



Recent Developments in Physician-Assisted Suicide

March 2004

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. No opinion had been issued as of the date this report was prepared. 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.

LEGISLATION

1. Arizona. In the 2003 session of the Arizona legislature, an Aid in Dying bill patterned after the Oregon Death with Dignity Act, which was introduced as H.B. 2454, died after a hearing was held. On 1/19/04, H.B. 2172 (known as the Patient Comfort and Control Act) was introduced in the 2004 session of the legislature. The bill would amend Arizona's advance directive statutes so that a person could indicate a desire to control suffering in the event of terminal illness by obtaining a prescription for lethal medication. The advance directive would have to be executed at least three months before the person requests a prescription. Except for the requirement for execution of an advance directive, the provisions of the Arizona bill are similar to the Oregon Death with Dignity Act.
2. 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; a companion bill was introduced in the House as H.B. 862. The bills were referred to committee and did not reach a vote, but they have been carried over to the 2004 Regular Session of the legislature, which began in January 2004.
3. Oregon
 - a. Compassion in Dying publishes book. In October 2003, Compassion in Dying of Oregon issued a book titled *Compassion in Dying: Stories of Dignity and Choice* (edited by Barbara Coombs Lee and published by NewSage Press). Most of the stories in the book are from Oregonians and their family members who sought assistance from Compassion in Dying of Oregon in order to take advantage of the Oregon Death with Dignity Act. Copies of the book can be ordered for \$12 plus \$3 for shipping and handling by contacting Compassion in Dying, P.O. Box 6404, Portland, OR 97228.
 - b. Counseling by Compassion in Dying. Compassion in Dying of Oregon counseled 112 patients who died during 2003. Of these, 75 died a natural death, 33 used the Oregon Death with Dignity Act, and 4 died by voluntarily stopping eating and drinking.
4. Vermont
 - a. Two bills introduced. Two bills relating to assisted suicide were introduced in the Vermont General Assembly in February 2003. H. 275, which was introduced by nine representatives, would criminalize assisted suicide. H. 318, which now has 40 sponsors, is patterned after the Oregon Death with Dignity Act. Both bills have been carried over to the 2004 legislative session.
 - b. Public debate over proposed legislation. A number of public debates were held in fall 2003 about the proposed physician-assisted suicide legislation.
 - c. Vermont Medical Society. On 10/17/03, 84 voting doctor-members of the society debated the proposed legislation at the society's annual meeting, which was open to the news media and the public. They decided to refer the issue to all 1,497 members of the society in a ballot mailed in November 2003; 769 members (51%) responded. The ballot contained two resolutions, one stating that "the society should take a neutral position" in order to honor the members' diverse views and the other (which reflected the society's current policy) that "there should be no laws concerning physician-assisted suicide." The first resolution won 50.6% support, while the second won 74% support. In light of these somewhat equivocal results, the governing body of the society (the Medical Society Council) voted 20-2 to endorse the second resolution.
 - d. Other groups. In December 2003, the Vermont State Nurses Association took a stand strongly opposing legalization of physician-assisted suicide. Other groups that recently have declared their opposition

include the Vermont Coalition for Disability Rights, the Vermont chapter of the American Cancer Society, and the Hospice and Palliative Care Council of Vermont.

- e. Vermont legislature. In light of the controversy over H. 318, Vermont Senator James Leddy and Representative Thomas Koch, chairs of the Senate and House Health and Welfare Committees, announced in January 2004 that their committees would not take up the bill this year. However, the House Health and Welfare Committee did hold hearings in February 2004 about ways to improve end-of-life care.
5. Wyoming. On 2/19/04, Senator Keith Goodenough attempted to introduce Senate File 7 (the Wyoming Death with Dignity Act) in the Wyoming Senate. The bill failed on introduction by a vote of 19 to 8; because the legislative session was a budget session, the bill could not be considered unless two-thirds of senators agreed. The bill was based on the Oregon Death with Dignity Act.
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OTHER NATIONAL DEVELOPMENTS

1. Dr. Jack Kevorkian. In 1999, Dr. Jack Kevorkian was convicted of second-degree murder for giving a lethal injection to a Detroit man who had Lou Gehrig's disease. He is eligible for parole in 2007. In December 2003, Kevorkian's second petition to be released early for health reasons was rejected by Judge Rae Lee Chabot.
 2. National poll. A national poll of 1,005 adults issued by Religious News Service in September 2003 showed that Americans find physician-assisted suicide more acceptable morally than suicide. As to physician-assisted suicide, 45% said it was morally acceptable and 49% that it was morally wrong. As to suicide, 14% said it was morally acceptable and 81% that it was morally wrong.
 3. Catholic church. At the U.S. Conference of Catholic Bishops in Washington, D.C., held in November 2003, church leaders criticized adherents' practice of picking and choosing which Catholic doctrines to follow. A task force of bishops is weighing whether to recommend sanctions for Catholic politicians who support policies contrary to church teachings, such as the prohibition against abortion and euthanasia. In January 2004, New Orleans Archbishop Alfred C. Hughes and Wisconsin Bishop Raymond Burke (now Archbishop of St. Louis) told diocesan priests to withhold communion from lawmakers who refuse to support the church's position on such issues.
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MEDICAL DEVELOPMENTS

