A Case to Oppose Legalisation of Telehealth Carriage Service Consultations for Assisted Suicide and Euthanasia.

Eugene Ahern 20 January 2023

The legalisation and availability of telehealth carriage service consultations by - for example video link for euthanasia and voluntary assisted dying would open the doors to far more readily available access to euthanasia and voluntary assisted dying.

It is essential those concerned with the protection of the lives of patients oppose all moves by the federal government to legislate to permit doctors to use telehealth consultations for voluntary assisted dying and euthanasia. Both assisted suicide and euthanasia are now legal in all Australia's states – (it became legal in Queensland from 1st January 2023.

Background:

1. **The Offence of Using A Carriage Service For Suicide-Related Material**

It is an offence to use a carriage service for suicide-related material. The offence of using carriage service for suicide-related material is contained in section 474.29A of the *Criminal Code 1995* (Cth) and is punishable by a maximum penalty of a fine of 1,000 penalty units.

The offence is committed where a person:

- uses a carriage service to:
- access suicide-related material; or
- cause suicide related material to be transmitted; or
- transmit suicide-related material; or
- make suicide-related material available; or
- publish or distribute suicide-related material;

AND the suicide-related material either directly or indirectly:

- advises or motivates another to commit or attempt to commit suicide; or
- promotes a specific method of committing suicide; or
- provides instructions on a specific method of committing suicide;

AND the person intended:

- to use the suicide-related material to advise or motivate another to commit or attempt to commit suicide; or
- the material to be used by another to advise or motivate others to commit or attempt to commit suicide; or
- the suicide-related material to promote a specific method or provide instructions on a specific method of committing suicide; or
- the material to be used by another to commit suicide.

Background:

2. "Fly in, Fly out Doctors" to Help with Euthanasia in Queensland

An article in The Australian (5/12/22) *"*Fly in, fly out doctors to help with euthanasia*"* stated:

> "*Doctors will fly to regional Queensland to help terminally ill patients end their lives next month after the federal government failed to act on please from state Labor colleagues to change laws restricting assisted dying via telehealth.*
>
> *Queensland taxpayers will fund the flights to circumvent a federal law that prohibits inciting or counselling* ***"suicide over the phone or internet when the state's scheme begins on 1 January 2023."***

Attorney-General Mark Dreyfus is looking to change the Criminal Code to allow telehealth discussions of euthanasia

With 18 million Australians covered by legislation allowing voluntary assisted dying and euthanasia by the end of January 2023, the federal government has not yet made legislative amendments to exempt doctors from the ban on telehealth consultations touching on voluntary assisted dying, as explained above.

With federal parliament due to resume in February, commonwealth prosecutors could be given guidelines not to charge VAD doctors, as Queensland Deputy Premier Steven Miles has previously said would be a ***"relatively simple thing to do".***

Mr Dreyfus's office did not respond to questions as to whether he would use guidelines to shield medics from potential prosecution, or when the government may move to change law to the matter. The matter was raised at a meeting of the nation's attorneys-general in November. No news was forthcoming after that meeting as to any future action. Pressure for change will continue from Queensland and Victoria.

Arguments to use against Telehealth Consultations for euthanasia and assisted dying:

- As a matter of principle, the policy of our federal government is in opposition to suicide. The Australian government has had a National Suicide Prevention Strategy for many years. The Australian government has strategies, plans, programmes and research to help prevent suicide in Australia, and reduce its impact.

- For our federal parliament to vote to abrogate the present ban on the use of Carriage Services to facilitate or counsel for suicide to legalise telehealth consultations touching in any way on doctor assisted suicide and life ending decisions would be in direct opposition to the government's programmes to combat the prevalence of suicides.

- Telehealth consultations touching on voluntary assisted dying and euthanasia would be the most serious and decisive step in the lives of patients. Any consultations between patients and their physicians which involve patients actually requesting access to voluntary assisted dying must, of necessity, be treated with appropriate seriousness because they involve ***"life and death"*** decisions.

- For our society to allow such ***"life and death"*** consultations to take place by telephone or by video links diminishes the principle of the inherent value of the life of all patients. As a society we must not countenance such a devaluation of the value and worth of the lives of patients.
- The prospect of telehealth consultations allowing access to and the facilitation of voluntary assisted dying and euthanasia is in itself a dramatic first step down a perilous path, where physicians would be authorised to prescribe death to patients on demand without even seeing those patients in person.

