

RECENT DEVELOPMENTS IN PHYSICIAN-ASSISTED SUICIDE
February 2005

Professor Valerie J. Vollmar
Willamette University College of Law

Copyright 2005

LITIGATION

, 368 F.3d 1118 (9th Cir. 2004), petition for cert. filed (U.S. Nov. 9, 2004) (No. 04-623)

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, *BT 50 0 0 50 0ft 0 50 1 292 0 Tm (t) Tj 59v*

Majority opinion. Judge Tallman wrote the majority opinion, with which Judge Lay concurred. The majority held that Congress did not authorize the Attorney General to determine that physician-assisted suicide violates the CSA. Specifically, (1) Congress did not clearly authorize the Attorney General to exercise control over regulation of medical care, which is an area traditionally reserved for state authority; (2) the Ashcroft directive contradicted the plain language of the CSA;

MEDICAL DEVEL

INTERNATIONAL DEVELOPA

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. In 1999, Colombia's congress attempted unsuccessfully to enact legislation regulating the practice. In November 2004, Senator and former Constitutional Court Judge Carlos Gaviria again presented a bill that would permit and regulate the "dignified and voluntary death" of terminally ill patients.

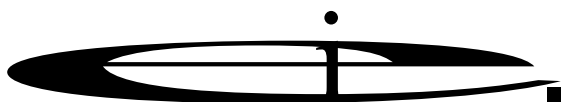
France. On 11/30/04, France's National Assembly voted unanimously (only three of 551 legislators abstained) to adopt legislation that will change the code of medical ethics and the public health code to permit withdrawing and withholding life-sustaining treatment. The bill will go to the Senate for a final vote in early 2005. A parliamentary report supporting new laws was issued following the highly publicized death of 22-year-old Vincent Humbert, whose mother allegedly gave him a lethal injection after President Jacques Chirac denied his request to die. The new legislation does not authorize euthanasia, although supporters of legalization remain hopeful that legislation permitting euthanasia will pass eventually as well.

Great Britain

Proposed assisted suicide legislation. In September 2004, a select committee of the House of Lords began considering testimony on the issues raised by the Patient (Assisted Dying) Bill (HL 37) introduced on 2/20/03 by Lord Joffe. Since that time, the Royal College of Physicians, the Royal College of General Practitioners, and the Royal College of Nursing have decided to drop their prior opposition to the bill and adopt a neutral stance, but the British Medical Association continues to be opposed. In December 2004, members of the select committee flew to Oregon to see how the Oregon Death with Dignity Act is working. Testimony heard by the committee in January 2005 indicated that the Church of England might be shifting toward approval of the bill, but the Archbishop of Canterbury promptly reiterated his disapproval. Hearings conducted by the select committee ended late in January 2005. Regardless of the findings of the committee, the House of Lords is not expected to pass Lord Joffe's bill.

Opinion surveys

Public opinion polls. A public opinion poll conducted in September 2004 revealed that 82% of those questioned wanted the law on physician-assisted dying to be changed. A poll of 1,600 people conducted by the research firm YouGm (i) Tj 50 0 0 :



would appeal to the Supreme Court.

Indonesia. On 10/22/04, Hasan Kusuma applied to the Central Jakarta District Court to permit euthanasia of his wife Agian Isna Naili, who had been in a coma for more than three months following unexpected medical complications during delivery of the couple's third child. The head of the District Court, I Made Karna, established a team to discuss whether the unprecedented request was permissible under Indonesian law. He indicated that the team would consult with the Jakarta High Court and the Supreme Court in making the decision. The head of the team, Cicut Sukardiman, directed Kusuma to rewrite his initial letter to explain the legal basis for his request. After the letter is accepted, the team will hold hearings and hear testimony from expert witnesses.

Israel. After almost three years, the recommendations of the Steinberg Committee have resulted in approval of a draft bill on end-of-life decisions by the Ministerial Committee on Legislation. Under the bill, terminally ill patients who want to die could end their lives through use of living wills, ethics committees, respirators with timers that turn themselves off, and a computerized database in which individuals could restate their end-of-life decisions every five years. The bill is being prepared by the Knesset Labor, Social Affairs and Health Committee under the direction of its chairman, MK Shaul Yahalom. In January 2005 in Tel Aviv District Court, Attorney General Menachem Mazuz for the first time did not oppose the request of a terminally ill patient to have life support removed.

Japan. In December 2002, Dr. Setsuko Suda was arrested and charged with killing a 58-year-old man on 4/19/02 at Kawasaki Kyodo Hospital by removing a tracheal tube and injecting a muscle relaxant after the patient suffered a cardiac arrest and lapsed into a f

concluded after a three-year inquiry that existing Dutch euthanasia law allows a physician to help end the life of a patient who is not terminally ill but is “suffering unbearably.” This conclusion contradicts a 2002 ruling of the Supreme Court involving the conviction of Dr. Philip Sutorius of malpractice for assisting in the death of Edward Brongersma, an 86-year-old man who was not terminally ill but was obsessed with his physical decline and hopeless existence. The Dijkhuis commission recommended that protocols be developed by which to judge such cases and that further data be collected and analyzed. The Royal Dutch Medical Association (KNMG), which established the commission, will now consider the report and decide what guidance should be given to physicians faced with these cases. However, a government spokesman indicated that the Dutch government would be “extremely reticent” about allowing euthanasia under these circumstances.

Physician willingness to provide euthanasia. The Dutch Voluntary End to Life Association has asked Professor Gerrit van der Waal of the Free University medical center in Amsterdam to conduct an investigation into claims that physicians are trying to avoid performing requested euthanasia or are continually delaying carrying out the request. The st

right to die. In November 2004, Roman Catholi