

RECENT DEVELOPMENTS IN PHYSICIAN-ASSISTED DEATH

Professor Valerie J. Vollmar
Willamette University College of Law

Copyright 2007

LITIGATION

Montana case filed. On 10/19/07, a suit over the right to die with dignity was filed in the Lewis and Clark County District Court in Helena, Montana. The plaintiffs include two patients who are terminally ill, 53-year-old Steven Stoelb and 75-

Prescriptions written. In 2006, 65 prescriptions were written for lethal doses of medication, as compared to 24 prescriptions in 1998, 33 in 1999, 39 in 2000, 44 in 2001, 58 in 2002, 68 in 2003, 60 in 2004, and 64 in 2005.

Number of patients. In 2006, 46 patients died after taking lethal medication, as compared to 16 patients in 1998, 27 in 1999, 27 in 2000, 21 in 2001, 38 in 2002, 42 in 2003, 37 in 2004, and 38 in 2005. The number has remained small compared to the total number of deaths in Oregon, with about 14.7 deaths under the Act in 2006 per 10,000 total deaths. Of the 65 persons who received prescriptions under the Act during 2006, 35 died after taking lethal medication, 19 died from their underlying illness, and 11 were alive as of the end of 2006. An additional 11 persons who received prescriptions before 2006 died in 2006 after taking their medications. A total of 292 patients have died under the terms of the Act since 1997.

Patient characteristics. Median age of the 46 patients who died was 74, 57% were male, 50% were married, 39% lived in the Portland metropolitan area, and 41% were college graduates. Forty-five of the 46 patients were white, and one was Hispanic. Eighty-seven percent of the patients who died had cancer, 76% were enrolled in a hospice program, and all but one of the patients had health insurance. Forty-three patients died at home, and two died in some type of care facility.

Patient concerns. The most common reasons for choosing assisted suicide expressed by patients to their physicians were inability to participate in activities that make life enjoyable (96%), loss of autonomy (96%), loss of dignity (76%), loss of control of bodily functions (59%), inadequate pain control (48%), and being a burden on family, friends, or caregivers (43%). No patient voiced concerns about the financial implications of treatment.

Mental health evaluations. Two of the 46 patients (4%) received a psychiatric or psychological consultation. (However, a psycho-social evaluation by a clinical social worker is standard practice when a patient enrolls in an Oregon hospice.)

Medical information. During 2006, all lethal medications prescribed were barbiturates. The physician was present when the medication was ingested in 33% of cases, with other health care providers present in 51%. Median time from taking the medication to unconsciousness was five minutes (individual times ranged from 1 to 29 minutes). Median time from taking the medication to death was 29 minutes (individual times ranged from one minute to 16.5 hours). Four patients 6c

ist for a psychiatric or psychological consultation has
2006. In addition, the median age of patients who died
for 1998-2005 (74 years versus 69 years), the number
declined slightly (76% versus 87%), and more patients
in control (48% versus 22%).

Portland Tribune reported that a Portland-area nurse and
disciplined by the Oregon Board of Nursing after they
e)-4.9a ypenurse phenobarbitferralcae col(re pat W)10sndy Melcher

State Medical Association opposed the practice when the first initiative was defeated in 1991, the group's current president, W. Hugh Maloney, has said that its 9,000 members now are "passionately split" and "very much in disarray" over the issue.

OTHER NATIONAL DEVELOPMENTS

Dr. Jack Kevorkian. Dr. Jack Kevorkian was paroled from a Michigan prison on 6/1/07, the earliest date he could be eligible. Kevorkian, who had been in prison since 1999, will be on probation for two years and is required to pay a \$600 supervision fee and a \$60 crime victims assessment. Kevorkian has promised that he will not assist in any form of suicide or euthanasia, but instead will push for legalization of physician-assisted suicide. Kevorkian's planned speech at the University of Florida on 10/11/07 was delayed until 1/15/08 after university officials said they wanted time to address the controversy over police use of a Taser on a student during a speech by Senator John Kerry in September. The university planned to pay Kevorkian \$50,000 for speaking.

