



Kevorkian looms over right-to-die debate

1 June 2012

By Kathryn Westcott

Jack Kevorkian - once America's most ardent advocate of physician-assisted suicide for terminally ill patients - has ended an eight-year prison sentence apparently determined to wade right back into the right-to-die debate.

The 79-year-old retired pathologist's release in 2007 has pushed the assisted suicide issue back to prominence.

Dr. Kevorkian advocated for physician-assisted suicide immediately after graduating from medical school at the University of Michigan in 1952. In 1958, Kevorkian presented a paper to a meeting of the American Association for the Advancement of Science which discussed the pros for experimentation on consenting death row inmates during the execution process.

Throughout the 1980s, Kevorkian published smaller articles in an obscure German journal, *Medicine and Law*. Here, he expressed his views on the ethics of euthanasia. One article in particular, "The Last Fearsome Taboo: Medical Aspects of Planned Death," outlined Kevorkian's specific system for planned deaths in 'suicide clinics.'

In 1987 he visited the Netherlands, where he studied techniques that allowed Dutch physicians to assist in the suicides of terminally ill patients without interference from the legal authorities.

A year later, he returned to Michigan and began advertising in Detroit-area newspapers for a new medical practice in what he called "bioethics and obiatory," which would offer patients and their families "death counseling." He made reporters aware of his intentions, explaining that he did not charge for his services and bore all the expenses of euthanasia himself. He showed journalists the simple metal frame from which he suspended vials of drugs — thiopental, a sedative, and potassium chloride, which paralyzed the heart — that allowed patients to end their own lives.

He also talked about the "doctrine" he had developed to achieve two goals: ensuring the patient's comfort and protecting himself against criminal conviction. He required patients to express clearly a wish to die. Family physicians and mental health professionals were consulted. Patients were given at least a month to consider their decision and possibly change their minds. Dr. Kevorkian videotaped interviews with patients, their families and their friends, and he videotaped the suicides, which he called medicides.

Kevorkian's first patient — or victim, depending on your point of view — was Janet Adkins, a 54-year-old Portland, Ore., teacher who allowed herself to be hooked up to one of Kevorkian's suicide machines in the back of his Volkswagen van on June 4, 1990. She had been diagnosed with Alzheimer's disease the year before and had contacted Kevorkian after an experimental drug treatment she received at the University of Washington was unsuccessful. She had first seen him on a talk show and read about him in a magazine. Immediately afterward Dr. Kevorkian called the police, who arrested and briefly detained him.

By 1993 he had assisted 19 people with such procedures in his state of Michigan. Patients from across the country traveled to the Detroit region to seek his help. Sometimes the procedure was done in homes, cars and campgrounds.

Dr Kevorkian said his terminally ill clients used his homemade devices to start the flow of and inhale carbon monoxide, or to start the flow of intravenous chemicals that caused their death. With the latter, patients could inject themselves intravenously with a lethal dose of potassium chloride. This so-called "suicide machine" became notorious. He called one the "Thanatron," or death machine, and another the "Meritron," or mercy machine.

Murder charges brought by Michigan prosecutors were dropped because the state had no law against assisted suicide.

He continued, despite the revocation of his medical license in 1991 and a ban on assisted suicides in Michigan that came into effect in 1992.

Throughout the 1990s, Kevorkian waged a defiant campaign to help people end their lives. He insisted that patients living in pain had the right to die. The man who came to be known as "Dr Death" was charged, tried and cleared in a total of four assisted-suicide cases.

Kevorkian provocatively likened himself to Martin Luther King or Mahatma Gandhi, but in 1995 the American Medical Association called him "a reckless instrument of death" who "poses a great threat to the public."

Altogether he assisted more than 130 people kill themselves, sufferers from cancer, Alzheimer's, arthritis, heart disease, emphysema and multiple sclerosis.

In 1998, though, he went from passive euthanasia to active euthanasia, videotaping himself giving Thomas Youk a lethal injection and sending the tape to the CBS show "60 Minutes," daring prosecutors to charge him with murder.

