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Patients Rights Council

Update

New Mexico court hears arguments in assisted-suicide law challenge

When is assisted suicide not assisted suicide? When a doctor does the assisting, according to lawyers representing the prescribed-death advocacy group Compassion & Choices (C&C) and the American Civil Liberties Union of New Mexico (ACLU-NM).

Kathryn Tucker, C&C's director of legal affairs, and Laura Schauer Ives, ACLU-NM's legal director, made that claim before 2nd Judicial District Judge Nan Nash during a two-day hearing in December. Their case, *Morris v. New Mexico*, is based entirely on verbal manipulation. What doctors practice when they prescribe lethal drugs so patients can end their lives is "aid-in-dying," the lawyers argued, and it is

totally distinct from the crime of assisting a suicide.

According to Tucker, "This case challenges the assumption that vague, antiquated prohibitions of assisted suicide pertain to aid-in-dying. The assumption is unfounded. Such laws," she explained, "are intended to prevent the impulsive act of an otherwise healthy person to end his life, perhaps due to situational depression, causing impaired judgment. The choice of a mentally competent, terminally ill patient to cut short suffering before death, when the patient finds the dying process unbearable, is fundamentally different and not addressed by such laws." [compassionandchoices.org, 12/12/13]

But State Attorney General Gary King disagreed, saying, "As the plaintiffs describe it, the provision of 'aid-in-dying' is unquestionably assisted suicide." At the hearing, Assistant Attorney General Scott Fuqua argued that aid-in-dying and assisted suicide have the same result—the person's death—and that is a violation of the law passed by the legislature. [*Albuquerque Journal*, 12/11/13; AP, 12/12/13]

C&C and the ACLU-NM filed the lawsuit in November 2012 on behalf of two doctors and a woman with uterine cancer. One of the doctors, Katherine Morris, formerly practiced in Oregon where she prescribed lethal drugs for dying patients. The judge is expected to issue a ruling in January. ■

Also in this Update

Scottish Parliament to grapple with another dangerous assisted-suicide bill... 2

Canadian spoon-feeding case heard in court 2

21% approve of euthanasia for those "tired of living" 2

News notes from home and abroad 3

Belgian Senate passes bill allowing euthanasia for children

The Belgian Parliament's upper house has passed a bill that will expand the country's liberal euthanasia law by allowing doctors to end the lives of terminally ill children. The bill was passed in the Senate on December 12, 2013, by a vote of 50 to 17. It now goes to the Chamber of Representatives, Belgium's lower house, where it is expected to pass before May 2014.

Belgium's current euthanasia law, enacted in 2002, stipulates that patients must be 18 or older to qualify for a doctor-induced death. The bill passed by the Senate will do away with that restriction. In fact, the new measure contains no age limit whatsoever—a first among countries that have legalized euthanasia. It simply requires that the child "possesses the capacity of discernment." In addition, the child must be terminally ill and experiencing "constant and unbearable physical suffering" with no pros-

pect of improvement, and the parents must agree to their child's euthanasia death.

The bill's sponsor, Socialist Party Senator Philippe Mahoux, called giving children access to euthanasia the "ultimate gesture of humanity." But not everyone agrees. Eugen Brysch, head of the German patient protection foundation Deutsche Stiftung Patientenschutz, called the bill "neither a laudable pioneering move nor an act of humanity, but rather a sad declaration of bankruptcy." [*New York Times*, 12/12/13; *Deutsche Welle*, 12/13/13]

"I don't think we should be proud of killing our children when we have good palliative care," observed Carine Brochier of Brussels' European Institute of Bioethics. "A child cannot buy a house in Belgium. A child cannot buy alcohol in Belgium. And this law would allow a child to ask to be killed!" [*Newsweek*, 12/5/13; *Deutsche Welle*, 12/13/13] ■

Scottish Parliament to grapple with another dangerous assisted-suicide bill

It was just three years ago that the Scottish Parliament hotly debated and overwhelmingly defeated—by a vote of 85 to 16—a bill that would have legalized both euthanasia and doctor-assisted suicide. Parliament's strong opposition centered on concerns that the bill posed a real danger to vulnerable patients.

Undeterred, MSP Margot MacDonald, the defeated bill's sponsor, immediately began the process of revising her measure to make it appear more patient protective in hopes of undercutting any future opposition to the re-drafted measure. On November 13, 2013, she began her second campaign to legalize prescribed death by introducing the new bill in Parliament.

