



網上專題座談會 ~ 如何死得安樂

2022年11月18日

由近日一宗案件判刑說起...

HCCC 88/2021
[2022] HKCFI 2989

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CRIMINAL CASE NO 88 OF 2021**

HKSAR
v
Kwok Wai-yin

Before: Hon Wong J
Date: 7 September 2022 at 9:31am
Offence: Manslaughter (誤殺)

The facts of the case may be summarised as follows. The deceased and the defendant were a married couple. At the time of the incident, the defendant was of the age of 56 and the wife, 54. They lived together in the private tenant flat together with the youngest sister of the defendant.

In October 2018, the wife was **diagnosed with lung cancer stage 4**. To take care of her, the defendant resigned from his job. The condition of the wife became worse and worse. In December 2019 and January 2020, **she expressed to the sister that she felt very painful and wanted to die**. One day, after making such expression on 28 January 2020, **the wife was hospitalised** as she was in great pain. She was in serious health condition and the prognosis was that the life expectancy was limited. Such situation was explained to both the defendant and his wife. **The wife decided to return to home.**

After repeated requests, she was allowed to do so on the following day. **She signed the “Do-Not-Attempt CPR” form** before she was discharged. When she was home, she told the sister that **she hoped there was euthanasia in Hong Kong.**

(Extract from the Audio Recording of the Sentence)

At 3.36 am on 30 January 2020, the police received a 999 call in which **the defendant said he had killed his wife**. When officers arrived at the couple's home, the deceased was found unconscious. A wok containing burnt charcoal was found on the floor inside the bedroom of the couple. First aid was applied to the wife and she was conveyed to the hospital, there she was certified death.

In a subsequent video-recorded interview, the defendant made statements including the following.

About two weeks before the incident, the doctor said there was **no other available treatment** and his wife's condition could get much worse in the next two months. His wife was **not able to sleep and was constantly woken up by pain**. She felt pain during eating and she needed to take medicine every four hours. Even though she took double dose of the prescribed medicine she still felt pain.

(Extract from the Audio Recording of the Sentence)



On 28 January his wife was admitted into hospital because of pain. He was **not able to visit her because of the hospital measures**. He was told by a doctor that his wife was going to pass away in a few days. When he made the telephone call to his wife, she told him she would like to leave the hospital as there was nobody even to help her change her diaper. **He wanted to take care of the deceased and he did not want her to pass away alone in the hospital.**

Despite the doctor said his wife would only have a few days left and was not fit for discharge, she decided to return to home and was eventually permitted to do so. Seeing the suffer of his wife, he bought charcoal just in case she wanted it.

(Extract from the Audio Recording of the Sentence)

案件帶出的三個概念 ...

安樂死



病人在居處離世



預設照顧計劃/預設醫療指示



立法會四題：安樂死

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以下是今日（2016年12月14日）在立法會會議上鍾國斌議員的提問和食物及衛生局局長高永文的答覆：

問題：

過去多年，一直有一些罹患絕症的病人及其家屬表示希望安樂死可在本港合法進行。儘管安樂死問題存在頗大爭議，但現時已有數個國家立法容許在某些情況下進行安樂死。就此，政府可否告知本會：

（一）是否知悉在過去三年，每年有多少名病人要求安樂死，並按病人所患疾病及其年齡列出分項數字；

（二）政府目前對罹患絕症的病人提供甚麼支援，以及會否加強有關支援；及

（三）政府拒絕容許為病人進行安樂死的理據為何；會否研究立法容許安樂死，讓有特殊情況或罹患絕症的病人從長期痛苦中解脫；若否，原因為何？

答覆：

主席：

安樂死的確是一個非常複雜而且具爭議性的議題，牽涉對醫學、社會、道德、倫理及法律等不同層面的影響。任何關乎生命的課題都必須慎重處理。

根據香港法律，安樂死涉及第三者作出蓄意謀殺、誤殺、或協助、教唆、慫恿或促致其他人自殺或進行自殺企圖，屬非法行為並可能涉及《侵害人身罪條例》下的刑事罪行。《香港註冊醫生專業守則》（《專業守則》）亦明確指出，安樂死是「違法及不道德的做法」。

就問題各部分回覆如下：

（一）醫院管理局（醫管局）並沒有備存有關希望接受安樂死的病人數目的統計數據。

（二）...