Terminally ill Thomas Youk suffered from ALS, or Lou Gehrig's disease, a wasting disorder of the nervous system. Youk, 52, could only move the fingers on his right hand. He had asked Kevorkian to administer a lethal injection into him, to which Kevorkian agreed. On Sept. 17, 1998, Kevorkian administered a lethal injection of Seconal, potassium chloride and a muscle relaxant to Thomas Youk. The difference this time was that instead of the patient pushing a button, Kevorkian administered the lethal injection.

"60 Minutes" broadcast the tape on Nov. 22, 1998. The broadcast, which prompted a national debate about medical ethics and media responsibility, also served as prime evidence for a first-degree murder charge brought by an Oakland County prosecutor's office in Michigan.

At the trial, Dr Kevorkian, who defended himself in court, clearly saw himself as fighting for a cause. In his closing statement, he compared himself to civil rights heroes Martin Luther King and Rosa Parks. He reminded the jury that in the past acts including drinking beer and registering to vote were illegal.

A jury convicted Kevorkian of second-degree murder in 1999 after watching the video of him injecting lethal drugs into Mr Youk.

Kevorkian served eight years of a 10-25 year sentence for the murder of Mr. Youk, and was released in 2007.

Thomas Youk's brother, Terry, said: "It was a medical service that was requested and... compassionately provided by Jack. It should not be a crime."

"My brother was at the end of his life, within certainly weeks of passing away," said Terry Youk. "He was waking up in the middle of the night choking (on his own saliva), with no way of being able to alert

anybody. He couldn't really speak. He couldn't move anything but a couple of fingers. That's a very terrifying thing."

But Tina Allerellie believed her sister and former Kevorkian "patient", Karen Shoffstall, suffered from depression and doubted that she wanted to die.

"His intent, I believe, has always been to gain notoriety," Ms Allerellie said.

Showdown

Kevorkian's campaign sparked a nationwide debate about patients' right to die and the role that physicians should play.

"It's got to be legalized," he told a Detroit TV station in a phone interview a few days before his release from prison in Michigan. "That's the point. I'll work to have it legalized, but I won't break any laws doing it."

Kevorkian said he had no regrets about his work.

"No, no. It's your purpose (as a) physician. How can you regret helping a suffering patient?" he said.

Kevorkian appears to maintain relatively strong public support.

An AP-Ipsos poll released in May 2007 found that 53% of those surveyed thought he should not have been jailed, while 40% supported his imprisonment.

The poll also asked whether it should be legal for doctors to prescribe lethal drugs to help terminally ill patients end their own lives: 48% agreed while 44% said it should be illegal.

Kevorkian died of natural causes in June 2011 at the age of 83.

Attorney Geoffrey Fieger, who was Kevorkian's lawyer on several assisted-suicide cases, described Kevorkian as a "historic man."

"He simply felt that it was the duty of every physician to alleviate suffering, and when the circumstance was such that there was no alternative, to help that patient to end their own suffering," Fieger said.

"It will be very interesting 50 years from now to see whether Kevorkian is regarded by history as this sort of a bizarre crank or whether he'll be regarded as a modern medical pioneer," said Jack Lessenberry, who wrote about Kevorkian for *The New York Times*.

Oregon's experience

The Oregon precedent is a battleground for campaigners on both sides of the debate in California.

The US state of Oregon legalized physician assisted suicide in 1997. On October 27, 1997 Oregon enacted the Death with Dignity Act (DWDA) which allows terminally-ill Oregonians to end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose.

Any risk that doctors who used the Oregon law to prescribe lethal drugs to terminally ill patients would be prosecuted or sanctioned by the federal government was removed in 1998 when Attorney General Janet Reno ruled that states may enact and implement such laws without federal interference.

