



Recent Developments in Physician-Assisted Suicide

June 1997

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LITIGATION

1. Washington v. Glucksberg (No. 95-1858) and Vacco v. Quill (No. 96-110). In these cases, the Second and Ninth Circuits held that the New York and Washington statutes criminalizing physician-assisted suicide were unconstitutional as applied to competent, terminally ill patients. The cases were argued before the Supreme Court on 1/8/97. Most commentators believe the Court will reverse.

2. Lee v. Harclerod, 107 F.3d 1382 (9th Cir. 1997), cert. pending (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 as to the plaintiffs' arguments. On 4/18/97, the panel denied plaintiffs' petition for rehearing. On 4/22/97, Judge Melvin Brunetti of the Ninth Circuit granted plaintiffs a stay pending application to the U.S. Supreme Court for a writ of certiorari. On 5/16/97, plaintiffs filed their petition for writ of certiorari. Although the defendants had waived their right to file a response, the Court requested a response on its own motion. As a result, the Court will not act on the petition until after the October term begins.

3. 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 either the right to privacy or equal protection under California's Constitution. California's Attorney General appealed to the Ninth Circuit; proceedings have been stayed until 7/1/97 pending resolution of Washington v. Glucksberg and Vacco v. Quill. On 11/4/96, the U.S. Supreme Court denied immediate review [Lungren v. Doe, No. 96-531; Doe v. Lungren, No. 96-547]. The "John Doe" AIDS patient, Thomas Edwards, died before the case was finally resolved; in May 1997, Edwards' partner and heir, John Guard, filed formal complaints with California's Osteopathic Board of Medicine and the Medical Board of California charging that Edwards' physician abandoned him by retiring without arranging for his level of care to continue.

4. Kevorkian v. Thompson, 947 F.Supp. 1152 (E.D. Mich. 1997), appeal pending (6th Cir. No. 97-1094). Dr. Kevorkian and Michigan activist Janet Good filed 13 lawsuits on 8/13/96 asking for an injunction forbidding prosecutors in Wayne, Oakland, or Macomb Counties from using Michigan's temporary criminal statute (now expired) to prosecute various assisted suicides that occurred from May 1992 to February 1993. On the same day, plaintiffs withdrew all the lawsuits except one that had been assigned to Judge Paul Borman; attorney Geoffrey Fieger later apologized to a panel of federal judges for judge-shopping and paid a \$7,500 penalty and \$8,207 in associated legal costs. On 1/6/97, U.S.

punishable by 4 years in prison and a \$2,000 fine; charges could be brought by the Attorney General's Office either in the county circuit court where the act occurred or in Ingham County (where Lansing is located). Dr. Kevorkian has 30 days to appeal the order to the state Board of Medicine.

c. Dr. Kevorkian's civil action against the American Medical Association. On 5/27/97, Wayne County Circuit Judge Sharon Finch denied the AMA's request to dismiss a \$10 million libel suit filed against the AMA and the Michigan State Medical Society by Dr. Kevorkian, who claims the AMA defamed him by calling him a "killer" and his behavior criminal. The AMA announced it will appeal the ruling.

d. Patient's civil action. On 5/26/97, Cheryl Fink filed a lawsuit against the Oakland County Prosecutor, two deputies, and St. Joseph Mercy Hospital. Fink, who suffers from a rare brain disorder, alleged that she was taken to the psychiatric ward of the hospital after going to the Oakland County Prosecutor's office in 1995 to get Dr. Kevorkian's telephone number.

e. Survey of Michigan voters. A telephone survey of 600 Michigan voters was conducted during January 1997 by EPIC/MRA. The poll showed that 63% favored allowing physician-assisted suicide and about half would consider physician-assisted suicide for themselves. The percentage who would consider physician-assisted suicide due to various conditions was as follows: need for life-support machines = 89%, chronic pain = 60%, loss of mobility = 50%, becoming a burden = 49%, loss of independence = 48%, less than 6 months to live = 43%, incontinence = 27%, prospect of nursing home = 25%.

2. Oregon. A complaint was filed by the State Board of Medical Examiners against Dr. James Gallant of Corvallis for engaging in active euthanasia with respect to his patient, Clarietta Day, who died 3/22/96, allegedly as a result of a lethal injection administered by a nurse. The Board held a second closed hearing on 3/13/97.

3. Florida. On 10/22/96, the state Agency for Health Care Administration suspended the license of Dr. Ernesto Pinzon after investigators charged him with intentionally giving deadly drugs on 10/6/96 to a man dying of cancer, Rosario Gurrieri of Sebring, Florida. On 11/21/96, Pinzon was indicted for first-degree murder. Pinzon is charged with administering six shots of morphine and two of Valium during a half-hour period, then injecting potassium chloride. Gurrieri's relatives did not know about or approve of Dr. Pinzon's actions. Trial of the case began 5/27/97. On 6/23/97, the trial judge blocked key testimony from a nurse based on state law protecting details of internal peer-review investigations; the prosecutor plans to appeal the ruling.

