



## Recent Developments in Physician-Assisted Suicide

March 1999

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### LITIGATION

1. *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.

2. *Sampson v. Alaska*, No. 3AN-98- CIV(Alaska Super. Ct.). On 12/15/98, Kevin Sampson (a 43-year-old man who is HIV-positive) and "Jane Doe" (a female cancer patient in her 60's who is a physician) filed suit in Alaska Superior Court in Anchorage challenging Alaska's ban on physician-assisted suicide based on state constitutional claims of privacy, liberty, and equal protection. The suit is sponsored by the Compassion in Dying Federation.

3. Colorado litigation. In February 1996, retired state trial court judge Robert Sanderson filed a petition asking the Prowers County District Court for authority to execute a power of attorney authorizing his wife to have a physician end his life by lethal injection, should he be stricken by a debilitating illness. In December 1998, Judge Norman Arends dismissed the lawsuit, ruling that case law had established that laws against physician-assisted suicide do not violate the constitutional right to equal protection or due process. Judge Arends said that the issue of physician-assisted suicide is one of public policy and should be taken up by state legislatures.

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### LEGISLATION

1. Arkansas. On 2/10/99, Arkansas state representatives passed a bill that would make it a felony for a physician to carry out a medical procedure or prescribe drugs for the purpose of ending a patient's life. The bill was sent to the Senate on a vote of 89 to 3.

2. Hawaii

a. Blue Ribbon Panel's report. Governor Ben Cayetano's Blue Ribbon Panel on Living and Dying with Dignity issued a 101-page report in June 1998, recommending by a vote of 11-7 that the state legislature legalize physician-assisted suicide and "physician-assisted death" (active euthanasia) for "mentally-alert patients who either are terminally ill or suffer intractable and unbearable illness that cannot be cured or successfully palliated." The panel proposed a set of safeguards (including repeated requests to die made by the patient to two physicians, a psychiatrist, and a social worker) as part of a draft Model Hawaii Law adapted from the Model State Act published in the *Harvard Journal on Legislation* in January 1996.

b. Proposed legislation. Governor Cayetano announced that he would introduce bills in the

state legislature in 1999 to legalize physician-assisted suicide and active euthanasia. On 2/6/99, however, members of the House Health Committee voted unanimously to hold a physician-assisted suicide bill in committee, effectively killing the bill. A similar measure remains alive in the Senate.

3. Louisiana. State Senator Lynn Dean of St. Bernard Parish reportedly is considering introducing legislation legalizing physician-assisted suicide in the Louisiana legislature in 1999.

#### 4. Maine

a. PRO 916. Following the Maine legislature's rejection in February 1998 of a bill that would have legalized physician-assisted suicide, assisted suicide supporters have launched the PRO 916 campaign to collect petition signatures to put the proposal on the ballot in 1999 or 2000. Supporters must collect voter signatures amounting to 10% of the total vote cast in the November 1998 race for governor. Because of low voter turnout in that election, only about 42,000 signatures will be needed (a reduction of about 9,000 signatures from the prior number required).

b. Mainers for Death with Dignity. The group "Mainers for Death with Dignity" seeks legislation similar to the Oregon Death with Dignity Act or, failing that, a referendum. The proposed legislation differs from the Oregon law in that it would require consultation by a pain specialist.

5. Massachusetts. On 1/4/99, the Special Subcommittee on End of Life Care, formed by House Judiciary Committee chair John Rogers, issued a report, based on a 15-month study, recommending formation of a permanent governor's task force on end-of-life care. The report also recommended establishing a 24-hour hot line, compiling a resources guide, creating a pilot program for the terminally ill and their caregivers, improving education of medical students and health care professionals, improving HMO end-of-life care standards, standardizing hospice benefits, and promoting better advance care planning.