United Church of Christ. In June 2007, the United Church of Christ General Synod 26 decided not to affirm physician aid-in-dying, but voted for a report on the issue to be presented to General Synod 27 in 2009 in Grand Rapids, Michigan.

End-of-Life Consultation Service. In September 2007, after proposed California legislation was defeated, Compassion & Choices announced the creation of an expanded End-of-Life Consultation Service. Volunteers, clergy members, and terminal patients spoke in four major California cities, pledging their support for the program, which is intended to help terminal patients access hospice, pain treatment, and high-quality end-of-life care. Clergy and trained volunteer counselors will advise the terminally ill against violent suicide, instead helping to identify a path to a "peaceful death." A counselor will remain present to comfort a terminally ill person taking his or her own life, if that person wishes. Easy-to-read referral cards that describe the program and provide the service's 1-800 number are available free of charge (except for a small shipping and handling fee) by calling (800) 247-7421.

Organizations change names. The Final Exit Network affiliate in Illinois has changed its name back to "Hemlock of Illinois," which was its original founding name in 1985, in order to attract more members and be more visible. Groups in San Diego, California, and in Florida had previously resumed their original "Hemlock Society" names. The former Hemlock Society of East Bay, on the

Support for allowing physician-assisted dying also varied by geographical region: 59% in the Northeast, 52% in the West, 45% in the Midwest, and 43% in the South. Thirty-five percent said they would consider ending their own life if they were seriously ill with a terminal disease; 55% said they would not; 3% said they probably would; 2% said maybe they would; and 5% gave no answer.

Harris poll. A nationwide survey of 2,694 adults conducted online between 8/7 and 8/13/07 by Harris Interactive showed that 39% supported physician-assisted suicide, 31% opposed it, and 21% neither supported nor opposed it. Analyzed based on respondents' political parties, support for physician-assisted suicide was 45% among Independents, 40% among Democrats, and 31% among Republicans. Analyzed by generation, support was 32% among "echo boomers" (age 18-30), 42% among "Gen X" (age 31-42), 42% among "baby boomers" (age 43-61), and 39% among "matures" (age 62+).

MEDICAL DEVELOPMENTS

Recent articles

A.A.E. Verhagen et al., *Physician End-of-Life Decision-Making in Newborns in a Less Developed Health Care Setting: Insight in Considerations and Implementation*, 96 Acta Paed. 1437 (2007)

C. Dageville et al., *Fin de Vie en Médecine Néonatale à la Lumière de la Loi/End of Life in Neonatal Medicine by the Light of French Law*, 14 Arch. Pédiatrie 1219 (2007)

Franco A. Carnevale & Gilles Bibeau, *Which Child Will Live or Die in France: Examining Physician Responsibility for Critically Ill Children*, 14 Anthro. & Med. 125 (2007)

Seiji Bito, *Acculturation and End-of-Life Decision Making: Comparison of Japanese and Japanese-American Focus Groups*, 21 Bioethics 251 (2007)

Erwin Kompanje, *Euthanasia in Intensive Care: A 56-Year-Old Man with a Pontine Hemorrhage Resulting in a Locked-in Syndrome*, 35 Crit. Care Med. 2428 (2007)

Sorem Holm, *Euthanasia in Intensive Care: Some Unresolved Issues*, 35 Crit. Care Med. 2460 (2007)

Jacob M. Appel, *A Suicide Right for the Mentally Ill? A Swiss Case Opens a New Debate*, 37 Hastings Ctr. Rpt. 21 (2007)

R. Wade Kenny, *An Effect of Communication on Medical Decision Making: Answerability, and the Medically Induced Death of Paul Mills*, 22 Health Comm. 69 (2007)

Charles L. Sprung et al., *The Importance of Religious Affiliation and Culture on End-of-Life Decisions in European Intensive Care Units*, 33 Intensive Care Med. 1732 (2007)

Andrej Michalsen, *Care for Dying Patients—German Legislation*, 33 Intensive Care Med.

