

## RECENT DEVELOPMENTS IN PHYSICIAN-ASSISTED SUICIDE

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### LITIGATION

*Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach*, 445 F.3d 470 (2006). The Alliance filed suit to enjoin the Food and Drug Administration (FDA) from barring access to potentially life-saving investigational drugs (already determined by the FDA to be sufficiently safe for expanded human testing) by mentally competent, terminally ill adult patients who have no alternative government-approved treatment options. On 5/2/06, the U.S. Court of Appeals for the District of Columbia Circuit issued a 2-to-1 decision finding that the complaint stated a claim and the District Court erred in dismissing the case. The appellate court concluded that cases such as *Glucksberg* and *Cruzan* established that the FDA's actions implicated fundamental substantive due process rights to privacy, liberty, and life of Alliance's terminally ill members. The court remanded the case to permit the trial court to determine whether the FDA's policy was narrowly tailored to serve a compelling governmental interest.

*Raich v. Ashcroft*, 248 F.Supp.2d 918 (N.D.Cal. 2003), *rev'd*, 352 F.3d 1222 (9th Cir. 2003), *rev'd sub nom. Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). On 6/6/05, the United States Supreme Court held in *Gonzales v. Raich* that application of Controlled Substances Act provisions criminalizing the manufacture, distribution, or possession of marijuana by intrastate growers and users of marijuana for medical purposes did not violate the Commerce Clause of the U.S. Constitution. In addition to the Commerce Clause claim, plaintiffs had alleged violation of state sovereignty under the Tenth Amendment, deprivation of liberty rights under the Due Process Clause of the Fifth Amendment and under the Ninth Amendment, and the defense of medical necessity. On 3/27/06, Judges C. Arlen Beam, Richard Paez, and Harry Pregerson of the Ninth Circuit Court of Appeals heard oral argument on the latter claims. *Raich v. Gonzales*, No. 03-15481 (9th Cir.). Case documents are available at Angel Raich's web site, <http://www.angeljustice.org>.

### LEGISLATION

#### California

Bill introduced. On 2/17/05, Assemblywoman Patty Berg and Assemblyman Lloyd Levine introduced a bill in the California legislature, AB 654 (the California Compassionate Choices Act), which was patterned after the Oregon Death with Dignity Act.

Assembly. After lengthy and contentious hearings, AB 654 was approved by the Assembly's Judiciary Committee by a vote of 5-4 and by the Assembly's Appropriations Committee by a vote of 11-6. Because of uncertainty about whether AB 654 would pass on the Assembly floor, Assemblywoman Berg moved on 6/2/05 that the bill be placed on inactive status in the Assembly. However, the provisions of AB 654 were substituted into

a different bill, AB 651, already pending before the Senate. Ultimately, backers of the California Compassionate Choices Act decided in July 2005 to abandon their efforts for the time being and to carry the proposed legislation over to the second year of the 2005-06 legislative session.

Senate. Supporters of AB 651 were optimistic that it would pass in the California legislature in 2006. On 6/27/06, hundreds of witnesses testified in a hearing before the Senate Judiciary Committee. At the conclusion of the hearing, the bill failed on a 3-2 vote when the committee's chair, Democratic Senator Joe Dunn, voted against it.

## Oregon

Char Andrews. Char Andrews, a 68-year-old breast cancer patient who was the last plaintiff to sign on in *Oregon v. Ashcroft*, died of her illness on 8/2/06. She did not take lethal medication, although she had started the process the prior month.

Oregon Pain Management Commission. The Oregon Pain Management Commission helped pass a law mandating seven hours of continuing education by 2009 for physicians who treat chronic pain. Although the Oregon Medical Association is not happy about the requirement, the Commission hopes to add physical and occupational therapists to the list of medical professionals who must complete continuing education. In 1995, Oregon became the third state to pass intractable pain laws.

Washington. On 1/24/06, Senator Pat Thibaudeau and other senators introduced SB 6843, the Washington Death with Dignity Act, in the Washington legislature. The bill was patterned after the Oregon Death with Dignity Act. The bill was referred to the Health & Long-Term Care Committee but died in committee without a hearing at the end of the legislature's 60-day session. However, incumbent Democratic Senator Darlene Fairley from the 32nd District has indicated that she plans to sponsor a similar bill in the next legislative session if she is reelected.