During the first three years only around 2 people a month used this to end their lives. This was partly because of the severe conditions that had to be satisfied before a request for euthanasia could be granted:

- patient must be resident in Oregon
- patient must be aged over 18
- patient must make 2 oral and 1 written request for euthanasia
- there must be at least 15 days between the first and the last request
- patient must be terminally ill with a life expectancy of less than 6 months
- this prognosis must be confirmed by a second consultant physician
- both doctors must confirm that the patient is capable of making this decision
- both doctors must confirm that the patient does not have medical condition that impairs their judgment
- patient must self-administer the lethal medication (The Oregon law explicitly prohibits “lethal injection, mercy killing or active euthanasia” The medication must be self-administered.)

One reason for the low numbers involved in the DWDA was the difficulty of finding a doctor who would go along with the request. The Oregon-licensed physician must be a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. The physician must also be willing to participate in the Act. Physicians are not required to provide prescriptions to patients and participation is voluntary.

The Oregon Health Division reported that only 1/5 of physicians in control of patients dying of terminal illnesses would have prescribed a lethal medication if asked.

American Medical Association policy opposes physician-assisted suicide because the practice is "fundamentally inconsistent with the physician's role as healer."

According to the Oregon Department of Human Services, more than 340 patients have died under the terms of the law between 1998, when the law took effect, and 2008. Of these terminally ill patients that opted for a hastened death, less than 0.15% of total Oregon deaths during that period...

- 80% were in the last stages of terminal cancer
- 75% were over 65 years of age

Between 1998 and 2011, 935 people used it to obtain lethal medication, though of those, only 596 actually went through with the act and swallowed their pills.

Only one in 10 people requesting PAS proceed as far as picking up the medication, though. And only half of those take the lethal drug. So although more than 340 patients have died under the law, many more have requested and received the medication.

Since the law went into effect in 1998, about 40 people a year have taken their own life this way. In 2013, 71 individuals did so (out of 114 who received the prescriptions).

The three most frequently mentioned end-of-life concerns were: decreasing ability to participate in activities that made life enjoyable (90.1%), loss of autonomy (88.7%), and loss of dignity (74.6%).

The provisions of the law allow terminally ill, mentally competent adults to administer life-ending medication prescribed by a physician. It is up to the physician to determine the prescription. To date, most patients have received a prescription for an oral dosage of a barbiturate, usually a liquid that when drunk, places the patient in a coma within minutes, and then ends their life within hours.

But opponents say the figures do not tell the whole story.

Oregon's rules governing assisted suicides stipulate that the patient must have been declared terminally ill by two physicians, have a life expectancy of six months or less and must have requested lethal drugs three times.

Oponents claim that there is no state authority to check fully on this and it is, therefore, open to abuse. Because Oregon does not require autopsies in such cases, they say, there is no way of knowing the patient's actual underlying conditions.

"It does not penalize doctors who fail to report assisting suicides and the state destroys the records and its paperwork after each annual report, making it impossible to verify those reports' conclusions independently," Tim Rosales, spokesman for Californians Against Assisted Suicide (CAAS), said in a recent statement.

Worryingly to the opponents, none of the patients have been referred for a psychiatric assessment, even though this might have led to successful treatment, rather than suicide. It is well established that depression is a common cause of suicidal wishes and that around 25% of patients with terminal cancer have treatable depression.

Oponents are also worried that patients are not using it for the right reasons. The major concerns of those undertaking PAS were loss of autonomy, being less able to take part in activities they enjoyed and loss of dignity (86%). Other reasons include fear of being a burden and that they might experience pain at the end of their lives. Therefore those in opposition to the law say it is being abused.

In 2001, U.S. Attorney General John Ashcroft fought Oregon's Death with Dignity Act by ordering Federal Drug Enforcement Agents to prosecute physicians and pharmacists who proscribed lethal drugs for terminally ill patients under Oregon's Death with Dignity law. Ashcroft issued a new interpretation of the Controlled Substances Act, which would prohibit doctors from prescribing controlled substances for use under the Oregon Act. Oregon replied by filing suit, to which the courts ruled that Ashcroft's order exceeded his authority under the Controlled Substances Act.

