

RECENT DEVELOPMENTS IN PHYSICIAN-ASSISTED DEATH

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LITIGATION

Baxter v. Montana, No. ADV-2007-787 (Mont. Dist. Ct., filed Oct. 18, 2007)

Pew Forum study. A survey of 35,000 people released on 2/25/08 by the Pew Forum on Religion and Public Life found that 27% of Oregonians are unaffiliated with any religion, compared with 16% of all Americans nationally. No other state has a higher percentage of unaffiliated adults, although both New Hampshire and Vermont are at 26%, and both Maine and Colorado at 25%.

National politics. Assisted suicide is not mentioned in the platforms of the major presidential candidates, it does not come up in national debates, and neither Republicans nor Democrats in Congress are talking about the issue. The speculation is that at this point no one thinks that a challenge to Oregon's law could succeed.

Washington

Initiative filed. In 1991, Washington voters rejected by a vote of 54% to 46% Initiative 119, which would have allowed active euthanasia as well as physician-assisted suicide. On 1/9/08, former Governor Booth Gardner filed with the Secretary of State the Washington State Death with Dignity Initiative (Initiative 1000), which is based on the Oregon Death with Dignity Act. See <http://www.secstate.wa.gov/elections/initiatives/text/i1000.pdf>. In order to get the initiative on the 11/4/08 ballot, supporters must gather 224,880 valid signatures by 7/3/08.

Washington Death With Dignity Coalition. The political action committee for the Initiative 1000 campaign is called Yes! on I-1000, www.yeson1000.org. A coalition of right-to-die groups, called the Washington Death With Dignity Coalition, is running the campaign. Its members include Compassion & Choices of Washington, national Compassion & Choices, the Death With Dignity National Center, and Oregon Death With Dignity. As of 6/11/08, the coalition had gathered contributions of \$1.2 million, with about \$440,000 coming from Oregon-based right-to-die organizations Death with Dignity and Compassion & Choices and its state chapters. The largest individual donor is former Governor Booth Gardner, who has contributed \$120,000.

Coalition Against Assisted Suicide. A group including people with disabilities, physicians, nurses, hospice workers, minority persons, and religious groups, known as the Coalition Against Assisted Suicide, has been formed to fight against Initiative 1000. The Coalition has said that it particularly objects to the initiative's lack of a mandatory mental health evaluation and mandatory family notification.

Other opponents. Governor Chris Gregoire has stated that she is opposed to Initiative 1000 but will not actively work against it. In May 2008, a bipartisan group of 11 Republican and four Democratic state legislators urged voters not to sign the initiative petition.

Suit over wording of initiative. The Coalition Against Assisted Suicide filed a lawsuit objecting to the language of Initiative 1000 and the official voters pamphlet description. On 3/8/08, however, Thurston County Superior Court Judge Chris Wickham refused to add the words "physician-assisted suicide" to the ballot or official voters pamphlet description. Instead, Judge Wickham approved words saying that the initiative would allow some

terminally ill patients “to request and self-administer lethal medication” prescribed by a physician. *Coalition Against Assisted Suicide v. Washington*, No. 08-2-00265-6 (Thurston Co. Sup. Ct., Mar. 8, 2008).

Human Life of Washington. In April 2008, Human Life of Washington filed a federal lawsuit claiming that Washington’s campaign finance laws are overly broad and asking the court to invalidate portions of those laws for being unconstitutional. *Human Life of Washington v. Brumsickle*, No. 2:08-CV-00590 (W.D. Wash., filed Apr. 16, 2008). Human Life argues that it should not have to register with the state as a political action committee and disclose its donors, because it wants to sponsor ads only about the issue of assisted suicide, not ones explicitly about Initiative 1000. The group also argues that its donors will be harassed or intimidated by supporters of Initiative 1000 if their names are disclosed. Alex Morgan, campaign manager for Initiative 1000, said that Human Life wants to keep voters in the dark because much of the money to pay for “voter education” against assisted suicide is likely to come from out of state, largely from the Catholic church.

