ABN 15 211 513 464

Centre for Values, Ethics & the Law in Medicine
Dr Christopher Ryan
Honorary Associate and Senior Clinical Lecturer

C/- Department of Psychiatry
Westmead Hospital
Darcy Road, Westmead, NSW, 2145
AUSTRALIA

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Committee Secretary
The Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: euthanasia.sen@aph.gov.au

Dear Sir/Madam

Inquiry into the Exposure Draft of the Medical Services (Dying with Dignity) Bill 2014

I am a psychiatrist who specialises in the assessment and management of people with medical illness. In addition I am an Honorary Associate of the University of Sydney's Centre for Values, Ethics and the Law in Medicine, where I am the leader of the Centre's Mental Health Research stream. My long-standing academic interest is in the interface of psychiatry, ethics and the law and I have over 50 peer-reviewed publications in this area.

I write now to offer some brief thoughts on the proposed Bill, particularly subclause 12(1)(e):

*a further medical practitioner (the **third medical practitioner**) who is a qualified psychiatrist has examined the person and has confirmed that the person is not suffering from a treatable clinical depression in respect of the illness; …*

It is important that safeguards are put into place to ensure, as much as possible, that vulnerable people are protected and that any apparent choices people make to afford themselves of these services are valid choices. Although there can be no doubt that a requirement for psychiatric review represents an obstacle to people accessing such a service, it is nonetheless an important safeguard.

Both major depression and delirium are common conditions among people suffering terminal illnesses. Both conditions can result in the loss a person's decision-making capacity, which is to say that both may remove the person's ability to either understand the information relevant to a decision, or the person's ability to use or weigh that information.

There is good evidence that non-psychiatrically trained doctors frequently miss major depression and delirium in medically ill patients.[1] All Australian psychiatrists have undergone six months sub-specialist training aimed at identifying and managing psychiatric conditions that arise in the context of medical illness. As a consequence they are uniquely placed to provide expert assessment of people with terminal illness and to ascertain, as far as possible, that a person's decision-making capacity is not impaired by either condition.

Evidence from Oregon suggests that unless the psychiatric review is made mandatory, cases of depression (and in all likelihood delirium) are missed and psychiatric review that may have detected these conditions and any associated loss of decision-making capacity is not called for.[2]

On the basis of this reasoning I would recommend the following:

1. That the Bill retain the mandatory psychiatric review, despite the fact that this will result in some delay in some people accessing assistance to die, especially in rural and remote areas.

2. That subclause 12(1)(e) be re-drafted to make it clear that the psychiatrist is being involved to ensure that the person has decision-making capacity, rather than a "treatable clinical depression". If a person does not have decision-making capacity, their apparent decision cannot be considered a valid reflection of their will. While a "treatable clinical depression" may remove a person's decision-making, it may not. Moreover, some other conditions, such as delirium and dementia may affect capacity, so limiting the psychiatrist's involvement to a simple screen for depression is inappropriate.

3. To further the aim of (2) the Bill should contain a definition of decision-making capacity, which should replace the rather archaic term "sound mind" used in subclauses 12(1)(k), 12(1)(m) and schedule 1. The definition should be based upon the common law definition articulated in *Hunter and New England Area Health Service v A* [2009] NSWSC 761 and recently incorporated into legislation such as the *Mental Health Act 2014* (Vic) and *Mental Health Act 2013* (Tas).

Please feel free to contact if I can be of any further assistance.

Yours sincerely

Christopher Ryan MBBS MHL FRANZCP

[1] Ryan CJ. Playing the ferryman: psychiatry's role in end of life decision making. *Australian and New Zealand Journal of Psychiatry* 2012; **46**: 932-935; Ryan CJ. Velcro on the slippery slope: the role of psychiatry in active voluntary euthanasia. *Australian and New Zealand Journal of Psychiatry* 1995; **29**: 580-585.
[2] Ganzini L, Goy ER, Dobscha SK. Prevalence of depression and anxiety in patients requesting physicians' aid in dying: cross sectional survey. *British Medical Journal* 2008; **337**: 1682-1686.