Recent Developments in Physician-Assisted Suicide

February 1998

LITIGATION

1. *Lee v. Harcleroad*, 107 F.3d 1382 (9th Cir. 1997), cert. denied (Oct. 14, 1997, U.S. No. 96-1824). Pursuant to the Ninth Circuit's mandate, U.S. District Judge Michael Hogan dismissed this case during a status hearing held on 11/25/97. However, Judge Hogan agreed to entertain further briefs regarding standing questions. On 2/18/98, Judge Hogan heard argument on the plaintiffs' motion to amend their complaint to allege that plaintiff Janice Elsner has standing due to the "stigmatic injury" that has resulted because legalizing physician-assisted suicide devalues her life; Judge Hogan has taken this motion under advisement. Also on 2/18/98, the plaintiffs filed another motion to amend their complaint to join Peter Begin, a terminally ill patient, as a new plaintiff; Judge Hogan will hear this motion after the parties have filed briefs. The plaintiffs hope that a favorable ruling on the standing question would lead Judge Hogan to resurrect his decision on the merits. If Judge Hogan rules against the plaintiffs, the opponents of the Oregon Death with Dignity Act are expected to file a new lawsuit.

2. *Kevorkian v. Arnett*, 939 F.Supp. 725 (C.D. Cal. 1996), appeal pending sub nom. *Kevorkian v. Lungren* (9th Cir. No. 96-56405). Dr. Kevorkian and an AIDS patient brought this suit to invalidate California's statute criminalizing physician-assisted suicide as applied to competent, terminally ill patients. On 9/11/96, U.S. District Judge Consuelo B. Marshall invalidated the statute on Fourteenth Amendment due process grounds. Judge Marshall dismissed Kevorkian's claims for lack of standing, declined to rule on the Fourteenth Amendment equal protection claim, and held that the statute did not violate the right to privacy or to equal protection under California's Constitution. On 2/5/98, the case was submitted on the briefs to a three-judge Ninth Circuit panel that includes Judges Betty Fletcher, Frank Magill, and Thomas Nelson, after the panel determined that oral argument was not necessary.

3. *Kevorkian v. Thompson*, 947 F.Supp. 1152 (E.D. Mich. 1997), appeal pending (6th Cir. No. 97-1094). Dr. Kevorkian and Janet Good filed suit asking for an injunction forbidding prosecutors in three counties from using Michigan's temporary criminal statute to prosecute various assisted suicides that occurred during 1992 and 1993. On 1/6/97, U.S. District Judge Gerald Rosen ruled against the plaintiffs, finding that: (1) the court should abstain under *Younger v. Harris* from deciding Dr. Kevorkian's claims because they could be raised by him in defending actions pending against him in state courts, (2) Janet Good had no constitutional right to assisted suicide under the Fourteenth Amendment, and (3) Michigan laws regarding assisted suicide were unconstitutionally vague prior to December 1992, when a state criminal statute was enacted. On 10/28/97, the Sixth Circuit denied plaintiffs' motion to remand the pending appeal. Briefing is under way, with the final brief due 3/23/98.

4. *Marlinga v. ???* (Macomb Co. Circuit Court). On 12/17/97, Macomb County Prosecutor Carl Marlinga filed a lawsuit in Macomb County Circuit Court asking the court to determine whether Michigan common law prohibiting physician-assisted suicide remained in effect when legislators allowed a temporary 1993 statute to expire. Marlinga has said that, if the common law is still in effect, he likely will bring criminal charges against Dr. Jack Kevorkian for assisting in the 10/13/97 suicide of Annette Blackman. Marlinga indicates that the evidence includes a recording of a telephone call from Dr. Kevorkian to the police informing them of the location of Blackman's body. Marlinga has asked Governor Engler to exercise his power to ask the Michigan Supreme Court to take up the question immediately.

LEGISLATION

1. Arizona. On 11/17/97, Representative Sue Lynch introduced an omnibus bill, titled Medical Treatment Options for Terminal Illness (House Bill 2001), co-sponsored by 40 of the state's 90 legislators and supported by the Hemlock Society. The bill is intended to strengthen patient-physician relationships and give patients greater control over end-of-life care options. The original draft would have permitted patients to tell their physicians of their willingness for medications in dosages high enough to relieve suffering, even if the medication would hasten death, but a compromise with the Arizona

Medical Association resulted in the bill's language being toned down to avoid reference to the potential for hastening death. Hearings were set for mid-January 1998.

2. California

a. Public hearings. State legislator Carole Migden, who chairs an Assembly Select Committee on Palliative Care, began conducting public hearings during November 1997 to discuss legalizing physician-assisted suicide.

b. Physician-assisted suicide proposal under consideration. On 11/4/97, state legislator Robert Hertzberg sent a letter to every member of the state Assembly and Senate seeking legislators willing to work with him on a bill to allow physician-assisted suicide. Assemblywoman Dion Archer said that she would join the effort, but Hertzberg has not yet decided whether to proceed with the proposal, which would be similar to Oregon law but would mandate a mental health evaluation for all patients.