Wisconsin. Senator Fred Risser and Representative Frank Boyle once again unsuccessfully circulated bills (SB 151 and AB 298) similar to the Oregon Death with Dignity Act that would give terminally ill patients the right to “die with dignity.” These legislators have introduced such bills 16 times, but so far have never gotten one to a vote in either the state Assembly or the Senate. However, a public hearing was held on SB 151 on 1/23/08, only the second time a bill got to the hearing stage.

OTHER NATIONAL DEVELOPMENTS

Dr. Jack Kevorkian

HBO Films movie. HBO Films plans to distribute a feature film about Dr. Jack Kevorkian’s life based on the book *Between the Dying and the Dead: Dr. Jack Kevorkian’s Life and the Battle to Legalize Euthanasia*, written by Harry Wylie and Neal Nicol. Steve Jones and Glenn Rigberg are executive producers. Adam Mazer, who co-wrote the espionage thriller *Breach*, is writing the script.

Speaking engagements. Kevorkian was paroled from a Michigan prison on 6/1/07 and will be on probation for two years. He has promised that he will not assist in any form of suicide or euthanasia, but instead will push for legalization of physician-assisted suicide. His recent speaking engagements include Wayne State University in Detroit, Michigan, in November 2007, and the University of Florida in Gainesville in January 2008. Large crowds attended both events.

Kevorkian runs for Congress. In March 2008, Kevorkian announced his intention to run as an independent for the U.S. Congressional seat currently held by Representative Joe Knollenberg, a Republican.

Frances Tolliver. In March 2008, an Omaha jury found in favor of the daughters of Frances Tolliver, an 85-year-old woman who died of cancer while a resident of Hospice House. Tolliver’s

daughters had alleged that the hospice facility falsely claimed it could provide noncurative comfort care while she was dying of breast cancer, but that in fact her death was anxiety-ridden and prolonged because the staff was inadequately prepared to treat her pain. The jury found Hospice House negligent in failing to provide adequate pain care.

Catholic Organization for Life and Family. The Catholic Organization for Life and Family has published a brochure called *Euthanasia and Assisted Suicide: Urgent Questions*. The group also issued a downloadable workshop guide called *Life in the Balance: Workshop on Euthanasia and Assisted Suicide*.

Center for Practical Bioethics. On 2/18/08, the Center for Practical Bioethics announced that William H. Colby has joined the Center as the Senior Fellow, Law and Patient Rights. Colby represented the family of Nancy Cruzan in their lawsuit and has written two books on the right to die.

Montana polls. Two recent polls in Montana (where the case of *Baxter v. Montana* is pending) showed a high level of support for legalizing physician-assisted suicide. On 10/29/07, the Helena Independent Record reported that 575 readers had responded to the Question of the Week, with 417 in favor of legalization and 158 against. On 11/22/07, the Great Falls Tribune reported that the 22nd statewide poll conducted by the Political Science Department of Montana State University-Billings showed that 56% of the 412 Montana residents randomly selected for telephone interviews thought that terminally-ill patients should be able to have a physician assist them in ending their lives.

National poll. In a survey of 1,070 U.S. adults conducted for ELDR magazine and ELDR.com by Knowledge Networks between 3/13 and 3/25/08, 66.3% of respondents favored making it legal for physicians to give terminally ill patients the means to end their lives, while 33.7% were opposed. When asked how the decision to end life should be made, 81.5% of respondents said based on the individual's wishes, 10.3% said based on the laws of the church, 4.2% said based on the laws of the government, and 4.0% said based on some other third party. When asked what they would want if in a persistent vegetative state, 6.4% of respondents said they would want to be kept alive by artificial means, while 93.6% said they would want to have artificial means removed. If terminally ill with no hope of recovery, 61.0% of respondents said they would want a physician to give them the means to end their own life, while 39.0% said they would not want a physician to do so. If experiencing end-of-life suffering that the physician could not relieve, 82.1% of respondents wanted the option of being sedated into unconsciousness, even though that might hasten death, while 17.9% did not want that option.

