

# Death Drugs Cause Uproar in Oregon

By **SUSAN DONALDSON JAMES** · Aug. 6, 2008

The news from Barbara Wagner's doctor was bad, but the rejection letter from her insurance company was crushing.

The 64-year-old Oregon woman, whose lung cancer had been in remission, learned the disease had returned and would likely kill her. Her last hope was a \$4,000-a-month drug that her doctor prescribed for her, but the insurance company refused to pay.

What the Oregon Health Plan did agree to cover, however, were drugs for a physician-assisted death. Those drugs would cost about \$50.

"It was horrible," Wagner told ABCNews.com. "I got a letter in the mail that basically said if you want to take the pills, we will help you get that from the doctor and we will stand there and watch you die. But we won't give you the medication to live."

Critics of Oregon's decade-old Death With Dignity Law -- the only one of its kind in the nation -- have been up in arms over the indignity of her unsigned rejection letter. Even those who support Oregon's liberal law were upset.

The incident has spilled over the state border into Washington, where advocacy groups are pushing for enactment of Initiative 1000 in November, legalizing a similar assisted-death law.

Opponents say the law presents all involved with an "unacceptable conflict" and the impression that insurance companies see dying as a cost-saving measure. They say it steers those with limited finances toward assisted death.

"News of payment denial is tough enough for a terminally ill person to bear," said Steve Hopcraft, a spokesman for Compassion and Choices, a group that supports coverage of physician-assisted death.

## Letter's Impact 'Devastating'

"Imagine if the recipient had pinned his hope for survival on an unproven treatment, or if this were the first time he understood the disease had entered the terminal phase. The impact of such a letter would be devastating," he told ABCNews.com.

Wagner, who had worked as a home health care worker, a waitress and a school bus driver, is divorced and lives in a low-income apartment. She said she could not afford to pay for the medication herself.

"I'm not too good today," said Wagner, a Springfield great-grandmother. "But I'm opposed to the [assisted suicide] law. I haven't considered it, even at my lowest point."

A lifelong smoker, she was diagnosed with lung cancer in 2005 and quit. The state-run Oregon Health Plan generously paid for thousands of dollars worth of chemotherapy, radiation, a special bed and a wheelchair, according to Wagner.

The cancer went into remission, but in May, Wagner found it had returned. Her oncologist prescribed the

drug Tarceva to slow its growth, giving her another four to six months to live.

But under the insurance plan, she can the only receive "palliative" or comfort care, because the drug does not meet the "five-year, 5 percent rule" -- that is, a 5 percent survival rate after five years.

A 2005 New England Journal of Medicine study found the drug erlotinib, marketed as Tarceva, does marginally improve survival for patients with advanced non-small cell lung cancer who had completed standard chemotherapy.

The median survival among patients who took erlotinib was 6.7 months compared to 4.7 months for those on placebo. At one year, 31 percent of the patients taking erlotinib were still alive compared to 22 percent of those taking the placebo.

"It's been tough," said her daughter, Susie May, who burst into tears while talking to ABCNews.com.

"I was the first person my mom called when she got the letter," said May, 42. "While I was telling her, 'Mom, it will be ok,' I was crying, but trying to stay brave for her."

"I've talked to so many people who have gone through the same problems with the Oregon Health Plan," she said.

Indeed, Randy Stroup, a 53-year-old Dexter resident with terminal prostate cancer, learned recently that his doctor's request for the drug mitoxantrone had been rejected. The treatment, while not a cure, could ease Stroup's pain and extend his life by six months.

#### Playing With 'My Life'

"What is six months of life worth?" he asked in a report in the Eugene Register-Guard. "To me it's worth a lot. This is my life they're playing with."

The Oregon Health Plan was established in 1994 and the physician-assisted death law was enacted in 1997. The state was recently hailed by a University of Wisconsin study as having one of the nation's top pain-management policies.

The health plan, for those whose incomes fall under the poverty level, prioritizes coverage -- from prevention first, to chronic disease management, treatment of mental health, heart and cancer treatment.

"It's challenging because health care is very expensive, but that's not the real essence of our priority list," said Dr. Jeanene Smith, administrator for the Office of for Oregon's Health Policy and Research staff.

"We need evidence to say it is a good use of taxpayer's dollars," she said. "It may be expensive, but if it does wonders, we cover it."

The state also regularly evaluates and updates approvals for cancer treatments. "We look as exhaustively as we can with good peer review evidence," she said.

