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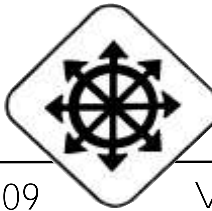
International Task Force on Euthanasia & Assisted Suicide
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# Washington State prepares for assisted suicides

With Washington State's new "Death with Dignity" law (Initiative 1000) due to take effect on March 4, 2009, Washington's Department of Health is under considerable pressure to set up the rubrics for assisted-suicide practice. But, with the help of Compassion & Choices (C&C), formerly called the Hemlock Society, the job has not been that difficult. In fact, it has been a classic case of not reinventing the "wheel." The state's proposed rules governing physician-assisted suicide (PAS) and the official forms to be used by doctors, pharmacists, and patients are virtually identical to Oregon's, the first state to legalize PAS.

On February 10, the Department of Health held an open hearing to elicit comments, pro and con, related to the agency's proposed protocols. Generally, those who support PAS were very pleased with the rules as written. Opponents, however, argued that the Washington law would have the same loopholes and problems found in Oregon unless the rules were sufficiently strengthened to protect patients. They recommended more oversight authority for the state, more transparency for the public, and stricter reporting requirements and penalties for non-compliance. Those in favor of assisted suicide countered that, if the state did what opponents wanted, then there would be too much red tape for both patient and doctor to endure. Department of Health Secretary Mary Selecky will make the final decisions on suggested rule changes. [*Seattle Post-Intelligencer,* 2/9/09; *Seattle Times,* 2/11/09; *News Tribune,* 2/13/09]

**Participation**

Meanwhile, health care facilities and hospice programs are grappling with whether they will engage in PAS practice. The University of Washington health care system and Group Health Cooperative are among

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# One judge's ruling makes assisted suicide instantly legal in Montana

In a ruling some have described as nothing less than judicial tyranny, Montana First Judicial District Court Judge Dorothy McCarter single-handedly legalized physician-assisted suicide (PAS), ostensibly for Montana's terminally ill. Her December 5, 2008, ruling took effect immediately, despite the fact that the state has no statute, restrictions, or guidelines in place to govern the practice or protect patients.

The case challenging Montana's longstanding law against assisted suicide was brought by 76-year-old Robert Baxter, a leukemia patient who died before hearing the judge's decision; four doctors affiliated with a Catholic hospital in Missoula, none of whom were Baxter's physicians; and the assisted-suicide advocacy group Compassion & Choices (C&C), formerly known as the Hemlock Society. Kathryn Tucker, C&C's legal director and veteran right-to-die litigator, spearheaded the lawsuit.

McCarter's ruling centered on her interpretation of the Montana State Constitution, which guarantees not only a right to privacy, but also a right to dignity. "The Montana constitutional rights of individual privacy and human dignity, taken together," she wrote, "encompass the right of a competent terminally [ill] patient to die with dignity." [*Baxter v. Montana*, Decision and Order, Cause No. ADV-2007-787, Mont. 1st Jud. Dist. Ct., 12/5/08, at 23. Hereafter cited as *Baxter v. Montana.*]

But the judge went beyond establishing a patient's right to assisted suicide by also ruling that such a right "*necessarily* incorporates the assistance of his doctor…." Without a doctor's help, she wrote, "the patient would increasingly become physically unable to terminate his life, thus defeating his constitutional right to die with dignity." [*Baxter v. Montana,* at 19. Emphasis added.] Furthermore, she held, "The patient's right to die with dignity includes protection of the patient's physician from liability under the State's homicide statutes." [*Baxter v. Montana,* at 23]

The ruling declared PAS a "fundamental" right that "cannot be limited by the State without a showing of a compelling state interest." [*Baxter v. Montana,* at 19] Such a finding opens the door for expanding the right beyond

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**Montana ruling legalizing PAS, *continued from page 1***

the terminally ill to other categories of patients—the chronically ill, the disabled, the anguished mentally ill, etc. —since "fundamental" rights generally apply equally to all. Moreover, McCarter's contention—that a patient's "constitutional right to die with dignity" is violated if that patient becomes too disabled to physically terminate his/her own life—may be interpreted in the future as grounds for allowing active euthanasia, where the doctor, not the patient, administers the lethal drug.

