Recent Developments in Physician-Assisted Suicide

February 1998

LITIGATION

1. *Lee v. Harcleroad*

Medical Association resulted in the bill's language being toned down to avoid reference to the potential for hastening death. Hearings were set for mid-January 1998.

2. California

a. Public hearings. State legislator Carole Migden, who chairs an Assembly Select Committee on Palliative Care, began conducting public hearings during November 1997 to discuss legalizing physician-assisted suicide.

b. Physician-assisted suicide proposal under consideration. On 11/4/97, state legislator Robert Hertzberg sent a letter to every member of the state Assembly and Senate seeking legislators willing to work with him on a bill to allow physician-assisted suicide. Assemblywoman Dion Archer said that she would join the effort, but Hertzberg has not yet decided whether to proceed with the proposal, which would be similar to Oregon law but would mandate a mental health evaluation for all patients.

3. Colorado. On 2/2/98, a legislative committee voted 5 to 3 to kill Senate Bill 57, which was introduced by Senator Maryanne Tebedo with the purpose of clarifying what actions constitute assisting a suicide under existing Colorado law. Critics were concerned that the bill might weaken the law against assisted suicide.

4. Kansas. In 1997 Representative Susan Wagle introduced House Bill 2531, which was intended to clarify what existing criminal statutes mean by assisted suicide. The bill was expected to clear the House and reach the Senate by the end of February 1998.

5. Maine. On 2/11/98, The Maine House rejected by a 99-42 vote a bill introduced by Representative Joseph Brooks that would have authorized physician-assisted suicide (Legislative Document 916, An Act to Allow Physician-Assisted Deaths for the Terminally Ill). Assisted suicide supporters unsuccessfully sought to have legislators refer the issue to the people for a vote. Supporters have indicated that they may launch a petition drive to put the proposal on the 1999 ballot. A statewide poll of 450 residents conducted by Strategic Marketing Services between January 16 and 20 showed that 71% would support a bill legalizing physician-assisted suicide.

6. Maryland. The Maryland Catholic Conference is working with hospice organizations and other groups to introduce a bill that would outlaw physician-assisted suicide. The bill was expected to be introduced when the General Assembly reconvened in January 1998.

7. Michigan

a. Voter initiative. The group Merian's Friends, which supports physician-assisted suicide for the terminally ill, is trying to gather voter signatures in an attempt to put the issue to a vote of the people in November 1998. The group, which needs to get 247,000 signatures within one 180-day period, has hired a company to gather the remaining required signatures before the May 27 deadline.

b. Legislature. Senator William Van Regenmorter, chairman of the Senate Judiciary Committee, has

action might be unnecessary. The committee was scheduled to meet again on 2/20/98 to begin drafting a package of amendments to present to the 1999 legislature, but no recommendations are expected until summer or fall of 1998.

c. Oregon Attorney General. Representatives from state agencies have asked the Attorney General for guidance regarding the role various agencies (such as the Oregon Health Division and the Oregon Board of Medical Examiners) have in enforcing and carrying out the Oregon Death with Dignity Act. Deputy Attorney General David Schuman has indicated that rules would be needed to address some gaps (such as the definition of residency) but that no such gaps would preclude the law from going into effect.

d. Oregon Health Division. On 11/5/97, the Oregon Health Division filed with the Attorney General emergency rules regulating the reporting of physician-assisted suicides. The division has six months to adopt permanent rules, following a public hearing. A 12/12/97 memo from the Center for Health Statistics advised county agencies that any Center employee who revealed information about an assisted death would be terminated immediately and that any county responsible for a leak would be stripped of its authority to access and distribute vital records for the state.

e. Oregon Board of Pharmacy. On 11/6/97, the Oregon Board of Pharmacy adopted an emergency rule requiring physicians to specify in writing on the prescription that the medication is being requested for assisted suicide. The purpose of the requirement was to alert pharmacists who do not wish to participate in an assisted suicide. The Oregon Medical Association objected to the rule on the ground that the Board of Pharmacy lacked authority over physicians and the rule violated patient confidentiality. On 1/6/98, the OMA filed a lawsuit before the Oregon Court of Appeals. Governor John Kitzhaber has asked the Oregon Board of Medical Examiners to draft a rule that would satisfy the concerns of both the OMA and the Board of Pharmacy.

