



Recent Developments in Physician-Assisted Suicide

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LITIGATION

1. Lee v. Oregon, 107 F.3d 1382 (9th Cir. 1997), cert. denied sub nom Lee v. Harclerod, 118 S.Ct. 328, 139 L.Ed.2d 254 (1997). 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; although Begin died on 2/26/98, Troy Thompson, a 36-year-old man with ALS, has agreed to serve as a plaintiff. On 4/7/98, plaintiffs filed a motion to certify the case as a class action. A hearing on pending motions is scheduled for 7/13/98. 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), vacated and appeal dismissed, 136 F.3d 1360 (9th Cir. 1998). 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 2/27/98, the Ninth Circuit vacated the District Court judgment and dismissed the appeal in light of the U.S. Supreme Court's decisions in Vacco v. Quill and Washington v. Glucksberg.

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. Final briefs and requests for oral argument were filed by the parties during June 1998.

4. Marlinga v. Kevorkian (Macomb Co. Circuit Court), immediate determination refused, 575 N.W.2d 550 (Mi. 1998). 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 had said that, if the common law was still in effect, he likely would bring criminal charges against Dr. Jack Kevorkian for assisting in the 10/13/97 suicide of Annette Blackman. On 5/9/98, however, Marlinga announced that he would not bring criminal charges after the Michigan Supreme Court declined on 2/24/98 to act on the Michigan governor's request for an immediate ruling and the trial judge then refused to make a decision about Michigan common law based on a civil complaint.

LEGISLATION

1. Hawaii. Governor Cayetano's Blue Ribbon Panel on Death and Dying issued a 101-page report in June 1998, recommending that the state legislature consider whether euthanasia and physician-assisted suicide should be made legal. The governor said that he will put the issue before the state legislature in spring 1999.

2. Maine. Following the Maine legislature's rejection in February 1998 of a bill that would have legalized physician-assisted suicide, assisted suicide supporters plan to collect petition signatures to put the proposal on the 1999 ballot.

3. Maryland. A bill to ban physician-assisted suicide and impose criminal penalties of three years in prison and a \$10,000 fine received preliminary approval in the Senate on 3/19/98. However, chances of passage in the House were considered to be poor.

4. Michigan

a. Legislature. Senate Bill 200 (making physician-assisted suicide a crime punishable by up to 5 years' imprisonment and a \$10,000 fine), which was approved by the Michigan Senate in December 1997, was passed by the House on 3/12/98 by a vote of 66-40. Originally, the bill failed to receive the required two-thirds vote in order to make it effective immediately. However, the two houses negotiated an agreement during June that will make the new law effective on September 1. The House earlier defeated by a vote of 49-57 a proposed amendment that would have exempted physicians from prosecution if medication to treat pain also hastens death. The House also defeated House Bill 5474, which would have allowed legalized physician-assisted suicide, by a vote of 38-69.

b. Voter initiative. Michigan voters may vote on November 3 on a ballot measure that would legalize physician-assisted suicide. On 5/26/98, the group Merian's Friends submitted petitions bearing more than 379,000 signatures to the Michigan Bureau of Elections; only 247,127 valid signatures are needed to place a measure on the ballot. On 7/7/98, however, opponents of the measure filed an objection to the petitions, claiming that more than a third of the signatures should not be counted because the signers or the petition circulators were not legally registered. The ballot measure is similar to the Oregon Death with Dignity Act, but requires a psychiatric evaluation and provides for an oversight commission. Supporters and opponents predict the campaign could cost as much as \$8 million. A Detroit News telephone poll of 400 voters during May 1998 showed that 44% favored the ballot measure, 39% opposed it, and 20% were undecided.

5. Oklahoma. On 5/4/98, Oklahoma governor Frank Keating signed into law the Assisted Suicide Prevention Act (Senate Bill 1243), which provides that health care professionals can have their licenses suspended after a felony conviction for assisting in a suicide. The bill also allows a lawsuit for civil damages and authorizes family members and health care providers to seek an injunction against persons who may be planning to assist in a suicide.

6. Oregon

a. First deaths by assisted suicide. Compassion in Dying announced on 3/25/98 that a woman in her mid-80's with breast cancer had died peacefully the previous night about 30 minutes after taking a lethal dose of barbiturates mixed with syrup and washed down with a glass of brandy. The woman fell into a deep sleep within five minutes after taking the medication. A close relative revealed on the same day that a second, unidentified cancer patient previously had died peacefully within five minutes after taking a lethal mixture of medications; Myriam Coppens, founder of the Hemlock Society of Portland, had worked closely with the second patient and a family member. A third case of assisted suicide is said to have occurred without complication during April, without involvement of either Compassion in Dying or the Hemlock Society of Portland, but no one who participated in the case was willing to discuss it. A fourth case of assisted suicide was reported by Salem physician Dr. Peter Rasmussen on June 5; Rasmussen indicated that the patient's death had occurred during the prior month and that the person fell into a coma and died within 3½ hours. No other assisted suicides are known to have occurred since November 4, 1997, when Oregon voters rejected a ballot measure that would have repealed the Oregon Death with Dignity Act. The Oregon Health Division will not make a public report until the end of the year or after 10 assisted suicides have occurred.