4. New York

a. State commission. On 4/17/97, New York Attorney General Dennis Vacco announced a new statewide commission to examine ways of improving the quality of care for the dying. The commission, chaired by Dr. Thomas Fahy, includes 19 health professionals from hospitals, medical schools, and hospices around the state, all of whom are opposed to physician-assisted suicide.

b. Sharon LaDuke. After carrying out a physician's orders to give a narcotic to dying patient Willis Dobisky to ease her death in 1993, nurse Sharon LaDuke was fired by Hepburn Medical Center, which also asked a district attorney to prosecute her as a killer. LaDuke, who was cleared of any wrongdoing by the prosecutor and found blameless by the state Department of Health and a peer panel, has sued the hospital to regain her job and be paid damages for slander. The hospital also faces a \$4 million medical malpractice suit filed by the Dobisky family, which intends to use the money to open a hospice center for the terminally ill.

5. Washington. On 6/5/97, Betty Drumheller, a 64-year-old woman undergoing treatment for an aggressive form of leukemia, asked the West Spokane Unitarian Universalist Church to provide her sanctuary for physician-assisted suicide if her treatment fails. The church's interim minister, Rev. David Parke, turned down the request on 6/13/97 on the ground that the church first needed to develop a mechanism for making congregation-wide decisions.

6. American Bar Association. The Beverly Hills Bar Association has submitted a resolution supporting legalization of physician-assisted suicide to the ABA House of Delegates for a vote at the ABA annual meeting in August 1997.

7. AMA nationwide survey. A telephone survey of 1,000 adults nationwide sponsored by the AMA revealed that 76% were concerned about issues related to care at the end of life, including physician-assisted suicide and adherence to advance directives.

8. Rx Remedy nationwide poll. On 6/23/97, Rx Remedy, Inc. released the results of a comprehensive survey of Americans age 55 and over regarding right-to-die issues. The 5-year-old firm has invested \$20 million in building a data warehouse about the health practices, attitudes, and behavior of American consumers in more than 1.2 million 55+ households. Over 100,000 households returned the completed 44-question survey, with 30,000 surveys selected and tabulated to create a demographically balanced national sample. Median age of sample respondents is 71. Results included the following:

a. 63% agreed that the terminally ill should have a legal right to commit suicide with a physician's assistance.

- b. 64% favored enacting legislation authorizing physician-assisted suicide.
 - c. Support by religious affiliation: atheists 96%, Jews 88%, Protestants 68%, Catholics 50%.
 - d. Support remained constant as individuals aged: 64.7% for ages 55-65, 64.8% for ages 66-80, 65.9% for those over age 80.
 - e. Support was weakest in the Midwest and Deep South, but 46 states had 50% or more respondents
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program.

9. Maryland initiative. The Johns Hopkins University Bioethics Institute and the Maryland Attorney General's office have joined forces on a 4-year project to reduce barriers that cause patients to die in pain. In addition to pain management, the initiative will focus on advance directives and financial incentives to improve patient care in hospitals and nursing homes. Jack Schwartz, chief counsel for opinions and advice to Maryland's Attorney General, and Johns Hopkins

be taken before deciding on terminal sedation, drug choice and means of delivery, and the level sedation desired by the patient.

c. Defining the "terminally ill." A research team at George Washington University's Center to Improve Care of the Dying has reviewed data from the SUPPORT study and concluded that deciding who should be counted as "terminally ill" will pose such severe difficulties that it may be untenable as a criterion for permitting physician-assisted suicide. Joanne Lynn et al., *Defining the "Terminally Ill": Insights from SUPPORT*, 35 Duquesne L. Rev. 311 (1996). Physicians in the five participating hospitals were asked to rate the study patients' chances for surviving for another 6 months. Of those rated as having a 50% chance of survival, almost half lived well beyond 6 months--some up to 3 years. Of those rated as having a 20% chance of survival, 10% lived beyond 3 years. Inability to predict survival was especially difficult for patients with congestive heart failure: of those rated as having a 20% chance of survival, actual survival was more than double the 6-month limit and was 7 times the rate expected by physicians. Similaran double the 6-moi(5ond 16251

Communication" published 6/4/97, two physicians argue that court decisions equating terminally ill patients who require life-sustaining treatment with those who do not (i.e., decisions under the Equal Protection Clause) are based on a faulty clinical view of the care of terminally ill patients and might undermine the care of such patients. Ann Alpers & Bernard Lo, *Does It Make Clinical Sense to Equate Terminally Ill Patients Who Require Life-Sustaining Interventions with Those Who Do Not?*, 277 JAMA 1705 (1997).

i. Data from the Netherlands. In a "Commentary" published 6/4/97, three authors reanalyze data from the

following four days of intense debate. Before being passed, the bill was amended by voice vote to commit the government to greater focus on palliative care. Northern Territory Chief

physicians, 78% community.

(e) Question 5

causing bodily harm in connection with an attempted suicide by another patient in July 1996.

