Reviewer’s report

Title: Concepts of decision making capacity for patients requesting assisted suicide: a qualitative analysis of expert evidence presented to the Commission on Assisted Dying.

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Reviewer: Muhammad Hammami

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Concepts of decision making capacity for patients requesting assisted suicide: a qualitative analysis of expert evidence presented to the Commission on Assisted Dying.

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I think the manuscript needs a major revision before it can be accepted. I declare I have no competing interests. There is no statistical analysis to be reviewed.

I would like to point out the following:

Essential major revisions:

1) The authors use “decision making” and “mental capacity” interchangeably, which may not be appropriate especially for such topic. Decision making is influenced by mental capacity and the other factors mentioned in the manuscript such as voluntariness, motives, and autonomy. The distinction between decision making and mental capacity is important as it appears that the disagreement among the invited experts is in a major part related to what constitutes “sound” and thus acceptable decision making rather than adequate mental capacity.

2) It appears that the disagreement among the experts is on two issues: 1) in the context of assisted dying should everybody be assumed competent unless proven otherwise OR incompetent unless proven otherwise, and 2) in accepting or rejecting an assisted dying request should we only assess mental capacity or in addition, voluntariness, motives, emotions, etc? Although the experts were invited (and thus may not represent “current thinking”), it would be useful to the reader to know how many took one view or the other and whether this was related to their background.

3) There is some inconsistency in what was analyzed: 35 transcripts of oral evidence and five pieces of written evidence (abstract) vs. 36 transcripts of oral evidence and five pieces of written evidence (methods) vs. 36 transcripts of oral evidence only (results and table1). This needs to be clarified.

4) If the invited experts did not listen to each other/discuss with each other, it is possible that they were addressing different things (or talking imprecisely), rather
than having disagreement. It is not clear what questions the experts were asked to address. For example, were they asked specifically to define mental capacity? Apparently they were not, since 4 of the 36 transcripts did not include reference to mental capacity. The authors did not have direct contact/discussion with the experts. They base their conclusions on the authors’ interpretation of the transcripts (we do not even know how much agreement the authors had among themselves). This interpretation does not necessarily represent “current thinking”. Thus the conclusions of the authors do not appear to be supported by the presented data and need to be softened.

5) The manuscript is essentially addressed to UK voters or parliament members. A wider perspective on the ethics/regulations of assisted dying worldwide and putting the results in context of medical decision making and mental capacity assessment in general may make the manuscript more appealing to a wider audience. [for example, is medical capacity presumed until proven otherwise when a patient refuses life saving treatment or donate an organ while alive, and are the other factors that may affect decision making such as motives, voluntariness, etc assessed in addition to mental capacity in such situations?]

6) 4 out of 36 transcripts did not mention mental capacity. This is unexpected and needs more discussion. What is the background of those contributors? Why did they not address mental capacity?

Essential minor revisions:

1) The topics “what is mental capacity” and “the boundaries of the definition of mental capacity” appear to be almost the same and may better be presented/discussed together.

2) The sentence under discussion about the impartiality of the Commission on Assisted dying is not referenced and is not related to the study. Consider omitting.

3) The sentence under discussion “This study analyzed ….. using rigorous qualitative methods from an atheoretical perspective…” is rather self credentialing and may be too strong. More detailed description of the methods used and their validity would be useful.

4) The manuscript needs editing. See for example the third sentence under results under abstract.

5) The information about the “Bill” needs to be updated.

6) The three paragraphs under presumption of capacity under results don’t flow well. The authors seem to go back and forth to the two options with some redundancy and confusion.

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Statistical review: No, the manuscript does not need to be seen by a statistician.
Declaration of competing interests:
I declare I have no competing interests