b. Requests for assisted suicide. Barbara Coombs Lee reported in late April 1998 that Compassion in Dying of Oregon had received 15 requests for assisted suicide. Four of those patients died of natural causes before using a lethal prescription (two after receiving greatly improved palliative care), three were not eligible for assisted suicide, and the remaining patients were still living and in various stages of the process toward obtaining a prescription. Myriam Coppens, associated with the Hemlock Society of Portland, reported that 18 of its 27 requests were from persons who were not eligible for assisted suicide, four patients had withdrawn their requests after obtaining hospice care, two patients died before they could get the lethal prescription, and two had not yet begun the formal process to obtain a prescription. In early June 1998, Salem oncologist Dr. Peter Rasmussen reported that two dozen patients had discussed the option of physician-assisted suicide with him: one had died by lethal medication, three were still within the 15-day waiting period, seven had expressed interest but had not yet started the formal process, and the remainder had died before taking the medication.

c. Oregon legislature. The joint interim legislative subcommittee appointed to consider questions raised by the Oregon Death with Dignity Act is not expected to reconvene until fall 1998, in order to allow various state agencies time to clarify various issues through their own rulemaking process.

d. Oregon Attorney General. Deputy Attorney General David Schuman issued an informal opinion on various questions to the joint interim legislative subcommittee. Schuman concluded that a physician or nurse probably may administer oral medications and assist in self-administration (including spoon-feeding medication to a patient), although he said that "the answer to this question is not without some doubt."

e. Oregon Health Division. On 11/5/97, the Oregon Health Division filed with the Attorney General emergency rules regulating the reporting of physician-assisted suicide. At hearings held before a hearings officer in March, opponents of physician-assisted suicide testified that the permanent rules should require the Division to gather additional information concerning the circumstances surrounding patients' deaths. With the agreement of both supporters and opponents of physician-assisted suicide, the Health Division has developed a 53-question questionnaire intended to gather such information through voluntary in-person or telephone interviews of physicians involved in assisted suicides.

f. Oregon Board of Pharmacy. At the request of Oregon's governor, the Oregon Board of Medical Examiners drafted a proposed rule intended to end the dispute between physicians and pharmacists about the labeling of lethal prescriptions. The proposed rule would provide two options: (1) the physician could personally dispense a prescription to the patient or (2) the physician could obtain the patient's written consent to inform the pharmacist of the purpose of the prescription, after which the pharmacist could dispense the prescription to either the physician, the patient, or the patient's agent. The Oregon Medical Association had objected to an emergency rule adopted by the Oregon Board of Pharmacy, which would have required physicians to specify in writing on the prescription that the medication is being requested for assisted suicide. Before the Board of Medical Examiners became involved, the OMA had filed a lawsuit against the Board of Pharmacy before the Oregon Court of Appeals.

g. Oregon Board of Nursing. On 3/6/98, a task force set up by the Oregon Board of Nursing recommended that the board draw up written standards for nurses to follow in an assisted suicide and later conduct a survey of nurses' opinions about assisted suicide. Nurses have been concerned about the possibility of disciplinary action against them as a result of participation in physician-assisted suicide.

h. Oregon Medical Examiner. Dr. Larry Lewman, Oregon's state medical examiner, announced in a March 1998 newsletter that assisted suicide deaths will not be investigated by his office but will be viewed as "deaths under medical care" (much like hospice deaths). The decision was reached by a working group of public officials convened by the governor's office.

i. Oregon Health Plan. On 2/26/98, the Oregon Health Services Commission voted 10-1 to place physician-assisted suicide on the list of medical treatments covered by the Oregon Health Plan, the state's insurance program for low-income people. The complete procedure, which includes physician office visits, psychiatric and psychological assessment, and lethal prescriptions, will rank 260th of 745 services on the list. Physician-assisted suicide will be included under the category of comfort care as a treatment for terminal illness. State funds must be used because federal legislation prohibits the use of federal funds for physician-assisted suicide. However, federal approval is required for revisions to the Oregon Health Plan list, and opponents of physician-assisted suicide are lobbying against approval by the Health Care Financing Administration.

j. Task Force to Improve the Care of Terminally Ill Oregonians. The task force, having published *The Oregon Death with Dignity Act: A Guidebook for Healthcare Providers*, is now turning its attention to expanding insurance coverage for hospice care and other comfort care for all Oregonians. The task force also plans to continue studying how conscientious objectors to physician-assisted suicide can implement their refusal to participate.

k. Fact-finding trip to the Netherlands. A group of seven Oregon health care professionals, including the executive director of the Oregon Board of Medical Examiners, traveled to the Netherlands in March to investigate the Dutch experience with euthanasia. The group met with representatives of the Justice and Health Ministries, the Royal Society of Pharmacy, the Royal Society of Medicine, the medical faculty of Vrije University in Amsterdam, the Dutch Society for Voluntary Euthanasia, and groups opposing euthanasia. One concern raised by the trip was how to improve the information gathered about patients who chose to take advantage of the Oregon Death with Dignity Act.