1. Recent articles
 - a. Joseph J. Gallo et al., *Life-Sustaining Treatments: What Do Physicians Want and Do They Express Their Wishes to Others?*, 51 J. Am. Geriatrics Soc'y 961 (2003) [1998 survey of known surviving physicians from Johns Hopkins Precursor Study showed that 46% felt that their own doctors were unaware of their treatment preferences, but 59% of these respondents had no intention of discussing their wishes with their doctors within the next year; 89% of respondents thought that their families were aware of their preferences and preferred that their spouse or children be consulted if they were unable to speak for themselves; 64% had executed an advance directive; and most would not want any treatment other than pain medication in the event of irreversible brain injury].

- b. Susan L. Mitchell et al., *Clinical and Organizational Factors Associated with Feeding Tube Use Among Nursing Home Residents with Advanced Cognitive Impairments*, 290 JAMA 73 (2003) [in a 1999 nationwide study of feeding tube use among nursing home residents with advanced cognitive impairment that considered both resident and facility characteristics, 33.8% of residents had feeding tubes, with a wide variation among states and among facilities within a single state; resident characteristics associated with a greater likelihood of feeding tube use included younger age, nonwhite race, male sex, divorced marital status, lack of an advance directive, a recent decline in functional status, and no diagnosis of Alzheimer disease; residents living in facilities that were for profit, located in an urban area, had more than 100 beds, and lacked a special dementia care unit had a higher likelihood of having a feeding tube].
 - c. David J. Doukas & John Hardwig, *Using the Family Covenant in Planning End-of-Life Care: Obligations and Promises of Patients, Families, and Physicians*, 51 J. Am. Geriatrics Soc'y 1155 (2003) [authors propose a process by which a patient's physician facilitates discussion of the patient's end-of-life care preferences between the patient and his or her family members, leading to mutual promises as to what each party will do if certain situations arise].
 - d. Bregje D. Onwuteaka-Philipsen et al., *Euthanasia and Other End-of-Life Decisions in the Netherlands in 1990, 1995, and 2001*, 362 Lancet 395 (2003) [authors use physician interviews and death-certificate studies to present new data on the rate in 2001 of euthanasia, physician-assisted suicide, and other end-of-life decisions in the Netherlands, as well as a longitudinal analysis of decisionmaking practices during 1990-2001; the rate of euthanasia and physician-assisted suicide remained stable over this period, although physicians became somewhat more restrictive in their practices; euthanasia remained much more common than physician-assisted suicide].
 - e. Charles L. Sprung et al., *End-of-Life Practices in European Intensive Care Units: The Ethicus Study*, 290 JAMA 790 (2003) [researchers who studied 31,417 patients admitted to intensive care units in 17 European countries during January 1999 through June 2000 found that 10% had a limitation of life-sustaining treatment; however, substantial variation was found among countries, associated with region and religion; seven countries reported active shortening of the dying process in a total of 2% of deaths].
 - f. Alberto Giannini et al., *End-of-Life Decisions in Intensive Care Units: Attitudes of Physicians in an Italian Urban Setting*, 29 Intensive Care Med. 1902 (2003) [2001 survey of 225 intensivists in all 20 ICUs in Milan, Italy, showed that the decision to forgo life-sustaining treatment was less frequent than in other countries, generally was made by the medical team, often was not noted in the patient's clinical record, and was not preceded by ethical consultation; that most respondents were unfamiliar with advance directives; and that deliberate use of lethal doses of drugs was admitted by 3.6% of respondents and considered ethically acceptable by 15.8%].
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INTERNATIONAL DEVELOPMENTS

1. Australia

- a. West Australia. In 2002, Robin Chapple of the Greens party introduced in the West Australian Upper House a private member's bill that would legalize voluntary euthanasia. In October 2003, Chapple predicted that the Upper House would vote on the bill early in 2004 and said that Upper House views appeared to be equally divided. The bill provides for an 18-month medically-supervised voluntary euthanasia trial.

