



Zurich-Forch, 27 May 2022

Revised chapter 6.2.1. “Assisted suicide” in the medical-ethical guidelines “Management of dying and death” by the Swiss Academy of Medical Science (SAMS) now made statutory rule for medical doctors by the Swiss Medical Association (FMH)

What is the impact on physician-supported assisted suicide made possible by DIGNITAS – To live with dignity – To die with dignity?

For many years, the option of physician-supported assisted suicide (PSAS) made possible for Swiss and Non-Swiss individuals by the non-profit membership associations “DIGNITAS – To live with dignity – To die with dignity” (abbrv: “DIGNITAS”) has been the object of a power struggle: being a human rights organization, DIGNITAS has always aimed at freedom of choice to determine the time and the manner of one’s own end life, as acknowledged by the Swiss Federal Supreme Court (2006) and the European Court of Human Rights (2011) in a case conducted by DIGNITAS¹. And this complemented by the right to reach out to voluntary support by others, professionals, to put into practice one’s end-of-life choice in a legal, safe and accompanied manner. On the opposite side, moralist pseudo-ethicists and paternalistic-conservative bureaucrats amongst the Swiss Academy of Medical Science (SAMS), the Swiss Medical Association (FMH), and others, aim at making PSAS (more) difficult or even impossible by limiting the freedom to act of medical and other professionals. The fact that SAMS subsumes a medical professional’s involvement in a patient’s intention to bring about their own death under “controversial actions” speaks for itself.

Who are SAMS and FMH?

Founded in 1943 as a research funding institution, SAMS sees itself as a bridge builder between science and society. It is a private foundation financially supported by the Swiss federal government; in the early days it enjoyed the support of the pharmaceutical industry². FMH is a private association which organises and represents the interest of Swiss physicians; it has some 40,000 members and is the umbrella organization for over 70 further groups, the Cantonal Medical Associations, etc. In Switzerland, over 90% of the practicing physicians are a member of FMH, having access to a number of professional support options which non-members cannot enjoy.

Are SAMS and FMH competent to create law?

The short answer is: “no, but”. SAMS issues “Medical-ethical Guidelines” which become code of conduct for physicians if the FMH accepts and implements them in its statutory rule. Statutory rule is a self-imposed code of conduct which those practicing a certain profession agree to respect, in this case physicians who are a signed-up members of FMH. The State Parliament sets a legal framework; the small details are left for self-regulation by professional bodies. For example, such statutory rule also exists for Swiss architects. The Swiss Federal Supreme Court has made it clear that SAMS is a

¹ http://www.dignitas.ch/index.php?option=com_content&view=article&id=56&Itemid=90&lang=en

² <https://hls-dhs-dss.ch/de/articles/043472/2014-03-06/> (in German)

private foundation without competence to set law and that the guidelines by SAMS do not have the force of law³. Besides, statutory rule cannot cross the line drawn by constitutional and human rights law. As published internal directives, statutory rule however can be used by courts as an interpretation aid in judgments; it such may have a third-party effect beyond an only internal framework.

The recent development of the SAMS’ guidelines “Management of dying and death”

In 2018, after a public consultation, SAMS enacted new medical-ethical guidelines “Management of dying and death” which include chapter 6.2.1. “Assisted suicide”, therein outlining what physicians willing to support and/or conduct PSAS should observe. Notably, SAMS put weight on the patient’s subjective view regarding their suffering. The FMH did not like the new guidelines, specifically the part on assisted suicide. On 25 October 2018, by a vote of 99 to 37, it rejected taking the guidelines into statutory rule for physicians⁴. Not happy with the situation that the guidelines had been enacted and were valid but were not statutory rule, FMH and SAMS sat together and – without involving or informing the public about the details – worked on revising the chapter on assisted suicide. DIGNITAS, and others, tried to obtain a draft of the revision. But, both SAMS and FMH replied with almost identical answers claiming that it was just a sort of conflict resolution. So much for public transparency and independence between an alleged science-bound organisation on one side and a profession-personal-interest group on the other side!

On 20 May 2022, FMH accepted the “revised” SAMS’ guidelines “Management of dying and death” chapter 6.2.1; it thus became statutory rule for Swiss physicians who are a member of the FMH.

What are the essential changes from the 2018 to the 2022 version?

The revised chapter 6.2.1. “Assisted suicide” is mainly a now more detailed description of prerequisites medical professionals should observe for providing medical assistance in fulfilling a patient’s desire for (assisted) suicide. There are four core points and some further aspects some of which also apply if assisted suicide would be conducted by non-medical-professionals – to be found on pages 22 - 24 of SAMS’ guidelines. A direct weblink to the English version is:

https://www.sams.ch/dam/jcr:3154cd58-a2bf-4d2a-b11c-27a46174bbe0/guidelines_sams_dying_and_death.pdf

Three noteworthy aspects are:

- Quote from SAMS’ guidelines: “the physician must – other than in justified exceptional cases – conduct at least two detailed discussions with the patient, separated by an interval of at least two weeks”.

Comment by DIGNITAS: the interval of at least two weeks is new, but there is room for exception (which must be justified). The inability of someone making two journeys from abroad to DIGNITAS or staying two weeks in Switzerland, because they have serious health conditions, is quite likely enough justification to make it an “exceptional case”. The aspect of two discussions is not new though; this was already a must-do in the Canton of Zürich, and consequently fulfilled by the physicians cooperating with DIGNITAS.

