



Recent Developments in Physician-Assisted Suicide

March 2003

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LITIGATION

1. Oregon v. Ashcroft, 192 F.Supp.2d 1077 (D.Or. 2002), appeal pending, No. 02-35587 (9th Cir.).

- a. Case Filed. On 11/7/01, in response to Attorney General John Ashcroft's directive that prescribing lethal medication was not a legitimate medical purpose under the Controlled Substances Act, the State of Oregon filed a complaint in the U.S. District Court for the District of Oregon seeking a declaratory judgment and injunctive relief. The court allowed several individual patient plaintiffs, a physician, and a pharmacist to intervene as plaintiffs supporting the position of the state of Oregon. Named defendants included Attorney General John Ashcroft, Asa Hutchinson (Administrator of the Drug Enforcement Administration), Kenneth W. Magee (Director of the Portland DEA office), the United States of America, the U.S. Department of Justice, and the U.S. Drug Enforcement Administration. The court allowed several organizations to file amicus briefs.

U.S. District Court decision. On 4/17/02, Judge Robert E. Jones issued his written decision in favor of plaintiff and plaintiff-intervenors. Oregon v. Ashcroft, 192 F.Supp.2d 1077 (D.Or. 2002). Judge Jones permanently enjoined defendants from "enforcing, applying, or otherwise giving any legal effect to" Ashcroft's directive and ordered that health care providers in Oregon "shall not be subject to criminal prosecution, professional disciplinary action or other administrative proceedings for any actions taken in compliance with the Oregon Death with Dignity Act." Although plaintiff and plaintiff-intervenors had made statutory, administrative, and constitutional arguments, Judge Jones based his decision on statutory grounds exclusively, holding that neither the plain language

Ohio. On 12/23/02, Ohio's governor signed into law HB 474, which was passed by the Ohio House on 5/21/02 and by the Senate on 11/20/02 and is effective on 3/24/03. The bill declares that assisting suicide is against the public policy of Ohio and creates the Compassionate Care Task Force to study and make recommendations on pain and symptom management for patients with terminal illness. Under the

INTERNATIONAL DEVELOPMENTS

1. Australia

- a. Nancy Crick. Nancy Crick, a 69-year-old resident of Queensland, ended her life on 5/22/02 in the presence of 21 family, friends, and supporters of voluntary euthanasia with the intent of challenging laws against assisting a suicide. Police investigating the case for possible criminal prosecution raided the home of John Edge, Crick's media adviser and a witness to her suicide, as well as property belonging to Dr. Philip Nitschke, and seized computers, e-mails, files, and other evidence. On 9/3/02, Nitschke announced that he had filed suit in the Darwin Supreme Court, seeking to recover seized items including the medical records of about 200 of his own patients and information on the members of the pro-euthanasia group Exit Australia. On 10/31/02, Justice Trevor Riley agreed that most of the records had nothing to do with the death of Crick and ordered Queensland police to return or destroy the vast majority of the records and pay Nitschke's costs in the court action. According to newspapers, a police report recommended Nitschke not be charged in connection with Crick's death.
- b. Recent deaths. Dr. Philip Nitschke's activities in conducting euthanasia workshops continue to stir controversy, with over 1,200 people having attended so far. Most recently, police are investigating the deaths of four people: an 80-year-old woman in Melbourne, Lisette Nigot in Perth, and Sydney and Marjorie Croft in Bundaberg who ended their lives after consulting with Nitschke, although none of them was terminally ill.
- c. Exit Australia. In October 2002, Dr. Philip Nitschke reported that the membership of Exit Australia had increased from 2,500 to 3,200 since Nancy Crick's death.
- d. COGen machine. With financial assistance from the American Hemlock Society, Dr. Philip Nitschke has developed a debreather machine (called the "COGen" machine) that pumps carbon monoxide through a nasal tube and is used in conjunction with sedatives to assist a person to die. Nitschke was scheduled to unveil the machine at a national Hemlock Society conference in San Diego in January 2003. Australian authorities seized the machine at the Sydney airport under the Prohibited Export Act, which was amended three months earlier to prohibit the exportation of devices that could be used to commit suicide or assist another to do so. However, authorities allowed Nitschke to return to Australia with the parts of a rebuilt machine, and Exit Australia plans to begin producing the machines and distributing them to members by the end of 2003.

