Recent Developments in Physician-Assisted Suicide

October 1997

LITIGATION

1. *Lee v. Harcleroad*, 107 F.3d 1382 (9th Cir. 1997), cert. denied (Oct. 14, 1997, U.S. No. 96-1824). On 2/27/97, a 3-judge panel of the Ninth Circuit held that the plaintiffs lacked standing to challenge Oregon's Death with Dignity Act and ordered U.S. District Judge Hogan to dismiss the case; the court did not rule on the merits. Plaintiffs' petition to the U.S. Supreme Court for writ of certiorari and motion to defer consideration were denied on 10/14/97. However, the final judgment in the case is not expected to be entered for 1-2 weeks, and opponents of the Act have vowed to prevent its implementation prior to the November 4 election.

2. *Kevorkian v. Arnett*, 939 F.Supp. 725 (C.D. Cal. 1996), appeal pending sub nom. *Kevorkian v. Lungren* (9th Cir. No. 96-56405). Dr. Kevorkian and an AIDS patient brought this suit to invalidate California's statute criminalizing physician-assisted suicide as applied to competent, terminally ill patients. On 9/11/96, U.S. District Judge Consuelo B. Marshall invalidated the statute on Fourteenth Amendment due process grounds. Judge Marshall dismissed Kevorkian's claims for lack of standing, declined to rule on the Fourteenth Amendment equal protection claim, and held that the statute did not violate the right to privacy or to equal protection under California's Constitution. Opening briefs were filed in September in the pending appeal to the Ninth Circuit.

3. *Kevorkian v. Thompson*, 947 F.Supp. 1152 (E.D. Mich. 1997), appeal pending (6th Cir. No. 97-1094). Dr. Kevorkian and Janet Good filed suit asking for an injunction forbidding prosecutors in three counties from using Michigan's temporary criminal statute to prosecute various assisted suicides that occurred during 1992 and 1993. On 1/6/97, U.S. District Judge Gerald Rosen ruled against the plaintiffs, finding that: (1) the court should abstain under *Younger v. Harris* from deciding Dr. Kevorkian's claims because they could be raised pa3limin tefern10801(ting aption spending apainst tlimin]TJ0 -1.16 TD[

1. Michigan

a. Dr. Kevorkian's recent assisted suicides (since 6/1/97). On 8/13/97, Dr. Kevorkian's attorney acknowledged Kevorkian's responsibility for over 100 assisted suicides, including 8 recent deaths. Deaths identified since 6/1/97 include the following:

(1) 53rd suicide 6/26/97 = Janis Murphy (40-year-old woman with chronic fatigue syndrome and fibromyalgia.

(2) 54th suicide 7/2/97 = Dorinda Scheipsmeier (51-year-old woman with multiple sclerosis).

(3) 55th suicide 7/2/97 = Lynne Dawn Lennox (54-year-old woman with multiple sclerosis).

(4) 56th suicide 8/13/97 = Karen Shoffstall (34-year-old woman with multiple sclerosis).

(5) 57th suicide 8/29/97 = Thomas Summerlee (55-year-old man with multiple sclerosis).

(6) 58th suicide 9/3/97 = Carol Fox (54-year-old woman with ovarian cancer).

(7) 59th suicide 9/7/97 = Deborah Sickels (43-year-old woman with multiple sclerosis).

(8) 60th suicide 9/20/97 = Natverlal Thakore (78-year-old man with Parkinson's disease).

(9) 61st suicide 9/29/97 = Kari Miller (54-year-old woman with multiple sclerosis).

(10) 62nd suicide 10/3/97 = John Zdanowicz (50-year-old man with Lou Gehrig's disease).

(11) 63rd suicide 10/8/97 = Lois Caswell (65-year-old woman with chronic pain syndrome).

