RECENT DEVELOPMENTS IN PHYSICIAN-ASSISTED SUICIDE

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LITIGATION

Oregon v. Ashcroft, 368 F.3d 1118 (9th Cir. 2004), cert. granted sub nom. *Gonzalez v. Oregon*, 125 S.Ct. 1299, 161 L.Ed.2d 104 (U.S. Feb. 22, 2005) (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 (CSA), the State of Oregon filed a complaint in the U.S. District Court for

appointed to replace Justice O'Connor is expected to be less receptive than Justice O'Connor to arguments in favor of the Oregon Death with Dignity Act. The Court's decision will be issued by June 2006.

LEGISLATION

California

Bill introduced. In 1999, Assemblywoman Dion Aroner

renamed as Compassion & Choices of Oregon, in order to prevent confusion between the Oregon group and the national parent organization, Compassion & Choices.

Legislation to reverse Oregon's law unlikely. Tim Nashif, the political director of the Oregon Family Council and the leader of the successful 2004 campaign to ban gay marriage in Oregon, said in a recent interview that the Oregon voters have spoken clearly on the issue of physician-assisted suicide and it has been relegated to the political back burner.

Documentary. Tom D'Antoni and Greg Bond have produced a documentary called "Robert's Story," which follows the last two years of the life of Robert Schwartz, a man with AIDS who used the Oregon Death with Dignity Act to die. Robert obtained a lethal dose of medication in 2001 and died two years later at the age of 52. For further information about the documentary, listen to an interview of the producers on Oregon Public Broadcasting's "Oregon Territory" show at www.opb.org/programs/oregonterritory. Click on "Archives" and go to the 10/7/05 show on death and assisted suicide.

Vermont

Bill introduced. H. 318, which was patterned after the Oregon Death with Dignity Act, was introduced in the Vermont General Assembly in February 2003 and carried over to the 2004 legislative session, where it died. On 2/4/05, another bill patterned after the Oregon Death with Dignity Act was introduced in the 2005 legislative session as H. 168.

Bill fails to receive vote. In April 2005, the House Human Services Committee listened to three days of emotion-packed testimony about H. 168. Despite the fact that eight of the 11 committee members had expressed some support for H. 168, committee chair Ann Pugh announced that the committee was unlikely to vote on the bill before the end of the session. The committee took no further action, and the legislature adjourned on 6/4/05.

Further consideration of proposed legislation. The House Human Services Committee is expected to take up physician-assisted suicide legislation again when the legislature reconvenes in January 2006. In the interim, a five-member subcommittee consisting of only Democrats and Progressives who support physician-assisted suicide is meeting to alter the previous bill. Some opponents argue that consideration should be deferred until the U.S. Supreme Court decides the pending case of *Gonzales v. Oregon*.

Federal legislation. If the U.S. Supreme Court rules in favor of Oregon in *Gonzales v. Oregon*, Congressional opponents of Oregon's law probably will introduce federal legislation prohibiting physician-assisted suicide. The sizable Republican majority in the Senate makes passage of such

MEDICAL DEVELOPMENTS

DEA guidelines on prescribing painkillers. On 8/11/04, the federal Drug Enforcement Administration and top pain specialists jointly issued detailed new guidelines spelling out proper prescribing of morphine-based painkillers, including how to diagnose severe pain. The guidelines were intended to strike an appropriate balance between curbing drug-trafficking and permitting adequate treatment of patients in intractable pain. In the 11/16/04 Federal Register, however, the DEA announced that the 31-page document "contained misstatements" and "was not approved as an official statement of the agency." On 1/18/05, the DEA published in the Federal Register a solicitation of comments on the subject. Most of the comments received sought clarification on the legal requirements governing the prescribing of Schedule II controlled substances by physicians.

Marie Schiavo, 293 JAMA 2403 (2005) [provides chronology of events and discusses issues raised by the Schiavo case].

