



## Recent Developments in Physician-Assisted Suicide

February 2002

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### LITIGATION

1. Cooley v. Granholm, No. 99-CV-75484 (E.D. Mich.), appeal pending (6th Cir.). On 11/12/99, Professor Robert Sedler filed a federal lawsuit against Attorney General Jennifer Granholm and the Michigan Board of Medicine on behalf of two Michigan physicians, Roy Cooley and M.W. El-Nachef. The plaintiffs claimed that Michigan's ban on assisted suicide violates the Fourteenth Amendment right "to be relieved from unbearable pain and suffering." On 12/20/00, Judge Nancy G. Edmunds granted the defendants' motion for summary judgment and dismissed the complaint. On 1/12/01, plaintiffs appealed to the Sixth Circuit Court of Appeals. The final brief on appeal was filed on 6/4/01. Both sides have requested oral argument.
2. Oregon v. Ashcroft, No. 01-CV-1647 (D.Or. filed 11/7/01). For a summary of recent developments regarding the Oregon Death with Dignity Act, see Robert Steinbrook, *Physician-Assisted Suicide in Oregon—An Uncertain Future*, 346 New Eng. J. Med. 460 (2002).
  - a. Case Filed. On 11/7/01, in response to Attorney General John Ashcroft's directive that prescribing lethal medication was not a legitimate medical purpose under the Controlled Substances Act (CSA) [SEE DISCUSSION BELOW], the State of Oregon filed a complaint in the U.S. District Court for the District of Oregon seeking a declaratory judgment and injunctive relief.
    - (1) Intervenors. In November 2001, the court allowed two separate groups to intervene as plaintiffs supporting the position of the State of Oregon. The first group consists of a Salem physician (Dr. Peter Rasmussen) and a Salem pharmacist (David Hochhalter). The second group consists of four individual patients (Richard Holmes, James Romney, Karl Stansell, and Jane Doe #1); Karl Stansell later died after taking lethal medication. The court denied the request of Compassion in Dying of Oregon to intervene. On 1/22/02, the court allowed another group of five additional individual patients (Melissa Bush, William Gilbertson, Roger Watanabe, Jane Doe #2, and John Doe #1) to intervene; Jane Doe #2 later died of her illness. The latter intervenors claimed that the existing plaintiff-intervenors might not survive adjudication of the case due to terminal illness.
    - (2) Defendants. Named defendants include Attorney General John Ashcroft, Asa Hutchinson (Administrator of the Drug Enforcement Administration), Kenneth W. Magee (Director of the Portland DEA office), the United States of America, the U.S. Department of Justice, and the U.S. Drug Enforcement Administration.
    - (3) Class action. On 11/16/01, plaintiff-intervenors filed a motion to certify the case as a class action. The court has not yet ruled on the motion.
    - (4) Amicus briefs. The court allowed the following organizations to file amicus briefs: Physicians for Compassionate Care, Not Dead Yet, American Center for Law and Justice, National Right to Life Committee and Oregon Right to Life, the American Academy of Pain Management and Coalition of Distinguished Pain and Palliative Care Professionals, ACLU Foundation of Oregon, and New York Physicians.
  - b. Temporary restraining order granted. After a hearing on 11/8/01, Judge Robert E. Jones granted a temporary restraining order preventing enforcement of Ashcroft's ruling for a period of 10 days, on the ground that "irreparable injury" otherwise might occur to "Oregon physicians, terminally-ill patients, and

the sovereign and regulatory interests of Oregon."

c. Temporary restraining order extended. On 11/20/01, Judge Jones conducted a second hearing. With respect to the plaintiffs' motion for a preliminary injunction, the court found "serious questions on the merits and that the balance of hardships tips sharply in favor of the plaintiffs." The parties then stipulated that the temporary restraining order could be extended to allow the court to proceed directly to consideration of the plaintiffs' motion for a permanent injunction. Judge Jones took the motion for class certification under advisement.

