



2017
Vol. 31, No. 3

Patients Rights Council

Update

2017 has not been a good year for doctor-assisted suicide activists

In spite of all the hype, press releases, verbally engineered euphemisms, social media manipulation, polling, legislative lobbying, biased articles, ads, TV news segments, and emotional personal testimonies—despite all of that and the huge outlay of money to accomplish it all—assisted-suicide advocates and well-financed activist groups have encountered one defeat after another in 2017.

This was supposed to be the year where targeted states would line up like sheep and follow the lead of California and Colorado, the two states that most recently legalized doctor-prescribed suicide.

In 2017, advocates introduced legislative measures in a record 27 states. They are Alaska, Arizona, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kan-

sas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Utah, Wisconsin, and Wyoming. New Jersey also has a bill, but it was introduced in 2016 and carried over to the 2017 legislative session. So that makes 28 states with assisted-suicide bills under consideration in 2017.

Of those 28 states, 22 have rejected the prescribed-suicide bills. The remaining six states with active measures are Massachusetts, Michigan, Minnesota, New Jersey, Pennsylvania, and Wisconsin. Massachusetts has a hearing scheduled for September 26 on its companion bills H. 1194 and S. 1225. There may be some activity in the fall on New Jersey's measure, but further

hearings or passage in 2017 are unlikely in the other states.

Also of note is a bill that was introduced in Alabama to expressly prohibit assisted suicide. It passed and took effect on August 1.

Advocates knew some states would not pass the legalization bills this time around, but they were hoping that debates on the bills would wear down opposition over time. They also knew, however, that some state legislatures had had assisted-suicide measures introduced in prior years (many multiple times) and were, as the saying goes, ripe for the picking. But, so far, that hasn't happened.

On top of all the state defeats, activists groups are frantically trying to prevent a defeat in Washington, DC. A

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Judge: Teen previously declared brain dead may be alive

A California Superior Court judge has ruled that Jahi McMath, a 13-year-old girl who was officially declared brain dead well over three years ago may actually be alive.

After a 2013 tonsillectomy, Jahi began hemorrhaging and went into cardiac arrest, causing her brain to be deprived of oxygen. Her doctors at Children's Hospital in Oakland, California, declared her brain dead. When her mother was told that all of Jahi's life-sustaining treatment would be withdrawn, she objected and a court battle ensued. The judge ruled in favor of the doctors, ordered that a death certificate be issued, but allowed her mother to take possession of Jahi. The family then moved to New Jersey where Jahi continues to receive needed treatment at home.

Since then, Jahi's supposedly dead body has not deteriorated as her doctors predicted. Her

skin is healthy looking, she digests nourishment, her blood pressure is stable without medications, she menstruates, and there are 49 videos—tested and found not doctored—of her slowly responding to commands.

According to testimony given by renowned pediatric neurologist Dr. Alan Shewmon, Jahi "is a living, severely disabled young lady, who currently fulfills neither the standard diagnostic guidelines for brain death nor California's statutory definition of death."

On September 7, 2017, Judge Stephen Pulido ruled that Jahi may not be dead and her malpractice lawsuit against Children's Hospital can proceed with a jury to determine whether her death certificate should be rescinded. The hospital had argued that Jahi could not sue for damages because she was dead. If she's not dead, awards for ongoing care would be far higher. ■

New York's highest court upholds doctor-prescribed suicide ban

The New York Court of Appeals, the state's highest court, has dealt assisted-suicide advocates a serious blow by ruling there is no constitutional right to doctor-prescribed suicide.

The plaintiffs in the case had argued that doctors who prescribe lethal drugs for terminally ill, competent patients should not be criminally liable under NY's law banning assisted suicide because what they practice is "aid-in-dying," not assisted suicide. Plaintiffs also asked the court to declare aid-in-dying a constitutional state right. The existing ban, they opined, is not rationally related to state interests.

In its September 7 ruling, the panel of judges unanimously held, "Although New York has long recognized a competent adult's right to forgo life-sustaining medical care, we reject plaintiffs' argument that an individual has a fundamental constitutional right to aid-in-dying as they define it." [*Myers v. Schneiderman*, 2017 NY Slip Op 06412, 9/7/17, pp. 1-2]

"We also reject plaintiffs' assertion that the State's prohibition on assisted suicide is not rationally related to legitimate state interests," they wrote. [p. 2] "The State may rationally seek to prevent the distribution of prescriptions for lethal dosages of drugs that could be... deliberately or accidentally misused. The State also has a significant interest in preserving life and preventing suicide, a serious public health problem." [p.12]

Moreover, the judges held, "At present, the Legislature of this State has permissibly concluded that an absolute ban on assisted suicide is the most reliable, effective, and administrable means of protecting against its dangers." [p. 14]

This is not the first time New York's law prohibiting assisted suicide has been challenged on constitutional grounds. In the 1997 case *Vacco v. Quill*, the US Supreme Court ruled unanimously that New York's law did not violate the US Constitution and supported New York's right to ban assisted suicide. The court reached the same conclusion regarding Washington State's law prohibiting the practice.