Ashcroft appealed the case several times, eventually bringing it to the U.S. Supreme Court in 2005 where new Attorney General Alberto Gonzales continued the case known as *Gonzales v. Oregon*.

In January 2006, the Death with Dignity National Center successfully defended the Oregon law before the U.S. Supreme Court in the 6 to 3 ruling in *Gonzales v. Oregon*. The Supreme Court's ruling affirmed the right of Oregonians to govern their own end-of-life, pain management and palliative care choices.

The ruling validates Oregon's Death with Dignity law and will prohibit federal agents from investigating and prosecuting physicians and pharmacists who practice ethically and legally under the Oregon law.

More and more Americans are demanding a greater say in how they live and how they die. *Gonzales v. Oregon* is a historic milestone that will protect the people's rights as patients.

Lovelle Svart found out at age 57 that cancer had invaded her lungs and started to spread into her chest. Lovelle went through chemotherapy and radiation to prolong her life. But her symptoms — mainly fatigue, shortness of breath, abdominal cramping and pain — had gradually worsened. In June 2007, her doctor estimated she had a life expectancy of six months or less.

Lovelle agreed to share her experience of dying with lung cancer in the final phase of her life — including her choice whether or not to pursue a doctor-assisted suicide under Oregon's 10-year-old Death With Dignity Act.

"This society," she says, "needs to talk more about death and dying."

She asked two journalists from the newspaper *The Oregonian* to be present when she took the lethal liquid cocktail under Oregon's Death with Dignity Act. Within minutes after finishing, Lovelle slipped into a coma. More than five hours later on September 28, 2007, she died at the age of 62.

<http://next.oregonianextra.com/lovelle/> Lovelle Svart's video diary

Eligibility under the Oregon law

- **Who can request physician-assisted suicide?**
To use the Oregon law, a patient must be: 18 years of age or older, an Oregon resident, able to make and communicate their own health care decisions, and diagnosed with a terminal illness with six months or less to live. The attending physician must decide whether these criteria have been met.
- **Can a non-Oregonian use the law?**
No. Only patients who establish Oregon residency can use the law if they meet certain criteria.
- **How does a patient establish residency?**
A patient must provide the attending physician proof of Oregon residency. Proof can include an Oregon drivers license, documentary proof that the patient rents or owns Oregon property, an Oregon voter registration, a recent Oregon tax return, etc. The attending physician must decide whether the patient has adequately established residency.
- **How long does it take to establish Oregon residency?**
There is no minimum residency requirement. A patient must simply be able to prove he or she is a current, bona fide Oregon resident.
- **Can a non-resident move to Oregon to use the law?**
The law does not prevent anyone from moving to Oregon. However, reports show that few, if any, patients had moved to Oregon to use the law.

Several safeguards ensure that patients who wish to use the law are protected and in full control of the process. The Oregon law requires that the patient...

- make two verbal requests -- separated by 15 days -- to the physician,
- make a written request to the attending physician and the request is witnessed by two individuals who are not primary care givers or family members,
- is able to rescind the verbal and written requests at any time, and
- is able to self administer the prescription.

The law further requires that...

- The attending physician must be a licensed Oregon physician.
- The physician's diagnosis must include terminal illness, with six months or less to live.
- The diagnosis must be certified by a consulting physician, who must also certify that the patient is mentally competent to make and communicate health care decisions.
- If either physician determines that the patient's judgment is impaired, the patient must be referred for a psychological examination.
- The attending physician must inform the patient of alternatives, including palliative care, hospice (institution designed to provide for the physical and emotional needs of dying people) and pain management options.
- The attending physician must request that the patient notify their next-of-kin of the prescription request.

Q: Can a patient's family members request participation in the Act on behalf of the patient (for example, in cases where the patient is comatose)?

A: No. The law requires that the patient ask to participate voluntarily on his or her own behalf.

Q: Does the Act allow euthanasia?

A: No. Euthanasia is a different procedure for hastening death. In euthanasia, a doctor injects a patient with a lethal dosage of medication. In Oregon, a physician prescribes a lethal dose of medication to a patient, but the patient - not the doctor - administers the medication. Euthanasia is illegal in every state in the US, including Oregon.

