PHYSICIAN-ASSISTED SUICIDE AS PUBLIC POLICY

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DEFINITIONS

In order to understand the issue of legalized Physician-assisted Suicide (PAS) as public policy, a number of definitions are in order . . .
Public policy is a “catch-all” phrase used to describe the policies (laws, rules, incentives, disincentives, and punishments), which government imposes on those living in its jurisdiction—the public.

Public policy is crafted at all levels of government—local, state and national—by elected and/or appointed officials:
- Legislators—county, state and federal
- Constitutional officers—state and federal
- Bureaucrats—every level of government
What is “good” public policy?

“Good” public policy benefits the most at the least cost and inconvenience, demands personal accountability and ensures protection of those that are vulnerable.

Examples of “good” public policy:

- **Food stamps**—individuals must demonstrate need (personal accountability), but both the hungry (vulnerable) and the economy (growers, retailers) benefit

- **Child protective services**—parents/guardians are scrutinized (personal accountability) thereby benefitting both the very young (vulnerable) and society (particularly the next generation)
What is “bad” public policy?

- Bad public policy benefits a small and/or elite sector of society, heightens the danger to the poor or vulnerable, and/or diminishes personal accountability.

- Examples of bad public policy:
  - *Abortion-on-demand*, which destroys the most vulnerable while allowing individuals to avoid personal accountability.
  - *Legalized assisted suicide*, which allows elites the option to control the “time and manner” of their deaths, but which also creates financial incentives that place the poor and disabled at risk.
What is suicide?

Suicide is self-destruction, self-annihilation, the act of killing one’s self

What is assisted suicide?

Assisted suicide is the process by which an individual, who may otherwise be incapable, is provided with the means (drugs or equipment) to commit suicide
What is Physician-assisted Suicide (PAS)?

- Suicide of a terminally ill (chronically ill?) patient by means of a self-administered lethal drug prescribed by a physician who has judged that patient mentally competent to make the request.
What is **Euthanasia**?

- **Euthanasia** literally means “good death” in Greek.

- The act of bringing about the death of a hopelessly ill and suffering person in a relatively quick and painless way either by:
  - Putting the person to death (active)
  - Withholding medical assistance from the person (passive)

- Also known as “mercy killing”
What is the difference between Euthanasia and Physician-assisted Suicide?

They differ in the level of participation of the physician:

- In PAS, upon the patient’s request, the physician provides the necessary means or information, but the patient performs the act.

- In Euthanasia the physician performs the act—either with or without the patient’s knowledge and/or consent.
BACKGROUND

Because suffering has always been part of human existence, suicide (self-killing) as well as requests for assistance in causing one’s death have occurred since the beginning of medicine . . .
The Ancients

History and philosophy of suicide

- **Hippocrates** (b. 460, d. 377 BC), the father of western medicine: “I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan.”

- **Plato** (b. 428, d. 347 BC) thought that suicide was an act of cowardice or laziness

- **Aristotle** (b. 384, d. 322 BC) thought that suicide was wrong for society
Neither Greek nor Latin had a single word that aptly translates to “suicide”—even though most of the ancient city-states criminalized self-killing.

Both Plato and Aristotle limit the justifications for suicide largely to considerations about an individual’s social roles and obligations.
Saint Augustine (b. 354, d. 430 AD) gave the first thoroughgoing justification for the prohibition on suicide using scripture (“thou shalt not kill”)

Saint Thomas Aquinas (b.1225; d. 1274) taught that suicide violates “divine order”/natural law and usurps God’s prerogative in determining when we die
The Enlightenment Philosophers on suicide

- **John Donne** \((b.1572, d.1631)\) gave the first modern defense of suicide: it cannot be contrary to laws of nature—or all acts of self-denial or privation would be similarly unlawful.

- **David Hume** \((b.1711, d.1776)\) countered traditional (Thomistic) “divine order”/natural law arguments against suicide: mankind often contravenes natural law, e.g., diverting a stream, treating an illness.

- **Immanuel Kant** \((b.1724, d. 1804)\) opposed suicide: our rational will was the source of our moral duty so it could not permissibly destroy itself.
Suicide is the *inevitable response* of a misunderstood and anguished soul—Novelists Rousseau (1712-1776), Goethe (1749-1832) and Flaubert (1821-1880)

Suicide is a *social ill* reflecting widespread alienation and cultural decline

Suicide results from a *psychiatric disorder*

Suicide is the *assertion of authentic human will* in the face of the absurdity of life—Existentialists Camus (1913-1960), Sartre (1905-1980)
History of Suicide Laws

For over 700 years, the Anglo-American common law tradition punished—with ignominious burial and/or estate forfeiture—or otherwise disapproved of suicide

- Henry of Bratton (b. 1210, d. 1268), English judge: *Laws and Customs of England*

- Sir William Blackstone (b. 1723, d. 1780) English jurist and professor: *Commentaries on the Laws of England*
History of Suicide Laws

- In the late 1700s, American colonies/states abolished harsh criminal penalties for suicide.
  
