



2018  
Vol. 32, No. 2

Patients Rights Council

# Update

## New AMA report recommends opposition to physician-assisted suicide

The American Medical Association’s Council of Ethical and Judicial Affairs (CEJA) has issued its long-awaited report on two issues related to doctor-prescribed suicide.

### AMA’s position on assisted suicide

The first issue dealt with a resolution that was submitted by the AMA’s Oregon delegation in the hope of getting the national medical group to change its staunch opposition to assisted suicide to being neutral on the issue. Resolution 15-A-16, titled “Study Aid-in-Dying as End-of-Life Option,” was submitted during the AMA’s House of Delegates’ June 2016 meeting and subsequently referred to the CEJA to study and consider.

At that time, the prescribed-suicide activist group Compassion and Choices (C&C) praised the AMA for accepting the resolution for study. In a press release, C&C President Barbara Coombs Lee al-

luded to why the AMA going neutral would help advocates in their campaigns to get more states to legalize prescribed suicide. She used the example of how, in 2015, the California Medical Association’s change from an opposition to a neutral stand on an assisted-suicide bill being considered in the legislature had directly “facilitated the enactment of California’s End of Life Option Act” in 2016. [C&C Press Release, 6/4/16]

But there won’t be any assisted-suicide activist groups praising the CEJA for the conclusions and recommendations that resulted from the council’s two-year, intensive study of the issue.

Addressing the risk of “unintended consequences” related to legalized doctor-assisted suicide, the CEJA report examined retrospective (after assisted death) case reviews—such as the annual

statistical reports that are issued in Oregon, Washington, and California—and whether they are effective in policing the practice. Such reviews often do not assess doctors’ reasoning in prescribed-death cases, the CEJA found, and “[t]o the extent that reporting and data collection in states that permit physician-assisted suicide have similar limitations, oversight of the practice may not be adequate.” [CEJA Report 5-A-18, 5/18, p. 4]

The state and the medical profession have a responsibility to effectively monitor assisted-death practices, CEJA said, and “to address promptly compromises in safeguards.” Even if there is evidence, as advocates claim, that there have been no “adverse consequences” related to state assisted-suicide laws, there is no “guarantee that such consequences would not occur in the future.” [p. 5]

*(continued on page 4)*

## Also in this Update

Ten states reject  
prescribed-suicide  
bills; one state  
votes bill into law ..... 2

Alfie Evans: A Case  
of Medical  
Authoritarian  
Power  
Wesley J. Smith..... 3

## Judge overturns California’s 2-year-old assisted-suicide law

A California Superior Court judge has ruled that the state law permitting doctor-prescribed suicide, called the End of Life Option Act (EOLOA), is unconstitutional. The law was passed by the legislature in September 2015, signed by Governor Jerry Brown in October 2015, and took effect in June 2016.

The lawsuit challenging the EOLOA was brought by the California-based Life Legal Defense Foundation on behalf of the American Academy of Medical Ethics and six California physicians. The suit was filed just prior to the law taking effect.

Judge Daniel A. Ottolia issued his ruling on May 15, 2018. The EOLOA is null and void, he found, because it was passed by the legislature in a manner that violated a section of the California Constitution that mandates rules related to special legislative sessions.

The Constitutional violation was not just a technicality, as assisted-suicide advocates now claim. It was a blatant, unlawful abuse of California’s legislative process.

During the 2015 regular session—after the EOLOA had already been passed by the full Senate—the measure was stopped cold in the Assembly Health Committee because several members felt the measure posed real dangers to their constituents. That meant the EOLOA was dead for the remainder of 2015.

But the bill’s sponsors had a different plan. Governor Jerry Brown had called for a special legislative session to convene after the regular session ended to address a \$1.1 billion health care shortfall. His stated reason for the special session was specific: “to enact permanent and sustainable funding” for Medi-Cal (California’s

*(continued on page 4)*

## Ten states reject prescribed-suicide bills; one state votes bill into law

So far this year, ten states have rejected measures to legalize doctor-assisted suicide, to study the issue for future legalization, or to approve a statewide referendum on the issue. Those states are Alaska, Connecticut, Indiana, Iowa, Massachusetts, Nebraska, New Hampshire, Oklahoma, Utah, and Wisconsin. Bills in these states died as a result of either being voted down, tabled for further study, or left languishing in a committee with no action taken before a session deadline.

