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Are Concerns About  
Irremediableness,  
Vulnerability, or Competence  
Sufficient to Justify Excluding  
All Psychiatric Patients from  
MAID?



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# Agenda



1. Situating the Piece in the Debate
2. Irremediableness (Briefly)
3. Vulnerability
4. Capacity (Briefly)
5. Evidence from the Netherlands

# Context

- Others have argued that psychiatric conditions should be considered analogous to physical conditions for the purposes of medical assistance in dying (MAID) <sup>1</sup>
- Most common objections: <sup>2</sup>
  - Irremediableness
  - Vulnerability
  - Capacity
- These are substantiated with reference to evidence from the Netherlands

1. Schüklenk, U., & Vathorst, S. v. d. (2015). Treatment-resistant major depressive disorder and assisted dying. *Journal of Medical Ethics*, 41, 577-583, doi:10.1136/medethics-2014-102458.
2. Kim, S. Y. H., & Lemmens, T. (2016). Should assisted dying for psychiatric disorders be legalized in Canada? *Canadian Medical Association Journal*, cmaj.160365, doi:10.1503/cmaj.160365.

# Irremediableness: Key Arguments

- Treatment Resistant Depression (TRD) is a contested term
- AND
- Prognosis is difficult
  - Imply: There is difficulty in ascertaining whether a psychiatric condition is irremediable, and this uncertainty justifies a ban.
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- Response: an assessment of a patient's likely future is still possible, and probabilistic judgments are an acceptable basis for this procedure, as they are in the rest of medical practice

# Vulnerability: the Objection

- The Vulnerable Persons Standard (VPS) is a Canadian document objecting to MAID for vulnerable people – including psychiatric patients <sup>1</sup>
- Defines vulnerability as extraneous factors which influence patient decision-making
- Psychiatric patients are especially vulnerable, and are in need of protection choices like pursuing MAID
- “Especially” – All individuals seeking MAID are going to be vulnerable to some extent. The claim is that psychiatric patients are more so.

1. Vulnerable Persons Standard. (2016) Accessible at: <http://www.vps-npv.ca/>. Accessed September 8 2017.

# 1: Concern with the Label

- “Vulnerable group” is a concept that has attracted criticism
- In research ethics, vulnerability has kept groups out of clinical trials who could have benefitted from those trials <sup>1</sup>
- Moreover, it is worth noting that this group could be harmed by this label <sup>2</sup>

1. Rhodes, R. (2005). Rethinking Research Ethics. *The American Journal of Bioethics*, 5, 7-28, doi:10.1080/15265160590900678.
2. Corrigan, P. (2004). How stigma interferes with mental health care. *The American Psychologist*, 59, 614-625, doi:10.1037/0003-066X.59.7.614.

## 2: What is Owed to Vulnerable People?



- Is it clear that individuals from a group that is identified as vulnerable should be prevented from making meaningful choices?
- What are the principles underlying concerns about vulnerability?

# 3: Vulnerability and Competence

- What make psychiatric patients especially vulnerable, compared to individuals with physical conditions?
- The VPS<sup>1</sup>
  - Poverty
  - Violence
  - FraudMore convincingly
  - “Distorted insight and judgment”<sup>1</sup>

1. Vulnerable Persons Standard. (2016) Accessible at: <http://www.vps-npv.ca/>. Accessed September 8 2017.

# Capacity: Key Arguments

- Some highlight concerns about capacity assessment, specifically:
  - Whether testing is consistently applied, and sufficiently rigorousAND
  - When rigorous tests are used, 'grey-zones' in evidence-based tools such as the MacCAT-T still exist
- Response:
  - The first objection is not a matter of whether tools exist, but that they go unused
  - The second criticizes one aspect of a certain set of tools, which could be mitigated

# The Netherlands: Criticism

- Two studies from the Netherlands both focusing on 66 cases of euthanasia for psychiatric conditions, as reported to Dutch retroactive review boards
  1. Identifies physician disagreement over irremediableness or competence
  2. Identifies how competence is described (with respect to Appelbaum's criteria) by physicians in the reports

# 1: Kim, de Vries, and Peteet<sup>1</sup>

- Primary finding is that physicians disagreed in 16 (24%) of cases (multiple disagreements occurred in some instances)
  - Capacity status in 8
  - Irremediableness in 13
  - Unbearable suffering in 1
- Two questions in response
  - How common is disagreement in medical practice?
  - What does disagreement signify?

1. Kim, S. Y. H., Vries, R. G. D., & Peteet, J. R. (2016). Euthanasia and Assisted Suicide of Patients With Psychiatric Disorders in the Netherlands 2011 to 2014. *JAMA Psychiatry*, 73, 362-368, doi:10.1001/jamapsychiatry.2015.2887.

## 2: Doernberg, Peteet, and Kim<sup>1</sup>

- Flagged terminology related to competence to document what assessments look like in the Dutch euthanasia regime
- They found that terminology was most often a judgment of holistic competence, and failed to reference Appelbaum's individual criteria
- These reports are limited to collect details this fine
  - We requested a template copy, which numbered 614 words
  - The mean word count from 2011 and 2014 was 1573, 1248, 1154, and 1117 respectively

1. Doernberg, S. N., Peteet, J. R., & Kim, S. Y. H. (2016). Capacity Evaluations of Psychiatric Patients Requesting Assisted Death in the Netherlands. *Psychosomatics*, 57, 556-565, doi:10.1016/j.psych.2016.06.005.

## 3: Additional Evidence

- A recent report from the End of Life Clinic in the Netherlands
- Of 419 requests, 383 (91%) were rejected or withdrawn