l. Salem Hospital. The Salem Hospital's board of trustees have adopted a policy permitting physicians to assist in the deaths of their patients, but prohibiting nurses, pharmacists, and other hospital employees from assisting. The physician must be present when the patient ingests the lethal medication and must remain until the patient loses consciousness.

m. Oregon Death with Dignity Legal Defense and Education Center. The Oregon Death with Dignity Legal Defense and Education Center sent a recruitment letter to Oregon's 2,000 pharmacists; by mid-March 1998, 32 pharmacists from across the state had indicated their willingness to fill prescriptions for lethal medications. In addition, the Center has recruited physicians willing to participate in physician-assisted suicide.

n. Assisted suicide support group. In March 1998, an assisted suicide support group was formed in

Portland by Myriam Coppens, founder of the Hemlock Society's Portland chapter and a licensed marriage and family therapist, and Dr. David M. Smith, a geriatric psychiatrist. The support group is for relatives and friends of terminally ill patients who already have died with assistance.

o. Hemlock Society of Oregon. The board of the Oregon chapter of the Hemlock Society voted in April 1998 to disband, due to the duplication of efforts by Oregon Right to Die (the political action committee supporting the Oregon Death with Dignity Act), the Oregon Death with Dignity Legal Defense and Education Center, and Compassion in Dying. However, Hemlock Society founder Derek Humphry has announced that he may try to revive the Oregon chapter, which he believes may still have a role to play in rural parts of Oregon and for patients who are not eligible for assistance under the Act.

p. Federal Drug Enforcement Administration. On 11/5/97, the DEA administrator issued a written opinion that prescribing lethal medication for purposes of assisted suicide 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. On 6/5/98, however, Attorney General Janet Reno issued a written opinion overruling the DEA administrator. Many members of Congress had signed letters urging the Attorney General to uphold the opinion of the DEA administrator.

7. South Carolina. In May 1998, the South Carolina legislature passed a bill providing that physicians, nurses, and pharmacists who help patients commit suicide may be convicted of a felony, sentenced to 15 years in prison, and fined \$100,000.

8. South Dakota. In May 1998, the South Dakota legislature adopted a new law that protects pharmacists from being sued or fired if they refuse to dispense drugs used for abortion, suicide, or euthanasia. The bill, which passed the House 57-10 and the Senate 30-3, was effective 7/1/98.

9. Virginia. In February 1998, the House passed by a 77-20 vote Senate Bill 646, which would have authorized 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. In March, the Senate voted 34-6 in favor of SB 646; the Senate deleted the language authorizing a civil fine, but physicians who violate the law could still lose their licenses and be sued by family members of patients whom they assist to die.

10. Federal legislation

a. Lethal Drug Abuse Prevention Act of 1998. On 6/5/98, immediately after Attorney General Janet Reno issued her opinion that the Controlled Substances Act was not violated by physicians who prescribe lethal medication under the Oregon Death with Dignity Act, House Judiciary Committee Chairman Henry Hyde and Representative James L. Oberstar introduced the Lethal Drug Abuse Prevention Act of 1998 (H.R. 4006) in the House of Representatives. The Act would amend the Controlled Substances Act to revoke the prescribing privileges of a physician who prescribes medication to assist in suicide or euthanasia. On 6/9/98, Senator Don Nickles introduced a similar bill (S. 2151) in the Senate. Oregon Senator Ron Wyden circulated a letter to senators dated 6/9/98, urging them to respect the wishes of Oregon voters; Senator Wyden also is lobbying senators personally and has mentioned the possibility of a filibuster. The constitution subcommittee of the House Judiciary Committee has scheduled a hearing on H.R. 4006 for 7/14/98, at which Oregon Governor John Kitzhaber and Congresswoman Darlene Hooley are expected to testify against the bill. The American Medical Association (which supports an outright ban on physician-assisted suicide) also opposes the proposed legislation on the ground that physicians might become reluctant to prescribe needed pain medication to dying patients.

b. Public opinion poll. A telephone poll of 511 people commissioned by the National Right to Life Committee and conducted by Wirthlin Worldwide 3/7-3/9/98 showed that 65% believed that federal law should not allow narcotics or other dangerous drugs to be used for assisted suicide or euthanasia, while 29% believed that such use should be allowed. Based on this poll, the director of the National Right to Life Committee's Department of Medical Ethics had urged the Attorney General to uphold the opinion of the DEA administrator that prescribing lethal medication violated the Controlled Substances Act.

OTHER NATIONAL DEVELOPMENTS

1. Michigan

a. Recent assisted suicides. Dr. Jack Kevorkian has admitted assisting in over 100 suicides. Deaths identified since 2/4/98 include the following:

(1) 2/23/98 = Muriel Clement (76-year-old woman with Parkinson's disease).

(2) 2/26/98 = Roosevelt Dawson (21-year-old man who was a ventilator-dependent quadriplegic and had just won a court battle to be released from the hospital).

(3) 3/5/98 = William Connaughton (42-year-old man with fibromyalgia).

