# WRONGFUL DEATHS BY ASSISTED SUICIDE OR EUTHANASIA

## UNAWARE OF AVAILABLE TREATMENT

### Will patients suffer wrongful deaths?

Some assisted suicide or euthanasia laws purport to provide an additional safeguard by requiring at least one doctor with relevant specialist experience to assess the person and inform them of all relevant information about the person's condition.

However, despite such provisions the evidence from jurisdictions which have legalised assisted suicide or euthanasia shows that **some people miss out on treatment that could have helped them and instead suffer a wrongful death** by assisted suicide or euthanasia.

### Northern Territory

The *Rights of the Terminally Ill Act 1995* (the ROTI Act) was in operation in the Northern Territory from 1 July 1996 until it was suppressed by the Commonwealth's *Euthanasia Laws Act 1997* on 27 March 1997.

During the nine month period in which the ROTI Act was in effect and under its provisions, four people were assisted to terminate their lives by Dr Philip Nitschke.

Case studies on these four deaths have been published.[1] The principal author of this paper is Professor David Kissane, who is a consultant psychiatrist and professor of palliative medicine. Philip Nitschke is a co-author of the paper.

The case studies examine how the conditions required by the ROTI Act were met. Cases numbered 3, 4, 5 and 6 in this paper refer to those cases which ended with the person's life being terminated with the assistance of Dr Philip Nitschke.

The ROTI Act provided that a "*medical practitioner who receives a request*" may, if certain conditions are met, "*assist the patient to terminate the patient's life*".

The conditions to be met included that a second "*medical practitioner who holds prescribed qualifications, or has prescribed experience, in the treatment of the terminal illness from which the patient is suffering*" has examined the patient and has confirmed

1 http://www.healthprofessionalssayno.info/uploads/1/0/9/2/109258189/seven_deaths_in_darwin_case_studies_unde.pdf

*"(A) the first medical practitioner's opinion as to the existence and seriousness of the illness; (B) that the patient is likely to die as a result of the illness; and (C) the first medical practitioner's prognosis*" (Section 7(1)(c)(i) and (iii)).

In case 4, there was no consensus that the person was terminally ill. The person was diagnosed with mycosis fungoides. "*One oncologist gave the patient's prognosis as 9 months, but a dermatologist and a local oncologist judged that she was not terminally ill. Other practitioners declined to give an opinion. In the end an orthopaedic surgeon certified that the ROTI provisions for terminal illness had been complied with*."

In case 3 the patient may have benefited from radiotherapy or strontium but neither of these was available in the Northern Territory.

In case 5, the patient had an obstruction and was clinically jaundiced. The ROTI Act required Dr Nitschke as a "*medical practitioner who receives a request*" to have "*informed the patient of the nature of the illness and its likely course, and the medical treatment, including palliative care, counselling and psychiatric support and extraordinary measures for keeping the patient alive, that might be available to the patient*." However, Kissane reports that "*when questioned about options like stenting for obstructive jaundice or the management of bowel obstruction*" Dr Nitschke "*acknowledged limited experience, not having been involved in the care for the dying before becoming involved with the ROTI Act*."

This raises doubts as to whether the patient in this case – who was reported by Dr Nitschke to exhibit "*indecisiveness*" over a two month period about whether or not to request euthanasia – would still have done so if he had been given better symptomatic relief for the jaundice and obstruction.

## Netherlands

The review committees in the Netherlands are required to consider whether all the conditions of the euthanasia law have been met in each case. The law there requires assessment by a relevant specialist before a person is euthanased.

In case 15 of the 2011 annual report the Regional Euthanasia Review Committees conclude that the attending physician failed to achieve an accurate diagnosis of the woman's back pain and only prescribed limited pain relief medication. Consequently it could not be said that the woman's pain was definitively unrelievable. Of course the woman can get no relief from this finding of error on the part of the doctor who failed her and then euthanased her as she is already dead by euthanasia.[2]

[2] http://www.euthanasiecommissie.nl/Images/RTE.JV2011.ENGELS.DEF_tcm52-33587.PDF

The same lack of remedy applies to the two cases of people with dementia who were euthanased in 2012 in relation to which the Review Committees found "*not to have been handled with due care*".[3]

In Case 2015-01 the Review Committee found a lack of due care before euthanasia was carried out on a woman with a history of stomach pains from an undiagnosed cause, who was reluctant to be examined by a geriatrician. No further action was taken on this case.[4]

## Conclusion

No legal framework permitting assisted suicide or euthanasia has yet been established which effectively ensures that all persons being killed or helped to commit suicide are accurately diagnosed and properly informed about all treatment options available for their condition.

People are being killed or helped to commit suicide who could have benefited from treatment

[3] http://www.euthanasiecommissie.nl/Images/JV.RTE2012.engelsDEF2_tcm52-39100.pdf

[4] https://www.nvve.nl/files/8414/6166/0719/RTE_jaarverslag2015DEF.pdf