d. Current status of Oregon Death with Dignity Act. Judge Jones also ordered:

"The directive of Attorney General Ashcroft issued on or about November 6, 2001, shall be unenforceable and of no legal effect pending further order of this court. Physicians, pharmacists, and other health care providers in Oregon shall not be subject to criminal prosecution, professional disciplinary action or other administrative proceedings for any actions taken in compliance with the Oregon Death with Dignity Act while this temporary restraining order remains in effect."

e. Further briefs, hearing, and final ruling. Plaintiff and plaintiff-intervenors filed their motions for summary judgment in January 2002. Defendants have until 2/21/02 to file their response and cross-motion for summary judgment. The parties have stipulated that defendants may at the same time file a motion to dismiss the complaints of plaintiff and plaintiff-intervenors for lack of subject matter jurisdiction and/or failure to state a claim upon which relief can be granted. Plaintiff and plaintiff-intervenors will then have 14 days to file any replies. Judge Jones has indicated that "[a] hearing will be set, if practicable, within 7 days of completion of briefing, and findings and conclusions will be issued within 30 days of the hearing."

f. Plaintiffs' arguments. The State of Oregon and the intervenors make the following arguments:

(1) Ashcroft's directive is invalid because Congress did not, under the CSA, delegate to the Attorney General the authority to override a state's determination as to the "legitimacy" of a medical practice.

(2) Ashcroft's directive is not an interpretive rule, but a substantive rule, and therefore is invalid for failure to follow the formal rule-making procedures required by the Administrative Procedures Act.

(3) Congress has no constitutional authority under the Commerce Clause to regulate the medical practices of Oregon physicians and pharmacists.

(4) Any attempt by Congress to invalidate medical practices authorized by Oregon law is unconstitutional under the Tenth Amendment as an impermissible intrusion into areas reserved to the States, and violates the federalism principles articulated in Executive Order No. 13,132, 64 Fed. Reg. 43,255 (Aug. 4, 1999).

(5) Ashcroft's directive violates the Fifth Amendment due process right of patients to adequate palliative care, including terminal sedation.

g. Defendants' arguments

. The defendants make the following arguments:

(1) The plaintiffs lack standing to challenge Ashcroft's directive.

(2) Ashcroft's directive is entitled to substantial deference and must be upheld unless it is plainly erroneous.

(3) A 1984 amendment to the CSA, the U.S. Supreme Court's recent decision regarding the medical use of marijuana [*United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001), holding that the CSA did not allow a "medical necessity" exception for the use of marijuana for patients suffering from certain illnesses], and other CSA cases indicate that Ashcroft had the authority under the CSA to issue his ruling.

(4) No basis exists in current Supreme Court jurisprudence for concluding that Congress exceeded its powers under the Commerce Clause.

