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## **The Vermont Legislative Research Shop**

### **Assisted Suicide**

Physician-assisted suicide occurs when a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act e.g., the physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide (American Medical Association, 1996). This is not to be confused with euthanasia, which does not require the consent and/or knowledge of the patient in order to administer the lethal medication. In Vermont, euthanasia has been criminalized by common law. This is also the case in eight other states: Alabama, Idaho, Maryland, Massachusetts, Michigan, Nevada, South Carolina, and West Virginia. Currently, a bill is before the Vermont Legislature, which would allow for a competent, terminally ill patient with a life expectancy shorter than six months to opt for assisted suicide as a means of dying with dignity. Oregon is currently the only state with statutory law that allows for physician-assisted suicide. Hawaii, Arizona, California and Wyoming have proposed bills similar to the Oregon act, but none have passed both the senate and the house of these states. In 2002, the Hawaiian Senate overturned a proposed bill that would enact an Act similar to that of Oregon in a 14-11 vote (Arakawa, Dayton; 2002). Thirty-eight states have strictly prohibited physician-assisted suicide through state-enacted statutes. Seven states have interpreted or held existing case law to criminalize physician-assisted suicide. Yet four states have no explicit laws in either direction regarding physician-assisted suicide. (See Figure 1 for an overview of state stances on physician-assisted suicide.)

### **Physician-Assisted Suicide in Oregon**

“Right-to-die” legislation entered into Oregon politics in 1991. Oregon Senate Bill 1141 was introduced by Senator Frank Roberts (D-Portland) and would have allowed physician-assisted suicide for the terminally ill. The bill died in committee. On November 4, 1994, Ballot Measure 51, called the Death with Dignity Act ballot was passed with 51% of people voting to legalize doctor-assisted suicide. US District Court Judge Hogan issued a temporary restraining order against Oregon's Measure 51, following that with an injunction barring the state from putting the law into effect. He ruled in 1995 that the Death with Dignity Act was unconstitutional on grounds that it violated the Equal Protection clause of the Constitution. This ruling was immediately appealed.

In May of 1997, the Oregon House of Representatives voted to return the Measure to the voters in November for repeal. In June the Senate voted to pass the Measure. The vote in November

resulted in the majority of constituents voting against repealing the Oregon Death with Dignity Act, 1994. The law officially took effect on October 27, 1997.

The law legalizes physician-assisted suicide, but it specifically prohibits euthanasia where a physician or other person directly administers a medication to end another's life. The Act requires that the patient be an Oregon resident and 18 years or older. The patient must be able to make and communicate health care decisions, and they must have been diagnosed with a terminal, incurable and irreversible illness that will lead to death within 6 months. If a patient meets these requirements, they are eligible to request a prescription for a lethal medication from a licensed Oregon physician. Physicians and health care systems are not required to participate in implementing the Act. A consulting physician must confirm the diagnosis and the patient's ability to make decisions and the patient must be advised of palliative care and pain control as an alternative to taking their own life. Patients are requested to notify their next of kin, although they are not required to do so (Euthanasia Research & Guidance Organization).

By the end of 2005, after 8 years of legal assisted suicide, Oregon's lethally prescribing doctors reported that 64 people had received prescriptions for lethal medications, 38 of these people died after taking the prescriptions (International Task Force on Assisted Suicide).

### **Recent Developments**

Twenty of the world's expert supporters of voluntary euthanasia (all twenty maintain medical doctorates) and assisted suicide met in January, 2004, in Seattle to explore methods of hastened death that dying persons could use to 'self-deliver' without breaking the law or with help from a physician. Representatives came from the Netherlands, France, Germany, Australia, Canada, and America, meeting under the auspices of the New Technology for Self-Deliverance Group (NuTech), founded in 1999. The Euthanasia Research & Guidance Organization (ERGO) was the host. While Belgium, the Netherlands, Switzerland, and the US state of Oregon each have some type of lawful hastened death; there are occasionally adults who do not qualify under the law. Therefore NuTech's mission was to find alternatives for self-deliverance that can be used by competent adults to escape "the misery of protracted and hopeless suffering." The group's chief success has been the development of a helium gas and plastic bag method of self-deliverance. Their reports were instrumental in Oregon court decisions to allow helium gas and plastic bag methods (under certain provisions). Dr. Philip Nitschke in Australia developed what he called the 'CO Genie' -- an apparatus that can be made at home that turns out lethal carbon monoxide. The method has yet to be tested legally anywhere in the United States. But directions for assembling such devices are widely available for purchase.

In 2001, Attorney General John D. Ashcroft announced that doctors in Oregon who prescribed lethal drugs to patients could be prosecuted and lose their prescription writing privileges, according to his interpretation of the Controlled Substances Act. The Supreme Court, however, stuck down Ashcroft's attempt to control physician-assisted suicide; on January 17, 2006, they found in a 6 to 3 vote that the Attorney General had exceeded his authority (Savage, 2006).

## **Public Opinion**

A 2001 nation-wide Harris Interactive public opinion poll asked 1,011 adults: Would they be supportive of a law similar to the Oregon Death with Dignity Act in their home states? Before responding to the question those polled were read a brief description of the Oregon policy, and were told the following requisite conditions to consider for their responses. The conditions were that a patient must have less than six months to live, in addition a patient must request physician assisted suicide at least three times, a second physician's opinion must be consulted, and there must be a fifteen day waiting period for the patient to change his or her mind. The poll results indicated 61% of respondents would support a law in their state similar to Oregon's, and 34% of respondents were against supporting a law similar to Oregon's in their state (Harris 2001).