  “Suicide is so abhorrent to the feelings of mankind...There can of course be no necessity of any punishment.”

  —Zephaniah Swift, Chief Justice of Connecticut, 1796

- Suicide remained a grievous—though nonfelonious—wrong in the American states.
Outlawing Assisted Suicide

- New York passed the earliest (1828) American statute explicitly outlawed assisting suicide and many of the new states and territories followed New York’s example.

- By the time the 14th Amendment was ratified (1868) most states had made assisting a suicide a crime.

- In recent years, the states’ assisted suicide bans have been re-examined and mostly re-affirmed.
CATHOLIC CHURCH’S STANCE

Catholic teaching is very clear in opposing both Physician-assisted Suicide and Euthanasia

Following are excerpts from those documents
Declaration on Euthanasia  
(Vatican, 1980)

- Intentionally causing one’s own death is equally as wrong as murder.

- Suicide is often a refusal of love for self, the denial of a natural instinct to live, a flight from the duties of justice and charity owed to one’s neighbor, to various communities or to the whole of society.
Evangelium Vitae
(Pope John Paul II, 1995)

- To concur with the intention of another person to commit suicide and to help in carrying it out through so-called “assisted suicide” means to cooperate in, and at times to be the actual perpetrator of, an injustice which can never be excused, even if it is requested.
Living the Gospel of Life
(U.S. Bishops, 1998)

- We must begin with a commitment never to intentionally kill, or collude in the killing, of any innocent human life, no matter how broken, unformed, disabled or desperate that life may seem.

- Euthanasia and assisted suicide are never acceptable acts of mercy. They always gravely exploit the suffering and desperate, extinguishing life in the name of the “quality of life” itself.
LANDMARK COURT DECISIONS

Two Circuit Courts found a ban on assisted suicide unconstitutional:

- New York (Second Circuit): No essential legal difference between ending a life by terminating medical treatment and administering life-ending drugs—the ban violates the Equal Protection Clause of the 14th Amendment.

- Washington state (Ninth Circuit): Everyone has a fundamental liberty interest in controlling the time and manner of their death—the ban violates the Due Process Clause of the 14th Amendment.

- However, the U.S. Supreme Court overturned both Circuit Courts and ruled in Washington v. Glucksburg that there is no federal constitutional right to physician-assisted suicide—although states may chose to legalize it.

- The Court held that intent on the part of the treating physician is determinant in deciding the difference between palliative care and PAS.

- The Court asserted that patients have a right to adequate palliative care.
Washington v. Glucksburg

Chief Justice Rehnquist wrote for the Court:

A physician who withdraws, or honors a patient’s refusal to begin, life sustaining medical treatment purposefully intends…only to respect his patient's wishes and to cease doing useless and futile or degrading things to the patient when [the patient] no longer stands to benefit from them.
Washington v. Glucksburg

- The same is true when a doctor provides aggressive palliative care; painkilling drugs may hasten a patient’s death, but the physician’s purpose and intent is only to ease his patient’s pain.

- The law has long used actors' intent or purpose to distinguish between two acts that may have the same result. The common law of homicide often distinguishes between a person who knows that another person will be killed as the result of his conduct and a person who acts with the specific purpose of taking another's life.
The right to palliative care

In contrast to the PAS debate, the right to palliative care is uniformly acknowledged.

- Justices O'Connor, Ginsburg, and Breyer wrote concurring opinions in *Washington v. Glucksburg*—specifically concluding that judicial intervention would become necessary were state law to prevent the provision of palliative care, including the administration of drugs as needed to avoid pain at the end of life.
Causes for the current interest in assisted suicide:

- Modern advances in medicine and technology which can greatly prolong life
- Institutionalization of death and dying
- Our current “rights” culture

Based on a recent study, most physicians practicing today have received a request for PAS and/or Euthanasia
Physicians’ principles

- Two principles on which all of organized medicine agrees:
  - Physicians have an obligation to relieve pain and suffering and to promote the dignity of dying patients in their care.
  - The principle of patient bodily integrity requires that physicians must respect patients’ competent decisions to forgo life-sustaining treatment.
Palliative care for the dying

Today, specialists in palliative care believe that if patients with life-threatening illnesses had access to the following, their suffering could be reduced sufficiently to eliminate their desire for hastened death:

- Careful assessment
- Optimal symptom control
- Supportive care

Even when the desire persists, avenues other than PAS/Euthanasia are available to remedy suffering and avoid prolonging life against the patient’s wish.
Secular arguments in favor of PAS