## LEGISLATION

1. California. In October 2001, California Governor Gray Davis signed into law a new bill, AB 487, requiring physicians to take classes in pain management and end-of-life care as part of obtaining their licenses or as a continuing education requirement in order to renew their licenses. The law also directs the state Division of Medical Quality to develop standards concerning pain management, including definitions for under-treatment, under-medication, and over-medication of a patient's pain, by 6/1/02. The Division is required to report annually to the legislature on actions taken by the Division or the state medical board regarding unprofessional conduct by medical personnel in prescribing drugs, including under-treatment or under-medication of pain.
2. Michigan. Michigan Governor John Engler has signed 15 bills reflecting the recommendations of the Michigan Commission on End of Life Care. The bills are intended to provide patients with information needed to make health care decisions, raise awareness and knowledge about pain management and treatment options, remove barriers to prescribing pain medication, establish a new electronic system to track prescription drugs, make health care professionals aware of patients' wishes, and make nursing home residents more aware of the availability of hospice care.
3. Oregon.
  - a. U.S. Department of Justice legal opinion. On 6/27/01, Sheldon Bradshaw, a deputy assistant attorney general with the U.S. Department of Justice, sent a 24-page memorandum to Attorney General John Ashcroft concluding that physician-assisted suicide is not a "legitimate medical purpose" under the Controlled Substances Act.
  - b. Senator Wyden's letter. On 10/30/01, Oregon Senator Ron Wyden wrote a letter to President Bush charging that the administration was "actively considering" whether to declare that physicians who prescribe drugs under the Oregon Death with Dignity Act were in violation of the Controlled Substances Act. Wyden called on President Bush to refrain from doing so, saying that such an action would lead to a court challenge and could have a chilling effect on pain relief nationwide.
  - c. Directive issued by U.S. Attorney General John Ashcroft. On 11/6/01, Attorney General John Ashcroft sent a letter to the Drug Enforcement Administration (DEA) determining that assisting suicide is not a "legitimate medical purpose" under the Controlled Substances Act and that a physician's license to prescribe is subject to suspension or revocation if the physician prescribes lethal medication for assisting suicide. The determination was to become effective as an interpretive rule on 11/9/01, when it was published in the Federal Register. 66 Fed. Reg. 56,607 (Nov. 9, 2001). The Attorney General directed the DEA to enforce and apply this determination notwithstanding the 6/5/98 letter from former Attorney General Janet Reno overruling an earlier determination by the DEA Administrator that assisting suicide was not a legitimate medical purpose. Ashcroft's directive stated that the reinstated determination "makes no change in the current standards and practices of the DEA in any State other than Oregon" and claimed that the Department of Justice has the authority to obtain copies of confidential documents filed with Oregon Health Services (formerly the Oregon Health Division) when an assisted suicide occurs.
  - d. Enforcement against Oregon physicians. U.S. Department of Justice officials have said that they do not plan to pursue criminal prosecutions in Oregon and would not enforce Ashcroft's directive retroactively. On 11/7/01, Dr. Hugh Stelson, president of the Oregon Medical Association, received a letter from Attorney General Ashcroft indicating that his directive would not be applied retroactively and will not be used to target aggressive treatment of pain for dying patients. Ashcroft sent letters to about a dozen national medical organizations, indicating that physicians could continue aggressively treating pain without fear of DEA action.
  - e. Oregon pharmacists. After Ashcroft's directive was issued, the Oregon Board of Pharmacists sent a letter to Oregon pharmacies telling them not to fill prescriptions for lethal medication. When Ashcroft's directive was issued, two dozen terminally ill patients were seeking to complete the process of obtaining lethal medication, which takes a minimum of 15 days. Pharmacists resumed filling prescriptions after the temporary restraining order was issued in *Oregon v. Ashcroft*.
  - f. Position of Oregon Congressional delegation. Six of Oregon's seven Senators and Representatives have announced their opposition to Ashcroft's ruling. Senator Gordon Smith, who is a devout Mormon, has said that he supports Ashcroft's ruling as a matter of conscience. Oregon Secretary of State Bill Bradbury, a

Democrat who is seeking to unseat Smith in the 2002 Congressional elections, has said that he will make assisted suicide one of his key issues in the campaign.

- g. Reaction of medical groups. Leaders of the Washington State Medical Association, which does not support the Oregon Death with Dignity Act, have indicated that they are very concerned that Ashcroft's ruling may undermine efforts to improve pain management, because physicians will not prescribe adequate pain medication out of fear of a DEA investigation. Other groups that have expressed similar concerns about the ruling include the American Academy of Family Physicians and the American Pain Federation.
- h. 2001 deaths by assisted suicide. On 2/7/02, the Oregon Health Division issued a report on deaths during 2001 under the Oregon Death with Dignity Act. The complete report is available on-line at [www.ohd.hr.state.or.us/chs/pas/ar-index.htm](http://www.ohd.hr.state.or.us/chs/pas/ar-index.htm). A brief version of the report is found in Katrina Hedberg et al., *Legalized Physician-Assisted Suicide in Oregon, 2001*, 346 *New Eng. J. Med.* 450 (2002). The report included the following information:

(1) Prescriptions written. In 2001, 44 prescriptions were written for lethal doses of medication, an increase from 24 prescriptions in 1998, 33 in 1999, and 39 in 2000.

