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Pereira's Attack on Legalizing Euthanasia or Assisted Suicide: Smoke and Mirrors

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SPECIAL ARTICLE

Pereira's attack on legalizing euthanasia or assisted suicide: smoke and mirrors

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ABSTRACT

Objective

To review the empirical claims made in: Pereira J. Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls. *Curr Oncol* 2011;18:e38–45.

Design

We collected all of the empirical claims made by Jose Pereira in "Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls." We then collected all reference sources provided for those claims. We compared the claims with the sources (where sources were provided) and evaluated the level of support, if any, the sources provide for the claims. We also reviewed other available literature to assess the veracity of the empirical claims made in the paper. We then wrote the present paper using examples from the review.

Results

Pereira makes a number of factual statements without providing any sources. Pereira also makes a number of factual statements with sources, where the sources do not, in fact, provide support for the statements he made. Pereira also makes a number of false statements about the law and practice in jurisdictions that have legalized euthanasia or assisted suicide.

Conclusions

Pereira's conclusions are not supported by the evidence he provided. His paper should not be given any credence in the public policy debate about the legal status of assisted suicide and euthanasia in Canada and around the world.

KEY WORDS

Euthanasia, assisted suicide, slippery slopes, evidence, Netherlands, Belgium, Canada

1. INTRODUCTION

In a paper published in *Current Oncology,* University of Ottawa palliative care physician Jose Pereira states that the "laws and safeguards [in countries in which euthanasia or assisted suicide have been legalized] are regularly ignored and transgressed in all the jurisdictions and that transgressions are not prosecuted" [1]. He purports to demonstrate that the safeguards and controls put in place in the permissive jurisdictions are an "illusion" [1].

What is startling about the Pereira paper is not the anti-assisted dying position taken nor the conclusions asserted. The academic literature is replete with papers arguing for, and other papers arguing against, legalization. Rather, what is startling about the paper is that it was written by an individual identified as an academic and published in a peer-reviewed journal, and yet the evidence provided for the statements and conclusions is profoundly compromised.

The deficiencies matter because Canada is, at this very moment, engaged with the issue of the legal status of euthanasia and assisted suicide on several fronts. In Quebec, a committee of the National Assembly recently released a major report on the issue (recommending, among other things, changing the law so as to permit "medical aid in dying" in some circumstances) [2,3]. In British Columbia, a constitutional challenge to the *Criminal Code* prohibitions of assisted suicide and voluntary euthanasia is currently before the courts [4,a]. Pereira's paper was submitted in its entirety and heavily relied upon in an expert witness report prepared by Pereira and submitted by the Crown in that case [5]. The paper was also cited approvingly by another witness for the Crown (Dr. Harvey Chochinov who, in his expert witness report, described Pereira's paper as "an excellent article") [6]. It has also been profiled in the mainstream media (CTV News, for example [7]) and widely cited on the Internet (albeit mostly on pro-life Web sites [8–11]). Nationally, the Royal Society of Canada appointed an expert panel to report on end-of-life issues in Canada, and the panel's report was released November 15, 2011 [12,b]. The public, the

courts, and the legislatures are, and will continue to be, engaged in reflection on the question of what the law should be with respect to assisted dying. It is therefore particularly important that the academic literature be rigorous so that the public policy debate can be informed by facts and not misshapen by smoke and mirrors.

In the present paper, we expose problems with the evidence base provided and relied upon by Pereira. It should be noted that we provide only examples of each of the categories of mistakes made by Pereira. The original work contains more, but the examples given should suffice to demonstrate that Pereira's conclusions are not supported by the evidence provided by him. We conclude that his paper should not be given any credence in the public policy debate about the legal status of assisted suicide and euthanasia in Canada and around the world.

2. ANALYSIS

2.1 Unsupported Statements

Pereira makes a number of factual statements without providing any sources.

> Initially, in the 1970s and 1980s, euthanasia and PAS [physician assisted suicide] advocates in the Netherlands made the case that these acts would be limited to a small number of terminally ill patients experiencing intolerable suffering and that the practices would be considered last-resort options only. (p. e41)

> It must be noted that legalization of euthanasia or PAS has not been required in other countries such as the United Kingdom, Australia, Ireland, France, and Spain, in which palliative care has developed more than it has in Belgium and the Netherlands. (p. e41)

> Denying euthanasia or PAS in the Netherlands is now considered a form of discrimination against people with chronic illness, whether the illness be physical or psychological, because those people will be forced to "suffer" longer than those who are terminally ill. (p. e43)

> Non-voluntary euthanasia is now being justified [in the Netherlands] by appealing to the social duty of citizens and the ethical pillar of beneficence. (p. e43)

None of these statements is accompanied by a reference. They are presented as statements of fact but, without references, are at best mere assertions.

Pereira also makes a number of factual statements with references where the references do not, in fact, provide support for the statements he has made.

> In 1998 in the Netherlands, 25% of patients requesting euthanasia received psychiatric consultation; in 2010 none did. (p. e39–40)

The reference provided for the foregoing statement was published in 1994 [13]. It is obviously impossible for it to support the statement.

