



Recent Developments in Physician-Assisted Suicide

October 1998

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LITIGATION

1. *Lee v. Oregon*, 107 F.3d 1382 (9th Cir. 1997), cert. denied sub nom *Lee v. Harcleroad*, 118 S.Ct. 328, 139 L.Ed.2d 254 (1997). Pursuant to the Ninth Circuit's mandate, U.S. District Judge Michael Hogan dismissed this case during a status hearing held on 11/25/97. However, Judge Hogan agreed to entertain further briefs regarding standing questions. On 7/13/98, Judge Hogan heard argument on two motions by the plaintiffs: (1) a motion to amend their complaint to allege that plaintiff Janice Elsner has standing due to the "stigmatic injury" that has resulted because legalizing physician-assisted suicide devalues her life and (2) a motion to certify the case as a class action. As a result of Troy Thompson's death, the plaintiffs withdrew their motion to amend the complaint to join him as a plaintiff. On 9/22/98, Judge Hogan issued an order denying the plaintiffs' pending motions, finding that the standing question had already been decided by the Ninth Circuit. Judge Hogan's order further stated:

Although I am bound by the Ninth Circuit's decision in this case, I find it troubling because it may well render Measure 16 incapable of judicial review. A terminally ill person intending to avail himself or herself of assisted suicide is obviously not going to challenge the constitutionality of the statutory scheme. Under this new Oregon law, the suicidal impulses of terminally ill persons are treated differently from the suicidal impulses of those who are not so afflicted. This court questions a decision which effectively places a statute of such consequence outside the parameter of constitutional review. Had the voters enacted a measure that permitted members of a certain race, gender, religion, or age group to avail themselves of physician assisted suicide, would outraged members of such classes lack standing to challenge the legislation on the ground they had no intention of committing suicide?

2. *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 by him in defending actions pending against him in state courts, (2) Janet Good had no constitutional right to assisted suicide under the Fourteenth Amendment, and (3) Michigan laws regarding assisted suicide were unconstitutionally vague prior to December 1992, when a state criminal statute was enacted. On 10/28/97, the Sixth Circuit denied plaintiffs' motion to remand the pending appeal. Final briefs and requests for oral argument were filed by the parties during June 1998.

3. *State v. Naramore*, 25 Kan. App. 2d 302, 965 P.2d 211 (1998). On 7/24/98, the Kansas Court of Appeals issued a 2-1 decision acquitting Dr. Stan Naramore of criminal charges in connection with the deaths of two patients in August 1992 following administration of medication Naramore claimed was given to relieve pain. The court found that "no rational jury could find criminal intent and guilt beyond a reasonable doubt based on the record here." Naramore was supported in his appeal by the American Osteopathic Association, the Kansas Medical Society, and the Kansas Association of Osteopathic Medicine, but many observers expected an order for retrial rather than an outright acquittal. Naramore spent 2½ years in prison after being convicted by a jury of second-degree murder and attempted murder.

LEGISLATION

1. Hawaii

a. Blue Ribbon Panel's report. Governor Ben Cayetano's Blue Ribbon Panel on Living and Dying with Dignity issued a 101-page report in June 1998, recommending by a vote of 11-7 that the state legislature legalize physician-assisted suicide and "physician-assisted death" (active euthanasia) for "mentally-alert patients who either are terminally ill or suffer intractable and unbearable illness that cannot be cured or successfully palliated." The panel proposed a set of safeguards (including repeated requests to die made by the patient to two physicians, a psychiatrist, and a social worker) as part of a draft Model Hawaii Law adapted from the Model State Act published in the *Harvard Journal on Legislation* in January 1996. The panel unanimously favored improvements in end-of-life care, including spiritual counseling, public and healthcare professional educational programs about choices available to the dying, advance healthcare directives, hospice care, and pain management and other symptom control programs. Copies of the panel's report are available from the State Executive Office on Aging, No. 1 Capitol District, 250 S. Hotel St. #109, Honolulu, HI 96813-2831, telephone (808) 586-0100, fax (808) 586-0185.

b. Proposed legislation. Governor Cayetano has announced that he will introduce bills in the state legislature in spring 1999 to legalize physician-assisted suicide and active euthanasia.

c. Public meetings. Marilyn Seely, head of the Executive Office on Aging, has announced that her office will be sponsoring public meetings on the issues raised by the Blue Ribbon Panel's report.

d. Efforts by supporters and opponents. Two conservative groups, Hawaii Right to Life and Focus on the Family, began a series of radio advertisements early in July opposing legalization. The Ad Hoc Committee on Living and Dying With Dignity, a private group that pre-dated the Blue Ribbon Panel, is expected to launch its own educational campaign on the proposals.

e. Public opinion poll. Appendix L of the Blue Ribbon Panel's report summarized the results of a survey of community attitudes conducted by the Center on Aging of the University of Hawaii's School of Public Health. The survey revealed significant differences among ethnic groups about whether physician-assisted death should be allowed, with disapproval strongest for Filipinos and Hawaiians.

