

Court approval of physician-assisted suicide

In April, a Federal appeals court in New York City overturned a state ban on assisted suicide, clearing the way for terminally ill patients to seek the help of their physicians in expediting their own deaths.

The unanimous decision, by a three-judge panel of the Second Circuit Court of Appeals, was the second such ruling by a Federal court in recent months. In March, the Ninth Circuit Court of Appeals in San Francisco overruled Washington State's ban on assisted suicides, on the grounds that a law prohibiting doctor-assisted suicide violated the Due Process clause of the Constitution's 14th amendment.

The judges in the New York case found in their ruling no compelling interest for the state in keeping a mentally competent, terminally ill patient alive against his or her own will. "What interest can the state possibly have in requiring the prolongation of a life that is all but ended?" the judges wrote. "And what business is it of the state to require the continuation of agony when the result is imminent and inevitable?"

The lawsuit, which was brought in 1994 by three physicians and their three patients, is almost certainly destined for appeal to the US Supreme Court. Although the plaintiffs in the case were acutely ill patients with terminal diseases, such as AIDS and cancer, the decisions will undoubtedly bear on an ever-growing population of long-term terminally sick persons — those suffering with Alzheimer's disease.

Alzheimer's disease is the fourth leading cause of death in the United States, behind heart disease, cancer and stroke. The disease is always fatal. Its progression, however, is less certain. People with Alzheimer's can live as many as twenty years after onset, or die within three.

An Internet site devoted to the Alzheimer's Association claims the financial costs of caring for patients with the disease run as high as US\$100 billion annually. Only about US\$8.5 billion of that figure is borne by federal and state governments, with the rest falling on the private sector.

Barring a major medical advance, the ripening of the so-called baby boomer generation — those Americans born in the decade after the World War II — the burden of Alzheimer's, both financial

and social, will cause an unavoidable surge in the number of people with the disease. By the middle of the next century, the Alzheimer's Association estimates, as many as 14 million Americans will be Alzheimer's patients (there are four million now.)

Of course, not every person with Alzheimer's will opt for suicide. Many, in fact, because of the severity of their dementia, will be in no position to make the decision. It is nevertheless unavoidable, however, that as today's middle-aged Americans grow older, more will be affected by the disease, and more will face the choice of taking their own lives.

In a 1995 book, *The Moral Challenge of Alzheimer's Disease*, Stephen Post attacks assisted suicide as being detrimental to the development of a "fully adequate" health care system — one in which long-term care for patients with dementia is a priority. "Because our health care system is designed more to rescue people from death than to make dying less burdensome, the development of care for those dying is not a highly esteemed goal," writes Post, a bioethicist at the Case Western Reserve School of Medicine.

But Post's argument goes beyond the duties of the state to provide options to the dying. The burden, he claims, also rests with the sick themselves, who have a duty to society not to take their deaths frivolously. "People with severe diseases have responsibilities to maintain the general cultural prohibition against suicide as a routine response to life's inevitable challenges," he writes.

Somewhat surprising, groups like the Alzheimer's Association have not encountered much interest in assisted suicide, despite their already large and growing pool of constituents.

Newspapers and other publications, however, have been flooded with letters on either side of the physician-assisted suicide debate. On April 5, for example, just three days after the ruling, the *New York Times* published condemnatory letters from two ethicists and a clergyman.

"The ruling," wrote Kenneth M. Prager, "by the Federal appeals court in Manhattan that physicians may legally help their patients commit suicide weakens the age-old Judeo-Christian value of the sanctity of life and the moral under-

pinning of the medical profession."

Prager, chairman of the medical ethics advisory committee at Columbia Presbyterian Medical Center, went on to write that whereas withholding life support can be appropriate if it "prevents the prolongation of the dying process," prescribing a lethal dose of medication "to a sentient, reasoning, albeit suffering, human being . . . is morally reprehensible and emotionally repugnant to a large majority of doctors . . ."

Similarly, the Reverend Brian P. Barrett wrote, "the false sense of absolute human freedom that underlies the argument for physician-assisted suicide can as easily be invoked to justify the legalization of physician-assisted homicide of patients deemed a burden to society. Once the truth of the human person has been set aside," Barrett wrote, "we all run the risk of being 'liberated' against our will from the life we cherish."

But what about the *uncherished* life?

In the New York case, for example, the three dying patients and their doctors argued that the ban against their receiving prescriptions for deadly medicine forced them to live in misery. The three patients each died before the recent ruling.

The physicians in the case, Samuel C. Klagsburn, Timothy E. Quill and Howard A. Grossman, spoke of their relief in the wake of the court's decision, according to reports.

Even though doctor-assisted suicide has been illegal in most states, physicians have long skirted these laws at the behest of their patients. And, as law enforcement officials in New York admitted, they are loath to prosecute such cases. In fact, according to the New York District Attorney's office, there have been no cases of a doctor being tried for assisting in a suicide.

Nevertheless, with the status of doctor-assisted suicide still pending, states must prepare for the possibility that the recent decisions validating it might well clear the Supreme Court. With this in mind, Derek Humphry, the founder of the right-to-die Hemlock Society, wrote in a letter to the *New York Times*, that while doctors in 12 states "can now prescribe lethal drugs for competent, dying patients . . ., this should not go unregulated."

ADAM MARCUS
Baltimore, Maryland