(2) Number of patients. In 2001, 21 patients died after taking lethal medication, as compared to 16 patients in 1998, 27 in 1999, and 27 in 2001. Of the 44 persons who received prescriptions under the Act during 2001, 19 died after taking lethal medication, 14 died from their underlying illness, and 11 were alive as of the end of 2001. An additional two persons who received prescriptions during 2000 died after taking their medications in 2001.

(3) Patient characteristics. Median age of the 21 patients who died was 68, 95% were white, 38% were male, 38% were married, 33% lived in the Portland metropolitan area, and 38% were college graduates. Eighteen of the 21 patients who died had cancer, 76% were enrolled in a hospice program (the other patients were offered hospice but declined), and all patients had health insurance.

(4) Patient concerns. The most common reasons for choosing assisted suicide expressed by patients to their physicians were loss of autonomy (94%), inability to participate in activities that make life enjoyable (76%), loss of control of bodily functions (53%), and being a burden on family, friends, or caregivers (24%). One patient cited concerns about pain control, and one patient voiced concern about the financial implications of treatment.

(5) Mental health evaluations. Three of the 21 patients received a psychiatric or psychological consultation.

(6) Medical information. The lethal medications ingested during 2001 differed from those used in previous years because Eli Lilly stopped producing secobarbital in May 2001, so that pentobarbital was used instead for many deaths occurring in late 2001. The physician was present when the medication was ingested in 43% of cases, with other health care providers present in 52% of cases. Median time from taking the medication to unconsciousness was three minutes (individual times ranged from 1-30 minutes). Median time from taking the medication to death was 25 minutes (individual times ranged from 5 minutes to 37 hours). The patient who lived for 37 hours did not regain consciousness after taking the medication. One patient vomited immediately after taking the medication, and lived for 25 hours after ingestion without regaining consciousness.

(7) Physician characteristics. A total of 33 physicians prescribed lethal medications to 44 persons. The physicians' median years in practice was 20. One physician was reported to the Oregon Board of Medical Examiners for submitting a written consent form with the signature of only one witness.

Oregon Health Division statistics for 2001 generally were consistent with statistics for 1998-2000.

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## OTHER NATIONAL DEVELOPMENTS

