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Physician-Assisted Death

Physician-assisted death (PAD), or physician-assisted suicide (PAS), is a process through which a terminally ill patient requests and personally administers a prescribed lethal dose of medicine.[1] PAD is legal in Oregon and Washington and their laws have been used as models for other states. PAD has been a topic of debate in California, Hawaii, Wisconsin, Vermont, and Massachusetts. Physician-assisted death is distinct from voluntary active and involuntary euthanasia, which are illegal nationwide and involve the doctors direct action in ending the life of the patient, whether the patient has specifically requested it, or the patient is unconscious and appears unlikely to survive.[2] Passive euthanasia, in which the removal of life-supports leads to patient death, is legal and may be determined by a patient's advance directive.[3] This report deals specifically with physician-assisted death for cognizant and willing patients.

Reasons for PAD Requests

Proponents of PAD posit that the request for assisted death is a result of the loss of ability to live a fulfilling and dignified life as a result of serious physical conditions. Based on a study of physicians in Washington State who had received assistance requests, Back *et al.* found that "the diagnoses most often associated with requests were cancer, neurological disease, and the acquired immunodeficiency syndrome (AIDS). The patient concerns most often perceived by physicians were worries about loss of control, being a burden, being dependent on others for personal care, and loss of dignity."[4] In other words, Back *et al.* concluded that from the perspective of the physicians "the most common patient concerns at the time these requests

[1] Richard Frank and Katherine Kaby Anselmi, "Washington v. Glucksberg: Patient Autonomy v. Cultural Mores in Physician-Assisted Suicide," *Journal of Nursing Law*, 14 (2011): 11-16.
[2] Timothy E. Quill and Jane Greenlaw, "Physician Assisted Death," The Hastings Center, accessed June 5, 2012, http://www.thehastingscenter.org/Publications/BriefingBook/Detail.aspx?id=2202.
[3] Richard Frank and Katherine Kaby Anselmi, "Washington v. Glucksberg: Patient Autonomy v. Cultural Mores in Physician-Assisted Suicide."
[4] Anthony L. Back, Jeffrey I. Wallace, Helene E. Starks, and Robert A. Pearlman, "Physician-Assisted Suicide and Euthanasia in Washington State: Patient Requests and Physician Responses," *The Journal of the American Medical Association,* 275 (1996): 919-925, accessed June 6, 2012, doi: 10.1001/jama.1996.03530360029034.

are made are nonphysical."[5] Opponents argue that developments in palliative care such as "psychological, social, existential, and spiritual dimensions,"[6] ease the dying process for terminally ill patients and offer an alternative to PAD.

In another study, a qualitative, in-depth study that utilized face-to-face interviews with 31 patients requesting PAD, Dees *et al.* found that feelings such as "fatigue, pain, decline, negative feelings, loss of self, fear of future suffering, dependency, loss of autonomy, being worn out, being a burden, loneliness, loss of all that makes life worth living, hopelessness, pointlessness and being tired of living" are what contributes to patients' requests for PAD.[7] They concluded, "medical and social elements may cause suffering, but especially when accompanied by psycho-emotional and existential problems suffering will become 'unbearable'… Unbearable suffering can only be understood in the continuum of the patients' perspectives of the past, the present and expectations of the future."[8]

Oregon requires physicians report data on PADs to the state which then publishes the data at http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ar-index.aspx. Oregon reported in 2011 that

- Of the 71 DWDA deaths during 2011, most (69.0%) were aged 65 years or older; the median age was 70 years. As in previous years, most were white (95.6%), well-educated (48.5% had a least a baccalaureate degree), and had cancer (82.4%).
- Most (94.1%) patients died at home; and most (96.7%) were enrolled in hospice care either at the time the DWDA prescription was written or at the time of death. Most (96.7%) had some form of health care insurance, although the number of patients who had private insurance (50.8%) was lower in 2011 than in previous years (68.0%), and the number of patients who had only Medicare or Medicaid insurance was higher than in previous years (45.9% compared to 30.4%).
- As in previous years, the three most frequently mentioned end-of-life concerns were: decreasing ability to participate in activities that made life enjoyable (90.1%), loss of autonomy (88.7%), and loss of dignity (74.6%).[9]

The state of Washington has a similar reporting requirement. Their 2011 Annual Report found

- Of the 72 participants in 2010 who have died, their characteristics and underlying illnesses include: Age range between 52 and 99 years… 78 percent had cancer 10