A 2005 Wake Forest Baptist Medical Center study conducted a random telephone survey on 1,117 adults to measure attitudes about physician aid in dying. The respondents were asked if they would trust their doctor less if they knew that the doctors were allowed to help their patients die. A majority of respondents disagreed with the statement saying that their trust in their doctor would remain the same. Only 27% of respondents said that they would lose some trust in their doctor (Hall, Mark, J.D 2005).

The PEW Research Center released a report on January 5, 2006 discussing the right to die. When asked to comment on right to die laws, 84% of respondents approved laws allowing the right to die. When respondents were asked if patients should sometimes be allowed to die, 70% of respondents said yes. (The PEW Research Center 2006)

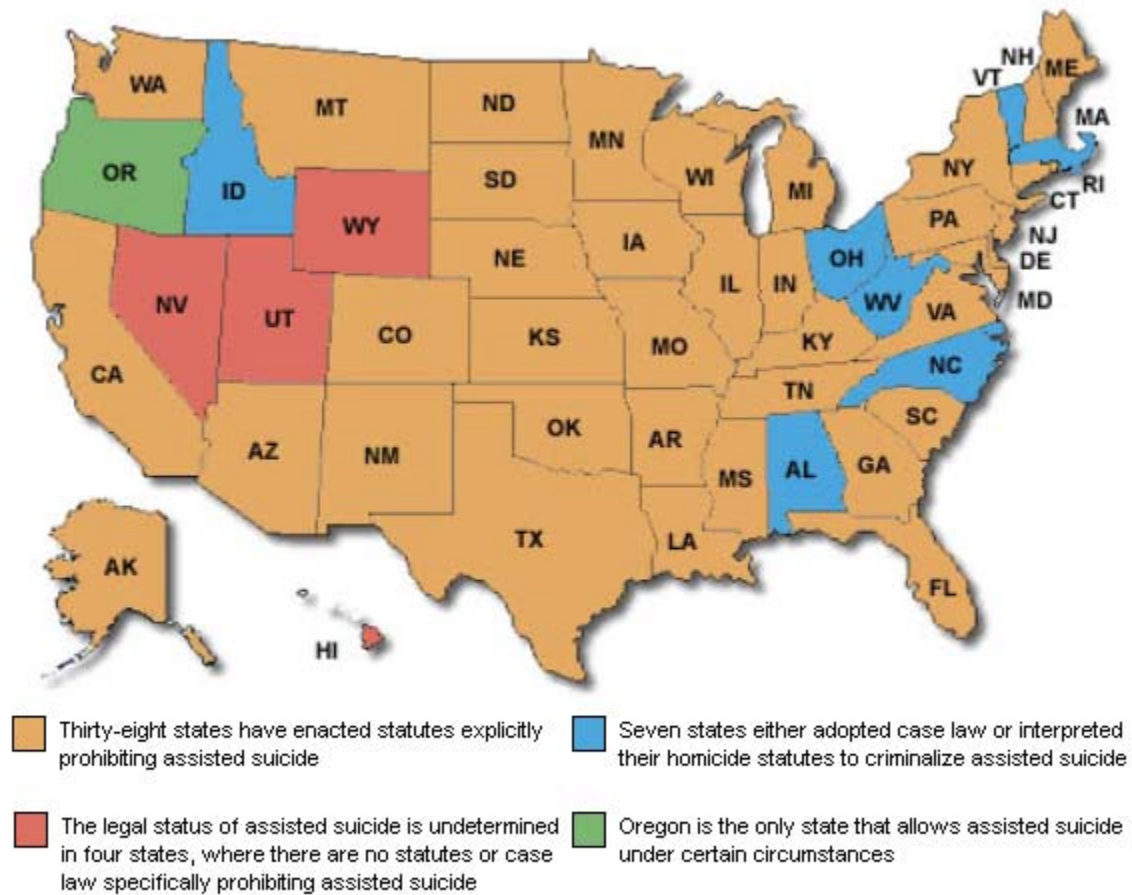
## **What is Legal vs. What is Ethical**

Although the United States Supreme Court deemed state legislation that allows for physician-assisted suicide constitutional in 1997 (*Washington et al v. Glucksberg*), it still presents a problem of ethics. For instance, the American Medical Association's Code of Ethics expressly prohibits physicians from assisting patients in committing suicide. The Association recognizes that this may leave physicians with only two ethical options in dealing with patients who desire death with dignity: 1) refuse aid to patients who are determined to kill themselves, possibly driving such patients to other unknown or inexperienced physicians or 2) violate the profession's principle code of ethics. (Medical professionals who are uncomfortable with assisting a patient in suicide may legally refuse care to the patient in Oregon).

Doctors, however, are not the only professionals and/or persons who would be forced to prioritize law over ethical standards. Many religions condemn suicide, further estranging a large percentage of the population from assisted suicide legislation. Nonetheless, there are supporters on both sides of the argument. In Vermont, certain organizations have established themselves as opponents of physician-assisted suicide: the Vermont Center for Independent Living, Roman Catholic Diocese of Vermont and Vermont Alliance for Ethical Health Care. Proponents of physician-assisted suicide include Death with Dignity and End of Life Choices. The Vermont Medical Society is flatly opposed to any law regarding physician-assisted suicide (Kiernan, 2003).

## Assisted-suicide laws in the United States

Legal status of physician-assisted suicide, August 2001



Source: "Physician Assisted Suicide: Legislation and Policy Guide," August 2001, Americans United for Life

**Figure 1: The status of suicide laws in the United States**

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