- (4) 3/5/98 = Patricia Greyham (61-year-old woman with rheumatoid arthritis).
- (5) 3/13/98 = Waldo Herman (66-year-old man with lung cancer).
- (6) 3/26/98 = Mary Judith Kanner (67-year-old woman with Huntington's disease).
- (7) 4/9/98 = Shala Seminoie (47-year-old woman with Lou Gehrig's disease).
- (8) 4/13/98 = Colleen Wilson (64-year-old woman with Lou Gehrig's disease).
- (9) 4/16/98 = Priscilla Hiles (73-year-old woman with chronic arthritis, sciatica, degenerative disc disease, and asthma).
- (10) 4/16/98 = Jack Schenbern (89-year-old man with prostate cancer).
- (11) 4/24/98 = Lucille Alderman, who died by injection of cyanide.
- (12) 5/7/98 = Mathew Johnson (26-year-old man who was a quadriplegic).
- (13) 5/19/98 = Emma Kassa (woman with lung cancer).
- (14) 6/7/98 = Joseph Tushkowski (45-year-old man who was a quadriplegic).

b. Kevorkian forces return of seized property. On 3/10/98, Dr. Kevorkian filed suit in Oakland County Circuit Court demanding return of property (including a "suicide machine") seized after he helped Russell Dawson to die. Police subsequently returned the property to Kevorkian after the trial judge ordered prosecutors to charge Kevorkian by April 1 or return the property to him.

c. Misdemeanor charges against Kevorkian and Reding. When Dr. Jack Kevorkian and his assistant, Dr. Georges Reding, dropped the body of Mathew Johnson off at a local hospital, an altercation ensued with two police officers. Kevorkian and Reding were arrested and have been arraigned on misdemeanor charges of resisting arrest and obstructing a police officer. Each faces up to 90 days in jail and a \$500 fine. The case appears likely to go to trial. Due to Kevorkian's arrest, the Oakland County gun board voted to suspend his one-year concealed-weapon permit. On 6/29/98, in response to the Tushkowski organ-harvesting case [see below], Royal Oak city attorney James Marcinkowski filed a motion asking District Judge Daniel Sawicki to revoke bond and jail Kevorkian on the pending misdemeanor charges, or at least revise the bond requirement to add a specific prohibition on harvesting of organs.

d. Kevorkian's attorney in governor's race. On 4/16/98, Dr. Kevorkian's attorney Geoffrey Fieger announced his candidacy for governor of Michigan in the August 4 Democratic primary. A poll of 400 voters conducted June 17-22 by EPIC-MRA of Lansing found that Fieger's support had slipped from 23% to 20%, making the race a dead heat among the three Democratic candidates; 42% of likely Democratic voters remained undecided. Most commentators expect that Republican Governor John Engler will win a third term in the general election.

e. Kevorkian harvests kidneys in assisted suicide. On 6/7/98, Dr. Kevorkian announced that two kidneys had been harvested from Joseph Tushkowski and were available for transplant, but Michigan's organ-donor network and local transplant hospitals refused to accept the kidneys. On 6/9/98, state representative Andrew Richner introduced a bill in the Michigan House that would amend the Public Health Code to require that human organs be harvested only by those licensed by the state.

f. Autopsy costs. The Macomb County Commissioners was expected to vote on 6/25/98 on a proposal to allow the county to bill autopsy costs to an assisted-suicide patient's helper or family. Autopsy costs can run from \$850 to \$1,200.

2. California. In February 1998, a California trial judge threw out for lack of sufficient evidence a case in which physician Dr. Wolfgang Schug of Clearlake had been charged with second-degree murder in connection with the death of 11-month-old Cody Burrows. Prosecutors claimed Schug's treatment of the boy did not comply with the proper standard of care. An \$8.3 million civil liability case is still pending, and prosecutors are still threatening action against Schug's license. The American Medical Association has expressed concern that such criminal cases may make physicians reluctant to treat seriously ill patients or utilize the peer review process.

3. Connecticut. A telephone poll of 500 adults conducted in mid-March 1998 by the University of Connecticut showed that 70% would favor legalizing physician-assisted suicide if the patient were close to death and at least two physicians agreed; 26% were opposed. Only 44% favored simply "making physician-assisted suicide legal" without controls, while 49% were opposed.

4. Florida

a. Charles Hall. Charles Hall, the Florida patient who unsuccessfully sought a court ruling allowing him to commit physician-assisted suicide, died on 3/9/98 from his illness.

b. Hospice deaths. On 5/20/98, Pinellas County Medical Examiner Dr. Joan Wood announced that she would appoint a team of medical professionals to investigate at least four deaths at Hospice of Volusia-Flagler. She also suspended Volusia County Medical Examiner Dr. Ronald Reeves, who had claimed that four terminally ill hospice patients had died of morphine overdoses during the past few months.

5. Oklahoma. In March 1998, a U.S. District Court jury found Dr. C. Douglas Wood guilty of involuntary manslaughter in the 1994 death of Virgil Dykes at the Veterans Administration Medical Center in Muskogee, Oklahoma. Prosecutors argued that Wood injected the patient with a potassium solution following surgery. Wood had been charged with first-degree murder but was convicted of the lesser offense.

