A bureaucracy of medical deception

Quebec physicians told to falsify euthanasia death certificates

Regulators support coverup of euthanasia from families

Sean Murphy, Administrator
Protection of Conscience Project

In the first week of September, the Canadian Medical Association (CMA) was reported to be "seeking 'clarity'"about whether or not physicians who perform euthanasia should misrepresent the medical cause of death, classifying death by lethal injection or infusion as death by natural causes. The question arose because the Quebec College of Physicians was said to be "considering recommending" that Quebec physicians who provide euthanasia should declare the immediate cause of death to be the underlying medical condition, not the administration of the drugs that actually kill the patient.[1]

In fact, the Collège des médecins du Québec and pharmacy and nursing regulators in the province had already made the decision. In August, the three regulators issued a *Practice Guide* directing Quebec physicians to falsify death certificates in euthanasia cases.

> The physician must write as the immediate cause of death the disease or morbid condition which justified [the medical aid in dying] and caused the death. It is not the manner of death (cardiac arrest), but disease, trauma or complication that caused death. The term medical assistance to die should not be included in this certificate.[2]

Lawyer Jean Pierre Ménard correctly observed that Quebec's euthanasia law does not require physicians to report euthanasia on death certificates.[1] M. Ménard is an expert on euthanasia law consulted by the Quebec government and the CMA,[3] but he seems unaware of guidelines relevant to the classification of deaths and medico-legal death investigations.

Those eligible for euthanasia in Quebec will be deliberately killed by the sequential injection or infusion of three different drugs at a prearranged date and time in accordance with detailed instructions provided in *Practice Guide.* Only trained physicians will be allowed to administer the drugs.[4,5]

"Physicians want to avoid the 'horror stories' of botched executions in the U.S.," explains Dr. Jeff Blackmer of the CMA,"or using wrong doses, or wrong combinations of life-ending drugs."[6]

Particularly if the first course of drugs fails, and the physician has to inject the second course to kill the patient, the preparations and procedures described in the *Practice Guide* more resemble an execution in the United States than death by natural causes. Whether or not it is "botched", carefully planned and

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executed death by lethal injection is not a "natural" death. At least, it certainly does not appear to be natural.

Quebec physicians were formerly required by the province's *Coroners Act* to report all deaths that did "not appear to be natural" to a coroner.[7] Coroners determine the medical cause of death, classify it as death by accident, natural causes, homicide or suicide,[8] and report the cause and classification of death on a death certificate. Other provinces have essentially the same system.[9]

According to standard guidelines used across Canada, deliberately killing a patient by lethal injection or infusion should be classified as homicide.[10, 11,12] It would also homicide in criminal law.[13] When the *Carter* decision takes effect or is enacted in statute,[14] euthanasia according to the terms specified by the Supreme Court of Canada will become *non-culpable* homicide: homicide that is not an offence - but homicide nonetheless.[15]

The Quebec *Coroner's Act* was superseded by new legislation in 1986 which changed the reporting requirements, deleting the term "natural." Since then, reports to a coroner or peace officer have been required from persons other than physicians only if a death appears to be the result of "negligence or in obscure or violent circumstances" or if the identity of the deceased is unknown. A different rule applies to physicians:

> Every physician who certifies a death for which he is unable to establish the probable causes or which appears to him to have occurred as a result of negligence or in obscure or violent circumstances shall immediately notify a coroner or peace officer.[16]

Homicide has always been considered a violent act, though only culpable homicide is an offence, so the change in the law did not change the practice with respect to the reporting and classification of deaths. As in other provinces, physicians' certificates of death (in Quebec, form SP-3[17]) are meant to be used only for death by natural causes. Coroners or medical examiners use different death certificates that include homicide, suicide and accidental deaths.[18]

Quebec's *Act Respecting End of Life Care* (ARELC) which purports to legalize euthanasia by physicians, does not change the definition of homicide or the distinction between homicide and death by natural causes. However, it creates an anomalous situation with respect to the reporting of deaths in Quebec because of the wording of the law governing reports to coroners.[16] A physician who kills a patient with a lethal injection or infusion will certainly be able "to establish the probable causes" of death, and is unlikely to believe that the patient died in "violent circumstances." He can thus conveniently absolve himself of any duty to notify a coroner or peace officer.