3. Colorado. On 2/2/98, a legislative committee voted 5 to 3 to kill Senate Bill 57, which was introduced by Senator Maryanne Tebedo with the purpose of clarifying what actions constitute assisting a suicide under existing Colorado law. Critics were concerned that the bill might weaken the law against assisted suicide.

4. Kansas. In 1997 Representative Susan Wagle introduced House Bill 2531, which was intended to clarify what existing criminal statutes mean by assisted suicide. The bill was expected to clear the House and reach the Senate by the end of February 1998.

5. Maine. On 2/11/98, The Maine House rejected by a 99-42 vote a bill introduced by Representative Joseph Brooks that would have authorized physician-assisted suicide (Legislative Document 916, An Act to Allow Physician-Assisted Deaths for the Terminally Ill). Assisted suicide supporters unsuccessfully sought to have legislators refer the issue to the people for a vote. Supporters have indicated that they may launch a petition drive to put the proposal on the 1999 ballot. A statewide poll of 450 residents conducted by Strategic Marketing Services between January 16 and 20 showed that 71% would support a bill legalizing physician-assisted suicide.

6. Maryland. The Maryland Catholic Conference is working with hospice organizations and other groups to introduce a bill that would outlaw physician-assisted suicide. The bill was expected to be introduced when the General Assembly reconvened in January 1998.

7. Michigan

a. Voter initiative. The group Merian's Friends, which supports physician-assisted suicide for the terminally ill, is trying to gather voter signatures in an attempt to put the issue to a vote of the people in November 1998. The group, which needs to get 247,000 signatures within one 180-day period, has hired a company to gather the remaining required signatures before the May 27 deadline.

b. Legislature. Senator William Van Regenmorter, chairman of the Senate Judiciary Committee, has sponsored Senate Bill 200, which would make physician-assisted suicide a crime punishable by up to 5 years' imprisonment and a $10,000 fine. On 12/2/97, the Judiciary Committee by a 6-1 vote approved the bill and agreed that it should be effective immediately, and without a vote of the people, upon passage by both houses of the legislature. The committee rejected a second bill that would have referred the question to Michigan voters in November 1998. On 12/4/97, the Michigan Senate approved SB 200 by a vote of 28-7 following an emotional debate. On 1/14/98, Representative Ted Wallace, chair of the House Judiciary Committee (to which SB 200 has been referred), introduced House Bill 5474, which would allow voters to decide whether to legalize assisted suicide; the bill would set up a state committee of 14 physicians and three public members to review decisions and provide an annual public report.

8. New York. The Hemlock Society of New York has embarked on a campaign to contact state legislators, urging them to consider legislation authorizing physician-assisted suicide.

9. Oregon

a. Measure 51 defeated. On 11/4/97, Oregon voters defeated Measure 51 (a referendum that would have repealed the Oregon Death with Dignity Act) by a vote of 60% to 40%. Approximately 60% of Oregon voters cast their ballots in the vote-by-mail election. Final campaign reports showed that the Yes on 51 committee spent $4,077,882; Oregon Right to Die spent $966,000. The election was the third most expensive ballot measure campaign in Oregon history.

b. Oregon legislature. After Measure 51 was defeated, some legislators initially proposed that a special session of the Oregon legislature be called to consider various amendments to the Oregon Death with Dignity Act. Instead, however, Governor Kitzhaber and legislative leaders agreed to have a joint interim subcommittee consider such questions as residency requirements, explicit immunity for pharmacists, lethal injections, and how changes to the Act might be implemented. Proponents of the Act objected to composition of the 11-member committee, which has assisted-suicide opponents Senator Ken Baker and Representative Lane Shetterly as its co-chairs and includes seven members who favored sending the Act back to the voters. After meeting with proponents on 12/11/97, legislators announced that legislative

action might be unnecessary. The committee was scheduled to meet again on 2/20/98 to begin drafting a package of amendments to present to the 1999 legislature, but no recommendations are expected until summer or fall of 1998.

c. Oregon Attorney General. Representatives from state agencies have asked the Attorney General for guidance regarding the role various agencies (such as the Oregon Health Division and the Oregon Board of Medical Examiners) have in enforcing and carrying out the Oregon Death with Dignity Act. Deputy Attorney General David Schuman has indicated that rules would be needed to address some gaps (such as the definition of residency) but that no such gaps would preclude the law from going into effect.

d. Oregon Health Division. On 11/5/97, the Oregon Health Division filed with the Attorney General emergency rules regulating the reporting of physician-assisted suicides. The division has six months to adopt permanent rules, following a public hearing. A 12/12/97 memo from the Center for Health Statistics advised county agencies that any Center employee who revealed information about an assisted death would be terminated immediately and that any county responsible for a leak would be stripped of its authority to access and distribute vital records for the state.

e. Oregon Board of Pharmacy. On 11/6/97, the Oregon Board of Pharmacy adopted an emergency rule requiring physicians to specify in writing on the prescription that the medication is being requested for assisted suicide. The purpose of the requirement was to alert pharmacists who do not wish to participate in an assisted suicide. The Oregon Medical Association objected to the rule on the ground that the Board of Pharmacy lacked authority over physicians and the rule violated patient confidentiality. On 1/6/98, the OMA filed a lawsuit before the Oregon Court of Appeals. Governor John Kitzhaber has asked the Oregon Board of Medical Examiners to draft a rule that would satisfy the concerns of both the OMA and the Board of Pharmacy.