**State appeals & moves to stay ruling**

Within days of McCarter's decision to instantaneously legalize assisted suicide, the state's Department of Justice submitted a motion asking McCarter to stop her ruling from taking effect until after the state's appeal to the Montana Supreme Court is decided. Given the fact that Montana has no law governing PAS practice, the state argued, there is nothing in place to protect patients and their loved ones from abuse.

McCarter's ruling on the stay was unequivocal:

> [A] stay pending appeal would deny the fundamental right of Montanans to die with dignity for a lengthy period of time while the case is being appealed. IT IS THEREFORE ORDERED that the State's motion for stay is DENIED. [*Baxter v/ Montana,* Cause No. ADV-2007-787, Decision and Order, 1/6/09]

**Reaction**

McCarter's ruling prompted strong reactions from ITF lawyers. Executive Director Rita Marker concluded, "It's judicial activism, judicial malpractice, and judicial arrogance—without question, all of the above."

ITF Associate Director Wesley J. Smith penned the following on his blog:

> So the court takes a propaganda buzz term, "death with dignity," and turns it into a constitutional right to suicide because the Montana Constitution uses the word dignity. Unbelievable, but this is what judges are becoming. It is, after all, where the power lies. [wesleyjsmith.com, 12/6/08]

As expected, national C&C and its state chapters embraced McCarter's ruling. A C&C of Washington e-mail message to supporters claimed, "If Judge McCarter's decision is upheld this will be the first legal-challenge-based victory for aid in dying [assisted suicide] in the U.S." [C&C of WA, E-mail Appeal, 12/08]

National C&C's head litigator Kathryn Tucker said they will be looking to extend the Montana judicial victory to other states. "We would look for a place where they have a constitution with an explicit privacy clause," she explained, "then we'd look to whether that's been interpreted by the state supreme court in a way that is protective of individual privacy and autonomy." "Any state where they have both of those factors would be one where this claim [constitutional right to assisted suicide] might well succeed." [*American Medical News,* 1/5/09; posted on-line, 12/26/08]

C&C's national president, Barbara Coombs Lee, sees the Montana ruling as putting C&C "at a tipping point in expanding choice at the end of life to include aid in dying." [Compassion & Choices Blog, 12/6/08] But lawyer George Eighmey, executive director of C&C of Oregon, said that the national group will likely wait for the Montana Supreme Court to rule on the appeal of Judge McCarter's decision before filing lawsuits in other states. [*Oregonian*, 12/6/08]

ITF's Smith is hopeful, however, that the Montana Supreme Court will not throw out the state's long held and duly enacted law banning assisted suicide. "Still," he said, "the case is certainly no sure thing—either way. But I do know it is likely to be a legal fight to the finish that could eventually grab the attention of the entire world." [*World Net Daily,* 12/6/08] ■

## Montana assisted-suicide bill to be introduced in legislature

In an attempt to pick up where Montana District Court Judge Dorothy McCarter left off in her broad ruling legalizing physician-assisted suicide (PAS), newly elected Representative Dick Barrett (D-Missoula) has drafted a bill—entitled the Montana Death with Dignity Act (LC 1818)—intended to establish rules and regulations for the newly legalized practice. The draft bill, not yet officially introduced, is patterned after Oregon's 10-year-old assisted-suicide law, the original Death with Dignity Act (DWDA).

