Physician-assisted death: time to move beyond Yes or No

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Physician-assisted death, which includes both euthanasia and assisted suicide, is legal in four countries and five US states. It is not yet legal in Canada, but the National Assembly of Quebec was close to passing Bill 52 before the Apr. 7 election call,[1] and a private member's bill that would allow physician-assisted death under specific circumstances has recently been introduced in the House of Commons.[2] The Supreme Court of Canada is set to hear an appeal of *Carter* v. *Canada*[3] in October 2014, when it will decide whether Canada's laws prohibiting physician-assisted death violate the Canadian Charter of Rights and Freedoms. Through either route, physician-assisted death may become legal in Canada, and our well-rehearsed debates about whether sanctity of life is more valuable than personal autonomy or whether people can experience intolerable suffering despite receiving optimal palliative care may become obsolete. We need to start to answer some challenging questions in preparation for the possibility that physician-assisted death will be available in Canada soon (Box 1).

What safeguards can we use to protect the vulnerable or incapable from receiving physician-assisted death against their will? How do we support the growth of palliative care services alongside legal physician-assisted death? And how do we protect physicians, both those who do and those who don't wish to assist patients in dying? In some jurisdictions where physician-assisted death is legal, and in Bill 52, lawmakers have attempted to address these questions through legislation. But if the Supreme Court of Canada strikes down the laws prohibiting physician-assisted death, physicians may be left to operate in a legal vacuum (as they were when the provisions in the Criminal Code regarding abortion were struck down[4]).

Any practice guidelines should protect the vulnerable. The US states of Washington and Oregon restrict physician-assisted death to competent adults with an estimated life expectancy of less than six months who can self-administer the lethal medication.[5,6] Consent must be voluntary and persistent over at least 15 days, and the patient must have been informed of all reasonable alternatives, including palliative care. Even if we accept that similar safeguards could offer adequate protection, a requirement for a palliative care consultation would pose a distinct challenge in Canada. Palliative care is available to only 30% of Canadians,[7] with long wait times even for urgent referrals. Such a requirement would be as much a barrier as a safeguard.

Depression may be common among those requesting physician-assisted death,[8] and it can render patients incapable of providing consent if it prevents them from being able to understand and appreciate the consequences of physician-assisted death and alternative treatments. In the Netherlands and the United States, two physicians must use clinical judgment to determine whether a patient is capable before physician-assisted death,[5,6,9] but patients are rarely referred for psychiatric assessment.[10] If a psychiatric assessment is required in the Canadian setting (as the trial judge in *Carter* v. *Canada* specified),[3] psychiatric resources would be hard-pressed to provide urgent assessments for patients who request physician-assisted death. Furthermore, Quebec's Bill 52 would allow physician-assisted death for consenting adults who are at the end of life and experiencing "unbearable ... psychological pain" (s.26[6]).[1] Depression could be simultaneously an indication and a contraindication for physician-assisted death.

We need a plan for monitoring to promote compliance with established safeguards and prevent the vulnerable or incapable from receiving physician-assisted death against their will. Data from the Netherlands suggest that the incidence of involuntary euthanasia has fallen since physician-assisted death was legalized there and may be lower than in some countries where physician-assisted death is illegal.[11,12] Yet there is no guarantee that Canada will follow that trend without vigilant monitoring. Belgium and the Netherlands have mandated committees to review every reported case of physician-assisted death and provide individual feedback to ensure the use of proper procedures.[9] They are sup-

Key points

- Physician-assisted death may become legal in Canada in the near future.
- If the Supreme Court of Canada strikes down the laws prohibiting physician-assisted death, physicians may be left to develop practice guidelines and monitoring on their own, in a legal vacuum.
- We could borrow from guidelines and policies from other jurisdictions, but many of these would need to be adapted to suit the Canadian context. We need to start discussing pressing questions now.

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posed to emphasize education rather than punishment for failure to comply. Quebec's Bill 52 mandates the creation of a commission to review each case of physician-assisted death; reporting would be mandatory to monitor whether all legal requirements were met. If two-thirds of members felt that an instance of physician-assisted death did not adhere to the legislation, they would be obliged to report the physician to his or her institution and the Collège des médecins du Québec to take "appropriate measures."[1] If these measures include notifying police, then physicians could face criminal charges of murder or assisted suicide even for an unintentional departure from the legislation. Monitoring is clearly needed, but there is no medicolegal precedent in Canada for such a commission, and its judgments could have far-reaching consequences.

We must ensure that any legalization of physician-assisted death will not compromise the provision of high-quality palliative care services. Oregon has some of the highest rates of hospice referral, opioid prescriptions and end-of-life communication in the US.[13] Although encouraging, this is likely the result of a determined, coordinated effort to inform patients and improve communication about end-of-life care. We would need to reproduce that effort in Canada and also continue to press for increased resources for the delivery of palliative care.

Box 1: If physician-assisted death is legalized in Canada, we may need to have answers for the following questions

- What conditions and prognosis would make a person eligible for physician-assisted death?
- What sort of suffering is "intolerable," and how long must it last before physician-assisted death can be offered? Can psychological or existential suffering be an indication for physician-assisted death?
- How can we ensure that physician-assisted death is available equitably to all patients?
- Will physicians who are conscientious objectors be obliged to present physician-assisted death as an option to patients and facilitate transfers of patients to other physicians or facilities?
- How can we protect professionals who participate in delivering physician-assisted death from societal repercussions? Should nonmedical or nonjudicial panels regulate the actions of physicians in this regard?
- How can we protect the vulnerable?
- How should we decide whether a patient is competent to consent to physician-assisted death? If a patient has an incurable illness with refractory symptoms *and* depression, how should we determine whether he or she is capable of consenting to physician-assisted death?
- How will we ensure informed, voluntary consent for physician-assisted death?
- How can we determine the most effective method(s) for physician-assisted death?
- How can we ensure that all Canadians have access to a palliative care consultation when appropriate?
- How can we ensure that physician-assisted death will not be considered a low-cost alternative to palliative care?
- Should physician-assisted death be included as part of advance health care directives?
- Should we delegate physician-assisted death to other health professionals, or should this be performed exclusively by physicians?

What about protection for physicians who choose not to perform physician-assisted death? In Oregon and Washington, conscientious objectors have the right to decline a request for physician-assisted death.[5,6] If physician-assisted death were legalized in Canada, could a physician face professional ramifications for failing to mention the option of physician-assisted death to a suffering patient, or for refusing to facilitate a transfer of care for an immobile patient who requests physician-assisted death?

Many physicians oppose physician-assisted death, and this opposition drove the Canadian Medical Association to reject a motion calling for nationwide public hearings into physician-assisted death at its annual meeting in August 2013. Whether or not physicians individually or collectively agree with physician-assisted death, it is clear that our profession must be prepared for the challenges to be faced if physician-assisted death is legalized in Canada. It is time for the "yes" or "no" debate to give way to a constructive dialogue about policies and guidelines for legal physician-assisted death. We may need them very soon.

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