f. Oregon Health Plan. The Oregon Health Services Commission will determine early in 1998 whether physician-assisted suicide will be placed on the list of medical treatments covered by the Oregon Health Plan, the state's insurance program for low-income people. Because federal legislation prohibits the use of federal funds for physician-assisted suicide, state funds would have to be used.

g. Response of Oregon medical groups

> (1) Oregon Medical Association. On 11/9/97, the executive committee of the OMA (which had supported Measure 51) issued a report advocating "good, competent and compassionate palliative care at the end of life" and stating that the OMA will "observe the provisions of Measure 16 (the Death with Dignity Act) to the letter of the law and will provide its members with the resources to do likewise." On 11/11/97, the OMA began offering physicians a "Compliance Checklist" outlining their rights and responsibilities under the Act. The OMA will not give guidance in specific medical procedures but will provide physicians with a list of resources they can call upon outside the OMA.
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> (2) Task Force to Improve the Care of Terminally Ill Oregonians. The task force (formed after voters approved Measure 16 in 1994) has published a guidebook for health care providers, *The Oregon Death with Dignity Act: A Guidebook for Healthcare Providers*. Copies can be purchased for $15 each from OHSU Center for Ethics in Health Care, L101, 3181 SW Sam Jackson Park Road, Portland, OR 97201.
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> (3) Guidelines for physicians. The Mid-Valley Physician Assisted Suicide Interest Group, which earlier had developed guidelines for physicians to follow, has been meeting for further discussions regarding implementation..
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> (4) Health care providers. A number of health care providers, including Salem Hospital and Kaiser Permanente HMO, have indicated that they will not participate in physician-assisted suicide until various questions regarding implementation have been addressed.
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> (5) Physicians for Compassionate Care. On 11/13/97, Physicians for Compassionate Care (which supported Measure 51) sent a letter to Oregon members giving recommendations on how to refuse to participate in physician-assisted suicide. One recommendation was to post in the physician's waiting room a statement of the physician's views on patient care, including the refusal to write a lethal prescription.

h. Federal Drug Enforcement Administration. On 7/25/97 and again on 10/31/97, Senator Orrin Hatch and Representative Henry Hyde (chairmen of the Senate and House Judiciary Committees) asked the DEA administrator for the DEA's view on whether prescribing a controlled substance for purposes of physician-assisted suicide would violate federal law. On 11/5/97, the administrator issued a written opinion that such action might constitute dispensing controlled substances "without a legitimate medical purpose," justifying the DEA's initiating proceedings to revoke a physician's license to prescribe controlled substances. After members of Oregon's congressional delegation objected that the federal government should not try to overrule a law passed by Oregon voters, Attorney General Janet Reno said that the

matter was under review in the Justice Department and that the DEA administrator had not cleared his opinion with her. On 11/20/97, Oregon officials met with officials from the Department of Justice and President Clinton's domestic policy advisors to discuss the issue. In late January 1998, a Department of Justice team headed by Deputy Attorney General Eric Holder, Jr., delivered its opinion to the Attorney General that DEA lacked the authority to declare that action allowed by Oregon law violated the Controlled Substances Act. At least two letters signed by a number of U.S. Senators and Representatives have been sent to the Attorney General, urging her to uphold the DEA's position.

i. Estimate of patients likely to use the Act. A 12/7/97 article in the Oregonian newspaper projected that 53 Oregonians a year would take lethal medication under the provisions of the Oregon Death with Dignity Act.

j. Compassion in Dying Federation. The Compassion in Dying Federation has moved its headquarters from Seattle to Portland and plans to have a network of counselors to assist patients in the Portland area by March 1 and statewide as early as June 1. Compassion in Dying will give appropriate patients a list of physicians willing to participate in physician-assisted suicide. The organization also will furnish physicians with a protocol of the types, amounts, and sequence of drugs a patient could use to die.

10. Virginia. On 2/4/98, the Senate Courts of Justice Committee, on a vote of 8 to 7, approved SB 646, which would authorize a commonwealth's attorney to bring a civil action against a health care provider who assists in a suicide, with a first offense subject to a fine of $10,000 and a second offense subject to a fine of $100,000. The bill is now being debated by the Senate. A similar measure was considered by the Virginia legislature in 1997.

11. Washington. On 1/19/98, Representative Phil Dyer introduced a bill, drafted by the ACLU and known as the End-of-Life Care Act of 1998, that would allow patients to choose from a full range of end-of-life care choices, including "palliative sedation." The Act would protect physicians who complied with the Act from any legal action.

12. West Virginia. House Speaker Bob Kiss and four other legislators introduced House Bill 4058, the Intractable Pain Relief Act, to provide protection to physicians, nurses, and pharmacists treating pain in good faith. The bill, which would protect physicians prescribing narcotics in "larger than average doses," responds to concerns that patients might not receive adequate pain relief because of aggressive action taken by the state Board of Medicine to prevent physicians from over-prescribing narcotics. In July 1997, the Board issued a statement spelling out 11 specific guidelines for narcotic prescriptions.