- **Respect for Autonomy**—Personal decision to choose time/manner of death for competent person
- **Justice**—Terminally ill patients allowed to hasten death by refusing treatment, ought to also be allowed assisted death
- **Compassion**—Not always possible relieve suffering (more than pain) with palliation
- **Individual liberty vs. state interest**—A complete prohibition on PAS is an excessive limit on personal liberty
- **Openness of discussion**—Legalization of PAS would promote open rather than secret actions
Secular arguments against PAS

- **Sanctity of Life**—There are strong traditions against taking human life as well as laws against homicide.
- **Passive vs. Active distinction**—There is a bright line between “letting die” and “killing”.
- **Potential for abuse**—Healthcare insurance costs, family greed, burden of care could drive the request.
- **Professional integrity**—Major professional medical groups oppose PAS as a harm to doctor/patient relationship.
- **Fallibility of the profession**—Errors in diagnosis, prognosis and inadequate treatment of pain.
THE CURRENT STATUS OF PAS IN THE UNITED STATES
Three states have legalized PAS

- **Oregon** by ballot initiative in 1994, and reaffirmed by referendum in 1997
- **Washington** by ballot initiative in November 2008
- **Montana** by a December 2008 trial court decision, *Baxter v. State*, in which the judge ruled that persons in that state have a right to die, as well as a right to assistance in dying.
History of the efforts to legalize PAS in California

- Proposition 161 (1992) failed 54.1 to 45.8 percent
- AB 1080, AB 1310 (1995) were withdrawn and never heard in Assembly committees
- AB 1592 (1999) passed Assembly policy and fiscal committees, never brought to the Assembly Floor
Efforts to legalize PAS in California (continued)

- AB 654 (2005) passed policy and fiscal committees, never brought to Assembly Floor
- AB 651 (2006) “gut and amend” bill; heard in Senate Judiciary committee—defeated 3-2
- AB 374 (2007) passed policy and fiscal committees, never brought to the Assembly Floor
2008 California Legislation: *The Right to Know Act*

- AB 2747, *End-of-Life care*, sponsored by *Compassion & Choices* (formerly *Hemlock Society*) was passed by the California Legislature —over the opposition of the *Californians Against Assisted Suicide* (CAAS) coalition and the CCC—and signed into law by the Governor.
Amendments to AB 2747

However, CAAS and the Association of Northern California Oncologists (ANCO) were successful in removing the most egregious parts of the bill:

- Requiring physicians to provide a “menu” of end-of-life “treatments” to patients with a prognosis of one year or less to live. That menu included:
  - Voluntary Stopping of Eating and Drinking (VSED)
  - Palliative (terminal) Sedation
After AB 2747 became law, the C&C, in a press release, misrepresented the actual language of the bill:

- When requested, information about hospice care, refusal or withdrawing of life-prolonging treatments, voluntary stopping eating and drinking (VSED), palliative care and palliative sedation will be discussed with the patient.
- The Act also requires that health care providers who do not wish to comply with a particular patient’s choice must refer or transfer the patient to another provider.
PHYSICIAN-ASSISTED SUICIDE IN 2009
2009 California PAS Legislation

We anticipate the introduction of a bill to legalize PAS because of the momentum created by:

- AB 2747 becoming law—which could provide a “ready-made” framework
- Passage of the Washington state initiative legalizing PAS
- Montana court decision ruling there is a state constitutional right to PAS
Opposition to legalizing PAS in California

- CAAS Capital group
  - Strategizing with like-minded groups (ANCO, CMA, Hospice, etc)
  - CAAS Lobbyists call on new Legislators in Capitol

- CAAS Grassroots group
  - CCC-hosted regular conference calls
  - Grassroots organizations’ letters sent to all new Legislators
  - Delegations assembled for visits to district offices of new Legislators
CAAS arguments against legalizing PAS

- A dying person’s request for death is almost always a cry for help coming from a fear of helplessness and abandonment—not unlike an anguished teenager who threatens suicide.

- Legalizing “assisted suicide” will damage our society’s foundational relationships—between
  - Physicians and patients,
  - Healthy and ill,
  - Old and young,
  - Fully-abled and partially-abled.
CAAS arguments

- Society has created many responsible ways for individuals to exercise their autonomy as life ebbs (living will, advance directives)

- Every major disability rights group asserts that their quality of life will be subtly devalued; their access to community resources and accommodation will be jeopardized if PAS is legalized

- Those who advocate for the poor point out that California is the most competitive health care market in America and that PAS will be cheaper than long-term care
Status of PAS as public policy in other states

- Washington state rule-making underway
  - Conscience opt-outs?
  - Listed cause of death
  - Record-keeping

- Montana state court battles
  - District Court denied Montana Attorney General’s request for a stay of trial court (one judge’s) decision
  - Attorney General requesting stay from state Supreme Court
  - Attorney General plans to appeal decision