Currently in Ireland, under the Criminal Law Amendment (Suicide) Act 1993, suicide is no longer a criminal offence, but anyone who aids, abets, counsels or procures a suicide, faces up to 15 years in prison. The recent High Court case taken by Wicklow woman, Marie Fleming, lodged a legal challenge to the current law in Ireland on assisted suicide and euthanasia. Ms Fleming suffers from MS, and is seeking to be assisted by her husband to end her life at a time of her choosing, as well as seeking to ensure that there will be no criminal law implications for her husband. In early January 2013 Ms Fleming failed in her challenge to the absolute ban on assisted suicide. So if her partner assists in her suicide then he will face that prospect of a custodial sentence and a criminal record. However, the debate does not end there as Ms Fleming is appealing the High Court decision.

The Fleming case followed on from a case in England where Tom Nicklinson, who suffered from the condition Locked-in syndrome, which he claimed to be like a “living nightmare”. However, the High Court in England rejected his application to be allowed to end his life legally.

Internationally, this is also becoming a major issue. For example, earlier this year in Canada in the case of Gloria Taylor, the Supreme Court of British Columbia struck down the constitutional ban in Canada on doctor-assisted suicide, although the Canadian Federal Government is currently appealing this decision. This two-part article will go through the issue of advance healthcare planning for patients and the implications if the Advance Healthcare Decisions Bill is implemented.

**Advance healthcare planning**

All of this has brought into greater focus the issue of advance healthcare planning for patients. This has already been addressed from an ethical and legal perspective by the Medical Council of Ireland in its 7th Guide to Professional Conduct and Ethics for Medical Practitioners, which states that as regards the ethical status of advance healthcare planning for patients:  

- The patient’s decision was an informed choice, according to the principles of informed consent outlined above
- The patient’s decision covers the situation that has arisen
- The patient has not changed their mind.

Currently in Ireland there is no legal recognition for advance directive. So what is an advance directive?

**Advance directives**

An advance directive or living will permits a patient to participate in clinical decision-making after they have lost the power to communicate their preferences or views and/or have become mentally incompetent.

An advance directive/living will may emerge in the following clinical contexts:

- Mental illness
- Chemotherapy
- End of life decision-making.

Usually an advance directive/living will emerges in the context of end of life decision-making. According to the British Medical Association’s *Advance Statements about Medical Treatment* an advance directive/living will can take a number of forms including a combination of any of the following:

- A general statement of a patient’s aspirations and preferences that does not expressly request a certain form of treatment or non-treatments
- A statement of beliefs, usually in a set of questions and answers about the patient’s present and future treatment
- A statement appointing an attorney to be consulted in the event of incapacity
- An advance statement/instruction refusing some or all forms of medical intervention or
- A statement outlining a clinical condition or state of health which would justify the withdrawal of life-sustaining treatment.

The Law Reform Commission Consultation Paper on The Need for Legislation on Advance Directives issued on October 14, 2008 recommended that advance directives/living wills be made legally binding in Ireland and assist in the area of patient consent in the event that the patient became incompetent through illness or clinical treatment. Its main recommendations were as follows, namely that the proposed legislation:

- Would not legalise euthanasia, assisted suicide or refusal to undergo basic care on part of patient
- Would address the legalising of advance directives for refusal of treatment not consent to treatment
- Would permit an advance directive to be in writing or verbal, but if it involves refusal for life-sustaining treatment it will have to be in writings.
For the profession and for the enhancement of care to our patients.

The coming together of interested GPs will result in the profession being centrally involved in the development and design of clear policies and procedures. Cases will be discussed and clarifications explored. It is envisioned that this will be the first of many such days and that the day is to bring interested GPs together to discuss the issues, share experiences and come together to help forge the way forward with clarity for the GP, resulting in the provision of high-quality care for our patients.

In addition to the four main areas above, we will be delivering an update on activities of the Clinical Lead for the elderly. If you have any role in the provision of care for patients in long-term residential care, this day will be of great interest to you. The day will be involving, and so we ask you to come prepared to

In 2010 the then Senator Dr Liam Twomey of Fine Gael proposed an amendment to the existing Power of Attorney Act 1996 through a Private Member’s Bill to allow for the nomination of an attorney who could act as the healthcare proxy referred to in the Law Reform Commission’s report. The 1996 Act states that the attorney appointed by the donor patient can make decisions in regard to:4

- Where the donor should live
- With whom the donor should live
- Whom the donor should and should not see
- What training or rehabilitation the donor should get
- The donor’s diet and dress
- Access to the donor’s personal papers
- Housing, social welfare and other benefits for the donor.

The glaring omission was the ability of the attorney to make healthcare related decisions on behalf of the donor patient, but Dr Twomey’s Private Member’s Bill seeks to change that legal anomaly. However, earlier this summer Dr Twomey, now a TD in the Fine Gael/Labour Coalition Government has reintroduced the 2010 Private Member’s Bill into the Dail and it appears to have the backing of the Minister for Health Dr James Reilly. So what is in the 2012 Bill? This will be covered in the second part of this article in the March issue of Forum.

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The second part of this article will be published in the March issue of Forum and will cover the Advance Healthcare Decisions Bill 2012.

References