MEDICAL DEVELOPMENTS

Palliative care. In May 2008, the American Hospital Association said that a third of hospitals have palliative care teams—more than double the number in 2000. About half of 50-plus-bed facilities have such teams in place. According to the National Hospice and Palliative Care Organization, more than a third of all deaths in 2006 occurred under hospice care, and more than 1.3 million patients received hospice services, up 61% from 1997. Also in 2006, 10 medical specialties claimed palliative medicine as a subspecialty for the purposes of accreditation.

Rubén Lisker, *Physician-Assisted Death: Opinions of a Sample of Mexican Physicians*, 39 Arch. Med. Research 452 (2008)

Rurik Lofmark et al., *Physicians' Experiences with End-of-Life Decision-Making: Survey in 6 European Countries and Australia*, BMC Med. 2008, 6:4

Judith Rietjens et al., *Continuous Deep Sedation for Patients Nearing Death in the Netherlands: Descriptive Study*, 336 Brit. Med. J. 810 (2008)

Jan L. Bernheim et al., *Development of Palliative Care and Legalisation of Euthanasia: Antagonism or Synergy?*, 336 Brit. Med. J. 864 (2008)

G.G. van Bruchem-van de Scheur et al., *Euthanasia and Assisted Suicide in Dutch Hospitals: The Role of Nurses*, 17 J. Crit. Nursing 1618 (2008)

G. Bosshard et al., *A Role for Doctors in Assisted Dying? An Analysis of Legal Regulations*

South Australia. On 5/31/07, the Voluntary Euthanasia Act 2007 was read for the first time in the South Australian House of Assembly. The Act would allow “voluntary euthanasia,”

to importing the drug from Mexico but not guilty to being an accessory to murder or aiding and abetting in a suicide. However, the Crown Prosecutor rejected the not guilty pleas. After a six-week trial, a jury found Justins guilty of manslaughter and Jennings guilty of being an accessory to manslaughter. Bail has been continued, with a likely sentence date sometime in November. The women are expected to seek noncustodial sentences. Justice Roderic Howie, who presided over the trial, sa

Draft legislation. Bloc Quebecois MP Francine Lalonde has announced her intent to introduce new legislation to legalize assisted suicide and euthanasia. Lalonde previously introduced a similar private member's bill C-407, the Right to Die with Dignity Act, in 2005, but the bill died when Paul Martin's minority Liberal government was defeated. The Euthanasia Prevention Coalition has launched a letter-writing campaign asking people to contact their MPs and urge strong opposition to any bill.

Robert Latimer. In 2001, Robert Latimer began serving a life sentence, without possibility of parole for 10 years, for the mercy killing of his disabled 12-year-old daughter. Latimer continued to express no remorse for his actions, and the National Parole Board denied him day parole after a hearing held on 12/5/07. In denying day parole, board members dismissed the conclusions of both Latimer's prison case workers and a recent psychological assessment. However, the appeal division of the board reversed the decision and released Latimer on day parole at an Ottawa halfway house in March 2008. He requested that he be released in Ottawa so that he could engage in advocacy work and to spare his family from media attention surrounding his release. Although the federal cabinet has wide discretion to grant a pardon, Latimer is unlikely to request one because he continues to insist that he did nothing wrong.

Astrid Hueller. Astrid Hueller, a 46-year-old woman from St. Catharines, Ontario, has been charged with manslaughter, criminal negligence causing death, and failing to provide the necessities of life in the sudden death of her 17-year-old daughter, Courtney Wise. Wise, who suffered from cerebral palsy and was confined to a wheelchair and unable to communicate, was found dead in a townhouse on 2/18/08. Hueller was released from prison on bail on 3/8/08.