1823 (2007)

Hilde de Vocht, *Health Professionals' Opposition to Euthanasia and Assisted Suicide: A Personal View*, 13 Int'l J. Palliative Nursing 351 (2007)

Calum Mackellar, *Human Dignity and Assisted Dying*, 18 Islam & Christian-Muslim Rel. 355 (2007)

Lieve Van den Block et al., *Transitions Between Care Settings at the End of Life in Belgium*, 298 JAMA 1638 (2007)

David Clark, *End-of-Life Care Around the World: Achievements to Date and Challenges Remaining*, 56 J. Death & Dying 101 (2007)

Kathryn L. Tucker & Fred B. Steele, *Patient Choice at the End of Life: Getting the Language Right*, 28 J. Legal Med. 305 (2007)

Neil M. Gorsuch, *A Reply to Raymond Tallis on the Legislation of Assisted Suicide and Euthanasia*, 28 J. Legal Med. 327 (2007)

Julius Grossenbacher, *The Case of Terri Schiavo: Ethics at the End of Life*, 28 J. Legal Med. 419 (2007)

Alexa Craig et al., *Attitudes toward Physician-Assisted Suicide among Physicians in Vermont*, 33 J. Med. Ethics 400 (2007) [mail survey of 1,052 physicians in Vermont showed that 38.2% believed physician-assisted suicide should be legalized, 16.0% believed it should be prohibited, 26.0% believed it should not be legislated, and 15.7% were undecided; males were more likely to favor legalization than females (42% versus 34%); 30% of respondents had received a request for assistance with suicide]

David Shaw, *The Body as Unwarranted Life Support: A New Perspective on Euthanasia*, 33 J. Med. Ethics 519 (2007)

Margaret P. Battin et al., *Legal Physician-Assisted Dying in Oregon and the Netherlands: Evidence Concerning the Impact on Patients in "Vulnerable" Groups*, 33 J. Med. Ethics 591 (2007) [authors reviewed all available data from Oregon and the Netherlands to determine effect of existing laws on 10 groups of potentially vulnerable people; results showed that no heightened risk existed for the elderly, women, the uninsured (not applicable in the Netherlands), people with low educational status, the poor, the physically disabled or chronically ill, minors, people with psychiatric illnesses including depression, or racial or ethnic minorities, and the only group with a heightened risk was people with AIDS; those who received physician-assisted dying appeared to enjoy comparative social, economic, and health outcomes]

Marilyn Smith-Stoner, *End-of-Life Preferences for Atheists*, 10 *J. Palliative Med.* 923 (2007)

Theo A. Boer, *Recurring Themes in the Debate about Euthanasia and Assisted Suicide*, 35 *J. Rel. Ethics* 529 (2007)

Timothy E. Quill, *Legal Regulation of Physician-Assisted Death—The Latest Report Cards*, 356 *New Eng. J. Med.* 1911 (2007)

Agnes van der Heide et al., *End-of-Life Practices in the Netherlands under the Euthanasia Act*, 356 *New Eng. J. Med.* 1957 (2007) [data summarized below under “INTERNATIONAL DEVELOPMENTS”]

G.L. Carter et al., *Mental Health and Other Clinical Correlates of Euthanasia Attitudes in an Australian Outpatient Cancer Population*, 16 *Psychooncology* 295 (2007)

A.A. Eduard Verhagen et al., *Physician Medical Decision-Making at the End of Life in Newborns: Insight into Implementation at 2 Dutch Centers*, 120 *Pediatrics* e20 (2007)

Johan Bilsen et al., *Changes in Medical End-of-Life Practices During the Legalization Process of Euthanasia in Belgium*, 65 *Soc. Sci. & Med.* 803 (2007)

INTERNATIONAL DEVELOPMENTS

Armenia

to just eight hours and can be completed by a single person acting alone. Moreover, manufacturing Nembutal may not be an indictable offense if a small enough amount is made at any one time.

