MEDICAL ASSISTANCE IN DYING – CONCERNS AND POSSIBLE ROLES OF BIOETHICISTS

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Outline

A. **Introduction: Overview of legal and regulatory requirements for MAiD in Canada**

B. **Some bioethics perspectives about MAiD**

C. **Possible roles of bioethicists and ethics teams in institutions where MAiD is administered**

A. INTRODUCTION

The Supreme Court of Canada Ruling in Carter vs. Canada 2015

- Criminal Code prohibition on physician-assisted dying infringes on the rights to life, liberty, and security of the person guaranteed by the Canadian Charter of Rights and Freedoms
- The Court gave the Canadian government one year to modify the law
- Canadian parliament - June 2016 - passed legislation (Bill C-14) to further regulate & guide access for MAiD.

Criteria for Medical Assistance in Dying

In accordance with federal legislation (Bill C-14) for an individual to access MAID, he/she must:

- Be eligible for publicly funded health services in Canada (e.g. OHIP)
- Be at least 18 years of age and capable of making decisions with respect to their health;
- Have a grievous & irremediable medical condition
- Make a voluntary request for MAID that is not the result of external pressure; and
- Provide informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

Federal Legislation

Grievous & Irremediable Medical Condition (defined)

- Serious & incurable illness, disease or disability
- In an advanced state of irreversible decline in capability
- Their illness, disease, or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them & that cannot be relieved under conditions that they consider acceptable; and
- Their natural death has become reasonably foreseeable, taking into account all their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining

Canadian process for Medical Assistance in Dying

- Patient requests MAiD
- A physician or a nurse-practitioner determines legal eligibility
- The patient makes a witnessed written request, in the presence of two independent witnesses
- A second physicians or nurse practitioner confirms legal eligibility
- 10 day reflection period
- MAiD provided

Office of the Chief Coroner/Ontario Forensic Pathology Service MAiD Data

Statistics as of January 31, 2017:

- **Total number of cases completed in Ontario: 244**
  - **Physician-administered: 241**
  - **Patient-administered: 3**

- **Underlying conditions:**
  - **Cancer-Related: 155**
  - **ALS: 25**
  - **Other Neurological: 24**
  - **CV/Resp: 25**
  - **Other: 15**

- **Setting of death:**
  - **Hospital 138**
  - **Home * 106**

*** Home includes: residence, long term care facilities, and seniors residence/assisted living**

- **Sex:**
  - **Female: 130**
  - **Male: 114**

- **Age**
  - **Average Age: 73**
  - **Youngest: 35**
  - **Oldest: 101**

Region	MAID Cases
Toronto East	23
Toronto West	14
Hamilton	45
Central East	17
Central West	40
Ottawa	60
Thunder Bay	10
Sudbury	13
London	22
Total	244

Operational Issues

- Provincial monitoring & reporting
  - Ontario is working towards implementing a monitoring and reporting regime for 2017, in tandem with the federal government's approach to oversight.
  - As an interim measure for Ontario, the Coroner's office collects data during its mandatory investigations of deaths resulting from MAiD, including information about the patient and their underlying medical condition, etc. – government is not currently collecting data on people who request but do not receive MAiD
- Coroner Involvement
  - Ontario is considering legislative amendments
- Insurance Eligibility

Operational Issues

- Clinician inventory
  - Local informal clinician inventory
  - Provincial clinician referral service
- Pathway – hospital vs. community
  - Location
  - Drug protocol & route of administration
  - Organ & tissue donation
- Responding to questions
  - Ontario Government Patient FAQ

B. SOME BIOETHICS PERSPECTIVES AND CONCERNS ABOUT PROVIDING MEDICALLY ASSISTED DEATH: consent; errors; conscientious objections; health economy

Expanding Scope of Patient's Autonomy during 20- 21st century

- Phase 1: No interference with a body without a consent- right to refuse unwanted medical intervention
- Phase 2: Patient's participation in selection of medical intervention offered by the physician & consent or refusal of consent to the intervention
- Phase 3: Patient's selection of the medical intervention in partnership with physician

Expanded autonomy of patients

DEATH as a most severe harm a patient may suffer

CONSENT

DEATH as a benefit to a patient

Expanded autonomy of patients

- How good must be the consent for MAiD?
- Is an imperfect consent that is in practice commonly acceptable for an intervention that is medically indicated also sufficient for MAiD?
  - What safeguards currently exist to ensure a comprehensive consent process?
- How do we avoid creating impossible bureaucratic barriers?

Medical Error?

News Release Date: May 3, 2016

John Hopkins School of Medicine:

Study Suggests Medical Errors Now Third Leading Cause of Death in the U.S.

