Update
International Task Force on Euthanasia & Assisted Suicide
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Competing Montana bills planned for 2011

Battle lines are being set for Montana's lawmakers over the issue of doctor-assisted suicide. Two bills are currently being drafted, one to formally legalize assisted suicide, the other to expressly prohibit it. Both are set to be introduced in January 2011 when the new legislative session begins.

The need for an explicit assisted-suicide statute became apparent after the Montana Supreme Court handed down its 2009 ruling in *Baxter v. Montana*. The high court heard the case after the state appealed an earlier ruling by District Court Judge Dorothy McCarter. McCarter held that the Montana State Constitution guarantees the terminally ill the fundamental right to "die with dignity," a right that includes assistance from a doctor who would be protected from criminal liability. [*Baxter v. Montana*, Decision and Order, Cause No. ADV-2007-787, Mont. 1st Jud. Dist. Ct., 12/5/08]

But the state Supreme Court overturned McCarter's decision that established a constitutional right to assisted suicide, and, instead, put the legalization question in the laps of state legislators. In a 5-2 decision, the high court ruled that no Montana statute expressly makes doctor-assisted suicide illegal or against public policy. [*Baxter v. Montana*, DA 09-0051, 2009 MT 449, MT Sup.Ct., 12/31/09]

Senator Greg Hinkle (R-Thompson Falls) wants to change that and is drafting the Montana Patient Protection Act, a bill to make assisted suicide clearly illegal in the state. He recently wrote that his bill is based on the state's policies to prevent escalating cases of elder abuse and suicide. [*Missoulian*, 6/29/10]

Representative Dick Barrett (D-Missoula) wants to legalize assisted suicide explicitly. He is drafting a bill based on Oregon's law that, he said, will protect doctors from criminal liability and professional sanctions. [*Helena Independent Record*, 7/9/10] ■

Assisted-suicide group loses in Connecticut, sets sights on Idaho

Compassion & Choices (C&C) and its legal director and chief litigator Kathryn Tucker have been persistently pushing their pro-assisted-suicide agenda in Connecticut since 1995. After three failed attempts to get the state legislature to pass bills legalizing assisted suicide, Tucker, along with two local doctors, turned to the Connecticut judiciary and filed a lawsuit on October 7, 2009, challenging the state's law banning assisted suicide—specifically, how the law applies to doctors who intentionally facilitate the suicides of their patients. The suit was Tucker's attempt to officially exclude "aid in dying" (C&C's euphemism for doctor-assisted suicide) from the legal definition of "assisted suicide." She said it would be the model for future lawsuits in many other states with similar assisted-suicide laws. [*Hartford Courant*, 10/7/09]

Blick et al. v. Connecticut

Connecticut's law clearly defines the crime of assisted suicide. "A person is guilty of manslaughter in the second degree when: (1) He recklessly causes the death of another person; or (2) he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide." [Conn. Gen. Stat. §53a-56(a)] But, according to the complaint C&C filed in Superior Court, the state's assisted-suicide statute "does not provide a valid statutory basis to prosecute any licensed physician for providing aid in dying because the choice of a mentally competent terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable does not constitute 'suicide'…" [*Blick v. Connecticut*, Verified Complaint, 9/20/09, pp. 8-9] In other words, when a terminally-ill patient intentionally takes lethal drugs prescribed by a doctor, that patient is not committing "suicide," so the prescribing doctor is not assisting a "suicide." He is simply providing "aid in dying" and cannot be prosecuted under the assisted-suicide statute.

Court ruling

But C&C's slick attempt at verbal manipulation backfired. On June 1, 2010, Superior Court Judge Julia Aurigemma rejected C&C's arguments and dismissed the case outright before the case was fully heard. Instead of finding "aid in dying" distinct from assisted suicide as C&C argued, the judge ruled that the law banning assisted suicide "is aimed at precisely the

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situation presented by the plaintiffs [C&C]—aiding a terminally ill patient, in unbearable pain, to end his or her own life—and precisely the situation in which physicians are most likely to participate." "The statute in question, [§53a-56], and the commentary to and legislative history of the statute make it quite clear that assisting a suicide, even for humanitarian reasons, is a crime." [*Blick v. Connecticut*, No. CV-09-5033392, Memorandum of Decision on Motion to Dismiss, at 13-14 (Conn. Super. Ct., June 1, 2010). Hereafter cited as *Blick*.]