Federal legislation. On 5/26/06, Senator Sam Brownback, a socially conservative Republican from Kansas, chaired a hearing on the subject of "The Consequences of Legalized Assisted Suicide and Euthanasia" before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights. On 8/3/06, Brownback introduced the Assisted Suicide Prevention Act of 2006, which would prohibit physicians from prescribing medication for assisted suicide or euthanasia. On 9/5/06, Oregon Senator Ron Wyden announced on the Senate floor that he would block the bill indefinitely through a legislative hold, which means that he is prepared to filibuster to prevent its passage. Supporters would need 60 votes to end a filibuster. Neither Brownback nor other members of Congress expect a bill to pass this year.

## **OTHER NATIONAL DEVELOPMENTS**

### Dr. Jack Kevorkian

Commutation request. Dr. Jack Kevorkian is scheduled to be paroled from a Michigan prison on 6/1/07. In June 2006, the Michigan Parole Board affirmed its earlier decision

rejecting Kevorkian's request for commutation of his sentence for the fourth consecutive year. However, Governor Jennifer Granholm, who has ordered an independent medical examination to determine Kevorkian's medical condition, may still consider a commutation. Kevorkian's lawyer Mayer Morganroth has argued that Kevorkian is 78 years old, weighs only 113 pounds, suffers from Hepatitis C and diabetes, and will not live for another year. Readers responding to a Detroit News Cybersurvey voted 67% to 33% in favor of release.

Biography. Two of Dr. Jack Kevorkian's longtime friends, Neal Nicol and Harry Wylie, have written an authorized biography, *Between the Dying and the Dead: Dr. Jack Kevorkian's Life and the Battle to Legalize Euthanasia*, published by the University of Wisconsin Press. Film rights to the book have been purchased by Hollywood's Bee Holder Productions.

Documentary. Sophie Boudreau, a 14-year-old girl from Holland, Michigan, researched and produced a 10-minute documentary on the life of Dr. Jack Kevorkian, titled *Whose Death Is It, Anyway?* Boudreau's documentary was selected as the best history project from a Michigan middle school at the National History Day competition at the University of Maryland.

American Bar Association. On 8/4/06 in Honolulu, Hawaii, a panel at the American Bar Association annual meeting discussed "*Gonzales vs. Oregon—Lessons for States, Terminally Ill, and Schiavo Patients.*" Speakers included leaders in the fields of medicine, law, medical ethics, and patient advocacy.

Dr. Bernard Rottschaefer. On 4/27/06, the U.S. Court of Appeals for the Third Circuit denied a request by Dr. Bernard Rottschaefer of Oakmont, Pennsylvania, for a new trial based on alleged perjury by a trial witness, prosecutorial misconduct, and ineffective assistance of counsel. Rottschaefer was convicted in March 2004 of 153 counts of illegally prescribing OxyContin to five female patients, but was acquitted on 55 other counts. He was sentenced to 6½ years in prison but had remained free on appeal. After his motion for a new trial was denied, Rottschaefer indicated that he would appeal to the U.S. Supreme Court.

Gallup poll. In Gallup's annual national Survey on Values and Beliefs conducted during 5/8-5/11/06, the vast majority of the 1,002 adults polled continued to support right-to-die laws for terminally ill patients, whether the laws legalize euthanasia or assisted suicide. In the case of euthanasia, 69% supported such laws, 27% opposed them, and 4% were unsure (support has fluctuated between 65% and 75% since 1990). In the case of physician-assisted suicide, 64% supported such laws, 31% opposed them, and 5% were unsure. Respondents most likely to object include senior citizens, those who frequently attend religious services, those with less education, blacks, conservatives, and Republicans.