As of May 21, 2018 State Legislative Action Taken	
Defeated Assisted Suicide Bills in 2018	Passed Assisted Suicide Bill in 2018
Alaska Connecticut Indiana Iowa Massachusetts Nebraska New Hampshire Oklahoma (Referendum) Utah Wisconsin	Hawaii

### Hawaii

The one state to pass a prescribed-suicide bill was Hawaii, but only after a record high 39 individual assisted-suicide bills were introduced in the legislature over the course of the last 20 years. All but one, HB 2739, were defeated.

This year, Hawaii had a total of nine assisted-suicide bills under consideration: five were carry-overs from 2017 and four were newly introduced in 2018. HB 2739, one of the four new 2018 bills, was “fast tracked” by the Democratic leadership as having the best chance of passing. Even the bill’s title, “Our Care, Our Choice Act,” was verbally engineered to be more positive—no depressing terms like “end-of-life,” “dying,” or “death”—to facilitate legislators’ support.

For many lawmakers, the fact that one of HB 2739’s main sponsors was Rep. Della Au Bellati gave the bill added standing. Last year, Bellati, then chair of

the House Health Committee, unexpectedly killed a similar prescribed-suicide bill (SB 1129) that had overwhelmingly passed in the Senate. At the time, Bellati told reporters that the bill lacked specifics and failed to protect the vulnerable. “We’re concerned about safeguards, the record-keeping, the physician training to be able to do this prescribing for aid in dying,” she said. [HawaiiNewsNow, 3/23/17]

Because Bellati sponsored a new assisted-suicide measure after rejecting last year’s bill, legislators assumed her bill had to be sufficiently protective to become law. But HB 2739 is internally inconsistent regarding safeguards. What sounds protective in one place is mitigated or negated elsewhere in the bill.

One example is the safeguard that requires all assisted-suicide patients to have a psychological consultation to determine whether they are capable to request death and are not depressed. But, the bill also states that the consultation can occur via “telehealth,” meaning the patient need not be seen in person. Given that those who request death often suffer from depression that is not easy to diagnose, this type of remote, one-time psychological evaluation could easily fall short of being adequately protective—especially when the life or death of the patient is at stake.

In a recent Hastings Center article, Katherine Drabiak, assistant professor of law at the College of Public Health at the University of South Florida, opined, “I posit Hawaii’s ‘rigorous safeguards’ constitute hollow promises.” [Hastings Center, Bioethics Forum, 5/4/18] HB 2739 is scheduled to take effect on January 1, 2019.

### Other states with active bills

Eleven states have bills that are technically still alive. Many measures have seen little or no committee action in 2018. Bills in five states, however, have seen some movement. (See table on this page.)

New Jersey’s A 1504 was passed by the first committee to consider the measure. The New York Assembly Health Committee conducted two hearings on A 2383, but no vote has been taken yet. Twice Delaware’s HB 160 was scheduled for a House floor vote but was pulled from the agenda both times due to a lack of votes.

On April 4, 2018, Rhode Island’s House Health, Education, and Welfare Committee voted to hold H 7297 for study. In other states, holding a bill for study usually means that the measure is dead for that legislative session. But, Rhode Island bills can be pulled up again during the year, even after the session ends in June, if the issue is deemed important by the legislative leadership.

California’s AB 282 would amend the state’s assisted-suicide law, the End of Life Option Act (EOLOA), so that it expressly prohibits the prosecution of “a person” for deliberately “aiding, advising, or encouraging suicide” if that person is acting in compliance with the EOLOA. The fate of the bill, which has passed the Assembly and one Senate committee, is in question after the EOLOA was overturned on May 15, 2018. (See article on page 1.) ■

