Recent Developments in Physician-Assisted Suicide

March 2001

LITIGATION

Sampson v. Alaska, No. 3AN-98-11288CI (Alaska Super. Ct.), appeal pending, No. S9338 (Alaska Sup. Ct.). On 12/15/98, Kevin Sampson (a 43-year-old HIV-positive man) and "Jane Doe" (a female physician in her 60's with cancer) filed suit in Alaska Superior Court in Anchorage challenging Alaska's ban on physician-assisted suicide based on state constitutional claims of privacy, liberty, and equal protection. On 9/9/99, Judge Eric T. Sanders issued a written opinion rejecting the plaintiffs' claims and granting summary judgment to the defendant. On

September 2000 showed that between 62% and 71% favored the ballot measure. However, two polls conducted later in October showed that support of the ballot measure had fallen to 54% and 52%, respectively.

b. Television advertisements. A television advertisement by groups opposing the Maine Death with Dignity Act depicted Dr. Thomas Reardon, an Oregon physician who has opposed the Oregon Death with Dignity Act as president of the American Medical Association. The advertisement claimed that Oregon patients attempting physician-assisted suicide ended up in hospital emergency rooms, and made other claims that supporters of the Maine initiative said were misleading. In response, the Act's supporters aired a television advertisement by Oregon's Governor John Kitzhaber, an emergency room physician, who said that the original advertisement was inaccurate. A second television advertisement by the Act's opponents, which suggested that HMOs would pressure Maine residents into physician-assisted suicide, was rejected by four major television stations for being factually unsupported.

2. Oregon.

a. 2000 deaths by assisted suicide. On 2/21/01, the Oregon Health Division issued a report on deaths during 2000 under the Oregon Death with Dignity Act. The complete report is available on-line at www.ohd.hr.state.or.us/chs/pas/ar-index.htm. A brief version of the report is found in Amy D. Sullivan et al., *Legalized Physician-Assisted Suicide in Oregon, 1998-2000*, 344 New Eng. J. Med. 605 (2001). The report included the following information:

(1) Number of patients. Thirty-nine persons received prescriptions under the Act, of whom 27 died after taking lethal medication (one of whom obtained the prescription in 1999), eight died from their underlying illness, and five were alive as of the end of 2000.

(2) Patient characteristics. Median age of the 27 patients who died was 69, 96% were white, 44% were male, 67% were married, 33% lived in the Portland metropolitan area, 19% were college graduates, and 31% had a post-baccalaureate degree. Twenty-one of the 27 patients who died had cancer, 88% were enrolled in a hospice program, and all patients for whom data were available had health insurance.

(3) Patient concerns. The most common reasons for choosing assisted suicide expressed by patients to their physicians were loss of autonomy (93%), inability to participate in activities that make life enjoyable (81%), loss of control of bodily functions (78%), and being a burden on family, friends, or caregivers (63%). Thirty percent cited concerns about pain control; one patient voiced concern about the financial impact of the illness.

(4) Mental health evaluations. Five of the 27 patients received a psychiatric or psychological consultation.

(5) Medical information. Twenty-six patients received prescriptions for nine grams or more of secobarbital. The lethal medication was delivered to the patient by a pharmacist in 65% of cases and by the physician in 30% of cases. The physician was present when the medication was ingested in 52% of cases. Median time from taking the medication to unconsciousness was nine minutes (individual times ranged from 1-38 minutes). Median time from taking the medication to death was 30 minutes (individual times ranged from 5-75 minutes); one patient was unconscious for up to six hours after taking the medication, but the actual time to death was not known. One patient regurgitated approximately 10 ml. of secobarbital suspension immediately after ingestion, but this patient became unconscious within one minute of ingestion and died within seven minutes.

(6) Physician characteristics. A total of 22 physicians prescribed lethal medications to 27 persons. The physicians' median age was 50 years and their median years in practice was 21. One physician was reported to the Oregon Board of Medical Examiners for submitting a written consent form with only one signature, although other witnesses were in attendance.

(7) Patient access to physicians. Fourteen patients who chose physician-assisted suicide had requested lethal medications from one or more providers before finding a physician who would participate.

Oregon Health Division statistics for 2000 generally were consistent with statistics for 1999.

b. Possible federal action. Supporters of the Oregon Death with Dignity Act have speculated that President Bush may take administrative action to overturn Oregon's law. Possible actions might include instructing the U.S. Attorney's office to prosecute Oregon physicians, holding public hearings that might lead to adoption of new administrative rules under the Controlled Substances Act, and instructing the Drug

on findings from the Study to Understand Prognoses and Preferences for Outcomes and Risks of Treatment (SUPPORT) and its companion study, the Hospitalized Elderly Longitudinal Project (HELP). 48 J. Am. Geriatrics Soc'y S1-S233 (May 2000). The issue included 29 articles containing new analyses and conclusions, reviews of previously published findings, and an annotated bibliography of the 67 previously published articles from SUPPORT and HELP as of 12/31/99.