## **MEDICAL DEVELOPMENTS**

DEA Policy Statement on Dispensing Controlled Substances for the Treatment of Pain. On 9/6/06, the Drug Enforcement Administration (DEA) issued a policy statement on dispensing controlled substances for the treatment of pain. *See* 71 Fed. Reg. 52,716 (Sep. 6, 2006). The DEA had

solicited comments on the subject in 2005. The new policy statement responds to these comments, most of which sought clarification on the legal requirements governing the prescribing of Schedule II controlled substances by physicians. The policy statement says that federal law “should in no way interfere with the legitimate practice of medicine or cause any physician to be reluctant to provide legitimate pain treatment,” and that the DEA “wishes to dispel the mistaken notion among a small number of medical professionals that the agency has embarked on a campaign to ‘target’ physicians who prescribe controlled substances for the treatment of pain.” The DEA declined to issue any specific guidelines on acceptable practices for physicians.

### Recent articles

Melissa W. Wachterman & Benjamin D. Sommers, *The Impact of Gender and Marital Status on End-of-Life Care: Evidence from the National Mortality Follow-Back Survey*, 9 J. Palliative Med. 343 (2006) [researchers analyzed end-of-life care for 12,771 individuals who died of natural causes, from the 1993 National Mortality Follow-Back Survey; the only gender differences during the last year of life were that women were more likely to receive formal or informal care and more likely to be on Medicaid; marital status was a key variable, with unmarried individuals more likely than married individuals to live their last year of life and die in nursing homes, less likely to receive formal or informal care, and more likely to be on Medicaid]

E. Dahl & N. Levy, *The Case for Physician Assisted Suicide: How Can It Possibly Be Proven?*, 32 J. Med. Ethics 335 (2006) [authors suggests ways to weigh the benefits and risks of physician-assisted suicide]

J. Coggon, *Arguing About Physician-Assisted Suicide: A Response to Steinbock*, 32 J. Med. Ethics 339 (2006) [author questions the usefulness of objective, empirical evidence in the debate about physician-assisted suicide, suggesting that ethical argument is essential]

K.L. Rodriguez & A.J. Young, *Perceptions of Patients on the Utility or Futility of End-of-Life Treatment*, 32 J. Med. Ethics 444 (2006) [in-depth interviews of 30 elderly individuals receiving outpatient care in a large, urban Veterans Affairs medical center focused on how the patients perceived life-sustaining treatment, terminal condition, state of permanent unconsciousness, and decisionmaking capacity; researchers concluded that the four factors taken into account by patients when discussing end-of-life interventions and outcomes were (1) expected quality of life, (2) emotional and financial costs of treatment, (3) likelihood of treatment success, and (4) expected effect on longevity; interviews showed that patients’ health care providers tended to take the same four factors into account]

Bregje D. Onwuteaka-Philipsen et al., *End-of-Life Decision Making in Europe and Australia*, 166 Archives Internal Med. 921 (2006) [written questionnaire completed by 300 physicians each in Australia, Belgium, Denmark, Italy, the Netherlands, Sweden, and Switzerland asked about their willingness in four hypothetical cases to withhold chemotherapy, intensify efforts to alleviate pain, use deep sedation, and administer drugs with the explicit intention of hastening death at a patient’s request; in all countries, 75% to 99% would withhold chemotherapy or intensify symptom treatment; in most cases, more than half of physicians

would be willing to use deep sedation, but there was less willingness to administer drugs to hasten death; the most important predictor of the physicians' willingness was a request from a patient with decisional capacity]

Harvey M. Chochinov et al., *Dignity in the Terminally Ill: Revisited*, 9 J. Palliative Med. 666 (2006) [researchers surveyed 211 patients receiving palliative care about the extent to which they believed various issues and concerns (physical, psychological, social, and existential) were related to or could influence their sense of dignity; quantitative data validated the Dignity Model, originally based on qualitative data; the two issues most often identified as having an influence on patients' sense of dignity were "not being treated with respect or understanding" (87.1%) and "feeling a burden to others" (87.1%)]

Erik K. Fromme et al., *Survival, Mortality, and Location of Death for Patients Seen by a Hospital-Based Palliative Care Team*, 9 J. Palliative Med. 903 (2006) [survey of the 292 patients seen over a one-year period by the inpatient palliative care team at Oregon Health & Science University showed that two-thirds of patients were able to be discharged, even when death occurred within two weeks; only 10% of patients who were discharged were readmitted within 30 days, and only 5% of those discharged ultimately died in an acute care hospital]

