

**OPINION BY LETTER Nr. 9**

**Request for opinion dated 27 April 2017**

22-10-2018

Mrs Alda Greoli,  
*Vice-Présidente [Vice-President] of the Walloon Government,*  
*Ministre de l'Action sociale, de la Santé, de l'Égalité des chances, de la Fonction publique et de la Simplification administrative*  
*[Minister for Social Action, Health, Equal Opportunities, the Public Sector and Administrative Simplification]*

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**our references**

resinfo/avis def/avis par lettre avec n°/DEF  
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**your references**

AviQ/BES/DA/HE/mars-17/MR/181004137

Dear Madam,

On 27 April 2017, the Belgian Advisory Committee on Bioethics received the following request for an opinion from Maxime Prévot, then Vice-President and Minister for Public Works, Health, Social Action and Heritage in the Walloon Government, as a result of a specific case referred to him by his department: can a doctor based in France come to Belgium with her/his patient and have them admitted to a Belgian short-stay centre or to a Belgian nursing home in order to euthanise them there at their request?

Without giving an opinion on the lawfulness of the underlying specific case, the Committee highlights the existence of a number of conditions that must in any event be met (see the annex relating to the application of the Belgian and European rules on the recognition of professional qualifications<sup>1</sup>) and points out that the requirements of the law on euthanasia must always be observed and respected, in both letter and spirit: the care relationship, including the aspects of the doctor-patient relationship, is paramount. The doctor must really know the patient well in order to be able to assess his euthanasia request correctly: what is the context of the euthanasia request? Are there any other options? What is the family environment of the person requesting euthanasia? What is the nursing context?

That said, two opinions are emerging within the Committee.

1. For some members, this series of due diligence requirements mean that serious questions should be raised concerning the practice whereby a French doctor would regularly (e.g. every week) travel with patients from northern France to our country in order to perform euthanasia here. For such a doctor, this would then no longer be a temporary and occasional act (cf. attached Annex). The same questions should

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<sup>1</sup> In the annex, the Committee does not discuss the issue of whether euthanasia is a medical treatment as described in the second subparagraph of Article 3(1) of the Consolidated Law of 10 May 2015 on the exercise of healthcare professions.

also have be raised if a Belgian doctor were systematically to see foreign patients in order to grant their euthanasia request.

Concerning the place where the act would occur – a short-stay centre or a nursing home –, these members point out that the fact that a patient is sent there for the sole purpose of performing euthanasia does not reflect the objectives of such centres<sup>2</sup>: that is not their primary purpose. However, this does not preclude a centre from being able to grant such a request on an exceptional basis. To that end, some of these members recommend an *ad hoc* procedure whereby several interested parties examine the request, taking into account the particular characteristics of the case. In addition to the doctor-patient relationship, consideration must also be given to the relationships with family and friends and with the medical staff at the institution and its residents. Euthanasia is not merely a procedure, either in the spirit of the law or in the opinion of the Committee. It is first and foremost a relationship involving several people. These members state that it is for such centres to discuss these euthanasia requests on a case-by-case basis and decide whether to accept them in their institution.

Others among these members may support this principle but they fear that approval given occasionally in such centres would open the door to a practice that could quickly become a habit. This practice of patients coming and going in search of euthanasia in a nursing home should also not be permitted since, as already highlighted above, it does not reflect the mission of such institutions which, by their very nature, aim to offer their residents a short or longer stay with care provided. These members recommend looking for other surroundings.

However, situations arise in which a foreign citizen opts for a Belgian nursing home as substitution for their home and retains their usual (foreign) doctor as their general practitioner. Like a Belgian resident, it is possible, at a given moment, for the resident to submit a euthanasia request to their general practitioner. What differentiates such situations from the issue under discussion is the purpose for which a nursing home is approached.

2. Other members state that there is no ethical inconvenience in a doctor, of Belgian or other nationality, who is authorised to practise in Belgium, performing euthanasia in Belgium under the conditions laid down by the Law of 8 May 2002 on euthanasia and, consequently, that none of the precautions mentioned above are relevant.

Moreover, all the members state that the law on euthanasia is not the only law that must be observed. The law on patients' rights and the law on palliative care also play a role here. The Committee wonders whether foreign doctors are sufficiently familiar with these regulations.

Yours faithfully,

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<sup>2</sup> A short stay is a "temporary stay" in a nursing home whose duration is determined initially by mutual consent between the resident and the manager and which may not exceed a total of 90 days per calendar year (whether or not in the same institution) (*Code wallon de l'Action sociale et de la Santé* [Walloon Social Action and Health Code], Articles 334 to 379 and *Code réglementaire wallon de l'Action sociale et de la Santé* [Walloon Regulatory Social Action and Health Code], Articles 1396 to 1457).

In Article 37 of the Decree of the Flemish Council of 13 March 2009, a residential care home is described as "a structure (...) in which the users aged 65 years and over who reside there on a permanent basis receive accommodation and are able to obtain care services for the elderly in a home substitution environment, whatever name is given to such services". In Article 30, a short-stay centre is described as a "structure offering users aged 65 years and over accommodation and care services for the elderly for a limited period, either during the day and the night, or only during the night ." [our translation]

[signature]

The President,  
Paul Schotsmans

## ANNEX I to the opinion by letter of 4 September 2018.

### APPLICATION OF THE EUROPEAN AND BELGIAN REGULATIONS ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS

#### 1. The principles of the European regulations and the Belgian legislation.

The Coordinated Law of 10 May 2015 on the exercise of healthcare professions transposes into Belgian law the European regulations<sup>1</sup> on the recognition of professional qualifications.

