

## **Written evidence submitted by The Pharmacists' Defence Association (ADY0392)**

The terms of reference bullet point 3 asks about “ What are the professional and ethical considerations involved in allowing physicians to assist someone to end their life?”

The professional considerations extend wider than to just physicians and will involve many healthcare professions including pharmacists.

The Pharmacists' Defence Association is the largest membership body and only trade union exclusively for pharmacists in the UK. The PDA has more than 35,000 members from across the four UK nations and the crown dependencies.

PDA members work as employees or as self-employed locums practising across every part of the health system including NHS organisations such as hospitals or GP surgeries, Integrated Care and Health Boards, in academia, in prisons and also within the most accessible part of the health system, community pharmacies in High Streets.

Our submission is thus based on overarching principles that cover the diverse environments in which our members practice and where they may be asked to be part of a process (directly or indirectly) which leads to the supply of substances with the aim of assisting an individual to their death.

***Jan 2023***

## Safeguarding the right of a pharmacist to autonomy in following their conscience.

### Introduction

Understandably, the debate around assisted dying has involved a range of terminologies (some of which are used to weaponise certain words) including assisted suicide and voluntary euthanasia.

In this submission, we do not argue for or against the practice, but focus on the implications, were such legislation introduced into the UK, on healthcare workers including pharmacists and their rights to follow their conscience in whether they wanted to play any part in assisting the process of death for any individual.

Lord Winston, in the recent second reading of the Assisted Dying Bill 2021, in the House of Lords noted;

***“ ... but one thing in this debate that remains a problem for me is how it has been assumed that it is the autonomy of people who are dying, or are likely to want to die, that is at stake. The problem is that, in spite of what the noble Lord, Lord Krebs, and the noble and learned Lord, Lord Brown, said, it is about the autonomy of a lot of other people—health service workers, carers, people in the street, people who clean hospitals and, most importantly, our society.”<sup>1</sup>***

It is in this context, the right of autonomy for pharmacists to exercise their conscience, that we make this submission.

### How has the right of autonomy been protected in other jurisdictions?

#### State of Victoria, Australia.

The state of Victoria has put in place processes that fully respect the right of all registered health practitioners to exercise their conscience clause. By having such a clause in their Voluntary Assisted Dying Act 2017,<sup>2</sup> all practitioners are able to exercise their conscience without fear of regulatory or other sanction.

#### **7 Conscientious objection of registered health practitioners**

A registered health practitioner who has a conscientious objection to voluntary assisted dying has the right to refuse to do any of the following—

- (a) to provide information about voluntary assisted dying;
- (b) to participate in the request and assessment process;

<sup>1</sup> [https://hansard.parliament.uk/lords/2021-10-22/debates/11143CAF-BC66-4C60-B782-38B5D9F42810/AssistedDyingBill\(HL\)](https://hansard.parliament.uk/lords/2021-10-22/debates/11143CAF-BC66-4C60-B782-38B5D9F42810/AssistedDyingBill(HL))

<sup>2</sup> [https://content.legislation.vic.gov.au/sites/default/files/8caaf3b4-28f6-3ad1-acf3-e3c46177594e\\_17-61aa003%20authorised.pdf](https://content.legislation.vic.gov.au/sites/default/files/8caaf3b4-28f6-3ad1-acf3-e3c46177594e_17-61aa003%20authorised.pdf)

- (c) to apply for a voluntary assisted dying permit;
- (d) to supply, prescribe or administer a voluntary assisted dying substance;
- (e) to be present at the time of administration of a voluntary assisted dying substance;
- (f) to dispense a prescription for a voluntary assisted dying substance.