The anomaly could easily have been corrected, since the Quebec government delayed implementation of the Act for 18 months to allow time to bring other legislation and policies into line with it. That it has not been corrected suggests that the Quebec government and regulatory authorities are pursuing a policy of deliberate deception.

The result is a rather tangled web of contradictions that becomes evident when one considers other direction given in the *Practice Guide*:

> Moreover, pursuant to paragraph 6 of section 3 of the *Act Concerning End of Life Care*, only a physician can administer the medication to a terminally ill person to

> obtain MAD. A physician is a person who holds a license and is entered on the roll of the Collège des médecins du Québec. Thus, a student, a medical resident or clinical monitor cannot perform this action, even under supervision.[19]
>
> It should be noted that, except as provided by law, aid in dying remains subject to criminal sanctions.[20]

According to the logic of the *Practice Guide,* then, the killing of a patient by lethal injection or infusion is a non-reportable death by natural causes at the hands of a physician, but a reportable death by homicide at the hands of a medical resident, even if the medical resident is acting under the direct supervision of a physician in exactly the same circumstances.

This anomaly, however, exists only with respect to the *reporting* of euthanasia deaths in Quebec. It does not affect the classification of euthanasia deaths as homicide under criminal law or vital statistics rules. That is straightforward. Assuming that all of the legal requirements have been met in the kind of euthanasia case described in the *Practice Guide*, it would be a simple matter to notify a coroner, who could easily establish the cause and classification of death and complete a death certificate.

It is true that irregularities might cause a coroner to investigate the circumstances at greater length, but one would expect a timely investigation if there were irregularities, while witnesses and evidence are immediately available. After all, the *Practice Guide* emphasizes that physicians must "strictly" follow the law "to avoid unacceptable abuses,"[21] and it indicates that a physician who provides euthanasia "except as provided by law" is liable to be charged for murder or manslaughter.[20]

Nonetheless, the *Practice Guide* insists that Quebec physicians who kill patients under the terms of ARELC are to falsify death certificates. Jean Pierre Ménard argued that this may be justified to prevent next of kin from discovering that a loved one was killed by a physician,[1] and this is exactly the rationale offered by the *Practice Guide*. First, it says, falsifying the cause of death makes it possible to respect the wishes of patients who don't want their families to know how they died. Second: it protects families who don't know that their loved ones have been killed by physicians from unspecified "harm."[22]

It is this planned and deliberate deception by physicians that seems to have unsettled CMA officials. Their uncertainty is understandable. They take the position that physicians can have a professional obligation to kill patients in circumstances defined by the Supreme Court of Canada.[23] Since killing is far more serious than mere deception, they may be at a loss to explain why physicians should not also have a professional obligation to lie.

Those who say that they do point out that euthanasia deaths in Quebec are supposed to be reported to designated state agencies, so to the extent that this is actually done, no "coverup" is involved. Falsifying death certificates would not seem to constitute forgery if done in good faith, at the request of the Quebec government through direction given in the *Practice Guide*.[24]

Moreover, law professor Amir Attaran of Ottawa recently declared that physicians cannot refuse to kill patients or help them commit suicide in the circumstances defined in *Carter*. If judges and lawyers can order physicians to kill patients, it would seem to follow that judges and lawyers can order physicians to lie.[25]

On the other hand, the code ethics for Quebec coroners requires them to act with "integrity, objectivity, rigorousness and independence,"[26] while the CMA *Code of Ethics* advises physicians to practise medicine "with integrity"[27] and to "resist any influences or interference" that might undermine it.[28] This suggests that falsifying death certificates would be problematic for those who take codes of ethics seriously.