> By 2006, the Royal Dutch Medical Association had declared that "being over the age of 70 and tired of living" should be an acceptable reason for requesting euthanasia. (p. e41)

The news report from the *British Medical Journal* cited as the authority for the foregoing statement does not contain that assertion; indeed, it provides evidence to the contrary [14].

> By 2005, the Groningen Protocol, which allows euthanasia of newborns and younger children who are expected to have "no hope of a good quality of life," was implemented. (p. e41)

"No hope of a good quality of life" is not one of the requirements of the Groningen Protocol. Neither of the papers cited by Pereira in support of his text states that it is [15,16].

> In 2006, legislators in Belgium announced their intention to change the euthanasia law to include infants, teenagers, and people with dementia or Alzheimer disease. (p. e41)

The authority for this statement is a news report about a physician facing an inquiry into the death of a woman with dementia [17]. There is no statement about Belgian legislators' intentions in the story.

> One specialist reported that, in his unit, the average time from admission until euthanasia was performed for patients that seemed to be in a "hopeless" situation was about 3.5 days. (p. e41)

In fact, according to the source cited by Pereira, the specialist indicated that the average stay in his department (an intensive care unit) was 3.5 days [18]. This is not the same thing as reporting that the average time from admission to euthanasia is 3.5 days.

[a] J. Pereira was an expert witness for the Crown in this case. J. Downie acted as a legal consultant and J. Bernheim was an expert witness for the plaintiffs in this case.

[b] One of the authors of the present paper (JD) was a member of this expert panel.

> At the United Kingdom's parliamentary hearings on euthanasia a few years ago, one Dutch physician asserted that "We don't need palliative medicine, we practice euthanasia." (p. e42)

The reference provided by Pereira for this incendiary quotation is the United Kingdom *Human Rights Act 1998* [19]. Obviously, the U.K. *Human Rights Act 1998* cannot be a source for a quote from a Dutch doctor. It is important to note that this is not simply a citation error, in which, for example, one footnote got transposed with another as text was moved about in the editing process. The very same mistake of sourcing this quote to the U.K. *Human Rights Act 1998* is made in a 2006 paper by Harris *et al.* [20] (although the latter paper is not cited anywhere in Pereira's paper).

> All jurisdictions except for Switzerland require a consultation by a second physician to ensure that all criteria have been met before proceeding with euthanasia or PAS. In Belgium, a third physician has to review the case if the person's condition is deemed to be non-terminal. The consultant must be independent (not connected with the care of the patient or with the care provider) and must provide an objective assessment. However, there is evidence from Belgium, the Netherlands, and Oregon that this process is not universally applied. (p. e39)

The references Pereira provides for the final sentence contain no information about consultations in Oregon [21,22].

> In Oregon, a physician member of a pro-assisted suicide lobby group provided the consultation in 58 of 61 consecutive cases of patients receiving PAS in Oregon. (p. e40)

The paper cited as an authority for the foregoing factual statement does not contain anything about it at all [23,c].

> Chambaere *et al.* found that voluntary and involuntary euthanasia occurred predominantly among patients 80 years of age or older who were in a coma or who had dementia. According to them, these patients "fit the description of vulnerable patient groups at risk of life-ending without request." They concluded that "attention should therefore be paid to protecting these patient groups from such practices." (p. e42)

[c] Error noted in Ganzini [24].

The paper by Chambaere *et al.* does not refer to "voluntary and involuntary euthanasia." Euthanasia is, by definition in the law and in the research, with the explicit request of the patient. The paper therefore refers to and distinguishes "euthanasia," "assisted suicide," and "use of life-ending drugs without explicit patient request." The phrase "predominantly among patients ..." applies only to the use of life-ending drugs without explicit patient request, not to euthanasia. Furthermore, Pereira fails to include the (critically important) sentence in the paper that follows on from the sentences he quoted: "However, when compared with all deaths in Flanders, elderly patients and patients dying of diseases of the nervous system (including dementia) were not proportionally at greater risk of this practice than other patient groups" [21] (p. 899). Finally, the rate of "use of life-ending drugs without explicit patient request" for elderly patients did not rise but was halved after the legalization of euthanasia [21] (p. 900). The paper by Chambaere *et al.* also demonstrates that, because mostly normal doses of opiates were used with little or no potential for life abbreviation, most cases were not "life ending" or even "life abbreviation."

The foregoing statements are all presented by Pereira as statements of fact supported by the academic literature when, in fact, they are mere assertions or are grounded in misrepresented sources.

2.2 False Statements

Pereira also makes a number of false statements about the law and practice in jurisdictions that have legalized either or both of euthanasia and assisted suicide.

> In the United States, the states of Oregon and Washington legalized PAS in 1997 and 1999 respectively, but euthanasia remains illegal. (p. e38)

The Washington State assisted-suicide legislation was passed in 2008 and came into force in 2009 [25].