As far as doctors are concerned, it is important to note, firstly, that this profession is recognised and regulated in the various countries of the EU and, secondly, that under the principle of free movement, the European regulations are designed to enable a doctor who is legally established in one Member State to practise medicine in any other country in the EU.

Such practice of medicine may take place permanently (setting up) or occasionally (carrying on a healthcare profession on a temporary and occasional basis). An additional Belgian peculiarity arises from the latest –sixth – State Reform as a result of which the recognition of the right to carry on a profession – such as setting up as a doctor – is a regional responsibility, whereas carrying on a temporary and occasional profession is regarded as a service provision that falls within the responsibility of the federal government and therefore of the *SPF Santé Publique* [Federal Ministry of Public Health].

Articles 107 to 112 of the Law of 10 May 2015, aforementioned, apply therefore to the case under consideration in this opinion, in other words to the case of a doctor legally established in France, where he carries on his profession, who wishes to provide a temporary and occasional service on Belgian territory.

These articles state, among other things, that:

- the temporary and occasional nature of the service is assessed on a case-by-case basis, in particular according to the duration of the service, its frequency, its regularity and its continuity (Article 107);
- since the medical profession and the training of doctors are regulated in France, the provision of temporary and occasional services in the healthcare profession cannot be restricted for reasons relating to professional qualifications (Article 108(1)(1)<sup>2</sup>).

For doctors, there is a principle of automatic recognition, which does not mean unconditional recognition: requirements of the Member State in which they wish to practise on an occasional and temporary basis (Article 108 (2)).

#### 2. The administrative procedure

Prior to the first temporary and occasional service provision, the doctor informs the *Direction générale Soins de santé du SPF Santé publique* [Health Department of the Federal Ministry of Public Health] of the service provision through a written declaration (Article 110(1)).

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<sup>1</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013.

<sup>2</sup> The same is true “if the profession or the training leading to access to or exercise of the profession in the Member State of establishment is not regulated and if the service provider has carried on such a profession in the Member State of establishment for at least one year during the ten years preceding the service” (Article 108(1)(2)).

The *Direction générale Soins de santé* has provided a form (cf. Annex) to be completed by the doctor in which they state the date on which and the address to which they will travel in Belgium to practise as a doctor on a temporary basis, and in which they also specify the nature and the duration of the service provision. They must provide (Article 110(3)):

- details of any insurance cover or other means of personal or collective protection with regard to professional liability;
- a copy of their identity card or passport;
- a copy of their diploma;
- a certificate confirming that they have the status of doctor and that they lawfully carry on such activity in France. This declaration must be renewed, by the doctor, after a year if they intend to provide a temporary and occasional healthcare service in Belgium during the following year (Article 110(2)<sup>3</sup>).

Submitting this declaration authorises the doctor to engage in a service activity across the entire territory (Article 110(1)) but does not entail recognition by the INAMI [National Institute for Health and Disability Insurance] (no reimbursement).

Within one month of receiving the declaration, the *Direction générale Soins de santé* informs the doctor of its decision (Article 112(3)), which is normally to authorise the service provision on the basis of this *administrative* verification of the professional qualifications. We should point out here that the occupation of doctor is covered by the automatic recognition system, see *inter alia* European Directive 2005/36/EC.

### 3. In practice

A doctor based in France who wishes to carry on a service provision on a temporary and occasional basis in Belgium is subject to the codes of conduct applicable to individuals who carry on the same healthcare profession in Belgium (Article 108(2)), whether of a professional, regulatory or administrative nature, relating directly to the professional qualifications, and is also subject to the disciplinary provisions and to the requirement to provide evidence of their professional qualifications.

Belgian law exempts the doctor from the authorisation, registration or membership requirements relating to a professional organisation that are imposed on Belgium-based health professionals<sup>4</sup>. However, the *Direction générale Soins de santé* organises automatic temporary registration and sends a copy of the written declaration – and, where appropriate, of the renewal – to the competent provincial medical committee and to the competent *Ordre* [Medical Board]. The *Direction générale* is careful to ensure that the automatic temporary registration does not, in any way, cause any delays or difficulties or any additional costs for the doctor (Article 109(1)). Belgium also exempts the doctor from the requirement relating to registration with the *Institut National d'Assurance Maladie-Invalidité* [National Institute for Health and Disability Insurance].

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<sup>3</sup> Article 110(2)(1), which states that, for healthcare service providers who benefit from automatic recognition and who have a European professional card, no further written declaration will be required until 18 months after the first declaration at the earliest, does not apply to doctors since no European professional card exists for them.

<sup>4</sup> Strictly speaking, the *Ordre des médecins* is not a professional organisation but a disciplinary board. Ever since the creation of the provincial medical committees alongside the *Ordre des médecins*, the distribution of their respective powers appears to have been the subject of discussions, and the Royal Decree required for the functioning of these committees still does not exist.

However the doctor and the *Direction générale* must inform the *Institut National d'Assurance Maladie-Invalidité* of the service provision in advance or, in an emergency, at a later date (Article 109(2)). To that end, the *Direction générale* sends a copy of the written declaration to the competent provincial medical committee, the *Ordre des Médecins* [Medical Board] and the INAMI<sup>5</sup>.

In the event of a complaint, the *Ordre des Médecins* and the competent provincial medical committee can take action as long as the doctor in question is still on Belgian territory. The competent provincial medical committee can organise an audit or an inspection. If the doctor appears to be working unlawfully (for example, without a declaration to the *Direction générale*), the case may be referred to the *Parquet* [State Prosecutor's office].

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<sup>5</sup> The services in Belgium of the French doctor in question are not reimbursed by the INAMI.