Assisted Suicide

Proponents of assisted suicide continue to push a very aggressive and well-funded campaign to legalize the deadly practice throughout the United States. State legislatures, courts, and medical and hospice associations at the state and national levels are all targets of their campaign.

State Legislation

Legislative bills to legalize assisted suicide were introduced in twenty-seven states this year, and a twenty-eighth state (New Jersey) has a bill that carried over from 2016. Now that legislative sessions have officially ended for the year in most states and until the fall in other states, I am happy to report that opponents of assisted suicide have been extremely successful in preventing any more states from legalizing the deadly practice.

Bills to legalize assisted suicide were killed in twenty-two states: Mississippi, Utah, Tennessee, Maryland, Wyoming, New Mexico, Indiana, Nebraska, Connecticut, Kansas, Arizona, Iowa, Missouri, Hawaii, Alaska, Maine, Nevada, New York, North Carolina, Oklahoma, Rhode Island, and Delaware. Battles were particularly tough in Maryland, New Mexico, Hawaii, Maine, and Nevada, but effective coalitions defeated the bills.

Bills are still alive in six states: New Jersey, Massachusetts, Pennsylvania, Minnesota, Wisconsin, and Michigan. Of these, New Jersey and Massachusetts are of most concern. Despite the many successes this year in defeating state-level assisted-suicide measures, the battle is far from over. Most or all of these states will continue to see assisted-suicide bills introduced year after year, and strong coalitions will have to be resolute and untiring in opposing them.

In addition to pushing to legalize assisted suicide in state legislatures, proponents of the practice are turning to ballot measures to advance their agenda. Colorado was

the most recent example where assisted suicide was rejected by the state legislature but within the same year was adopted by a vote of the people. There is little doubt, especially if assisted-suicide proponents continue to lose in state legislatures, that ballot measures will be proposed in many more states. In fact, an effort is under way in South Dakota, a deep red state, to place the legalization of assisted suicide before the voters in 2018. And ballot measures are also possible in other states, such as Massachusetts and Maine.

State Litigation

Assisted-suicide proponents are also turning to the judicial branch of government to invalidate state laws prohibiting the practice. Courts in New Mexico, Tennessee, Minnesota, and Hawaii have recently upheld state bans on assisted suicide, but lawsuits are still pending in New York and Massachusetts.

In New York, three patients, four doctors, a nurse, and End of Life Choices NY challenged the constitutionality of New York's statutes banning assisted suicide and are seeking an injunction to prohibit the prosecution of doctors who prescribe lethal drugs to terminally ill patients. A lower court dismissed the case on the basis that the US Supreme Court in its 1997 case *Vacco v. Quill* had already decided that New York's statutes were constitutional. On appeal to a New York appellate court, the lower court's ruling was upheld in a unanimous ruling by a panel of four judges. These rulings were then appealed to New York's highest court, the Court of Appeals, which heard oral arguments on May 30. A ruling is expected in late summer.

In Massachusetts, two doctors (one with stage 4 cancer) filed a lawsuit in an attempt to establish that "medical aid in dying" is legal in the state. These plaintiffs are seeking an injunction prohibiting the state from prosecuting physicians who provide medical aid in dying. On May 31, Massachusetts Superior Court Judge Mary Ames ruled that the lawsuit had met the minimum threshold to proceed.

An encouraging judicial development occurred in Vermont on May 23 when a group promoting assisted suicide dropped its appeal of a federal court's decision affirming that a Vermont law cannot be interpreted to require health professionals to counsel or refer patients for assisted suicide. In a press release, Alliance Defending Freedom, which represented medical groups that challenged the state's interpretation, said that "the withdrawal of the appeal by Compassion & Choices leaves in place a consent agreement between physician groups and the Vermont Attorney General's office, which agreed that the court was correct in deciding that the state's Act 39 does not force conscientious professionals to ensure all 'terminal' patients are informed about the availability of doctor-prescribed death."[1]

Medical Associations

Another battleground where assisted-suicide proponents like Compassion and Choices have been very aggressive is in the medical profession itself. Long-held opposition to assisted suicide by medical associations has been essential to preserving

1. Alliance Defending Freedom, "Victory for Vermont Health Professionals after Pro-suicide Group Drops Appeal," news release, May 23, 2017, http://www.adflegal.org/.

laws against the practice. That is why Compassion and Choices is infiltrating medical associations and urging them to abandon opposition and adopt a position of neutrality. The move to neutrality by medical associations in Oregon, Vermont, and California helped pave the way for legalization of assisted suicide in those states.