#### 6. Michigan

a. Proposal B defeated. On 11/3/98, by a margin of 71% to 29% (2,090,357 to 853,957), Michigan voters defeated Proposal B, a ballot measure that would have legalized physician-assisted suicide for Michigan residents and near relatives from out of state. Supporters of Proposal B spent only \$75,000 on advertising, while opponents spent \$5.5 million. As a result of Proposal B's defeat, Michigan law continues to provide (under a new law that became effective 9/1/98) that physician-assisted suicide is a crime punishable by up to 5 years' imprisonment and a \$10,000 fine. Members of Merian's Friends, the group that initiated Proposal B, do not plan to meet to decide on their next course of action until April 1999.

b. Pain management bills stalled in legislature. On 12/8/98, the Michigan legislature passed a bipartisan package of bills on pain management (H.B. 4681 through 4686). The bills, which were expected to be signed by Michigan's governor early in 1999, are effective 4/30/98. The legislation will create an advisory committee to work with licensing boards in developing an integrated approach to pain management, require the Michigan Department of Consumer and Industry Services to develop and distribute an informational book on the appropriate use by physicians of controlled substances to treat pain, and require health insurance companies to provide information to subscribers about benefits for the treatment of intractable pain.

7. North Dakota. Senator Ralph Kilzer has introduced a bill in the North Dakota legislature that would revoke a health care provider's license for assisting in a suicide and would make the provider liable to pay damages in any potential lawsuits.

8. Oklahoma. On 11/1/98, the Assisted Suicide Prevention Act (Senate Bill 1243) became effective. The Act prohibits dispensing medication to cause the death of terminally ill patients and provides for injunctive relief, monetary damages, and suspension of medical licenses for violations of the Act. The Act exempts physicians who give medicine to relieve pain, even if the medication or procedures may increase the risk of death.

#### 9. Oregon

a. Deaths by assisted suicide. Since the Oregon Health Division issued its first report on assisted suicide deaths in August 1998, at least six more patients have used lethal prescriptions to die. The Health Division is expected to issue a report for all of 1998 sometime in February 1999. As of January 1999, Compassion in Dying reported that it had been contacted by 59 patients who were eligible for assisted suicide. Of that number, 38 had died, 11 of them by assisted suicide. Of the remaining 27 who died, four obtained

prescriptions for lethal medication but never used them, five died from double effect dosages of morphine, 14 died naturally without requesting a prescription, and the circumstances of four deaths were not known. Ann Jackson, executive director of Oregon Hospice Association (which opposed the Oregon Death with Dignity Act), said that the Act was "working well" and "giving Oregonians one more option at the end of life."

b. Oregon Health Plan. Based on an earlier decision of the Oregon Health Services Commission to include physician-assisted suicide as part of comfort care services, the Oregon Health Plan began covering physician-assisted suicide for low-income Oregonians on 12/1/98. Officials estimate that the Health Plan will pay less than \$45 for the medication, between \$9 and \$81 for each visit to a physician's office, and \$30 to \$118 for each counseling session.

c. Task Force on Pain and Symptom Management. On 12/17/98, the 30-member Task Force on Pain and Symptom Management, appointed pursuant to 1997 legislation, approved recommendations that will be made to Oregon's governor and the 1999 legislature. The Task Force focused particularly on treating chronic pain. Recommendations include creation of an Office of Chronic Pain Management, adoption of a Pain Patient's Bill of Rights, improvement of the existing Intractable Pain Act, better education of health professionals, improved access to hospice care, a new system for managing chronic pain patients, an updated statement from the Board of Medical Examiners about treatment of chronic pain, and greater emphasis on pain treatment under the Oregon Health Plan. The task force arrived at its recommendations after holding public hearings throughout Oregon.

d. 1999 Oregon legislature. Four pending bills would affect the Oregon Death with Dignity Act:

(1) SB 19. Senate Bill 19, introduced 1/12/99 at the request of the Senate Interim Judiciary Committee, would amend the Act to permit a health care provider to impose sanctions (including loss of privileges or termination of contract) on another health care provider who participates in the Act after being notified that participation is prohibited. Sanctions may be imposed only for participation while on the premises of and while acting as an employee or independent contractor of the sanctioning health care provider.