Furthermore, the judge held,

> Not only is the text of §53a-56 devoid of any support for the plaintiffs' interpretation of the term "suicide," but it also does not include any exception from prosecution for physicians who assist another individual to commit suicide…. Instead, §53a-56 applies to every "person… [who] intentionally causes or aids another person, other than by force, duress or deception, to commit suicide." [*Blick*, at 24]
>
> The legislative history of §53a-56… further supports the conclusion that the legislature intended the statute to apply to physicians who assist a suicide, and intended the term "suicide" to include self-killing by those who are suffering from unbearable terminal illness. [*Blick*, at 25]

The fact that lawmakers intended the statute to ban doctor-assisted suicide, the judge argued, can be seen in the legislature's repeated rejection of multiple bills (in 1995, 1997, and 2009) that would have amended §53a-56 "to expressly permit such assistance." "If such assistance were already permitted [as C&C contends]," the judge wrote, "there would be no need to amend the statute." [*Blick*, at 14]

The judge also dismissed the case because C&C and co-plaintiffs Drs. Gary Blick and Ronald Levine, were attempting to sue the state's Division of Criminal Justice, the chief state's attorney, and thirteen state's attorneys, an action prohibited by the common law doctrine of sovereign immunity, which shields the state and its officials from lawsuits. Moreover, she ruled that the case "presents a nonjusticiable claim, one which must be decided by the Connecticut legislature, and not by the court." [*Blick*, at 21 & 26]

Tucker's reaction to defeat

Tucker expressed both disappointment and indignation after the judge handed down her decision. "We haven't had the opportunity to get into all the depth and breadth of why we take [a] different view," she told the press. "We'd like the opportunity to do that instead of being summarily dismissed at the threshold." But, citing Connecticut's "unusually strict" sovereign immunity law, Tucker ultimately decided that C&C would not be appealing the judge's decision. [*Hartford Courant*, 6/8/10 & 6/24/10; *New Haven Register*, 6/26/10]

Idaho: C&C's next targeted state

Just a little more than three weeks after Judge Aurigemma cut short any hope C&C had of adding Connecticut to its list of conquered states, Tucker was busily laying the groundwork for a major push to legalize doctor-prescribed death in Idaho. Having recently moved to Ketchum, Idaho, Tucker approached the issue as a professional resident concerned about improving end-of-life care and expanding the rights of terminally-ill patients. Her strategy was three-pronged: (1) tell the public that they have a right to choose "aid in dying" as an end-of-life care option; (2) tell lawyers that Idaho has no law barring "aid in dying"; and (3) tell physicians that, without an explicit law prohibiting the practice, they are currently free to prescribe intentionally lethal drugs so that patients can end their lives—what most people call physician-assisted suicide.

Over the summer months, Tucker blitzed the state. She authored or co-authored articles published in the *Coeur d'Alene Press* (6/27/10); the ACLU's newsletter, *Idaho Liberty* (Spring/Summer 2010); and the Idaho State Bar's publication, *The Advocate* (August 2010). In addition, she addressed patrons of the Ketchum Community Library (6/24/10); members of the Unity Church of North Idaho (6/27/10); and, most importantly, members of the Idaho Medical Association (7/17/10).

Her messages, however, were at best misleading. While it's true that Idaho does not have a statute specifically stating that assisted suicide is illegal, the practice is nevertheless prohibited under common law. According to Idaho Code §73-116, "The common law of England, so far as it is not repugnant to, or inconsistent with, the constitution of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state."

Tucker also claimed that Idaho's doctors need only look to the neighboring states of Oregon, Washington, and Montana—which allow "aid in dying"—for the appropriate "standard of care" at the end of life. This standard of care, established by these local communities, she said, is what should directly influence the standard of care in Idaho and will be the standard accepted by Idaho courts. But this claim was refuted in a response to her address to the Idaho Medical Association (IMA) by Dr. Robert Ancker, medical director of Hospice of North Idaho. It is not the medical practice established in large regions or states that sets the standard of care, Dr. Ancker explained. It is limited to the medical practice employed in the environment in which the physician works.

