Assistance in dying and mental patients

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Disclosure statement

- Professor of Health Law, University of Amsterdam
- Member of the research team of the third evaluation of the Euthanasia Act (2015-2017)
- Involved in writing the Code of Practice (2015) of the Regional Euthanasia Review Committees

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This presentation

- Some data
- History
- Legal framework
- Concerns
- Conclusions

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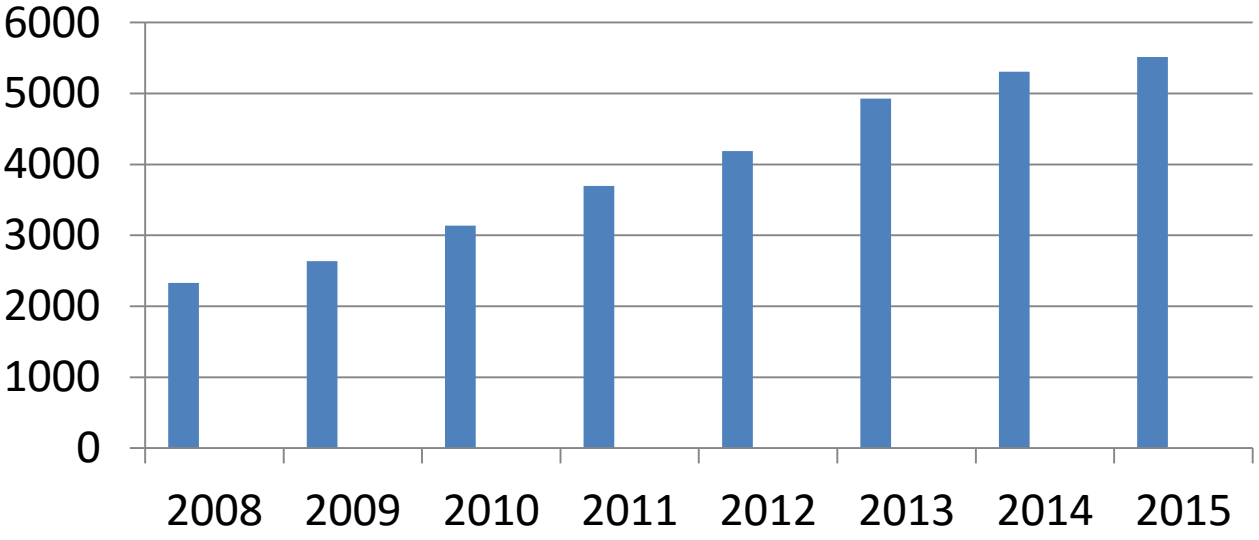
All reported cases of euthanasia and assisted suicide in the Netherlands



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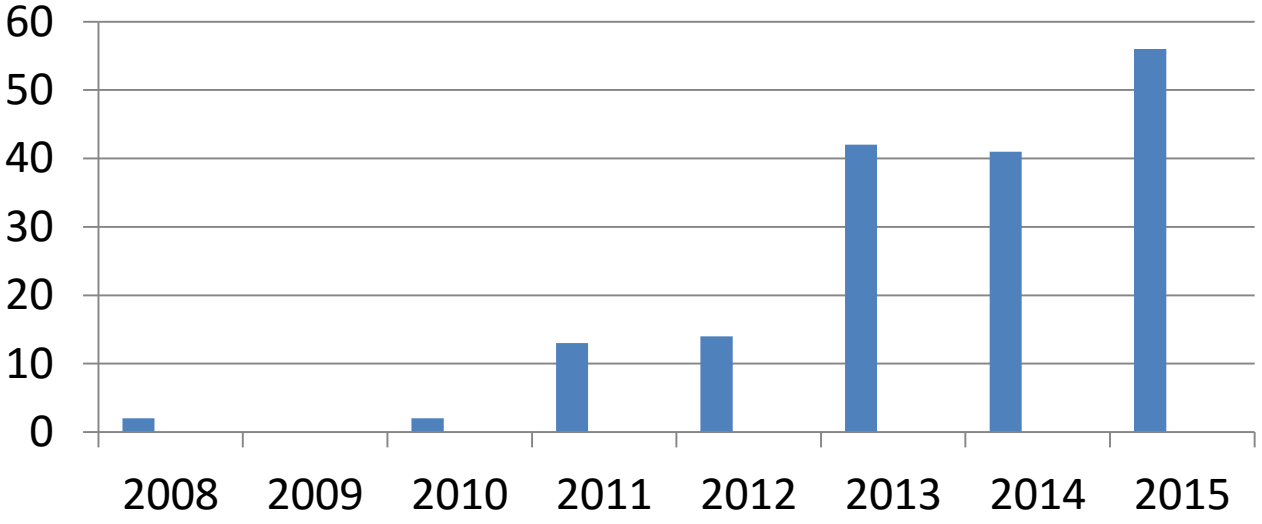
Reported cases of assisted suicide of psychiatric patients



