Protection of Conscience Project
www.consciencelaws.org

ADVISORY BOARD

Iain Benson, PhD
Professor of Law, University of Notre Dame Australia;
Extraordinary Professor of Law, University of the Free State, Bloemfontein South Africa

J. Budziszewski, PhD
Professor, Departments of Government & Philosophy, University of Texas, (Austin) USA

Shimon Glick, MD
Professor (emeritus, active) Faculty of Health Sciences, Ben Gurion University of the Negev, Beer Sheva, Israel

Mary Neal, PhD
Senior Lecturer in Law, University of Strathclyde, Glasgow, Scotland

David S. Oderberg, PhD,
Dept. of Philosophy, University of Reading, England

Abdulaziz Sachedina,PhD
Dept. of Religious Studies, University of Virginia, Charlottesville, Virginia, USA

Roger Trigg, MA, DPhil
Senior Research Fellow, Ian Ramsey Centre for Science and Religion, University of Oxford, England

PROJECT TEAM

Human Rights Specialist
Rocco Mimmo, LLB, LLM
Ambrose Centre for Religious Liberty, Sydney, Australia

Administrator
Sean Murphy

Revision Date: 2019 Nov 16

Freedom of conscience in health care: “an interesting moral swamp”?

Sean Murphy, Administrator
Protection of Conscience Project

“Whose rights come first?” asks Professor Arthur Caplan in a recent *Medscape* column. “Doctors’ or patients?”[1]

“You can't have physicians, pharmacists, nurses, and social workers saying they are not going to do legally allowed medicine or standard-of-care treatment because it violates their rights,” says Professor Caplan. He does suggest that refusal can be allowed if the objector can find a substitute “and it doesn’t disrupt the ER or the organization of healthcare delivery.”[1]

“Legally allowed medicine or standard-of-care treatment” in Canada includes euthanasia and assisted suicide (EAS services) for “irremediable” medical conditions causing suffering that cannot be alleviated by any means acceptable to the patient — if death is “reasonably foreseeable.”

To date, that includes not only cancer and ALS, but rheumatoid arthritis,[2] hip fractures[3] and dementia.[4] It remains to be seen if the newly elected federal government will affirm a recent Quebec court ruling by abolishing the requirement that death be “reasonably foreseeable.”[5] If it does (but even if it does not, given the Quebec precedent) EAS services for blindness, paraplegia and mental illness will likely become legally allowed medical practices that meet standards of care.[6]

Would Professor Caplan insist that Canadian physicians must kill patients or help them commit suicide because they can’t be allowed to refuse to provide “legally allowed medicine or standard-of-care treatment”? Would he excuse an objecting Canadian physicians who refuse to kill a patient only if they can arrange for a colleague to do it, and only if refusal to kill did not disrupt the delivery of health care?

While he supports EAS in some circumstances,[7] Professor Caplan’s sharp criticism and warnings about the practices in Belgium and the Netherlands[8],[9] suggest that, in this column, he was not thinking about what health care, medical treatment, and patients’ best interests mean where standards of care include therapeutic homicide.

The point here is that terms like “health care” and “patient well-being” frequently mask significant underlying disagreements about whether or not X is actually care, or health care, or in the patient’s best interest. Applying such labels to morally contested services may be polemically advantageous because it puts objecting practitioners at a disadvantage. However, uncritically accepting them is prejudicial to productive ethical discourse because it obscures fundamental ethical issues.

7120 Tofino St., Powell River, British Columbia, Canada V8A 1G3
Tel: 604-485-9765 E-mail: protection@consciencelaws.org

Professor Caplan observes that the debate about freedom of conscience in health care "is becoming an interesting moral swamp." Surely the reason for this is that public and professional discourse is often dominated by polarized factions primarily interested in expanding or restricting access to X. Few seriously attend to the meaning and significance of freedom, conscience, health, care — and freedom of conscience — except to the extent that such concepts can be made to serve a "pro" or "anti" agenda or to conform to notions of autonomy and contract.