The health plan takes "no position" on the physician-assisted suicide law, according to spokesman Jim Sellers.

The terminally ill who qualify can receive pain medication, comfort and hospice care, "no matter what the cost," he said.

But Sellers acknowledged the letter to Wagner was a public relations blunder and something the state is "working on."

"Now we have to review to ensure sensitivity and clarity," Sellers told ABCNews.com "Not only is the patient receiving bad news, but insensitivity on top of that. This is something that requires the human touch."

Sellers said that from now on insurance officials will likely "pick up the phone and have a conversation," he said.

But a 1998 study from Georgetown University's Center for Clinical Bioethics found a strong link between cost-cutting pressures on physicians and their willingness to prescribe lethal drugs to patients -- were it legal to do so.

The study warns that there must be "a sobering degree of caution in legalizing [assisted death] in a medical care environment that is characterized by increasing pressure on physicians to control the cost of care."

Cancer drugs can cost anywhere from \$3,000 to \$6,000 a month. The cost of lethal medication, on the other hand, is about \$35 to \$50.

Advocates for the proposed Washington law say that while offering death benefits but not health care can be perceived as a cost-cutting, "respectable studies" say otherwise.

"The reason is that hospice care, where most patients are at the end of life is relatively inexpensive," Anne Martens, spokesman for Washington's Death With Dignity Initiative, told ABCNews.com.

But even those who support liberal death laws say Wagner's predicament is reflective of insurance attitudes nationwide.

### Case Is Not Unique

"Her case is hardly unique," said Michigan lawyer Geoffrey Fieger, who defended Dr. Jack Kevorkian's crusade to legalize physician-assisted deaths.

"In the rest of the country insurance companies are making these decisions and are not paying for suicide," Fieger told ABCNews.com. "Involuntary choices are foisted on people all the time by virtue of denials."

"I am surprised there hasn't been a revolt in this country," he said. "It happens every day and people are helpless."

Indeed, one executive suffering from a rare and potentially fatal form of liver cancer is fighting his insurance company for coverage. Oncologists from a major teaching hospital in New York City have prescribed Sutent -- a medication that costs about \$4,000 a month and could extend his life expectancy.

"Most of my objections are that some second rate guy on the staff of the insurance company is second-guessing one of the foremost authorities and trumping his judgment," said the 57-year-old executive, who didn't want his name used to protect his privacy.

"I am fortunate to have the financial resources and the ability to fight these people who would rather these you die," he told ABCNews.com.

Dr. Jonathan Groner, clinical professor of surgery at OSU College of Medicine and Public Health in Columbus, Ohio, said some patients may want to prolong their lives for a life-cycle event, like a birth or wedding.

"A course of chemo would not cure, but would subdue the cancer long enough to be meaningful," he told ABCNEWS.com. "There are many people with slow-growing but nonetheless metastatic cancer for whom death, while inevitable, is many years away."

"The problem with the Oregon plan is it sounds like administrators, not physicians, are making treatment decisions," he said. "And if a patient can get assisted death paid for but not cancer treatment, the choice is obvious."

Derek Humphry, founder of the Hemlock Society and author of "Final Exit," who helped write the Oregon Death With Dignity Law, said only about 30 people a year choose an assisted death, which must be approved by two doctors.

"It's purely optional and the patient and doctor can walk away from it," the 78-year-old told ABCNEWS.com. "It's not the mad rush our enemies predicted and for our residents it has worked out well."

His own wife, Jean, was diagnosed with fast-growing breast cancer in 1975 and asked him to help find drugs to help her die. At 42, she chose to take them and ended her life.

Humphry says the Oregon Health Plan's approach to coverage is sound.

"People cling to life and look for every sort of crazy cure to keep alive and usually they are better off not to have done it," he said.

Meanwhile Wagner has faith in her medicine, not assisted death. Now, at the request of her doctor, the pharmaceutical company Genentech is giving her Tarceva free of charge for one year.

"The doctor did say it would put a lid on the cancer and I am hopeful," she said.

Wagner's daughter Susie May says her mother is a fighter. "I think we all knew that this is her last hope," she said.

Even Wagner's ex-husband, Dennis Wagner of Springfield, has weighed in on the ethical dilemma.

"My reaction is pretty typical," he told ABCNews.com. "I am sick and tired of the dollar being the bottom line of everything. We need to put human life above the dollar."

*Rana Senol of ABC News Research contributed to this report.*