1. Dr. Jack Kevorkian

- a. Criminal conviction affirmed. On 3/26/99, Dr. Jack Kevorkian was convicted by a jury of second-degree murder and illegal delivery of a controlled substance in connection with the death of Thomas Youk by lethal injection. Kevorkian will not be eligible for parole until May 2007. On 11/12/99, Kevorkian filed an appeal with the Michigan Court of Appeals to reverse his conviction and dismiss the case or order a new trial. A hearing on the appeal was held on 9/11/01 in Detroit before Judges Joel P. Hoekstra, Henry William Saad, and William C. Whitbeck of the Michigan Court of Appeals. On 11/20/01, the 3-judge panel unanimously affirmed Kevorkian's conviction, rejecting his claims that euthanasia is legal, that a prosecutor improperly referred to Kevorkian's failure to testify, that he received ineffective assistance of counsel, and that prosecutors failed to prove that Youk died as a result of the lethal injection. *People v. Kevorkian*, 2001 WL 1474986 (Mich. App. Nov. 20, 2001). Kevorkian's attorney, Mayer Morganroth, has indicated that the case will be appealed to the Michigan Supreme Court and, if necessary, to federal courts.
  - b. Request for release pending appeal. On 12/27/00, Jack Kevorkian's attorney Mayer Morganroth filed a petition for writ of habeas corpus in U.S. District Court contending that Kevorkian should be released from prison while his murder conviction is appealed, because he is at risk of a stroke, he poses no threat to the public, and the issues on appeal have strong merit. On 6/22/01, U.S. District Judge Paul Borman denied Kevorkian's request, finding that delay in hearing the appeal did not of itself require the federal courts to intervene. *Kevorkian v. Ludwick*, No. 00-CV-75557 (E.D. Mich.), appeal pending, No. 01-2010 (6th Cir.). Briefing on the appeal was completed on 2/7/02, and the parties have requested oral argument.
2. New trial ordered for Utah physician. On 1/9/01, Utah Second District Judge Thomas L. Kay granted a new trial to Dr. Robert Weitzel, a psychiatrist who was convicted by a jury in July 2000 of two counts of second-degree felony manslaughter and three counts of misdemeanor negligent homicide in connection with the deaths of five elderly patients at the geriatric psychiatric unit of the Davis Hospital and Medical Center in Layton, Utah, during a 16-day period from late 1995 to early 1996. Prosecutors had contended that all five patients were admitted for dementia, not for life-threatening diseases, and that Weitzel killed them with lethal doses of morphine, while the defense had contended that Weitzel merely provided comfort care. Weitzel's motion for a new trial was granted on the ground that prosecutors failed to disclose pretrial statements from Dr. Perry Fine, a University of Utah Medical Center physician and expert in pain management and end-of-life care, that could have aided Weitzel's defense. Prosecutors have decided against seeking first-degree murder charges for the retrial, which is not expected for several months. In November 2001, an appeals court judge removed Judge Kay from the case at the request of prosecutors. Weitzel has drawn criticism for setting up a web page containing extensive records of his patients (all of which are part of the public record of his trial), as well as comments by family members and other information about the case.
  3. President's Council on Bioethics. On 11/28/01, President Bush signed an executive order creating the 18-member President's Council on Bioethics and appointed Leon Kass as its chairman. The Council is empowered to study and make recommendations on embryonic stem cell research, cloning, assisted reproduction (including in vitro fertilization), and euthanasia. The American Society of Reproductive Medicine expressed concern about the Council's charge because Kass is a conservative who once questioned the ethics and safety of in vitro fertilization.
  4. National poll. In a Harris telephone poll of 1,011 adults conducted during December 2001, 65% of respondents agreed that the "law should allow doctors to comply with the wishes of a dying patient in severe distress who asks to have his or her life ended"; 63% disapproved of the 1997 U.S. Supreme Court ruling that Americans do not have a constitutional right to physician-assisted suicide; and 58% said that Attorney General John Ashcroft was wrong to issue his directive allowing the Drug Enforcement Administration to revoke a physician's license to prescribe controlled substances if the physician participates in assisted suicide. Sixty-one percent said that they would be in favor of a law similar to Oregon's Death with Dignity Act if proposed within their state, 34% that they would be opposed, and 5% that they were not sure.

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## MEDICAL DEVELOPMENTS

1. OxyContin. The U.S. Drug Enforcement Administration and 21 health groups have called for a balanced policy toward the use of OxyContin, a powerful opioid painkiller. In an unprecedented collaboration, DEA Administrator Asa Hutchinson and leading health organizations say that efforts to stop abuse of the drug should not interfere with the treatment of legitimate patients.

2. Medicare payment for nutrition therapy and pain management Beginning 1/1/02, Medicare will recognize and pay for two new services, nutrition therapy and pain management. The nutrition benefits will be available initially to patients with diabetes or kidney disease. Based on the experiences of this group, the Secretary of Health and Human Services is supposed to advise Congress whether nutrition benefits should be made available to other Medicare beneficiaries. Medicare has established a new reimbursement code allowing physicians to identify themselves as specialists in pain management.