The Montana draft bill, however, differs from Oregon's law in one significant area. Oregon's law requires a waiting period of at least 15 days between the patient's first oral request for PAS and the doctor's writing of the prescription for lethal drugs. [OR DWDA, ORS 127.850 §3.08] The Montana bill would greatly speed up the process by requiring only a 48-hour wait between the first request and the issuance of the prescription. [MT LC 1818, Sec. 6 (1)]

Shortly after Judge McCarter's ruling last December, Compassion & Choices' legal director, Kathryn Tucker, laid the groundwork for Montana's "token" waiting period. Speaking on Spokane Public Radio, she said that Montana would have more freedom regarding PAS than Oregon. "In Oregon there's a minimum 15-day waiting period. That provision very possibly would not survive constitutional scrutiny because it would be unduly burdensome," she explained. [OR Public Broadcasting, 12/9/08] ■

# Expanded assisted-suicide bills introduced in Hawaii & New Hampshire

Assisted-suicide advocates—emboldened by their recent initiative victory in Washington State and their judicial win in Montana—have introduced expanded, Oregon-style physician-assisted suicide (PAS) bills in Hawaii and New Hampshire. (A PAS bill in Montana is currently in the legislature's drafting process and has not as yet been formally introduced. See page 2 for more on Montana's bill.)

**Hawaii**

Hawaii, a state repeatedly targeted for PAS bills dating back to 1999, had three bills under consideration in the 2009 legislative session—all titled "Death with Dignity." Of the three, companion bills HB 806 and SB 1159 were expected to survive the initial hearing process. HB 806 had been "fast-tracked," meaning it would skip the usual first hearing in the House Health Committee and go directly to the House Judiciary Committee for deliberation. But on February 18, Judiciary head Jon Riki Karamatsu said that the bill would not be heard this year, a decision effecting SB 1159 as well. [*Honolulu Advertiser,* 2/18/09]

Unlike the Oregon PAS law, the Hawaii bills required that a "monitor" be "present at the time of actual administration of the medication to the qualified patient…." [HB 806, §41 (a)] Notice it says the death-producing drug would be administered "to" the patient, not "by" the patient, and nowhere in the bills does it say that the lethal drug has to be "self-administered." It could be argued that the Hawaii bills would have legalized both PAS and euthanasia.

**New Hampshire**

New Hampshire, another state with a history of failed PAS bills, has a new "Death with Dignity Act" proposal (HB 304). While this bill is patterned after Oregon's law, it has been altered in ways that significantly loosen Oregon's PAS restrictions.

Like a similar requirement in Oregon's law, the New Hampshire bill states that a patient eligible for assisted suicide ("qualified patient") must be a resident of the state. However, unlike Oregon, HB 304 would allow non-residents to also qualify for PAS if they are "regularly treated in a New Hampshire health care facility." [HB 304, Chapter 137-L:2, XII]

Furthermore, the New Hampshire bill drops entirely Oregon's definition of terminal condition as being one which causes death in 6 months or less. Instead, HB 304 defines a terminal condition as "an incurable and irreversible condition, for the end stage of which there is no known treatment which will alter its course to death, and which… will result in *a premature death.*" [HB 304, Chapter 137-L:2, XIII. (Emphasis added.) The bill contains no definition of "premature death."

This expanded definition does not require that a qualified PAS patient be in the "end stage" of the condition. Consequently, an early-stage Parkinson's Disease or emphysema patient could be considered "terminal" under the terms of this bill. And it doesn't stop there. A person with quadriplegia, spinal muscular atrophy, HIV/AIDS, Multiple Sclerosis, and other life-shortening conditions could also be assisted-suicide eligible under New Hampshire's bill. ■

**Editor's Note:** For the ITF's complete analysis of the Hawaii bills, see:
http://www.internationaltaskforce.org/hawaii_analysis.htm
For the analysis of New Hampshire's bill, see:
http://www.internationaltaskforce.org/new_hampshire_analysis.htm

# Versions of California's "Right to Know" law surface in Arizona & Maryland

Last year, the California Legislature passed the "Right to Know End-of-life Options Act" (AB 2747). The bill—carried by a perennial assisted-suicide bill sponsor in conjunction with the PAS activist group Compassion & Choices (C&C)—was clearly intended to erode opposition to assisted-suicide legalization and to set up C&C and other like groups as the professional go-to sources for end-of-life counseling. Now, similar bills have been introduced in Arizona and Maryland.