Daniel P. Sulmasy, *Spiritual Issues in the Care of Dying Patients—“ . . . It's Okay Between Me and God,”* 296 JAMA 1385 (2006) [author uses a hypothetical cancer patient with a strong religious belief in a miraculous cure to explore how better understanding of this belief and more explicitly spiritual conversation with the patient might have provided opportunities for improved care]

Scott D. Halpern & John Hansen-Flaschen, *Terminal Withdrawal of Life-Sustaining Supplemental Oxygen*, 296 JAMA 1397 (2006) [authors discuss physicians' concerns about heeding patient requests to withdraw supplemental oxygen, and recommend that physicians take a four-step approach to address their concerns]

## INTERNATIONAL DEVELOPMENTS

### Australia

Sandra Kanck. The federal Suicide Related Material Offences Act makes it a criminal offense to use the internet or email to access, transmit, or make available material that counsels, incites, or instructs how to commit suicide. On 8/30/06, Democratic leader MP Sandra Kanck used her parliamentary privilege to give a speech in the South Australian parliament criticizing the federal law and detailing various ways by which people can commit suicide. Kanck expected that her speech would be published in the Hansard (the record of parliamentary proceedings) and posted on parliament's website, thus causing a confrontation over the Act's constitutionality between the federal government and the state. The upper house subsequently deflected the potential confrontation by voting 10-9 to delete the speech from the internet version of the Hansard. However, the speech was published on other web sites, including one in New Zealand, where the government issued a statement

saying that the Bill of Rights Act guaranteed freedom of speech.

South Australia. Former Speaker Bob Such has announced that he will introduce a private member's bill on euthanasia in the South Australian parliament before the end of 2006. Under the terms of the Voluntary Euthanasia Safeguards Bill, euthanasia would be available only to terminally ill patients experiencing gross pain despite efforts at pain relief. The bill would require that two physicians and a psychiatrist examine the patient. Five attempts to enact voluntary euthanasia legislation in South Australia have failed in the past.

Other states. Immigration Minister Amanda Vanstone, the most powerful woman in the federal cabinet, has come out in favor of developing "sane, sensible, and humane" euthanasia laws. In September 2006, she said that people treat their pets better than their loved ones when faced with the prospect of a slow and agonizing death. Vanstone also indicated that she hoped that "one of the states or territories can be encouraged to have another go."

Anniversary of Northern Territory legislation. Ten years have passed since implementation of the Northern Territory's Rights of the Terminally Ill Act, a euthanasia law under which four patients died before the federal parliament overturned it. The Speaker of the Northern Territory parliament rejected Dr. Phillip Nitschke's request for a commemorative display in the foyer of the parliament, saying that it would be too controversial, but the territory's former Chief Minister Marshall Perron said that he continues to support the Act. Senator Vanstone was a key speaker at a Sydney conference in September 2006 marking the tenth anniversary. Two hundred people marched through Sydney to mark the anniversary.

Suicide pill. Dr. Philip Nitschke has reported the development of a do-it-yourself suicide pill by a group of 20 Australians with degenerative and terminal illnesses, each of whom contributed about \$1,700 to fund the year-long trial period. Nitschke said that the barbiturate (named the "Peanut Project") would be ready for use soon. The original group plans to bequeath their equipment and know-how to another group of people wanting to end their lives, who will need to spend only about \$425 to manufacture sufficient amounts of the drug to kill themselves. Nitschke said that about 100 people are on a waiting list. On 9/19/06, 45 copies of Nitschke's *The Peaceful Pill Handbook* were seized by Customs officials at the Brisbane airport. The books are being withheld pending appeal, and Nitschke has been informed that they will be destroyed unless he files an appeal within 21 days.

Nancy Crick. Nancy Crick, a 69-year-old resident of Queensland, ended her life on 5/22/02 in the presence of 21 family, friends, and supporters of voluntary euthanasia with the intent of challenging laws against assisting a suicide. Although Queensland police investigated the case for possible criminal prosecution, they decided not to proceed. However, in September 2006 John Edge published a book, *Telling It Straight*, in which he admitted that he was present when Crick died and helped dispose of the evidence that could have been used to support a charge of assisted suicide. As a result, Queensland police are reviewing the book to see whether it contains new evidence that could lead to criminal charges being brought.