Samuel Golubchuk. The Orthodox Jewish family of 84-year-old Samuel Golubchuk fought in a Winnipeg court to keep their father alive, arguing that their religious beliefs did not allow any action that would hasten death. Golubchuk's physicians were advocating that he should be taken off life support because his vegetative condition would never improve. In February 2008, Justice Perry Schulman of Manitoba Court of Queen's Bench extended an injunction preventing physicians from taking Golubchuk off a ventilator and feeding tube, ordering that everything necessary be done to keep him alive until a full trial could be held.

Treatment guidelines. The Manitoba College of Physicians and Surgeons has issued guidelines saying that physicians—not patients or their families—have the right to decide when life-sustaining treatment can be withdrawn. The guidelines, which went into effect on 2/1/08, state that the "minimum goal" of life-sustaining treatment, including providing nutrition and hydration, is for patients to recover to a level in which they can be aware of themselves, their environment, and their existence.

Use of "exit bag." Criminologist Russel Ogden of Kwantlen College in Vancouver has reported that at least 19 people in British Columbia have chosen the helium "exit bag" method to die. His report is based on statistics compiled for him by the Coroner's Service of B.C. Ogden estimated that such deaths are under-reported because in many cases the equipment or evidence is removed after the person's death.

Attitudes in Victoria. Victoria MP Denise Savoie, who was speaking to a crowd of seniors in Oak Bay, was asked a question about “dying with dignity.” Savoie asked for a show of hands from the crowd on who felt there should be a federal policy on the issue of assisted suicide, and was surprised when three-quarters of the seniors raised their hands. She indicated that she would be thinking more about the subject after hearing from the seniors.

Angus Reid poll. Angus Reid Strategies conducted an online survey among 1,004 adult Canadians from 10/11 to 10/12/07. The survey showed that at least 61% of respondents think that physician-assisted suicide is a morally acceptable practice, with the highest percentages in Manitoba and Saskatchewan (73%) and Quebec (69%) and the lowest in British Columbia (54%). Conservative and Conservative-leaning voters are the most opposed to euthanasia (33%). Nearly 70% of Canadians think that family members should decide when to remove a vegetative patient from life support, while 15% believe physicians should decide, and only 2% think the courts should decide. Only 11% of Canadians would want to be kept alive if they were in a vegetative state.

Colombia. In 1997, Colombia’s Constitutional Court issued a 6-3 decision decriminalizing active euthanasia of terminally ill patients who consent. Colombia’s Congress has the role of drawing up rules and regulations to prevent abuses, but cannot change the core of the court’s ruling. Prior attempts to pass legislation failed in 1999 and 2005, but Armando Benedetti, a Colombian pro-government senator, introduced another bill that would have established standards for euthanasia. Although the bill had the support of the Colombian government, its backers dropped the bill late in 2007 because sponsors concluded they lacked the votes to ensure passage. Villaneda said that changes would be made to the bill and that it would be brought before a Senate committee again in 2008.

Czech Republic. The extra-parliamentary Liberal Reform Party earlier proposed legislation permitting voluntary euthanasia for incurable patients. In March 2008, however, at a conference on “Dignified Dying” held in Prague, a crushing majority of politicians opposed legalization.

France

Chantal Sébire. In February 2008, 52-year-old Chantal Sébire appealed to French President Nicolas Sarkozy to allow her to die by euthanasia. Sébire suffered from a rare disease known as esthesioneuroblastoma, a very rare and incurable form of cancer in the nasal cavity
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President Nicolas Sarkozy and Health Minister Roselyne Bachelot-Narquin calling on the country to begin an open debate on the question of euthanasia, leading to a referendum on the issue. Blanc said that a specialist had told her at the age of 25 that her life “ended there,” and that she would never have either children or a future. She is living on disability benefits and says she cannot afford to get help from Dignitas in Switzerland.