Although the wording in each bill is slightly different, both Arizona's SB 1311 and Maryland's HB 30 mandate that, when a health care provider gives a patient a terminal diagnosis, that provider is obliged to give the patient information and/or counseling regarding *legal* end-of-life options. [SB 1311, Art. 3, §32-3242(A); HB 30, §5-902(A)] If these bills pass and assisted suicide ever becomes legal in those states, it would then be against the law to not offer the assisted-suicide option to a patient newly diagnosed as terminal.

Both bills as introduced encourage health care providers to refer terminally-ill patients to organizations specializing in end-of-life care that provide information on factsheets and internet websites. [SB 1311,§32-3242(C); HB 30, §5-902(E)(3)] The assisted-suicide groups C&C and Final Exit Network—two organizations that currently help people to commit suicide, often clandestinely—would qualify as referral sources for both information and counseling. There are no provisions in either bill that would prohibit these groups from giving vulnerable patients how-to-commit-suicide information. Moreover, the bills contain no oversight or accountability requirements and no credentialing mandates for death counselors, most of whom are C&C and Final Exit Network volunteers. ■

# News briefs from home & abroad . . .

- Meeting with reporters in Seattle, the heads of Compassion & Choices (C&C) chapters in Oregon and Washington revealed that Oregon had a record high 55 assisted suicides in 2008. Year 2007 had previously been the record holder with 49 deaths recorded. The official Oregon state report on recorded PAS deaths in 2008 has not yet been released, but is expected to be made available in early March. According to George Eighmey, executive director of C&C of Oregon, volunteers from his organization have witnessed the deaths of 85% of all Oregon's assisted-suicide patients. The head of C&C of Washington, Robb Miller, explained that his group considers itself as the "steward of the law" and the "advocate and counselor" for all patients contemplating an assisted-suicide death under Washington's new PAS law. [*Seattle Post-Intelligencer,* 1/9/09]

- A new **"conscience rule"** issued by the U.S. Department of Health & Human Services (HHS) took effect in January 2009. It protects the right of health care workers to refuse to participate in medical procedures and treatment that they consider ethically or morally objectionable. The regulation allows the federal government to withhold or withdraw funding from providers and facilities that discriminate against workers who are conscience bound not to be involved in certain medical services. Most people erroneously assume that the rule only applies to abortion-related procedures, but it definitely has implications for assisted suicide and euthanasia practice as well. In a scathing article on the subject, C&C Executive Director Barbara Coombs Lee wrote that the rule threatens induced death practices. "Under the guise of protecting those with strong religious and moral convictions from workplace 'discrimination,' the rule encourages zealous, sanctimonious healthcare workers to act out their convictions at the expense of patients they are supposed to serve." [*Huffington Post,* 1/7/09] HHS Secretary Mike Leavitt sees it differently. "This rule protects the right of medical providers to care for their patients in accord with their conscience," he explained. [HHS Press Release, 12/18/08]

- San Francisco transplant surgeon Hootan Roozrokh has been found not guilty of felony dependent adult abuse by attempting to hasten the death of Ruben Navarro, 25, in order to harvest his organs for transplantation. Navarro had a degenerative neurological condition and was diagnosed with irreversible brain damage. On February 3, 2006, when Navarro was close to death, his mother authorized the retrieval of his organs, but he was not technically brain dead, a usual requirement for organ procurement. Roozrokh, who should not have been in the same room with Navarro prior to his death, ordered that Navarro be taken off life support. When Navarro's heart kept beating, witnesses said Roozrokh ordered a nurse to give the patient excessively high doses of morphine and Ativan. But Navarro still didn't die within the one hour time limit for organ retrieval, so his organs were never removed. The jury issued its not-guilty verdict after more than two days of deliberation. Jurors indicated that the prosecution did not meet its burden of proof beyond a reasonable doubt. [AP, 12/18/08; *San Luis Obispo Tribune,* 12/18/08; *Ventura County Star,* 12/19/08]

