

# Philosophy of Medicine

Letter

## Understanding Asymmetrical Opposition to Medical Assistance in Dying for Mental Illness

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In Canada medical assistance in dying (MAiD) excludes individuals who have a mental health disorder as their sole underlying medical condition (MD-SUMC). This suggests mental illness is conceptually distinct from somatic illness, a position that requires further analysis. The Canadian government has postponed legislation on mental health conditions since it is highly controversial compared to physical illness, and this will allow them to collect more data on the issue (Government of Canada 2024a). Aside from the legislative reality in Canada, Jeffrey Kirby (2022) has described three positions that scholars have taken up regarding the ethical permissibility of MAiD for MD-SUMC: (a) accept that MAiD for MD-SUMC is ethically permissible; (b) presently oppose MAiD for MD-SUMC, but maintain that MAiD for MD-SUMC could become ethically permissible should the current eligibility criteria better align with the relevant empirical data; and (c) oppose MAiD for MD-SUMC on “philosophical grounds” and maintain that no alteration could make the practice ethically permissible.

If we assume that each view described by Kirby also entails the claim that MAiD in general is ethically permissible, or at the very least is not ethically impermissible, it appears that opposition to MAiD for MD-SUMC reveals something important about the way in which mental illness is understood—namely, as something perhaps categorically different from somatic illness. This results from the asymmetry between holding that MAiD for somatic illness is ethically permissible, but MAiD for MD-SUMC is ethically impermissible.

At present there are five conditions that must be met in order for one to be eligible for MAiD: (1) be eligible for government-funded health services; (2) be competent and at least 18 years of age; (3) voluntarily request MAiD; (4) provide informed consent; and (5) have a grievous and irremediable medical condition (Government of Canada 2024b). To determine whether one’s medical condition is grievous and irremediable, there are further conditions that must be met: (i) “have a serious illness, disease, or disability;” (ii) “be in an advanced state of decline that *cannot* be reversed;” and (iii) “experience unbearable physical or mental suffering from your illness, disease, disability or state of decline that *cannot* be relieved under conditions that you consider acceptable” (Government of Canada 2024b; emphasis in original).

Emphasis tends to be placed on the grievous and irremediable nature of one’s medical condition in debates on MAiD for MD-SUMC (Birkness and Rudnick 2023). For example,



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Alexander I.F. Simpson (2018) argues that the uncertainty surrounding the irremediability of mental illness makes it, as a kind of illness, a poor target for MAiD, especially since new treatments continue to be developed. Additionally, Mark Sinyor and Ayal Schaffer (2020) argue that *uncurable* and *irremediable* are not synonyms and therefore mental illness may, under certain conditions, be uncurable but that has no bearing on whether it is also irremediable.

This reasoning can then be used to support either position (b) or (c) above. With respect to (b), we might think that the asymmetry between somatic and mental illness in the form of grievous and irremediable constitutes a difference in *kind*, which is the same type of difference that we find between any two somatic illnesses. For the sake of clarity, we can assume that this view incorporates a general concept we can refer to as *Illness* and that both mental and somatic illnesses are to be understood as particular kinds of illnesses within this general concept. A difference in kind, then, is the difference between the various *kinds* of illnesses (for example, those affecting the kidneys, brain, spine, and so on), where each illness is perceived to be part of the scoping concept *Illness* because of the shared features between them, whatever those features may be. Mental illness is as separate from somatic illness as any given mental illness is from any other mental illness and any somatic illness is from any other somatic illness. As such, a difference in kind between illnesses is an assessment of the degree to which certain elements—for instance, elements such as grievous and irremediable—can be applied. It is for this reason that someone like Kirby (2022) has argued that MAiD for MD-SUMC can be made ethically permissible if the eligibility criteria are amended appropriately to better reflect the nuance of mental illness.

On the other hand, the above reasoning can also support the asymmetry present in position (c), where such an asymmetry between somatic and mental illness constitutes a difference in *concept*. A difference in concept goes further than a difference in kind and postulates that our previously theorized general concept of *Illness* does not include mental illness, as a grouping of illnesses, because there are no (or simply not enough) shared features for mental and somatic illnesses to be categorized equivalently. The asymmetry in position (c) implies that mental illness is part of a fundamentally distinct concept to somatic illness because elements germane to MAiD eligibility, such as a grievous and irremediable medical condition, are incommensurable with the elements of mental illness and no alteration to the eligibility criteria could compensate mental illness and thus make it an ethically appropriate target for MAiD. In other words, mental illness is simply not the kind of thing that can be interpreted as eligible for MAiD because it lacks the requisite features that could raise it to and above the same or similar threshold as somatic illness. With respect to position (b) described above, the upshot of a difference in kind was a recognition that perhaps different eligibility criteria are necessary, criteria that are sensitive to the kind of illnesses contained within the group we call “mental illness.” However, no such analysis is warranted with respect to position (c) and a difference in concept because the asymmetry is so stark that no amount of nuance could make MAiD appropriate for mental illness.

Position (c) is explicit about its opposition to MAiD for MD-SUMC. However, what is not clear is the rationale for holding such a view. In the above analysis, I have tried to show why one might subscribe to position (c) and my reasoning is grounded in asymmetrical thinking between mental and somatic illness, which bottoms out in a conclusion about the incommensurability between the features of somatic and mental illness such that the two groupings of illnesses are not just different because they affect different bodily systems, but

are different conceptually. This conclusion, that mental and somatic illnesses may be part of different concepts, where only somatic illnesses are thought of as part of the *Illness* concept, raises many concerns that I cannot address in any detail here.

However, it is worth positing what those concerns are and why they might present problems for our understanding of medicine and illness more generally. There are, I think, at least two concerns: firstly, separating mental from somatic illness conceptually raises the issue of seriousness; namely, that mental illness, as a grouping of illnesses, appears to be unable to rise to the same threshold of seriousness (from a medical and/or phenomenological perspective) as somatic illness. The problem with this is that it appears to conflict quite clearly with the empirical data on mental illness (see, for example, Dickerson et al. 2006; Schmutte et al. 2021). However, it does align with the present exclusion of mental illness for MAiD. Second, and perhaps more importantly, there is a concern about the rightful understanding of mental illness when it is implied to be conceptually distinct from and incommensurable with somatic illness. How ought mental illness to be understood in this light? If it is distinct from somatic illness, what might this say about how it should be diagnosed and treated, and by whom? This concern raises foundational questions about how to treat mental illness, as a grouping of illnesses, and how to comprehend its features relative to somatic illness and things such as MAiD.

Therefore, taking up an ethical stance toward MAiD for MD-SUMC may, at first glance, appear to be solely an issue of appropriate eligibility criteria, but upon further analysis of positions, one might reasonably hold that it seems opposition to MAiD for MD-SUMC may carry an underlying asymmetry between mental and somatic illness. This implicit asymmetry then makes clear the rationale one might have for opposing MAiD for MD-SUMC and raises at least two concerns regarding our understanding of mental illness.

### Disclosure Statement

No competing interest was reported by the author.

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