It is no wonder, then, that observers may be at a loss when, as in Colorado, a physician asserts a right to do X and a hospital asserts a right to refuse to allow X, and both base their claims on appeals to freedom of conscience.[10]

Notes

1. Caplan AL. Whose rights come first: Doctors or patients? [Internet] Medscape. 2019 Nov 5 [cited 2019 Nov 16] Available from: https://www.medscape.com/viewarticle/920107#vp_2.

2. Grant K. Medically assisted death allows couple married almost 73 years to die together [Internet]. The Globe and Mail. 2018 Apr 1 April, 2018 [cited 2019 Nov16]. Available from: https://www.theglobeandmail.com/canada/article-medically-assisted-death-allows-couple-married-almost-73-years-to-die/.

3. Three people in Quebec were lethally injected because of hip fractures. The commission overseeing the operation of Quebec's euthanasia law held that hip fracture is not a serious and incurable disease ("La Commission est d'avis qu'une fracture de la hanche n'est pas une maladie grave et incurable.") Commission sur les soins de fin de vie. Rapport Annual d'Activitiés (du 1er avril 2018 au 31 mars 2019) [Internet]. 2019 Sep [cited 2019 Nov 16]. Available from https://drive.google.com/file/d/1V1T4g_t1wxPR13xONOWBr3K_Ibjfxl2u/view. While that would suggest that euthanasia for hip fractures is not permitted by law, hip fracture was accepted as a justification for euthanasia in an Ontario case. See note 2.

4. Grant K. From dementia to medically assisted death: A Canadian woman's journey, and the dilemma of the doctors who helped [Internet]. The Globe and Mail. 2019 Oct 12 [cited 2019 Nov 16]. Available from: https://www.theglobeandmail.com/canada/article-from-dementia-to-medically-assisted-death-a-canadian-womans-journey/.

5. Canadian Press. Quebec judge invalidates parts of provincial, federal laws for medical aid in dying [Internet]. Global News. 2019 Sep 11 [cited 2019 Nov 16]. Available from: https://globalnews.ca/news/5888949/quebec-court-medically-assisted-dying-law/.

6. Santi N. From Courtroom to Bedside - A Discussion with Dr. Jeff Blackmer on the Implications of Carter v. Canada and Physician-Assisted Death [Internet]. University of Ottawa J

Med. 2015 May [cited 2019 Nov 16]; 5(1) 1-3. Available from: https://uottawa.scholarsportal.info/ottawa/index.php/uojm-jmuo/article/view/1276/1270.

7. Caplan AL. The case for assisted dying [Internet]. Chicago Tribune. 2015 Sep 16 [cited 2019 Nov 16]. Available from: https://www.chicagotribune.com/opinion/commentary/ct-assisted-dying-california-jerry-brown-perspec-0917-20150916-story.html.

8. Lemmens W, Lemmes T, Caplan A. The dangers of euthanasia-on-demand [Internet]. Chicago Tribune. 2016 Oct 17 [cited 2019 Nov 16]. Avaible from: https://www.chicagotribune.com/opinion/commentary/ct-euthanasia-assisted-suicide-dutch-netherlands-perspec-1018-jm-20161017-story.html.

9. Lerner BH, Caplan AL. Euthanasia in Belgium and the Netherlands: On a Slippery Slope? [Internet] JAMA. 2015 Aug 10 [cited 2019 Nov 16]; 175(10) DOI: 10.1001/jamainternmed.2015.4086. Available from: https://www.academia.edu/16457446/EUTHANASIA_in_Belgium_and_the_Netherlands.

10. Associated Press. Centura Health doctor's firing sets off lawsuit, fight over Colorado's assisted suicide law [Internet]. 7 The Denver Channel. 2019 Sep 4 [cited 2019 Nov 16]. Available from: https://www.thedenverchannel.com/news/local-news/centura-health-doctors-firing-sets-off-lawsuit-fight-over-colorados-assisted-suicide-law. Note that the hospital's legal defense is based on the exercise of freedom of religion rather than freedom of conscience, though in this case it is consistent with the exercise of freedom of conscience to the extent that it is a refusal to be complicit in what is believed to be wrong.