2017
Vol. 31, No. 2

Patients Rights Council Update

15 states rejected doctor-prescribed suicide bills since the beginning of year

This year so far has been hugely disappointing to assisted-suicide activists and supporters who have spent lots of money and time pushing bills to legalize doctor-prescribed suicide in states across the country. Legislators in 27 states—states targeted by the pro-assisted suicide groups Compassion & Choices and the Death with Dignity National Center—have had to consider prescribed-suicide measures since the beginning of the year. Some states, like Hawaii and New York, had more than one such measure introduced in the 2017 legislative session. (See table on page 2.)

The defeats

The reason for advocates' disappointment is that bills in 15 states have already failed either by not being heard, not passing committee or floor votes, or being withdrawn by sponsors due to lack of support. Those states are Alaska, Arizona, Connecticut, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Mississippi, Missouri, New Mexico, Tennessee, Utah, and Wyoming.

Perhaps the hardest defeats for activists were in Hawaii and New Mexico; they had considered both states to be sure wins for the assisted-death movement.

The most recent loss occurred in Maine when, on May 23, the House convincingly voted against the bill (85-61). The Senate had already passed the measure by only one vote (16-15). After the House voted it down, the bill was returned to the Senate for one final vote, but the Senate opted not to take the vote and let the House defeat stand.

States with bills still pending

As of May 26, 2017, 12 states had bills to legalize assisted suicide still pending in the legislative process. But not all have a realistic chance of passing.

Three states—Massachusetts, Nebraska, and Rhode Island—have bills that are technically alive, but appear to be stalled in committees with the end of the legislative session approaching. Three more states have bills that also seem to be languishing in committees, but those states have "biennium legislative sessions" that allow measures that do not pass in 2017 to be carried over for consideration during the 2018 session. Those states are Minnesota, New York, and Pennsylvania.

(continued on page 2)

Also in this *Update*

Compassion & Choices drops appeal in Vermont case

The national assisted-suicide activist group Compassion & Choices (formerly the Hemlock Society) has dropped its appeal of a federal district court ruling (and subsequent consent agreement) that found that Vermont doctors are not required to counsel or refer their patients for doctor-assisted suicide under the state's prescribed-suicide law, Act 39.

The conscientious objection case that Compassion & Choices (C&C) had been appealing was originally brought by the Vermont Alliance for Ethical Healthcare and the Christian Medical & Dental Associations because state medical authorities (Vermont Board of Medical Practice and the Office of Professional Regulation) interpreted state laws to mean that doctors and other clinicians were required to counsel *all* terminally ill patients for assisted suicide. Doctors who did not comply for conscience reasons would be subjected to professional sanctions. [*Vermont Alliance for Ethical Healthcare v. Hoser*, Complaint, US District Ct. of VT, 7/19/16]

The district court dismissed the case, ruling that the two plaintiff groups lacked standing. But the court also found that Act 39 does not impose "any obligation on physicians who do not choose to prescribe lethal medication or in other way participate in assisted suicide." [*VT Alliance v. Hoser,* Opinion & Order, 4/5/17]

C&C had initially spun the district court ruling as a victory because the judge dismissed the case, but then objected to a consent agreement

(continued on page 2)

15 states rejected doctor-prescribed suicide bills since beginning of year, *continued from page 1*

New Jersey also has a two-year assisted-suicide bill that was originally introduced, passed by the full Assembly, and passed by the first Senate committee in 2016, but, so far, there has been no further action taken by the Senate in 2017. New Jersey Governor Christie has said he does not support the bill. [nj.com, 11/3/16]

The remaining states with active bills are Delaware, Michigan, Nevada, North Carolina, and Wisconsin. Delaware's bill was introduced on May 2 and referred to the House Health & Human Development Committee. As yet, no hearing has been scheduled. Similarly, Michigan, North Carolina, and Wisconsin had prescribed-suicide bills introduced within the last two months that have not been heard in their respective committees.

In April, the Nevada assisted-suicide bill looked to be in trouble after it was pulled from its scheduled Senate Health and Human Services Committee hearing, making its passage unlikely before the set deadline for passing bills out of committees. But the bill's sponsor managed to get that deadline extended until June 5. On May 10, the hearing was held, and five days later the committee passed the bill by one vote. On May 23, the full Senate approved the bill, also by just one vote (11-10). The measure now goes to the Assembly for consideration. Nevada Governor Brian Sandoval has clearly indicated that he does not support the bill. [CBS News, 5/11/17]

Other prescribed-suicide measures

In 1997, Oregon was the first state to enact a doctor-assisted suicide law that allows *only competent* adults, who personally and voluntarily request assisted suicide, to receive and self-administer prescribed lethal drugs to end their lives. Now, a bill (SB 893) would expand that law to allow an *incompetent* patient's "expressly identified agent" to "assist with the procedures for ending a patient's life." The patient would have had to sign an advance directive—when he or she was competent—requesting death in advance and naming the person authorized to assist that death. The agent would then be empowered to, among other things, administer the fatal drugs to the now incompetent and vulnerable patient.