Washington Follows Oregon's Lead

In November 2008, the state of Washington became only the second US state — after Oregon — to offer terminally ill people the option of physician-assisted suicide.

Washington's ballot measure, officially Initiative 1000, was patterned after Oregon's "Death with Dignity" law.

It specifically allows terminally ill, competent, adult residents of the state to request and self-administer lethal medication prescribed by a physician. The person requesting to end his or her life must be medically predicted to have six months or less to live. A physician is not required to comply, but anyone participating "in good faith" with the request would not risk criminal prosecution.

The patient would have to make two oral requests, 15 days apart, and submit a written request witnessed by two people. One of the witnesses must not be a relative, heir, attending doctor, or connected with a health facility where the requester lives.

Two doctors also would have to certify that the patient has a terminal condition and six months or less to live.

The public face of the campaign was Democratic former Gov. Booth Gardner, who suffers from Parkinson's disease, an incurable disorder that causes tremors and stiff or frozen limbs. He was governor of Washington State for two terms in the 1980s and '90s. He is 73, and his last campaign is driven by his desire to kill himself.

"My logic is impeccable. *My life, my death, my control,*" Gardner said.

Gardner declared this his "last campaign." Although the popular former officeholder could not use medically assisted suicide - Parkinson's is not considered fatal - Gardner said he pushed the measure after coming to understand why other ill people would want the option.

Opponents, including the Catholic church, argued that it devalued human life and suggested that it could unwittingly exploit depressed or vulnerable people who worry they've become a burden on their families.

Supporters saw the victory as a bellwether for the larger movement to enact similar laws around the country.

"No terminal Washingtonian will ever have to shoot themselves or use other violent means again. We hope someday to be able to say the same for patients in the other 48 states," said Barbara Coombs Lee, president of the national advocacy group Compassion and Choices.

Outside of Oregon, advocates of similar laws haven't fared well in recent years. California, Michigan and Maine voters rejected the idea, and bills have failed in statehouses around the country.

In Washington, voters rejected physician-assisted suicide in 1991. The 2008 proposal differed from the earlier Washington measure - it doesn't allow doctors to administer lethal drugs on behalf of patients who can't do so themselves.

Montana

On December 5, 2008, Montana Judge Dorothy McCarter ruled that state homicide laws unconstitutionally restrict terminally ill patients' right to dignified deaths.

The Montana Supreme Court ruled that nothing in state law prohibits assisted suicide, effectively making Montana the third state to allow it. They said that neither state law nor public policy prevented doctors from prescribing lethal drugs to terminally-ill patients who want to end their lives. In essence, the court ruled, suicide is not a crime.

The case, *Baxter v. Montana*, involved numerous plaintiffs who had sued the state, one in which was Robert Baxter, a 75-year-old man with terminal cancer. He died of natural causes before learning of the ruling. Four physicians were also plaintiffs.

In her ruling, Judge McCarter wrote that “the Montana constitutional rights of individual privacy and human dignity” give a mentally competent person who is terminally ill the right to “die with dignity.”

The ruling said that those patients had the right to obtain self-administered medications to hasten death if they found their suffering to be unbearable, and that physicians could prescribe such medication without fear of prosecution.

The judge's ruling took effect immediately, meaning that Montana physicians can prescribe lethal doses of medicine to mentally competent terminally ill patients, without fear of criminal prosecution. The court decision does not apply to other states.

This ruling puts Montana in a grey area, requiring a legislative action to actually decide what the law states in Montana. Although not entirely factual, the ruling does, in essence, make Montana the third state to allow patient-directed dying.

New Mexico

In 2013 Vermont became the 4th state in the US to allow terminally ill patients to acquire medication to end their lives. New Mexico became the 5th state just months later in January 2014 after the Second Judicial District Judge Nan Nash said the state's constitution prohibits the state from depriving a person of life, liberty or property without due process.