2. Belgium. On 10/25/01, the national parliament approved a bill legalizing euthanasia for competent adults with an incurable illness causing unbearable and constant suffering. The final step in implementing the new law occurred in September 2002, when the government set up a national evaluation committee of physicians and lawyers that will ensure that the law is followed.

France. In January 2003, nurse Christine Malevre was convicted and sentenced to 10 years in prison on six

history of mental illness that makes their lives unbearable. In October 2002, the first British citizen used the services of Dignitas to die in Zurich. On 1/20/03, a second British man, 74-year-old Reginald Crew, who had motor neurone disease, also died. Euthanasia opponents and the British Voluntary Euthanasia Society have criticized such "death tourism," and the Director of Public Prosecutions is investigating whether a television broadcasting company that paid for broadcasting rights could be prosecuted for aiding and abetting a suicide that occurred in another country.

Physician participation in assisted suicides. On 1/26/03, the Sunday Times of London reported that a practicing general physician from southeast Scotland had admitted to deliberately helping eight terminally ill patients to commit suicide by overdoses of sleeping pills or fatal morphine injections. The physician said six family physician colleagues had discussed with him their role in similar assisted suicides. A survey released the week before claimed that half of all physicians in

9. New Zealand

- a. Pending legislation. New Zealand First MP Peter Brown introduced a private member's bill in parliament in 2000 that would legalize voluntary euthanasia.
 - b. Lesley Martin. In September 2002, Lesley Martin, a euthanasia campaigner, published the book To Die Like a Dog. The book describes how Martin, an intensive care nurse, gave her mother a morphine injection in May 1999 as Joy Martin was dying of cancer. Wanganui police are considering reopening their earlier inquiry into Joy Martin's death, which they had closed after finding insufficient evidence to charge anyone.
 - c. Recent deaths. Several recent deaths in New Zealand have raised controversy over assisted suicide. In August 2003, Rex Law, 77, was sentenced to 18 months in prison after pleading guilty to murdering his wife of 54 years, who suffered from Alzheimer's disease. In September 2002, former Voluntary Euthanasia Society member Victoria Vincent, 83, was found dead with a bag over her head. An 89-year-old man has been charged with murder in the death of his wife of 60 years in December 2002; she was found with a plastic rubbish bag over her head, while the husband was unconscious but recovered.
 - d. Massey University survey. In an annual survey of 1,000 people on political and social issues conducted in August and September 2002 by Massey University, more than 70% of those polled said they supported physician-assisted suicide for someone with a painful incurable disease, while 17% were opposed and the rest undecided. Support dropped to just under 50% for suicide assisted by nonphysicians, such as a relative, while 38% were opposed. Respondents under age 50 were more in favor of physician-assisted suicide (77%) than were those age 50 and over (67%).
 - e. Grey Power survey. Nearly 78,000 members of Grey Power will be surveyed on the ethics of assisted suicide through the group's Lifestyle Quarterly magazine due out in March 2003. The Voluntary Euthanasia Society applauded Grey Power's initiative in running the survey, but also called for a national referendum on the question.
10. Switzerland. The group Dignitas, which legally assists its members to commit suicide, now has 2,340 members and has assisted 147 of its members (about 80% from other countries) to take their lives. Critics have claimed that too much authority is vested in Dignitas' general secretary, Ludwig Minelli, that groups like Dignitas should be licensed, that mentally ill individuals are being assisted in suicide, that too many foreigners are traveling to Switzerland as "suicide tourists," and that each case should be assessed by a second physician. A group of legislators, physicians, and lawyers is calling on the Swiss government to pass legislation regulating assisted suicide, and Zurich prosecutors are investigating Dignitas for assisting in the suicide of mentally ill individuals.
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* Some information obtained from media reports has not been independently verified.