Two states could see initiatives to legalize assisted suicide on their 2018 ballots. Oklahoma's HJR 1009 is a joint legislative referendum that, if passed, would place the "Oklahoma Death with Dignity Act" on the ballot for voter approval.

Given a lack of support in the South Dakota legislature, assisted-suicide supporters are currently gathering signatures to place an initiative on the state's 2018 ballot. They need only 13,871 valid voter signatures to qualify the measure. In February, both houses in the legislature overwhelmingly passed Senate Concurrent Resolution 11, which strongly opposed doctor-prescribed suicide. ■

Compassion & Choices drops appeal in Vermont case, *continued from page 1*

between the two plaintiff groups and the defendant Vermont Board of Medical Practice. The agreement stipulates that health care providers "do not have a legal or professional obligation to counsel and refer patients" for assisted suicide, but do have "a professional obligation to provide relevant and accurate information regarding [Act 39] *upon a patient's request*." (Emphasis added.) If the doctor is unwilling to provide that information personally, the doctor must refer the patient to a source of general information.

The agreement further requires the defendant state agencies to "revise all State-owned web sites" that erroneously state that medical professionals have an obligation to refer and counsel all terminally ill patients. [*VT Alliance v. Hoser,* Consent Agreement & Stipulation, 5/3/17]

By dropping its appeal, C&C is allowing the consent agreement to stand.

While that is a definite victory for those who oppose doctor-prescribed suicide, there are some medical providers for whom the requirement to refer inquiring patients to assisted-suicide informational sources compromises their strongly held beliefs. ■

2017 State Assisted-Suicide Bills

(as of May 26, 2017)

State	Bill	Introduced	Status
AK	HB 54	1/18/17	Dead
AZ	HB 2336	1/24/17	Dead
CT	HB 6024 HB 6238	1/19/17 1/20/17	Dead Dead
DE	HB 160	5/2/17	Pending
HI	HB 150 HB 201 SB 357 HB 550 SB 1129	1/19/17 1/19/17 1/20/17 1/25/17 1/25/17	Dead Dead Dead Dead Dead
IN	HB 1561 SB 273	1/23/17 1/9/17	Dead Dead
IA	HF 299 SF 215	2/14/17 2/7/17	Dead Dead
KS	HB 2120	1/20/17	Dead
ME	LD 347	2/2/17	Dead
MD	HB 370 SB 354	1/25/17	Bills Withdrawn
MA	H 1194 S 1225	1/23/17 1/23/17	Pending Pending
MI	HB 4461 HB 4462	3/30/17 3/30/17	Pending Pending
MN	SF 1572 HF 1885	2/27/17 3/1/17	Pending Pending
MS	SB 2283	1/13/17	Dead
MO	HB 524	1/9/17	Dead
NE	LB 450	1/17/17	Pending
NV	SB 261	3/13/17	Pending
NJ	A 2451	2/4/16	Pending
NM	HB 171 SB 252	1/20/17 1/30/17	Dead Dead
NY	A 2383 S 3151 A 3598	1/19/17 1/20/17 1/27/17	Pending Pending Pending
NC	HB 789	4/11/17	Pending
OK	HJR 1009 (Referendum)	1/18/17	Pending
OR	SB 893 (Expands existing law)	2/28/17	Pending
PA	SB 238	1/26/17	Pending
RI	H 5468 S 224	2/15/17 2/2/17	Pending Pending
TN	HB 1394 SB 1378	2/9/17 2/9/17	Bills Withdrawn
UT	HB 76	12/21/16	Dead
WI	LRB 2248	4/10/17	Pending
WY	HB 122	1/12/17	Dead

When patients' death requests supersede physicians' conscience rights

If you're a doctor practicing in the Canadian province of Ontario and your conscience or ethical standards prohibit any participation in a patient's legal euthanasia or assisted-suicide death, you may have to move to another province or country or, worst yet, give up practicing medicine altogether.

