

Association pour le Droit de Mourir dans la Dignité – Letzebuerg, a.s.b.l .

Inofficial translation

**LAW ON EUTHANASIA AND ASSISTED SUICIDE
of March 16th, 2009**

**CHAPTER I
General**

Art. 1

In the application of the present law, **euthanasia** must be understood as the act, performed by a medical doctor, which intentionally ends the life of a person at his or her specific and voluntary request.

By **assisted suicide**, it is understood that a medical doctor intentionally helped a person to commit suicide or provided this person with the necessary means to do so, at his or her specific and voluntary request.

**CHAPTER II
The request for euthanasia or assisted suicide
Pre-conditions and procedure**

Art. 2. 1

The physician who performs a euthanasia or an assisted suicide and cannot be prosecuted for harm and damages if the following conditions have been observed :

- 1) the patient is an adult or an emancipated minor, capable and conscious at the time of his/her request ;
- 2) the request is made voluntarily, is well-thought-through, has been reiterated, and is not the result of outside pressure ;
- 3) the patient suffers constant and unsupportable physical or psychological pains resulting from a serious accident or from a pathological condition without hope of recovery ;
- 4) the request for euthanasia or assisted suicide has been made in writing.

2. Before proceeding to perform a euthanasia or assisted suicide, the physician must in all cases respect the following conditions of form and procedure :

- 1) inform the patient of the state of his/her health and of his/her life expectancy, discuss with the patient his/her request for euthanasia and the therapeutic measures which could still be considered, as well as the availability and consequences of palliative care. The physician must have reached the conviction, that in the patient's view, there is no other acceptable solution to the situation. These conversations are to be registered in the medical file as relevant information.

- 2) ascertain the persistent nature of the patient's physical or psychological suffering and of his/her reiterated wish. To this end, the physician will conduct several interviews with the patient, reasonably spaced with due regard to the evolution of the patient's condition;
- 3) consult with another physician regarding the serious and incurable nature of the situation, specifying the reason for the consultation. The consulting physician will study the medical record, examine the patient and ascertain the constant, unbearable and unrelievable nature of the physical or psychological suffering. He will then write a report of his findings. The consulted physician must be independent in respect to the patient as well as the treating physician, and be competent in the pathological condition at hand. The treating physician will inform the patient on the outcome of this consultation;
- 4) discuss the patient's request with the nursing team or with some of its members, unless the patient does not wish this;
- 5) unless the patient does not want it, discuss his request with those persons close to him/her that s/he designated in his living will;
- 6) assure that the patient has had the opportunity to discuss his requests with those persons;
- 7) assure with the Commission de Contrôle et d'Evaluation if the patient's "dispositions de fin de vie" have been registered with them.

The request of the patient must have been registered in writing, written, dated and signed by him/herself. Should he/she find himself in a permanent physical impossibility to do this, the request may be written and signed by the person designed by him to do so. This person will mention that the patient is unable to do it himself and state the reason. This will be done in the presence of the treating physician whose name must also figure in the document, which will be added to the medical file.

The patient can revoke his request at any time, in which case the document will be retrieved from the medical file and handed back to the patient.

All requests and related observations and reports by the doctor(s) should be consigned to the medical file of the patient.

Art. 3

The treating physician can, if he wants, ask to be accompanied by a councillor or expert of his choice and add their notifications to the medical file.

CHAPTER III

The anticipated declaration :

"dispositions de fin de vie" - "Bestimmungen zum Lebensende"

Art. 4. 1.

Every capable adult or emancipated minor may establish a written declaration of his/her will in anticipation of the eventuality when he/she would no longer be able to express his/her wishes

concerning the circumstances and conditions under which a physician should perform a euthanasia should he recognize:

- that he/she is the victim of a serious and incurable accidental or pathological condition,
- that he/she is unconscious,
- and that this is an irreversible situation as far as the current scientific knowledge goes.

The end of life dispositions may also contain a special chapter in which the signatory defines his wishes for funeral or burial arrangements.

The declaration may designate one or several trusted adult persons, listed in order of preference, who will acquaint the treating physician with the wishes of the patient.

The end of life declaration may be made at any time. It must be made in writing, dated and signed by the declarant.

4.2. If the person who wishes to make an anticipated declaration is physically and permanently unable to write and to sign it, his/her declaration may be taken down in writing by an adult person of the declarant's choice, in the presence of two adult witnesses.