- Even usual face to face consultations between patients and physicians are often unsatisfactory for the care and welfare of the patients due to patients' problems with open communications.

- In the case of consultations for VAD patients may find it more difficult to verbalise their underlying thoughts. Patients often are experiencing underlying undiagnosed depression. There may be a complex interplay of factors relating to their physical and mental health. These factors, when patients are suffering serious physical illnesses, may be affecting their judgements and their capacity to deal with the issues and decisions facing them. Such factors have even more impact when patients have mental health conditions.

- Such frequently encountered situations require particularly great skills on the part of physicians. Even if they were to have the required skills, they are unlikely to draw be able to draw on those skills within the context of a telehealth consultation to which patients would be unaccustomed.

  The artificial situation of a remote consultation, even if it be via video, will not be one in which such grave issues can be properly resolved for the benefit of patients.

- **The legalisation of the use of Telehealth Carriage Services for consultations for voluntary assisted dying and euthanasia would in itself be a new and dramatic step in medical practice. Such a step demands careful scrutiny**.

An excellent contribution to the debate over passing legislation to allow such telehealth

> "With assisted death available on telehealth, the elderly and people with disability, the most vulnerable people in the community, will be even more prone to exploitation or neglect," he writes.
>
> "Ignoring the reality that only a percentage of patients can get palliative care, euthanasia advocates insist that assisted death should be available because despite palliative care, people with existential suffering cannot be helped. They argue that existential suffering is thought to be a form of intractable misery that lies far beyond the realm of palliative care."
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> "For them, the only solution to it is to help its victims to end their life."
>
> In the medical world "existential suffering" is used to describe various experiences. In the palliative care setting, "existential suffering" can refer to 'lack of meaning or purpose, loss of connectedness to others, thoughts about the dying process, struggles around the state of being, difficulty in finding a sense of self, loss of hope, loss of autonomy, and loss of temporality'. These afflictions are not limited to people at life's end. They can be experienced by

many people, particularly people with mental illness, or those going through a crisis or severe trauma.

It is clear we are on a perilous path to where medical practitioners would be authorised to assess patients and to prescribe death to patients without ever even seeing the patients in person.

VAD has been legalised in all six states and VAD is already being practised in three states, there is a profound possibility that the Australian population will grow accustomed to the deliberate ending of the lives of patients and come to accept VAD deaths as a routine part of medical practice but at present there are in effect reasonably specific procedures in place in the different states.

In the new atmosphere of the practice of VAD and euthanasia, the introduction of Telehealth Carriage Service consultations for voluntary assisted dying and euthanasia quite probably would be seen by Australians as just a further inevitable step. Almost certainly, the telehealth consultations not be regulated by the present tight regulations of VAD in the legislation of the different states.

We need to alert legislators to this likelihood with the medical practitioners authorised to approve assisted suicide for patients and prescribe fatal dosages of medications for the patients to take to commit doctor assisted suicide without the medical practitioner ever even seeing the patients in person.

Serious questions arise regards the physicians or medical practitioners who can be expected to be actively involved in such telehealth consultations.

Statistics available from the annual reports on the operation of voluntary assisted dying in Victoria show that a limited number of medical practitioners are responsible for the majority of deaths resulting from VAD.

The Victorian statistics already reflect what is the case in British Columbia, where a very limited number of physicians perform the huge number of MAiD deaths. An example is of one physician, Dr Ellen Wiebe, one of Canada's most outspoken euthanasia doctors, who operates a euthanasia clinic in Vancouver says that she has killed 400 people by MAiD (Medical Assistance in Dying).[1]

In Victoria, certain medical practitioners have become known as facilitators of VAD. Their reputations have spread by word of mouth and by referrals from other medical practitioners.

Were legislation be passed which would permit telehealth consultations for VAD, an undesirable consequence problem would be the further concentration of VAD procedures performed by the already limited number of medical practitioners **"specialising"** in this field of medical practice, who can be expected to be performing increasing number of procedures based to the experience in British Columbia.