b. Andrew Thorns & Nigel Sykes, *Opioid Use in Last Week of Life and Implications for End-of-Life Decisionmaking*, 356 The Lancet 398 (2000). Researchers who retrospectively examined the use of opioids in 238 patients who had died at St. Christopher's Hospice in London showed that patients who received opioid increases at the end of life did not show shorter survival than those who received no increases.

c. On 11/15/00, the Journal of the American Medical Association published a theme issue on end-of- life care. 284 JAMA 2411-2550 (2000). The following articles were included in the issue:

(1) Ezekiel J. Emanuel et al., *Attitudes and Desires Related to Euthanasia and Physician-Assisted Suicide Among Terminally Ill Patients and Their Caregivers*, 284 JAMA 2460 (2000) [interviews of 988 terminally ill patients between March 1996 and July 1997 showed that 60.2% supported euthanasia and physician-assisted suicide in a hypothetical situation, but only 10.6% seriously considered these options for themselves at the time of the first interview; many patients had changed their minds when they were re-interviewed two to six months later].

(2) Karen E. Steinhauser et al., *Factors Considered Important at the End of Life by Patients, Family, Physicians, and Other Care Providers*, 284 JAMA 2476 (2000) [national

euthanasia movement.

2. Belgium

    a. Draft euthanasia bill. On 12/22/99, the ruling six-party coalition of French and Flemish Socialists, Liberals, and Greens, which ousted the Christian Democrats from power in mid-1999, introduced a draft euthanasia bill in the Belgian Senate. The draft bill would legalize euthanasia for competent adults with an incurable illness causing unbearable and constant suffering, as well as for patients in a persistent vegetative state who had made a request within the prior five years before two witnesses to have their life ended in such circumstances. A national evaluation committee of physicians and lawyers would be set up to ensure that the law is followed. In January 2001, senators from two parliamentary working groups voted 17-10 to adopt the compromise draft text of controversial Article Three of the bill, which sets out the conditions under which patients may ask for a physician's assistance in dying. Under the draft text, the opinion of a second physician would be required for a terminally ill patient. In the case of a patient who is not terminally ill, the opinion of a third physician (either a psychiatrist or a specialist in the patient's illness) would be required, and at least one month would have to elapse between the patient's request and the act of euthanasia. Seven sections of the draft bill remain to be finalized. The bill is expected eventually to pass, despite opposition from Christian Democrats, Catholics, and the national medical association.

    b. Survey of end-of-life decisions in medical practice. A survey of physicians regarding 1,925 deaths in Flanders during January-April 1998, using the same questionnaire employed in earlier surveys in the Netherlands and Australia, revealed that 4.4% of deaths involved euthanasia or physician-assisted suicide. Overall results generally were similar to those in the Netherlands, except for a significantly higher incidence in Flanders of physicians intentionally ending the lives of patients without their explicit request. Luc Deliens et al., *End-of-Life Decisions in Medical Practice in Flanders, Belgium: A Nationwide Survey*, 356 The Lancet 1806 (2000).

3. Canada

    a. Legislation. New Democrat MP Svend Robinson, who supports legalization of assisted dying, has announced plans to again move that the House of Commons appoint a special committee to review the provisions of the Canadian Criminal Code dealing with euthanasia and physician-assisted suicide. In 1998, the House of Commons defeated a similar motion by a vote of 169-66.

    b. Robert Latimer. On 1/18/01, the Supreme Court of Canada upheld the conviction and sentencing of Robert Latimer, who was convicted by a jury in 1997 of second-degree murder for the mercy killing of his disabled 12-year-old daughter. *R. v. Latimer*, 2001 SCC 1. Although the jury had recommended parole after one year and the trial judge had granted a special constitutional exemption from the mandatory sentence, the Saskatchewan Court of Appeal upheld the mandatory life sentence, without possibility of parole for 10 years. The Supreme Court rejected Latimer's claims that the trial judge's actions rendered his trial unfair and that the sentence was unconstitutional because it constituted cruel and unusual punishment. The federal cabinet or the Governor General has the authority to grant a pardon to Latimer after considering any recommendation of the National Parole Board.

    c. Public opinion poll. An Angus Reid Group telephone poll of 1,501 Canadians conducted during December 2000 showed that 73% thought that Robert Latimer's mandatory life sentence was too harsh, 23% thought that the penalty was appropriate, and 4% had no opinion. When asked whether mercy killing should be illegal, 41% said no, 38% said yes but those convicted should be treated with leniency and compassion, and 16% said that mercy killing should be treated like any other murder.

    d. Jim Wakeford. On 2/7/01, provincial Justice Katherine Swinton dismissed a constitutional lawsuit filed by AIDS activist Jim Wakeford, who had sought the right to die with the help of a physician. Justice Swinton found that it was "plain and obvious" that the suit could not succeed in light of the Supreme Court's decision in the Sue Rodriguez case. Wakeford announced that he will appeal to the Court of Appeal.

4. France. Nurse Christine Malevre will face trial in 2001 on seven counts of murder for allegedly practicing euthanasia to relieve the suffering of 11 elderly, terminally ill cancer patients who died in 1997 and 1998 at a hospital in Mantes-la-Jolie west of Paris.

