

# ***Oregon v. Ashcroft: Physician-Assisted Suicide with Federally Controlled Substances***

**The legal battle Oregon is facing over physician-assisted suicide affects a patient terminally ill with liver cancer who has expressed desire to end her own life.**

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Upon being diagnosed with colon cancer Dr. Barber closed her medical practice in Portland, OR and is going to move home to Houston for treatment and the support of her family. She is referring her patients to other clinicians and asks her friend and co-worker, Dr. Xavier, to accept a particular patient, EH. EH, is a 46-year-old woman with liver cancer who has enjoyed a long, trusting relationship with Dr. Barber. Dr. Barber has been a strong advocate for EH and hand-picks Dr. Xavier to take over EH's care because of her confidence in his professional skills and wisdom. Dr. Barber also asks Dr. Xavier to complete an important task that she was unable to complete before her illness and hasty retirement. She tells Dr. Xavier that the completion of the task will allow her to focus on her family and provide comfortable closure to her medical career.

She asks Dr. Xavier to write a prescription for secobarbital for EH so that EH can make a decision about her own death. Three physicians have certified in writing that EH is within 6 months of death. A psychiatrist has found EH to be mentally competent. In her medical file is a long, compelling letter EH wrote detailing why she wants access to barbiturates to end her life, how she has researched her options, and how she willingly asked Dr. Barber for a prescription.

After careful consideration Dr. Xavier determines that EH meets all the eligibility criteria for assistance under the [Oregon Death with Dignity Act](#). Dr. Xavier is aware that he will be required to record his prescription of the lethal dosage of barbiturates (a federally regulated substance) with the Oregon Department of Health. Dr. Barber reminds Dr. Xavier that Oregon voters approved the physician-assisted suicide law by a 60 percent majority. Dr. Xavier consults other friends and colleagues who also insist that EH has the right to make difficult choices about her death, and they suggest that any alternative could be equated with abandonment of EH in her time of need. Dr. Xavier also knows that the US Attorney General John Ashcroft issued a directive encouraging the Drug Enforcement Agency (DEA) to take action against any physician who assists in a suicide, and that the directive has been challenged in federal court.

In his own mind, Dr. Xavier believes that terminally ill adults have a right to death with dignity, yet he knows that the ethical code of his profession does not allow physician participation. There is also the possibility that, with the US Attorney General's office's initiative, he might lose his license to prescribe federally regulated substances. Dr. Xavier considers the harm that such a loss would cause his professional career if he could no longer prescribe.

## **Questions for Discussion**

1. Is physician-assisted suicide fundamentally incompatible with physicians' role as healers? See [AMA Principles III and IV](#) and see what the *AMA Code of Medical Ethics* says about this topic in Opinion 2.211. Physician assisted suicide. American Medical Association. *Code of Medical Ethics 2008-2009 Edition*. Chicago, IL:

American Medical Association; 2008:104-112.

2. EH's needs for powerful pain medication will increase as her illness progresses. Should Dr. Xavier be concerned about prescribing adequate pain medication that could result in EH's unintentional death even where medically appropriate? See [DEA press release](#).
3. Proponents of Ashcroft's position claim that DEA agents will easily be able to determine the differences between intentionally causing a death and prescribing enough medication to provide adequate pain relief. Do you agree?
4. If Dr. Xavier wants to abide by the ethics of his profession, what should he tell Dr. Barber and EH?

## Subsequent Legal Proceedings

The legal question of authority over Oregon physicians hinges on federal versus state's rights. In 1997 the US Supreme Court ruled that the Constitution does not guarantee citizens a positive right to demand the aid of a physician in committing suicide. But it left the question of legality of physician-assisted suicide to state legislatures to decide. A 2001 [US Supreme Court decision](#) about the medical use of marijuana prompted Ashcroft's insistence that federal law regulating controlled substances be uniform throughout the United States and not be superseded by state law. However, at a hearing on November 8, 2001, federal District Judge Robert E. Jones issued a Temporary Restraining Order (TRO), enjoining the defendants from enforcing, applying, or otherwise giving any legal effect to the attorney general's directive. Judge Jones reasoned that there would be "irreparable harm" to citizens of the state of Oregon who were relying upon the Death with Dignity Act if the new federal directive were to go into effect before the case was heard fully on the merits. That temporary restraining order was extended until Judge Jones issued his decision.

On April 17, 2002 Judge Jones issued his decision, [Oregon and Rasmussen v. Ashcroft, 192 F. Supp. 2d 1077 \(April 17, 2002\)](#). The judge opined that through his directive, Ashcroft evidently sought to stifle an ongoing "earnest and profound debate" in the various states concerning physician-assisted suicide. The judge went on to rule in favor of the state of Oregon and entered a permanent injunction enjoining the defendants from enforcing, applying, or otherwise giving any legal effect to the Ashcroft directive. The judge's ruling rested on the finding that Congress never intended, through the Controlled Substances Act or through any other current federal law, to grant blanket authority to the Attorney General or the DEA to define, as a matter of federal policy, what constitutes the legitimate practice of medicine. Upholding the long standing principle that control and regulation of medical practice is a state prerogative, the court found that the Attorney General exceeded his authority in attempting to override the state's definition of "legitimate medical practice."

On May 24, 2002 the federal government announced it would appeal Judge Jones's decision in the Ninth Circuit Court of Appeals. Briefs have been filed, and a hearing date is expected to be set in late January 2003.

## Additional Reading

- Hardaway RM, Peterson MK, Mann C. The right to die and the Ninth Amendment: compassion and dying after Glucksberg and Vacco. *Geo Mason L Rev.* 1999;313:342.
- Orr R, Bishop L. Why psychiatrists should not participate in euthanasia and physician-assisted suicide, *Am J Forensic Psychiatry.* 1998;19:35-36.
- The Oregon Death With Dignity Act. <http://www.oregon.gov/DHS/ph/pas/ors.shtml/shtml>.

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