(三)《專業守則》的第34段已就對末期病人的護理訂定指引。當病人危殆時，醫生的責任是小心照顧病人，盡可能令病人在少受痛苦的情況下有尊嚴地去世。醫生要尊重病人對控制其症狀措施的自主權，包括身體、情緒、社交及精神等各方面的問題。

根據《專業守則》的第34.2段，安樂死的定義是「直接並有意地使一個人死去，作為提供的醫療護理的一部分」。《專業守則》明確指出，安樂死是違法及不道德的做法。

在香港，偶然會有末期病人於身心痛楚未受控制的階段時提出安樂死的要求。但是，當病人得到適切的紓緩治療，身心痛楚受到控制後，絕大多數會改變主意，不再要求安樂死。故此，面對身心痛楚的末期病人，應該考慮如何改善紓緩治療服務，讓更多末期病人得到適切的治療，而不是考慮如何進行所謂的「安樂死」。

據了解，現時絕大多數國家和地區都不容許安樂死。只有極少數國家（例如荷蘭、比利時和盧森堡）容許安樂死在法律的規範下進行；瑞士、加拿大和美國少數州份（例如俄勒岡州、華盛頓州、佛蒙特州和加利福尼亞州等）容許醫生在法律規範下協助末期病人自殺，但安樂死則仍屬非法。政府暫時並無計劃就安樂死合法化問題進行研究或諮詢。

根據普通法，當病人有能力作決定的時候，可透過訂立**預設醫療指示**，指明假如他日處於病情到了末期或陷於不可逆轉的昏迷或處於持續植物人狀態時，**除了接受基本護理和紓緩治療外**，可選擇不同意接受任何維持生命治療或其他指明的治療，或在特定情況下**不提供或撤去僅能延長死亡過程的無效用治療**，這並不等於安樂死。

現時，醫管局的醫護人員可以透過「**預設照顧計劃**」，與末期病人及其家人商討，從病人最佳利益角度來考慮，應否不提供或撤去僅能延長死亡過程的無效用治療。病人亦可以簽署「**預設醫療指示**」，指明假如他日的病情到了末期、或陷於不可逆轉的昏迷或處於持續植物人狀態、或在其他特定情況時，他可以不接受某些無效用的維持生命治療，讓病人可以安詳離世。醫管局已為「**預設醫療指示**」，以及「**預設照顧計劃**」訂立指引。

以下是一些常見問題和答案，作為《醫院管理局成年人預設醫療指示醫護人員指引》的補充資料，供職員參考：

1. 病人可否在預設醫療指示中拒絕所有治療，包括不是維持生命的治療？

預設醫療指示的主要目的，是讓病人事先作出指示，當面對嚴重及不可逆轉的疾病時拒絕維持生命治療，以減少痛苦或維持尊嚴。根據這項原則，經修訂的法律改革委員會（法改會）表格範本只用作拒絕維持生命治療。病人不能作出預設醫療指示，拒絕接受為維持病人安舒所需的基本護理或症狀控制。即使病人曾作出預設醫療指示拒絕精神科治療，但強制治療令可凌駕這項指示。

若病人使用法改會表格範本以外的形式，作出預設醫療指示拒絕所有治療，包括相對簡單的維持治療（如糖尿病或心臟科藥物治療），有人可能會問，病人在作出預設醫療指示時是否獲妥為告知詳情。因此，預設醫療指示的有效性可能會受到質疑。如遇到困難個案，可徵詢醫院或聯網臨床倫理委員會的意見。

2. 病人可否作出預設醫療指示拒絕接受檢查？

雖然法改會的表格範本沒有涵蓋這方面，惟病人可使用其他形式事先拒絕檢查，特別是該項檢查與維持生命治療的決定有關。若有關預設醫療指示是有效和適用，應受到尊重。如有疑問，可徵詢醫院或聯網臨床倫理委員會的意見。

「在家離世」

就香港法例，註冊醫生在病人離世前十四日內見過病人，並在離世後廿四小時內上門證實不屬於「非自然死亡」，註冊醫生是可以在死者家中簽發死因醫學證明書，再由死者家屬拿着前往死亡登記處辦理死亡登記，繼而安排殯儀服務移動遺體。

不在醫院過身的要解剖



居住單位會變成凶宅





完結.謝謝!