The document must then specify the disability and the reasons why the person making the declaration is unable to write and sign. The declaration must be dated and signed by the person who has put the declaration in writing, by the witnesses and, when applicable, by the designated trusted person. A medical certificate to confirm the permanent physical incapacity will be joined.

The "dispositions de fin de vie" must be sent to and registered in the official system of registration of the Commission Nationale de Contrôle et d'Evaluation pour l'euthanasie et le suicide assisté.

The "dispositions de fin de vie" may be re-iterated, revoked or adapted at any time. Every 5 years, the Commission Nationale de Contrôle will contact the declarant to reconfirm his will. All changes must be registered with the Commission. However, no euthanasia may take place if the physician comes to know of the patient's wish to revoke his wish for euthanasia registered in his initial declaration.

The details for such registration of end-of-life documents and their availability to physicians in charge of end-of-life-patients may be determined by Grand-Ducal regulations, which might even suggest a form to fill in for this purpose;

4. 3

The physician who performs euthanasia following an anticipated declaration, is not performing an unlawful act, as stipulated in paragraphes 1 and 2, if he has observed that the patient:

- 1) is suffering from a serious and incurable accidental or pathological condition,
- 2) is unconscious,
- 3) that this situation is irreversible according to the current state of scientific knowledge.

Before proceeding to the act of euthanasia, the physician must always respect the following conditions of procedure :

- 1°. consult with another physician regarding the irreversibility of the patient's medical condition, and inform him of the reasons for this consultation. The consulting physician will acquaint

himself with the medical records and will examine the patient. He will write a report of his observations. If a trusted person is designated in the anticipated declaration, the treating physician will inform that person of the results of that consultation. The consulting physician must be independent in respect to the patient as well as to the treating physician; he should be well-versed in the pathology at hand.;

- 2°. if there is a treatment team that is in regular contact with the patient, he must discuss the content of the anticipated declaration with the team or with some of its members;
- 3°. if the anticipated declaration designated a trusted person, he must discuss with that person the will of the patient, and
- 4°. if the anticipated declaration designates a trusted person, discuss the content of the anticipated declaration with those persons that the trusted person designates as very close to the patient.

The anticipated declaration, as well as all the steps taken by the treating physician and the results of these steps, inclusive of the consulting physician's report, will be routinely inserted in the patient's medical record.

CHAPTER IV **Official declaration**

Art. 5

The physician who performs a euthanasia will submit the document mentioned in article 7, duly completed, to the Commission de Contrôle et Evaluation within four working days, as described in article 6 of the present law.

CHAPTER V
La Commission
Commission de Contrôle et d'Evaluation

Art. 6

1. Establishment of a commission of control and evaluation, hereafter referred to as « la commission»
2. The commission is composed of nine members, selected for their knowledge and experience in the matters pertaining to the mandate of the commission.

Three members of the “commission” “will be physicians, of which one member proposed by the “Collège medical”. Two members are selected by the AMMD (Association des médecins et médecins dentistes) , of which one is specialised in pain-treatment.

Three members are lawyers, of which one “Avocat à la Cour”, as proposed by the l’Ordre des Avocats”, one magistrate proposed by the High Court of Justice and one professor of law from the University of Luxembourg.

One member from the group of Health professions as proposed by the “Conseil supérieur” of Health professions.

Two members represent organisations defending the rights of the patient.

Lacking the nomination of one of the above, the Minister of Health will put forth his proposal.

The members of the Commission are appointed by the Grand Duke for the period of 3 years. Their mandate can be renewed 3 times.

Membership in the commission is incompatible with a seat in Parliament, Conseil d’Etat or Government. The members of the Commission choose a president amongst them. The Commission cannot deliberate validly unless at least 7 of its members are present. Decisions are taken by simple majority.

3. La commission sets up its own rules of procedure.

Art. 7

The Commission drafts a registration document that must be completed by the physician and sent to the Commission each time a euthanasia is performed.

This document is made up of two sections. The first section must be sealed by the physician. It contains the following data:

- the name, first names and address of the patient;
- the name, first names, number in the national health insurance registry, and address of the treating physician;
- the name, first names, number in the national health insurance registry and address of the physician(s) who has (have) been consulted concerning the request for euthanasia;
- the name, first names, address and function of all the persons who were consulted by the treating physician, as well as the dates of these consultations;

- if there exists “Disposition de fin de vie” designating a person of trust, the name, first names of the person of trust who intervened.

