



## Recent Developments in Physician-Assisted Suicide

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### LITIGATION

1. Lee v. Oregon, 107 F.3d 1382 (9th Cir. 1997), cert. denied sub nom Lee v. Harclerod, 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 2/18/98, Judge Hogan heard argument on the plaintiffs' 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; Judge Hogan has taken this motion under advisement. Also on 2/18/98, the plaintiffs filed another motion to amend their complaint to join Peter Begin, a terminally ill patient, as a new plaintiff; although Begin died on 2/26/98, Troy Thompson, a 36-year-old man with ALS, has agreed to serve as a plaintiff. On 4/7/98, plaintiffs filed a motion to certify the case as a class action. A hearing on pending motions is scheduled for 7/13/98. The plaintiffs hope that a favorable ruling on the standing question would lead Judge Hogan to resurrect his decision on the merits. If Judge Hogan rules against the plaintiffs, the opponents of the Oregon Death with Dignity Act are expected to file a new lawsuit.

2. Kevorkian v. Arnett, 939 F.Supp. 725 (C.D. Cal. 1996), vacated and appeal dismissed, 136 F.3d 1360 (9th Cir. 1998). 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

2. Maine. Following the Maine legislature's rejection in February 1998 of a bill that would have legalized physician-assisted suicide, assisted suicide supporters plan to collect petition signatures to put the proposal on the 1999 ballot.

3. Maryland. A bill to ban physician-assisted suicide and impose criminal penalties of three years in prison and a \$10,000 fine received preliminary approval in the Senate on 3/19/98. However, chances of passage in the House were considered to be poor.

#### 4. Michigan

a. Legislature. Senate Bill 200 (making physician-assisted suicide a crime punishable by up to 5 years' imprisonment and a \$10,000 fine), which was approved by the Michigan Senate in December 1997, was passed by the House on 3/12/98 by a vote of 66-40. Originally, the bill failed to receive the required two-thirds vote in order to make it effective immediately. However, the two houses negotiated an agreement during June that will make the new law effective on September 1. The House earlier defeated by a vote of 49-57 a proposed amendment that would have exempted physicians from prosecution if medication to treat pain also hastens death. The House also defeated House Bill 5474, which would have allowed legalized physician-assisted suicide, by a vote of 38-69.

b. Voter initiative. Michigan voters may vote on November 3 on a ballot measure that would legalize physician-assisted suicide. On 5/26/98, the group Merian's Friends submitted petitions bearing more than 379,000 signatures to the Michigan Bureau of Elections; only 247,127 valid signatures are needed to place a measure on the ballot. On 7/7/98, however, opponents of the measure filed an objection to the petitions, claiming that more than a third of the signatures should not be counted because the signers or the petition circulators were not legally registered. The ballot measure is similar to the Oregon Death with Dignity Act, but requires a psychiatric evaluation and provides for an oversight commission. Supporters and opponents predict the campaign could cost as much as \$8 million. A Detroit News telephone poll of 400 voters during May 1998 showed that 44% favored the ballot measure, 39% opposed it, and 20% were undecided.

5. Oklahoma. On 5/4/98, Oklahoma governor Frank Keating signed into law the Assisted Suicide Prevention Act (Senate Bill 1243), which provides that health care professionals can have their licenses suspended after a felony conviction for assisting in a suicide. The bill also allows a lawsuit for civil damages and authorizes family members and health care providers to seek an injunction against persons who may be planning to assist in a suicide.

#### 6. Oregon

a. First deaths by assisted suicide. Compassion in Dying announced on 3/25/98 that a woman in her mid-80's with breast cancer had died peacefully the previous night about 30 minutes after taking a lethal dose of barbiturates mixed with syrup and washed down with a glass of brandy. The woman fell into a deep sleep within five minutes after taking the medication. A close relative revealed on the same day that a second, unidentified cancer patient previously had died peacefully within five minutes after taking a lethal mixture of medications; Myriam Coppens, founder of the Hemlock Society of Portland, had worked closely with the second patient and a family member. A third case of assisted suicide is said to have occurred without complication during April, without involvement of either Compassion in Dying or the Hemlock Society of Portland, but no one who participated in the case was willing to discuss it. A fourth case of assisted suicide was reported by Salem physician Dr. Peter Rasmussen on June 5; Rasmussen indicated that the patient's death had occurred during the prior month and that the person fell into a coma and died within 3½ hours. No other assisted suicides are known to have occurred since November 4, 1997, when Oregon voters rejected a ballot measure that would have repealed the Oregon Death with Dignity Act. The Oregon Health Division will not make a public report until the end of the year or after 10 assisted suicides have occurred.

b. Requests for assisted suicide. Barbara Coombs Lee reported in late April 1998 that Compassion in Dying of Oregon had received 15 requests for assisted suicide. Four of those patients died of natural causes before using a lethal prescription (two after receiving greatly improved palliative care), three were not eligible for assisted suicide, and the remaining patients were still living and in various stages of the process toward obtaining a prescription. Myriam Coppens, associated with the Hemlock Society of Portland, reported that 18 of its 27 requests were from persons who were not eligible for assisted suicide, four patients had withdrawn their requests after obtaining hospice care, two patients died before they could get the lethal prescription, and two had not yet begun the formal process to obtain a prescription. In early June 1998, Salem oncologist Dr. Peter Rasmussen reported that two dozen patients had discussed the option of physician-assisted suicide with him: one had died by lethal medication, on (two a22.7aled o0 -1.16 TD[(fooaveisr(y0y







b. Hospice deaths. On 5/20/98, Pinellas County Medical Examiner Dr. Joan Wood announced that she would appoint a team of medical professionals to investigate at least four deaths at Hospice of Volusia-Flagler. She also suspended Volusia County Medical Examiner Dr. Ronald Reeves, who had claimed that four terminally ill hospice patients had died of morphine overdoses during the past few months.