As the title of the substantially revised measure suggests, the "Assisted Suicide (Scotland) Bill" no longer allows euthanasia, the direct killing of a patient by a doctor. Its scope is now limited to assisted suicide by the patient's "own deliberate act" to assuage Parliament members' prior concerns. But members beware: The new bill still poses dangerous risks for patients.

Adults and teenagers, ages 16 and 17, can qualify for suicide assistance if

they are patients of a Scottish medical practice and have a qualifying medical condition, which can be a "terminal," "life-shortening," or "progressive" illness. In the latter case, it can either be terminal or life-shortening. [Assisted Suicide (Scotland) Bill, Part 2, § 4 (2), 11/13/13. Hereafter cited as Bill.]

Nowhere in the bill are "terminal," "life-shortening," or "progressive" actually defined. This leaves open the possibility that common, potentially life-shortening conditions with which people can live for many years (like diabetes or high blood pressure) and progressive conditions (such as osteoarthritis, multiple sclerosis, or early dementia) could qualify a patient for a prescribed death.

The bill's "Policy Memorandum," officially prepared on behalf of MacDonald, confirms that MacDonald wanted a very broad assisted-suicide law: "The Bill is not just aimed at the small number of people whose quality of life is already so low that they would prefer not to go on living. It is also aimed at those whose diagnosis has allowed them to see such a situation in prospect, and even those who are currently healthy but fear for an uncertain future." ["Policy Memorandum," 5]

Another controversial bill mandate is the creation of an entirely new profession, the "Licensed [Suicide] Facilitator." These facilitators are to be specially trained and licensed by an association or group chosen by the Scottish Ministers. According to the bill's "Policy Memorandum," "It is envisioned that organizations generally supportive of assisted suicide (such as the Humanist Society Scotland) may be willing to take on this role." ["Policy Memorandum," 47]

The suicide facilitator can be as young as 16 years of age and is responsible for providing the patient with "practical assistance" as well as "comfort and reassurance" before, during, and after "the act of suicide (or attempted suicide)." A facilitator is also charged with the task of notifying the police that a legal assisted suicide has taken place and whether or not it successfully resulted in the patient's death. If the patient doesn't commit suicide before a 14-day death window expires, the facilitator is responsible for taking the lethal drugs or other paraphernalia away from the patient. [Bill, Part 2, §19 (a)-(d)] ■

Canadian spoon-feeding case heard in court

The husband and daughter of Canadian advanced Alzheimer's patient Margot Bentley want her caregivers to stop spoon-feeding her. They contend that Bentley, an 82-year-old former nurse, stipulated in a 1991 living will that, if she was ever in her present state, "I direct that I be allowed to die and not be kept alive by artificial means or 'heroic measures.'" Also, "no nourishment or liquids" were to be provided if there was no chance that she would recover.

But, Bentley's nursing home and the Frazier Health Authority argue that spoon-feeding is basic care, not medical care that can be withheld or withdrawn.

Currently, Bentley can swallow and opens her mouth when a spoon taps her lip. Caregivers say that, if she does not open her mouth, she is not being force-fed. Crown lawyer Jonathan Penner said caregivers risked charges of culpable homicide if they stopped her feedings.

Bentley's husband and daughter filed a lawsuit naming the nursing home, Frazier Health Authority, and the provincial government as defendants. The case was heard by the Supreme Court of British Columbia in December. The ruling is pending. [National Post, 9/7/13; Vancouver Sun, 11/19/13, 11/20/13] ■

21% approve of euthanasia for those "tired of living"

Research published in the *Journal of Medical Ethics* found that one in five people (21%) in the Netherlands think that the elderly should be helped to die if they are tired of living and are not seriously ill. Similarly, 19% indicated that they would want the same help to die if they were in that situation. One-third (36%) believed that the very old should have access to lethal pills so they can die if they want.

The findings are based on a random survey of 1,960 Dutch adults, 18 to 95 years-old, that was conducted in 2009 and 2010.

Incredibly, while only a minority approved of euthanasia for those simply tired of life, the study's authors concluded that "this topic may need to be taken seriously in the debate about end-of-life decision-making." [Journal of Medical Ethics (online), 12/13/13] ■



News briefs from home & abroad . . .