As of May 21, 2018 Assisted-Suicide Bills Still Alive in State Legislatures			
State	Bill	Introduced	Status in Committee
AZ	HB 2102	1/16/18	Health - No Action
CA	AB 282	2/2/17	Passed Assembly 1/18/18; Passed Senate Public Safety 5/15/18
DE	HB 160	5/2/17	No Action in House Since 1/19/18
MI	HB 4461 HB 4462	3/30/17 3/30/17	Health - No Action Health - No Action
MN	SF 1572 HF 1885	2/27/17 3/1/17	HHS - No Action HHS - No Action
NJ	A 1504 S 1072	1/9/18 1/22/18	Passed JUD 3/12/18 HHS - No Action
NY	A 2383 (C) S 3151 (C) A 3598	1/19/17 1/20/17 1/27/17	Heard in Health 4/23/18 & 5/3/18 Health - No Action Health - No Action
NC	HB 789	4/11/17	Rules - No Action
OH	SB 249	1/24/18	Ref to HHS 3/21/18
PA	SB 238	1/26/17	Judiciary - No Action
RI	H 7297	1/25/18	HEW - Held for study 4/4/18

**Abbreviations:**  
 HHS = Health & Human Services Committee  
 JUD = Judiciary Committee  
 HEW = Health, Education & Welfare Committee  
 (C) after 2 bills means those bills are identical.



# Alfie Evans: A Case of Medical Authoritarian Power

By Wesley J. Smith

**T**he death of Alfie Evans, a 23-month-old UK toddler forced off life support by doctors and judges and denied the right to have his care decisions made by his parents, brings healthcare to a crossroads.

For years we have been told that end-of-life decisions are the most intimate of all, and that as autonomous persons, we—or if incompetent, our families—must be free to decide when to refuse life support, to which I say, amen.

But in Alfie’s case, *the family was united in wanting Alfie’s life maintained* so they could transfer him to an Italian hospital, which had agreed to offer continued care, including a tracheostomy and a PEG feeding tube that allows for more effective and comfortable long-term care than he had been receiving in the UK.

But Alfie’s parents, Tom Evans and Kate James, were thwarted by the doctors and the courts, both of which, citing Alfie’s “best interests,” refused to continue life support *and* prevented the family from removing Alfie to a different hospital—even though the cause of his cognitive collapse had not been diagnosed. The technocracy had decided Alfie should die, and so die he did!

Some called Alfie’s continued care “futile” or “inappropriate”—based on the utilitarian values of our technocratic “expert” class, which is taking power onto itself to decide when a life is no longer worth living. They can call it “professional standards” all they want, but people know what is really happening.

A press release, dated April 13, 2018, supportive of Tom and Kate—the full contents of which was not publicly reported, so I can’t verify its accuracy—stated that a judge had stripped them of their parental rights, ordering that Alfie become a ward of the court to further thwart the parents’ efforts to seek further treatment and care for their son. If true, that order could have conceivably become a pretext to prevent Tom and Kate from visiting their son.

This is what medical authoritarianism looks like.

A few thoughts about this tragedy:

- “Futile care” impositions are not medical decisions, but value judgments about the benefit

of continued care *that is working*, e.g., keeping the patient alive. The doctors and courts believe Alfie should die sooner rather than later, the parents want to keep trying to find what is causing their son’s cognitive collapse and to maintain his life regardless of whether a cure can be found.

- The judge ruled essentially that, as a matter of law, Alfie is better off dead than in his then deeply troubling circumstances, which include a “semi-vegetative state” (whatever that means) accompanied by seizures and a degenerating neurological condition (yet unidentified). The parents disagreed. Surely, in such cases they should have the final say, not strangers.
- Coercion destroys the peoples’ trust in the health-care system. This problem will grow more pronounced as the cost containment paradigm becomes increasingly backed by an iron fist.
- Finally, Alfie’s case was about raw power. If Alfie—Charlie Gard before him, and the victims of futile care in the U.S.—had escaped the diktat, there would soon be others demanding their freedom too.

Ultimately, that raw power was the reason Alfie was denied *his right* to the last chance his parents fought so bravely and tenaciously to give him.