In Victoria, there is one single access point for the dispensing of any Voluntary Assisted Dying substances<sup>3</sup> and this is through a Statewide Pharmacy Service (based at Alfred Health). Pharmacists employed by the service visit applicants anywhere in Victoria state to not only dispense the assisted dying substance but also to provide education and support to families and medical practitioners.<sup>4</sup>

To give this statewide service a UK context, Victoria state has a land area of approximately 87,000 square miles (UK 93,000 square miles) and a population of around 6.6 million (UK 67 million). A similar centrally controlled NHS operation is thus feasible given the much higher population density and the greater number of NHS hospitals and hospital pharmacies in the UK.

## New Zealand

In New Zealand The End of Life Choice Act came into force on the 7<sup>th</sup> November 2021<sup>5</sup>. The absolute right of healthcare practitioners to be able to exercise their conscientious objection is fully protected. The exception 9(2) covers the situation where the attending medical practitioner, if they have a conscientious objection, must inform the patient of their right to a replacement medical practitioner.

### Part 2 Assisted dying

#### 8 Conscientious objection

- (1) A health practitioner is not under any obligation to assist any person who wishes to exercise the option of receiving assisted dying under this Act if the health practitioner has a conscientious objection to providing that assistance to the person.
- (2) Subsection (1)—
  - (a) applies despite any legal obligation to which the health practitioner is subject, regardless of how the legal obligation arises; but
  - (b) does not apply to the obligation in section 9(2).
- (3) An employer must not—
  - (a) deny to an employee any employment, accommodation, goods, service, right, title, privilege, or benefit merely because the employee objects on the grounds of conscience to providing any assistance referred to in subsection (1); or
  - (b) provide or grant to an employee any employment, accommodation, goods, service, right, title, privilege, or benefit conditional upon the employee providing or agreeing to provide any assistance referred to in subsection (1).
- (4) A person who suffers any loss by reason of any breach of subsection (3) is entitled to recover damages from the person responsible for that breach.
- (5) In subsection (3), employee includes a prospective employee.

<sup>3</sup> <https://www.australianpharmacist.com.au/pharmacists-voluntary-assisted-dying/>

<sup>4</sup> [https://www.safercare.vic.gov.au/sites/default/files/2022-09/Voluntary%20Assisted%20Dying%20Review%20Board%20Report%20of%20Operations%20July%202021-June%202022\\_FINAL.pdf](https://www.safercare.vic.gov.au/sites/default/files/2022-09/Voluntary%20Assisted%20Dying%20Review%20Board%20Report%20of%20Operations%20July%202021-June%202022_FINAL.pdf)

<sup>5</sup> <https://www.legislation.govt.nz/act/public/2019/0067/latest/whole.html#LMS167538>

It is notable that the rights of employees (and prospective employees) are explicitly protected in the New Zealand legislation. In the UK the majority of pharmacists – including the majority of our members - are employees.

Like Victoria state in Australia, New Zealand has centralised pharmacy distribution of end of life substances through two district health board pharmacies. To give geographical population context, New Zealand has a population of around 5.1 million spread over a land area of approximately 104,000 square miles.

### **Netherlands and Belgium.**

The Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act<sup>6</sup> came into force in 2002 as did Belgian Act on Euthanasia<sup>7</sup> which too came into force in 2002. These 2 countries were amongst the first European countries that introduced legislation around assisted dying (Switzerland has permitted assisted suicide for “unselfish reasons” since 1942).

However, the Dutch and Belgian legislation did not consider the ethical perspectives from a healthcare practitioner point of view. Nevertheless, there have been attempts to ensure that the rights of practitioners to exercise a conscience objection to take part in assisted dying are respected. The 3<sup>rd</sup> Dutch 5 yearly report (2012-2016 period) specifically recommended the removal of the duty to refer to another physician for physicians who refuse a request for euthanasia or assisted suicide.<sup>8</sup>

This is in keeping with the modern acknowledgment that the rights and autonomy of healthcare workers to be able to exercise their conscience be respected. The more recent legislation we have exemplified in Australia and New Zealand shows how this can be achieved.

Unlike New Zealand and Australia there is no centrally coordinated supply of assisted dying substances.