[5] Anthony L. Back, Jeffrey I. Wallace, Helene E. Starks, and Robert A. Pearlman, "Physician-Assisted Suicide and Euthanasia in Washington State: Patient Requests and Physician Responses."
[6] Timothy E. Quill and Jane Greenlaw, "Physician Assisted Death."
[7] Marianne K. Dees, Myrra J. Vernooij-Dassen, Wim J. Dekkers, Kris C. Vissers, and Chris van Weel, "'Unbearable Suffering:' A Qualitative Study on the Perspectives of Patients Who Request Assistance in Dying," *Journal of Medical Ethics*, last modified September 24, 2011, accessed June 6, 2012, doi: 10.1136/jme.2011.045492.
[8] Marianne K. Dees, Myrra J. Vernooij-Dassen, Wim J. Dekkers, Kris C. Vissers, and Chris van Weel, "'Unbearable Suffering:' A Qualitative Study on the Perspectives of Patients Who Request Assistance in Dying."
[9] Oregon Health Authority, Public Health, "Annual Reports: Year 14 – 2011 Summary," March 6, 2012, accessed August 8, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year14.pdf.

percent had neuro-degenerative disease, including Amyotrophic Lateral Sclerosis (ALS) 12 percent had heart disease or other illnesses 88 percent had private, Medicare, Medicaid, or a combination of health insurance

- Of the 72 participants in 2010 who have died, After Death Reporting Forms were received for 67 of these individuals. Their end-of-life concerns include: 90 percent were concerned about loss of autonomy, 64 percent about loss of dignity, and 87 percent about losing the ability to participate in activities that made life enjoyable
- Of the 51 participants in 2010 who ingested the medication and died: 90 percent were at home and 84 percent were enrolled in hospice care when they ingested the medication No complications of ingesting the medication were reported Emergency Medical Services (EMS) were not called for intervention after ingestion of the medication by any participant.[10]

Constitutional and Ethical Debates

In 1997, in a decision upholding Washington State's ban on PAD, the U.S. Supreme Court "held that the right to assisted suicide is not a fundamental liberty interest protected by the Due Process Clause since its practice has been, and continues to be, offensive to our national traditions and practices. Moreover, employing a rationality test, the Court held that Washington's ban was rationally related to the state's legitimate interest in protecting medical ethics, shielding disabled and terminally ill people from prejudice which might encourage them to end their lives, and, above all, the preservation of human life."[11]

The ruling touched on the fear of "precedent setting for future euthanasia." It is accepted that a physician has "an obligation to relieve pain and suffering and to promote the dignity of dying patients in their care." In *Cruzan v. Director, Missouri Department of Health* of 1990 affirmed the patient right to refuse life-sustaining medical treatment or nutrition.

In a test of Oregon's Death with Dignity law, the Court ruled in 2005 that physicians administering PAD did not violate the Controlled Substances Act of 1970 as claimed by then Attorney General John Ashcroft. "The Court held that Congress intended the CSA to prevent doctors only from engaging in illicit drug dealing, not to define general standards of state medical practice. Moreover, the CSA did not authorize Attorney General John Ashcroft to declare a medical practice authorized under state law to be illegitimate."[12] According to one analysis, "[t]he immediate legal impact of the court's ruling is clear: Oregon physicians may

[10] Washington State Department of Health, "Washington State Department of Health 2010 Death with Dignity Act Report Executive Summary," accessed August 8, 2012, http://www.doh.wa.gov/Portals/1/Documents/5300/DWDA2010.pdf.

[11] Oyez, "*Washington V. Glucksberg,"* accessed August 8, 2012, http://www.oyez.org/cases/1990-1999/1996/1996_96_110/.

[12] Oyez, "*Gonzalez v. Oregon*," accessed August 8, 2012, http://www.oyez.org/cases/2000-2009/2005/2005_04_623.

prescribe drugs under the Death with Dignity Act without fear of federal penalty."[26]

Physician-Assisted Death in Oregon

The first state to legalize Physician Assisted Suicide (PAS) was Oregon. The Oregon Death with Dignity Act (DWDA) was passed on October 27th, 1997. The legislation allows "an adult...suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner."[19] The DWDA provides four requirements that patients must meet in order to be eligible. The patient must be an Oregon resident, over the age of 18, diagnosed with a terminal illness that will cause death in six months, and able to effectively communicate his or her health care needs.[20]

