



## Recent Developments in Physician-Assisted Suicide

October 2003

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### LITIGATION

1. Oregon v. Ashcroft, 192 F.Supp.2d 1077 (D.Or. 2002), appeal pending, No. 02-35587 (9th Cir.)
  - 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, 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. The court allowed several individual patients, a physician, and a pharmacist to intervene as plaintiffs supporting the position of the state of Oregon. Named defendants included 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. The court allowed several organizations to file amicus briefs.
  - b. U.S. District Court decision. On 4/17/02, Judge Robert E. Jones issued his written decision in favor of plaintiff and plaintiff-intervenors. *Oregon v. Ashcroft*, 192 F.Supp.2d 1077 (D.Or. 2002). Judge Jones permanently enjoined defendants from "enforcing, applying, or otherwise giving any legal effect to Ashcroft's directive and ordered that 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. Although plaintiff and plaintiff-intervenors had made statutory, administrative, and constitutional arguments, Judge Jones based his decision on statutory grounds exclusively, holding that neither the plain language of the Controlled Substances Act, its legislative history, nor the cases cited supported defendants' argument that Congress intended to delegate to the Attorney General the authority to override a state's determination as to the "legitimacy" of a medical practice.
  - c. Appeal to Ninth Circuit. On 5/24/02, defendants filed a notice of appeal to the Ninth Circuit Court of Appeals. Numerous amicus briefs were filed on both sides of the case. The case was argued on 5/7/03 in Portland, Oregon, before a three-judge panel consisting of Clifford J. Wallace, a San Diego-based senior judge appointed by President Nixon in 1972; Donald P. Lay, a St. Paul, Minnesota-based senior judge from the Eighth Circuit Court of Appeals appointed by President Johnson in 1966; and Richard Tallman, a Seattle-based judge appointed by President Clinton in 2000. Questioning was vigorous and focused on issues of jurisdiction and ripeness as well as on the merits of the case. On 8/22/03, the court entered an order permitting two new patient-plaintiffs to intervene following the deaths of two patient-plaintiffs. The three-judge panel is expected to issue its decision soon. The losing side may seek review by an en banc panel of 11 Ninth Circuit judges and ultimately is expected to seek review by the United States Supreme Court.

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### LEGISLATION

1. Hawaii. On 3/7/02, the Hawaii House passed by a vote of 30-20 the Hawaii Death with Dignity Act, patterned after the Oregon Death with Dignity Act. The Senate initially voted 13-12 in favor of the bill but finally rejected it by a vote of 11-14. On 1/17/03, Senator Colleen Hanabusa again introduced the bill in the Senate as S.B. 391. The bill was referred to committee and did not reach a vote, but has been carried over to the 2004 Regular Session of the legislature.

## 2. Oregon

- a. Survey of Oregon physicians. An article published in June 2003 reported the results of interviews conducted during 2000 of 35 Oregon physicians who had at least one patient who had requested physician-assisted suicide. Linda Ganzini et al., *Oregon Physicians' Perceptions of Patients Who Request Assisted Suicide and Their Families*, 6 J. Palliative Med. 381 (2003). The physicians described these patients as having strong and vivid personalities characterized by determination and inflexibility. These individuals wanted to control the timing and manner of death and to avoid dependence on others, preferences which reflected long-standing coping and personality traits. The patients' requests for lethal medication were forceful and persistent, could occur at any point after diagnosis of terminal illness, and were paralleled by refusal of medical interventions including palliative treatments.
- b. Intractable pain legislation. On 6/20/03, Oregon's governor signed into law Senate Bill 436, which amends existing law by eliminating the requirement that a patient be evaluated by a specialist before the patient's attending physician can prescribe controlled substances to control a patient's intractable pain. Before commencing treatment, however, the physician must provide, and the patient must sign, a written notice provided and approved by the Oregon Board of Medical Examiners, disclosing the material risks associated with the controlled substance. 2003 Or. Laws ch. 408.
- c. Oregon Death With Dignity. On 8/1/03, Oregon Death With Dignity, the group that was instrumental in passage of the Oregon Death with Dignity Act, merged with the Death With Dignity National Center, an advocacy group founded in California in 1994 but headquartered in Washington, D.C., where the merged organization will be located. Scott Swenson of Oregon Death With Dignity, the new organization's executive director, said that plans are to add two or three staff members to the seven full-time and four part-time employees at the two organizations, which have a combined budget of \$1.1 million. The merged organization will have two arms, the Death With Dignity National Center (which will focus on education about end-of-life care and pain management) and the Oregon Death With Dignity Political Action Fund (which will focus on raising money and promoting Oregon's law in other states). The initial efforts of the latter arm will concentrate on Hawaii and Vermont.