(2) Dr. Morrison. 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. Conviction would carry an automatic life sentence with no possibility of parole for 25 years. Mills' death was reported as being from natural causes following the family's consent to withdrawal of life support. Dr. Morrison has been released from jail on \$10,000 bail and is free to practice medicine outside the hospital's intensive care unit until her preliminary hearing scheduled to begin 2/9/98. Colleagues have expressed support for Dr. Morrison, a respected physician and medical school professor. 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).

b. Legislation. Svend Robinson's proposed bill to decriminalize physician-assisted suicide (Private Members' Bill C-304) died 3/6/97 in the House of Commons without a vote.

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 because the government prosecutor had ordered police to question prospective jurors (including five who ended up on the jury) concerning their views on religion and euthanasia; however, the court rejected Latimer's request that his confession be suppressed. Latimer had been sentenced to life in prison without possibility of parole for 10 years, but spent only one day in jail before being released on \$10,000 pending the appeal. Latimer's new trial is set for 10/27/97.

3. Colombia

a. Court decriminalizes active euthanasia. On 5/20/97, Colombia's Constitutional Court issued a 6-3 decision decriminalizing active euthanasia of terminally ill patients who consent; the court subsequently reaffirmed its ruling on 6/12/97. The Catholic church has petitioned to overturn the ruling, and the matter will be debated again in 4 weeks. Four of the 9 judges reportedly support overturning the ruling. The ruling came in a case brought by a Bogota lawyer, José Parra, who had sought to invalidate existing criminal laws that impose a lesser penalty for mercy killing than for murder. If the court's ruling becomes final, Colombia's congress is expected to consider legislation regulating euthanasia.

b. Public opinion poll. A poll carried out by the National Consulting Center and published in the 5/15/97 edition of Bogota's El Espectador newspaper showed that 53% of Colombians agreed that no penalty should be imposed for the act of putting someone who is incurably ill and suffering intensely out of their misery.

4. Germany

a. Survey of physicians. The 11/27/96 of the German newsmagazine STERN contained the results of a survey of German physicians conducted by Dr. Karl-Heinz Wehkamp, Director of the Center for Health Ethics in Hannover. A total of 184 hospital chief physicians and 282 general practitioners participated in the written and oral survey during fall 1996. The survey showed that 88.0% of hospital physicians and 74.3% of private physicians approved of administering painkillers having a double effect; 54.4% of hospital physicians and 48.3% of private physicians had been asked by patients to carry out active euthanasia, but only about 1 in 20 had done so; and 32.2% of hospital physicians and 30.2% of private physicians could imagine that they would perform active euthanasia for humanitarian reasons.

b. Nurse convicted. On 5/7/97, a Bavarian nurse was sentenced to 5 years in jail by a court in Ansbach, Bavaria, for having injected an incurable 85-year-old woman with a fatal dose of a sleeping drug. The town council and local residents have donated \$580,000 to help the nurse.

5. Great Britain. On 6/12/97, Sir Stephen Brown in the Family Division of the High Court held a preliminary private hearing to consider the request of Annie Lindsell (who suffers from motor neurone disease) to extend the doctrine of double effect and allow her physician to give her drugs that would relieve her distress but also may hasten her death.

6. Japan

a. Dr. Yamanaka. Dr. Yoshihiro Yamanaka administered a muscle relaxant intravenously in April 1996 to hasten the death of an unconscious man who had stomach cancer and was in excruciating pain. Kyoto police, who forwarded the results of their investigation to prosecutors on 4/24/97, said Yamanaka should have known the dose of muscle relaxant would be fatal for the patient.

b. Parliamentary vote on recognizing brain death. On 6/17/97, the Japanese parliament approved a bill that would allow heart and lung transplants for the first time in Japan, but only under strict conditions. The bill accepts the concept of brain death but requires that a donor give consent to be diagnosed as brain

dead and gives the donor's family the right to veto the patient's wish.

7. The Netherlands

a. New reporting procedures. Under recently revealed changes to the reporting procedures, euthanasia cases will no longer be referred to public prosecutors but instead will be submitted to an independent committee made up of legal, medical, and ethical experts. The changes are intended to increase the rate at which physicians report deaths resulting from euthanasia.

b. Physician prosecuted for murder. On 4/8/97, Dr. Sippe Schat, who had been charged with the murder of a 72-year-old patient, Dora Bratinga, in April 1996, was released after a court handed down a 6-month suspended sentence. The court found that Dr. Schat was not guilty of murder because the patient had expressed a wish to die. However, Dr. Schat failed to follow guidelines immunizing physicians who participate in euthanasia, by failing to get a second opinion and falsifying the death certificate to show the patient died of natural causes.

8. Norway. Retired Dr. Christian Sandsdalen has been charged with premeditated murder and had his license revoked for admittedly giving a lethal dose of morphine in June 1996 to a 45-year-old woman suffering from multiple sclerosis. He demanded on national TV that he be charged as a test of Norway's laws against euthanasia. The case is expected to be heard in an Oslo municipal court later in 1997.

9. The Philippines. On 3/25/97, the Philippines' Congress approved for debate the Right to Die Act, which would allow patients dying from terminal diseases to order medical remedies stopped or to ask that artificial means be administered
