Reviewer’s report

Title: Ethical Failings of CPSO Policy and the Health Care Consent Act: Case Review

Version: 0 Date: 24 Sep 2018

Reviewer: Thaddeus Mason Pope

Reviewer’s report:

My main concern is that the CPSO policy is described and then criticized. But the rationale and justification for the CPSO position is lacking. For a scholarly publication, this seems too unbalanced. Even if they fail on balance, you should present the counterarguments to your position. Also, here are six other points.

1) [31-44] The generally accepted use of "futile" today is narrower than it was several years ago. See the 2015 ATS/SCCM statement. It is limited to situations where the treatment literally would not work. You may want to stick with the Savulescu/Singer definition. But it seems erroneous to say irreversible conditions are likely futile in the sense of having no scientific rationale.

2) [66] Change less to fewer, since resources is plural

3) [119-121] In the JEP and DW cases it would be helpful for the reader to know why the CCB ruled for the SDM. Were these cases where the patient had well-documented wishes? Or were these cases decided on best interest grounds? Can you provide more detail on the facts of the cases?

3) [141-143] Is it really true that the CCB and Ontario courts must accept any wish? Any hastily drafted garbage advance directive?

4) [158] It seems you have two distinct concerns: (1) a too big emphasis on autonomy and (2) the fact that HCCA does not really respect autonomy because it does not require clear and convincing evidence that the expressed wish reflects considered preferences and values. These separate concerns might be better distinguished.

5) [165] It seems the HCCA already does not require doing the impossible. So, isn't futility already built in?

6) [163-166] Since you are not explaining exactly how other factors like distributive justice would be factored in, perhaps you should clarify that you are not offering a definitive argument. You are only calling for a discussion or consultation on whether and how to factor them in.

Are the methods appropriate and well described?
If not, please specify what is required in your comments to the authors.

Yes
Does the work include the necessary controls?
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Yes

Are the conclusions drawn adequately supported by the data shown?
If not, please explain in your comments to the authors.

No

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If an additional statistical review is recommended, please specify what aspects require further assessment in your comments to the editors.

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