European Working Time Directive faces challenges

Published at www.cmaj.ca on Nov. 26

Proponents of a 48-hour workweek for European doctors say that patient safety is substantially improved as doctors are less tired when they perform their duties.

Critics, including the Royal College of Surgeons of England, have charged that a 48-hour work week for European doctors compromises training and results in a lack of continuity in patient care, and even patient death. Proponents counter that patient safety is substantially improved as doctors are less tired when they perform their duties.

Such are the competing nuances of the European Working Time Directive (EWTD), a controversial bit of legislation that aimed to provide labour protection to doctors working in member states of the European Union, while setting minimum standards in relation to working hours, rest periods and annual leave.

Adopted in 1993 and amended in 2003, the directive has been incrementally introduced in European nations, with the final stage coming into force on Aug.1, when doctors-in-training were limited to a maximum workweek of 48 hours

Few issues have generated as much heat — or legal challenges — as this directive. The European Parliament voted in 2008 to end the right of individual doctors in member states to opt out of the directive, while the European Council of Heads of State and Government wants them to retain that right. There have also been challenges in the European Court of Justice as to whether time spent on call should be counted as working time.

There are pros and cons, says Dr. Malcolm Lewis, director of postgraduate education for general practice at the School of Postgraduate Medical and Dental Education, in Cardiff University (Wales), and chairman of the Committee of General Practice Education Directors, a United Kingdom-based forum.

"The perceived advantages are of a less tired workforce and of improved patient safety as a result," Lewis says. "This is of course theoretical and I'm not aware of a body of evidence to support the perception. Perhaps one of the problems with night-time cover/safety is that traditionally there are few experienced doctors around, rather than the tiredness of those who are present. This is a matter of debate. Post-training is not an issue as consultants and GPs [general practitioners] are apparently unaffected by restricted hours, or they voluntarily opt out."

"The disadvantage is the relatively decreased time spent in active training programs," Lewis adds. "Some surgical specialties and acute medical specialties might suffer most. The service/training balance has always been problematic, but the reduction in working hours will exacerbate that conflict. It seems that every solution brings a new problem and the possible lack of experience at the time of achieving independent practitioner status might become the new safety concern for patients."

Others are more optimistic, including Dr. Bernardo Bollen Pinto, president of the Permanent Working Group of European Junior Doctors and an anaesthesiology resident at University College London in the UK.

Although there has been some harm associated with the directive, Pinto says it has made him optimistic about the future of health systems and postgraduate medical training.

"In general, the impact of the EWTD is positive, at least in theory," Pinto says. "We have reached a point of no return. Of course there are some disadvantages with the 48-hour week, like the discontinuity of care and the organizational difficulties. But there has to be a reorganization of health and postgraduate training systems in order to deal with the 48-hour week."

"The current paradigm of postgraduate medical training, which is organized around blocks of a specific amount of time in each rotation during residency, is naturally hampered with the EWTD, because it implies spending fewer hours a week in a rotation," he adds. "Thus, the aims and objectives of the rotation cannot be achieved. One possible solution is to change the paradigm of medical training to one based on competency-based learning."

There has been checkerboard implementation of the directive, says Ed Davies, editor of *BMJ Careers*. Many UK hospitals have problems complying, Davies says. "It's a very mixed picture and slightly hard to tell, to be honest. In theory, hospitals have all devised rotas that are 48-hour compliant and are swimming along nicely, with the exception of a handful which were granted a derogation, meaning they can stick to 56-hour weeks for the time being."

"On the other hand, we are hearing a lot of reports that rotas are not compliant and doctors are being asked to sign opt-out forms," Davies adds. "Other people are claiming that their hospitals are facing huge doctor shortages as a result of implementing the directive. It's difficult to get an accurate national picture as it varies from place to place."

That's true across all of Europe, says Pinto. "In practical terms, we don't know how the EWTD is being implemented across the several European Union member states. We are only aware of the countries' individual reports."

Hungary, the Netherlands and the UK have notified the European Commission that they require an extension for implementing the directive for doctors-in-training. The legislation allows for an extension of up to two years (to July 31, 2011) to member states, provided average working times do not exceed 52 hours per week. It also allows member states who are experiencing particular difficulties with the organization and delivery of health services to extend that 52-hour limit even further (to July 31, 2012).

Hungary and the Netherlands have reported that they have already limited the hours of junior doctors to 56 per week. The UK reported that most doctors-in-training are already complying with a 48-hour week, except with respect to some 24-hour services and in remote or highly specialized services, largely as a consequence of shortages of specialist staff and reconfiguration of hospital services.

The various concerns have also led to attempts to revise the directive. In 2008, the European Commission proposed to increase time limits to 65 hours a week. The proposal was later approved by the Council of the European Union (the European Union's legislative body), through the Employment, Social Policy, Health and Consumer Affairs Council. The amendment also proposed that time spent on-call not be considered working time. But in December 2008, the European Parliament voted in favour of the "Cercas report" (so named after its author, Alejandro Cercas, a Spanish member of the European Parliament), which advocated that all on-call time, including the inactive part, be regarded as working time. It also recommended periods of rest following time spent on call.

If Parliament had accepted the increase in working time to 65 hours, the consequences would have been disastrous, says Dr. Juan José Rodríguez Sendin, president of the Spanish Medical Association. "There would have been a sharp increase in the number of medical errors and adverse events, besides posing as a threat to the well-being of health care professionals, and to jeopardize patient safety."

"To consider as inactive working time the hours when doctors on call are not undertaking active clinical work would have considerably undermined the quality of life of health care professionals and impacted significantly on their family life," Rodríguez Sendin says. "It is proven that working more than 50 hours per week can be detrimental for the health of health care professionals, and the European authorities know that. The pressure exerted by the citizens and workers, who considered the EU Commission's initiative as an aggression against the social rights of European citizens, and a (step backwards) in its welfare state, allowed the future of Europe to be forged on the streets, and to make politicians think two or three times more."

As it stands, a 48-hour work week is still demanding, adds Dr. Luiz Santiago, a member of the Portuguese delegation of the European Union of General Practitioners.

"I really believe the working times for doctors as stated in the directive are excessive, given the need to carry out other activities apart from seeing patients, like case studies, reading and reflecting on what we are doing," says Santiago. "Just like for other professions, the compulsory enforcement of compulsory periodical medical examinations in order to ensure the maintenance of good health should be implemented. Above all, doctors are people and have the right to benefit from what they preach to patients: rest and enjoy hobbies." — Tiago Villaneuva MD, Lisbon, Portugal

DOI:10.1503/cmaj.109-3111