### **Scottish Parliament and the UK Parliament**

The Scottish Parliament considered an Assisted Suicide (Scotland) Bill<sup>9</sup> in 2013 and the UK Parliament has considered this issue most recently in 2021<sup>10</sup>. The 2021 Lady Meacher Assisted Dying Bill did acknowledge the right of healthworkers:

#### ***“5 Conscientious objection***

***A person is not under any duty (whether by contract or arising from any statutory or other legal requirement) to participate in anything authorised by this Act to which that person has a conscientious objection.”***

However, the wording in this latest Bill may not be sufficiently robust to protect the rights of healthcare workers from overzealous regulators who may make conflicting Rules or impose “professional standards obliging participation” via other legislation (for example imposing a duty to refer to another practitioner).

#### **The role of pharmacists in assisted dying.**

The recent briefing paper lodged at the House of Commons Library in July 2022<sup>11</sup> noted a number of healthcare stakeholders but did not include any acknowledgement of the impact that any assisted dying legislation may have on pharmacists and their right not to participate. In contrast, we have also seen how the generic right of all healthcare workers has been protected in the more recent legislation around assisted dying globally.

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<sup>6</sup> <https://wfrtds.org/dutch-law-on-termination-of-life-on-request-and-assisted-suicide-complete-text/>

<sup>7</sup> <http://eol.law.dal.ca/wp-content/uploads/2015/06/Euthanasia-Act.pdf>

<sup>8</sup> [https://publicaties.zonmw.nl/fileadmin/zonmw/documenten/Kwaliteit\\_van\\_zorg/Evaluatie\\_Regelgeving/Derde\\_evaluatie\\_Wtl.pdf](https://publicaties.zonmw.nl/fileadmin/zonmw/documenten/Kwaliteit_van_zorg/Evaluatie_Regelgeving/Derde_evaluatie_Wtl.pdf)

<sup>9</sup> [https://archive2021.parliament.scot/S4\\_Bills/Assisted%20Suicide/b40s4-introd.pdf](https://archive2021.parliament.scot/S4_Bills/Assisted%20Suicide/b40s4-introd.pdf)

<sup>10</sup> <https://bills.parliament.uk/publications/41676/documents/322>

<sup>11</sup> <https://researchbriefings.files.parliament.uk/documents/SN04857/SN04857.pdf>

Pharmacists, as healthcare workers, have a specific role in that they are custodians of and responsible for the safe supply of potent licensed medications. This obligation is to ensure that medicines they supply are both appropriate and as required by the prescriber.

UK caselaw<sup>12</sup> has confirmed the obligation of UK pharmacists to **professionally assess** every prescription prior to it being dispensed for appropriateness. In context this would mean the role of the pharmacist goes beyond merely supplying substances as may be specified on an assisted dying prescription. These medicines would in the context of assisted dying be used as unlicensed “off-label” substances for the purpose of ending life and any pharmacist choosing to supply these substances would know the end result of such a supply.

The examples in Australia and New Zealand relating to how a proper structured approach to pharmacist involvement and effective control on supply (and hence record keeping) would ensure that pharmacists that had no objection in taking part in the process of assisted dying could do so whilst those that did not were not put into difficult situations of potentially having to refuse discussing assisted dying or supplying substances to assist dying.

We acknowledge that as of the date of this submission there has been little debate within the pharmacy profession about the potential implications of any assisted dying legislation. As the largest membership organisation of pharmacists within the UK we are committed to listening to and protecting the interests of our members. To that end we will be undertaking a member consultation on the views of pharmacists to further inform this sensitive topic.

We look forward to working with parliamentarians and others in ensuring that there is credible and workable protection within primary legislation to safeguard the right of pharmacists not to have to take part in the discussion about the use of or in the supply of such substances to patients, should such practice become lawful.

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<sup>12</sup> <https://www.bailii.org/ew/cases/EWHC/QB/2006/2808.html>