean by "assisted death" and is what the law entails.

[2] http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=1&ENV=WWE&TIT=3889&NO=014-3889-22E Accessed March 8, 2017. An Ontario government form, "Clinician Aid A – Patient Request for Medical Assistance in Dying." See other forms on same website.