5. Oklahoma. In March 1998, a U.S. District Court jury found Dr. C. Douglas Wood guilty of involuntary manslaughter in the 1994 death of Virgil Dykes at the Veterans Administration Medical Center in Muskogee, Oklahoma. Prosecutors argued that Wood injected the patient with a potassium solution following surgery. Wood had been charged with first-degree murder but was convicted of the lesser offense.

6. Washington. Port Angeles pediatrician Dr. Eugene Turner has been charged with suffocating 3-day-old Conor McInerney on 1/12/98 when he began to revive after being declared dead in the Olympic Memorial Hospital emergency room. On 2/23/98, the Washington Medical Quality Assurance Commission charged Dr. Turner with "unprofessional conduct" and a "gross lack of judgment" and banned him from making decisions on when to end resuscitation for future patients.

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## MEDICAL DEVELOPMENTS

1. Mayday Fund public opinion poll

Trustees, issued a statement following Attorney General Reno's ruling regarding prescription of lethal medication and the federal Controlled Substances Act. The statement said that, despite the AMA's adamant opposition to physician-assisted suicide, "we feel very strongly that involving the federal DEA, through the Controlled Substances Act, is not in the best interests of patients" because such action could make physicians fearful about providing adequate pain control for dying

*the Truth About Terminal Cancer*, 279 JAMA 1746 (1998) [selected SUPPORT study data revealed that cancer patients who thought they were going to live for at least six months were more likely to favor life-extending therapy, that patients were substantially more optimistic (and less accurate) about their prognoses than their physicians were, and that patients who chose aggressive therapy had the same survival rate as those who chose palliative care but were more likely to have a hospital readmission, undergo attempted resuscitation, or die on a ventilator].

h. Roberto Bernabei et al., *Management of Pain in Elderly Patients with Cancer*, 279 JAMA 1877 (1998), and Charles S. Cleeland, *Editorial: Recommendations for Pain Management*, 279 JAMA 1914 (1998) [a study of 13,625 cancer patients aged 65 or older who were discharged from the hospital to Medicare- or Medicaid-certified nursing homes in five states revealed that up to between 25% and 40% were in pain every day and that 26% did not receive any painkilling agent at all; minority patients and older patients were most likely to receive inadequate pain relief].

i. American Society of Clinical Oncology (ASCO) survey of oncologists, issued 5/16/98 at ASCO meeting in Los Angeles [survey of 3,200 oncologists revealed that 64% have received requests for physician-assisted suicide or euthanasia, 22% support physician-assisted suicide, 6.5% support euthanasia, and 13% have participated in physician-assisted suicide or euthanasia; a majority reported that over 20% of their patients die in pain].

j. Ezekiel Emanuel et al., study on depression in the terminally ill, issued 5/19/98 at ASCO meeting in Los Angeles [survey of 988 terminally ill patients revealed that depression and heavy dependence on others for daily care needs were the leading reasons patients considered physician-assisted suicide or euthanasia; patient pain was not a determinative factor].

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euthanasia if terminally ill and in pain. Only 0.7% of physicians said that they would choose euthanasia for patients who feel intolerable pain or who are suffering from incurable diseases and are dying. The ministry expects to draw up a report on terminal care in June, based on the survey.

## 6. The Netherlands

a. Public opinion poll. A poll by Dutch radio concluded that 84% of voters were in favor of legalizing euthanasia if carried out by a physician under strict conditions.

b. Dutch elections. Prior to general elections held on 5/6/98, the D66 political party called for legislation legalizing euthanasia (which currently is permitted if certain requirements are met, even though technically it is illegal). As a result of the election, D66 (a member of the three-party ruling coalition with the Labour party and the Liberal VVD party) lost 9 of its former 24 seats in parliament but is expected to remain part of the ruling coalition. The Christian Democrat party, which opposed legalizing euthanasia, lost 8 of its former 36 seats.

c. Documentary. The award-winning documentary about democracy in Holland, "Sex, Drugs & Democracy," contains a favorable report on euthanasia. The film played in 100 cities across America and now is available in video stores.

d. New reporting requirements. Under a letter sent to the Dutch lower house of parliament by Dutch Health Minister Els Borst and Justice Minister Winnie Sorgdrager, beginning 11/1/98 Dutch physicians will have to report cases of euthanasia and assisted suicide to one of five regional committees consisting of experts in ethics, medicine, and law. The committees will assess whether established criteria have been met in each case and will send their opinions to the public prosecutions office and regional health inspector's office within six weeks of notification. If the committee believes that the physician has acted properly, the public prosecutions office will not instigate legal proceedings unless the Dutch Association of Prosecutors General feels there are strong grounds for doing so. The letter also announced that a study will be conducted to clarify the role of nurses and caregivers in cases involving end-of-life care.

7. Spain. On 3/4/98, excerpts of the videotape showing Roman Sampedro's assisted suicide were broadcast on the private television channel Antena 3, inflaming the national debate that was prompted by his death. The Spanish parliament has rejected a bill by leftist parties to legalize assisted suicide, but the conservative government and opposition parties agreed to send the issue to the Senate, which was expected to form a commission to consider the issue. The Catholic church, which is strongly opposed, issued a report in February 1998 titled, "Euthanasia Is Immoral and Antisocial."

8. Thailand. At a seminar entitled "Dying with Dignity" held in Bangkok in March 1998, a group of physicians proposed the use of euthanasia as a way of making money go further in economic hard times. However, the secretary general of the Thai medical council admitted that euthanasia was too sensitive an issue in Buddhist Thailand.

9. Roman Catholic church

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