Articles in vol. 8, no. 3, of the Journal of Palliative Medicine:

> Patricia Ruopp et al., *Questioning Care at the End of Life*, 8 J. Palliative Med. 510 (2005) [researchers interviewed physicians on the internal medicine services of two academic medical centers to explore their emotional responses to patients' deaths, and concluded that physicians' questions about care can contribute to designing residents' training experiences and improving the quality of end-of-life care].
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> Jennifer Kapo et al., *Are We Referring Patients to Hospice Too Late? Patients' and Families' Opinions*, 8 J. Palliative Med. 521 (2005) [although most patients and family members believed at the time of enrollment visits that they were not enrolling in hospice too late, they were much more likely to believe after the patient's death or discharge that enrollment was too late; families who believed that enrollment was too late had shorter lengths of stay in hospice (a median of 10 days versus 24 days for other families)].
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> Joseph W. Shega et al., *Factors Associated with Self- and Caregiver Report of Pain Among Community-Dwelling Persons with Dementia*, 8 J. Palliative Med. 567 (2005) [researchers found that self-report of pain was not associated with any other variable measured, suggesting that pain should be assessed through direct self-report and treated accordingly; they also concluded that clinicians may need to routinely assess patient pain, patient agitation, and caregiver depression].

Articles in vol. 24, Jul./Aug. 2005 issue, of Health Affairs:

Todd Gilmer et al., *The Costs of Nonbeneficial Treatment in the Intensive Care Setting*, 24 Health Affairs 961 (2005) [researchers conclude that ethics consultations resolve conflicts that would have inappropriately prolonged nonbeneficial or unwanted treatments in the ICU instead of focusing on more appropriate comfort care].

Lindsay A. Hampson & Ezekiel J. Emanuel, *The Prognosis for Changes in End-of-Life Care After the Schiavo Case*, 24 Health Affairs 972 (2005) [authors conclude that the Schiavo case is unlikely to change current practices except to increase the number of Americans who complete living wills].

Robert M. Veatch, *Terri Schiavo, Son Hudson, and "Nonbeneficial" Medical Treatments*, 24 Health Affairs 976 (2005) [author argues that clinicians should unilaterally refuse futile treatment but should not block access based on competition for scarce resources or the clinician's belief that the patient's goals are valueless].

Articles in vol. 165, Aug. 8/22, 2005 issue, of Archives of Internal Medicine:

Susan M. Wolf, Editorial, *Assessing Physician Compliance with the Rules for Euthanasia and Assisted Suicide*, 165 Archives Internal Med. 1677 (2005) [criticizing Dutch practices].

Marijke C. Jansen-van der Weide et al., *Granted, Undecided, Withdrawn, and Refused Requests for Euthanasia and Physician-Assisted Suicide*, 165 Archives Internal Med. 1698 (2005) [survey of 3,614 Dutch general practitioners regarding the most recent request for euthanasia and physician-assisted suicide (EAS) they had received; more than half of physicians had not received a request; of those who had received an explicit request, 44% resulted in EAS, 13% of patients died before the performance of EAS, 13% died before the final decision was made, 13% withdrew the request, and the physician refused the request in 12% of cases; researchers concluded that physician decisions seemed to be based on patient evaluations; physicians reported compliance with the official requirements for accepted practice].

David S. Zingmond & Neil S. Wenger, *Regional and Institutional Variation in the Initiation of Early Do-Not-Resuscitate Orders*, 165 Archives Internal Med. 1705 (2005) [researchers found that characteristics of California hospitals appeared to be associated with use of DNR orders, with early DNR orders significantly lower in for-profit (versus private nonprofit) hospitals, higher in the smallest (versus the largest) hospitals, and lower in academic (versus nonacademic) hospitals; rates of DNR order use varied 10-fold across counties].

F. Amos Bailey, *Improving Processes of Hospital Care During the Last Hours of*

Life, 165 Archives Internal Med. 1722 (2005) [study showed that end-of-life care in acute care inpatient setting improved after the introduction of a multicomponent

INTERNATIONAL DEVELOPMENTS

Australia

Steve Guest. On 7/11/05, Steve Guest, a 58-year-old Point Lonsdale resident with incurable throat cancer, called in to Jon Faine's radio program on 774 ABC, describing his suffering and indicating his desire to die. Guest died on 7/27/05 by taking Nembutal, with both his brothers present. Euthanasia activists Dr. Philip Nitschke and Dr. Rodney Syme visited Guest during the week before he died and advised him how to end his life. The State Coroner began an investigation into Guest's death, after which the two doctors revealed that they knew who gave the Nembutal to Guest and that Guest had dictated letters to both doctors denying that either gave him the barbiturate.