Facts

- 10 percent of all U.S. deaths are now due to medical error
- Medical errors are an under-recognized cause of death.

- What will be the rate of medical errors in providing MAiD? (a wrong diagnosis, missing capacity, overly restrictive interpretation of eligibility criteria…)
- How will errors be detected and prevented?
- Are there specific risks to self-administration at home?

Exploring Voluntariness

- Fear & anxiety re. pain & suffering
- Concerns re. being a burden – on family members, on the system etc...
- Access to palliative care
- Family influence re. accessing/not accessing MAiD
- Patient provider relationship
- Patient capacity
- Language barriers

Study of wishes to die in 200 terminally ill cancer patients

- Transient wishes to die: 45%
- Sustained wishes to die: 8.5% - patients in this group were
  - More likely depressed
  - More likely in grater pain
  - More likely had low social support
  - … remediable sources of suffering

Chochinov 1995

Expanded autonomy of patients comes with risks to staff

- Should physicians and nurse practitioners be able to decide in their conscience if they will provide MAID to a particular patient or provide MAID at all?

Conscientious objection in medicine

- It is the notion that a health care provider can abstain from offering certain types of medical care with which he/she does not personally agree because of his/her moral or religious convictions (for a particular patient)

- This includes care that would otherwise be considered medically appropriate by other physicians and it is legal

- An example would be an obstetrician who refuses to perform abortions or sterilizations or a family physician who would not prescribe birth control medication or deliver MAiD

Canadian Medical Association : Principles Based Recommendations

- *Physicians are not obligated to fulfill requests for assisted dying*

- *This means that physicians who choose not to provide or participate in assisted dying are not required to provide it or to participate in it or to refer the patient to a physician or a medical administrator who will provide assisted dying to the patient*

College of Physicians - Ontario

College of Physicians and Surgeons of Ontario: Where a physician declines to provide medical assistance in dying for reasons of conscience or religion, the physician must not abandon the patient. An effective referral must be provided. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, nurse practitioner or agency.

Health Cost Considerations in MAID

Estimated annual health care spending in Canada, based on assumption that MAiD will account for 1- 4% of all deaths:

- Cost of MAID : $ 1.5 – 14.8 million
- Savings by MAID: $ 34.7 – 138.8 million

Trachtenberg & Manns, CMAJ Jan 2017

C. POSSIBLE ROLES OF BIOETHICISTS AND ETHICS TEAMS IN INSTITUTIONS PROVIDING MAID

Associate of the bioethicist role with Medical Assistance in Dying (MAID)?

- Decisions about intentionally ending life are moral decisions….in their area of expertise (deliberation, negotiation, values clarification, dispute resolution, …)
- They are (quasi) independent or at arms-length from the organization
- They are trusted by many parties (patients, professionals, management…)

Possible roles of bioethicists and ethics committees:

- DECLARE: their willingness to discuss and assist patients, families and health care staff in MAiD decision-making
- ADVISE: based on accurate knowledge of the current law, regulations and arrangements for MAiD
- ADVOCATE; if requested so by patients, families and staff or if they have concerns
- MONITOR: institutional practices, record & disseminate experiences through scholarly research

Practical ethical scenarios & MAiD:

- Problematic capacity of the patient
- Concerns re. coercion
- Presence of people/family members with varying perspectives or struggling with the decision
- Severe shortage of resources (budget, beds, staff)
- Conscientious objections

Equitable ACCESS & a fair PROCESS is a matter of justice

- Patients who are eligible for MAiD but a disability makes their access difficult
- Patients in northern and remote communities
- Patients in communities where no medical practitioner will provide MAID

- Should medically assisted deaths be reviewed by a bioethics consultant or an ethics team, if available?
- Should institutions providing MAiD have a multidisciplinary MAiD team, that would include a bioethics consultant?

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It depends on the circumstances

Questions that require prospective research

- How to teach trainees about MAiD and how will MAiD affect health care education?
- Is there an impact on different populations - mentally ill, old, sick, disabled?
- How can the assisted death coincide with palliative care? Does the availability of palliative care affect requests for MAiD?
- Will MAiD change the physician patient relationship?
- How do medical professionals & families reflect on their experience having participated in MAiD?

Summary

- Ethical issues in providing medically assisted death are complex, and the approach needs to be nuanced, sensitive to the particular patient and situations
- Bioethics professionals, teams and committees have roles to play in supporting careful application, of MAID: in reduction of risks and harms and supporting benefits, promoting justice in access and process and in ongoing monitoring.
- Introduction of MAID into health care is worth investigating from a bioethics perspective.

Thank you for your attention.

Your comments and questions would be appreciated.

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