Drugs smuggled into country. A 73-year-old Queensland woman has said that she was one of 12 Australians who traveled to Mexico in September 2006 and obtained the lethal drug

Nembutal in order to smuggle it into Australia. The fine if she had been caught in Australia could have been as high as \$110,000, but the woman said she had no regrets. Dr. Philip Nitschke and his organization Exit International arranged the trip. Customs Minister Senator Chris Ellison admitted there was little the federal government could do about elderly people smuggling lethal drugs into the country.

## Canada

Proposed legislation. In 2005, Bloc Québécois MP Francine Lalonde tabled a private member's bill that would have legalized assisted suicide, but the bill died when the parliamentary session ended in November 2005. Lalonde was reelected in January 2006 and has promised to reintroduce her bill. Mike Storeshaw, spokesman for Justice Minister Vic Toews, has said that the Tories are not immediately looking at changing existing laws, although Tory MPs likely would be allowed a conscience vote if the issue comes to a vote in the House of Commons.

Dr. Ramesh Sharma. Dr. Ramesh Sharma, a longtime family physician from Vernon, British Columbia, appeared in court on 8/1/06 charged with attempting to assist an elderly patient to commit suicide. The alleged incident, which was interrupted by staff at a residential care facility, involved a 92-year-old female patient. A police investigation is under way. The British Columbia College of Physicians and Surgeons will conduct its own investigation into the matter.

Conference. The World Federation of Right to Die Societies 16th biennial conference was held in Toronto 9/7-9/10/06. The conference theme was "Challenge in Choice."

Gallup poll. In cooperation with Dying With Dignity, Gallup Canada Inc. revised the question it has been running since 1968 on the subject of euthanasia and assisted suicide. In the most recent poll, 75% of Canadians responded to the original question by saying that physicians should be allowed to end the life of a patient whose life is immediately threatened by a disease that causes the patient to experience great suffering, 17% said no, and 8% had no opinion. The response to this question has been quite stable (between 75% and 78%) over the last seven years. In response to the new question about whether physicians should be allowed to end the life of a patient with an incurable disease that is not immediately life-threatening but causes the patient to experience great suffering, 57% said yes, 32% said no, and 11% had no opinion.

Colombia. Beatriz Gomez, founder of the Colombian death with dignity organization Fundación Pro Derecho A Morir Dignamente (DMD), died on 8/15/06. DMD, which now has more than 10,000 members, was the only such organization in South America prior to 2006. Although the Colombian Constitutional High Court has ruled that the state could not criminalize assisted dying, Catholic politicians have kept the Senate from approving the ruling so that it still remains unconfirmed. Gomez tried unsuccessfully to find a physician who would assist a suicide in a justifiable case so that the law could be tested in court.

Crete. On 9/23/06, a coroner in Hania, Crete, conducted a post-mortem examination on the

exhumed body of an elderly woman following claims that a male nurse had helped her to die on 9/14/06. An investigation is under way.

Germany. At the annual meeting of the Association of German Law Professionals in September 2006, Justice Minister Brigitte Zypries told the *Stuttgarter Zeitung* that she supports the enactment of statutes authorizing the use of living wills, which already are recognized in case law. At the same time, however, Zypries said that there was no need for statutes explicitly decriminalizing the actions of medical personnel who assist in carrying out the patient's wishes. Criminal lawyer Torsten Verrel of Bonn said in response that such statutes were necessary to prevent inadequate relief from patients' suffering due to physicians' fear of liability.

### Great Britain

Valerie Sliwinski. Valerie Sliwinski, a 58-year-old woman who suffered from cancer and multiple sclerosis, died at a Dignitas clinic in Switzerland on 4/28/06. She was driven to Switzerland by her 34-year-old son Stefan. After Valerie Sliwinski's sister contacted British police, Stefan was arrested and questioned by detectives in May. Documents and a computer were taken by police who raided the home he shared with his family and his mother. On 8/16/06, police said that Stefan would not face any further action.