f. Oregon Health Plan. The Oregon Health Services Commission will determine early in 1998 whether physician-assisted suicide will be placed on the list of medical treatments covered by the Oregon Health Plan, the state's insurance program for low-income people. Because federal legislation prohibits the use of federal funds for physician-assisted suicide, state funds would have to be used.

g. Response of Oregon medical groups

(1) Oregon Medical Association. On 11/9/97, the executive committee of the OMA (which had supported Measure 51) issued a report advocating "good, competent and compassionate palliative care at the end of life" and stating that the OMA will "observe the provisions of Measure 16 (the Death with Dignity Act) to the letter of the law and will provide its members with the resources to do likewise." On 11/11/97, the OMA began offering physicians a "Compliance Checklist" outlining their rights and responsibilities under the Act. The OMA will not give guidance in specific medical procedures but will provide physicians with a list of resources they can call upon outside the OMA.

(2) Task Force to Improve the Care of Terminally Ill Oregonians. The task force (formed after voters approved Measure 16 in 1994) has published a guidebook for health care providers, *The Oregon Death with Dignity Act: A Guidebook for Healthcare Providers*. Copies can be purchased for $15 each from OHSU Center for Ethics in Health Care, L101, 3181 SW Sam Jackson Park Road, Portland, OR 97201.

(3) Guidelines for physicians. The Mid-Valley Physician Assisted Suicide Interest Group, which earlier had developed guidelines for physicians to follow, has been meeting for further discussions regarding implementation..

(4) Health care providers. A number of health care providers, including Salem Hospital and Kaiser Permanente HMO, have indicated that they will not participate in physician-assisted suicide until various questions regarding implementation have been addressed.

(5) Physicians for Compassionate Care

matter was under review in the Justice Department and that the DEA administrator had not cleared his opinion with her. On 11/20/97, Oregon officials met with officials from the Department of Justice and President Clinton's domestic policy advisors to discuss the issue. In late January 1998, a Department of Justice team headed by Deputy Attorney General Eric Holder, Jr., delivered its opinion to the Attorney General that DEA lacked the authority to declare that action allowed by Oregon law violated the Controlled Substances Act. At least two letters signed by a number of U.S. Senators and Representatives have been sent to the Attorney General, urging her to uphold the DEA's position.

i. Estimate of patients likely to use the Act. A 12/7/97 article in the Oregonian newspaper projected that 53 Oregonians a year would take lethal medication under the provisions of the Oregon Death with Dignity Act.

j. Compassion in Dying Federation. The Compassion in Dying Federation has moved its headquarters from Seattle to Portland and plans to have a network of counselors to assist patients in the Portland area by March 1 and statewide as early as June 1. Compassion in Dying will give appropriate patients a list of physicians willing to participate in physician-assisted suicide. The organization also will furnish physicians with a protocol of the types, amounts, and sequence of drugs a patient could use to die.

10. Virginia. On 2/4/98, the Senate Courts of Justice Committee, on a vote of 8 to 7, approved SB 646, which would authorize a commonwealth's attorney to bring a civil action against a health care provider who assists in a suicide, with a first offense subject to a fine of $10,000 and a second offense subject to a fine of $100,000. The bill is now being debated by the Senate. A similar measure was considered by the Virginia legislature in 1997.

11. Washington. On 1/19/98, Representative Phil Dyer introduced a bill, drafted by the ACLU and known as the End-of-Life Care Act of 1998, that would allow patients to choose from a full range of end-of-life care choices, including "palliative sedation." The Act would protect physicians who complied with the Act from any legal action.

12. West Virginia. House Speaker Bob Kiss and four other legislators introduced House Bill 4058, the Intractable Pain Relief Act, to provide protection to physicians, nurses, and pharmacists treating pain in good faith. The bill, which would protect physicians prescribing narcotics in "larger than average doses," responds to concerns that patients might not receive adequate pain relief because of aggressive action taken by the state Board of Medicine to prevent physicians from over-prescribing narcotics. In July 1997, the Board issued a statement spelling out 11 specific guidelines for narcotic prescriptions.

13. Federal legislation. Choice in Dying is promoting a federal bipartisan bill for the next Congressional session, known as the Advance Planning and Compassionate Care Act (Senate Bill 1345), which has been introduced by Senators Jay Rockefeller and Susan Collins; a companion bill has been introduced by Rep. Sander Levin. The Act would give Medicare beneficiaries the right to discuss end-of-life issues with a trained professional, establish a national telephone hotline providing information about end-of-life care, require medical facilities to place any existing advance medical directive in the front of a patient's chart, require that states honor directives validly executed under the law of other states, ask the federal government to study the creation of uniform advance directives, and direct the federal government to develop national standards for evaluating the performance of health care programs that provide end-of-life care.