## 3. Vermont

- a. Two bills introduced. Two bills relating to assisted suicide were introduced in the Vermont General Assembly in February 2003, both of which were referred to committee. H. 275, which was introduced by nine representatives, would criminalize assisted suicide. H. 318, which was introduced by 39 representatives, is patterned after the Oregon Death with Dignity Act. Both bills are being carried over until the legislative session resumes in January 2004.
- b. President of Vermont Medical Society disciplined. On 7/2/03, the Vermont Board of Medical Practice issued a decision reprimanding Dr. Lloyd "Tim" Thompson III, the president of the Vermont Medical Society, for giving a dying woman Norcuron, a powerful paralyzing drug, which hastened her death after she was removed from a respirator in August 2002. One-third of the 21-page ruling stated the Board's position on end-of-life care (see [www.healthyvermonters.info/bmp/recent.shtml](http://www.healthyvermonters.info/bmp/recent.shtml)). Thompson also agreed that his practice would be monitored for a period of one year. Thompson apologized to the Board, the woman's family, and his co-workers for his error in judgment in failing to use other medication to relieve her distress. Attorney General William Sorrell declined to prosecute Thompson for manslaughter, and he resigned from his position as president of the Vermont Medical Society on 7/26/03.
- c. Public debate over proposed legislation. Vermont groups supporting physician-assisted suicide legislation include a state chapter of the Hemlock Society founded in 2002 and Death with Dignity, a group formed in early 2003 that has circulated a mailing with the endorsement of 125 Vermont physicians. Groups opposing the legislation include the Roman Catholic Diocese of Vermont and the Vermont Alliance for Ethical Health Care, a physician-led organization. A series of public debates began in September 2003.
- d. Position of Vermont Medical Society. In 1997, the ethics committee of the Vermont Medical Society (which was chaired by Dr. Thompson) responded to an assisted suicide bill before the Vermont House by concluding that Vermont should have no law governing whether physicians may hasten patients' deaths. During September 2003, the society sponsored a series of seven forums to permit physicians to debate the new proposed legislation among themselves. The question also will be debated at the society's annual meeting in October 2003. Physician polls conducted by Death with Dignity and the Vermont Alliance for Ethical Health Care have produced conflicting results as to physician attitudes.

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## OTHER NATIONAL DEVELOPMENTS

1. Dr. Jack Kevorkian. On 7/17/02, Jack Kevorkian's attorney Mayer Morganroth filed a petition for writ of habeas corpus in U.S. District Court, alleging ineffective assistance of counsel and multiple violations of Kevorkian's

constitutional rights at his original trial in connection with the death of Thomas Youk by lethal injection. *Kevorkian v. Grayson*, No. 02-CV-72927 (E.D. Mich.) On 10/1/03, U.S. District Judge Nancy Edmunds denied Kevorkian's petition to be released.

2. Hemlock Society. On 7/21/03, the Hemlock Society announced that it was changing its name to End-of-Life Choices. The organization has more than 30,000 members in 70 chapters and community groups around the nation.
3. Suicide websites. A number of websites provide information about methods for committing suicide, and several people have died by following those instructions. One of them was a 52-year-old St. Louis woman, who killed herself on 6/2/03 using two helium tanks to cause asphyxiation. St. Louis Circuit Attorney Jennifer Joyce indicated in July 2003 that she wants to pursue voluntary manslaughter charges against the person responsible for the website that provided information on use of helium to commit suicide. The website is run by a group called the Church of Euthanasia, but authorities have not been able to locate any of the people connected with the site.
4. Arizona physician charged with overprescribing pain medication. As of August 2003, Dr. Jeri B. Hassman, a Tucson pain management specialist, faced 320 federal charges for prescribing various painkillers to 16 patients (four of whom died) without a legitimate medical reason. The drugs were Schedule II narcotics including morphine, methadone, Vicodin, and Oxycontin. Hassman's DEA certificate of registration allowing her to prescribe controlled substances was suspended in November 2002. Hassman also has been charged with 42 counts relating to the manner in which she billed a managed health-care program for chiropractor services not covered by the plan. Hassman has continued to practice medicine but is under investigation by the Arizona Medical Board. Two medical malpractice suits have been filed against her.
5. Nevada physician loses license. In June 2003, the Nevada State Board of Medical Examiners revoked Dr. Kenneth D. Mower's right to practice medicine, finding that he had administered a lethal dose of morphine on 7/19/02 to a woman who was brought to the emergency room at Desert Springs Hospital Medical Center after attempting to commit suicide by taking a large amount of prescription medications. The Board rejected Mower's arguments that the patient was terminally ill due to extremely shallow breathing when the morphine was administered, that her living will specified that she did not want life support, and that her husband supported the decision. The hospital filed the complaint with the Board after Mower sued for wrongful termination. Local authorities have not decided whether to file criminal charges.

