I have read the “Interim Guidance on Physician Assisted Death” that the College of Physicians and Surgeons of Ontario has drafted. I understand that the Supreme Court of Canada (SCC) Carter ruling has put the College in a difficult position and the College may not wish to pass judgment on the morality of Physician Assisted Dying (PAD). Nevertheless there are some real concerns regarding patient, physician and societal harms which the College cannot conscionably ignore.

I should say at the outset that there is, in my view, a serious problem with the basis of the SCC decision, which although now apparently “carved in stone”, will inevitably colour the response we all make.

First, the cornerstone of the argument seems to be the pre-eminence of patient autonomy. But how does killing the patient support that patient’s autonomy? An essential of autonomy is the freedom to change one’s mind. Destroying a life denies that freedom. And in this scenario, changing one’s mind is hardly insignificant, considering that subjective suffering, an affective and perhaps transient state of mind, and not terminal illness, is the criterion for candidacy. For autonomy to continue, life must continue.

Secondly, the concept of being “forced” to commit suicide earlier than one would have chosen because of fear of incapacity for it later, and thereby having one’s life shortened, is also based on questionable logic. In what way exactly is anyone forced to do something by an event that has not occurred, and may never occur? One thing we should know as physicians is that our prognostication can rarely if ever be absolute. And on the legal front, is this not the chief reason why as a nation we gave up the death penalty?

If the SCC logic is weak, our reaction to it need not be. We have a long tradition of refusal to take life, refusal “to give poison even when asked to do so” (Hippocratic oath). It seems that because one of the appellants in the Carter case was a physician, the court assumed that the killing of patients was a principle upheld by the profession. In fact that physician was in flagrant contravention of our Hippocratic oath, which has stood for 2400 years and whose attempted “improvement” in recent times has repeatedly failed. Respect for life is not primarily a religious principle but a humanitarian one. However great the suffering, its cure is not our primary calling; rather it is the overall well-being of the patient. That we must not kill or aid in killing patients is one of the defining pillars of Western medicine, supporting patient security and trust between patient and doctor. And of course, it will be the most vulnerable – elderly, handicapped, and demented, burdensome in their own eyes as well as others’, and expensive to the state – who will suffer primarily. We need to state as a profession that taking life has nothing to do with the art or science of medicine, and in fact is diametrically contradictory to our calling. We cannot become the courts’, government’s or anyone else’s agent in killing patients, nor in aiding them to kill themselves. This is who we are.
The next question then becomes this: Are we, as a profession, compelled to conform to the assumption of the SCC that we act as society's executioners? It seems that the Canadian Medical Association and other medical leaders think so. My view is this: The CMA should speak for the Canadian medical profession. But the Colleges, whose prime duty is the protection of the public, must speak for the patients. The public interest is served neither by the undermining of the doctor-patient relationship nor by exposure of vulnerable members of society to danger. That the court overturned objections raised concerning the statistics that emerged following similar legislation in Europe (e.g. 32% of Belgium's PAD is occurring without the patients' consent\(^1\), and 47% of their euthanasia deaths go unreported\(^2\)) on the basis that this need not happen in Canada, in no way excuses the College from examining and inferring from the facts for itself. And if the public is exposed to danger, the College has a duty to say so clearly, and act accordingly. That would be the antithesis of a duty to "guide", let alone compel, doctors to conform.

Which brings me to the Interim Guidance for doctors on Physician Assisted Death (PAD) drafted by the College of Physicians and Surgeons of Ontario, on which you seek opinion. The paragraph entitled "Conscientious Objection" considerably exceeds its description as guidance, as it carries ten clear imperatives in the 4 bulleted paragraphs. Imperatives do not constitute guidance, but are demands. The requirement to refer to an agency providing PAD is directly in conflict with the principle of freedom of conscience, and violates physicians' rights. It also clearly defies both the letter and the spirit of the SCC ruling, which states, concerning physician duty, "Nothing in the declaration ... would compel physicians to provide assistance in dying". Referring a patient to such an agency is certainly an act of assistance.

Finally, I see nothing in your statement about harm to the physician. It is naïve to assume that killing does not result in emotional damage, as our experience of battlefield trauma has shown. A heavy burden is being imposed on probably a fairly small number of doctors, and the collateral damage may be severe. The College surely has a duty to protect these doctors. What provisions have been made for them?

I very much hope the College will consider the long term implications of both their choices and their power, attend to the issue of physicians' freedom of conscience, and state categorically that no physician is ever required to provide assistance in any way in killing patients, either in unspoken acquiescence or in referral to a potential agency of death.

---


\(^2\) Reporting of Euthanasia in Medical Practice in Flanders, Belgium: cross sectional analysis of reported and unreported cases. Smets T et al, BMJ 2010; 341:c5174.