In my Spring 2017 column, I mentioned that the American Medical Association's House of Delegates adopted a resolution at its June 2016 meeting to study a proposal to change the AMA's decades-long position against assisted suicide to one of "neutrality." The AMA Council on Ethical and Judicial Affairs, tasked with studying this proposal, reported at the June 2017 House of Delegates meeting that it needed more time to study the proposal: "In light of the complex and deeply contested nature of the issues at stake, CEJA believes it is wisest to proceed cautiously and allow ample time for thoughtful reflection in developing its report."[2]

CEJA is now expected to issue a report on its study at the next AMA House of Delegates meeting in November 2017. It is essential that doctors and other health care professionals who are opposed to assisted suicide work aggressively within their state and national professional associations to maintain or obtain policies against the legalization of assisted suicide. Patients also have a stake in this battle, and should inquire into their doctors' position on assisted suicide. If they oppose it, thank them for their stance and urge them to speak out against the practice with their medical associations, their state legislature, and Congress. If they support legalization, try to change their minds—and if they will not, find a new doctor, letting your former doctor know why you left.

Fighting Back by Exposing Dangers and Abuses of Assisted Suicide

The multifaceted battle against assisted suicide can seem daunting, especially when some public opinion polls indicate that the public is receptive to legalizing the practice (and especially when euphemistic language like "aid in dying" is used). But the same polls show that when the public learns the truth about the dangers and abuses associated with the practice of assisted suicide, especially for those who are poor, elderly, disabled, or lacking access to good medical care, their views shift against the practice. These dangers and abuses need to be shared widely:

Assisted suicide and our profit-driven health care system make a deadly mix

- Some patients in Oregon received word from the Oregon Health Plan that it would pay for assisted suicide but not for treatment that may sustain their lives.[3]

2. Ronald J. Clearfield, "Opinion of the Council on Ethical and Judicial Affairs, 5: Study Aid-in-Dying as End-of-Life Option (Resolution 15-A-16)," AMA Annual Meeting notes, June 2017, 19, https://www.ama-assn.org/sites/default/files/media-browser/public/hod/a17-ceja-reports.pdf.

3. Susan Harding, "Health Plan Covers Assisted Suicide but Not New Cancer Treatment," *KVAL News*, July 31, 2008 (updated Oct. 30, 2013, but no longer available online), noting that the Oregon Health Plan will pay for coverage for chemotherapy that cures cancer but not for chemotherapy drugs that can extend life; and Jennifer Popik, "Terminally Ill

- Patients enrolled in private health plans are meeting with similar discrimination and pressure to commit suicide. One patient in California was told by her insurance company that it would not pay for her life-extending treatment but that she "would only have to pay $1.20" for drugs to commit suicide.[4]
- Nevada physician Brian Callister testifies that when he tried to transfer patients to Oregon and California for treatments not available in his state, insurers in both states rejected his effort and instead asked, "Would you consider assisted suicide?" Dr. Callister says both of his patients had good chances for a cure with treatment but will die without it.[5]
- One well-known advocate of assisted suicide has written openly of the unacceptable "burden" of caring for elderly Americans, declaring that "in the final analysis, economics, not the quest for broadened individual liberties or increased autonomy, will drive assisted suicide to the plateau of acceptable practice."[6]