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#### MEDICAL DEVELOPMENTS

1. Poll of medical students. An online poll of medical students revealed that 46% were in favor of legalizing physician-assisted dying, 7% said maybe they were in favor, 37% were opposed, and 11% were uncertain.
2. Recent articles
  - a. Juan Carlos Batlle, *Legal Status of Physician-Assisted Suicide*, 289 Med. Student JAMA 2279 (2003) [clarifying terminology among assisted suicide, euthanasia, and withdrawal of life support].
  - b. Karl Lorenz & Joanne Lynn, *Moral and Practical Challenges of Physician-Assisted Suicide*, 289 Med. Student JAMA 2282 (2003) [discussing problems raised by physician-assisted suicide].
  - c. Larry I. Palmer, *The Legal and Political Future of Physician-Assisted Suicide*, 289 Med. Student JAMA 2283 (2003) [discussing pending litigation over the Oregon Death with Dignity Act].
  - d. Linda Ganzini et al., *Oregon Physicians' Perceptions of Patients Who Request Assisted Suicide and Their Families*, 6 J. Palliative Med. 381 (2003) [SEE DISCUSSION ABOVE].
  - e. Diane E. Meier, *Characteristics of Patients Requesting and Receiving Physician-Assisted Death*, 163 Arch. Intern. Med. 1537 (2003) [379 physicians reported that patients who were most likely to request and receive physician-assisted death were in severe pain or discomfort, had a life expectancy of less than one month, and were not believed to be depressed].
  - f. Linda Ganzini et al., *Nurses' Experiences with Hospice Patients Who Refuse Food and Fluids to Hasten Death*, 349 New Eng. J. Med. 359 (2003) [survey of 307 Oregon hospice nurses indicated that one-third had cared for a patient in the previous four years who deliberately hastened death by voluntary refusal of food and fluids, almost twice the number of Oregonians who died by physician-assisted suicide during the same period; patients chose to stop eating and drinking because they were ready to die, saw continued existence as pointless, considered the quality of life poor, and wanted to control the manner of death; nurses rated the quality of most deaths as good].

- g. Nikkie B. Swarte et al., *Effects of Euthanasia on the Bereaved Family and Friends: A Cross Sectional Study*, 327 Brit. Med. J. 189 (2003) [questionnaire was completed by 189 bereaved family members and close friends of terminally ill cancer patients who died by euthanasia in the University Medical Center Utrecht, the Netherlands, between 1992 and 1999 and by 316 bereaved family members and friends of comparable patients who died a natural death; bereaved family members and friends of patients who died by euthanasia reported less traumatic grief symptoms, less current feeling of grief, and less post-traumatic stress reactions].
- h. Agnes van der Heide et al., *End-of-Life Decision-Making in Six European Countries: Descriptive Study*, 362 Lancet 345 (2003) [physicians in Belgium, Denmark, Italy, the Netherlands, Sweden, and Switzerland completed questionnaires about medical decisionmaking that preceded 20,480 deaths between June 2001 and February 2002; the proportion of deaths preceded by end-of-life decisions ranged from 23% in Italy to 51% in Switzerland; all countries reported euthanasia or physician-assisted suicide, but the proportion ranged from about 1% or less in Denmark, Italy, Sweden, and Switzerland, to 1.82% in Belgium and 3.40% in the Netherlands; euthanasia took place most frequently in the Netherlands (2.59%), while physician-assisted suicide occurred most often in Switzerland (0.36%); ending of life without the patient's explicit request happened more frequently than euthanasia in all countries except the Netherlands; the end-of-life decision was discussed with the patient and relatives most often in the Netherlands and least often in Italy and Sweden].