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The data in context

- In general: 55% of all requests are not realized:
  -patient dies of natural causes
  -patient withdraws his/her request
  -according to the physician not all requirements are met
  (Van der Heijden et al, 2012)

- Reported cases involving psychiatric patients in 2015: 1% of all reported cases (56/5516). In all cases suffering related to a mental illness was the main component, in a number of cases there was a mixture of mental and physical problems

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History (1)

- Several cases in the 1980s and 1990s: in most of these cases the physician successfully invoked the defense of necessity
- Health Council of the Netherlands (1986): no absolute ban on physician-assisted death in cases of mental suffering
- Dutch Supreme Court in 1994 (Chabot): cases of mental suffering allowed, but the physician has to act with the "utmost carefulness"

(Legemaate & Gevers, Cambridge Quarterly Healthcare Ethics, 1997)

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History (2)

- 1998: Guideline on assisted suicide in psychiatry issued by the Dutch Psychiatric Association (starting-point: “No, unless..”)
- Guideline revised in 2004, 2009, new revision in progress
- Until a few years ago: (great) reluctance amongst psychiatrists

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History (3)

- Increase in number of reported cases (from 2 in 2008 to 56 in 2015)
- More willingness to consider patients' requests (in practice and in theory: from "no, unless.." to "yes, if …")
- Increasing discussion in society

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Legal framework (1)

- Requirements in the Dutch Euthanasia Act:

  -voluntary and competent request

  -unbearable suffering

  -patient informed about his situation

  -no reasonable alternative

  -written report by independent physician after having seen the patient

  -due medical care

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Legal framework (2)

- "Utmost carefulness" (Dutch Supreme Court, 1994) replaced by "particular caution" (Code of Practice, 2015)

- "Particular caution" in the case of psychiatric patients:
  - Specific attention for the patient's competence
  - Specific attention for the existence of reasonable alternatives (fair balance between the burden and benefit of treatment options)
  - The independent consultant should be an expert in the field of psychiatry (especially if the patient's physician is not)

Legal framework (3)

- Decision nr 2014-1 of the review committee:
  - -the physician involved was not a psychiatrist (but a GP)
  - -the independent consultant was also not a psychiatrist (but a GP)
  - -doubts about the patient's competence and the existence of treatment options
  - -judgment: physician did not meet all criteria > case sent to the medical inspectorate and the public prosecutor

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Code of Practice of the Regional Review Committees

- http://www.euthanasiecommissie.nl/uitspraken/brochures/brochures/code-of-practice/1/code-of-practice
- Psychiatric patients: pages 26-27

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Concerns (case specific)

- Not in all cases an independent consultant with psychiatric expertise was involved
- The physician concludes that all criteria are met, but the independent consultant does not
- Rejecting treatment options that might be successful

(Den Hartogh, Dutch Law Journal, 2015; Kim et al, JAMA Psychiatry, 2015)

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Concerns (general)

- Does allowing physician-assisted death in psychiatry stimulate psychiatrists to stop treating some patients?
- Does allowing physician-assisted death in psychiatry induce hopelessness among other individuals with similar conditions?
- Do initiatives like the 'end-of-life-clinic' lower the treshold for approving requests? (33/56 cases in 2015)
- Shouldn't there be the requirement of a treatment relationship between physician and patient?
- Is there a trade off between competence and the exhaustion of treatment options?

(Appelbaum, JAMA Psychiatry, 2015; Den Hartogh, Dutch Law Journal, 2015)

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Conclusions

- No arguments to ban or exclude requests for physician-assisted death from competent persons with a mental disorder: the Dutch Euthanasia Act applies to them as well *(principles of equality and non-discrimination, avoid stigmatization)*
- The number of reported cases (in 2015: 56) is not worrying in itself
- The requirement of “particular caution” still is relevant and important
- The system works quite well, but improvements are possible and desirable

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