During Dr. Ancker's rebuttal, he asked his fellow physicians how many wanted assisted suicide legalized. No one raised their hand. ■

Proposed Oregon for-profit, assisted-suicide clinic… and other signs of the "slippery slope"

Since Oregon's Death with Dignity law took effect in 1997, the assisted-suicide advocacy group Compassion & Choices of Oregon (C&C-OR) has kept tight control of the law's implementation to prevent word of any abuses or violations from reaching the public. The group facilitates over 90% of Oregon's doctor-prescribed suicides and has a statewide network of doctors and pharmacists to prescribe and dispense lethal drugs. It was this control that prompted a strong editorial in the state's largest newspaper. "Oregon's physician-assisted suicide program has not been sufficiently transparent," the editorial read. "Essentially, a coterie of insiders run the program, with a handful of doctors and others deciding what the public may know…." [*Oregonian*, 9/20/08]

So when Dr. Stuart Wiesberg, a 37 year-old, Portland psychiatrist, suddenly announced his plans to open the first ever Dignity House where people can go for a customized assisted suicide for a price, C&C-OR's executive director George Eighmey immediately went into damage control mode, calling the plan "ghoulish" and the "commercialization of death with dignity." [ABC News, 6/24/10] But what Eighmey didn't say was that there is nothing in Oregon's assisted-suicide law that legally prevents the establishment of for-profit suicide clinics.

For one day, Wiesberg had the media's full attention. He already had the house in Portland and had filed the necessary incorporation papers with the state. He even had his web site, endoflifeconsultants.com, up and running.

The web site spelled out the law's requirements—to which he pledged total compliance—and the prices of the various death services he would provide. The full death package, including catering, flowers, video taping, a beautician, "magical" music, fine linens, and a security agent, if needed, would cost $5,000. But all fees had to be paid ahead of time by cashier's check or postal money order, unless the soon-to-be-dead person opted for the full package. Then a credit card payment directly to Wiesberg's account would be okay.

Wiesberg said he got the idea for Dignity House after seeing a recent interview featuring Jack Kevorkian, Michigan's Dr. Death. At that moment, he decided there were too many barriers in the assisted-suicide law. He was so inspired by Kevorkian that he invited him and about thirty others to a dinner on July 21 to unveil his new business. [*Oregonian*, 6/23/10; KGW-TV, 6/22/10; endoflifeconsultants.com]

But that dinner never took place, and the web site is no longer online. After just one day of Dignity House being headline news, the Oregon Medical Board (OMB) issued an emergency order suspending Wiesberg's license to practice medicine, ostensibly not because of Dignity House, but for improperly prescribing drugs to two of his regular psychiatric patients. According to the OMB, Wiesberg "has recently manifested behavior indicative of grandiosity, compulsivity, and risk taking behavior that calls his ability to practice medicine competently and in conformity to the law in question." [OMB, Re: Weisberg, Order of Emergency Suspension, 6/24/10]

While the suspension of his medical license appears to have also suspended his plans for Dignity House, Wiesberg could still legally operate the assisted-suicide clinic as a businessman. He has indicated, however, that, if the suspension is not lifted, he will walk away from the project. But he has also stated, "If they want to suspend me, I'll fight it." [AP, 6/25/10]

Wiesberg's contention that Oregon's assisted-suicide law has too many barriers may be a sign of things to come. A recent editorial in the *Albany Democrat Herald* called for the assisted-suicide law to be "adjusted" to allow people in "helpless circumstances," who can't self-administer the lethal drugs as the law requires, to qualify for a legal assisted suicide. [*Democrat Herald*, 6/29/10] Earlier, the same newspaper published a letter calling for the law to be amended to allow healthy, elderly individuals who are tired of living or "no longer contribute to society" to opt for assisted suicide. [*Democrat Herald*, 4/26/10] ■

Final Exit Network tries billboard advertising

Final Exit Network (FEN) wants America to know it exists and buy into its cause—assisted death-on-demand for just about anyone who claims to be suffering physically or mentally. During June and July, FEN had large black and yellow billboards erected near high-traffic roadways in San Francisco and New Jersey, with plans to do the same in Florida and other areas with large elderly populations. The billboards simply say, "My Life My Death My Choice" followed by "FinalExitNetwork.org."