> All jurisdictions except for Switzerland require a consultation by a second physician to ensure that all criteria have been met before proceeding with euthanasia or PAS. In Belgium, a third physician has to review the case if the person's condition is deemed to be non-terminal. The consultant must be independent (not connected with the care of the patient or with the care provider) and must provide an objective assessment. However, there is evidence from Belgium, the Netherlands, and Oregon that this process is not universally applied. (p. e39)

There is no requirement as described by Pereira in the Oregon law. According to the legislation, a

"'[c]onsulting physician' means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease" [26,c]. There is no requirement of independence.

> [M]ost LEIF [Life End Information Forum] physicians have simply followed a 24-hour theoretical course, of which only 3 hours are related to palliative care, hardly sufficient to enable a LEIF member to provide adequate advice on complex palliative care needs. (p. e40)

The reference Pereira provides for this statement is a letter to the editor of the *Journal of Palliative Medicine* (that is, not a peer-reviewed article) [27], despite the fact that peer-reviewed research papers have been published that provide information about the experience and training of LEIF physicians [28,29]. Those peer-reviewed papers give a very different picture of LEIF physicians, including, for example, that "[a]bout 73 percent of respondents [LEIF physicians] followed some education in end-of-life care additional to the LEIF training," and "[a]lmost 41 percent followed the 30-hour postgraduate interuniversity training in palliative care," and "[a] quarter are part of a hospital or home care multidisciplinary palliative care team" [28].

> It must be noted that legalization of euthanasia or PAS has not been required in other countries such as the United Kingdom, Australia, Ireland, France, and Spain, in which palliative care has developed more than it has in Belgium and the Netherlands. (p. e41)

The statement with respect to the development of palliative care is demonstrably false for France and Spain [30].

> In Switzerland in 2006, the university hospital in Geneva reduced its already limited palliative care staff (to 1.5 from 2 full-time physicians) after a hospital decision to allow assisted suicide; the community-based palliative care service was also closed. (p. e42)

Pereira cites this statement to "unpublished data." However, the Chief of Palliative Medicine of the University Hospitals of Geneva has stated that "there was no direct or indirect relation between the palliative care staffing/provision of community-based palliative care services and the hospital taking a position (on the advice of its clinical ethics committee) on the provision of assisted suicide within the institutional walls." Furthermore, in the period referred to by Pereira, "the number of physicians full-time equivalents in palliative care increased from 3 to 3.5" and that number has subsequently increased to 7.5 [31].

> In 30 years, the Netherlands has moved from euthanasia of people who are terminally ill, to euthanasia of those who are chronically ill; from euthanasia for physical illness, to euthanasia for mental illness; from euthanasia for mental illness, to euthanasia for psychological distress or mental suffering—and now to euthanasia simply if a person is over the age of 70 and "tired of living." (p. e43)

This is false. The Netherlands did not start with the limit of terminal illness [12] (p. 78), and it does not allow euthanasia where a person is simply "over the age of 70 and 'tired of living'" [d].

> The United Nations has found that the euthanasia law in the Netherlands is in violation of its *Universal Declaration of Human Rights* because of the risk it poses to the rights of safety and integrity for every person's life. (p. e43)

The United Nations has not made any such finding. A review of the official United Nations documentation posted on the United Nations Human Rights Web site and a review of the literature (using multiple search terms including "United Nations AND euthanasia" and multiple databases including PubMed and Web of Science) did not disclose any primary-sourced finding by the United Nations that the Netherlands is in violation of the UN *Declaration of Human Rights* [e].

3. CONCLUSIONS

The issue of the legalization of euthanasia and assisted suicide in Canada and elsewhere is complex and controversial. As various actors in the legal system contemplate reform, it is essential that they

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[d] Even the reference cited by Pereira in support of his claim states that "Jos Dijkhuis, the emeritus professor of clinical psychology who led the inquiry [of the Royal Dutch Medical Association], said that it was 'evident to us that Dutch doctors would not consider euthanasia from a patient who is simply "tired of, or through with, life,"' (terms used in the original court case)" [14]. For an explanation of Dutch euthanasia law, see Legemaate [32].

[e] It is possible that Pereira misunderstood the following statement found in Wikipedia: "The United Nations has reviewed and commented on the Netherlands euthanasia law" [33] ("review" and "comment" not being the same thing as "found") and misunderstood the status of the reference given in Wikipedia for that statement, "Observations of the UN Human Rights Committee" (this is a committee of the United Nations, not "the United Nations," and it makes observations and non-binding recommendations). Furthermore, the Human Rights Committee did not find the Netherlands to be in violation of the *Universal Declaration of Human Rights* [34].

and the public they represent (in direct and indirect ways) be well-informed. Carelessly researched and inadequately referenced or deliberately misleading professional journal articles with the apparent legitimacy of peer-reviewed literature must not be allowed to contaminate the debate. There is far too much at stake.

4. CONFLICT OF INTEREST DISCLOSURES

No financial conflicts of interest exist for any of the authors.

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