ABC program

overdose of the drug Nembutal. Wylie suffered from severe dementia and Alzheimer's disease, and Swiss authorities had rejected his request to go to Switzerland for an assisted death because tests showed him to be incapable. After being released on bail, Justin and Jenning returned to court on 10/5/07 and pleaded not guilty to murder and assisted suicide charges. They will be tried together in May 2008.

Dr. Nitschke runs for federal parliament. In July 2007, Nitschke announced that he would run for a Victorian seat in the federal parliament against Kevin Andrews, the federal Immigration Minister and occupant of the seat since 1991. Nitschke ran against Andrews in 1996 for his role in overturning the Northern Territory's Rights of the Terminally Ill Act, but Nitschke lost in that election.

Victoria. On 6/20/07, a rally on the steps of the state parliament in Victoria drew hundreds of people demanding law reform to permit voluntary euthanasia in Victoria. The rally occurred on the second anniversary of the death of Steve Guest, a journalist and former government media advisor who suffered from inoperable esophageal cancer. Dr. Rodney Syme, Vice President of Dying With Dignity Victoria, said that he had provided Guest with medication to end his life, and challenged the Victorian parliament to pass legislation to permit physicians to respond to the requests of people like Guest. The President of the organization, Neil Francis, pointed out that this issue is controlled by individual state legislation and that the federal parliament cannot override state legislation. On 7/17/07, a petition with over 8,000 signatures supporting voluntary euthanasia legislation was presented to the Victorian parliament by the Deputy Premier.

Belgium

Study of infant deaths. Professor Veerle of the University of Ghent studied the medical files of about 300 infants who died under the age of one and concluded that about half of the deaths resulted from active termination of life, either by withdrawing treatment or by administering a fatal dose of opiates. In 9% of cases, products were explicitly administered to end the child's life. In 84% of cases, the decision was made in consultation with the parents. The babies whose deaths involved active termination of life had no chance of survival or, in 30% of the cases, little hope of having an acceptable quality of life.

Electoral platform. A draft version of the electoral platform of the Flemish liberals Open VLD party presented in April 2007 proposed that patients in all government-funded hospitals have the right to euthanasia if they choose. If a physician refuses to perform euthanasia, the hospital itself would be required to ensure that the patient's request is carried out by another physician.

Brazil. On 3/19-3/20/07, Datafolha conducted a poll of 5,700 Brazilian adults, asking "Do you think euthanasia, that is, the intentional death of another person in the event of an incurable disease, should be allowed?" The results of the poll were published in *Folha de Sao Paulo*. Thirty-six percent of those polled said yes, 57% said no,

Canada

Dr. Ramesh Sharma

bill in parliament in June 2005 that would have legalized assisted suicide. She is now helping to form an organization in Quebec that supports end-of-life choice and expects to re-introduce the same bill in the near future. However, a spokesperson for Justice Minister Rob Nicholson indicated that the Conservative government has no plans to address the issue of assisted suicide.

Poll. A recent DGHS survey on living wills showed that 62% of respondents would be prepared to forgo a possible residual chance of waking up if their living wills specified that life-preserving measures should not be taken if they were in a coma. Fifty-eight percent wanted not just a legal ruling on living wills, but further measures such as exemption from prosecution if treatment is discontinued and assisted suicide for the terminally ill. Sixty-eight percent believed that there should be legal rulings on assisted death, all the way from

Dr. Michael Munro

party called for assisted suicide to be legalized, despite warnings that the party's position would be unpopular among some voters. The policy adopted included safeguards for persons wishing to end their lives and for health care professionals involved in the process.

Conference in Edinburgh. On 10/3/07, a major conference sponsored by the Royal College of Physicians was held in Edinburgh on the subject of "Physician-Assisted Suicide—A Good Death?"