6. Washington. Port Angeles pediatrician Dr. Eugene Turner has been charged with suffocating 3-day-old Conor McInerney on 1/12/98 when he began to revive after being declared dead in the Olympic Memorial Hospital emergency room. On 2/23/98, the Washington Medical Quality Assurance Commission charged Dr. Turner with "unprofessional conduct" and a "gross lack of judgment" and banned him from making decisions on when to end resuscitation for future patients.

MEDICAL DEVELOPMENTS

1. Mayday Fund public opinion poll. In January 1998, the Mayday Fund (a New York City-based group that advocates greater use of controlled substances to relieve pain) released results of a public opinion poll conducted by telephone by Trahan, Burden & Charles Inc. Nearly 70% favored the use of high doses of morphine to control severe pain, and 61% (as compared to 52% in a 1993 survey) believed that people suffering from pain should use drugs to bring comfort.

2. Model Pain Relief Act. The Model Pain Relief Act, drafted by the American Society of Law, Medicine & Ethics, is intended to halt actions against health care providers engaged in justifiable pain management practices as early as possible in the disciplinary or criminal process. A health care professional who is in "substantial compliance" with accepted practice guidelines would be rebuttably presumed to be in compliance with the law. The model act differs from pain management laws adopted in a number of states in that the act is not limited to physicians and does not provide absolute immunity for professionals treating patients in pain.

3. Proposed "medicaring" system. Dr. Joanne Lynn, director of the Center to Improve Care of the Dying at George Washington University, has proposed a new system called "medicaring," which would enable patients to receive the kind of comfort hospice provides without giving up their right to curative treatment. The Health Care Financing Administration, which runs the Medicare program, is considering the idea. Dr. Lynn is planning pilot projects to prove that the new system might pay for itself.

4. American Pharmaceutical Association. At its national meeting in March 1998, the American Pharmaceutical Association (the oldest and largest professional organization of pharmacists in the country) approved a resolution that permits pharmacists to refuse to fill prescriptions for such purposes as assisted suicide but also recognizes the right of patients to have a lethal prescription filled by a pharmacist willing to do so. Oregon pharmacists had lobbied for approval of the resolution.

5. American Medical Student Association mock trial. At its annual convention on 3/14/98, the American Medical Student Association (which supports the option of physician-assisted suicide) presented a mock trial based on *McIver v. Krischer*, followed by a question-and-answer period with a panel of experts.

6. Robert Wood Johnson Foundation community grants. On April 1, 1998, the Robert Wood Johnson Foundation announced a new \$11.25 million grant program intended to encourage state and community groups to work together to improve end-of-life care. The program, Community-State Partnerships to Improve End-of-Life Care, will be headquartered at the Midwest Bioethics Center, Kansas City, Missouri. Center President and CEO Myra Christopher is the national program director. Likely applicants are expected to include state agencies, universities, professional associations, ethics institutes, or other bodies that can bring a broad constituency together effectively. Foundation staff expect to fund just one project in each state, with an average grant award of \$450,000. At least one-third of the grant amount must be matched by contributions from participating organizations or local funders.

7. Massachusetts survey on advance directives. According to a survey of 190 hospitals, nursing homes, home health agencies, hospices, and medical staff leaders conducted by the Massachusetts Medical Society committee on advance directives, only one-third of respondents had trained their staffs on advance directives, three-quarters had done no community education, and 42% had no committee, task force, or designated group to implement the requirements of federal law.

8. Michigan Circle of Life. On 4/24/98, the Michigan Department of Community Health, the Michigan State Medical Society, the Michigan Catholic Conference, and Right to Life of Michigan unveiled a new organization, known as the Michigan Circle of Life. The group seeks to promote hospice care, pain management, and general awareness about end-of-life concerns among patients and physicians.

9. AMA's position on Reno ruling. On 6/5/98, Dr. Thomas Reardon, chair of the American Medical Association's Board of

Trustees, issued a statement following Attorney General Reno's ruling regarding prescription of lethal medication and the federal Controlled Substances Act. The statement said that, despite the AMA's adamant opposition to physician-assisted suicide, "we feel very strongly that involving the federal DEA, through the Controlled Substances Act, is not in the best interests of patients" because such action could make physicians fearful about providing adequate pain control for dying patients. The statement also said that "we stand ready and willing to work with the Clinton administration to protect dying patients and ensure that they don't view physician-assisted suicide as their only option."

10. Oregon research projects on end-of-life care. Dr. Susan Tolle, director of the Center for Ethics in Health Care at Oregon Health Sciences University, and Virginia Tilden, associate dean for research at OHSU's School of Nursing, will lead several research projects to improve end-of-life care. Oregon Health Sciences University has received \$598,351 from the Robert Wood Johnson Foundation and \$100,000 from the Nathan Cummings Foundation to conduct four projects over a three-year period:

- a. Removing barriers. Researchers will collect data about barriers to good end-of-life care for patients who die in hospice care, nursing homes, or hospitals. The project began with telephone surveys of almost 500 families and friends, completed in June 1998, which covered patient wishes about resuscitation measures, pain management, and issues involving communication with physicians, transportation, and finances. The personal stories will be published in a year and also will be discussed in forums statewide with health care professionals and others connected with hospitals, hospices, and nursing homes.
- b. Hospice coverage. Researchers will compile a policy paper describing the population of uninsured terminally ill Oregonians and suggesting ways to expand coverage.
- c. POLST form. Researchers will compile and present a guide for other states on how Oregon developed its Physician Orders for Life-Sustaining Treatment (POLST) form.
- d. Data-driven change. Researchers will help other states' leaders learn to access their own statistical information on death and dying as a tool to change policies.