The street in San Francisco FEN chose for its billboard was Van Ness Avenue, one of the main feeder roads to the Golden Gate Bridge, a bridge notorious for the 1,300 suicidal people who have jumped off the landmark to their deaths. The New Jersey billboard was placed on the busy Route 22 in Hillside, and the one in Florida is slotted for the often crowded I-75. International Association of Suicide Prevention President Lanny Berman, called FEN's advertizing "irresponsible and downright dangerous." "It is the equivalent of handing a gun to someone who is suicidal." [Fox News, 7/15/10; ABC News, 7/19/10] FEN has decided to change the wording on future billboards. [Jerry Dincin, Right to Die List Serv., 8/26/10] ■

Death in Europe: When laws no longer matter

There appears to be a disturbing trend in certain European countries, a trend that threatens the lives of society's most vulnerable members—those physically or mentally ill, the disabled, and the elderly. The threat occurs when laws that have been passed to protect citizens are no longer taken seriously. And, when those laws deal with euthanasia and assisted suicide, the danger posed is especially clear. Consider the following examples:

Great Britain - Currently, aiding, abetting, counseling or procuring the suicide of another is illegal under Britain's Suicide Act of 1961. Anyone violating the law could face up to 14 years in prison. But, on February 25, 2010, Britain's Director of Public Prosecutions (DPP), Keir Starmer, issued finalized guidelines for deciding whether assisted-suicide cases in England and Wales will be prosecuted. The new guidelines, ordered by a 2009 House of Lord's court ruling, apply to assisted-suicide deaths occurring at home or abroad (i.e., at a Swiss suicide clinic). According to Starmer, "The policy is now more focused on the motivation of the suspect rather than the characteristics of the victim." [DPP Press Release, 2/25/10] In other words, if a person facilitates a death for compassionate reasons, the individual will more than likely not be prosecuted. But, while a suspect can claim to have been motivated by compassion, the real motive is often impossible to prove, since any investigation occurs after the victim—who may be the only one who knew the suspect's real motive—is dead. This fact prompted Dr. Peter Saunders of Britain's Care Not Killing to write, "The guidelines are thereby a recipe for elder abuse and abuse of people with disabilities, chronic illnesses and terminal illnesses by unscrupulous individuals who can tick the right boxes." [Personal e-mail regarding the interim draft of the guidelines, 9/27/09]

The new guidelines were used to determine whether Dr. Michael Irwin, a longtime euthanasia activist, would be prosecuted for the 2007 assisted-suicide death of Raymond Cutkelvin, a cancer patient. Irwin, 79, has openly admitted to assisting the deaths of at least nine people. In the Cutkelvin case, he not only went with Cutkelvin to the Swiss assisted-suicide clinic Dignitas, but he actually helped pay for Dignitas' services. According to the DPP's press release on the case, "while there is sufficient evidence to prosecute" Dr. Irwin, "such a prosecution would not be in the public interest and no further action should be taken" against him. [DPP's Press Release, 6/25/10; *Daily Telegraph*, 6/26/10]

It remains to be seen how Britain's Crown Prosecution Service and the DPP will handle Dr. Howard Martin, a 75-year-old general practitioner who—perhaps because of the more lenient attitude toward assisted suicide—recently told a London newspaper that he euthanized 18 patients by injecting them with overdoses of morphine and other painkillers. In two cases, he injected the patients without their consent. He claims to have acted out of "Christian compassion" and in the patients' "best interest." While euthanasia (the direct killing of another) is clearly illegal in Britain, Martin was acquitted in 2005 in the deaths of three of his patients, deaths he now admits to have caused. In one case the patient would have likely recovered if Martin had not injected him. But at the time of the criminal trial, Martin remained silent, refusing to answer any questions, so he was acquitted. At the urging of his victims' irate family members, police have reopened their investigation of Martin in light of his new admissions, but, as of this writing, no charges have been filed. [*Daily Telegraph*, 6/19/10; 7/30/10]