13. Federal legislation. Choice in Dying is promoting a federal bipartisan bill for the next Congressional session, known as the Advance Planning and Compassionate Care Act (Senate Bill 1345), which has been introduced by Senators Jay Rockefeller and Susan Collins; a companion bill has been introduced by Rep. Sander Levin. The Act would give Medicare beneficiaries the right to discuss end-of-life issues with a trained professional, establish a national telephone hotline providing information about end-of-life care, require medical facilities to place any existing advance medical directive in the front of a patient's chart, require that states honor directives validly executed under the law of other states, ask the federal government to study the creation of uniform advance directives, and direct the federal government to develop national standards for evaluating the performance of health care programs that provide end-of-life care.

OTHER NATIONAL DEVELOPMENTS

1. Michigan

a. Dr. Georges Reding. Geoffrey Fieger has announced that Dr. Georges Reding has begun an "apprenticeship" under Dr. Kevorkian. Dr. Reding is a licensed psychiatrist who has assisted Kevorkian with several deaths; he was charged with various crimes in 1996, but those charges were later dropped by the prosecutor. On 12/31/97, Kevorkian and Reding issued a manifesto and announced that they invited prosecution and conviction, and would die of starvation in prison to further their beliefs.

b. Recent assisted suicides. Deaths identified since 10/29/97 include the following:

(1) 65th suicide 10/29/97 = John O'Hara (55-year-old man confined to a wheelchair after a stroke).

(2) 66th suicide 11/13/97 = Nadia Foldes (74-year-old woman with cancer).

(3) 67th suicide 11/21/97 = Naomi Sachs (84-year-old woman with severe osteoporosis).

(4) 68th suicide 11/21/97 = Bernice Gross (78-year-old woman with multiple sclerosis).

(5) 69th suicide 12/3/97 = Martha Wichorek (82-year-old woman who complained of health problems related to old age but had not been diagnosed with any particular illness).

(6) 70th suicide 12/11/97 = Rosalyn Hayes (59-year-old woman with cancer).

(7) 71st suicide 12/16/97 = Margaret Weilhart (89-year-old woman who had suffered several strokes, was paralyzed on her right side, and was going blind).

(8) 72nd suicide 12/16/97 = Cheri Trimble (46-year-old woman with cancer).

(9) 73rd suicide 12/27/97 = Mary Langford (73-year-old woman with cancer).

(10) 74th suicide 12/27/97 = Franz-Johann Long (53-year-old man with cancer and a history of mental illness).

(11) 75th suicide 1/7/98 = Nancy Rush (81-year-old woman with cancer, emphysema, and ulcers).

(12) 76th suicide 1/18/98 = Carrie Hunter (35-year-old transsexual woman with AIDS).

(13) 77th suicide 2/4/98 = Jeremy Allen (52-year-old man with cancer).

c. Cease and desist order. On 4/4/97, Dr. Kevorkian was served with an order from the Michigan Department of Consumer and Industry Services to cease and desist from practicing medicine by assisting in suicides without a medical license (Kevorkian's license was suspended on 8/21/92). On 12/3/97, Macomb County prosecutor Carl Marlinga reported that evidence existed that could establish a violation of the cease-and-desist order, in the form of a telephone call from Kevorkian to police made to report the 10/13/97 death of Annette Blackman. Marlinga and state officials are discussing the possibility of criminal charges or a civil contempt action for violation of the cease and desist order.

d. HBO documentary. On 11/4/97, HBO aired an hour-long television documentary, *Calling Dr. Kevorkian: A Date with Dr. Death*. During a telephone and satellite news conference held on 10/22/97 to promote the documentary, Dr. Kevorkian announced that he plans to promote organ donations by patients who commit suicide with his assistance.

e. Catholic bishops' letter. In an unprecedented pastoral letter issued in October 1997 by the leaders of all seven Michigan dioceses (titled *Living and Dying According to the Voice of Faith*), Michigan's Catholic bishops urged parishioners to reject physician-assisted suicide. Educational materials have been developed to accompany the pastoral letter, and local priests and lay leaders have received instruction regarding the issue.

f. Gerald Klooster. On 11/4/97, a superior court judge in Alameda County, California, denied the request of Ruth Klooster to be appointed as conservator for her husband, Gerald Klooster, and to stop having live-in care on a 24-hour basis. Klooster's daughter was appointed conservator after Klooster's son claimed that Mrs. Klooster had asked Dr. Kevorkian to assist in Klooster's suicide. Dr. Klooster subsequently suffered a stroke while vacationing in Hawaii.

2. Florida. On 10/22/96, the medical license of Dr. Ernesto Pinzon was suspended after investigators charged him with intentionally giving deadly drugs on 10/6/96 to a man dying of cancer. Dr. Pinzon was acquitted of first-degree murder by a jury in June 1997. In October, an administrative law judge ruled that Dr. Pinzon did not kill his patient, although he did falsify the patient's medical chart; the judge recommended that Dr. Pinzon serve a one-year suspension, starting a year before the judge's decision. On 12/6/97, the Board of Medicine voted 7-6 to suspend Dr. Pinzon for two years, with credit for the time he had been under suspension and a stay for the remaining 10 months of the suspension. Dr. Pinzon also will be required to do 100 hours of free work in hospices over a 2-year period. Dr. Pinzon will be able to resume his practice immediately.

