The Code of Practice of the Regional Euthanasia Review Committees in the Netherlands

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Conflict of interest

- Member-ethicist of a Regional Euthanasia Review Committee
- Member of the supervisory board of the Code of Practice (2015)

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Dutch law on euthanasia

- (Attempt to) commit suicide is not prohibited
- Criminal Code **prohibits**
  - Assisting suicide
  - Termination of life on request
- **Exemption** from criminal liability for **physicians** only: codified since 2002

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Exemption from criminal liability

- Physician must fulfil six **due care criteria**
- Physician must fil in a form and **write a well argued report** on compliance with statutory due care criteria
- Physician must notify to **municipal pathologist**
- Pathologist must report to appropriate **Regional Review Committee**

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Due care criteria

- Section 2 of the Termination of life on request and assisted suicide (review procedures) Act (WTL)
- Voluntary and well-considered **request**
- Unbearable **suffering** with no prospect of improvement
- **Inform patient** about situation and prognosis
- No reasonable **alternative**
- Consult **independent physician**
- Due **medical care** in performance

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Five Regional Review Committees

- **Expert committees**, not part of judiciary
- Independent and impartial
- Chair — Legal expert (3 in each region)
- Member — Physician (3 in each region)
- Member — Ethicist (3 in each region)
- Secretary — Legal expert (voice, no vote)

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Why expert committees?

- According to legislator: physicians have more **trust:**
- In committee with a physician-member
- If Public Prosecution is ‘placed at a distance’
- More trust -> more **willingness to report**

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Decision of RTE

- Based on legislation, case law and “case law/policy” of RTE’s
- **If all criteria are met:** the verdict is “euthanasia was performed in accordance with criteria of due care”
- Factually end of the case
- **If not all criteria are met:** the verdict is “not performed in accordance with ...” and case is sent to Board of Public Procurators and Health Care Inspectorate
- Yearly 1-10 cases
- Until now: no prosecution, so **no judicial decision since 2002**

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Number of cases (2015)

- 5516 cases reported
- 4 not in accordance with all criteria of due care
- 69 decisions published on website
- 19 out of 69 decisions published in Annual Report

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Why a Code of Practice?

- Second evaluation of the WTL 2012, Ministers of Health and of Justice, Royal Medical Association (KNMG):
  - "**Information** about decisions of RTE's should be **better accessible. …**
  - CoP could give an **overview of interpretation of due care criteria**"
- CoP April 2015:
  - Outlines issues that committees regard as relevant in performing statutory task
  - Especially for performing physicians and independent physicians, but also for patients and others who are interested

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Code of Practice (2015)

- Digitally accessible at
- http://www.euthanasiecommissie.nl

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CoP

- Combination of text
- And boxes with a summary

Key elements of 'unbearable suffering with no prospect of improvement'

- There must be a medical dimension to the suffering
- Suffering can result from an accumulation of psychological and physical factors
- No prospect of improvement: there is no realistic alternative to euthanasia (see also section 3.5)
- Unbearable suffering: it is about the suffering of this specific patient (in relation to his life history, personality, stamina and values). The suffering must be palpable to the physician
- Suffering may also be caused by fear of future deterioration
- Patient must be aware of the suffering

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Content of CoP

- Purpose and structure of CoP
- Outline of WTL, procedures of RTE's, relevance of professional guidelines
- **Due care criteria**
- **Specific issues**
  - A.o. advance directives, dementia, psychiatry, coma
- Useful references
- Annexe: statutory provisions

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Questionnaire of the RTE's

- Feb-March 2016: RTE's sent questionnaire to all **performing physicians (PP)** who reported an euthanasia and to all **independent physicians (IP)** who were consulted in these cases
- 1118 questionnaires
- 760 responses (68%): PP 63% IP 73%

- Heleen Weyers and Anne Ruth Mackor (both member-ethicist RTE), assisted by Parants Palanciyan (student-assistant Faculty of Law, University of Groningen)

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Does the CoP fulfill its function?

- Q: do you **know** (about the existence of) the CoP?
- Performing physician (353): 21% yes **79% no**
- Independent physician (406): **89% yes** 11% no

- Q: are you **satisfied** with (the explications in) the CoP (N = 247: PP 48 + IP 199)?
- **89,5% yes** 6,5% neutral 4% no

- Q: would you **advice** the CoP to others?
- **99% (245) yes** - 1% (2 IP) no

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CoP mostly consulted about

	Consulted	Answer found		Not
• Suffering	99	93	(94%)	4
• Dementia	83	73	(88%)	-
• Finished with life	74	63	(85%)	3
• Psychiatry	68	55	(81%)	1

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CoP on suffering

- Suffering must be due to **medical** condition
  - Somatic and/or psychiatric
- Not necessarily one major/life-threatening problem
  - Also **accumulation** of (minor) problems
- **Not** necessarily **terminal** illness
- Suffering, a.o.
  - Pain, shortness of breath, **exhaustion**
  - Realistic fear of future deterioration
  - **Loss of independence and/or dignity**
- In principle no suffering and thus no euthanasia without **consciousness** of suffering

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CoP on coma/reduced consciousness

- **Coma**: no consciousness -> no suffering -> no euthanasia
- **Exception**: coma is **reversible** (medically induced)
  - Patient has requested euthanasia orally or in advance directive
  - Inhumane to arouse patient merely to confirm his request
- **Reduced consciousness**
- **Reversible** see above
- **Irreversible** (caused by disease): is patient suffering?
  - Glasgow Coma Scale

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Suffering without prospect of improvement

- No reasonable **curative or palliative** treatment options to end or alleviate suffering
- Improvement within a reasonable time
- Taking into account
  - (Stage of) disease
  - Burden of treatment
  - Medical history
  - Life expectancy
- Connected to due care criterion of reasonable alternative

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Unbearable suffering

- Unbearable for **this** patient
- Taking into account
  - Patient's perception of situation
  - Medical history
  - Coping mechanisms
  - Personality
  - Biography
  - Values
- Unbearable for this patient (subjective) but understandable for physician (intersubjective)

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CoP on dementia

- **Caution** with respect to
  - Voluntary and well-considered **request**
- **Early stage**: still mentally competent
  - Unbearable suffering
- In most cases: normal consultation procedure
- In case of doubt: consultation of independent expert
- **Late stage**: no longer mentally competent
  - **Advance directive** necessary
  - **Independent expert** (specialized in geriatrics) must always be consulted, next to or combined with the independent physician

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CoP on 'finished with life'

- Suffering **not due to medical condition**
- Value of life has decreased to the point where patient would rather die than carry on living
- Euthanasia **not allowed**

- Medical condition need not be life-threatening
- **Multiple geriatric syndromes** can cause unbearable suffering with no prospect of improvement
- Euthanasia **in principle allowed**

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CoP on psychiatry

- **Caution** with respect to
  - Voluntary and well-considered **request**
  - Absence of **prospect of improvement** and lack of **reasonable alternative**
- An independent psychiatrist must always be consulted, next to or combined with the independent physician

- **Combination** of somatic and psychiatric disorders
- **Caution** with respect to request
- In case of doubt: consultation of psychiatrist (or consult independent physician who is psychiatrist)

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Conclusions

- **CoP is necessary**
  - Only few decisions of RTE's are published
  - Physicians cannot be expected to read 'case law'
- **CoP is (not) known**
  - Large majority of independent physicians are familiar with CoP
  - Small minority of performing physicians are familiar with CoP
- **CoP is useful** for physicians
  - Very large majority of physicians are satisfied with CoP
  - Almost all physicians would advice it to others

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