

Advance Directive

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Advance directive

- Art. 2, subsection 1: Euthanasia is a criminal act but justified if in the specific case the due care criteria are met:
- A voluntary and carefully considered request
- Unbearable suffering with no prospect
- patient is informed about his situation and prospects
- No reasonable alternative
- Consultation of at least one other, independent physician, who must have seen the patient
- Termination of the patient's life with due medical care and attention

Advance directive

- Euthanasia can also be justified of patients lacking mental capacity, based on an advance directive requesting euthanasia. Art. 2, **subsection 2** of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act:
- “If a patient aged sixteen or over, who is no longer capable of expressing his will, but before reaching this state was deemed capable of making a reasonable appraisal of his own interests, has made a written declaration requesting that his life be terminated, the attending physician may comply with this request. The due care criteria referred to in subsection 1 apply *mutatis mutandis*”.

Advance directive

- A. The doctor MAY (not **have** to) follow and honour the request.
- B. The patient, at the moment when writing the directive, makes a prognosis, a prediction what future situation he or she will then, in the future, define or experience as unbearable suffering. Paragraph 2 subsection 2 addresses that, future situation, with a rule of conduct for the physician who may act on the advance directive, but who has (also) to act in that situation in accordance with the due care requirements of subsection 1.
- C. The 'gap' between subsection 2 and subsection 1 is in the wording of the law only bridged by the vague words 'mutatis mutandis'.
- D. Although a vital element of the doctors' check whether the due care criteria are met is lacking, that is: the communication with the (competent) patient whether he or she indeed suffers unbearable as he or she prescribed in the advance directive.

Advance directive

- It is not a last will (testament)
- Nor a DNAR-order
- Nor an advance refusal of treatment

Advance directive

- How to apply the due care requirements in case of a written advance directive requesting euthanasia?
- The advance written directive can help the physician to come to the conclusion that there is room for a justified decision for euthanasia as part of the communication between him and his patient.
- For the situation that someone who is lacking mental capacity, an advance written directive, drafted when he was competent, is a *condition sine qua non*.

Advance directive

- The directive must have 'reached' the doctor and must be communicated with him
- There are no time limits for the validity of a directive
- A ten years old directive that has been part of communication between doctor and patient on a regularly bases is no problem, a three years old directive that had never been go through, can be a bigger problem.
- An advance directive is not a document to be kept in a safe, but a document that has to be elaborated in ongoing communication between patient and doctor.

Advance directive

- The one directive is not the other: the more the directive is the expression of the specific, detailed will from this specific person, about what situation or situations he or she would (probably) see as ‘unbearable suffering’, the better it will help the physician to decide; better not use general clauses.

Advance directive

- The law calls for a ‘voluntary and well-considered’ request from the patient.
- Parliamentary papers: a written advance directive requesting euthanasia has the same legal force as an oral request of a competent patient.
- Of course: unless the physician has reason to believe otherwise.

Advance directive

- Not strictly necessary for the second, independent physician (art. 2 section 1 under e; must have ‘seen’ the patient’), that he needs to have communicated with the patient about the unbearableness of his suffering.
- The bottle neck of art. 2 par 2: there is no communication about the patients (not) suffering at the time the doctor has to decide although exactly that situation was described by the patient as unbearable suffering. The prognoses of the unbearableness of the suffering can not replace the communication between doctor and patient about exactly this aspect of suffering at the moment of the decision to terminate the life of the patient.

Advance directive

- **Royal Dutch Medical association (KNMG):** doctor should have had any communication with the patient that forms – at least - a confirmation – what ever slight that might be (words, attitude, facial expression or mime – that he indeed does suffer unbearable in the actual situation as he or she already described in the advance directive and wants to end his life.
- **The wording of the law:** does not prohibit as such the acceptance of the patients opinion of unbearableness on the advance directive.
- This key-issue is not salved in the recent ‘manual’ for physicians

Advance directive

- Pessimistic conclusion?
- The advance directive is of main importance.
- It makes clear what the patients will is, that can help – as one aspect among others - the physician to decide that the due care criteria are met.
- The directive is an important factor, which fits in the development under Dutch law in which, in the end, it is the doctor who decides that there is ground and room for justified euthanasia, but it which system the expressed will of the patient is a very important factor that guides the doctor a long way.

Advance directive

- Is – after all - not exactly the unbearableness of the suffering in essence unpredictable especially in connection to the wish that one's life should be terminated?
- The directive helps to guarantee a careful decision
- That guarantee is why the Dutch system in the end is based on criminal law provisions

Advance directive

- Thank you for your attention!