3. Oregon. On 7/17/97, the State Board of Medical Examiners voted 7-2 to reprimand Dr. James Gallant for unprofessional and dishonorable conduct and suspend his medical license for 60 days (from September 1 to November 1) for engaging in active euthanasia with respect to his patient, Clarietta Day, who died 3/22/96, allegedly as a result of a lethal injection administered by a nurse; Dr. Gallant also was required to pay $6,370 to cover the costs of the disciplinary process. Dr. Gallant has appealed the disciplinary action to the Oregon Court of Appeals. On 12/10/97, the Lane County district attorney announced that no criminal charges would be filed against either Dr. Gallant or anyone else involved in Day's death.

4. Compassion in Dying. As of November 1997, Compassion in Dying had counseled about 500 terminally ill patients and attended about 48 deaths. According to Executive Director Barbara Coombs Lee, Compassion in Dying and the Florida Hemlock Society may join to offer Florida residents the option of "passive attendance" (under which trained counselors would describe medications that could be used for a lethal dose, instruct on the use of the drugs, and remain with the patient until death occurred), in lieu of physician-assisted suicide.

5. National Public Radio. NPR's series, *The End of Life: Exploring Death in America*, was inaugurated on 11/3/97. Transcripts are available at www.npr.org/programs/death/trns.

6. Gallup poll. On 12/5/97, George Gallup, Jr. released the results of a 1997 nationwide telephone survey of 1,212 adults, in a report titled *Spiritual Beliefs and the Dying Process.* At least half of respondents identified four things as "very important" in providing comfort during the dying process: having someone with whom they could share their fears and

concerns, simply having someone with them, having the opportunity to pray alone, and having someone pray for them. A majority were worried about personal pain and about how loved ones would fare. When asked which overall area (practical, emotional, medical, or spiritual) concerned them most, respondents cited spiritual matters (38%) and practical matters (21%). Respondents were divided into nearly equal camps about physician-assisted suicide: one-third favored making it legal "under a wide variety of circumstances," one-third wanted it legal only "in a few cases," and one-third opposed it under any circumstances.

MEDICAL DEVELOPMENTS

1. Connecticut "Physician-Assisted Living" program. A new state "Physician-Assisted Living" program seeks to make consumers more aware of hospice care as an alternative to physician-assisted suicide. The program is circulating information packets and public service announcements and also will provide a "hospice will" that patients can use to express their preference for hospice care.

2. Education for Physicians on End-of-life Care (EPEC) Project. Funded by a $1.5-million grant from the Robert Wood Johnson Foundation, the AMA's Institute for Ethics has established the Education for Physicians on End-of-life Care (EPEC) Project, which will spend two years developing a standardized curriculum for the education of physicians in end-of-life care. The Project is gathering and evaluating existing educational materials, preparing a speakers list and a resource guide to educational materials, and planning a spring 1998 conference to present an abbreviated version of the curriculum to an invited group of national leaders in medicine. Four regional, two-day conferences will follow in the fall and winter of 1998 to disseminate the full curriculum. A self-directed learning text, the *EPEC Monograph*, will be made available for physicians who cannot attend the training conferences.

3. AILTD initiative. The American Institute of Life-Threatening Diseases (AILTD), in cooperation with the AMA Medical Education Group, the Department of Psychiatry at Columbia University College of Physicians and Surgeons, and other groups, is planning a series of national conferences on developing medical curricula for improving care of the dying. The first conference was held in July 1997.

4. Dartmouth study. On 10/15/97, results from a massive study of Medicare patients during 1994-95, led by Professor John Wennberg of Dartmouth Medical School, were released. The study found large geographic disparities in the number of days Medicare patients spent in hospitals during the last six months of life, ranging from a low of 4.4 days to a high of 22.9 days. Chances of treatment in intensive care during the last six months of life ranged from less than 9% to more than 46%. Percentage of Medicare deaths occurring in a hospital ranged from 22.2% to 51.3%. Average Medicare payment for hospital bills during the last six months of life ranged from $6,000 to $16,571. Patients in Western states were much more likely to die at home without massive medical intervention. Hospitalization rates correlated closely with the number of hospital beds per 1,000 residents.

5. American Health Decisions survey. During March to May 1997, American Health Decisions (a national coalition of citizen groups dealing with ethical issues in health care) conducted a survey of 36 focus groups, including 385 people in 32 cities. The results of the survey were described in a report, *The Quest to Die with Dignity*, released in October 1997. The report found that Americans who have different experiences and diverse backgrounds draw strikingly similar conclusions: they fear reaching the end of life hooked up to machines, prefer a natural death in familiar surroundings with loved ones, and do not believe that the current health care system supports their ideal concept of dying. The report offers a number of suggestions for addressing Americans' concerns about end-of-life care and indicates that fundamental changes are needed in how we plan for the end of life and how we care for the dying.

6. Last Acts. Last Acts, a national coalition of almost 100 organizations seeking to improve care of the dying, held its second annual leadership conference in Washington, DC on 10/29-10/30/97. Last Acts is conducting a national campaign funded by the Robert Wood Johnson Foundation, which expects to make several million dollars available in the coming months to develop regional coalitions.