Leslie Burke. Leslie Burke, who suffers from a degenerative brain condition known as cerebellar ataxia, challenged the General Medical Council guidelines on withholding and withdrawing life-sustaining treatment that were published in 2002, 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. High Court Justice Mummery upheld Burke's claim that he was entitled to treatment and ordered the GMC to redraft its guidelines, but also recognized the right of patients to refuse treatment. The GMC appealed, arguing that the initial ruling was too broad because it might allow a patient to demand treatment physicians did not believe was in the patient's interest. The Department of Health, which oversees the government-funded National Health Service, joined the GMC in its appeal, citing concerns about resource allocation. In July 2005, a three-judge panel of the Court of Appeal agreed and reversed the lower court's decision. Burke appealed to the European Court of Human Rights, but in 2006 the court issued a written judgment refusing to reverse the ruling of the British courts. The European court said that it did not accept there was a "real and imminent" threat that artificial nutrition and hydration would be withdrawn in the final stages of Burke's illness, because British law favors prolonging life whenever possible. Moreover, artificial nutrition can hasten death in some circumstances, so it would be impossible to set rules as to what is in a patient's best interests.

Scotland. Liberal Democrat Jeremy Purvis had planned to introduce a member's bill patterned after the Oregon Death with Dignity Act in the Scottish parliament during 2006. The bill failed to attract enough support from other MPs, and is unlikely to be revived before the next election in 2007. However, Purvis said he will raise the issue again and has organized a debate in Holyrood in November 2006.



Gloria Thomson. Gloria Thomson, a 53-year-old woman with Huntington's disease, wrote to Scottish First Minister Jack McConnell asking him to pass legislation to make physician-assisted suicide lawful. Thomson's father died from the illness, and her sister also has it. The Scottish Executive replied saying that there were no plans to change Scottish law and the legalization of euthanasia would not be considered.

Assisted suicide pact. Jenni Murray, the presenter of BBC Radio 4's Woman's Hour, has entered into a pact with Sally Feldman (a former editor of Woman's Hour) and Jane Wilton (a mutual friend) in which they agreed to help each other to die if any of them develops a debilitating and incurable illness. They plan to draw up a written agreement. The pact arose out of a television documentary about euthanasia that Murray made.

Professor Len Doyal. Len Doyal, emeritus professor of medical ethics at Queen Mary, University of London, and a member of the British Medical Association medical ethics committee for nine years, argues that physicians are already effectively practicing euthanasia on patients who have no consciousness beyond the capacity to suffer pain and says that physicians also should be able to end the lives of some terminally ill patients "swiftly, humanely, and without guilt," even if the patients have not given consent. Doyal expressed his views in an article in Clinical Ethics, published by the Royal Society of Medicine, calling for the law and professional guidance to be changed.

Liberal Democrats. Chris Davies, Liberal Democratic MP for northwest England, recently organized a fringe meeting with Ludwig Minelli, the founder of the Swiss assisted suicide organization Dignitas. Although the Liberal Democrats backed assisted dying as official policy in 2004, the party has yet to promote the issue in or out of parliament. Davies said that the Liberal Democrats should "take the lead" on such a fundamental "human rights" issue, and he applauded the meeting between his party's home affairs spokesman, Nick Clegg, Minelli, and Sophie Pandit, the daughter of Anne Turner. Davies said that he would now "expect" to discuss the matter further with Clegg to ensure that the party pursued the issue. Both Davies and the chief executive for the British organization Dignity in Dying rejected Minelli's view that assisted suicide should be available to clinically depressed and mentally ill individuals.

Hong Kong. On 8/16/06, the Law Reform Commission of Hong Kong recommended that the city's hospitals draw up an advance medical directive form that all patients with terminal illness would sign before treatment, indicating their wishes if they become comatose or are in the terminal stages of their illness. There was no comment from the Health Department, which must decide whether to adopt the commission's recommendation. Cheung Tak-hair, chairman of the Alliance of Patients' Organization which represents 37 groups, attacked the proposal, while the Hong Kong Medical Association reacted cautiously.