³ See <http://www.dignitas.ch/images/stories/pdf/diginpublic/stellungnahme-richtlinienentwurf-samw-umgangmitsterbenundtod.pdf> chapter 3, page 3 with weblinks (in German)

⁴ <http://dignitas.ch/images/stories/pdf/medienmitteilung-26102018.pdf> (in German)

- Quote from SAMS’ guidelines: “The severity of the patient’s symptoms and/or functional impairments is to be substantiated by an appropriate diagnosis and prognosis. For the patient, they are a source of intolerable suffering [...] Since intolerable suffering is not objectively determinable, the physician cannot be required to make such a determination”.

Comment by DIGNITAS: compared to the 2018 version, the new guideline shifts from putting weight on the patient’s personal view as justification for a physician to support the request for assisted suicide towards a more medical-diagnosis-classification of suffering. This shift can be seen as the negative impact of paternalistic-conservative forces within FMH, to which SAMS bowed. The effect of this is that medical reports which a member of DIGNITAS sends in for assessment of their request for PSAS, and the report(s) and internal documentation a Swiss physician is required to create in the course of assessing such request, will need to be even more detailed than before regarding diagnosis, development of the ailment over time, treatments tried, medication, etc.

- Quote from SAMS’ guidelines: “Not ethically justifiable in accordance with these guidelines is the performance of assisted suicide in persons who are healthy.”

Comment by DIGNITAS: Ethics, also called moral philosophy, is about social, religious, or civil behaviour considered correct, especially that of a particular group, profession, or individual⁵. Morals is tied to personal worldviews (Weltanschauung). The SAMS guideline is “medical-ethical”, and it represents the personal view of some individuals of a private institution. The guidelines are not medical evidence/science-based, and they are not in line with law and jurisdiction; SAMS (and FMH) ignore that the Swiss Federal Supreme Court and European Court of Human Rights, also the German and Austrian Constitutional Courts, have declared the freedom of an individual to decide on time and manner of their own end in life as a human right. The right to a self-determined death is not limited to situations defined by external causes like serious or incurable illnesses, nor does it only apply in certain stages of life or illness. Rather, this right is guaranteed in all stages of a person’s existence. The individual’s decision to end their own life, based on how they personally define quality of life and a meaningful existence, eludes any evaluation on the basis of general values, religious dogmas, societal norms for dealing with life and death, or considerations of objective rationality⁶.

Apart from this, as indicated earlier, the guidelines, now statutory rule for physicians who are a member of FMH, go into more detail, leading to more bureaucracy which may have the negative effect of making it even more difficult for some suffering individuals to access DIGNITAS. On the other hand, requests by DIGNITAS-members with complex sufferings situations, for example a mix of physical and psychiatric sufferings / diagnosis, always brought about a cautious and scrutinising assessment of requests for PSAS by the Swiss physicians cooperating with DIGNITAS. Which is something that makes sense: no sensible and responsible physician lightly nods through a request for PSAS, thereby potentially exposing themselves to the risk of a dispute with the Swiss Cantonal Health Authorities (which issues and can withdraw a physicians’ work permit). As to the role of DIGNITAS, founder and human rights lawyer Ludwig A. Minelli repeatedly says: “Our job is to make end-of-life-

⁵ <https://www.collinsdictionary.com/dictionary/english/ethics> and <https://www.britannica.com/topic/ethics-philosophy/Anthropology-and-ethics>

⁶ <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-012.html>

choices such as an accompanied suicide safe for everyone involved: the DIGNITAS-member, their loved ones, the physician(s) involved, and the staff of DIGNITAS.”

What is the next step?

DIGNITAS will monitor the reception of the revised guidelines in practice, exchange with cooperating physicians assessing PSAS requests, discuss with legal and medical experts, continue to train its staff, etc. Also, as it is the nature of DIGNITAS to have triggered, led and supported many court proceedings to further develop freedom of choice over one’s own end of suffering and life, legal aspects and consequences will be observed and discussed in detail.

Overall conclusion

It is absurd, to say the least, that the Swiss legal and practical frame around assisted suicide – no matter whether conducted with or without involving physicians or a non-profit organisation with many years of experience in this field such as DIGNITAS – makes access to arguably the best means, that is a lethal dose of Pentobarbital, more difficult than access to other means and methods. It is also absurd that physicians, by nature of their profession in close contact with suffering individuals and who can such instantly support them as to all forms of relieving suffering – which does include assisted suicide – are deliberately deterred to do so by bureaucracy combined with a Damocles’ sword of potential professional-legal consequences. It is highly problematic that a private organisation which is not democratically legitimised can impose such far-reaching statutory rule in Switzerland. Quite obviously, most of the “medical establishment” occupying positions of power have not yet understood that medical science, which has brought about an enormous increase of life expectancy, should assume responsibility for the fact that a longer life does not always mean a good quality of life from the point of view of the individual. Society overall should start to stand up for real freedom of choice in life, which includes the end of life, and put pressure on politicians, courts, and the medical establishment to respect “the last human right”.

Human rights are especially aimed at protecting minorities and the possibly weak. They have to be fought for and defended, again and again, for the benefit of all citizens. In a democratic society, parliament and government have not received their power for their self-interest and/or by grace of God. They have, only temporarily, been given such power by the citizens. This distinction should be kept in mind by elected politicians just as much as by citizens.

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