7. Suicide pill. Dr. Philip Nitschke, who helped four patients to die in the Northern Territory of Australia, announced on 11/20/97 that testing is being done in Canada, the United States, Britain, the Netherlands, and Australia on a "suicide pill" that would combine over-the-counter substances into a lethal dose that could be self-administered.

8. Americans for Better Care of the Dying. Formation of a new group known as Americans for Better Care of the Dying (ABCD) was announced late in 1997. ABCD is a nonprofit charity intended to offer a voice to organizations, associations, and individuals committed to improving care of the dying. ABCD is dedicated to social, professional, and policy reform, and education aimed at improving services for seriously ill patients and their families. Founders of ABCD include Dr. Joanne Lynn, director of George Washington University's Center to Improve Care of the Dying. Dr. Lynn has indicated that ABCD is "mildly opposed" to physician-assisted suicide.

9. Compassion in Dying. On 1/12/98, Compassion in Dying announced in a national telephone news conference that it was sending letters to the medical boards of all 50 states urging them to ease rules on prescribing pain-relief medication and to discipline physicians who do not provide adequate pain management.

10. New York Commission on Quality Care at the End of Life. The New York Attorney General's Commission on Quality Care at the End of Life issued a report during February 1998 finding that too little attention is paid to the physical and

emotional pain of terminally ill patients. The report concluded that physicians and the public must be better educated about palliative care and more emphasis must be placed on hospice care.

11. Recent articles

a. Daniel J. Cher & Leslie A. Lenert, *Method of Medicare Reimbursement and the Rate of Potentially Ineffective Care of Critically Ill Patients*, 278 JAMA 1001 (1997) [authors reviewed all Medicare patients hospitalized in intensive care units in California during fiscal year 1994 and concluded that Medicare beneficiaries in HMO practice settings are less likely to experience injudicious use of critical care near the end of life].

b. Correspondence, *Physician-Assisted Death and Pharmacy Practice in the Netherlands*, 337 New Eng. J. Med. 1091 (1997) [1994 survey of pharmacists in community and hospital settings revealed that 94% agreed with the concept of euthanasia and 91% with physician-assisted suicide and 95% would dispense drugs for these purposes; 71% of hospitals had official guidelines for dealing with requests].

c. George J. Annas, *The Bell Tolls for a Constitutional Right to Physician-Assisted Suicide*, 337 New Eng. J. Med. 1098 (1997).

d. Letters, *Physician-Assisted Suicide: The Dutch Case*, 278 JAMA 1492 (1997) [regarding Linda Ganzini's review of Hendin, *Seduced by Death: Doctors, Patients, and the Dutch Cure*].

e. Lawrence O. Gostin, *Deciding Life and Death in the Courtroom: From Quinlan to Cruzan, Glucksberg, and Vacco--A Brief History and Analysis of Constitutional Protection of the "Right to Die,"* 278 JAMA 1523 (1997).

f. Timothy E. Quill, Rebecca Dresser & Dan W. Brock, *Sounding Board: The Rule of Double Effect--A Critique of Its Role in End-of-Life Decision Making*, 337 New Eng. J. Med. 1768 (1997) [discusses shortcomings of double effect as a practical clinical guide and proposes alternative principles to govern care at the end of life].

g. Timothy E. Quill, Bernard Lo & Dan W. Brock, *Palliative Options of Last Resort: A Comparison of Voluntarily Stopping Eating and Drinking, Terminal Sedation, Physician-Assisted Suicide, and Voluntary Active Euthanasia*, 278 JAMA 2099 (1997) [compares these four practices from clinical and ethical perspectives and recommends safeguards for any medical action that may hasten death].

h. Molly Cooke et al., *Informal Caregivers and the Intention to Hasten AIDS-Related Death*, 158 Archives of Internal Medicine 69 (1998) [study of men with AIDS and their caregiving partners revealed that 12.1% received an increase in medications immediately before death intended to hasten death, and that the medications were administered in 10% of cases by the caregivers].

i. Molla S. Donaldson & Marilyn J. Field, *Measuring Quality of Care at the End of Life*, 158 Archives of Internal Medicine 121 (1998) [considers strategies for assessing and improving care at the end of life].

j. Philip R. Muskin, *The Request to Die: Role for a Psychodynamic Perspective on Physician-Assisted Suicide*, 279 JAMA 323 (1998) [outlines thoughts and emotions that could underlie a patient's request to die and makes recommendations regarding the proper roles of the primary care physician and the psychiatric consultant].

k. Joel Tsevat et al., *Health Values of Hospitalized Patients 80 Years or Older*, 279 JAMA 371 (1998) [Hospitalized Elderly Longitudinal Project (HELP) study that took place at four academic medical centers from January 1993 to November 1994 found that most patients were unwilling to trade much additional time of living for excellent health, although preferences varied greatly; patients were willing to trade significantly less time for a healthy life than their surrogates assumed they would].

l. Gail Gazelle, *Sounding Board: The Slow Code--Should Anyone Rush to Its Defense?*, 338 New Eng. J. Med. 467 (1998).