Reasons to oppose assisted suicide by telehealth based on U.S. use of telehealth

On May 19, 2021 the U. S. **Hospice News** reported that a bill will be introduced in the US Senate to extend the use of telehealth that was initiated during the COVID-19 pandemic.[2] Last year Alex Schadenberg, Director, Euthanasia Prevention Coalition,

[1] https://thelifeinstitute.net/news/2023/canadian-doctor-boasts-of-euthanising-patients-as-concerns-rise-over-canadas-maid-law

[2] https://hospicenews.com/2021/05/19/senate-bill-would-extend-telehealth-flexibilities-beyond-pandemic/

reported that the assisted suicide lobby was using the Covid-19 crisis to implement assisted suicide by telehealth.[3]

This was not new. The 2019 New Mexico assisted suicide bill and the 2020 bill to expand assisted suicide in Hawaii included **assisted suicide by telehealth provisions.**

In June 2020, U. S. author, **Wesley Smith**, reported that assisted suicide by telehealth was happening.[4]

Quoting from an article entitled: **"*Dying Virtually*"** published in **The Conversation,**[5] Smith wrote:

> *"[Dr. Carol] Parrot says she sees 90% of her patients online, visually examining a patient's symptoms, mobility, affect and breathing.*
>
> *"I can get a great deal of information for how close a patient is to death from a Skype visit," Parrot explained. "I don't feel badly at all that I don't have a stethoscope on their chest."*
>
> *"After the initial visit, whether in person or online, aid-in-dying physicians carefully collate their prognosis with the patient's prior medical records and lab tests. Some also consult the patient's primary physician.*
>
> *"I understand the benefit of expanding telehealth services but* ***assisted suicide is not a form of health care****.*
>
> ***"Assisted suicide by telehealth means a person with difficult health issues who feels like a burden on others, or is experiencing depression or existential distress, could be assessed, approved and prescribed a lethal drug cocktail by telehealth without ever being examined by a physician.***
>
> "Considering how common medical misdiagnosis is, assisted suicide by telehealth may lead to abuse of the law."

The language of the legislation is everything.

Language referring to "**specialty consultations**" (assisted suicide requires consultations), or end-of-life care (the assisted suicide lobby defines assisted suicide as "**end-of-life care**") requires clear definitions to prevent its use for assisted suicide.

Imprecise language within the legislation may enable assisted suicide doctors to do assisted suicide assessments and prescribe lethal assisted suicide drugs, without meeting or physically assessing the person.

Assisted suicide is not health care.

Assisted suicide does not treat or cure a disease or condition, but rather it causes death.

The main goals of the assisted suicide lobby is to normalize assisted suicide by redefining it as **end-of-life care** and **to expand the availability of assisted suicide by telehealth consultations**.

Assisted suicide by telehealth achieves the second goal.

Telehealth may also lead to out-of-state assisted suicide deaths in Australia.

Medical error is the third leading cause of death in the U.S.A

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[3] https://alexschadenberg.blogspot.com/2020/03/assisted-suicide-lobby-is-using-covid.html

[4] https://www.firstthings.com/web-exclusives/2020/06/assisted-suicide-by-zoom

[5] https://theconversation.com/dying-virtually-pandemic-drives-medically-assisted-deaths-online-139093

In Australia, assisted suicide by telehealth will exasperate the problem of misdiagnosis and the unfortunate death of misdiagnosed patients.

Palliative care accompanies patients as their struggle through the various stages of their facing imminent death and the various forms of resistance to the peaceful acceptance of death. Depriving patients this palliative care and relegating these patients who seemingly may wish to have VAD to merely an audio or video link with a "**tick**" from a physician is to devalue the inherent value of the patients' lives.

It is highly doubtful that there would be adequate be safeguards from exploitation, such as **elder abuse** which is so rampant in Australia today, yet is so difficult to detect. This would particularly be the case in telehealth consultations by telephone or video link because the abused patients would find it more difficult to even give a hint of abuse, than might be the case in face-to-face consultations, in which it is hard to reveal the abuse. There is also the added factor that the "**abusers**" may well be surreptitiously present close to patients, unknown and undetected by the medical practitioner conducting the consultation, even if the presence of undeclared third parties is specifically precluded by regulation.

The possibility of patients being led to impulsive requests for VAD.

The pressures, tensions and atmosphere of audio or video consultations to which patients are quite unaccustomed may actually lead patients to impulsive decisions leading to asking for VAD. With some states already allowing physicians to raise the matter of VAD and recommendations from other states that their VAD legislation be amended to allow physicians to raise VAD with patients, vulnerable patients will be exposed to greater risks of impulsive decisions and asking for VAD.

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