- Canadian MP Francine Lalonde has introduced a bill to legalize assisted suicide. The text of the newly submitted bill is not currently available. This is the third

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those who have opted to provide the death service. Catholic health care systems and others have already declared that they will not participate in ending patients' lives, and the practice will be prohibited on their premises. [*Seattle Times,* 2/2/09]

Many health care providers believe their involvement in assisted-suicide practice will be totally voluntary, allowing them to be shielded from any and all participation in a patient's induced death. They are basing that belief on the law's provision stating, "[o]nly willing health care providers shall participate" in assisted-suicide deaths, [WA Death with Dignity Act, Sec. 19(1)(d)]

But those providers who declare themselves to be non-participants will likely still be required to participate by referring patients to doctors who will give patients lethal drugs. That is because the law excludes the act of referring from the definition of "participation." The law states,

> "Participation in this act" does **not** include…(C) Providing a patient, upon request of the patient, with a referral for another physician….[Sec. 19(2)(d)(ii)(C); emphasis added]

■

**News briefs from home & abroad, *continued from page 4***

attempt by Lalonde, who is battling cancer, to get the Canadian Parliament to transform the crime of assisted suicide into a medical treatment. But, given parliament's conservative bent, the bill is not expected to fare any better than her two previously failed bills, C-407 (2005) and C-562 (2008). [CanWest News, 2/15/09]

- Parliament member Margo MacDonald has launched a campaign to legalize assisted suicide in Scotland. MacDonald, who has **Parkinson's Disease**, plans to introduce her **"End of Life Choices (Scotland) Bill,"** sometime this year, but first she needs to gain the support of 18 fellow Scottish Parliament members. Her bill would allow assisted suicide for not only the terminally ill, but also those with degenerative conditions and those "who unexpectedly become incapacitated to a degree they find intolerable." MacDonald is contemplating allowing children around age 12 to request assistance to end their lives. "People of that age," she told reporters, "have the legal right to determine in the case of their parents breaking up which parent they will live with. Arguably, therefore, they are being given a right to choose a lifestyle and their wishes are respected." [BBC, 12/8/08; *The Scotsman,* 12/8/08; *The Herald,* 12/9/08]

- Over 100 Britons have travelled to Zurich, Switzerland, to die at the hands of the assisted-suicide group Dignitas. More than 700 Britons are paid Dignitas members, making them eligible for death assistance in Switzerland if they so decide. [*The Times* (London), 10/17/08; *Herald de Paris*, 11/18/08]

  The September 2008 assisted suicide of 23-year-old Daniel James, a paralyzed former Rugby player, was one of the more controversial Dignitas deaths, since he was young, disabled, and not terminally ill. According to his parents, Julie and Mark James, Daniel was "not prepared to live what he felt was a second-class existence" in his paralyzed state. His parents supported his decision to die and accompanied their son to Zurich. While assisting a suicide carries a penalty of up to 14 years in prison, the Crown has not prosecuted any of the family members, friends, or helpers involved in the Dignitas deaths. [Sky News, 10/17/08; *Daily Mail*, 1/10/09]

  Other high-profile Dignitas cases included Anne Turner (a British doctor whose January 2006 death was the subject of the BBC drama, *A Short Stay in Switzerland*—aired 1/25/09) and Craig Ewert (a motor-neuron disease patient whose actual September 2006 death was shown on a Sky TV documentary aired on 12/10/08). [*The Times*, 1/26/09; *The Guardian*, 12/10/08; AP, 12/10/08]