INTERNATIONAL DEVELOPMENTS

1. Australia

a. Northern Territory legislation. The Rights of the Terminally Ill Act (which authorized both physician-assisted suicide and active euthanasia) was repealed by legislation enacted in the national

parliament in March 1997. However, the head of the territory government, Shane Stone, has indicated that the Act may be reinstated if the territory is granted statehood as proposed by 2000.

b. National parliament. A motion introduced in the national parliament in December 1997, calling for a referendum on the question of euthanasia, was largely ignored.

c. Proposed state legislation. Euthanasia bills are at various stages in three states but are foundering without major party support.

d. Television documentary. On 2/24/98, ABC Television of Australia aired a documentary about the adoption and eventual repeal of the Northern Territory legislation, as viewed through the eyes of Dr. Philip Nitschke.

e. Nurses' poll. On 2/13/98, the Sydney *Morning Herald* reported that a random survey of 475 members of the New South Wales Nurses' Association found that 80% supported voluntary euthanasia, 22% would be prepared to give a lethal injection to a patient who had chosen to die, and 70% supported physician-assisted suicide.

2. Belgium. The Belgian Federal Advisory Committee on Bioethics has issued a report on euthanasia. A majority of the committee's members expressed support for an approach that would consider euthanasia as only one of many options for end-of-life care. The proposal would keep euthanasia subject to the penal code, but make it legally justifiable under certain conditions. A consistent procedure would be required for all end-of-life decisions (including shared responsibility of physician and patient, consultation with the nursing team and family, and ethical evaluation of the decision by the whole medical team). In the case of euthanasia, a nonphysician "third person" representing the local hospital ethics committee would have to be consulted, and some form of legal review would be required.

3. Canada

a. Proposed legislation. Liberal Senator Sharon Carstairs has abandoned her plan to introduce a bill in the Senate that would protect physicians from prosecution for withdrawing or withholding life-sustaining treatment upon request or administering pain relief medication that may hasten death; a similar bill previously introduced by Senator Carstairs (S-13) died when the parliament dissolved for elections held in June 1997. After the Kevorkian-assisted suicide of a prominent British Columbian land developer and philanthropist, Natverlal Thakore, MP Svend Robinson announced that he would reintroduce a private member's bill to allow physician-assisted suicide. However, he was unable to garner support when he sought during November 1997 to have the House of Commons establish a special committee to review the evidence and findings of the Senate committee that held hearings during 1994 and 1995.

b. Prosecution of physicians

(1) Dr. Genereux. On 12/22/97, Dr. Maurice Genereux entered a guilty plea on two counts of assisting a suicide, involving the death of AIDS patient Aaron McGinn and near death of Mark Jewitt from drug overdoses in April 1996 and July 1995. The prosecution agreed to drop three other charges in exchange for the guilty plea. Dr. Genereux was released on bail and allowed to continue treating patients, but not to prescribe narcotics. A judge will sentence Dr. Genereux in April; the maximum prison sentence is 14 years. A hearing is scheduled for March 12 and 13 before the College of Physicians and Surgeons of Ontario to determine whether Dr. Genereux's license should be revoked.

(2) Dr. Morrison. Dr. Nancy Morrison was charged in May 1997 with first-degree murder in connection with the death on 11/10/96 of patient Paul Mills, reportedly from a lethal injection, in the intensive care unit at the Queen Elizabeth II Health Sciences Centre in Halifax. On 11/6/97, prosecutors announced that they had decided to pursue a lesser charge of manslaughter. However, Halifax police have refused to withdraw the original murder charge. A two-week preliminary hearing began on 2/9/98 before Judge Hughes Randall. Prosecutors have indicated they will seek a preferred indictment of manslaughter if Judge Randall refuses their request to reduce the original charge or orders trial on second-degree murder. Several thousand individuals have signed petitions supporting Dr. Morrison.

c. Latimer prosecution. On 11/5/97, a jury convicted Robert Latimer of second-degree murder for the mercy killing of his disabled 12-year-old daughter. Latimer faced a mandatory life prison sentence, without a chance for parole for 10 years. However, the jury recommended parole after one year. On 12/1/97, the trial judge granted a special constitutional exemption from the mandatory minimum on the ground that the punishment would be cruel and unusual. Instead, the judge sentenced Latimer to serve one year in a provincial jail (subject to reduction for good behavior) and another year under house arrest on his farm; both Latimer and the prosecution are appealing the decision. Latimer had been convicted in an earlier trial in 1994, but the Supreme Court of Canada granted a new trial because of allegations of jury tampering by the prosecutor.

d. The Right to Die NETWORK of Canada. The Right to Die Society of Canada has officially changed its name, home base, and operating principles. The new name is The Right to Die NETWORK of Canada, now based in Ottawa as the center of the federal government and the home of various national organizations involved in right-to-die issues. The NETWORK will place a strong emphasis on the growth and development of local chapters and support groups, with the goal of meeting the end-of-life needs of Canadians at a local level and in a personal way.

e. Public opinion poll. A comprehensive Southan-Global poll, conducted by the Toronto-based polling company Pollara, surveyed 1,410 adults nationwide between 11/28 and 12/2/97. The poll found that 60% favored legalizing physician-assisted suicide; 70% (including one-third of those opposed to outright legalization) said that it would be acceptable in some circumstances for a physician to help a patient die.

f. Survey of physicians. A Medical Post-Angus Reid national poll of Canadian physicians in 1997 revealed that 55% believed physicians do not do enough to help with pain; 48% believed that the demand for assisted suicide would disappear if more patients received adequate pain control.