Assisted suicide puts vulnerable persons at risk for abuse and pressure

- Once lethal drugs have been prescribed, assisted suicide laws have *no* requirements for assessing a patient's consent, competency, or voluntariness. Who would know if the drugs are freely taken, since they are not tracked once they leave the pharmacy and no witnesses are required at the time of death?
- Elder abuse is considered a major health problem in the United States, with federal estimates that one in ten elder persons is abused.[7] Placing lethal drugs in the hands of abusers generates an additional major risk to elderly persons.
- Assisted-suicide laws call for two people to witness a patient's request for lethal drugs and allow one of the witnesses to be an heir to the patient's estate.[8] Therefore, an heir or friends of an heir can encourage or pressure a patient to request lethal drugs (only *undue* influence is prohibited) and then be a witness to the request.
- Although Oregon has a reporting system designed to conceal rather than detect abuses, reports of undue influence have nonetheless surfaced there. In one case, a woman with cancer committed suicide with a doctor's assistance even though she showed early signs of dementia, was found mentally incompetent

Oregon Patients Denied Treatment but Reminded They Can Choose Physician-Assisted Suicide," *National Right to Life News* 35.7–8 (July 2008): 24, http://www.nrlc.org/archive/news/2008/NRL08/Oregon.html.

4. Bradford Richardson, "Assisted-Suicide Law Prompts Insurance Company to Deny Coverage to Terminally Ill California Woman," *Washington Times*, October 20, 2016, http://www.washingtontimes.com/.

5. Bradford Richardson, "Insurance Companies Denied Treatment to Patients, Offered to Pay for Assisted Suicide, Doctor Claims," *Washington Times*, May 31, 2017, http://www.washingtontimes.com/.

6. Derek Humphry and Mary Clement, "The Unspoken Argument," in *Freedom to Die* (New York: St. Martin's Griffin, 1998), 313.

7. Mark S. Lachs and Karl A. Pillemer, "Elder Abuse," *New England Journal of Medicine* 373.20 (November 12, 2015): 1949, doi: 10.1056/NEJMra1404688.

8. See, for example, Or. Rev. Stat. § 127.810 sec. 2.02.

by doctors, and had a grown daughter described as "somewhat coercive" in pushing her toward suicide.[9]

The definition of "terminal illness" is dangerously broad in the laws

- Assisted-suicide laws appear to limit eligibility to terminally ill patients who are expected to die within six months. However, they do not distinguish between persons who will die within six months with treatment and those who will die in that time without treatment. This means that patients with treatable diseases like diabetes, chronic respiratory or cardiac disease, and disabilities requiring ventilator support are eligible for lethal drugs, since they would die within six months without treatment.

Untreated pain is not the issue in most decisions to seek assisted suicide

- According to the official annual reports, in Oregon, 90 percent of patients seeking lethal drugs in 2016 said they were "less able to engage in activities making life enjoyable" and were "losing autonomy," and 49 percent cited being a "burden" on family, friends, or caregivers. In both Washington and Oregon, concern about pain was cited as the second-to-last reason for seeking lethal drugs (35 percent).[10]

No psychiatric evaluation or treatment is required for approval of a request for assisted suicide

- Despite medical literature showing that nearly 95 percent of those who commit assisted suicide had a diagnosable psychiatric illness (usually treatable depression) in the months preceding suicide,[11] the prescribing doctor and the doctor he or she selects to give a second opinion are both free to decide whether to refer suicidal patients for any psychological evaluation. According to Oregon's official annual reports, from 2007 to 2016 less than 4 percent of patients who died under its assisted-suicide law were referred for psychological evaluation of any kind.[12]
- If an evaluation is provided to suicidal patients, the goal is not to treat the underlying disorder or depression but to determine that it is not "causing impaired judgment."[13] Doctors and counselors who consider depression "a completely

9. See Herbert Hendin and Kathleen Foley, "Physician-Assisted Suicide in Oregon: A Medical Perspective," *Michigan Law Review* 106.8 (June 2008): 1624–1625; and Erin Hoover Barnett, "A Family Struggle: Is Mom Capable of Choosing to Die?" *Oregonian*, October 17, 1999, reprinted February 4, 2015, http://www.oregonlive.com/.

10. Oregon Health Authority, "Oregon Death with Dignity Act: Data Summary 2016," February 10, 2017, 10. Links to all the annual reports in Oregon are available at https://www.deathwithdignity.org/oregon-death-with-dignity-act-annual-reports/. Washington State Department of Health, "2015 Death with Dignity Act Report: Executive Summary," 2016. Links to Washington state reports are available at http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/DeathwithDignityAct/DeathwithDignityData.