- British Dignitas member Debbie Purdy, 45, who has multiple sclerosis, wanted firm assurances from the Crown that her husband, Omar Puente, would not be prosecuted if he accompanies her to the Swiss clinic to die. Purdy took her case to the Royal Courts of Justice on October 29, 2008, to force the Director of Public Prosecutions to issue guidelines on when assisted-suicide cases would be prosecuted. The court denied Purdy's request, saying that only parliament, not the courts, can give her the assurance she seeks, since the law would have to be changed. With help from the British right-to-die organization Dignity in Dying, Purdy appealed the decision. On February 19, the Appeal Court ruled that it could not grant Purdy's husband blanket immunity from prosecution, adding that other recent assisted-suicide cases indicate that prosecution would be unlikely. "I feel that I have won my argument, despite having lost the appeal," Purdy told the press. [*Guardian*, 10/30/08; AP, 2/19/09; BBC, 2/19/09]

- Soraya Wernli, a former nurse employed by Dignitas director Ludwig Minelli, has told Swiss authorities that the suicide clinic is a "production line of death concerned only with profits." Wernli, who acted as an undercover informer for eight months, gave detectives information on Minelli and his practices. She said after Minelli had asked her to sort through the contents of large garbage bags he had stored, she realized that the cell phones, purses, shoes, glasses, money, wallets, and jewelry in the bags were actually possessions of the people who died at the clinic. She said Minelli made the clients sign forms giving their possessions to Dignitas. Minelli then sold everything to pawn and second-hand shops. Wernli reported that Dignitas deaths were seldom dignified. After paying over $9,000, clients were rushed through, arriving in the morning and dead hours later. The doctors Minelli used to dispense the lethal drugs were either corrupt or inept, she said. Never once did they refuse to hand out the drugs. [*Daily Mail* (London), 1/26/09]

- Former Hamburg justice minister Roger Kusch, referred to in Germany as Dr. Death, is that country's first assisted-suicide entrepreneur. For a little over $10,000, he will provide advice on how to commit suicide and offer support for those wanting to die. "I provide a service," Kusch told AFP news service. "It's of value, and in our society such things do not come free." Kusch also has invented a suicide machine, an intravenous device modified to inject a suicidal person with a lethal dose of potassium chloride. It's for sale or rent

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depending on the situation. German police have issued a temporary restraining order in the hopes of stopping Kusch from assisting any more suicides. But, Kusch, a doctor of law, has challenged the injunction. A court ruling is expected soon. [*Deutsche Welle*, 12/29/08; *Spiegel*, 1/21/09]

- An Italian case, tragically reminiscent of the Terri Schiavo case in the U.S., has ended in the death of 38-year-old Eluana Englaro. Eluana was diagnosed as being in a permanent vegetative state (PVS) as a result of brain damage from a car accident 17 years ago. In 1999, her father, Beppino Englaro, started his long legal battle to have her tube-supplied food and fluids withheld so she would die. He claimed that his daughter had said before her accident that she would not want to be kept alive by artificial means. On October 8, 2008, the Italian Supreme Court ruled that Eluana could be starved and dehydrated to death. Months later, when the nuns caring for her in a hospice near Milan refused to stop her tube feeding, her father moved her under the cover of darkness to a willing clinic in Udine. She died suddenly on February 9, 2009, only three days after her food and fluids were withheld. Usually in such cases, death occurs in 10 to 14 days. A subsequent autopsy found that Eluana likely died from cardio-respiratory failure, possibly caused by her dehydration. Toxicology results are not yet available.

  Tragically, her death came as the Italian Parliament was hurriedly trying to pass a law prohibiting the removal of nutrition and hydration from patients like Eluana. [Reuters, 2/9/09; BBC, 2/10/09; ANSA, 2/12/09] ■

The International Task Force on Euthanasia & Assisted Suicide is a human rights group formed in 1987 to meet the urgent need for individuals and organizations who oppose euthanasia to work together to: provide information on euthanasia and related issues; promote and defend the right of all persons to be treated with respect, dignity and compassion; resist attitudes, programs and policies which threaten the lives of those who are medically vulnerable.

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