Certainly, physicians opposed to euthanasia have been upset by this policy in the *Practice Guide*. The Physicians' Alliance Against Euthanasia deplored and denounced it publicly:

> This instruction by the College is contrary to Article 19 of the *Public Health Act Regulation* which stipulates that "the cause of death must be indicated in the most accurate manner possible." It goes without saying that such a practice constitutes a severe breach of ethics, and it will inevitably lead to serious abuse, in addition to distorting the official statistics on the real causes of death in Quebec.[29]

Many physicians, coroners and other health care workers may share these concerns, even if they don't have moral reservations about euthanasia. Indeed, euthanasia supporters may worry that mandating deceptive practices is counterproductive and inconsistent with the *Practice Guide's* expectation that physicians will apply "moral rigour" in processing euthanasia requests.[30]

Others may be uncomfortable lying or dissembling to families about how their loved ones died, which would seem to be unavoidably associated with falsifying causes of death. They may be concerned that falsifying records and lying to families is likely to undermine the trust essential to the practice of medicine. And many people simply have moral or religious objections to falsifying documents, lying, dissembling and other forms of deception under any circumstances.

In addition, a good number of those who object to euthanasia who are not directly involved in lethally injecting a patient will almost certainly consider participation in deception to involve unacceptable complicity in killing, even if it occurs after the fact. This is not an unreasonable position. The killing of thousands of hospital patients in Nazi Germany involved extensive falsification of death certificates by physicians, supervised and assisted by state functionaries. Their goal was to convince families that loved ones who had been lethally injected or gassed had died from natural causes. Few would now say that those involved in what Robert J. Lifton called a "bureaucracy of medical deception" were not morally implicated in the deaths of those patients.[31]

The "clarity" sought by CMA officials might be found by reflecting upon the position of the Collège des médecins du Québec and CMA itself: that euthanasia is a beneficial medical treatment. Beneficial medical treatments do not require a bureaucracy of medical deception. Deception only increases the likelihood of conflict and controversy.

Notes

1. Kirkey S. "Medical leaders grapple with new euthanasia dilemma: What to write on the death certificate." *National Post*, 4 September, 2015 (http://news.nationalpost.com/health/medical-leaders-grapple-with-new-euthanasia-dilemma-what-should-be-on-the-death-certificate) Accessed 2015-09-05

2. "Le médecin doit y inscrire comme cause immédiate de décès la maladie ou l'affection morbide ayant justifié l'AMM et provoqué la mort. Il ne s'agit pas du mode de décès (arrêt cardiaque), mais de la maladie, du traumatisme ou de la complication qui a entraîné la mort. Le terme d'aide médicale à mourir ne devrait pas figurer dans ce bulletin." Collège des médecins du Québec, Ordre des pharmaciens du Québec, Ordre des infirmières et infirmiers du Québec, *L'Aide Médicale à Mourir: Guide d'Exercice* (August, 2015), p. 49. Murphy S. "Quebec Euthanasia Guidelines: Practice guide issued by Quebec health care profession regulators" (August, 2015) (parallel translation) Protection of Conscience Project, T#198 - T#201 (http://www.consciencelaws.org/law/commentary/legal068-013.aspx#198) (hereinafter "Guide")

3. Canadian Medical Association, Annual Meeting and General Council, Education session: *Setting the context for a principles-based approach to assisted dying in Canada* (25 August, 2015) (https://www.cma.ca/En/Pages/gc2015-setting-the-context.aspx) Accessed 2015-09-05

4. Ubelacker S. "Quebec MDs to get euthanasia guide to prepare for legalized assisted death: Unclear whether other provinces and territories will adopt a similar practice." *The Canadian Press*, 1 September, 2015 (http://www.cbc.ca/news/canada/montreal/quebec-mds-to-get-euthanasia-guide-to-prepare-for-legalized-assisted-death-1.3212081) Accessed 2015-09-03

5. *Guide*, Chapters 4, 5, 6, Annexes III to IX.