World Federation of Right to Die Societies. The 2008 meeting of the World Federation of Right-to-Die Societies will be held in Paris in

the law. Ludwig Minelli, head of Dignitas, said in November 2007 that his organization was prepared to take the case to the German Federal Court of Justice. A majority of patients who are helped to die in Switzerland by Dignitas are Germans.

Great Britain

British Medical Association. At the annual meeting of the British Medical Association in March 2008, physicians voted 65% to 35% to overturn the Association's neutral position on assisted dying, which had just been adopted at the organization's 2007 annual meeting. Conference delegates were overwhelmingly in favor of a statement that said ongoing

free to hold an inquiry on end-of-life issues if they wish.

India

Proposed legislation. C.K. Chandrappan, a CPI MP from Trichur, Kerala, has introduced the Euthanasia (Permission and Regulation) Bill 2007 in the Lok Sabha. The private member's bill says that "a person who's completely invalid and/or is bedridden or who cannot carry out his daily chores without regular assistance, can either himself or through

suggested that federal agents could still attempt to extradite Exoo if he travels to one of the 25 states that prohibit conduct such as his, assuming Ireland does not withdraw its extradition request.

Italy

Eluana Englaro. In 2006, Beppino Englaro's request for court authorization to remove a feeding tube from his 34-yea

Luxembourg. On 2/19/08, the parliament of the Grand Duchy of Luxembourg approved the Err/Huss bill No. 4909 decriminalizing assisted suicide and euthanasia by a vote of 30 to 26 on the bill's first reading. Under the bill, a patient would have to have a "grave and incurable" condition, and a national commission made up mainly of physicians and officials would have to check on a case-by-case basis that all legal conditions and procedures had been satisfied. The bill was expected to become law around summer 2008 after its second reading. The bill provoked an energetic public debate, with Prime Minister Jean-Claude Juncker's Christian Social Party, the Catholic church, and most physicians opposing it.

Mexico

Federal legislation. On 4/12/07, Mexico's Senate began discussing a proposed bill that would liberalize Mexico's existing law mandating lengthy jail time for anyone who assists a patient in ending medical care that keeps the patient alive, even if the patient is terminally ill. The bill would allow a patient (or the patient's immediate family) to withdraw or withhold life-sustaining treatment but would not permit active euthanasia or assisted suicide. On 4/22/08, the Senate voted 70-0 in favor of the bill. The bill must be approved by the lower house of Congress and signed by Mexico's President.

Mexico City ordinance. On 12/4/07, the local assembly of Mexico City unanimously passed an ordinance that will allow withdrawing and withholding life-sustaining treatment for terminally-ill patients. The new law does not apply to either federal or private hospitals in Mexico City. Patients will be permitted to sign a living will rejecting "tenacious, disproportionate, or useless" medical treatment that would, in their opinion, unnecessarily lengthen the "inevitable dying process." The patient's family can make decisions if the patient is unable to do so. The law expressly prohibits active euthanasia.

Foreigners buy euthanasia drugs. Exit International has concluded that Mexico is the best place to visit to obtain Nembutal legally and cheaply. The Mexican newspaper *Reform* reported that at least 200 people from Australia, Britain, New Zealand, and the United States have visited Mexico since 2001 to buy veterinary Nembutal, which can be used by a person to end his or her life. Foreign buyers usually fly to U.S. border cities and cross over to Tijuana, Nuevo Laredo, or Ciudad Juarez, where they buy the drug from a pet shop or veterinary supply store.

Public opinion poll. Interviews with 1,200 Mexican adults conducted by Parametría from 2/9 to 2/16/08 showed that 59% of respondents thought that physicians should have the legal right to end the life of a patient with an incurable illness if the patient and his family request it; 35% said no; and 6% were not sure.

The Netherlands

Legislative proposals. Activists are pushing for Dutch euthanasia laws to be relaxed to allow those suffering from dementia and those who are "tired of life" to die, and a parliamentary debate on the subject was held in March 2008. Changes to Dutch law appear unlikely, however, because the religious Christian Union is a junior partner in the ruling coalition.