## India

Law Commission. A number of residents of India have requested that courts grant permission to die by euthanasia, but so far all the requests have been denied. However, the Law Commission of India recently recommended legislation that would permit a terminally

ill patient or the patient's family to request a physician's assistance in euthanasia. If the physician agrees, the request would be considered by a government-appointed committee of three expert physicians, who would have to concur before euthanasia would be allowed. According to Law Minister H.R. Bharadwaj, the commission's recommendation has been sent to the Health Ministry for their opinion.

Fasting with intent to die. Petitioner Nikhil Soni has challenged the Jain religious practice of Santhara, or fasting with the intent of dying. Soni argues that Santhara is just as illegal as suicide and mercy killing, and subtly encourages the elderly to follow the practice. The matter is scheduled for a hearing before the Rajasthan High Court on 10/5/06, when both the state government and Jain religious groups will respond to Soni's petition.

## Italy

Piergiorgio Welby. In September 2006, Piergiorgio Welby sent a videotape to Italy's President, Giorgio Napolitano, asking to be granted the right to euthanasia. Welby said that Italian citizens should have the same ability to make use of euthanasia as Swiss, Belgian, and Dutch citizens do. Welby, a 60-year-old man who is co-president of the Luca Cascioni association, suffers from progressive muscular dystrophy and is on a respirator, is fed by a feeding tube, and communicates through a voice synthesizer. Napolitano responded with a letter saying that he was emotionally moved by the appeal and that he hoped euthanasia would be discussed in parliament "because the only unjustifiable stance would be silence." The situation has provoked considerable debate, and political and religious leaders are split on the issue.

Giovanni Nuvoli. Following Welby's appeal, Maddalena Nuvoli also wrote a letter to Italian President Giorgio Napolitano asking for the legalization of euthanasia. Nuvoli's 52-year-old husband, Giovanni Nuvoli, who has suffered from ALS for seven years and has been in bed for the past four years, is on a respirator and can only move his eyes. Maddalena Nuvoli said that the story of her husband and his battle for euthanasia will be told in a book that will be published after his death.

## Japan

Hokkaido physician. On 8/3/06, prosecutors in Toyama Prefecture decided not to charge a 34-year-old physician with murder for removing a 90-year-old patient from a respirator. The patient, who could not breathe on his own, died at Hokkaido Prefectural Haboro Hospital on 2/15/04, about 15 minutes after his respirator was withdrawn. Examinations by several physicians showed the man would have died soon even if the respirator had not been removed, and prosecutors said it was "extremely difficult" to find a causal link between the physician's action and the patient's death.

Yomiuri Shimbun survey. A survey by The Yomiuri Shimbun of 240 hospitals from around the country showed that 56% of hospitals had withheld life-prolonging treatment without clear guidelines on how to handle terminally ill patients, leaving the decision to the attending physicians. The respondents differed as to whether the practice presented problems, but the

majority cited the need for regulations (such as a law) defining when and how a patient should be placed on life support. Only 21 of the hospitals had drawn up their own guidelines on removing patients from life support. Seventy-two percent said that definite rules needed to be instituted nationwide for the purpose of gaining public consent and providing explanations to the families concerned.

Government guideline for end-of-life treatment. The Ministry of Health, Labor, and Welfare has compiled a draft guideline on medical treatment for patients who are terminally ill or have no chance of recovery from serious diseases such as cancer. The draft proposes putting top priority on the patient's will, and clearly bans physicians from participating in active euthanasia or physician-assisted suicide. The draft guideline calls for informing patients fully about their condition before confirming their wishes. If a patient's will cannot be confirmed directly, a team of more than one physician and nurses will discuss the situation with the patient's relatives. After taking advice from the relatives, the medical team will decide on the course of treatment which it deems best. A team of experts in the medical institution also will give advice to the medical team. The ministry plans to make the draft guideline public on its website in order to seek public opinions, have the draft and opinions discussed by a panel of experts, and then publish the final guideline by March 2007.

Other guidelines. Medical associations such as the Japanese Association for Acute Medicine, the Japanese Society of Intensive Care Medicine, and the All Japan Hospital Association are working on similar guidelines for end-of-life treatment.