Once these requirements have been fulfilled, the patient may then begin the process of obtaining the lethal prescription. This process begins with two separate oral requests, followed by a written request signed in the presence of two witnesses. Once the request has been accepted the presiding physician "refer(s) the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily."[21] If either the presiding or consulting physician should feel that the "patient may be suffering from a psychiatric or psychological disorder"[22] then they are required by DWDA to refer the patient to psychiatric consultation. Finally the patient's primary physician is required to discuss other alternatives to physician-assisted suicide, "including, but not limited to, comfort care, hospice care and pain control."[23]

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[26] Pew Research Center Publications, "Supreme Court's Decision in Gonzales v. Oregon," January 31, 2006, accessed June 19, 2012, http://pewresearch.org/pubs/4/supreme-courts-decision-in-gonzales-v-oregon).

[19] The Oregon Death with Dignity Act, *Oregon Revised Statute, 1994* (2011), 127.805 §2.01. accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx.

[20] The Oregon Death with Dignity Act, *Oregon Revised Statute, 1994* (2011), 127.810 §2.02 accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx

[21] The Oregon Death with Dignity Act, *Oregon Revised Statute, 1994* (2011), 127.815 §3.01(d). accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx

[22] The Oregon Death with Dignity Act, *Oregon Revised Statute, 1994* (2011), 127.825 §3.03. accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx

[23] The Oregon Death with Dignity Act, *Oregon Revised Statute, 1994* (2011), 127.800 §1.01(e). accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx

Physicians are required to report any prescription of DWDA to the Department of Human services. An annual report on requests for and use of lethal prescriptions is published by the Oregon Public Health division. "Since the law was passed in 1997, a total of 935 people have had DWDA prescriptions written and 596 patients have died from ingesting medications prescribed under the DWDA."[24] The most frequently mentioned end-of-life concern were loss of autonomy (93.8%), decreasing ability to participate in activities that made life enjoyable (93.8%), and loss of dignity (78.5%)."[25]

Physician Assisted Death in Washington State

The only other state to legalize "Death with Dignity" laws is Washington. The Washington Death with Dignity Act (DWDA) was passed on November 4, 2008 and is similar to Oregon's law.

Similarly to Oregon's recording system, Washington DWDA law also requires physicians to complete a report after prescribing lethal drugs for a patient under DWDA. These findings are published in an annual report put out by the Washington State Department of Health. In the 2010, there were 87 participants compared to 65 in the previous year of 2009.[28]

Failed Legislation in California

California introduced Proposition 161 in 1992, which would have allowed physicians to aid in ending the lives of terminally ill patients for those who requested it. This proposition was very similar to the Oregon Death with Dignity Act in that the patient had to have a terminal illness with a projected life expectancy of six months or less. Physicians would have also had the opportunity to opt out of being involved with physician-assisted death for moral, religious, or ethical reasons. Proposition 161, however, also included legalizing euthanasia by allowing physicians to administer the lethal injection themselves.[29] Proposition 161 failed to pass on November 3, 1992.[30] On February 15, 2007 a new bill was introduced called the California Compassionate Choices Act (AB 374) to the California legislature. This bill was also based on Oregon's Death with Dignity Act but patients not under hospice care had to undergo a psychiatric analysis before being able to make the decision to end their lives. The bill passed in the Assembly Judiciary Committee at the end of May in 2007 and passed in the Assembly

[24] Oregon Public Health Division, "Oregon Death With Dignity Act-2011," accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year14.pdf p.2.
[25] Oregon Public Health Division, "Oregon's Death with Dignity Act--2010," January 11, 2011, accessed June 19, 2012, http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year13.pdf
[28] Washington State Department of Health, "Washington State Department of Health 2010 Death with Dignity Act Report", 2010, accessed June 19, 2012, http://www.doh.wa.gov/Portals/1/Documents/5300/DWDA2010.pdf , p.1.
[29] Secretary of State of the State of California, "California Ballot Pamphlet," UChastings Library, November 3, 1992, accessed June 7, 2012, http://library.uchastings.edu/ballot_pdf/1992g.pdf, pp. 32-35.
[30] LA Law Library, "California Ballot Propositions 1990-1999," LA Law Library, 2009, accessed June 12, 2012, http://www.lalawlibrary.org/research/ballots/1990/1992.aspx.