Book published. Penguin Books has published a book co-authored by Philip Nitschke and Fiona Stewart, titled *Killing Me Softly: Voluntary Euthanasia and the Peaceful Pill*.

Belgium. A Belgian physician whose identity has not been disclosed was arrested on 7/29/05 and charged with murder in connection with the deaths of five elderly patients in a nursing home. He reportedly said that he had administered lethal drugs to end the patients' suffering. Although physician-assisted suicide is legal in Belgium, the patients were incompetent and unable to make a request as required by law.

Bhutan. In August 2004, when the 82nd session of the National Assembly approved the Penal Code of Bhutan, legislators debated the issue of euthanasia extensively. The draft Code would have criminalized euthanasia, but the National Assembly deleted that provision and resolved to debate it again in future sessions. Chukha drangpon Lungten Dubgyur, who wrote a seminal pap Twwdr4-0.e.1(s)-4.5 -1

suffocated her with a plastic bag to end her suffering. He was charged initially with attempted murder and released on bail, but the charge may be upgraded to murder after an investigation is complete.

Marielle Houle. Marielle Houle (not related to Bergeron's wife) also is facing charges brought in Montreal of assisting in the 2004 suicide of Charles Fariala, her 36-year-old son who had multiple sclerosis. Houle waived her right to a preliminary hearing and is scheduled to appear in court on 10/31/05.

Fatality at Winnipeg hospital. June Morris, an 83-year-old woman with a broken hip, died on 1/4/02 from a deadly dose of potassium, one day after she was admitted to St. Boniface General Hospital in Winnipeg. After an investigation, Provincial Court Judge Tim Preston issued a report on Morris' death on 9/12/05 that mentioned the possibility of both a deliberate overdose and an accidental one, but focused almost entirely on 74 recommendations aimed at preventing a similar occurrence. One key suggestion was that nurses no longer be required to mix potassium acetate themselves on the ward.

End-of-life care. Gary Fish, whose wife died of cancer 10 weeks after she was diagnosed, is compiling an Internet palliative resource center that he hopes will be operational around the clock by January 2006. In addition, a group of 21 organizations calling themselves the Quality End-of-Life Care Coalition of Canada, have sent a report on palliative care needs to federal Health Minister Ujjal Dosanjh and asked for $20 million a year to implement a long-term strategy to provide the necessary resources.

Colombia

Proposed legislation. 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. In July 2005, Gaviria said that he would submit a bill in the current legislative session with guidelines similar to those in Belgium and the Netherlands. The role of the Colombian Congress is to draw up rules and regulations to prevent abuses, not to change the core of the court's ruling.

Public opinion. According to a Yanhaas tTJudgp5261.165 TDmer its ruli0.001dge Carloa5PublicRCN ra

pointed out that the new penal code contains no procedural safeguards for euthanasia, and has announced that the party will not support changing the law that regulates euthanasia.

France. A poll of 1,000 adults carried out in August 2005 for Figaro magazine showed 81% in favor of allowing euthanasia, 14% opposed, and 5% undecided. The results indicated a 16% increase in support for euthanasia over the past five years.

Germany

Dignitas Deutschland. In September 2005, the Swiss group Dignitas opened its first German office, called Dignitas Deutschland, in Hanover. Dignitas has assisted in 453 suicides since it was founded, including 253 people from Germany. The primary purpose of the new office is to push for a change in German law and to provide advice to local members. Dignitas Deutschland will not provide direct or indirect assistance in the actual act of suicide. Justice Minister Elisabeth Heister-Neumann of Lower Saxony said that she would introduce legislation in Germany's upper house making professional advice on suicide a crime. Roger Kusch, Justice Minister of the city state of Hamburg, touched off an uproar when he wrote a guest commentary for Hamburger Abendblatt newspaper indicating that he personally supported assisted suicide.

Public opinion polls. A study commissioned by Stern magazine after the Dignitas office opened revealed that 74% of Germans thought that doctors caring for terminally ill patients should be allowed to give them a lethal injection, 20% were opposed, and 6% were undecided. However, a counter survey commissioned by the German Hospice Foundation and conducted by the Emnid research group showed that only one-third of Germans know what "palliative care" is, and only 20% are familiar with hospices. According to the latter survey, when interviewees were presented with more information about end-of-life care, 56% said they would prefer to be cared for in a hospice rather than resort to assisted suicide.