Hong Kong. Thirty-seven-year old Tang Siu-pun, who has been a quadriplegic since a 1991 accident, has written a 300-page Chinese-language book titled (in the English translation) *IDemand Euthanasia*. After coming across the book at the Hong Kong Book Fair in July 2007, Hospital Authority chairman Anthony Wu Ting-yuk said that he personally supported euthanasia. In 2004, Tang had written a letter to legislators and the then chief executive Tung Chee-hwa demanding that the law be changed so he could die with medical assistance in a peaceful and painless manner.

India. The Law Commission of India has published a 434-page report titled "Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)." The report recommended formation of a three-member panel of respected medical experts having at least 20 years' experience to approve requests to withdraw life support. The panel would be appointed by a statutory body, the names of the experts would be public, and decisions would be made by majority vote. If the High Court declared that a physician's decision was "lawful," the physician would not be subject to civil or criminal proceedings. An informed decision by a competent patient would be binding on the physician, and the patient could not be accused of suicide nor the physician of assisting a suicide. The Commission sought to make it clear that active euthanasia and physician-assisted suicide were always "held unlawful and continue to be unlawful."

Ireland

Rosemary Toole Gilhooley

of the episcopal conference, Archbishop Angelo Bagnasco said that the Church would continue to insist on the preservation of human life until natural death.

Pope John Paul II. In an article in the Italian journal *Micromega*, anesthesiologist Dr. Lina Pavanelli alleged that Pope John Paul II violated Catholic teaching against euthanasia by refusing medical care that would have kept him alive longer. Pavanelli argued that he was not given adequate nutrition soon enough, a charge immediately dismissed by Vatican officials.

Living wills. In late 2006, a Senate committee began hearing opinions from experts over legislation to approve living wills, or “biological testaments.” The Catholic church has indicated opposition to any form of living will, and the bill remains stalled in the Senate.

Prisoner request. In June 2007, three hundred Italian inmates signed a letter to Italy’s president Giorgio Napolitano urging him to bring back the death penalty. The letter was from Carmelo Musumeci, a 52-year-old member of the Sicilian Mafia who is serving a 17-year sentence and feels that he is “dying a little bit every day” anyway and wants to “die just once.” A month later, a prisoner serving in a Welsh jail at Swansea wrote to the prisoners’ newspaper *Inside Time* calling for the government to consider allowing voluntary euthanasia for inmates serving long sentences.

Japan

Proposed legislation. A nonpartisan group of lawmakers headed by former Foreign Minister Taro Nakayama, a member of the ruling Liberal Democratic Party in the Lower House who is also a physician, has expressed its intention to propose legislation in the Diet dealing with dignified death. The draft, compiled by the House of Representatives’ Legislative Bureau from a number of points of agreement reached by the group, proposes allowing physicians to take patients off life support if two or more other physicians confirm a “near-death situation.” Removal of life support would be permitted only if a patient over the age of 15 has signed an advance directive declaring that he or she does not want life-prolonging treatment. Under the proposed legislation, a physician who follows proper procedures could not be prosecuted for removing life support. The Japan Medical Association has expressed opposition to the proposal, saying that an outline describing proper practice is better than codified laws.

Nippon Medical School guidelines. The ethics panel of Nippon Medical School in Tokyo has compiled interim guidelines for ending life support for hopelessly sick or injured patients under certain conditions, in order to make decisionmaking more objective and avoid situations in which physicians could face criminal liability. The school will begin using the guidelines in April 2008 at its four affiliated hospitals—Nippon Medical School Hospital and its three branch hospitals in Tokyo, Kanagawa, and Chiba prefectures. The guidelines define “end-of-life” as a condition in which a patient is bound to die from illness or injury “within two weeks or within a month at longest” or a condition that is incurable and life-sustaining treatment would only serve to delay the time of death. Determination of whether a patient has entered the “end-of-life” period would be made by a team of physicians and not

Physicians' attitudes. Twenty-eight percent of physicians support the view that, in exceptional cases, assistance is justified in the case of elderly patients who suffer unbearably and are tired of living; 28% had the opposite view. Twenty-five percent of physicians admitted that they were not fully aware of the exact legal requirements (such as justification of the request or the degree of suffering required).

