

ASSISTED DYING LEGISLATION:

**Time for the Laboratory to Extend
Beyond Oregon, to the Neighboring
State of California?**

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“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.”

New Skate Ice Co. v. Liebermann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).



“Throughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician assisted suicide. Our holding permits this debate to continue, as it should in a democratic society”

**Glucksberg v. Washington;
Quill v. New York (1997)**



“States are presently undertaking extensive and serious evaluation of physician-assisted suicide. . . . In such circumstances, ‘the challenging task of crafting appropriate procedures for safeguarding liberty interests is entrusted to the “laboratory” of the States in the first instance.’”

(O’Connor, J., concurring)



The Laboratory of Oregon

- Oregon Death with Dignity Act (“ODWDA”) (1994)
- Lee v. Oregon, 891 F. Supp. 1429 (D. Or. 1995), vacated, 107 F.3d 1382 (9th Cir. 1997)
- Implementation (finally) begins



Continued Challenges to ODWDA

Federal Legislation

↓ LDAPA (1998)

↓ PRPA (1999)

- ◆ Measures derailed: mainstream medical/health policy community concerned about adverse impact on pain management/palliative care



Continued Challenges to ODWDA

Federal Executive Action

- ↓ Ashcroft Directive (2001)
 - ◆ Scope of CSA
 - ◆ What constitutes: “legitimate practice of medicine”
 - ◆ Who determines?



The Oregon Experience

- Use of physician-assisted dying is limited
- During the first 6 years, a total of only 171 Oregonians chose it
- Patients choosing assisted dying in 2003= 1/7 of 1%—i.e., 0.0014 percent—of Oregonians who died that year



The Oregon Experience

- 99% of patients opting for physician-assisted dying during the first six years had health insurance;
- 86% were enrolled in hospice care
- 7 years of experience in Oregon demonstrate that risks to patients are not realized when a carefully drafted law is in place



The Oregon Experience

- The option of physician-assisted dying has not been unwillingly forced upon the poor, uneducated, uninsured or otherwise disadvantaged



The Oregon Experience

- ↓ Rather than posing a risk to patients or the medical profession, the ODWDA has galvanized improvements in EOL care
 - ◆ doctors increase efforts to improve ability to provide adequate EOL care;
 - ◆ Improve knowledge of the use of pain medications for the terminally ill;
 - ◆ Improve ability to recognize depression and other psychiatric disorders;
 - ◆ More frequently refer patients to hospice programs.



Outside Reviews

“It is [quite] apparent from credible sources in and out of Oregon that the Death with Dignity Act has not had an adverse impact on end-of-life care and in all probability has enhanced the other options.”

State of Vermont(2004)



Public Support for Assisted Dying

- 65% support legalization of the right to physician-assisted dying, 61% favor implementation of a version of the ODWDA in their own state (Harris poll, January 2002)
- 63%-90% of people with a terminal illness support right to physician-assisted dying and would like to have the option available to them



Expanding the Laboratory Beyond Oregon

Efforts to enact Oregon-type laws

- Michigan (1998)
- Maine (2000)
- Hawaii (2002,2003,2004)
- Vermont (2004, 2005)
- California (1999, 2005)



Why California, Why Now?

- Seven years experience in Oregon
 - ↓ Political process no longer in vacuum
 - ↓ Arguments regarding risks/abuse no longer tenable



Why California, Why Now?

- California landscape regarding end-of-life care
 - ↓ California is a national leader in policy promoting good pain management and palliative care



Why California, Why Now?

- ◆ IPTA, PPBR, Mandatory med school and CME in pain management/palliative care;
- ◆ Medical board policy and practice;
- ◆ Tort system (e.g., Bergman, Tomlinson cases)
- ◆ “Must improve pain management” argument ought have little traction



**Expanding the Laboratory Is
Important to Continue
Development of
Understanding/Knowledge**



What Position Should Professional Organizations' Take?

Position Statements on Physician-Assisted Suicide: A Case for Studied Neutrality

- American Academy of Hospice and Palliative Medicine
- American Medical Students Association
- American Pharmaceutical Association
- Oncology Nursing Society
- Oregon Health & Science University
- Oregon Hospice Association:
- Oregon Medical Association