11. Policy guide for state legislatures. On 7/1/98, the National Conference of State Legislatures and the Center to Improve Care of the Dying at George Washington University released a report, *State Initiatives in End-of-Life Care: A Policy Guide for State Legislators*, intended to provide state legislators with a comprehensive overview of the issues surrounding the end-of-life care debate. Funding for the report was provided by a grant from the Robert Wood Johnson Foundation. Copies of the report (item #6742) can be obtained by calling (303) 830-2054 or on the web at www.ncsl.org/programs/pubs/endoflife.

12. Recent articles

- a. Timothy E. Quill et al., *The Debate over Physician-Assisted Suicide: Empirical Data and Convergent Views*, 128 *Annals of Internal Medicine* 552 (1998) [summarizes available empirical data about end-of-life care and describes areas of general agreement about physicians' responsibility to their dying patients].
- b. Franklin G. Miller & Diane E. Meier, *Voluntary Death: A Comparison of Terminal Dehydration and Physician-Assisted Suicide*, 128 *Annals of Internal Medicine* 559 (1998) [authors conclude that terminal dehydration deserves careful consideration as an alternative to physician-assisted suicide].
- c. Susan W. Tolle, *Editorial: Care of the Dying: Clinical and Financial Lessons from the Oregon Experience*, 128 *Annals of Internal Medicine* 567 (1998) [summarizes recent improvements in end-of-life care in Oregon, produced in part by the debate over physician-assisted suicide].
- d. Daniel P. Sulmasy et al., *The Accuracy of Substituted Judgments in Patients with Terminal Diagnoses*, 128 *Annals of Internal Medicine* 621 (1998) [study found that surrogate decisionmakers correctly predicted the preferences of terminally ill patients for life-sustaining treatments in 66% of instances; accuracy of substituted judgment was better when certain factors were present].
- e. Diane E. Meier et al., *A National Survey of Physician-Assisted Suicide and Euthanasia in the United States*, 338 *New Eng. J. Med.* 1193 (1998) [a 1996 national survey of 1,902 physicians in the 10 specialties most likely to treat dying patients found that 36% would prescribe lethal medication if it were legal, 18.3% had received an assisted-suicide request, and 3.3% had written a prescription for lethal medication; in the case of active euthanasia, 24% would give a lethal injection if it were legal, 11.1% had received a request for lethal injection, and 4.7% had given a lethal injection].
- f. Daniel P. Sulmasy et al., *Physician Resource Use and Willingness to Participate in Assisted Suicide*, 158 *Archives of Internal Medicine* 974 (1998) [a random sample of 206 general internists in six urban areas revealed that 33% would participate in the suicide of a competent terminally ill patient with breast cancer making stable and persistent requests for physician-assisted suicide; physicians who were more conservative with financial resources in dealing with six other clinical scenarios were 6.4 times more likely to prescribe the requested lethal medication].
- g. Jane C. Weeks et al., *Relationship Between Cancer Patients' Predictions of Prognosis and Their Treatment Preferences*, 279 *JAMA* 1709 (1998), and Thomas J. Smith & Karen Swisher, *Editorial: Telling*

the Truth About Terminal Cancer, 279 JAMA 1746 (1998) [selected SUPPORT study data revealed that cancer patients who thought they were going to live for at least six months were more likely to favor life-extending therapy, that patients were substantially more optimistic (and less accurate) about their prognoses than their physicians were, and that patients who chose aggressive therapy had the same survival rate as those who chose palliative care but were more likely to have a hospital readmission, undergo attempted resuscitation, or die on a ventilator].

h. Roberto Bernabei et al., *Management of Pain in Elderly Patients with Cancer*, 279 JAMA 1877 (1998), and Charles S. Cleeland, *Editorial: Recommendations for Pain Management*, 279 JAMA 1914 (1998) [a study of 13,625 cancer patients aged 65 or older who were discharged from the hospital to Medicare- or Medicaid-certified nursing homes in five states revealed that up to between 25% and 40% were in pain every day and that 26% did not receive any painkilling agent at all; minority patients and older patients were most likely to receive inadequate pain relief].

i. American Society of Clinical Oncology (ASCO) survey of oncologists, issued 5/16/98 at ASCO meeting in Los Angeles [survey of 3,200 oncologists revealed that 64% have received requests for physician-assisted suicide or euthanasia, 22% support physician-assisted suicide, 6.5% support euthanasia, and 13% have participated in physician-assisted suicide or euthanasia; a majority reported that over 20% of their patients die in pain].

j. Ezekiel Emanuel et al., study on depression in the terminally ill, issued 5/19/98 at ASCO meeting in Los Angeles [survey of 988 terminally ill patients revealed that depression and heavy dependence on others for daily care needs were the leading reasons patients considered physician-assisted suicide or euthanasia; patient pain was not a determinative factor].