Appropriations Committee in June of 2007 but was shelved before reaching a vote with the full Assembly due to lack of support.[31]

Hawaii

The Hawaii Death with Dignity Act (HB 675) was presented to the Hawaii House Health Committee on January 22, 2007. If passed it would have allowed terminally ill, competent patients to acquire a fatal amount of a specific medication in order to end their lives. The bill also included legalizing active euthanasia or the use of lethal injections. All other aspects of this bill were modeled off of the Oregon Death with Dignity Act.[32] The committee voted not to bring the bill to a full vote in front of the House after a four-hour hearing in front of the House Health Committee.[33] Although bills supporting physician-assisted death and euthanasia were defeated in 2009 and 2011, the Physician Advisory Council for Aid in Dying still funds a "hotline to field queries from patients and doctors about end-of-life care issues and physician-assisted suicide. The idea is that Hawaii physicians who fear the legal consequences of writing life-ending prescriptions could refer their patients to the council for help."[34]

Wisconsin

Wisconsin also brought forth two physician-assisted death bills. The 2007 Senate Bill 151 and Assembly Bill 298, both modeled after the Oregon Death with Dignity Act, failed before reaching a vote.[35] The Wisconsin Medical Society announced that they were against SB 151 and AB 298 in 2007.[36] The Wisconsin Catholic Conference also spoke out against SB 151 stating that it "involves taking of human life" and "weakens rather than strengthens the bonds of human solidarity."[37] Compassion & Choices of Wisconsin, however, strongly supported SB 151 and AB 298. They support the option of aid-in-dying for the terminally ill. They are hopeful that state legislatures will reintroduce this bill in a later session.[38]

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[31] Valerie J. Vollmar, "Recent Developments in Physician-Assisted Death," Williamette University College of Law, 2007, accessed June 12, 2012, http://www.williamette.edu/wucl/pdf/pas/2007-05.pdf.
[32] House of Representatives of the State of Hawaii, "Death with Dignity," State of Hawaii, 2007, accessed June 6, 2012, http://www.capitol.hawaii.gov/session2008/bills/HB675_.htm.
[33] Valerie J. Vollmar, "Recent Developments in Physician-Assisted Death."
[34] Kevin B. O'Reilly, "5 Hawaii doctors offer assisted suicide to terminally ill patients," American Medical News, April 17, 2012, accessed July 3, 2012, http://www.ama-assn.org/amednews/2012/04/16/prsd0417.htm.
[35] Wisconsin State Legislature, "Senate Bill 151," Wisconsin State Legislature, 2008, accessed June 12, 2012, https://docs.legis.wisconsin.gov/2007/proposals/sb151.
[36] Wisconsin Medical Society, "About the Wisconsin Medical Society," Wisconsin Medical Society, 2011, accessed June 7, 2012, http://www.wisconsinmedicalsociety.org/about.
[37] Barbara Stella, "Testimony in Opposition to SB 151: Assisted Suicide," Wisconsin Catholic Conference, January 23, 2008, accessed June 12, 2012, http://www.wisconsincatholic.org/Assisted%20Suicide%20Testimony.pdf.
[38] Compassion & Choices of Wisconsin, "Who Are We?."

Recent Developments

In Massachusetts, the Death with Dignity Coalition has collected over 70,000 petition signatures to add a doctor-assisted suicide initiative on the ballot this November.[39] An "Act Relative to Death with Dignity," would be similar to those passed in Oregon and Washington, requiring that the patient be diagnosed with a terminal illness in order to receive medication, among other stipulations.[40] Health care may be transferred to a different physician if the action physician has a personal moral conflict.[41]

Massachusetts could be a difficult arena for passage of such a controversial law. The state is heavily Catholic (46%, according to a 2009 Gallup poll), and the archdiocese has shown strong opposition to it.[42] Several prominent physicians have led the petitioning, although the Massachusetts Medical Society has reaffirmed its opposition to doctor-assisted suicide.[43] A Public Policy Polling poll conducted in March 2012 found 43% of Massachusetts citizens in favor of legalizing doctor-assisted suicide, 37% against, and 20% undecided.[44] A total of 936 individuals were polled. A similar poll conducted statewide in May 2012 by Western New England University found 60% in favor, 29% opposed, and 11% undecided. A total of 504 individuals were polled.[45] Although the polls occurred within months of each other, they showed a significant difference in public opinion.