2. Maine

a. PRO 916. Following the Maine legislature's rejection in February 1998 of a bill that would have legalized physician-assisted suicide, assisted suicide supporters have launched the PRO 916 campaign to collect petition signatures to put the proposal on the ballot in 1999 or 2000. Supporters must collect voter signatures amounting to 10% of the total vote cast in the November 1998 race for governor.

b. Mainers for Death with Dignity. The group "Mainers for Death with Dignity" seeks legislation similar to the Oregon Death with Dignity Act or, failing that, a referendum. The proposed legislation differs from the Oregon law in that it would require consultation by a pain specialist.

3. Michigan

a. Legislature. Senate Bill 200 (making physician-assisted suicide a crime punishable by up to 5 years' imprisonment and a \$10,000 fine) became effective 9/1/98.

b. Voter initiative. Michigan voters will vote on November 3 on Proposal B, a ballot measure that would legalize physician-assisted suicide by Michigan residents and near relatives from out of state (mother, father, siblings, children, and spouses of those relatives). The group Merian's Friends submitted petitions bearing more than 379,000 signatures to the Michigan Bureau of Elections; only 247,127 valid signatures were needed to place a measure on the ballot. On 7/20/98, the Board of State Canvassers certified the measure, rejecting an objection filed by Citizens for Compassionate Care.

(1) Ballot language. Following a vigorous dispute over the proper language to be used on

Information Act.

- 4) Create penalties for violating law.
Should this proposal be approved?

(2) Campaign against Proposal B. A coalition known as Citizens for Compassionate Care has formed to oppose Proposal B. Members of the coalition include the Michigan State Medical Society, Right to Life of Michigan, and the Michigan Catholic Conference; the group's planned advertising campaign is expected to cost between \$5 and \$6 million. Another group, Metro Detroiters Concerned About Proposal B, has asked for health care professionals to put campaign literature in their offices, for local politicians and civic leaders to publicly declare their opposition, for local religious leaders to mount campaigns within their congregations, for people who oppose Proposal B to leave their porch lights and vehicle lights on, and for clergy of all faiths to dedicate the weekend services of 10/31 to 11/1/98 to a faith-based message. A videotaped message from Cardinal Adam Maida against Proposal B has been furnished to over 300 Detroit-area Catholic churches, and some 360,000 Catholic families will receive six special editions of the weekly diocesan newspaper before election day.

(3) Voter polls. A poll of 600 registered voters conducted by EPIC/MRA of Lansing between 9/29 and 10/1/98, based on the ballot language, showed 48% in support of Proposal B, 40% opposed, and 9% undecided; when pollsters gave additional details about Proposal B, 54% supported the measure, 40% were opposed, and 6% undecided. However, a private poll conducted by supporters of Proposal B showed a 43% to 43% tie, which supporters claimed was due to the unanswered TV campaign being conducted by opponents.

4. New York. In early August 1998, New York Governor George Pataki signed a bill that eliminates the use of triplicate forms to prescribe controlled substances and redefines "addict" and "habitual user" to make it easier for physicians to treat the pain of seriously ill patients.

5. Oregon

a. Deaths by assisted suicide. On 8/18/98, officials of the Oregon Health Division reported that, since the Oregon Death with Dignity Act went into effect in late October 1997, eight patients had died after taking lethal medication and that another two patients had obtained medication but died before taking it. In each case, all requirements of the Act were found to have been satisfied. Additional information reported included the following:

- (1) Five patients were men and five were women.
- (2) Five patients were from the Portland area.
- (3) The average age of the patients was 71.
- (4) Eight of the 10 patients had more than a high school education.
- (5) All 10 patients were white.
- (6) Nine patients had cancer and one had heart disease.
- (7) The number of days between obtaining the medication and taking it ranged from the same day to 16 days, with an average of two days.
- (8) All patients fell unconscious within 20 minutes of taking the medication, with an average lapse of five minutes.
- (9) The average time between taking the medication and death was 40 minutes; the longest time was seven hours.
- (10) No patients experienced complications after taking the medication.
- (11) Most of the deaths occurred 3-4 months prior to the report.
- (12) The two patients who died of their illnesses lived an average of 10.5 days after obtaining the medication.
- (13) Nine different primary physicians were involved in the ten cases; although one physician had two patients, they were the two patients who did not take the medication.