INTERNATIONAL DEVELOPMENTS

1. Australia

a. Proposed state legislation. In June 1998, the Tasmanian Community Development Committee recommended against the introduction of euthanasia laws, suggesting instead that more money be spent on palliative care and on publicizing existing laws that permit a patient to refuse treatment. The Committee had received 1,162 written submissions and heard evidence from 91 witnesses.

b. Manifesto presented to parliament. A group of physicians, lawyers, and philosophers seeking legalization of passive and active euthanasia presented their Manifesto for Self Determination to parliamentary president Heinz Fischer in February 1998. The government is considered unlikely to want a public euthanasia debate because it is currently investigating a physician for the murder of handicapped children by overprescription of painkillers during the Nazi euthanasia program.

c. Voluntary Euthanasia Research Foundation. Dr. Philip Nitschke's website, Deliverance (<http://www.ozemail.com.au/~dcar1946/deliverance>), has announced the formation of the Voluntary Euthanasia Research Foundation, which will conduct research into drugs and other means for assisting the terminally ill to die, publish a member newsletter, conduct education campaigns, and support physicians and others involved in assisted suicide. Access to the latest research will be available to subscribers only.

d. Euthanasia supporters to run for national parliament. Dr. Philip Nitschke is running for the Liberal Menzies seat in the national Australian parliament against MP Kevin Andrews, who sponsored the federal legislation that overturned the Northern Territory's Rights of the Terminally Ill Act. Reportedly, the euthanasia movement will run as many as 30 candidates in the next federal election, targeting marginal seats where less than three percent of the vote is needed to remove the sitting member and in which the incumbent MP voted for the Andrews legislation.

2. Canada

a. Canadian House of Commons. On 3/25/98, the Canadian House of Commons defeated by a vote of 169-66 a motion by MP Svend Robinson to establish a special committee to review the provisions of the Canadian Criminal Code dealing with euthanasia and physician-assisted suicide and bring an appropriate bill to the House. Reform proposals have included creating a "mercy" defense for physicians accused of aiding a patient's death or creating a new category of homicide called third-degree murder under which the judge would have discretion in sentencing a convicted physician.

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. Although the maximum prison sentence was 14 years, a judge sentenced Genereux on 5/13/98 to two years less

a day and three years probation. Genereux was freed on \$5,000 bail pending an appeal of his sentence. The College of Physicians and Surgeons of Ontario revoked Genereux's license in March for professional misconduct.

(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 2/27/98, at the conclusion of a preliminary hearing, Judge Hughes Randall discharged Dr. Morrison when he found the evidence was insufficient for a jury to convict her of the pending first-degree murder charge or any lesser charge. On 6/5/98, Crown prosecutors filed an appeal before the Nova Scotia Supreme Court. Prosecutors had declined to seek a preferred indictment on manslaughter (which would have forced a trial despite the judge's ruling) because they did not want the judge's ruling to be used as a precedent in other cases. Morrison's attorney has asked provincial Justice Minister James Smith to end the prosecution by entering a stay of proceedings.

c. Survey of physicians. A recent Canada-wide survey of 2,010 physicians revealed that 21% would agree to assist in a suicide, 30% were unsure, and 49% would refuse. Physicians in British Columbia and Quebec showed a much more permissive attitude than physicians in other regions. The survey results were to be published by Dr. Douglas Kinsella in the Canadian Medical Association Journal.

3. China. On 3/10/98, Chinese legislator Hu Yamei called in the Ninth National People's Congress for a law permitting certain hospitals in Beijing and Shanghai to practice euthanasia on a trial basis. Her proposal would permit euthanasia only for patients suffering from incurable diseases and with the consent of the patient and family members.

4. Great Britain

a. Green paper. Debate continues over the Lord Chancellor's green paper, *Who Decides?*, which would give statutory recognition to living wills. Many religious, medical, and political leaders have expressed their fear that enacting legislation might bring the country closer to euthanasia.

b. Jane Macdonald. Annie Lindsell's battle to legalize euthanasia is being continued by her friend, Jane Macdonald, a 49-year-old woman who has multiple sclerosis, breast cancer, and osteoporosis. Lindsell's campaign for a change in the law was reflected in a TV documentary, "Fighting for Dignity," broadcast on 3/24/98.

c. Dr. Dave Moor charged with murder. In 1997, after prominent physician Dr. Michael Irwin announced that he had helped at least 50 patients to die, general practitioner Dr. David Moor (who has since retired) reported that he had helped at least 100 patients to die. Subsequently, Dr. Moor was arrested and then released on bail in connection with the death on 7/19/97 of George Liddell, an 85-year-old cancer patient. On 6/10/98, Moor was charged with murder and summoned to appear before Newcastle magistrates' court on 7/30/98. The Newcastle coroner had conducted an autopsy after halting cremation of Liddell's body.