OTHER NATIONAL DEVELOPMENTS

1. Michigan

a. Dr. Georges Reding. Geoffrey Fieger has announced that Dr. Georges Reding has begun an "apprenticeship" under Dr. Kevorkian. Dr. Reding is a licensed psychiatrist who has assisted Kevorkian with several deaths; he was charged with various crimes in 1996, but those charges were later dropped by the prosecutor. On 12/31/97, Kevorkian and Reding issued a manifesto and announced that they invited prosecution and conviction, and would die of starvation in prison to further their beliefs.

b. Recent assisted suicides. Deaths identified since 10/29/97 include the following:

(1) 65th suicide 10/29/97 = John O'Hara (55-year-old man confined to a wheelchair after a stroke).

(2) 66th suicide 11/13/97 = Nadia Foldes (74-year-old woman with cancer).

(3) 67th suicide 11/21/97 = Naomi Sachs (84-year-old woman with severe osteoporosis).

(4) 68th suicide 11/21/97 = Bernice Gross (78-year-old woman with multiple sclerosis).

(5) 69th suicide 12/3/97 = Martha Wichorek (82-year-old woman who complained of health problems related to old age but had not been diagnosed with any particular illness).

(6) 70th suicide 12/11/97 = Rosalyn Hayes (59-year-old woman with cancer).

(7) 71st suicide 12/16/97 = Margaret Weilhart (89-year-old woman who had suffered several strokes, was paralyzed on her right side, and was going blind).

(8) 72nd suicide 12/16/97 = Cheri Trimble (46-year-old woman with cancer).

(9) 73rd suicide 12/27/97 = Mary Langford (73-year-old woman with cancer).

(10) 74th suicide 12/27/97 = Franz-Johann Long (53-year-old man with cancer and a history of mental illness).

(11) 75th suicide 1/7/98 = Nancy Rush (81-year-old woman with cancer, emphysema, and ulcers).

(12) 76th suicide 1/18/98 = Carrie Hunter (35-year-old transsexual woman with AIDS).

(13) 77th suicide 2/4/98 = Jeremy Allen (52-year-old man with cancer).

c. Cease and desist order. On 4/4/97, Dr. Kevorkian was served with an order from the Michigan Department of Consumer and Industry Services to cease and desist from practicing medicine by assisting in suicides without a medical license (Kevorkian's license was suspended on 8/21/92). On 12/3/97,

concerns, simply having someone with them, having the opportunity to pray alone, and having someone pray for them. A majority were worried about personal pain and about how loved ones would fare. When asked which overall area (practical, emotional, medical, or spiritual) concerned them most, respondents cited spiritual matters (38%) and practical matters (21%). Respondents were divided into nearly equal camps about physician-assisted suicide: one-third favored making it legal "under a wide variety of circumstances," one-third wanted it legal only "in a few cases," and one-third opposed it under any circumstances.

MEDICAL DEVELOPMENTS

1. Connecticut "Physician-Assisted Living" program. A new state "Physician-Assisted Living" program seeks to make consumers more aware of hospice care as an alternative to physician-assisted suicide. The program is circulating information packets and public service announcements and also will provide a "hospice will" that patients can use to express their preference for hospice care.

2. Education for Physicians on End-of-life Care (EPEC) Project. Funded by a $1.5-million grant from the Robert Wood Johnson Foundation, the AMA's Institute for Ethics has establis," and o/84lr

emotional pain of terminally ill patients. The report concluded that physicians and the public must be better educated about palliative care and more emphasis must be placed on hospice care.