(2) SB 491. Senate Bill 491, introduced 2/2/99 and under consideration by the Senate Judiciary Committee, would make a number of changes to the Act: (1) the Act would define "capable" rather than "incapable"; (2) pharmacists would be included as health care providers; (3) a patient would have to show documentation of Oregon residency such as an Oregon driver's license, voter registration, or a recent tax return; (4) any prescription for assisted suicide would have to specify its intended use; (5) a psychiatric evaluation would be required; (6) another adult would have to be present when the patient takes the lethal medication; (7) patients could use the medication only at a health care facility, at the patient's home, at the home of another consenting person, or at the medical office or clinic of the attending physician; (8) the attending physician would have to recommend that the patient notify his or her family; (9) information about a death could be made available to the state Board of Medical Examiners, local district attorneys, law enforcement officers, and the state medical examiner, and evidence collected would be admissible as evidence in a judicial or administrative proceeding; (10) a new panel would advise the Oregon Health Division about how to handle a physician who has not complied with the law; (11) physicians participating in assisted suicide on the premises of a health care facility that forbids it could be penalized; (12) patients would have to be informed that the suicide process could take more than three hours.

(3) HB 2374. House Bill 2374, introduced 1/26/99 by Representative Roger Beyer, would prohibit use of state funds to pay for costs associated with services necessary to implement the Act.

(4) HB 2547. House Bill 2547, introduced 2/2/99 by Representative Kevin Mannix, would require more extensive documentation of assisted suicides, require the Oregon Health Division to review all records rather than just a sample, allow the state attorney general's office to review documents filed about patients who use the Act, and make the information collected a public record available for inspection by the public after confidential

information has been deleted.

## 10. Federal legislation

a. Lethal Drug Abuse Prevention Act. The Lethal Drug Abuse Prevention Act of 1998 (H.R. 4006 and S. 2151) died in both houses of Congress upon adjournment but may be renewed in 1999. The Act would have amended the Controlled Substances Act to revoke the prescribing privileges of a physician who prescribes medication to assist in suicide or euthanasia. Nearly 60 medical and patient advocacy groups had expressed opposition to the Act because of concerns that the proposed legislation would discourage effective pain management and threaten patients' rights to privacy.

b. Pain Management Task Force. On 11/13/98, the Pain Management Task Force formed by Oregon Senator Ron Wyden and Representative Darlene Hooley held its first public event, a briefing at which speakers described the need for better pain management education among both medical providers and the public. At the briefing, Dr. Kenneth W. Kizer, Undersecretary for Health of the U.S. Department of Veterans Affairs, announced that the department will include pain as the fifth vital sign to be monitored in all Veterans Affairs facilities nationwide beginning in January 1999.

c. Proposed legislation to improve end-of-life care. Oregon Representative Darlene Hooley, together with Representatives Sander Levin and Jim Greenwood, were expected to introduce legislation during February 1999 to improve aspects of end-of-life care, such as patients' ability to specify what medical care they wish to receive.

d. Conquering Pain Act of 1999. Oregon Senator Ron Wyden has said that he will introduce legislation by early March 1999, called the Conquering Pain Act of 1999, that would require the federal government to develop and operate a pain management program making information on pain care widely available, create six pain management centers at academic institutions across the country, pay for demonstration projects, and increase reimbursement for pain care in assisted living facilities and for in-home hospice patients. Oregon Representative Darlene Hooley intends to introduce companion legislation in the House.