### 3. Recent articles

- a. Charles D. Douglas et al., *The Intention to Hasten Death: A Survey of Attitudes and Practices of Surgeons in Australia*, 175 Med. J. Australia 511 (2001) [survey of 683 general surgeons during 1999 revealed that 36.2% of respondents had given drugs in doses that they perceived to be greater than required to relieve symptoms with the intention of hastening death, with more than half of these (20.4% of all respondents) reporting that they had not received an unambiguous request for a lethal dose of medication; only 5.3% indicated that they had given a lethal injection or assisted a suicide in response to an unambiguous request]. See also Roger W. Hunt, *Commentary: Intention, the Law, and Clinical Decision-Making in Terminal Care*, 175 Med. J. Australia 516 (2001), and Michael A. Ashby, *Commentary: On Causing Death*, 175 Med. J. Australia 517 (2001).
- b. Francesco Landi et al., *Pain Management in Frail, Community-Living Elderly Patients*, 161 Archives Internal Med. 2721 (2001) [data for 3,046 patients admitted to home health care programs in 12 home health care agencies in Italy during 1997-99 showed that more than 40% of elderly patients living in the community experienced daily pain, but only 25% received pain medication of any kind; patients age 85 or older and patients with cognitive impairment had the greatest risk of receiving no pain medication].
- c. Harvey Max Chochinov et al., *Dignity in the Terminally Ill: A Developing Empirical Model*, 54 Soc. Sci. & Med. 433 (2002) [50 patients with advanced terminal cancer recruited over a period of 15 months from a specialized palliative care unit in a Canadian urban extended care hospital were interviewed to determine how dying patients understand and define the term "dignity"; researchers developed three major categories (illness-related concerns, dignity conserving repertoire, and social dignity inventory) and various themes and sub-themes that might form the foundation for an emerging model of dignity among the dying].
- d. Edward Lowenstein & Sidney H. Wanzer, *The U.S. Attorney General's Intrusion into Medical Practice*, 246 New Eng. J. Med. 447 (2002) [expressing concern that Attorney Ashcroft's directive would lead to intrusion of the federal government into the regulation of medical practice].
- e. Katrina Hedberg et al., *Legalized Physician-Assisted Suicide in Oregon, 2001*, 346 New Eng. J. Med. 450 (2002) [SEE DISCUSSION ABOVE].
- f. Robert Steinbrook, *Physician-Assisted Suicide in Oregon—An Uncertain Future*, 346 New Eng. J. Med. 460 (2002) [summarizing recent developments regarding the Oregon Death with Dignity Act].

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## INTERNATIONAL DEVELOPMENTS

### 1. Australia

- a. Physician and family members acquitted of murder charges. Following a three-day preliminary hearing, Magistrate Jeremy Packington ruled on 11/28/00 that the evidence was insufficient to commit West Australian urologist Dr. Daryl Allan Stephens for trial on charges that he murdered 48-year-old Freeda Patricia Hayes on 2/4/00 at the Murdoch Community Hospice in Perth. Hayes, who was suffering from terminal kidney cancer, allegedly died after being given a lethal intravenous injection of atracurium and midazolam. The magistrate also dismissed murder charges against Hayes' brother and sister, Warren Hayes and Lena Vinson, who allegedly were present while the lethal injection was being administered. Despite the magistrate's ruling, in January 2001 West Australia's Director of Public Prosecutions Robert Cock presented an indictment to the Supreme Court reinstating the murder charges against all three

defendants and adding an alternative charge of aiding a suicide. On 10/23/01, however, after deliberating for only 10 minutes, a jury acquitted the defendants of the murder charges, which were supported only by circumstantial evidence. The judge previously had ruled that there was no evidence to support a charge of assisting a suicide.

- b. South Australia. On 1/26/02, Sandra Kanck, deputy leader of the South Australian Democrats, pledged to introduce voluntary euthanasia legislation at the first sitting of the South Australian parliament following the February 9 election.
- c. Nancy Crick website. Nancy Crick, a 70-year-old resident of Burleigh Waters, Queensland has established a website ([www.protection.net.au/nancycrick/](http://www.protection.net.au/nancycrick/)) to chronicle the rest of her life by diary entries and photographs. Crick, who has bowel cancer, already has access to lethal medication but is objecting to the fact that her family might be subject to criminal prosecution if they were present at her death.