6. The CMA's Dr. Jeff Blackmer obviously recognized the similarity when discussing the need to train physicians properly. "Physicians want to avoid the 'horror stories' of botched executions in the U.S., or using wrong doses, or wrong combinations of life-ending drugs, he said." Kirkey S., "Majority of doctors opposed to participating in assisted death of patients: CMA survey." *National Post*, 25 August, 2015 (http://news.nationalpost.com/news/canada/0826-na-assisted-death) Accessed 2015-08-26

7. "Whosoever knows or learns that a person died suddenly or violently or from negligent or culpable conduct of some other person, or from causes unknown or of a suspicious nature or which do not appear to be natural, shall forthwith so inform the coroner of the district where the body was found." Quebec *Coroners Act*, Section 9 (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FC_68%2FC68_A.htm) Accessed 2015-11-15.

8. Statistics Canada, *The Coroner and Medical Examiner Systems*. (http://www.statcan.gc.ca/pub/82-214-x/2012001/int-eng.htm#cl) Accessed 2015-09-05

9. For example, among the kinds of deaths that must be reported to a coroner, the Ontario *Coroners Act* includes deaths "from any cause other than a disease." Ontario, *Coroners Act*, Section 10(1)f. (http://www.ontario.ca/laws/statute/90c37) Accessed 2015-09-05

10. "The cause of death variable in the CVS-D is classified according to the World Health Organization's *International Statistical Classification of Diseases and Related Health Problems*

Tenth revision (ICD-10)." Statistics Canada, *The Collection of Death Data in Canada*. (http://www.statcan.gc.ca/pub/82-214-x/2012001/int-eng.htm#cl) Accessed 2015-09-05.

11. *International Statistical Classification of Diseases and Related Health Problems*, Tenth revision (ICD-10), Vol. 2, 2nd Ed., 4.1.2: "It was agreed by the Sixth Decennial International Revision Conference that the cause of death . . . should be designated the underlying cause of death. . . [T]he underlying cause has been defined as '(a)' the disease or injury which initiated the train of morbid events leading directly to death, or (b) the circumstances of the accident or violence which produced the fatal injury." (http://www.who.int/classifications/icd/ICD-10_2nd_ed_volume2.pdf) Accessed 2015-09-05

12. "Homicide - a death due to injury *intentionally* inflicted by the action of another person." (Emphasis in the original.) British Columbia Vital Statistics Agency, *Physicians' and Coroners' Handbook on Medical Certification of Death and Stillbirth* (2004 Ed.), p. 9 (http://unstats.un.org/unsd/vitalstatkb/Attachment32.aspx) Accessed 2015-09-05

13. "A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being." Canada, *Criminal Code*, Section 222(1) (http://laws-lois.justice.gc.ca/eng/acts/C-46/page-121.html#h-76) Accessed 2015-11-15

14. In February, 2015, the Supreme Court of Canada struck down the law prohibiting physician assisted suicide and physician administered euthanasia in circumstances defined by the court. The Court suspended the ruling for a year to give the governm ent time to responde with appropriate legislation. *Carter v. Canada (Attorney General)*, 2015 SCC 5 (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do) Accessed 2015-11-17

15. Canada, *Criminal Code*, Section 222(3) (http://laws-lois.justice.gc.ca/eng/acts/C-46/page-121.html#h-76) Accessed 2015-11-15

16. Quebec, Chapter R-0.2, *An Act Respecting the Determination of the Causes and Circumstances of Death*, Section 34 (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/R_0_2/R0_2_A.html) Accessed 2015-11-15

17. Gouvernement du Québec, Ministère de la Santé et des Services sociaux, *SP-3, Return of Death* (http://www2.publicationsduquebec.gouv.qc.ca/documents/lr/txtspc/L-0.2R1_EN_00010168.pdf) Accessed 2015-11-15