Problems with end-of-life care. Currently, only two percent of the 850,000 Germans who die each year receive professional end-of-life care, and only 1,150 hospice beds are available throughout the country. However, in October 2005 Health Minister Ulla Schmidt pledged 250 million euros ($300 million) to improve and expand hospices and palliative care. She also has promised to set up 330 teams of trained palliative care experts across the country. A medical ethics commission recently issued a report on the state of palliative care and hospices in Germany, recommending more training and education programs in palliative care and making palliative medicine a mandatory subject in medical schools.

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 Assisted Dying for the Terminally Ill Bill introduced by Lord Joffe. The committee issued its written report on 4/4/05. Insufficient time remained at that point for the bill to be considered before the May

election, but the committee recommended that its report be debated early in the next parliamentary session and that a committee of the whole House examine any bill that might be introduced. In June 2005, Lord Joffe received a letter from Health Service Minister Rosie Winterton, indicating that the government was prepared to give his bill time but "remain neutral" and "listen to the debate." In October 2005, the House of Lords engaged in an eight-hour debate about the select committee's report. Lord Joffe is preparing to introduce the bill for the fourth time. He has agreed to remove voluntary euthanasia from the bill but is unwilling to concede to the committee's recommendation that the definition of unbearable suffering be replaced with "unrelievable" or "intractable" suffering or distress.

Leslie Burke. Leslie Burke, who suffers from a degenerative brain condition known as cerebellar ataxia, challenged the General Medical Council guidelines on withholding and withdrawing life-sustaining treatment that were published in 2002, arguing that domestic and European human rights law is violated by the guidelines' provisions allowing physicians to withhold or withdraw artificial nutrition and hydration under certain conditions without court approval. High Court Justice Mumby upheld Burke's claim that he was entitled to treatment and ordered the GMC to redraft its guidelines, but also recognized the right of patients to refuse treatment. The GMC appealed, arguing that the initial ruling was too broad because it might allow a patient to demand treatment physicians did not believe was in the patient's interest. The Department of Health, which oversees the government-funded National Health Service, joined the GMC in its appeal, citing concerns about resource allocation. In July 2005, a three-judge panel of the Court of Appeal agreed and reversed the lower court's decision.

Scotland. Liberal Democrat Jeremy Purvis, who has drafted a member's bill patterned after the Oregon Death with Dignity Act for introduction in the Scottish parliament, received a total of 616 responses to his consultation paper, Dying with Dignity, of which 56% supported allowing physician-assisted suicide. Purvis indicated that he intended to introduce his private member's bill at the end of October or early in November 2005. He will then seek the support of 18 members of parliament, which is required to move the bill forward.

Dr. Michael Irwin

contemplating suicide. The group receives almost a call a day, but nine out of 10 people who seek advice do not end up taking their own lives. Under Dutch law, giving advice on suicide is legal, but the advisor may not prepare the drug or be present when the person takes it.

New Zealand. In July 2005, the New Zealand Medical Association board voted to retain its current position opposing euthanasia and physician-assisted suicide as unethical.

South Africa. In July 2005, Research Surveys conducted a telephone survey of 493 adults in urban areas, identifying the cultural and religious background of each person surveyed. A large majority of all groups favored allowing a patient's family to turn off life-support systems if the individual had been declared brain-dead. On the other hand, half of those questioned responded that people should never be allowed to take their own lives, even if they were terminally ill and in considerable pain. On the issue of physician-assisted suicide, 46% responded that it should be allowed and 51% disagreed. The group supporting physician-assisted suicide included 37% of black respondents, 60% of white respondents, 50% of Indians, and 49% of colored respondents. Age, gender, and religion did not affect the responses on this issue.

Switzerland. In July 2005, the Advisory Committee on Biomedical Ethics issued a report commissioned by the Swiss parliament, which is considering drawing up proposals for a new law on euthanasia and assisted suicide. The report said that groups such as Dignitas or Exit should be able to operate legally under certain conditions, a