## 2. Belgium

- a. Senate approves euthanasia bill. On 10/25/01, the Belgian Senate approved by a vote of 44-23, with two abstentions, a bill that would legalize euthanasia for competent adults with an incurable illness causing unbearable and constant suffering, as well as for patients in a persistent vegetative state who had made a request within the prior five years before two witnesses to have their life ended in such circumstances. A national evaluation committee of physicians and lawyers would be set up to ensure that the law is followed. The opinion of a second physician would be required for a terminally ill patient. In the case of a patient who is not terminally ill, the opinion of a third physician (either a psychiatrist or a specialist in the patient's illness) would be required, and at least one month would have to elapse between the patient's request and the act of euthanasia. The legislation came to a vote after 18 months of committee discussion and three days of Senate debate. The House of Representatives is expected to approve the bill.
- b. Insurance industry reaction. The Belgian insurance industry association Beroepsvereniging der Verzekeringsondernemingen (BVVO) has announced plans to restrict payment of life insurance benefits where the policy was purchased less than one year prior to the death of a euthanasia patient who was not terminally ill. BVVO plans to lobby the lower house of Parliament to amend the pending legislation. In the absence of an amendment, BVVO says that it will introduce its own guidelines restricting payment of life insurance benefits.

3. Canada. Supporters of Robert Latimer continue to protest his life sentence, without possibility of parole for 10 years, for the mercy killing of his disabled 12-year-old daughter. On 12/13/01, the Canadian Civil Liberties Association presented to the office of Solicitor General Lawrence MacAulay a petition seeking clemency for Latimer that was signed by more than 60,000 people.

## 4. Great Britain

- a. Diane Pretty. In June 2001, Brian Pretty wrote a letter to Prime Minister Tony Blair asking that a physician be allowed to help his 42-year-old wife Diane die because of her motor neurone disease. When Blair declined to help and Mrs. Pretty's condition deteriorated further, she appealed to Director of Public Prosecutions David Calvert-Smith to guarantee that her husband would not be prosecuted if he assisted her to take her own life. In August 2001, after Calvert-Smith refused to give any guarantee, Mrs. Pretty appealed to the High Court in London arguing that his refusal violated her rights under the European Convention on Human Rights. After a hearing, the High Court ruled on 10/18/01 that the law did not allow a family member to help a loved one to die. On 11/29/01, the five law lords of the House of Lords affirmed the High Court's decision. On 1/18/02, Mrs. Pretty registered her case with the European Court of Human Rights, which said that it would rule as soon as possible after giving priority to the case.
- b. Editorial. In the 11/10/01 issue of the British Medical Journal, two British medical professors argued that the decision in Diane Pretty's case might be consistent with legal precedent but was "morally wrong." The authors believe that active euthanasia and physician-assisted suicide should be legalized. Len Doyal & Lesley Doyal, Editorial, *Why Active Euthanasia and Physician Assisted Suicide Should Be Legalized*, 323 Brit. Med. J. 1079 (2001).
- c. General Medical Council guidelines. Britain's General Medical Council is considering a draft code of practice that would clarify the ethics of withdrawing and withholding treatment from patients with little chance of recovery. A final decision on the guidelines is expected during 2002. The British Medical Association issued similar ethical guidelines in 1999.