5. Great Britain

    a. Police investigate hospital deaths. A team of 30 police officers is investigating the deaths of more than 50 patients in the care of Dr. Ann David, a consultant anesthetist at Basildon hospital, after a colleague raised concerns about her alleged use of high doses of painkillers. The inquiry may spread to David's

previous employer, Wordsley hospital at Stourbridge in the West Midlands.

b. Effect of new Human Rights Act. On 10/6/00, Dame Elizabeth Butler-Sloss, President of the High Court Family Division, ruled that the state's obligation to protect the right to life under the Human Rights Act (which went into effect in October) did not prevent the withdrawal of artificial nutrition and hydration from two women in a persistent vegetative state. The applications for withdrawal, which were supported by the women's families and by the relevant National Health Service trusts, were authorized under guidelines for physicians introduced in 1999 by the British Medical Association after consultation with the Department of Health. Both patients died peacefully after artificial nutrition and hydration were withdrawn.

c. Survey of cancer patients. A survey of cancer patients by CancerBACUP, a national cancer information charity, showed that 70% of the 157 patients surveyed had experienced pain as a result of their cancer and 77% had experienced pain as a result of their treatment. Only 46% had been told to expect pain, and more than one-third said they had not been given sufficient information on pain control. In addition, 64% of patients reported that they had experienced adverse effects from their treatment for pain (with nausea, vomiting, constipation, and drowsiness being the most common problems), but only 46% had been warned of these potential side effects. A majority (54%) of patients said that they had not been sufficiently involved in making decisions about their treatment for pain. Results of the survey were reported at 321 Brit. Med. J. 1309 (2000).

6. India. On 2/22/01, the Patna High Court dismissed the writ petition of Tarkeshwar Chandrawanshi, who had sought euthanasia for his 26-year-old wife, Kanchan Devi, who had been in a coma for 16 months.

7. Italy. The Green Party has submitted to the Italian Senate three legislative proposals aimed at guaranteeing the right to a dignified death. One of the proposed bills states that "every individual has a right to choose consciously the method used to end one's existence." On 7/12/00, Prime Minister Giuliano Amato said that he had asked the National Bioethical Committee to express its opinion on the subject.

8. Netherlands

a. Proposed legislation. On 11/28/00, the lower house of the Dutch Parliament voted 104-40 to legalize physician-assisted suicide and euthanasia, which have been technically illegal in the Netherlands but not prosecuted if physicians followed prescribed guidelines. Approval by the upper chamber is expected by early 2001. In July 2000, the Dutch government dropped from the proposed legislation a controversial provision that would have allowed terminally ill children age 12 to 16 to request aid in dying even if their parents objected. The proposed legislation requires that (1) the physician know the patient well, (2) the physician determine that the patient's request is voluntary and well-considered, (3) the patient face unremitting and unbearable suffering, (4) the patient understand his medical situation and prognosis, (5) the physician and patient agree that there is no reasonable alternative acceptable to the patient, (6) the physician consult at least one other independent physician who has examined the patient, and (7) the physician carry out the termination of life in a medically appropriate manner. The physician must report the death to a three-member commission consisting of a physician, a lawyer, and an expert on ethical issues.

b. Death of patient with "unbearable suffering." On 10/30/00, a court in Haarlem acquitted Dr. Philip Sutorius of charges in connection with the April 1998 assisted suicide of Edward Brongersma, an 86-year-old former politician who had no serious physical or psychiatric illness but was obsessed with his "physical decline" and "hopeless existence." Public prosecutors had called for Sutorius to be given a three-month suspended prison sentence, but the court found that Brongersma was suffering "hopelessly and unbearably," one of four criteria protecting Dutch physicians against prosecution. A spokesperson for the Royal Dutch Medical Association said that the definition of "unbearable suffering" had been stretched too far to include "social decline." The public prosecutions office is expected to appeal to the High Court.

9. New Zealand. Dr. Philip Nitschke plans to conduct euthanasia clinics in New Zealand during April 2001. On 10/10/00, New Zealand's national health spokesperson Wyatt Creech said that euthanasia was a conscience issue and the party did not have a position on it.

10. Poland. On 1/31/01, 68 of the 460 legislators in Poland's lower house of parliament sent a letter to Prime Minister Jerzy Buzek claiming that the Netherlands should be called before the European Court of Human Rights for allowing euthanasia. The legislators, who are from the governing center-right AWS-Solidarity coalition, claimed that Dutch law violates a 1950 Council of Europe convention and Poland has an obligation to ensure that other signatories observe the convention.

11. Switzerland. In October 2000, Zurich authorities announced a change in policy that will allow residents of state retirement homes to engage in assisted suicide effective 1/1/01. Switzerland does not prosecute nonphysicians who assist in suicides unless they act with a selfish motive, and the Swiss organization Exit assists in suicides, notifies police, and provides a detailed written account with dates, times, and witnesses. The new policy does not apply to patients in public and private hospitals or to residents of private retirement homes.

Venezuela