The Oregon Health Division is conducting in-depth interviews with the physicians involved and will issue a more extensive report early in 1999 covering all cases under the Act.

b. Compassion in Dying. On 8/18/98, Barbara Coombs Lee reported that Compassion in Dying had assisted two of the patients who had died after taking lethal medication. Compassion in Dying had received 200 inquiries about assisted suicide since the law went into effect, 50 of those from patients (25 of whom were eligible). In addition to the two who took the lethal medication, eight had begun the process but died of their illnesses. Fifteen were still in the process of obtaining a prescription.

c. Hospice guide. The Oregon Hospice Association has issued a new publication, *Hospice Care: A Physician's Guide*, for use by Oregon physicians. The reference guide was first published by the Minnesota Hospice Organization and was modified for use in Oregon. Funding was provided by a grant from the Hospice Foundation of America.

d. Oregon Health Sciences University. Oregon Health Sciences University, Oregon's only medical school, has been criticized for failing to incorporate into the curriculum any formal teaching on physician-assisted suicide. The only discussion of the subject during the 1997-98 academic year was initiated by students during a two-hour period as part of a three-week segment on "Death and Dying." Faculty and administrators report that the topic has been considered too controversial to cover. However, pharmacy students at Oregon State University's School of Pharmacy study physician-assisted suicide as part of a

their doctor to end their life, if they so choose."

(2) 66% approved of Oregon's Measure 16 after being read its official ballot title.

(3) 66% would favor "a similar law" in their own state.

(4) 75% said that Congress "should not overturn" Oregon's Measure 16.

(5) 80% agreed that "Since Oregon voters overwhelmingly approved the state law allowing terminally ill patients in Oregon to get a prescription for medication to end life, Congress should respect the will of these voters and not try to overturn Oregon's law."

(6) 76% agreed that "It is not appropriate for Congress to get involved in regulating legal drugs prescribed by doctors to their patients."

(7) 72% opposed "federal legislation that would prohibit physicians from prescribing medications that terminally ill patients could request to end life."

(8) 90% agreed that "It should be up to local doctors and medical boards to decide what is appropriate treatment for the terminally ill, not the federal government."

The poll's findings were similar to those of a 1996 Gallup poll.

f. Oregon legislators propose task force. Oregon Senator Ron Wyden and Representative Darlene Hooley announced on 7/30/98 that they are forming a task force to examine education, training, pain management, and other issues related to treating the terminally ill. They were joined by representatives of

3. Illinois. The Cook County medical examiner's office has issued a homicide ruling in the death of Henry Taylor, a 69-year-old man with a terminal kidney disease who died 9/30/98 in Columbia Olympia Fields Osteopathic Hospital and



d. Ezekiel J. Emanuel et al., *Policy Perspectives: The Practice of Euthanasia and Physician-Assisted Suicide in the United States--Adherence to Proposed Safeguards and Effects on Physicians*, 280 JAMA 507 (1998) [10.7% of 355 oncologists who were contacted had participated in either euthanasia or physician-assisted suicide; interviews of oncologists who had participated in euthanasia or physician-assisted suicide revealed that 78.9% of patients initiated and 60.5% both initiated and repeated the request, 97.4% of patients were experiencing unremitting pain or such poor physical functioning that they could not perform self-care, and physicians sought consultation in 39.5% of cases; 52.6% of oncologists received comfort from having helped a patient with euthanasia or physician-assisted suicide,

2. Belgium. In September 1998, the Belgian parliament was scheduled to debate proposed legislation to legalize euthanasia submitted by Socialist Senators Lallemand and Erdman. The Christian-Social PSC party is opposed to legalization and has submitted a bill that would require that the patient and physician arrive at a decision only after consulting with another physician, the patient's relatives, and the nursing team, and subject to social (and perhaps judicial) review.

3. Canada. Dr. Nancy Morrison was charged in May 1997 with first-degree murder in 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. On 2/27/98, at the conclusion of a preliminary hearing, Judge Hughes Randall discharged Dr. Morrison when he found the evidence was insufficient for a jury to convict her of the pending first-degree murder charge or any lesser charge. On 6/5/98, Crown prosecutors filed an appeal before the Nova Scotia Supreme Court. In July 1998, provincial Justice Minister James Smith refused to enter a stay of proceedings that would have ended the prosecution, but he promised to press for changes in the existing law.