Why? Because on May 9, the Ontario Parliament overwhelmingly passed the Medical Assistance in Dying (MAiD) Statute Law Amendment Act (Bill 84), a measure that implements the Federal MAiD law—which took effect last year—by amending various existing Ontario statutes. Unfortunately for conscientiously objecting medical providers, Bill 84 ignored their right to refuse to participate in all aspects of the MAiD process. Another measure (Bill 129) that would have explicitly acknowledged doctors' conscience rights was defeated shortly after Bill 84 was passed.

By failing to address the conscience issue, Bill 84 allows the controversial Professional Obligations & Human Rights Policy, adopted by the College of Physicians & Surgeons of Ontario (CPSO) in 2015, to be the province's ethical and legal standard for acceptable medical practice and conscientious objection.

The policy states, "Where physicians are unwilling to provide certain elements of care for reasons of conscience or religion, an *effective referral* to another health-care provider *must* be provided." CPSO defines "effective referral" as "a referral made in good faith, to a *non-objecting*, available, and accessible physician, other health-care professional, or agency." [CPSO, Professional Obligations & Human Rights Policy, 3/15, p. 5; emphasis added] CPSO's policy forces doctors to refer to an actual "health care provider," not an informational source, such as a government referral service or website.

Dr. Philip Drijber, who says euthanasia and assisted-suicide participation violates his conscience, ethics, and the Hippocratic Oath, explained why making an "effective referral" is a huge problem. "Whether one is the hit man or calls the hit man—the effective referral—both are equally responsible. Intent and assisting are equal in the common law, and the courts have always held so," he said. "An effective referral is participation, and that's what makes it morally repugnant to health care providers of conscience." [*Northfolk News,* 4/28/17]

The rationale behind CPSO's policy is popping up in medical circles outside of Ontario as well. In a recent article published by *The New England Journal of Medicine (NEJM)*, University of Pennsylvania bioethicists Ronit Y. Stahl and Ezekiel Emanuel (one of the chief architects of Obamacare) wrote, "Health care professionals are not conscripts, and in a freely chosen profession, conscientious objection cannot override patient care." "Conscientious objection still requires conveying accurate information and providing timely referrals to ensure patients receive care," they explained. Further, doctors who want to "prioritize personal values over professional duties must choose a less personally fraught occupation." [*NEJM*, 4/6/17]

Likewise, in an editorial published in *The Journal of Community & Supportive Oncology (JCSO)*, Dr. Thomas Strouse opined, "I have come to view 'active non-participation' in legal PAD [physician-assisted death]—that is, decisions by individual physicians and/or health systems not only to not provide, but also not refer patients to possibly willing providers and systems without regard for specific clinical contexts—as a toxic form of patient abandonment. " [*JCSO,* January– February, 2017]

Patients Rights Council consultant Wesley J. Smith calls this kind of thinking "euthanasia tyranny." "Think about this," he wrote. "Three years ago [in Ontario], it would have been a felony for doctors to kill patients, potentially landing them in prison." [The Corner, *National Review,* 5/18/17]

This trend against conscientious objection threatens not only doctors and other professionals—nurses and pharmacists—but also faith-based hospitals, hospices, and nursing homes. In both Canada and the US, civil rights and pro-MAiD groups have been arguing that these medical facilities should be forced to provide euthanasia and/or assisted suicide, especially if the facility's non-participation creates an undue burden on patients seeking MAiD access. [Dying with Dignity Canada, Press Release, 10/6/16; CBC News, 3/20/17; Statnews.com, 1/19/17] ■

Mayo Clinic study finds over 20% of patients are totally misdiagnosed

A study, published in the *Journal of Evaluation in Clinical Practice (JECP)*, has found that almost 88% of patients who went to the Mayo Clinic for a diagnostic second opinion ended up with a new diagnosis. In 21% of the cases, patients received a completely different diagnosis, while 66% received a "refined or redefined" diagnosis. The original diagnosis made by the primary care doctor was confirmed in only 12 percent of the cases.

According to lead researcher Dr. James Naessens, diagnostic errors can cause harm to the patient and even death. "Knowing that more than 1 out of every five referrals may be completely [and] incorrectly diagnosed is troubling—not only because of the safety risks for these patients prior to the correct diagnosis, but also because of the patients we assume are not being referred at all," he said.

To cut costs, health insurers often set limits on referrals outside of their network of providers. This significantly lessens the number of second opinion referrals made by primary care practices to medical specialists who have the expertise to more accurately assess a patient's condition. [*JECP,* 4/4/17; Mayo Clinic Press Release, 4/4/17]

This is particularly troubling considering that, while all the existing state doctor-prescribed suicide laws in the US require a consulting physician's second opinion before lethal drugs can be prescribed, none require that the second physician be an actual specialist. With the 88% diagnostic error rate found in this study, the likelihood that patients misdiagnosed as terminal are being prescribed fatal drugs is very real. ■

News briefs from home & abroad . . .

