



Hospice Care and Assisted Suicide

In the last few months, Help the Hospices has received a number of enquiries from member hospices about the role and responsibilities of hospices where a patient or service user has expressed an interest in accessing assisted suicide overseas.

This briefing has been put together to provide answers to some of the most frequently asked questions. It has been developed with input from the Care Quality Commission, but does not constitute formal or definitive guidance.

Hospices should always seek independent legal advice in any cases associated with assisted suicide, as individual circumstances will vary.

Q: What does the law say about assisted suicide?

A: Committing suicide is not a criminal offence. However, the 1961 Suicide Act introduced the offence of assisting a suicide. The legislation states that

"A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years."

It is important to note that it is not a criminal act to commit suicide, but it is potentially a criminal act to help somebody to do so.

The Director of Public Prosecutions, and the Courts, have so far handled the issue of prosecution with some sensitivity. There have been no successful prosecutions to date of individuals who have been accused of aiding or abetting a suicide by helping an individual to travel to a jurisdiction in which assisted suicide is permitted by the law.

In relation to individuals who travel overseas for the purposes of assisted suicide, it is, as yet, uncertain whether the crime of aiding and assisting a suicide, where the suicide or proposed suicide takes place outside the UK, could be committed. This is because it is unclear whether the law on suicide applies where the suicide or proposed suicide takes place outside the UK.

Q: What does that mean for hospices?

A: Although there have been no successful prosecutions of individuals under the Suicide Act 1961, there have, to date, been no cases which have tested the boundaries of the law in terms of organisations. Legally, it remains unclear what the potential liability would be for an organisation, such as a hospice, in such circumstances.

Within the context of hospice care, it is important to remember that patients are entitled to discharge themselves from the service in order to make other arrangements, and that patients cannot, except in specific circumstances covered by either the Mental Health Act, the Mental Capacity Act, or the Deprivation of Liberty Safeguards, be held against their will. Actions that a patient undertakes following their discharge from a service are not the responsibility of the organisation.

Q: We have a patient who says they want to travel overseas for an assisted suicide. How should we respond?

A: The important thing to ensure is that any conversations with patients or family members relating to assisted suicide are documented. Those discussions should take account of the requirements of the Mental Capacity Act, the Mental Health Act and Safeguarding Vulnerable People guidance. Where appropriate, and with the patient's consent, those records should also include the views of the patient's family or friends.

If the patient chooses to discharge themselves from the care of the hospice in order to travel overseas for the purpose of assisted suicide, the documented conversations will provide important evidence of the role that the hospice played. Normally, following a person's assisted suicide in another country, there is a police investigation in the UK, and such records will be useful in demonstrating that the hospice acted within the law in the advice and support that it provided to the person.

Hospice staff should be encouraged not to shy away from documenting such conversations, and hospices may wish to consider developing a self discharge form to be signed by the patient and witnessed, which would serve the purpose of summarising the decision taken by the patient, and supporting hospice staff by demonstrating that the choice was the patient's own. Such a process would support any subsequent police investigation, and may remove the need for the law enforcement agencies to gain access to patient records by providing reassurance of the role that the hospice played.

Q: What can and can't we do to support patients who decide to travel overseas to access assisted suicide?

A: Supporting a patient's discharge in the usual way, within legal and professional boundaries, is unlikely to be viewed as a complicit act to a subsequent assisted suicide. However, booking or facilitating a patient's travel arrangements, or providing information (such as telephone numbers, website addresses etc) could be viewed differently.

It is important to note that this is an as yet untested area of law, which leaves many unanswered questions. For example, it is unclear whether helping a patient to dial a telephone number, which they have found themselves, if they are physically unable to do so as a result of their condition would constitute complicity. Hospices are therefore encouraged to exercise caution and discretion.

Hospices are strongly encouraged to seek independent legal advice if they are uncertain whether a particular action could be viewed as a complicit act, and ensure that all actions undertaken by hospice staff are carefully documented, as outlined above.

Q: Our clinical staff receive guidance from their professional bodies on assisted suicide. How should we support other staff and volunteers?

A: Regulatory and professional bodies, such as the General Medical Council or the Nursing and Midwifery Council, are able to advise and support clinical staff on caring for patients who may express a wish to have an assisted death, and provide guidance, from a regulatory perspective, on what is and what is not permitted in law.

However, it is important to recognise that patients might initiate such a conversation with any member of the hospice team, including staff and volunteers. Hospices are therefore strongly encouraged to ensure that all staff and volunteers are aware of their responsibilities in such circumstances, and that procedures are in place to ensure that any such conversations are documented and recorded as described above. This could be achieved through the induction process for new staff or volunteers.

Q: We have a patient who regularly uses the computer in the Day Hospice to surf the internet. He has used the computer to search for information on assisted suicide. What action should we take, and could it be perceived that the hospice has assisted in providing this information?

A: The law is very uncertain in this area, and it is unclear whether the use of hospice equipment to obtain information on assisted suicide would constitute complicity in a subsequent assisted suicide. A new Coroners and Justice Bill is currently progressing through Parliament which, if passed in its current form, will significantly tighten the law relating to access to information which is capable of assisting or encouraging a suicide. In the meantime, hospices are encouraged to exercise caution and discretion.

Q: Would our registration with the Care Quality Commission be affected by our actions?

A: Registration and regulatory requirements for hospices are set out in the Private and Voluntary Healthcare Regulations. These regulations will remain in force until October 2010 at which point they will be replaced by the new requirements under the Care Quality Commission.

The Regulations cover a number of areas relevant to the care of patients who might express a wish to travel overseas to access assisted suicide. Regulation 15 addresses the requirement for the service to meet the individual needs of the patient, while Regulation 9 requires hospices to have a policy that covers the discharge of patients.

Under Regulation 15, there is a potential conflict if the decision of the patient to pursue an assisted suicide overseas were to be seen as an 'individual need'. However, it is important to note that the Regulations cannot force a provider to commit an offence under other legislation. The definition of 'individual need' in such a situation is likely to be understood within the context of the domestic legal framework.

Under Regulation 9, and the requirement to have a discharge policy, hospices are encouraged to ensure that their policy covers the discharge arrangements for patients leaving the service to access assisted suicide overseas to ensure that staff are properly guided. Following ordinary discharge arrangements is as relevant and important for this group of patients as for any other. Careful consideration will have to be given to the level

of support that is appropriate to provide, for instance, in relation to providing adequate medication for the patient to manage their pain following discharge from the hospice.

Q: Where can I get more information?

Further information is available from the relevant professional bodies, including;

- General Medical Council – www.gmc-uk.org
- Nursing & Midwifery Council – www.nmc-uk.org
- British Medical Association – www.bma.org.uk
- Royal College of Nursing – www.rcn.org.uk

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