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## OTHER NATIONAL DEVELOPMENTS

### 1. Michigan

a. Criminal charges for death of Thomas Youk. On 9/17/98, Dr. Kevorkian assisted in the death of Thomas Youk, a 52-year-old man with advanced Lou Gehrig's disease, by giving him a lethal injection. On 11/22/98, Dr. Kevorkian appeared on the television program "60 Minutes" (which also aired a videotape of Youk's death) and challenged Michigan authorities to prosecute him for euthanasia. As a result of his actions, Oakland County Prosecutor David Gorcyca charged Kevorkian with first-degree murder, assisted suicide, and illegal delivery of controlled substances. The murder charge could lead to a mandatory life sentence; the other two charges are subject to prison sentences of up to 5 years and 7 years, respectively. Kevorkian was released on \$750,000 personal bond, subject to his agreement not to participate in any action involving the taking of a human life. On 12/16/98, Kevorkian pleaded not guilty. Kevorkian is representing himself with advice from a law professor and several lawyers; Geoffrey Fieger, who acted as Kevorkian's attorney in prior criminal cases in which Kevorkian was acquitted, is not representing Kevorkian in the Youk case. The case has been assigned to Judge Jessica Cooper, who clashed repeatedly with prosecutors during a 1996 assisted suicide trial. A prosecution motion to keep out evidence about Youk's daily suffering and a defense motion to dismiss the murder and assisted suicide charges will be argued 3/3/99. Trial is set for 3/22/99. A statewide telephone poll of 300 Michigan residents conducted by EPIC/MRA of Lansing following the "60 Minutes" broadcast showed that only 37% would find Kevorkian guilty of murder but 62% would find him guilty of assisting a suicide. A national CBS telephone poll of 11,158 respondents, on the other hand, showed that 19% believed Kevorkian should face murder charges, 27% a lesser charge, and 39% no punishment at all.

b. Recent assisted suicides. No deaths in which Dr. Jack Kevorkian has assisted (other than Thomas Youk's) have been identified since June 1998. However, Kevorkian stated in an newspaper interview that he has assisted in "well over 130" deaths.

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). In December 1998, as a result of the death of Thomas Youk, Department director Kathleen M. Wilbur announced that a proceeding would be filed in January in Ingham County Circuit Court charging him with the felony of practicing medicine without a license, a charge that could lead to a 2-year prison sentence.

d. Misdemeanor charges against Kevorkian and Reding. On 11/4/98, after a month-long trial, a jury convicted Dr. Jack Kevorkian of the misdemeanors of resisting arrest and obstructing a police officer as a result of an altercation that occurred when a patient's body was dropped off at the hospital. Kevorkian elected to have \$900 in fines and court costs paid by a supporter, rather than serve 60 days in jail. Kevorkian also was sentenced to two years of probation, during which he cannot violate any law or ordinance. Kevorkian's assistant, Dr. Georges Reding, was acquitted by the jury.

e. Dr. Kevorkian's civil action against the American Medical Association. On 5/27/97, Wayne County Circuit Judge Sharon Finch denied the AMA's request to dismiss a \$10 million libel suit filed against the AMA and the Michigan State Medical Society by Dr. Kevorkian, rejecting the defendants' free speech claims. The case was argued before the Michigan Court of Appeals on 1/6/99, with Geoffrey Fieger appearing on Kevorkian's behalf.

f. Kevorkian's attorney loses in governor's race but intends to run for Congress. Dr. Kevorkian's attorney Geoffrey Fieger, who ran for Michigan governor as the Democratic nominee, lost to incumbent Governor John Engler by a margin of 2-to-1. However, Fieger has announced that he intends to run as a Democratic candidate against U.S. Senator Spencer Abraham in 2000.

2. Illinois. The Cook County medical examiner's office has issued a homicide ruling in the death of Henry Taylor, a 69-year-old man with a terminal kidney disease who died 9/30/98 in Columbia Olympia Fields Osteopathic Hospital and Medical Center shortly after receiving an injection of a large dose of morphine and potassium chloride. Police have indicated that, if the osteopathic physician involved is charged, he will be charged with murder.

### 3. New Jersey

a. Gannett New Jersey poll. According to a Gannett New Jersey poll of 553 adults on health-related issues that was released on 11/29/98, respondents said by a 4 to 1 margin that physicians should be permitted to help terminally ill patients "die with dignity." More than half said that physician-assisted suicide should be legal in New Jersey.

b. Winthrop Drake Thies. Winthrop Drake Thies, president of Hemlock Society of New Jersey since 1995, is under investigation for alleged violation of New Jersey's assisted suicide law. Thies was detained on 8/13/98 at the home of a terminally ill cancer patient who had planned "self-deliverance" with drugs she had obtained privately, but who was stopped when authorities confiscated the drugs. Thies says that, if he is indicted, he will use his case to test the constitutionality of the 30-year-old New Jersey statute.