11. Herbert Hendin, *Seduced by Death: Doctors, Patients, and Assisted Suicide* (New York: Norton, 1998), 34–35.

12. See the Oregon annual reports at https://www.deathwithdignity.org/.

13. Or. Rev. Stat. § 127.825; and Wash. Rev. Code § 70.245.060.

normal response" to terminal illness may decide that the depressed patient's judgment is not impaired.[14]

Legalization of assisted suicide threatens improvements in palliative care

- Vermont legalized physician-assisted suicide in 2013. In 2015, the state's Visiting Nurse Association announced that it is conducting a study to discover why the state has "the third lowest hospice utilization rate in the nation."[15]
- Oregon was a leader in promoting hospice care before it legalized assisted suicide. After legalization, its percentage improvement in utilization of hospice fell below the national average. The state opened only five new hospices from 2000 to 2014, at a time when 1,832 opened in other states. Washington state, which legalized assisted suicide in 2008, also has a hospice utilization rate below the national average.[16]

Assisted suicide fosters discrimination

- Assisted suicide creates two classes of people: those whose suicides we spend hundreds of millions of dollars each year to prevent and those whose suicides we assist and treat as a positive good. We remove weapons and drugs that can harm one group while handing deadly drugs to the other, setting up yet another kind of life-threatening discrimination.

Favorable publicity about assisted suicide leads to more suicides

- In 2015, Oregon's health department reported that "the rate of suicide among Oregonians has been increasing since 2000" (three years after the state legalized assisted suicide) and in 2012 was "42 percent higher than the national average"; suicide had become "the second leading cause of death among Oregonians aged 15 to 34 years." These deaths are in addition to deaths under the Oregon assisted-suicide law, which legally are not counted as suicides.[17]
- Proponents claim that assisted suicide is a "peaceful" alternative that replaces "violent" suicides. A recent study has found that legalizing assisted suicide does not reduce or substitute for other suicides but increases total suicides.[18]
- The World Health Organization warns that media coverage of suicide "which sensationalizes or normalizes [it] or presents it as a solution to problems" can

14. Hendin and Foley, "Physician-Assisted Suicide in Oregon," 1623.

15. "Vermont VNA Seeking to Identify Causes of State's Low Hospice Utilization Rates," Hospice and Palliative Care News, April 29, 2015, http://healthrespubs.com/.

16. Jennifer Ballentine, Cordt Kassner, and Ira Byock, "Physician-Assisted Death Does Not Improve End-of-Life Care," letter, *Journal of Palliative Medicine* 19.5 (May 2016): 479–480, doi: 10.1089/jpm.2016.0035, available at http://www.theirisproject.net/uploads/7/8/4/1/78413882/ballentine-byock_letter2.pdf.

17. Xun Shen and Lisa Millet, "Suicides in Oregon: Trends and Associated Factors 2003–2012," Oregon Health Authority, 2015, 3, http://www.oregon.gov/.

18. David Albert Jones and David Paton, "How Does Legalization of Physician-Assisted Suicide Affect Rates of Suicide?," *Southern Medical Journal* 180.10 (October 2015): 599–604, doi: 10.14423/SMJ.0000000000000349.

lead to "imitative suicidal behaviours," especially among young or depressed people.[19]

There are many more reasons why legalizing assisted suicide is a bad and dangerous idea. For further information, check out these websites: USCCB, "To Live Each Day with Dignity" (http://www.usccb.org/toliveeachday), and Patients Rights Action Fund (http://www.patientsrightsaction.org).

A New Attack on Conscience

In the April 6, 2017, issue of the *New England Journal of Medicine*, a prominent physician and an ethicist urge professional medical associations not to allow health professionals' "personal beliefs" to override their obligation to serve "patients' well-being." They oppose laws that respect conscience rights on issues such as abortion, and insist that a doctor or nurse who on moral grounds cannot provide a procedure that is "professionally accepted" must change specialties or "leave the profession."[20]

Writing about this article, Wesley Smith points out that "ethics opinions, legislation, and court filings seeking to deny 'medical conscience' have proliferated as journals, legislative bodies, and the courts have taken up the cause. In the last year, these efforts have moved from the relative hinterlands of professional discussions into the center of establishment medical discourse. … When advocacy of this kind is published by the *NEJM*, it is time to sound the air raid sirens."[21]