11. Recent articles

a. Daniel J. Cher & Leslie A. Lenert, *Method of Medicare Reimbursement and the Rate of Potentially Ineffective Care of Critically Ill Patients*, 278 JAMA 1001 (1997) [authors reviewed all Medicare patients hospitalized in intensive care units in California during fiscal year 1994 and concluded that Medicare beneficiaries in HMO practice settings are less likely to experience injudicious use of critical care near the end of life].

b. Correspondence, *Physician-Assisted Death and Pharmacy Practice in the Netherlands*, 337 New Eng. J. Med. 1091 (1997) [1994 survey of pharmacists in community and hospital settings revealed that 94% agreed with the concept of euthanasia and 91% with physician-assisted suicide and 95% would dispense drugs for these purposes; 71% of hospitals had official guidelines for dealing with requests].

c. George J. Annas, *The Bell Tolls for a Constitutional Right to Physician-Assisted Suicide*, 337 New Eng. J. Med. 1098 (1997).

d. Letters, *Physician-Assisted Suicide: The Dutch Case*, 278 JAMA 1492 (1997) [regarding Linda Ganzini's review of Hendin, *Seduced by Death: Doctors, Patients, and the Dutch Cure*].

e. Lawrence O. Gostin, *Deciding Life and Death in the Courtroom: From Quinlan to Cruzan, Glucksberg, and Vacco--A Brief History and Analysis of Constitutional Protection of the "Right to Die,"* 278 JAMA 1523 (1997).

f. Timothy E. Quill, Rebecca Dresser & Dan W. Brock, *Sounding Board: The Rule of Double Effect--A Critique of Its Role in End-of-Life Decision Making*, 337 New Eng. J. Med. 1768 (1997) [discusses shortcomings of double effect as a practical clinical guide and proposes alternative principles to govern care at the end of life].

g. Timothy E. Quill, Bernard Lo & Dan W. Brock, *Palliative Options of Last Resort: A Comparison of Voluntarily Stopping Eating and Drinking, Terminal Sedation, Physician-Assisted Suicide, and Voluntary Active Euthanasia*, 278 JAMA 2099 (1997) [compares these four practices from clinical and ethical perspectives and recommends safeguards for any medical action that may hasten death].

h. Molly Cooke et al., *Informal Caregivers and the Intention to Hasten AIDS-Related Death*, 158 Archives of Internal Medicine 69 (1998) [study of men with AIDS and their caregiving partners revealed that 12.1% received an increase in medications immediately before death intended to hasten death, and that the medications were administered in 10% of cases by the caregivers].

i. Molla S. Donaldson & Marilyn J. Field, *Measuring Quality of Care at the End of Life*, 158 Archives of Internal Medicine 121 (1998) [considers strategies for assessing and improving care at the end of life].

j. Philip R. Muskin, *The Request to Die: Role for a Psychodynamic Perspective on Physician-Assisted Suicide*, 279 JAMA 323 (1998) [outlines thoughts and emotions that could underlie a patient's request to die and makes recommendations regarding the proper roles of the primary care physician and the psychiatric consultant].

k. Joel Tsevat et al., *Health Values of Hospitalized Patients 80 Years or Older*, 279 JAMA 371 (1998) [Hospitalized Elderly Longitudinal Project (HELP) study that took place at four academic medical centers from January 1993 to November 1994 found that most patients were unwilling to trade much additional time of living for excellent health, although preferences varied greatly; patients were willing to trade significantly less time for a healthy life than their surrogates assumed they would].

l. Gail Gazelle, *Sounding Board: The Slow Code--Should Anyone Rush to Its Defense?*, 338 New Eng. J. Med. 467 (1998).

INTERNATIONAL DEVELOPMENTS

1. Australia

parliament in March 1997. However, the head of the territory government, Shane Stone, has indicated that the Act may be reinstated if the territory is granted statehood as proposed by 2000.

b. National parliament. A motion introduced in the national parliament in December 1997, calling for a referendum on the question of euthanasia, was largely ignored.

c. Proposed state legislation. Euthanasia bills are at various stages in three states but are foundering without major party support.

d. Television documentary. On 2/24/98, ABC Television of Australia aired a documentary about the adoption and eventual repeal of the Northern Territory legislation, as viewed through the eyes of Dr. Philip Nitschke.

e. Nurses' poll. On 2/13/98, the Sydney *Morning Herald* reported that a random survey of 475 members of the New South Wales Nurses' Association found that 80% supported voluntary euthanasia, 22% would be prepared to give a lethal injection to a patient who had chosen to die, and 70% supported physician-assisted suicide.

2. Belgium. The Belgian Federal Advisory Committee on Bioethics has issued a report on euthanasia. A majority of the committee's members expressed support for an approach that would consider euthanasia as only one of many options for end-of-life care. The proposal would keep euthanasia subject to the penal code, but make it legally justifiable under certain conditions. A consistent procedure would be required for all end-of-life decisions (including shared responsibility of physician and patient, consultation with the nursing team and family, and ethical evaluation of the decision by the whole medical team). In the case of euthanasia, a nonphysician "third person" representing the local hospital ethics committee would have to be consulted, and some form of legal review would be required.