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## INTERNATIONAL DEVELOPMENTS

### 1. Australia

- a. Northern Territory. Chief Minister Clare Martin has indicated that the idea of the Northern Territory becoming Australia's seventh state is back on the political agenda, despite a resounding rejection of a referendum five years ago. Statehood could open the door to restoring legalized euthanasia, which was in effect in the territory for a year before federal legislation was enacted forbidding that option for Australia's territories.
- b. South Australia. A Dignity in Dying Bill introduced by Democrats leader Sandra Kanck, MLC, is before both houses of the South Australian parliament.

2. France. A national debate about euthanasia has been provoked in France by the death of 22-year-old Vincent Humbert and the release of his book, *I Ask You for the Right to Die*, in September 2003. Humbert had been unable to speak, move, or see following injuries suffered in an automobile accident in 2000, although he was able to write his book by communicating through movements of his left thumb. Humbert had repeatedly asked to die, including a request made to President Jacques Chirac in November 2002. Humbert's mother Marie allegedly injected his intravenous line with barbiturates, leading to his death two days later. She was taken into custody initially by the police on suspicion of attempted murder, but subsequently was released and hospitalized.

### 3. Great Britain

- a. Proposed legislation in House of Lords. On 2/20/03, Lord Joffe, a retired human rights lawyer, introduced the Patient (Assisted Dying) Bill (HL 37) in the House of Lords. The bill would allow a terminally ill adult to receive medical help to die if two physicians had confirmed the diagnosis and were satisfied that the patient had considered alternatives such as hospice care. On 6/6/03, the bill was given an unopposed second reading, in keeping with tradition, after an impassioned seven-hour debate in which 21 Lords spoke in favor of the bill and 27 spoke against. The bill is certain to be blocked at a later stage of the legislative process.
- b. Survey of physicians. An internet polling survey of 986 British physicians, which was commissioned by Right to Life, was conducted between 3/26/03 and 4/9/03. The results including the following:
  - (1) Twenty-five percent agreed with assisted suicide, 60% disagreed, and 13% were undecided. Twenty-two percent agreed with euthanasia, 61% disagreed, and 14% were undecided.
  - (2) Seventy-four percent said they would refuse to practice assisted suicide if it was legalized and 26% said they would be willing. Seventy-six percent said they would refuse to practice euthanasia if it was legalized and 23% said they would be willing.
  - (3) Fifty-nine percent believed that current British Medical Association policy against legalization of euthanasia and assisted suicide should not change.

- (4) When asked how many patients had requested euthanasia over the past three years, nearly half said none, 37% said less than five, 11% said between five and 10, and 2% said more than 10.
4. Ireland. Irish authorities have been investigating the involvement of Rev. George Exoo and Thomas McGurrin of Beckley, West Virginia, in the suicide of Rosemary Toole Gilhooley, 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. The men could be charged with assisting a suicide, a felony that can lead to a sentence of up to 14 years in prison. In September 2003, the Director of Public Prosecutions confirmed that extradition proceedings would be commenced.
5. Italy. A survey of 1,000 Italians conducted by Coesis for the Catholic Worker's Association (ACLI), a left-leaning Catholic group, showed that 42% favored giving the option of euthanasia to people with terminal illnesses, while 19% had no opinion. The survey results were released in September 2003 as part of a debate on bioethics at the association's four-day conference in Orvieto.
6. New Zealand
1. Euthanasia legislation defeated. In 2000, New Zealand First MP Peter Brown introduced a private member's bill (the "Death with Dignity Bill") that would lead to a national referendum on legalization of voluntary euthanasia. On 3/6/03, the bill was introduced for debate in parliament, and debate began in April 2003. On 7/30/03, the proposed legislation was narrowly defeated at its first reading by a vote of 60 to 57, with one abstention and two members absent. The last time parliament debated the issue was in 1995, when a similar bill failed to pass by a large margin.
  2. Lesley Martin. In September 2002, Lesley Martin, a euthanasia campaigner, published the book *To Die Like a Dog*. The book describes how Martin, an intensive care nurse, gave her mother a morphine injection in May 1999 as Joy Martin was dying of cancer. On 3/6/03, Wanganui police arrested Lesley Martin on attempted murder charges. In August 2003, her case was committed to trial.
7. Council of Europe. In September 2003, the Council of Europe's Social, Health, and Family Affairs Committee called on all European states to decriminalize euthanasia. The committee also wants member states to collect and analyze evidence on end-of-life decisions. [Table of Contents](#)
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\* Some information obtained from media reports has not been independently verified.