“This court cannot envision a right more fundamental, more private or more integral to the liberty, safety and happiness of a New Mexican than the right of a competent, terminally ill patient to choose aid in dying,” Nash wrote.

Nash also ruled that doctors could not be prosecuted under the state's assisted suicide law, which classifies helping with suicide as a fourth-degree felony.

Terminally ill patients in the state now have a fundamental right under the New Mexico Constitution to seek a physician's help in getting prescription medications if they want to end their lives on their own terms.

The judge's decision comes from a case in which two doctors and a Santa Fe woman with advanced uterine cancer asked the judge to determine whether physicians would not be breaking the law if they wrote prescriptions for competent, terminally ill patients who wanted to end their lives.

Doctors Katherine Morris and Aroop Mangalik and patient Aja Riggs initially filed their lawsuit in March 2012.

The lawsuit had the support of the ACLU of New Mexico, Denver-based Compassion & Choices and the New Mexico Psychological Association, the largest organization of professional psychologists in the state. The psychologists' group argued that assisted suicide and "aid in dying" for terminally ill patients were fundamentally different.

Riggs, a 49-year-old Santa Fe resident who has undergone aggressive radiation and chemotherapy treatment, testified that her cancer was in remission and that she wanted to live, but she also wanted the option of dying if her condition worsened.

"I don't want to suffer needlessly at the end," she told Nash.

California's Bid

Oregon, Washington, and Montana could get some big company soon. The spotlight is now on California, where a bill under consideration would allow patients diagnosed with six months or less to live to take lethal pills prescribed by their doctor.

David Masci of the independent Pew Forum on Religion and Public Life believes the bill has a chance to pass the state legislature this year because it has the backing of the assembly speaker, Fabian Nunez

"That could carry the bill through the assembly and give it some momentum in the state senate," he told the BBC News website.

If both houses approve the bill, it will need Governor Arnold Schwarzenegger's signature to become law.

He has previously said he would prefer the issue be decided by voter referendum rather than the legislature.

A poll found last year that nearly 70% of Californian adults favored allowing incurably ill patients access to lethal drugs.

A successful passage of the bill would be important on a national scale, says Mr Masci. California, the nation's most populous state, has always been a social and cultural bellwether. It could prompt other state legislatures to debate the issue, he says.

CAAS - a coalition of disability rights activists, Latino civil rights groups, pro-life groups and medical professionals - is leading the opposition in California.

The group fears that rising health care costs and health rationing could lead hospitals, health insurers and even family members to pressure patients to end their lives prematurely in order to save scarce resources.

"In a way, Dr Kevorkian is the poster boy for why we need this law," says Ms Berg.

"The disturbing tale of Dr Kevorkian is a tale of the tragic lengths people will go to when they have no legal options. We don't need crusaders who think they are above the law."

University of Utah study

"Physician-assisted death" can mean either a form of suicide in which a doctor provides drugs in the knowledge that they will be used to end life, which is passive euthanasia, or active euthanasia where the doctor also helps administer those drugs.

A 2007 University of Utah study, led by Professor Margaret Battin, looked at hundreds of examples of "physician-assisted death" in both locations, looking closely at race, gender, age and medical history.

The average age of people choosing assisted suicide is 70, with most suffering from cancer.

A spokeswoman for the Pro-life Alliance said that other studies hinted that vulnerable people were at risk from assisted dying.

"Data from Oregon in 2005 showed that more than a third of the people who underwent assisted suicide said that one of their reasons for doing so was because they felt a burden to their families."

LEGAL BATTLES

Vermont: Death-with-dignity bill failed in 2005 and 2007, but was brought up again in 2011

Hawaii: Came within three votes of becoming the second state to allow doctor-assisted suicide in 2002. Similar bills have stalled in the legislature since then

Michigan: A law enacted in 1998 made physician-assisted suicide a felony

Maine: Voters narrowly rejected a proposal in 2000. Similar proposals were rejected by the legislature four times before supporters launched a citizen initiative drive that forced the proposal to the ballot