- **Vermont:** Jason Saltman, 47, was the first person under Vermont's new assisted-suicide law to formally request a lethal drug prescription from a doctor. Saltman, who had stomach cancer, planned to pick up the prescription from the pharmacy on Friday, November 22, and ingest the drugs the following Monday, but that didn't happen. According to his sister, Saltman died naturally on that Friday morning before the lethal drugs could be obtained. Robert Stirewalt, a state health department spokesman, confirmed that the state had received its first lethal drug request form, but said the law prohibited him from revealing any of the details. [*Burlington Free Press*, 12/13/13]

Vermont's assisted-suicide law was enacted on May 20, 2013, just days after narrowly passing in the legislature.

- **New Jersey:** Things are not going well for assisted-suicide activists in New Jersey. Their proposed "New Jersey Death with Dignity Act"—introduced as companion Assembly (A3328) and Senate (S2259) bills—has been languishing in the legislature with little or no activity. Even in the unlikely event that lawmakers were to pass the measure, the chances of it being signed into law by the governor are not good. Reportedly, when asked at a press conference if he backed the measure, Governor Chris Christie responded with one word, "Opposed." [*Capitol Quickies*, 12/3/13]
- **Oregon:** Oregon has taken its health care rationed, state Medicaid program to new lows. Last August, the state's Health Evidence Review Commission issued new guidelines regarding the availability of cancer treatment for low-income patients covered under the state Medicaid program. The guidelines now require that payment for certain cancer treatments be denied if patients are judged to be too sick, if they haven't responded well to prior treatments, or if they are unable to care for themselves.

In an article published in the *Statesman Journal*, Peter J. Pitt, president of the Center for Medicine in the Public Interest, wrote, "Through these new rules, Oregon state bureaucrats are severely restricting access to care and dooming potentially thousands of local patients to a premature death." Even Obamacare supporters, he wrote, "have taken to calling these treatment restrictions a death knell for poor cancer patients." [*Statesman Journal*, 11/4/13]

The new guidelines also state that, if potentially life-saving or life-prolonging cancer treatments are denied, patients will still be covered for palliative care. On Oregon's "Prioritized List of Health Services," the official list of treatments and services that the state **will** pay for, "Palliative Care" includes "Death with Dignity Act" (assisted suicide) services and drugs. ["New Cancer Treatment Guideline," 8/8/13, effective 10/1/13; "Prioritized List of Health Services," p. SI-1, 10/1/13]

- **Canada:** With the Quebec National Assembly poised to pass Bill 52, a measure based on Belgium's law that would legalize "medical aid-in-dying," a group called Canadian Lawyers Against Euthanasia and Assisted Suicide has drafted a "Declaration" and is currently gathering signatures nationwide. The declaration states in part,

We, as lawyers from across Canada, representing various legal traditions and philosophies, do not support the legalization of euthanasia or assisted suicide. We ask legislators to maintain and respect existing *Criminal Code* provisions and its life affirming values, thereby respecting society's fundamental principles, our right to life, and the life-affirming ethos central to medicine and law. [See, www.lawyersagainsteuthanasia.com]

(continued on page 4)

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News briefs from home and abroad, continued from page 3

- **Great Britain:** A High Court judge has ruled that a 78-year-old man, who has been in a vegetative state—possibly a minimally conscious state—since May, should not be resuscitated if his health deteriorates. The order, issued by Mr. Justice Mostyn, goes against the family’s wishes. The man, referred to only by his initials “SM,” had fallen down a flight of stairs and sustained a spinal injury. During the weeks that followed, he had several cardiac arrests, which caused brain injuries.

During the court hearing, one of SM’s sons told the judge, “[W]e would say keep him alive; that’s better than a tombstone for us.” Another son pleaded “They [the doctors] might lose a patient but we might lose a dad.” But the judge was unconvinced and ruled that it was “perfectly clear” to him that it would not be in “SM’s

best interests” to be resuscitated in the event of another cardiac arrest. Furthermore, the judge said, “Should this crisis eventuate it is clear there’s a significant risk of further mental deterioration of SM, even from the low level he is at at the moment.” [*Independent* (London), 12/4/13]

Reportedly, this judge issued another very controversial ruling in August 2012 that was just made public in December 2013. He ordered doctors to sedate a pregnant woman with bipolar disorder and then perform a caesarean section without her knowledge and against her wishes. According to the hearing transcript, Justice Mostyn told the court, “She should not know about this before she is taken and goes to hospital.” [*Daily Mail*, 12/4/13; *Telegraph*, 12/7/13] ■

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

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

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