- **Arizona:** Assisted suicide is not legal in Arizona, but that didn't stop lawmakers from proactively passing a bill (SB 1439) that would protect the conscience rights of health care professionals and facilities who choose not to participate in intentionally life-ending procedures or processes. Governor Doug Ducey signed the bill into law on March 24. Should doctor-prescribed suicide ever become legal in the state, there's a law already on the books that prohibits discriminating against or penalizing conscientious objectors for not "causing or assisting in causing the death of any individual, such as by assisted suicide, euthanasia or mercy killing."

- **New York:** On May 30, the NY Court of Appeals, the state's highest court, heard oral arguments in *Myers v. Schneiderman,* a case originally filed in 2015 that challenged the constitutionality of NY's statutes banning assisted suicide and sought an injunction to prohibit the prosecution of doctors who prescribe lethal drugs to terminally ill patients. A lower court dismissed the case, saying that the US Supreme Court had already ruled, in the 1997 case *Vacco v. Quill,* that NY's statutes were constitutional. Then the plaintiffs—three patients, five doctors, and End of Life Choices NY (formerly Compassion & Choices of NY)—appealed the case to an intermediate appellate court, but their arguments were unanimously rejected by the panel of four judges. Now, before the highest court, attorneys for the remaining plaintiffs argued that prescribing lethal drugs is aid-in-dying, not assisted suicide. Consequently, it's not against law, they said. A decision by the Court of Appeals is expected in late summer. If the court were to rule in favor of the plaintiffs, it doesn't mean assisted suicide would be legalized, only that the plaintiffs could return the case to the lower courts for deliberation. [*Times Union,* 5/29/17; AP, 5/30/17; News 10, 5/30/17; *Courthouse News*, 5/31/17]

- **Washington, D.C.:** A new study on cancer and the risk of suicide found that the suicide rate in patients with any type of cancer was 60% higher compared with the general population. The suicide rate for patients diagnosed with lung cancer, was astronomically high: 420% higher than the general public. (That's not a typo.) The study's findings were presented at the American Thoracic Society's 2017 International Conference in Washington, D.C., on May 23. "We wanted to see what the impact of one of life's most stressful events is on patients," explained Mohamed Rahouma, M.D., the study's lead researcher from Weill Cornell Medical College/NY Presbyterian Hospital. "While cancer diagnosis counselling is an established practice, referral for ongoing psychological support and counseling typically does not happen," he said. [American Thoracic Society, Press Release, 5/23/16] The annual assisted-suicide reports from Oregon and Washington State substantiate the lack of psychological support. The number of patients who are referred for a psychological evaluation before receiving lethal drugs from their doctors is extremely low, ranging between 3% to 5% of the total number of prescribed-death cases.

- **Australia:** For the last year, the debate over "voluntary" euthanasia has been raging in the Australian states of Victoria, New South Wales (NSW), South Australia, and Tasmania. The Victoria government created a series of committees and panels, not to study if euthanasia should be legalized, but rather how to make a euthanasia law safe. As a result, a draft "Voluntary Assisted Dying Bill" is expected to be introduced in the Victoria Parliament later this year. Likewise, a NSW parliamentary working party has been drafting that state's proposed euthanasia bill and could introduce it as early as August of this year. Last November, the South Australian Parliament defeated its "Death with Dignity Bill" by one vote. Another bill was overwhelmingly rejected on May 24 by the Tasmanian Parliament. ■

PRC ALERT

The America Medical Association (AMA) is considering changing its decades-long opposition to doctors participating in the intentionally induced deaths of patients. There is an effort within the AMA for the group to take a neutral stand on doctor-assisted suicide in 2017. We urge readers who are concerned about this possible policy change to express those concerns to:

Andrew W. Gurman, MD
AMA President
330 N. Wabash, Ste 43482
Chicago, IL 60611-5885
Phone: 312-464-5618
Fax: 312-464-4094
Email:
Andrew.gurman@
ama.assn.org

Bette Crigger, PhD
Secretary
Council on Ethical & Judicial Affairs
330 N. Wabash, Ste 43482
Chicago, IL 60611-5885
Phone: 312-464-5223
Fax: 312-224-6911

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.

Executive Director: Rita Marker, J.D.
Assistant Director: Jason Negri, J.D
Consultant: Wesley J. Smith, J.D.
Editor: Kathi Hamlon

Patients Rights Council
P.O. Box 760
Steubenville, OH 43952 USA
800-958-5678 or 740-282-3810
www.patientsrightscouncil.org