- b. New South Wales. In November 2003, the New South Wales Upper House rejected, by a vote of 28-4, a Greens party bill to allow a referendum on voluntary euthanasia.
 - c. Young Leaders Parliament. On 1/20/04, a bill for voluntary euthanasia was passed by the Young Leaders Parliament in Adelaide by a 30-12 vote.
2. Belgium. In November 2003, Flanders International Radio reported that 203 people had used the new euthanasia law during the first year it was in effect. Preliminary figures showed that far more Flemish patients than French-speaking patients were requesting euthanasia. The Belgian government is expected to issue an official report soon.
 3. France. In January 2003, nurse Christine Malevre was convicted and sentenced to 10 years in prison on six counts of murder for administering lethal medication to elderly, terminally ill cancer patients who died in 1997 and 1998 at a hospital in Mantes-la-Jolie west of Paris. On 10/15/03, an appeals court upheld the conviction but increased the sentence from 10 to 12 years.
 4. 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. On 1/14/04, a select committee of the House of Lords was appointed to consider the issues raised by the bill.
 - b. Survey of nurses. A survey of over 2,700 nurses conducted by Nursing Times magazine reported in November 2003 that 44% of respondents had administered a pain relief drug to dying patients knowing it could hasten death, and 25% had been asked to help a patient end his or her life when the pain got to be too much. Thirty-one percent thought that nurses should be allowed to assist in a suicide, although most would limit assistance to terminally ill patients; 40% would limit assistance to patients in "extreme pain or distress."
 - c. Dr. Irwin. In December 2003, Dr. Michael Irwin, a retired general practitioner serving as chairman and a board member of the Voluntary Euthanasia Society, resigned from his positions after being arrested in connection with the death of his terminally ill friend and fellow activist, Patrick Kneen, in October on the Isle of Man. Irwin allegedly took sleeping pills to Kneen, but claimed that Kneen was no longer able to take them and died without assistance. In February 2004, the Attorney General's office and the police decided not to pursue the case against Irwin.
 - d. Leslie Burke. Leslie Burke, who suffers from a degenerative brain condition known as cerebellar ataxia, has launched a challenge to the General Medical Council guidelines on withholding and withdrawing life-sustaining treatment that were published in 2002 after lengthy consideration. Burke is arguing that domestic and European human rights law is violated by the guidelines' provisions allowing physicians to withhold or withdraw artificial nutrition and hydration under certain conditions without court approval. The case is due to be heard at the High Court in London at the end of February 2004.
5. 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. In September 2003, the Director of Public Prosecutions confirmed that extradition proceedings would be commenced. Initially, it was thought that

the men would be charged with assisting a suicide, a felony that can lead to a sentence of up to 14 years in prison. More recently, the authorities have indicated that they will charge the men with murder.

6. Israel. In 2002, a committee of 58 experts on end-of-life issues chaired by Professor Avraham Steinberg submitted a written report to Health Minister Nissim Dahan containing a number of recommendations for legislation on end-of-life care. The report recommended barring active euthanasia, but allowing a hopelessly ill patient to die passively by not initiating resuscitation or other lifesaving procedures or by executing a legally binding living will. On 1/15/04, Professor Steinberg announced that engineers were completing design of a delayed-response timer that dying patients could use to turn off a respirator. The committee's report has been endorsed by Dahan and his successor, Dan Naveh, and approved and processed by the Health Ministry's legal department. A bill based on the report is expected to be presented to the Ministerial Committee on Legislation and then to the Knesset. Under the bill, a hospital ethics committee would rule in problematic cases, and a national ethics committee would hear appeals.

 7. New Zealand. 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. Her trial will begin in March 2004.

 8. Switzerland
 - a. Concern about assisted suicides. The group Dignitas, which performs assisted suicide, is under investigation in connection with the deaths of a British couple and a Frenchman because of concerns that they were not terminally ill or lacked mental capacity. Authorities in the canton of Aargau also have issued a cease and desist order for a physician who works closely with Dignitas to stop prescribing deadly barbiturates. Through the end of October 2003, a total of 73 foreigners had traveled to Switzerland to commit suicide.

 - b. Swiss Academy of Medical Sciences. Werner Stauffacher, president of the Swiss Academy of Medical Sciences, recently told the news agency Swissinfo that the organization no longer opposed all forms of euthanasia. The organization continues to oppose active euthanasia but approves of physician-assisted suicide if certain conditions are satisfied. The academy's recommendations will be reviewed by Swiss physicians and a final list of directives will be established by the end of 2004.

 9. Council of Europe. The Parliamentary Assembly of the Council of Europe has rescheduled from January 2004 to April 2004 a discussion on the Marty Report on Euthanasia (Doc. 9898), drafted by the Swiss Rapporteur of the Social, Health, and Family Affairs Committee, Mr. Dick Marty. The Marty Report asks all European countries to promote the introduction of a euthanasia law similar to those in effect in the Netherlands and Belgium. The International Federation of Catholic Medical Associations has issued a statement opposing the recommendations of the Marty Report.
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* Some information obtained from media reports has not been independently verified.