4. Washington. On 2/1/99, prosecutors dismissed without prejudice a second-degree murder charge against Dr. Eugene Turner. Turner was charged with suffocating 3-day-old Conor McInerney on 1/12/98, when the infant began to revive after being declared dead. The infant's parents filed a \$1.5 million damage claim against Olympic Memorial Hospital in Port Angeles in June 1998. Turner may face a civil lawsuit from the parents. In addition, he faces a hearing before the state Medical Quality Assurance Commission on 5/26/99.

5. Hemlock Society. Hemlock Society USA has launched a program called "Caring Friends," which will be staffed by trained volunteers who will provide information and support to terminally ill members of Hemlock who seek to hasten their own deaths. Volunteers are expected to "coach" patients and to be present when a member chooses to die, but not to perform any illegal acts such as providing the means of death or physically assisting the member to die.

6. National study. In January 1999, the University of Chicago's National Opinion Research Center released a study showing that 70% of Catholics said that they were in favor of euthanasia, compared with 65% of Protestants.

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## MEDICAL DEVELOPMENTS

1. Complaints to state medical boards for undertreatment of pain. With the help of the Compassion in Dying Federation, Beverly Bergman filed a complaint with the Medical Board of California, asking that the

physician for her father, William Bergman, be disciplined for failing to provide adequate pain relief prior to his death in February 1998 from lung cancer. In August 1998, the board found that pain management for Bergman "was indeed inadequate" but declined to take any disciplinary action. Although the complaint involving Bergman was unsuccessful, such complaints are on the rise. David Joranson, director of the Pain and Policy Studies Group at the University of Wisconsin, found in a 1997 survey that 8.1% of state medical board members questioned knew of physicians who had been either investigated or disciplined for undertreating pain, as compared to only 5% in 1991.

2. AMA training begins. In October 1998, the AMA launched its Educating Physicians on End of Life Care project (funded by the Robert Wood Johnson Foundation) with the first of four programs to train 250 physicians on hospice care. The AMA hopes the trainees and other physicians trained by them will reach all practicing physicians within the United States within a few years.

3. Survey of physicians. In a national survey of 1,902 physicians conducted by Mount Sinai School of Medicine in New York, about 8% of respondents reported ever having participated in physician-assisted suicide or active euthanasia. However, if physician-assisted suicide were legal, 36% said they would hasten death under some circumstances and 24% said they would provide a lethal injection. Physicians most willing to comply with patient requests for aid in dying were general internists and physicians specializing in pulmonary or geriatric care.

4. California Conference on Physician Assisted Dying. On 11/13/98, the Death with Dignity National Center of San Mateo (which supports legalization of physician-assisted suicide) held a conference on physician-assisted suicide in San Francisco, which was co-sponsored by Mayor Willie Brown and the San Francisco Medical Society. At the conference, the Center released a survey of 750 Californians conducted November 7-8 by Santa Monica-based Fairbank, Maslin, Maullin & Associates, which indicated that 71% favored allowing physicians to help terminally ill patients end their lives, 67% would vote for legalizing physician-assisted suicide, 64% believed there was too much government involvement in an individual's decision about physician-assisted death, and 59% would be more likely to vote for a legislator who supported physician-assisted suicide.

5. Michigan's Citizens for Compassionate Care. Citizens for Compassionate Care, the coalition that worked to defeat Proposal B (which would have legalized physician-assisted suicide in Michigan), has launched a campaign to educate the public about alternatives to assisted suicide. A 60-second television commercial began running statewide in November 1998, and a website has been established (<http://ccc.infobase.org>).