State supreme courts in Florida, New Mexico, and Alaska have all struck down constitutional challenges to prohibitive prescribed-suicide laws. Earlier this year, a Hawaii circuit court dismissed a lawsuit that sought to exempt "medical aid-in-dying" from the state's criminal statutes so lethally-prescribing doctors would not be prosecuted. [*Maui Now*, 7/16/17] ■

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federal appropriations bill was recently passed by the US House of Representatives that would repeal the Washington, DC, assisted-suicide law that was implemented in July. The US Constitution and the DC Home Rule Act give Congress jurisdiction over DC and its laws. Activist groups are calling for supporters to fight any advancement of the spending bill in the Senate.

Lawsuits to legalize assisted suicide by means of the New York and Hawaiian courts have also been rejected in 2017. (See above article.) ■

California beats Washington State in unreported assisted-suicide data

Recently, both Washington State and California issued statistical reports mandated by each state's permissive assisted-suicide law. Washington's law has been in effect since 2009; California's was enacted in June 2016. Both reports contain data gleaned from forms submitted to the state by doctors who wrote lethal drug prescriptions in 2016 so patients could end their lives.

According to Washington's official 2016 report, 248 patients received death inducing drugs from 140 separate doctors. Of those patients, 192 died after ingesting the drugs and 36 died without taking the drugs. There were another 12 assisted-suicide patients who died in 2016, but the Washington Department of Health (WSDOH)—the state agency responsible for overseeing the implementation of the Death with Dignity Act and issuing the annual data report—doesn't know if they ingested the drugs or not. For the remaining 8 patients, the WSDOH doesn't know if they are alive or dead because it has received no mandatory doctor follow-up forms or death certificates for those patients.

In fact, the report states that the status of 21 patients between 2009 and 2015 remains unknown. Eleven patients in 2015, four in 2014, four in 2013, one in 2011, and one in 2009 either outlived their doctor's 6-month or less life expectancy prediction or

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California: Reported Assisted-Suicide Deaths June 9, 2016 - December 31, 2016

Data supplied by lethally-prescribing doctors & death certificates.¹
Figures are those reported by the state.

Categories	TOTAL
Reported number of assisted-suicide patients given lethal drugs	191
Reported assisted-suicide deaths	111 [58%]
Unreported assisted-suicide deaths	Unknown ¹
Individual reporting doctors who wrote lethal drug prescriptions	173
Cases where the patient's status (living or deceased) or ingestion status is not known	59 [31%]
Number of patients referred for a psychiatric evaluation	Not Reported
Cases where prescribing doctor was present at the time lethal drugs were ingested	Not Reported
Complications from lethal drug ingestion	Not Reported
Patients' reasons for requesting death	Not Reported
Cases of doctor non-compliance with the assisted-suicide law	Not Reported

1. The California Public Health Department, the state agency required by End of Life Option Act to issue an annual statistical report and oversee the law, has no way of knowing whether the report submitted by lethally-prescribing doctors for each assisted suicide case is accurate or complete. The other report data source, death certificates, only indicate that a patient has died from an underlying illness, but, by law, are not permitted to list drug overdose as the accurate cause of death.

Source:

California Department of Public Health, *California End of Life Option Act 2016 Data Report*, 6/27/17. Available online at: <https://www.cdph.ca.gov/Programs/CHSI/Pages/End-of-Life-Option-Act.aspx>.

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their deaths were never fully reported to the state as required by law. But, if the latter is the case, there have been no instances of physician non-compliance reported in the Washington annual reports since the prescribed-suicide law took effect. There isn't even a

non-compliance category in any of the reports. (See the WA State table for more data and where to get the complete online 2016 report.)

While Washington's reports are riddled with unknowns and data not reported, California's 2016 report wins the lack-of-data prize hands down.

The report covers only the first six months after the End of Life Option Act (EOLOA) was enacted. According to the California Department of Public Health (CDPH)—the law's overseer, data collector, and the publisher of the assisted-suicide report—it can only include in the report data categories that are specifically stipulated in the law passed by the legislature in 2015. Those categories deal predominantly with basic patient demographics—patients' ages, gender, ethnicity, location, level of education, type of health insurance, type of terminal illness—as well as more general statistics, such as the number of assisted-suicide deaths and the number of lethal drug prescriptions written. (See the CA table on page 2 for more data and where to get the complete online 2016 report.)