4. France

a. Nurse helps patients die. Nurse Christine Malevre is under investigation after admitting that she helped about 30 elderly, terminally ill cancer patients to die since January 1997 at Francois-Quesnay Hospital in Mantes-la-Jolie west of Paris. The patients' families, who had asked Malevre to help the patients die, have not pressed charges. The investigating judge ordered Malevre freed after finding no criminal motives, and Health Minister Bernard Kouchner has expressed sympathy for Malevre. French Senator Henri Caillavet, president of the Association for the Right to Die in Dignity, has called for legislation legalizing active euthanasia. The case is expected to raise new debate in France about euthanasia.

b. Medical council refuses to discipline physician. On 9/18/98, the regional medical council of Midi-Pyrenees refused to discipline Dr. Jean-Paul Duffaut, head of the geriatric service at a care facility who admitted to helping a 92-year-old woman die in January 1998 by active euthanasia. The head of the council called for a debate on the question of euthanasia.

c. Health Minister seeks to improve end-of-life care. Health Minister Bernard Kouchner, himself a physician, is seeking to improve care of the dying in France. Kouchner has directed physicians to make it easier for patients to get pain-relieving medication, proposed doubling of the number of palliative care units, and plans to launch a public information drive before year's end. Training for physicians in giving pain relief will begin in 1999.

d. Public opinion poll. In a poll conducted in September 1998, 79% of those questioned (64% of practicing Catholics) said they would like to be offered a chance of an early death if suffering an incurable and painful disease. In the last poll, conducted 10 years earlier, only 57% favored euthanasia.

5. Great Britain

a. British Medical Association. The British Medical Association has called for guidelines to ease the pressure on physicians regarding decisions on life-sustaining treatment. A consultative document, *Withdrawing and Withholding Treatment*, will be debated by physicians, lawyers, and the public via the Internet. It is hoped that final guidelines will be drawn up early in 1999.

b. Dr. Moor. In 1997, after prominent physician Dr. Michael Irwin announced that he had helped at least 50 patients to die, general practitioner Dr. David Moor (who has since retired) reported that he had helped at least 100 patients to die. Subsequently, Dr. Moor was arrested and then released on bail in connection with the death on 7/19/97 of George Liddell, an 85-year-old cancer patient. On 6/10/98, Moor was charged with murder. Dr. Moor is free on bail until the plea hearing, which is set for 10/19/98.

6. India. In June 1998, an 80-year-old Indian man, C.A. Thomas, filed a court petition in the provincial high court of the southern state of Kerala, claiming that he is entitled to choose when he dies. Thomas is financially secure and content with his family life, but believes he has lived long enough and does not want to wait to die until his health deteriorates. Thomas' lawyer contends that Thomas wants "voluntary death" rather than physician-assisted suicide or euthanasia, which are illegal in India and viewed as violating Hindu beliefs.

7. Ireland. Patrick Hanafin, a lecturer in Law at the Center for Legal Studies at the University of Sussex, has called in an article in FORUM (a periodical for Irish general physicians) for a discussion of the rights of dying patients, including the right to physician-assisted suicide.

8. Italy. In August 1998, Italy's Waldensian Protestant Church adopted a statement supporting euthanasia and assisted suicide and urged that legislation permitted these practices be considered. The Waldensians, most of whom live in mountain valleys near Turin, joined with the Methodists in 1975. The two groups have about 30,000 members. The Waldensians, most of whom live in mountain valleys near Turin, joined with the Methodists in 1975. The two groups have about 30,000 members. The Waldensians, most of whom live in mountain valleys near Turin, joined with the Methodists in 1975. The two groups have about 30,000 members.

10. New Zealand. On 7/16/98, a jury found Janine Albury-Thomson guilty of manslaughter in the choking death of her 17-year-old autistic daughter. The prosecution had charged Albury-Thomson with murder after she confessed to police, but her attorney argued that she had been provoked by her daughter's extreme behavior. On 7/31/98, Albury Thomson was sentenced to four years in prison.

11. Thailand. The Public Health Ministry's Medical Science Department, which is coordinating the drafting of Thailand's first legislation for the elderly, organized a seminar in July 1998 to discuss whether terminally ill patients should be given the right to refuse treatment. Several experts opposed including such a provision, citing the complexity of the issues involved.

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