4. Colombia. On 5/20/97, Colombia's Constitutional Court issued a 6-3 decision decriminalizing active euthanasia of terminally ill patients who consent; the court subsequently reaffirmed its ruling on 6/12/97. The Catholic church petitioned to overturn the ruling, but the petition was denied on 10/2/97 by a 6-3 vote. Colombia's congress is expected to consider legislation regulating euthanasia.

5. Great Britain

a. Liberal Democrats call for royal commission. On 9/25/97, delegates to the Liberal Democrats' annual conference called for establishment of a royal commission to study legalization of voluntary euthanasia. A Downing Street spokesman said the government did not believe there was any need for a commission.

b. Annie Lindsell. On 10/27/97, Annie Lindsell (who suffered from motor neurone disease) abandoned her effort to obtain a court ruling allowing her physician to give her drugs that would relieve her distress but also might hasten her death. Her physician agreed to provide the drugs after he obtained the support of two distinguished consultants, who submitted affidavits to the court endorsing the physician's proposed action. On 12/1/97, Lindsell died a natural and peaceful death without requiring the aid of her physician.

c. Legislation. On 11/20/97, Labor MP Joe Ashton tabled the Doctor Assisted Dying Bill, which would allow physician-assisted death, subject to consent by the patient's family. On 12/10/97, MPs voted 234 to 89 to deny a formal first reading for the bill.

d. Green paper proposes Court of Protection for persons unable to make decisions. On 12/10/97, the Lord Chancellor, Lord Irvine of Lairg, presented a green paper titled *Who Decides?* to both houses of parliament proposing establishment of a Court of Protection with expanded powers to make decisions and resolve disputes about the personal welfare, finances, and medical care of persons unable to make decisions. Under the proposal, authority traditionally given to family members would instead be exercised by an independent physician or court-appointed manager. Lord Irvine, who sought to spark a public debate on the increasing use of living wills, indicated that the government continues to oppose any form of euthanasia.

e. Church of England priest supports euthanasia. In December 1997, Reverend Brian Anderson, a Church of England priest since 1964, announced that he actively supports euthanasia and was present at the deaths of at least 20 patients who were assisted to die. Anderson said that he wanted to start a debate within the Church of England, which strongly opposes euthanasia.

6. Ireland. Dr. Paddy Leahy, an active campaigner for abortion, contraception, and euthanasia who is suffering from cancer, has traveled to Thailand with the intention of ending his life there. Thai authorities have indicated that any physician who assists Dr. Leahy would be prosecuted for murder. Dr. Leahy says that he has been directly involved in 50 cases of euthanasia in Ireland, has referred "scores" of other patients to physicians willing to help them, and is aware of at least one physician in every county in Ireland who will assist patients to die.

7. Japan. On 12/12/97, Kyoto prosecutors announced that they would not prosecute Dr. Yoshihiro Yamanaka, who had administered a muscle relaxant intravenously in April 1996 to hasten the death of an unconscious man who had stomach cancer and was in excruciating pain. Prosecutors indicated that they had decided not to seek an indictment because they could not prove either that Dr. Yamanaka intended to kill the patient or that the medication he administered directly caused the patient's death.

8. Norway. On 12/3/97, retired physician Dr. Christian Sandsdalen was convicted in an Oslo municipal court of first-degree murder for admittedly giving a lethal dose of morphine in June 1996 to a 45-year-old woman suffering from multiple sclerosis. He had asked the public prosecutor to charge him as a test of Norway's laws against euthanasia. Although first-degree murder carries a maximum prison sentence of 21 years, the prosecution had asked for only a 2-year suspended jail sentence and revocation of Dr. Sandsdalen's license to practice medicine. In view of mitigating circumstances, including Dr. Sandsdalen's age, the court postponed sentencing indefinitely. Dr. Sandsdalen has appealed the verdict.

9. Ramon Sampedro. On 1/12/98, Ramon Sampedro, a 53-year-old man from the northwest of Spain who had been paralyzed from the neck down for 28 years, died of cyanide poisoning after campaigning since 1993 for the right to assistance to end his life. A criminal investigation is under way. Sampedro's death occurred with the help of 11 friends, each of whom participated in only one step of the process in the hope of avoiding criminal prosecution. The entire process was videotaped. Sampedro's case was rejected by the Constitutional Court in Barcelona and the European Court of Human Rights. Although the provincial court of La Coruna agreed to reopen his case in November 1996, the court did not grant the requested relief. Sampedro, who wrote a book called *Letters from Hell* in 1996, received legal and moral support from a Spanish pro-euthanasia group, Derecho a Morir Dignamente. The group is providing legal representation for Sampedro's close friend, Ramona Maneiro, who was detained by police but later released.

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* Some information obtained from media reports has not been independently verified.