What is missing in the report are any statistics pertaining to referrals for psychological evaluations, reasons for patients' death requests, and data related to the most critical time in the whole assisted-suicide process: when the patient ingested the lethal drugs. There is nothing in the report on the patients' experiences or the circumstances at this time, including who was present, how long it took for the lethal overdose to cause unconsciousness and death, and whether patients experienced any complications as the result of the drugs, such as the patient regurgitating the toxic drink, having seizures, or waking up instead of dying. All these categories are simply not required by the EOLOA. Neither is the presence of the prescribing doctor or any objective witness who could report back to the CDPH, so there is no way to know what actually occurred.

Apparently, legislators and others who authored the EOLOA didn't think that the public should have access to this important data. Compassion & Choices (C&C), the assisted-suicide activist group that helped author the EOLOA and lobbied for its passage, averted attention from the law's lack of transparency and praised the 2016 report saying, "The state's data show that even during the early months of the law's implementation, the law is working well and terminally ill Californians were able to take comfort in knowing that they had this option to peacefully end intolerable suffering." [C&C Press Release, prnews-wire.com, 6/27/17]

Another pro-assisted suicide group, the Death with Dignity National Center (DWDNC), emphatically echoed C&C's spin: "No issues were reported with the use of the law. *None*. California's new assisted dying law works as intended, providing peace of mind, comfort, and control at the end of life to dying Californians." [DWDNC, Email to supporters, 8/24/17]

C&C and the DWDNC have a huge interest in the public thinking that the EOLOA is working well. It's their way of getting other states to follow suit. But with all the unknown and unreported California data, saying the law is "working well" is absurd. ■

Washington State: Reported Assisted-Suicide Deaths

2009-2016

Data supplied by lethally-prescribing doctors, pharmacists, & death certificates.¹

Figures and percentages are those reported by the state.

Categories	TOTAL	2016	2015	2009-14
Reported number of assisted-suicide patients given lethal drugs	1,184	248	213	723
Reported assisted-suicide deaths	843	192	166	485
Unreported assisted-suicide deaths	Unknown ¹	Unknown ¹	Unknown ¹	Unknown ¹
Individual doctors who wrote lethal prescriptions in a given year	? ²	140	142	? ²
Cases where the patient's status (living or deceased) or ingestion status is reported as "unknown"	179	20	23	136
Cases where prescribing doctor was present at the time lethal drugs were ingested	47	17 [9%]	9 [5%]	21
Number of patients referred for psychiatric evaluation	44	11 [5%]	8 [4%]	25
Patients' reasons for requesting death: ³				
Loss of autonomy	911	206 [87%]	169 [86%]	536
Inability to do enjoyable activities	902	199 [84%]	170 [86%]	533
Loss of dignity	754	156 [66%]	135 [69%]	463
Being a burden	539	120 [51%]	105 [52%]	314
Lost control of bodily functions	506	101 [43%]	96 [49%]	309
Pain or concern about it	382	97 [41%]	70 [35%]	215
Financial implications of treatment	87	18 [8%]	25 [13%]	44
Complications from lethal drugs:				
Regurgitation	16	7 [4%]	2 [1%]	7
Seizures	1	0 [0%]	0 [0%]	1
Patient awakened	2	0 [0%]	0 [0%]	2
Other ⁴	4	2 [1%]	1 [1%]	1
Cases unknown	64	2 [1%]	14 [8%]	29
Cases of doctor non-compliance with the assisted-suicide law	Not Reported	Not Reported	Not Reported	Not Reported
Penalties imposed for non-compliance with the law	Not Reported	Not Reported	Not Reported	Not Reported

1. The Washington State Department of Health (WSDOH), the agency responsible for overseeing assisted-suicide practice, has no way of knowing if data provided by prescribing doctors are accurate or complete. The Pharmacy Dispensing Report simply asks for general information (i.e., patient & physician names and drugs prescribed) but contains no data on the patients who died by doctor-prescribed suicide. Death certificates, by law, are not permitted to indicate drug overdose as the true cause of death.

2. Since the WSDOH reports do not identify the lethally-prescribing doctors, there is no way to determine the total number of doctors who wrote prescriptions beyond a year at a time. The same doctor could have written multiple lethal drug prescriptions for multiple patients over the time span since assisted suicide was legalized.

3. The Washington report states, "Participants may have selected more than one end of life concern. Thus the totals are greater than 100 percent."

4. This category was not included in the 2009, 2010, and 2011 annual reports. The 2016 report does not specify which "other" complications are included in this category.