The Peaceful Pill Handbook. On 6/7/07, the New Zealand Office of Film and Literature Classification banned the book *The Peaceful Pill Handbook*, co-authored by Dr. Phillip Nitschke and Fiona Stewart, as “objectionable” in New Zealand because it would promote violation of the criminal laws. On 5/9/08, New Zealand’s chief censor Bill Hastings approved sale of an amended version of the book, sealed and classified as R18. However, Right to Life New Zealand and The Society for the Promotion of Community Standards have been granted permission by the secretary of Internal Affairs to make a submission appealing the decision to the Film and Literature Review Board. About 20 New Zealand bookstores had agreed to sell the book.

Dr. Nitschke’s tour. Dr. Phillip Nitschke conducted a four-city tour in New Zealand early in 2008. The visit provoked considerable controversy, particularly over newspaper reports that a physically healthy 68-year-old life member of Exit named Anne had chosen to end her life using Nembutal about five years previously, using Nembutal she purchased in Mexico. New Exit chapters were formed after Nitschke’s visit in several locations, including Nelson, Bribie Island, and Northern Rivers.

Audrey Monica Wallis. An American woman from North Carolina, Susan Wilson, may be charged with murder or assisted suicide after she allegedly was paid \$12,000 by Audrey Monica Wallis to fly to New Zealand in August 2007 to help Wallis die using Nembutal. Wallis, a 49-year-old Auckland woman, is believed to have been depressed and suffering health problems from an addiction to prescribed medication. Wilson has openly admitted on a British documentary and an Exit International film that she helps people die, for a fee that she uses to reimburse her travel expenses and support Compassionate Chaplaincy, in which she acts as an assistant to Reverend George Exoo. If Wilson is charged with major offenses, the authorities are likely to seek her extradition from the United States.

Dignity New Zealand Trust. Dignity New Zealand Trust, which was founded by Lesley Martin and other euthanasia campaigners, is lobbying for law reform so that people can choose to end their lives safely and legally with support from a network of “dignity havens” the group wants to set up. The trust held a conference in February 2008 in Palmerston North that was attended by about a dozen members. Activities planned for the future include a public education campaign, and helping with a rewrite of the proposed Death with Dignity Bill that was narrowly defeated in 2003. The trust now has eight regional groups around the country.

Suicide prevention plan. In March 2008, the New Zealand government launched a five-year Suicide Prevention Action Plan to lower the number of suicides.

Poland. According to a survey of Polish citizens conducted by the *Gazeta Wyborcza* newspaper in November 2007, 57% of respondents favored approving adoption of the European Union’s Charter of Fundamental Rights. Twenty-eight percent feared that the document could pave the way for legalization of euthanasia and homosexual marriage in Poland.

Samoa. Legislators in American Samoa are review

of 1995. Samoa has not previously had any law providing for advance medical directives.

South Korea

Government considers “limited euthanasia.” The Korean Ministry of Health and Welfare is moving to adopt a form of “limited euthanasia” under which medical treatment keeping terminal cancer patients alive could be withdrawn at the last minute to permit death with dignity. Under this approach, measures such as CPR and respiratory tubes could be withdrawn, allowing the patient to die. Current laws ban physicians from any form of euthanasia. The Korean government formed a task force to deal with the issue in July 2007. The Korea Medical Association announced guidelines for applying death with dignity, but received considerable public criticism.

Court petition for death with dignity. In May 2008, the children of Kim, a brain-dead 75-year-old woman receiving medical care at Se

that he thought the question was somewhat unrealistic, which could account for the larger percentage of physicians who answered affirmatively. Assisted suicide and euthanasia are illegal in Sweden.

Switzerland

Dignitas evicted. In 2007, Dignitas was evicted from its location near the town of Maur, near Lucerne.

Vatican conference. An international congress called “Close by the Incurably Sick and the