I find it bitterly ironic that some of the same bioethicists who believe doctors should be able to impose futile care treatment terminations based on their conscientious objections to continued care, also opine that doctors who don’t want to participate in assisted suicide or other morally contentious elective acts in the medical context should be forced legally to do so upon threat of professional discipline. ■

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**Judge rules CA's assisted-suicide law unconstitutional cont. from page 1**

Medicaid) as well as for the state's "developmental disability services" and "In-Home Supportive Services." In addition, Brown wanted the special session to find ways to "improve the efficiency and efficacy of the health care system, reduce the cost of providing health care services, and improve the health of Californians." [Gov. Jerry Brown, Special Session Proclamation, 6/16/15]

The California Constitution requires that, during a special session, the legislature "has power to legislate *only on subjects specified* in the [governor's] proclamation...." [California Constitution, Article 4, Sec. 3 (b); emphasis added]

But when the 2015 special session convened, the sponsors of the just-defeated assisted-suicide bill resurrected it and introduced it in the session that should have been limited to health care services and funding measures. The sponsors knew that the special session would be the perfect vehicle to secure their bill's passage. It was much shorter time-wise than a regular session and allowed sponsors to circumvent many of the regular session requirements. Most importantly, the special session Assembly Health Committee would be smaller, and members could be hand-picked, so those who had opposed the EOLOA just weeks earlier during the regular session could be replaced by legislators who were known to be more favorable towards assisted suicide.

It only took 11 days for the EOLOA to pass both houses. At that time, Assemblyman Scott Wilk (now a senator), who voted against the bill, remarked, "In the last few weeks of the session, I witnessed the majority party undermine democratic principles and violate rules to implement personal agendas." [Santa Clarita Valley News, 9/21/15]

In his ruling that the EOLOA is unconstitutional, Judge Ottolia said,

The decriminalization of...doctor-assisted suicide does not relate to, is not reasonably germane to, or have a natural connection to patients' access to healthcare services, improving the efficiency and efficacy of the healthcare system, or improving the health of Californians.....

The legislation decriminalizing assisted suicide cannot be deemed a matter incidental to the purpose of the emergency session. [*Ahn v. Hestrin*, Super. Ct., Case No. RIC 1607135, Transcript of Proceedings, May 16, 2018]

The judge stayed his nullification ruling for five days in order to give the state attorney general time to appeal the case. However, Senate Majority Leader Bill Monning, one of the main sponsors of the EOLOA, has said that, if necessary, he will re-introduce the measure, so the Democratic-controlled legislature can quickly pass it again before the current regular session adjourns in August.

According to the California Department of Public Health, from June to December 2016, 191 patients received prescriptions for lethal drugs from 173 individual doctors, and 111 patients took the drugs and died under the EOLOA. ■

**AMA report recommends opposition to PAS, cont. from page 1**

Also of concern is the fact that, in the U.S., patients have "uneven access" to care, including "high quality end-of-life care," and doctors often do not have conversations with patients about death and dying. That raises the concern that "many patients may be led to request assisted suicide because they don't understand the degree of relief of suffering state-of-the-art palliative care can offer." [p. 5]

Moreover, patients can be vulnerable to coercion, especially patients who are disadvantaged. Another problem, according to the CEJA, is that "forces external to medicine could adversely influence practice." [p. 5]

After much deliberation, the CEJA recommended that the existing AMA *Code of Medical Ethics* "not be amended" and that Resolution 15-A-16—to change the AMA's position on assisted suicide to neutral—"not be adopted." [p. 6]

**AMA's use of terminology**

The second resolution (14-A-17) that the CEJA considered "as a matter of organizational policy" had to do with the terms often used to describe "the practice of physicians prescribing lethal medication to be self-administered by patients." The traditional term is "physician-assisted suicide," but advocates have created euphemisms, terms such as "aid in dying" and "death with dignity," to describe the practice in a more positive light to gain support.

After considering all the terms, the CEJA concluded:

CEJA believes ethical deliberation and debate is best served by using plainly descriptive language. In the council's view, despite its negative connotations, the term "physician assisted suicide" describes the practice *with the greatest precision*. Most importantly, it clearly distinguishes the practice from euthanasia. The terms "aid in dying" or "death with dignity" could be used to describe either euthanasia or palliative/hospice care at the end of life and *this degree of ambiguity is unacceptable* for providing ethical guidance. [p. 2; emphasis added]

The AMA's House of Delegates will vote on the CEJA's recommendations in June. ■

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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