(12) 64th suicide 10/13/97 = Annette Blackman (34-year-old woman with multiple sclerosis).

b. Nonmedical panel to establish guidelines. On 7/2/97, Dr. Kevorkian announced that a nonmedical panel, headed by Janet Good, would establish "reasonable and sensible" guidelines for physician-assisted suicide because the medical profession has failed to do so.

c. Janet Good dies. On 8/26/97, Janet Good, one of Dr. Kevorkian's closest allies and founder of the Michigan chapter of the Hemlock Society, died after a long battle with pancreatic cancer. Her death was thought to be a suicide with the assistance of Dr. Kevorkian.

d. Ionia County criminal prosecution dropped. On 8/1/97, Ionia County prosecutor Raymond Voet announced that he would not refile criminal charges against Dr. Kevorkian in connection with the 8/30/96 death of Loretta Peabody, which was reported as being from natural causes. Voet's motion for a mistrial was granted in June, after the jury was impaneled, on the ground that defense attorney Geoffrey Fieger's opening statement was improper and prejudicial.

e. Dr. Kevorkian's civil actions against Oakland County officials. A $50 million civil lawsuit brought by Dr.

through discussion groups and forums, after which the guidelines will be presented to health care providers and hospitals, along with a report on community reactions. Susan Fox Buchanan is executive director of CCMD.

4. Florida Pain Management Commission. The Florida Pain Management Commission, formed three years ago and consisting of legal and medical experts, has documented problems of pain management and is now working on solutions. Florida no longer automatically investigates any physician who is reported for prescribing large quantities of narcotics. The commission is proposing a law that would include recognition of certain types of physicians and centers as pain treatment specialists. Florida also has produced pain guidelines that recognize the need for broad flexibility in prescribing drugs for intractable pain and require physicians to document individual need and failed attempts at alternative treatment.

5. Morphine use and comfort care in Oregon. Federal data from the first half of 1996 show that Oregon's increased focus on care of the dying has made the state the nation's leader in the medical use of morphine, with per-capita wholesale distribution more than 50% higher than the national average. Since 1994, the Oregon Board of Medical Examiners has emphasized that physicians should treat end-of-life pain aggressively. A number of hospitals have established patient comfort care teams, and utilization of hospice care has risen dramatically.

6. Oregon physicians release guidelines for physician-assisted suicide. A group of 24 Salem-area physicians, known as the Mid-Valley Physician Assisted Suicide Interest Group, has released a 6-page document containing guidelines for physicians wishing to participate in physician-assisted suicide. Guidelines for the day of the suicide include the following:

a. Completing a checklist to ensure compliance with the law's requirements.

b. Waiting to write the prescription until the day the patient plans to take it, making it valid for only one day, promptly filling the prescription, and noting on the prescription the purpose for which it is being written.

c. Dispensing the prescription directly to the attending or consulting physician.

d. Handing the drugs to the patient only after confirming that the patient is competent and wishes to proceed.

e. Using medical judgment to relieve distressing symptoms during or after taking the drugs (e.g., by administering antiemetics, antianxiety agents, oxygen, and/or antiseizure medications).

f. Remaining near the patient at least until unconsciousness occurs, and leaving only if another physician or an RN remains.

g. If the patient changes his mind, making every reasonable effort to recover him but nonetheless honoring any CNR request.

h. Allowing the patient to recover naturally if the attempt at suicide fails, and making another attempt only if the patient regains consciousness and still requests assisted suicide within the allowable time period.

7. Tennessee Medical Association. The issue of physician-assisted suicide was raised at a board meeting of the Tennessee Medical Association in July 1997. The TMA's president-elect, Dr. David Gerkin, reported that the TMA will oppose physician-assisted suicide when the issue is brought before state legislators in the coming year.