6. Nebraska. A statewide nonprofit organization, the Nebraska Coalition for Compassionate Care, has been formed to promote quality care at the end of life and prevent assisted suicide or euthanasia. The coalition's advisory and operations boards are made up of representatives of health care, ethics, long-term care, religion, pastoral care, education, law, business, and public policy.

7. AMA House of Delegates. At its meeting in Hawaii in December 1998, the AMA House of Delegates reaffirmed its opposition to legalization of physician-assisted suicide or euthanasia. The vote was in response to the recommendation of Hawaii's Blue Ribbon Panel that both practices be legalized. The House of Delegates also declined to take action on a proposal to make opiate drugs available to cancer patient by fax, instead referring the issue to the board of directors for further study.

8. Advocacy groups assert patient right to request adequate pain treatment. On 12/16/98, Compassion in Dying Federation, Americans for Better Care of the Dying, the American Academy of Pain Management, the American Pain Foundation, the Medicare Rights Center, and Choice in Dying sent a letter to the Health Care Financing Administration asking that California medical providers be investigated for not complying with the Patient Self-Determination Act. The groups claim that the Act requires that patients be told of their right to request adequate pain treatment. The groups are making California their test case because the right to know about pain-control options is especially well defined in California's Pain Patient's Bill of Rights, enacted in 1997. The American Bar Association, California Hospice, the Pain and Policy Studies Group at the University of Wisconsin, and the Southern California Cancer Pain Initiative sent separate letters to HCFA.

9. Michigan State Medical Society task force. The Michigan State Medical Society has formed a task force to study ways to improve end-of-life care in Michigan. The task force is chaired by Dr. Cathy O. Blight, president of the medical society.

10. Michigan Commission on End-of-Life Care. In January 1999, Michigan Governor John Engler announced that he plans to appoint a Commission on End-of-Life Care.

11. VA pain assessment program. In January 1999, the U.S. Department of Veterans Affairs began routine pain assessment in all of its facilities nationwide. Assessment was expected to be done verbally by asking the patient to rate his or her pain on a scale of 1 to 10. Following assessment, the physician is expected to select pain treatment based upon a patient's specific needs.

12. New York survey on use of advance directives. On 1/5/99, IPRO (New York's largest independent health care quality review agency) released the findings of a study of 56 New York hospitals. The study showed that only 64% of elective surgery patients and 63% of congestive heart failure patients received any information about advance medical directives before or during admission. Of the 43 patients who died, 37% did not have an advance directive documented in their medical chart. The study was part of a statewide effort to increase awareness about advance directives and encourage health care providers to bring up the topic with patients.

13. New York State Partnership to Improve End-of-Life Care. In January 1999, a 38-member coalition known as the New York State Partnership to Improve End-of-Life Care received a \$446,500 grant from the Robert Wood Foundation to improve care of the dying. The state Department of Health will be the lead organization, along with a steering committee. The group will focus on developing a dialogue about end-of-life concerns, reducing health professionals' fears of unwarranted legal reprisals for prescribing pain medication, encouraging advance end-of-life planning, improving end-of-life care in nursing homes, and reducing financial barriers to end-of-life care.

#### 14. Recent articles

a. David W. Kissane, Annette Street & Philip Nitschke, *Seven Deaths in Darwin: Case Studies Under the Rights of the Terminally Ill Act, Northern Territory, Australia*, 352 *Lancet* 1097 (1998) [case studies of seven patients who made formal use of the Rights of the Terminally Ill Act, four of whom died under the Act].

b. David M. Smith & David Pollack, *A Psychiatric Defense of Aid in Dying*, *Community Mental Health Journal* 547 (Dec. 1, 1998) [two physicians affiliated with the Oregon Health Sciences University defend the Oregon Death with Dignity Act].

c. Peter A. Singer, Douglas K. Martin & Merrijoy Kelner, *Quality End-of-Life Care: Patients' Perspectives*, 281 *JAMA* 163 (1999) [in-depth interviews with 126 patients (including dialysis patients, AIDS patients, and residents of a long-term care facility) revealed that the most important elements of end-of-life care from the patients' perspectives were avoiding inappropriate prolongation of dying (61.1%), strengthening relationships with loved ones (38.9%), achieving a sense of control (38.1%), relieving burden on loved ones (38.1%), and receiving adequate pain and symptom management (22.2%)].