18. For example, British Columbia, Ministry of Health Planning, British Columbia Vital Statistics Agency, *Coroner's Medical Certification of Death*. (http:www.consciencelaws.org/images/med-cert-cor.png)

19. "D'ailleurs, suivant le paragraphe 6o de l'article 3 de la Loi concernant les soins de fin de vie, seul un médecin peut administrer le médicament permettant à une personne en fin de vie d'obtenir l'AMM. Un médecin est une personne qui détient un permis d'exercice et qui est

inscrite au tableau du Collège des médecins du Québec. Ainsi, un étudiant, un résident en médecine ou un moniteur clinique ne peut pas effectuer ce geste, même en étant supervisé." *Guide*, p. 23-24; T#106 to T#108

20. "Il est à noter que, en dehors des conditions prévues par la Loi, l'aide à mourir demeure passible de sanctions criminelles." *Guide*, p. 12 (T# 022)

21. "Pour éviter des dérives inacceptables, le législateur a encadré sévèrement le processus décisionnel habituel en imposant des conditions, à la fois d'ordre juridique et d'ordre clinique (art. 26 et 27), et en exigeant des procédures que les médecins doivent suivre strictement (art. 29)." | "To avoid unacceptable abuses, legislators severely restricted the usual decision-making process by imposing conditions, both legal and clinical, (art. 26 and 27), and requiring procedures that physicians must follow strictly (art. 29)." *Guide*, p. 13 (T# 028)t

22. "En effet, une telle mention, si elle était connue de proches non informés, pourrait d'une part aller à l'encontre de la volonté d'un patient souhaitant garder ce renseignement confidentiel et, d'autre part, leur causer préjudice." | "Indeed, such mention, if it became known to uninformed relatives, could firstly go against the will of a patient wishing to keep this confidential information and, secondly, cause them harm." *Guide*, p. 49-50 (T#201)

23. Canadian Medical Association Policy: *Euthanasia and Assisted Death* (Update 2014) (https://www.cma.ca/Assets/assets-library/document/en/advocacy/EOL/CMA_Policy_Euthanasia_Assisted Death_PD15-02-e.pdf) Accessed 2015-06-26.

24. Canada, *Criminal Code*, Section 366(5). Forgery is defined as knowingly making a false document with the intent that someone, believing it to be genuine, should do or refrain from doing anything. However, the law makes an exception for those who make false documents at the request of the police, military or the federal or provincial government. (http://laws-lois.justice.gc.ca/eng/acts/C-46/page-189.html#h-102) Accessed 2015-09-05

25. Attaran A. "Doctors can't refuse to help a patient die - no matter what they say." *iPolitics* 13 November, 2015 (https://ipolitics.ca/2015/11/13/doctors-cant-refuse-to-help-a-patient-die-no-matter-what-they-say/) Accessed 2015-11-17

26. Quebec, *Code of Ethics for Coroners*, Sections 10, 15 (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FR_0_2%2FR0_2R1_A.htm) Accessed 2015-09-05

27. Canadian Medical Association, *Code of Ethics* (Update 2004), 5

28. Canadian Medical Association, *Code of Ethics* (Update 2004), 7

29. The Physicians' Alliance Against Euthanasia, *The College of Physicians promotes secrecy in its practice guideline for "medical aid in dying"* (23 September, 2015)

(http://collectifmedecins.org/en/the-college-of-physicians-promotes-secrecy-in-its-practice-guideline-for-medical-aid-in-dying/) Accessed 2015-11-15

30. "Il reste nécessaire que les médecins les suivent avec bon sens et rigueur morale." | "It remains necessary for physicians to apply common sense and moral rigor." Guide, p. 13, (T#027)

31. Lifton R.J. *The Nazi Doctors: Medical Killing and the Psychology of Genocide*. New York: Basic Books, 1986, p. 74-75