Japan Society For Dying With Dignity. The Japan Society For Dying With Dignity, which is based in Tokyo, now has more than 110,000 members, about 80% of whom are age 65 or older. The organization issues living wills that its members can use to state that they want to minimize pain, but do not want to receive unnecessary treatment that prolongs their life if they are suffering from a terminal disease. The group received a flood of inquiries in March 2006 after allegations were made that a surgeon at Imizu Municipal Hospital had removed respirators from seven patients.

New Zealand. In September 2002, Lesley Martin, a euthanasia campaigner, published the book *To Die Like a Dog*, which described how Martin, an intensive care nurse, gave her mother a morphine injection in May 1999 as she was dying of cancer. Martin eventually was convicted of attempted murder and sentenced to 15 months in prison. She refused to apply for home detention and served half of her sentence before being released from prison in December 2004. Her appeals from the conviction were denied. Martin has now written a new book, *To Cry Inside*, published by Penguin. In the book, she explains the events that led up to her mother's death and the reasons her account of these events might not always have been consistent.

Spain. On 8/24/06, the Spanish newspaper El País reported that the heads of the radiology, accident and emergency, urology, pediatrics, and anesthetics departments at the Severo Ochoa hospital in Madrid have been dismissed. The dismissals resulted from allegations that up to 400 terminally ill patients had died from the administration of excessive doses of sedatives without the patients' consent. Two reports have failed to find conclusive proof of euthanasia: one found only administrative irregularities, while the other led to a reduction in the number of alleged cases from

400 to 16. No criminal cases have been brought.

## Switzerland

Pending lawsuit. Ludwig Minelli, the founder of Dignitas, has called for assisted suicide to be made available to clinically depressed and mentally ill individuals. On 10/27/06, a case will be argued before the Swiss Supreme Court on behalf of a Dignitas member who has bipolar disorder and wants the option of assisted suicide to be available. The member is a Swiss national but is living abroad. Minelli has indicated that the case will be taken to the European Court of Human Rights in Strasbourg if the Supreme Court's ruling is adverse. Currently, a physician who prescribes lethal medication under such circumstances can lose his or her license. Dignitas wants access to barbiturates without the need for a prescription.

Parliamentary actions. In May 2006, the Swiss cabinet rejected a call by legislators to restrict assisted suicide. Christian Weber, a spokesman for the Radical Free Democratic Party (one of four governing parties), said recently that suicide tourism is making headlines and that his party will ask parliament for a commission to tighten oversight of assisted-suicide groups. In addition, Martin Schwyn, who has a seat in Zurich's city parliament, has asked the local government to stop Dignitas from operating in a building whose residents have complained about activities there.

Dignitas. Eight hundred British people are now members of Dignitas, the Swiss organization that helps terminally ill individuals (including those from foreign countries) end their lives. The chief executive of Dignity in Dying, a British organization, predicts that the number of British members will rise to 1,000 by the end of 2006. Dignitas had more than 4,000 total members at the end of 2004 and has assisted in 573 deaths.

Exit. Exit, a Swiss organization founded in 1982, has about 50,000 members (Dignitas split off from Exit in 1998). Unlike Dignitas, Exit does not take clients from other countries. Exit volunteers assisted in 162 suicides in 2005.

Documentary. Five European Public Broadcasters (from Switzerland, France, Germany, Denmark, and Finland) have co-produced a documentary called *EXIT, The Right to Die*. The documentary shows how volunteers from the organization Exit accompany individuals who want assisted suicide on their journey to Switzerland. The documentary has won awards in several festivals (including Visions du Réel, Etats Généraux du documentaire, FIPA, Swiss Cinema Awards, and 2005 Namur International Film Festival), and was awarded the 5th EBU Golden Link Award in June 2006 by the European Broadcasting Union, the largest professional association of national broadcasters in the world. In October 2006, the documentary was shown at the Vancouver International Film Festival in Canada.

Venezuela. In March 2006, the Venezuelan Association for the Right to Die with Dignity (Asociación Venezolana Derecho a Morir) became the second right-to-die group formed in South America. Professor Rafael Aguiar-Guevara is the president.

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