d. M. Kim Marvel et al., *Soliciting the Patient's Agenda: Have We Improved?*, 281 *JAMA* 283 (1999) [study showed that family practice physicians solicited patient concerns in only 75.4% of 264 visits; the patient's complete agenda was solicited in only 28% of cases; physicians redirected the patient's opening statement after a mean of 23.1 seconds; patients allowed to complete their statement of concerns used only 6 seconds more on average than those who were redirected before completion of concerns].

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## INTERNATIONAL DEVELOPMENTS

### 1. Australia

a. Dr. Nitschke. Dr. Philip Nitschke has announced that he plans to intensify his search for easily synthesized compounds to create a suicide pill. Dr. Nitschke also plans to set up a euthanasia clinic in Melbourne that would provide information to patients about how to obtain illegal drugs to end their lives. Victoria state government officials have said that the state medical board and police would be responsible for responding if Dr. Nitschke acted unethically or illegally.

b. Dr. Syme. On 11/2/98, Dr. Rodney Syme, a urologist who is also the president of the Voluntary Euthanasia Society of Victoria, admitted in *The Age* newspaper that he had helped a 60-year-old cancer patient to die through terminal sedation. Dr. Syme indicated that he had reported the death to the coroner in September 1998 and requested an inquest in order to clarify Victorian law on double effect and terminal sedation. Dr. Syme's actions have provoked a debate in Victoria, but both the police and the Minister for Health and Aged Care have indicated that they have no plans to take any steps against Dr. Syme.

2. Brazil. In January 1999, a congressional commission recommended reducing the maximum penalty for euthanasia from 20 years to five.

### 3. Canada

a. 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 11/19/98, Justice Jill Hamilton of the Nova Scotia Supreme Court ruled that Judge Randall's ruling on the sufficiency of the evidence was within his jurisdiction and not subject to judicial review. The Nova Scotia Public Prosecution Service announced on 12/11/98 that it will not take any further action against Dr. Morrison. However, the Nova Scotia College of Physicians and Surgeons is still investigating a formal complaint against Dr. Morrison in connection with Mills' death, with a hearing expected in spring 1999.

b. 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.

(1) Lenient sentence appealed. On 11/23/98, the Saskatchewan Court of Appeal held that the sentence was improper and Latimer must serve at least 10 years with no chance for parole; Latimer remains free pending an appeal to the Supreme Court of Canada.

(2) Public opinion poll. The Angus Reid Group conducted a telephone poll of 1,501 Canadians during December 10-20, 1998, regarding the Latimer case. Results showed that 73% believed that Latimer acted out of compassion and should receive a more lenient sentence, while only 23% thought he should pay the full penalty for second-degree murder. On the subject of "mercy killing," 41% believed that it should not be against the law under the appropriate circumstances; 38% believed that it should remain illegal but people who do it should be treated with leniency and compassion; only 18% believed that it should be treated like any other murder. Older respondents were more likely than younger people to favor leniency.

c. Russel Ogden. In October 1998, Simon Fraser University in Vancouver, British Columbia, apologized to former criminology student Russel Ogden for failing to support him in 1994 when he had to defend in coroner's court the research techniques he used in discovering 34 cases of illegal assisted suicides of AIDS patients. The university also agreed to pay Ogden \$10,000 for his costs in defending himself in the coroner's court. The coroner's court ultimately decided not to find Ogden in contempt for refusing to release the sources he quoted in his Master's thesis.

4. France. In January 1999, a group of 132 members of the intellectual and scientific elite in France signed a call in *France Soir* for the right to assisted suicide.

5. Germany. Reverend Rolf Sigg, the 82-year-old Swiss euthanasia pioneer and former managing director of the Swiss group Exit, admits that he has accompanied critically ill German patients to their deaths five times. Although this act is not of itself illegal in Germany, the helper is required to call for a physician once the patient has taken lethal medication. Sigg admits he did not call for a physician and says he is prepared to risk arrest because he would like to see the euthanasia issue decided in the German courts.