3. Canada

a. Proposed legislation. Liberal Senator Sharon Carstairs has abandoned her plan to introduce a bill in the Senate that would protect physicians from prosecution for withdrawing or withholding life-sustaining treatment upon request or administering pain relief medication that may hasten death; a similar bill previously introduced by Senator Carstairs (S-13) died when the parliament dissolved for elections held in June 1997. After the Kevorkian-assisted suicide of a prominent British Columbian land developer and philanthropist, Natverlal Thakore, MP Svend Robinson announced that he would reintroduce a private member's bill to allow physician-assisted suicide. However, he was unable to garner support when he sought during November 1997 to have the House of Commons establish a special committee to review the evidence and findings of the Senate committee that held hearings during 1994 and 1995.

b. Prosecution of physicians

(1) Dr. Genereux. On 12/22/97, Dr. Maurice Genereux entered a guilty plea on two counts of assisting a suicide, involving the death of AIDS patient Aaron McGinn and near death of Mark Jewitt from drug overdoses in April 1996 and July 1995. The prosecution agreed to drop three other charges in exchange for the guilty plea. Dr. Genereux was released on bail and allowed to continue treating patients, but not to prescribe narcotics. A judge will sentence Dr. Genereux in April; the maximum prison sentence is 14 years. A hearing is scheduled for March 12 and 13 before the College of Physicians and Surgeons of Ontario to determine whether Dr. Genereux's license should be revoked.

(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 Paug0 -1.15ould noed volpmdug [(certain211/the K pr1(o a nd allowedatie

d. The Right to Die NETWORK of Canada. The Right to Die Society of Canada has officially changed its name, home base, and operating principles. The new name is The Right to Die NETWORK of Canada, now based in Ottawa as the center of the federal government and the home of various national organizations involved in right-to-die issues. The NETWORK will place a strong emphasis on the growth and development of local chapters and support groups, with the goal of meeting the end-of-life needs of Canadians at a local level and in a personal way.

e. Public opinion poll. A comprehensive Southan-Global poll, conducted by the Toronto-based polling company Pollara, surveyed 1,410 adults nationwide between 11/28 and 12/2/97. The poll found that 60% favored legalizing physician-assisted suicide; 70% (including one-third of those opposed to outright legalization) said that it would be acceptable in some circumstances for a physician to help a patient die.

f. Survey of physicians. A Medical Post-Angus Reid national poll of Canadian physicians in 1997 revealed that 55% believed physicians do not do enough to help with pain; 48% believed that the demand for assisted suicide would disappear if more patients received adequate pain control.

4. Colombia. 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 petitioned to overturn the ruling, but the petition was denied on 10/2/97 by a 6-3 vote. Colombia's congress is expected to consider legislation regulating euthanasia.

5. Great Britain

a. Liberal Democrats call for royal commission. On 9/25/97, delegates to the Liberal Democrats' annual conference called for establishment of a royal commission to study legalization of voluntary euthanasia. A Downing Street spokesman said the government did not believe there was any need for a commission.

b. Annie Lindsell. On 10/27/97, Annie Lindsell (who suffered from motor neurone disease) abandoned her effort to obtain a court ruling allowing her physician to give her drugs that would relieve her distress but also might hasten her death. Her physician agreed to provide the drugs after he obtained the support of two distinguished consultants, who submitted affidavits to the court endorsing the physician's proposed

9. Ramon Sampedro. On 1/12/98, Ramon Sampedro, a 53-year-old man from the northwest of Spain who had been paralyzed from the neck down for 28 years, died of cyanide poisoning after campaigning since 1993 for the right to assistance to end his life. A criminal investigation is under way. Sampedro's death occurred with the help of 11 friends, each of whom participated in only one step of the process in the hope of avoiding criminal prosecution. The entire process was videotaped. Sampedro's case was rejected by the Constitutional Court in Barcelona and the European Court of Human Rights. Although the provincial court of La Coruna agreed to reopen his case in November 1996, the court did not grant the requested relief. Sampedro, who wrote a book called *Letters from Hell* in 1996, received legal and moral support from a Spanish pro-euthanasia group, Derecho a Morir Dignamente. The group is providing legal representation for Sampedro's close friend, Ramona Maneiro, who was detained by police but later released.

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