d. TV documentary-drama. Granada Television aired a documentary-drama about Derek Humphry (founder of the Hemlock Society) in England in January 1997 and again in the United States on A&E network in September 1997. After Humphry complained about the program's contents, the British Broadcasting Standards Commission ruled that the program was unfair in several respects and ordered Granada Television to broadcast its ruling nationally on 7/5/98 and also print the ruling as a display advertisement in *The Time of London* on 6/25/98.

e. Gillian Jennison. On 6/29/98, Gillian Jennison, who had assisted in the suicide of her mother, 83-year-old Annie Wilkes, was sentenced to 12 months' probation. Jennison had admitted placing a pillow over her mother's head for up to two minutes after watching her take an overdose of sleeping pills. The judge, who could have sentenced Jennison to up to 14 years' imprisonment, found that Jennison was a caring and loving daughter who was motivated by her belief that her mother wanted to die rather than return to a nursing home.

f. British Medical Association. Representatives attending the British Medical Association's annual conference overwhelmingly rejected a motion which would have obliged physicians to "accede to clear requests by patients that their life should be allowed to end." However, leaders of the BMA plan to hold a conference to discuss physician-assisted suicide.

5. Japan. On 5/8/98, the Health and Welfare Ministry issued the results of a questionnaire survey (conducted during January-March 1998) of 1,577 physicians, 3,361 nurses, and 2,422 citizens regarding end-of-life care. Both physicians (77.4%) and nonphysicians (67.6%) thought that life-sustaining treatment should be avoided or abolished. While 58.8% of physicians said that they would tell a patient's family about an incurable illness before telling the patient, 65.7% of the general public preferred for the physician to tell the patient. Due largely to economic considerations, only 16.2% of the public--as opposed to 44.1% of physicians--thought that terminal patients could be cared for at home. A low percentage of respondents (1.8% of physicians, 2.6% of nurses, and 13.3% of citizens) indicated that they would personally opt for

euthanasia if terminally ill and in pain. Only 0.7% of physicians said that they would choose euthanasia for patients who feel intolerable pain or who are suffering from incurable diseases and are dying. The ministry expects to draw up a report on terminal care in June, based on the survey.

6. The Netherlands

a. Public opinion poll. A poll by Dutch radio concluded that 84% of voters were in favor of legalizing euthanasia if carried out by a physician under strict conditions.

b. Dutch elections. Prior to general elections held on 5/6/98, the D66 political party called for legislation legalizing euthanasia (which currently is permitted if certain requirements are met, even though technically it is illegal). As a result of the election, D66 (a member of the three-party ruling coalition with the Labour party and the Liberal VVD party) lost 9 of its former 24 seats in parliament but is expected to remain part of the ruling coalition. The Christian Democrat party, which opposed legalizing euthanasia, lost 8 of its former 36 seats.

c. Documentary. The award-winning documentary about democracy in Holland, "Sex, Drugs & Democracy," contains a favorable report on euthanasia. The film played in 100 cities across America and now is available in video stores.

d. New reporting requirements. Under a letter sent to the Dutch lower house of parliament by Dutch Health Minister Els Borst and Justice Minister Winnie Sorgdrager, beginning 11/1/98 Dutch physicians will have to report cases of euthanasia and assisted suicide to one of five regional committees consisting of experts in ethics, medicine, and law. The committees will assess whether established criteria have been met in each case and will send their opinions to the public prosecutions office and regional health inspector's office within six weeks of notification. If the committee believes that the physician has acted properly, the public prosecutions office will not instigate legal proceedings unless the Dutch Association of Prosecutors General feels there are strong grounds for doing so. The letter also announced that a study will be conducted to clarify the role of nurses and caregivers in cases involving end-of-life care.

7. Spain. On 3/4/98, excerpts of the videotape showing Roman Sampedro's assisted suicide were broadcast on the private television channel Antena 3, inflaming the national debate that was prompted by his death. The Spanish parliament has rejected a bill by leftist parties to legalize assisted suicide, but the conservative government and opposition parties agreed to send the issue to the Senate, which was expected to form a commission to consider the issue. The Catholic church, which is strongly opposed, issued a report in February 1998 titled, "Euthanasia Is Immoral and Antisocial."

8. Thailand. At a seminar entitled "Dying with Dignity" held in Bangkok in March 1998, a group of physicians proposed the use of euthanasia as a way of making money go further in economic hard times. However, the secretary general of the Thai medical council admitted that euthanasia was too sensitive an issue in Buddhist Thailand.

9. Roman Catholic church. On 6/30/98, Pope John Paul II issued an apostolic letter, Ad Fidem Tuendam (To Defend Faith), which makes unconditional acceptance of church teaching on "definitive" truths binding under canon law. A separate commentary written by Cardinal Joseph Ratzinger specified opposition to euthanasia as one of the "definitive" truths and made clear that Catholic theologians, priests, and religious superiors rejecting church teaching would be subject to penalties ranging from a warning to excommunication. The apostolic letter addressed the church's "profession of faith," a list of essential Catholic beliefs that the pope reformulated in 1989.

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