5. India. On 12/13/01, the Kerala High Court dismissed a petition filed by a 74-year-old man, B.K. Pillai, who sought a direction to the state government to facilitate the painless termination of his life. Pillai suffers from filariasis, a debilitating illness, and said that he could not live with dignity any longer. Mr. Justice J.B. Koshy observed that the right to life was protected under the Constitution.
  6. Ireland. Rev. George Exoo and Thomas McGurrin of Beckley, West Virginia, are being questioned about whether they assisted in the suicide of Rosemary Toole, a 49-year-old woman who died in Dublin in January 2002 after swallowing crushed sleeping pills, covering her head with a plastic bag, and breathing helium. Exoo is a minister at New River Unitarian-Universalist Fellowship and runs Compassionate Chaplaincy, a tax-exempt organization that counsels people seeking to commit suicide. Irish newspapers have reported that Toole suffered from depression, but Exoo said that Toole told him she had a terminal brain condition. Irish authorities are expected to sit in while the FBI interviews the two men, who could be charged with assisting a suicide, a felony that can lead to a sentence of up to 14 years in prison. Toole reportedly left 60,000 euros (\$52,000) to a euthanasia group.
  7. Israel. Health Minister Nissim Dahan has condemned the disconnection of a respirator that caused the death of a 62-year-old man suffering from Lou Gehrig's disease, which occurred in Hillel Yaffe Hospital, a government hospital. A district court judge had granted permission to disconnect the respirator after Attorney-General Elyakim Rubinstein did not voice opposition. On 1/17/02, a committee of 58 experts on end-of-life issues chaired by Professor Avraham Steinberg submitted a written report to Dahan containing a number of recommendations for legislation on end-of-life care.
  8. Italy. On 11/18/01, the newspaper La Stampa reported that a fierce public debate has broken out in Italy with the revelation that the euthanasia group Exit has been arranging for terminally ill patients to travel to the Netherlands, where euthanasia is legal. The patients have been admitted into Dutch medical institutions where euthanasia is practiced according to the guidelines applied under Dutch law.
  9. Korea. A public controversy has flared up since the Korean Medical Association issued a new set of ethical guidelines on 11/15/01. Critics claim that the following guideline would permit euthanasia: "A doctor may accept a request, submitted in a document by a family member or other surrogate, for an end to the life-sustaining treatment or discharge from the hospital of a terminal patient."
  10. Netherlands
    - a. Legislation legalizes physician-assisted suicide and euthanasia. On 4/10/01, the Dutch Parliament passed the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, legalizing physician-assisted suicide and euthanasia. The law went into effect on 1/1/02.
    - b. Prosecution of Dr. Sutorius. On 10/30/00, a court in Haarlem acquitted Dr. Philip Sutorius of charges in connection with the April 1998 assisted suicide of Edward Brongersma, an 86-year-old former politician who had no serious physical or psychiatric illness but was obsessed with his "physical decline" and "hopeless existence." Public prosecutors had called for Sutorius to be given a three-month suspended prison sentence, but the court found that Brongersma was suffering "hopelessly and unbearably," one of four criteria protecting Dutch physicians against prosecution. The public prosecutions office appealed, seeking a finding of guilt but no prison sentence. On 12/6/01, an appeals court in Amsterdam found that Sutorius was guilty of the criminal charges because he did not act for a medical reason, but rather because his patient was tired of life. However, the court imposed no prison sentence because Sutorius acted out of compassion and because the court viewed the case as a test case by the prosecutor. The Royal Dutch Medical Association indicated that it agrees with the court's decision but believes that uncertainty still exists over the physician's role in the case of existential suffering; the Association has therefore appointed a special committee to consider this question.
  11. Poland. A poll of 968 adults by the CBOS Institute 11/9-11/12/01 asked whether people should have the right to ask doctors to accelerate their death if they suffer from an incurable disease. Forty-eight percent answered yes, 39% said no, and 13% had no opinion. About 90% of Poles consider themselves to be Catholic, and the Catholic church in Poland has fiercely criticized any suggestions of legalizing euthanasia.
  12. Switzerland. On 12/11/01, the Swiss National Council passed a motion forcing the Swiss government to propose legislation governing the practice of two forms of euthanasia: "indirect active" euthanasia and "passive" euthanasia, both of which are recognized by the Swiss Academy of Medical Sciences. The National Council rejected two other euthanasia initiatives, one liberalizing and the other limiting current euthanasia practices.
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\* Some information obtained from media reports has not been independently verified.