8. Recent surveys and articles

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effect, "Are you depressed?" Harvey Max Chochinov et al., *"Are You Depressed?" Screening for Depression in the Terminally Ill*, 154 American J. Psychiatry 674 (1997).

e. Guidelines for aid-in-dying. The June 1997 issue of The Western Journal of Medicine contains a number of articles on physician-assisted suicide, including an article outlining advisory guidelines developed for the San Francisco Bay area by the Bay Area Network of Ethics Committees and a report of a consensus conference held in September 1996 at the Stanford University Center for Biomedical Ethics. Steve Heilig et al., *Physician-Hastened Death--Advisory Guidelines for the San Francisco Bay Area from the Bay Area Network of Ethics Committees*, 166 The Western Journal of Medicine 370 (1997); Ernlé W.D. Young et al., *Report of the Northern California Conference for Guidelines on Aid-in-Dying: Definitions, Differences, Convergences, Conclusions*, 166 Western J. Med. 381 (1997).

f. Patient preferences for communication with physicians. On 7/1/97, researchers reported the preferences of selected SUPPORT study patients for communication with their physicians about cardiopulmonary resuscitation and prolonged mechanical ventilation. Jan C. Hoffman et al., *Patient Preferences for Communication with Physicians About End-of-Life Decisions*, 127 Annals of Internal Medicine 1 (1997). Only 23% of patients had discussed CPR preferences with their physicians, and only 12% had discussed ventilation preferences. The most surprising finding was that most patients who had not discussed their preferences did not wish to do so (58% as to CPR, 80% as to ventilation), despite the fact that 25% of patients did not want CPR and 87% did not want prolonged ventilation.

g. Patient preferences for living permanently in a nursing home. On 7/1/97, researchers reported the willingness of selected SUPPORT study patients to live permanently in a nursing home, as well as surrogate and physician understanding of patient preferences. Thomas J. Mattimore et al., *Surrogate and Physician Understanding of Patients' Preferences for Living Permanently in a Nursing Home*, 45 J. American Geriatrics Society 818 (1997). Patients were asked, "Would you be very willing, somewhat willing, somewhat unwilling, very unwilling, or would you rather die, than put up with living in a nursing home all the time?" Twenty-six percent were very willing or somewhat willing to live permanently in a nursing home, 37% were somewhat or very unwilling, 30% said they would rather die, and 6% were undecided. Surrogates understood 61% of patients' preferences but identified only 35% of patients who were willing to live permanently in a nursing home. Physicians identified only 18% of patients willing to live permanently in a nursing home.

l. Oregon's physician-assisted law. An August 1997 issue of the Archives of Internal Medicine includes an editorial on the debate over physician-assisted suicide, as well as an article by Dr. Peter Goodwin (one of the sponsors of Oregon's Death with Dignity Act) responding to criticisms of the Oregon law. Richard M. Sobel & A. Joseph Layon, *Editorial: Physician-Assisted Suicide-- Compassionate Care or Brave New World?*, 157 Archives of Internal Medicine 1638 (1997); Peter Goodwin, *Commentary: Oregon's Physician-Assisted Suicide Law--An Alternative Positive Viewpoint*, 157 Archives of Internal Medicine 1642 (1997).

m. Palliative care in undergraduate medical education16 TD(1642 PrTFenal edic.1666566201.64 747.72 Tm0ell as apublishian)77

connection with the death on 11/10/96 of patient Paul Mills, reportedly from a lethal injection, in the intensive care unit at the Queen Elizabeth II Health Sciences Centre in Halifax. The hospital has appointed an independent panel to review Mills' death. Halifax police are now investigating other cases of sudden or unexpected death in the hospital (none of which involve Dr. Morrison). Dr. Morrison's preliminary hearing is set for 2/9/98.

c. Latimer prosecution. Robert Latimer was convicted of second-degree murder in 1994 for the mercy killing of his disabled 12-year-old daughter. On 2/6/97, the Supreme Court of Canada issued a 9-0 decision granting Latimer a new trial. Latimer's new trial is set for 10/27/97.

d. Recent surveys

(1) National survey of physicians. University of Calgary researchers Marja Verhoef and Douglas Kinsella, both physicians, are expected to publish soon the results of a 1995