Source:

Washington State Department of Health, 2016 *Death with Dignity Act Report*, 7/17. All Washington annual reports are available online at: <http://doh.wa.gov/dwdal>.



News briefs from home & abroad . . .

● **United States:** After much study and debate, the American College of Physicians (ACP) has issued a new position statement opposing the legalization and practice of doctor-prescribed suicide (a.k.a, aid-in-dying). It affirms the ACP's earlier opposition policy issued in 2001. According to the new statement:

Physician-assisted suicide is neither a therapy nor a solution to difficult questions raised at the end of life. On the basis of substantive ethics, clinical practice, policy, and other concerns, the ACP does not support legalization of physician-assisted suicide. This practice is problematic given the nature of the patient-physician relationship, affects trust in that relationship as well as in the profession, and fundamentally alters the medical profession's role in society.... Control over the manner and timing of a person's death has not been and should not be a goal of medicine.

The ACP's statement also emphasizes its commitment to "human dignity and management of pain and other symptoms, and support for families." [*Annals of Internal Medicine*, 9/19/17]

● **Canada & The Netherlands:** Two doctors, both of whom actively supported euthanasia legalization in their respective countries, are now having second thoughts and have gone public with their concerns.

Dr. Yves Robert, the secretary of the Quebec College of Physicians, posted on the College's website his reflections on the expansion of the Quebec and federal medical aid-in-dying (MAID) laws. Since those laws were implemented over a year ago, he wrote, people who are clearly not qualified to receive euthanasia "have invoked a 'new constitutional right': that of obtaining MAID on demand or claim it 'pre-emptively' shortly after being diagnosed with a severe or terminal illness...." "While MAID was reserved for the suffering patient," he added, "we see the emergence of pressure demanding a form of death *à la carte*. But is this really what our society wants?" Society wants safeguards against abuse, he wrote, "while asking the doctor to act as if there were none." [Quebec College of Physicians website, 5/10/17]

A recent Ontario court case involving a 77 year-old woman (referred to as AB) illustrates Robert's concern. AB had crippling osteoarthritis for years and wanted to have her life ended with a doctor's assistance. One doctor agreed to euthanize her, but that doctor changed her mind after a second physician said that AB didn't qualify under the MAID law because she was not terminally ill and her natural death was not "reasonably foreseeable," one of the law's requirements. But a Superior Court judge disagreed and ruled that AB qualified for MAID because of her advanced condition and her age, which made her natural death reasonably fore-

seeable. [*AB v. Canada*, 6/19/17] AB was euthanized early last August. The Canadian government opted not to appeal the decision. [*Globe & Mail*, 8/10/17; *ipolitics*, 9/14/17]

The second doctor having second thoughts about the euthanasia law he so staunchly supported is Dutch psychiatrist Dr. Boudewijn Chabot. While Chabot was instrumental in getting euthanasia for psychiatric patients legally permitted in The Netherlands, he is now highly critical of the almost routine practice of euthanizing people with dementia and those with chronic mental illness. "The Euthanasia Law does not provide protection to people with dementia and psychiatric problems," he wrote. What really worries him is the sharp increase in the number of euthanasia deaths for dementia patients (from 12 in 2009 to 141 in 2016) and chronic psychiatric patients (from 0 to 60 during the same timespan). Chabot blames doctors at the euthanasia End of Life Clinic who kill patients but never treat them for their illnesses. "The euthanasia practice is running amok..." he wrote. [nrc.nl, Chabot, "Worrisome Culture Shift in the Context of Self-Selected Death" 6/16/17]

● **Australia & New Zealand:** The world down under is in the grips of controversy over whether to legalize medicalized killing. In Australia, the parliaments of Victoria and New South Wales are preparing for both emotional and contentious debates on euthanasia bills by the end of 2017 and the beginning of 2018—with the media in those states continually hyping what they perceive is the likelihood of passage. Both supporters and opponents of the bills are working overtime lobbying members of each parliament.

The New Zealand Parliament also has a euthanasia bill to consider. Prime Minister Bill English, however, opposes it, saying that the bill's safeguards will never be adequate against abuse. Also, a two-year parliamentary inquiry into euthanasia legalization reported in August that the committee did not recommend any changes to the current law. ■

The Patients Rights Council is a human rights group formed to promote and defend the right of all patients to be treated with respect, dignity and compassion and to work with individuals and organizations to resist attitudes, programs and policies which threaten the lives of those who are medically vulnerable. To those ends, the PRC compiles well-documented and up-to-date information on a whole range of end-of-life issues, including health care advance directives, futile care policies, health care reform, and doctor-prescribed death.

The *Update* is available to the general public; suggested minimum donation is \$25.00 [U.S.] a year. Add \$3.00 for foreign postage.

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