Continuous deep sedation. The number of cases in which the patient was placed under continuous deep sedation (or "palliative sedation") until death occurred increased from 8,500 cases (5.6% of all deaths) in 2001 to 9,700 cases (7.1% of all deaths) in 2005.

Life-extending treatment. The number of cases in which physicians refrained from life-extending treatment increased from 21,300 cases in 2001 to 28,000 cases in 2005.

2006 report

Free University of Amsterdam. The Free University of Amsterdam has been commissioned to scientifically investigate the role of personal dignity at the end of life, and a specific professorship on the subject is being created. A scientific council will assist in the investigation.

New novel. Pediatrician Paul Brand, who is 46 years old, recently published a novel titled

now believes that parliament may back a bill to change existing law.

Poland. Janusza Switaja, a 32-year-old who was left completely paralyzed following a motorbike accident in 1993 and is on a respirator, petitioned a local court for help to end his life after one or both of his parents become too old to care for him. In September 2007, Switaja was notified by the Warsaw District Court that his request had been dismissed.

South Korea. The case of a “mercy killing” has opened debate in South Korea for the first time. A 30-year-old physician identified only by the name Park removed the respirator that kept a comatose woman suffering from liver cirrhosis alive. The woman had previously expressed her wish not to be kept alive by artificial means. The physician was arrested at the request of the woman’s daughter, whom he claimed had requested him to carry out the act in the first place. Police from Bangbae and Seoul sent the case to prosecutors with the opinion that the physician should not be charged with a crime. In the absence of precedent, the case was sent to the Supreme Court.

Switzerland

EX-International. The website of the Scottish group FATE (Friends At The End) has reported that a second Swiss group—EX-International based in Bern—shares with Dignitas the policy of providing suicide assistance to people from outside Switzerland. Although the group has worked mostly with people from Europe, it is willing to accept people from outside Europe as well. The group prefers at this point that interested parties begin by approaching the right-to-die group they belong to in their own country.

Dr. Peter Baumann. Retired Swiss psychiatrist Peter Baumann, who is the head and founder of the assisted suicide organization Verein SuizidHilfe Schweiz, has been found guilty of involuntary manslaughter based on charges that he helped three depressed people take their lives rather than trying to save them. Baumann was given a three-year prison sentence, two years of which were suspended by the Basel criminal court. The prosecution argued that the three people in question were not capable of judgment and that Baumann had acted out of self-interest and a desire to spread his beliefs.

Dignitas evicted. Local residents in a Zurich suburb had complained about the constant flow of police cars and ambulances to two apartments leased to Dignitas, and the organization has now been evicted. About 700 people had committed suicide at the apartments over an 8-year period. The landlady is a cousin of Ludwig Minelli, who heads Dignitas. Dignitas has since moved several times but so far has been unable to find a permanent home. On 10/1/07, the authorities in Schwerzenbach, near Zurich, refused to allow Dignitas to continue using premises in the village’s industrial area. The Zurich cantonal authorities say that the construction or conversion of a building to be used for assisted suicide needs special permission, but Dignitas has appealed the ruling. The owner of a Swiss hotel said that he would bring legal action against Dignitas after the group helped a German man end his life in one of the hotel rooms without asking permission.

Ozzy and Sharon Osbourne. MSNBC.com has reported that Ozzy and Sharon Osbourne have agreed to end their own lives by assisted suicide in Switzerland if a mentally

degenerative disease afflicts either of them. The couple had seen Sharon Osbourne's father suffer from 2002 to his death in July 2007.

Polls. According to a report by the polling institute Demoscope, 53% of 500 Swiss people recently polled approved of assisted suicide if a patient is terminally ill, 27% fully agreed with the right to assisted suicide, and 15% opposed assisted suicide. A similar survey by the Isopublic Institute found that 54% of those inte