In another disturbing development against conscience rights, on July 5, the Oregon Senate voted 17 to 13 in favor of a bill that would force nearly all health insurance plans across the state to cover abortion (among other things) with no co-pays. The measure exempts any currently offered health benefit plans that do not cover abortion, and it has a very narrow religious exemption on abortion but creates a new state program to fund abortions for people whose plans do not cover abortion. The House passed the measure on July 1 on a vote of 33 to 23. Governor Kate Brown is expected to sign it into law.

This new law adds Oregon to a list of other states (Washington, New York, California, Illinois, and Alaska) that violate the federal Weldon amendment. Weldon prohibits the federal government—and state and local governments that receive federal financial assistance for health-related activities—from penalizing or discriminating against a "health care entity" based on its refusal to provide, pay for, provide coverage of, or refer for abortions.[22] Weldon defines a health care entity to

19. World Health Organization, *Preventing Suicide: A Resource for Media Professionals* (Geneva: WHO, 2008), 6–8, http://www.who.int/.

20. Ronit Stahl and Ezekiel J. Emanuel, "Physicians, Not Conscripts: Conscientious Objection in Health Care," *New England Journal of Medicine* 376.14 (April 6, 2017): 1380–1385, doi: 10.1056/NEJMsb1612472.

21. Wesley J. Smith, "Pro-lifers: Get Out of Medicine!," *First Things*, e-pub May 12, 2017, https://www.firstthings.com/.

22. The full text of the Weldon amendment, which has been included in every Labor/HHS appropriations bill enacted since 2004, reads as follows: "(1) None of the funds made available in this Act [Labor/HHS] may be made available to a Federal agency or program, or to

include health insurance plans. Of course, the worst sort of discrimination against a plan that does not cover or pay for abortion would be to drive it out of existence.

These new attacks on conscience are additional reasons why Congress must enact the Conscience Protection Act (H.R. 644 / S. 301) this year. The CPA would make more effective and permanent the conscience protections of the Weldon amendment and would ensure that victims of discrimination under that policy, and under the Church amendment of 1973, have a right of action to protect their rights in court. Constituents need to urge their members of Congress—both the Senate and the House—to get this legislation across the finish line this year. Human Life Action, the Catholic bishops' public policy partner for organizing and activating grassroots action on life issues, has made it easy to communicate this message to senators and representatives at its website, www.humanlifeaction.org.

Finishing Up with Inspiration

On June 2, the pro-life movement lost a champion and unsung hero in Mark Gallagher. Mark spent thirty-three years lobbying for the pro-life cause, most of those years with the United States Conference of Catholic Bishops as associate director of the Office of Government Liaison and as their principal lobbyist for the unborn and the poor. As his obituary noted, "His most significant legislative efforts contributed to the enactment of (a) the Hyde Amendment, which prohibited the federal funding of abortions, saving over two million unborn lives since 1976; (b) the Family and Medical Leave Act; and (c) the Refundable Child Tax Credit, lifting ten million Americans out of poverty."[23]

Given that Mark played a pivotal role in getting the Hyde amendment enacted into law, saving the lives of millions of unborn humans, these words from the late Rep. Henry Hyde could not be a more fitting tribute for this good and faithful servant:

> When the time comes, as it surely will, when we face that awesome moment, the final judgment, I've often thought, as Fulton Sheen wrote, that it is a terrible moment of loneliness. You have no advocates, you are there alone standing before God—and a terror will rip your soul like nothing you can imagine. But I really think that those in the pro-life movement will not be alone. I think there'll be a chorus of voices that have never been heard in this world but are heard beautifully and clearly in the next world—and they will plead for everyone who has been in this movement. They will say to God, "Spare him, because he loved us!"

Greg Schleppenbach

a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions. (2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan." Consolidated Appropriations Act 2016, Pub. L. 114-113, div. H, tit. V, § 507(d) (December 18, 2015).

23. *Ocean City* [MD] *Sentinel*, June 14, 2017.