Scotland - Scotland is not bound by Britain's new assisted-suicide guidelines, yet an increasingly lenient attitude toward the crime is apparent. In 2008, Dr. Iain Kerr, a 63-year-old euthanasia supporter, was suspended from practicing medicine for six months and subsequently put on restriction by the General Medical Council (GMC) for prescribing sleeping pills to an elderly suicidal woman to use to end her life. She ended up not taking them, but years later died after she took an overdose of tamazepan that Kerr had knowingly given her just days after she attempted suicide but failed. At the GMC suspension hearing, medical expert Dr. Leonard Peter testified, "It's clearly illegal to prescribe to a patient a drug with the intention that patient should use it to end their life." But criminal charges were never filed, and, on August 6, 2010, Kerr was deemed fit once again to practice medicine without any restrictions by the GMC. [*Daily Record*, 7/18/08; *Scotland Herald*, 8/7/10; *Scotsman*, 8/7/10]

The Netherlands - In 2002, the Netherlands formally legalized euthanasia and assisted suicide after 30 years of allowing those practices to occur. The Dutch claimed that the new law contained "strict" guidelines to protect patients and to designate the limited qualifications and conditions under which euthanasia and assisted suicide could be performed. Now, the Dutch Right-to-Die Association (NVVE) says there is a need to establish new hospitals or clinics that provide euthanasia and assisted-suicide services exclusively. The group plans to study the feasibility of such facilities until the end of the year.

According to a Dutch news service, these clinics will be "for people with a deep desire to end their lives, but *who fall outside the current euthanasia law*." [Dutch News.nl, 8/9/10; emphasis added] NVVE director Petra de Jong explained that, while most hospices offer euthanasia, dementia and Alzheimer's patients, those with chronic psychiatric problems, and people who just don't want to continue living do not qualify for hospice care because they are not dying. These patients have nowhere else to turn

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News briefs from home & abroad . . .

- On June 30, 2010, the **British Royal Society of Medicine** strongly defeated a motion calling for the legalization of assisted suicide. For an entire day, the group heard arguments on both sides of the legalization issue. But after the debate, Society members voted 52 for and 83 against the motion that read: "This house believes that assisted suicide should be legal in the U.K." [*British Medical Journal,* 7/10/10]

- **Switzerland** has the most liberal assisted-suicide law in the world, which is why the **Zurich**-based, suicide clinic **Dignitas** has been able to turn the country into a magnet for suicidal foreigners from around the world. The growing **suicide tourism** problem and the public outcry against it prompted **Justice Minister Eveline Widmer-Schulumpf** to announce last October the drafting of two bills, one to ban assisted-suicide outright and the other to place restrictions on all assisted-suicide groups, but especially on Dignitas, whose clients include the physically healthy as well as paranoid schizophrenics who end up dead 24 hours after arriving in the country. But on August 8, 2010, the justice minister did an about-face, calling for the government to reconsider its plan to ban or limit assisted suicide. In Switzerland, that's likely the kiss of death for suicide regulation. [SwissInfo, 8/8/10; World Radio Switzerland, 8/10/10]

  It also appears that Dignitas founder/director **Ludwig Minelli** is "off the hook" for illegally dumping urns containing the ashes of dead clients into scenic **Lake Zurich**. The pile of urns was accidently found in April by divers who said there were hundreds of them all bearing the logo of the crematorium Dignitas uses exclusively. But, on July 28, 2010, Swiss prosecutors dropped the criminal investigation of Minelli, saying there was insufficient evidence to ascertain who actually did the dumping—a decision made despite a first-hand account from someone who went with Minelli on one of his early morning dumping runs and Minelli's own comments about how he routinely "tosses remains into the water, urns and all" that was published in a magazine two months *before* the urns were discovered. [*Times* (London), 5/9/10; *The Atlantic,* 3/10; World Radio Switzerland, 8/4/10; AP, 8/4/10]