This first section is confidential. It is transmitted to the commission by the physician. It may be consulted only upon decision of the commission, and in no circumstance may it be used as basic information for the evaluation work of the commission.

The second section of the document is also confidential and contains the following data :

- if there exists a “disposition de fin de vie” or a request for euthanasia or assisted suicide
- the patient’s age and sexe;
- the serious and incurable - accidental or pathological –condition which affected the patient;
- the description of the constant and unbearable suffering;
- the reasons why this suffering has been deemed unrelievable;
- the facts confirming that the request was made voluntarily, was well thought through and was repeated without any external pressure;
- the procedure followed by the physician,
- the qualifications of the physician(s) who were consulted by the treating physician, with the dates of these consultations;
- the qualifications of the persons consulted by the physician, with the dates of these consultations;
- the exact circumstances under which the euthanasia or assisted suicide was performed and by what means.

Article 8

The commission studies the registered and duly completed document received from the physician. The commission ascertains, from the contents of the second section of the registered document, whether euthanasia was performed in conformity with the conditions and procedures listed in the present law.

When in doubt, the commission may, by a majority vote, decide to waive the anonymity of the document. The commission then proceeds to acquaint itself with the first section of the registered document. The commission may request from the treating physician that he communicates all the contents of the medical records pertaining to the euthanasia.

The commission renders a decision within two months.

When, by a two-third majority vote, the commission is of the opinion that the conditions set down in par. 2 of Art. 2 have not been respected, it will communicate this to the concerned physician and will send the full report with a copy of its motivated decision to the Collège Médical. The Collège Médical will send a commentary within a month and will decide by a majority vote if there should be a disciplinary action. In the case of none-observance of par. 1 of art. 2 of the present law, the commission will forward the records to the prosecutor.

Article 9

Within two years of the implementation of the present law, and thereafter every two years, the commission presents to Chambre des Députés

- a) a statistical report based upon the informations gathered from the duly completed second part of the registered document sent by the physicians in compliance with article 8;
- b) a report containing a description and an evaluation of the implementation of the present law;
- c) if needed, recommendations that may lead to a legislative initiative and/or other measures concerning the implementation of the present law.

In order to carry out those tasks the commission may gather all the relevant information from the various authorities and institutions. The information established by the commission is confidential.

None of these documents may contain the identity of any person mentioned in the records handed over to the commission within the framework of the control set down in article 8.

The commission may decide to communicate statistical and purely technical information, exclusive of any data of a personal character, to research teams that might present a motivated request for it. The commission may decide to consult experts.

Article 10

For the execution of its mission, the Commission may call on administrative personnel made available by the governmental administration.

Article 11

The commission's operating expenses are drawn from the Governmental budget.

Article 12

Whoever is involved, in whatever manner, in the implementation of the present law, must respect the confidentiality of the data entrusted to him/her in the exercise of this mission.

Article 13

Within six months following the handing over of the commission's first report and, if need be, of the commission's recommendations, as set down in article 9, the Chambre des Députés will schedule a debate on the subject.

This six-month delay is suspended, should there be a dissolution of the Chambre des Députés and/or an absence of an accepted Governmental body.

CHAPTER VI Amendments

Article 14

A new article 397-1 has been introduced into the penal code, with the following heading
 “Art.397-1. The application of this particular section does not apply to the physician who replies to a request for euthanasia or assisted suicide respectful of the conditions set forth in the Law on euthanasia and Assisted Suicide of March 16th, 2009

CHAPTER VII Special measures

Art. 15

No physician is bound to perform euthanasia or assistance to suicide
 No other person is bound to perform euthanasia or assistance to suicide.

If the physician refuses to perform euthanasia or assisted suicide, s/he must inform in due time the patient or his representative, and specify his/her reasons within 24 hours, giving the reasons for his/her refusal.

The physician who refuses to act upon a request for euthanasia must, at the wish of the patient or his representative (person of trust), transfer the patient’s medical record to the physician designated by the patient or by the trusted person.

CHAPTER VIII Transitional measures

Article 16

The Minister responsible for the Health Department may engage 2 persons in excess of those stipulated in his budget for the application of the present law .

We recommend and order that the present law should be retained in the official Mémorial, to be executed and observed by all those concerned.

*Le Ministre de la Santé
 et de la Sécurité Sociale*

Palais de Luxembourg, le 16 mars 2009

Mars Di Bartolomeo

Henri