#### 6. Great Britain

a. British Medical Association. The British Medical Association is reviewing the question of end-of-life care and has agreed to hold a conference to debate the ethics of physicians assisting patients to commit suicide. In October 1998, physicians opposed to euthanasia, who have formed a group called First Do No Harm, launched a campaign against any relaxation of existing laws.

b. Dr. Moor. 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. Dr. Moor was free on bail until the plea hearing, which was set for 10/19/98.

c. Poll of physicians by Sunday Times of London. On 11/15/98, the Sunday Times of London published the results of a poll of 300 general practitioners through a confidential

questionnaire. Results included the following:

- (1) 69% said that living wills were a good idea and 44% that they should have more legal force.
- (2) 68% said that a physician should be able to assist death by withdrawing or withholding life-sustaining treatment.
- (3) 60% said that a physician should be able to administer large doses of painkillers even though doing so would shorten life.
- (4) 18% said that physicians should be able to prescribe lethal medication that patients can take with the intention of killing themselves.
- (5) 14% admitted having broken the law by helping patients to die at their request, with an average of five assisted deaths apiece.

d. Investigation of hospital patients' deaths. The deaths of at least 60 hospital patients in Derby, Surrey, Kent, and Sussex are under investigation by police and health officials after relatives and nurses complained that physicians permitted patients who were not terminally ill to die of dehydration. The most serious case involves 40 deaths at the Kingsway Hospital in Derby, which a team of eight or nine police detectives have been investigating since November 1997.

7. Hong Kong. In October 1998, Tse Man-shing, secretary of the Hong Kong Medical Council, reported that the council will discuss euthanasia in its regular review on the code of conduct for physicians.

8. Israel. On 10/5/98, Itai Arad, a 49-year-old patient with Lou Gehrig's disease, died 24 hours after he was injected with massive quantities of anesthetic and disconnected from a respirator. Arad had obtained a court order and approval of the Health Ministry before the action was taken by his physician, Dr. Avinoam Reches of Hadassah Hospital in Ein Kerem.

#### 9. Netherlands

a. Anti-euthanasia cards. More than 10,000 people in the Netherlands now carry anti-euthanasia "declaration of life" cards, which are being distributed throughout the country by pro-life groups.

b. Support and Consultation on Euthanasia in the Netherlands project. The Royal Dutch Medical Association and the National General Practitioners' Association have developed a national project, known as Support and Consultation on Euthanasia in the Netherlands (SCEN), that will permit physicians who have received requests for euthanasia to consult by telephone with trained, professional staff who can offer practical medical or legal advice or arrange a formal consultation. SCEN was designed to increase compliance with the requirement for consultation with an independent physician.

10. Switzerland. The congress of World Federation of Right to Die Societies, including 100 delegates from 20 countries, met in Zurich, Switzerland, in October 1998 to discuss the theme of "death with dignity." The federation was formed in 1980 and includes 34 organizations. Meinrad Schar, former president of Exit, a Zurich-based euthanasia organization, reported on the Swiss policy of permitting assisted suicide. According to Schar, the Swiss penal code says that assisted suicide is not punishable, provided it is not done for enrichment purposes and that the person concerned carries out the final death act. Exit helps about 120 terminally ill patients to die each year, by having two "helpers" provide a glass of water containing a triple dose of a powerful barbiturate that kills painlessly. In order to receive assistance from exit, the patient must obtain a medical certificate describing an intolerable health problem, a pessimistic prognosis must be furnished, and the patient must be older than 18, in full knowledge of his or her citizenship rights, and mentally sane. The patient must be able to sign a document authorizing assistance and to swallow the contents of a glass without aid. About 60% of all cases involve cancer patients, 15% neurological illness (such as Parkinson's disease), 10% bone diseases, 10% cardiovascular disease, and 5% AIDS.

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