  Minelli is still in the news, however. The respected Swiss magazine ***Beobachter*** conducted a recent investigation of Minelli's finances. It seems that when Minelli started Dignitas in 1998 he had no taxable assets. Yet, by 2007, just 9 years later, he had a personal fortune amounting to more than $1.8 million (US), including a villa near Zurich. For the last five years Minelli has refused to make Dignitas' financial records public, claiming privacy concerns. But Swiss law states that assisted suicide is only legal if it is done without selfish motives, like undue profit making. According to former Dignitas nurse **Soraya Wernli**, "[Minelli] has found a way to make a lot of money out of death and the fear of it." [*Daily Mail,* 6/24/10; *Daily Telegraph*, 6/24/10; AOL News, 6/24/10]

- In the **Netherlands**, the number of euthanasia and assisted-suicide deaths has risen so sharply that the **Dutch Health Ministry** announced it would launch an inquiry into why there are so many. According to the annual report of the country's **regional commissions** that oversee euthanasia and assisted-suicide practice, the number of reported cases jumped 13% in 2009 to a total of 2,636 deaths (a whopping 2% of all 2009 Dutch deaths). Last year's rise followed a 10% increase in 2008. The vast majority of the cases for both years were euthanasia deaths. [NRC Handelsblad, 6/15/10; *Daily Telegraph,* 6/20/10]

- A 15-member **National Assembly** committee in **Canada**'s liberal **Quebec Province** will be holding public hearings in at least 10 cities across the province to ascertain where the public stands on euthanasia and assisted-suicide legalization. Earlier this year, the committee consulted with 32 "experts" on the issue, resulting in the document "**Dignity in Dying.**" The document will be used as guidance during the public hearings starting in September. While some groups—like the **Quebec College of Physicians**—have already voiced support for legalization, groups of physicians and patients' rights advocates have issued strong warnings against both induced-death practices. In addition, a new coalition, called **Living with Dignity,** has been formed. Its members

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Europe: When laws no longer matter, *continued from page 4*

because often their doctors refuse to euthanize them or give them the means to end their lives. Each year, de Jong said, approximately 500 of these patients request euthanasia or assisted suicide, but only 8 are actually helped to die. The availability of new euthanasia hospitals and clinics for such patients would solve the problem, she said. [Radio Netherlands, 8/9/10; *The Scotsman*, 8/12/10] But lost in NVVE's attempt at "problem" solving is the fact that one of the "strict" and "protective" provisions of the 2002 Dutch euthanasia law is that a patient's euthanasia or assisted-suicide request must be voluntary and well-considered—a request that dementia and Alzheimer's patients as well as patients with serious psychiatric conditions and acute depression are not usually capable of making. ■

News briefs from home & abroad, *continued from page 5*

are health care professionals, lawyers, pharmacists, business people, and ordinary citizens, all of whom oppose assisted suicide**.** In a press release, the coalition warned that the planned hearings "may be a public diversion to rubber stamp a decision the **Charest government** has already made to permit euthanasia and assisted suicide in Quebec hospitals." [Living with Dignity Press Release, 6/22/10; CBC News, 8/26/10; *Globe & Mail*, 5/25/10]

- Six years ago, **Tang Siu-pun** wanted to die. He was a talented gymnast who, in 1991, fell and ended up paralyzed from the neck down. In 2004, he appealed to **Hong Kong**'s leader asking help to die, igniting a huge debate over the illegal practices of euthanasia and assisted suicide. He later changed his mind, and his condition improved. In August—after being hospitalized for 19 years—Siu-pun went home to a specially adapted flat, excited about his new life. [BBC, 8/19/10; *Earthtimes*, 8/19/10] ■

Paul Longmore

1947 - 2010

On August 9, 2010, disability-rights advocate and historian Paul Longmore died unexpectedly. His death is a huge loss for the disability community as well as for anyone fighting to keep vulnerable patients safe from the threats posed by legalized doctor-prescribed death. Paul knew the vulnerability of disabled patients. Childhood polio had left him partially paralyzed and unable to use his hands. It took him 10 years to write his first book by punching letters with a pen in his mouth. He became a tenured professor at San Francisco State University, where he founded and directed the Institute on Disability. He also contributed to the founding of Not Dead Yet, a disability-rights group committed to opposing assisted suicide.

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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