In Vermont, the debate over doctor assisted death continues. Legislation has been introduced periodically in the legislature over the last ten years, modeled after the Death with Dignity laws in Oregon and Washington.[46] The attending physician must seek a second opinion, and refer the patient to a mental health specialist if the physician believes he or she is mentally unsound.[47] Bills have historically been defeated in the House, most recently in 2008 (defeated 82-63).[48] An "act relating to patient choice and control at end of life" was introduced in both the House (H.274) and Senate (S.0103) and sent to committee at the beginning of the 2011 legislative

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[39] Paula Span, "Massachusetts Debates 'Death with Dignity,'" *The New Old Age* (blog), June 7, 2012 (9:52 a.m), http://newoldage.blogs.nytimes.com/2012/05/29/massachusetts-debates-death-with-dignity/.

[40] Michael Clarke, "Massachusetts Death With Dignity Act," (petition, Boston, Massachusetts, 2011), p. 1-11.

[41] Michael Clarke, "Massachusetts Death With Dignity Act."

[42] Paula Span, "Massachusetts Debates 'Death with Dignity.'"

[43] William Frank, "State Lawmakers to Consider Physician-Assisted Suicide Initiative," Massachusetts Medical Society, February 2012, June 7, 2012 (10:57 a.m.), http://www.massmed.org/AM/Template.cfm?Section=Home6&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=67451.

[44] Public Policy Polling Institute, "Massachusetts Survey Results," March 16, 2012- March 18, 2012, http://www.publicpolicypolling.com/pdf/2011/PPP_Release_MA_322121.pdf. June 26, 2012.

[45] Western New England Polling University Institute, "Death With Dignity Ballot Question," May 29-31, 2012, p. 1-4.

[46] An Act Relating to Patient Choice and Control at End of Life, *General Assembly of the State of Vermont, 2011, ξ 5281.*

[47] An Act Relating to Patient Choice and Control at End of Life, *General Assembly of the State of Vermont, 2011, ξ5282.*

[48] Dirk Van Susteren, "' Death with Dignity' bill heads for renewed Vermont debate," VT Digger, October 6, 2011, June 13, 2012 (10:33 a.m.), http://vtdigger.org/2011/10/06/%E2%80%98death-with-dignity%E2%80%99-bill-heads-for-renewed-vermont-debate/.

session, where it remained in committee hearings into the new year. In April 2012 however, Senator Hinda Miller introduced the same bill as an amendment to legislation on tanning bed use, and the Committee on Health and Welfare voted to send it to the floor.[49] Opponents questioned the germaneness of such an amendment to a tanning bed bill, and the Senate ultimately voted 18-11 against "suspending the rules" to allow debate.[50]

A 2011 Zogby International poll (commissioned by the advocacy group Patient Choices Vermont) of 600 randomly chosen individuals found 64% would "support legislation to give a mentally competent adult, dying of a terminal disease with a prognosis of less than 6 months to live the right to request and take medication to peacefully hasten death."[51] Twenty-six percent opposed such legislation, while 11% were unsure. In early 2012, Zogby International (again, commissioned by the advocacy group Patient Choices Vermont) polled just Windsor and Caledonia counties and found 73% in support of death with dignity legislation, 19% opposed, and 7.5% unsure.[52]

Conclusion

Physician-assisted death is a highly controversial issue that continues to be a topic of discussion in state legislatures across the nation. Currently it is legal only in Oregon and Washington. Rulings by the Supreme Court have established that debate over instituting PAD will occur at the state level. The ethical debate continues to divide legislators and the public on the issue.

This report was completed on August 8, 2012 by Christine Labella, Susie Parsons, Ian Goodnow, and Annie Leiter under the supervision of graduate student Kate Fournier and Professor Anthony Jack Gierzynski.

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[49] Alan Panebaker, "Death with Dignity Falls on Senate Floor", VT Digger, April 12, 2012, June 7 2012 (11:00 a.m), http://vtdigger.org/2012/04/12/death-with-dignity-bill-falls-on-senate-floor/.
[50] Alan Panebaker, "Death with Dignity Falls on Senate Floor."
[51] Zogby International, "Patient Choices Vermont 2011 Zogby International Poll," http://7d.blogs.com/files/patient-choices-vermont-poll.pdf.
[52] Zogby International, "Telephone Survey of Likely Voters in Windsor and Caledonia Counties," January 11-14, 2012, http://patientchoices.org/poll/, June 14, 2012.