Ruling on physician-assisted suicide near top of agenda at US Supreme Court

Education

Éducation

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In brief

THE US SUPREME COURT will soon rule on whether Americans have a constitutional right to physician-assisted suicide. Lawyer Karen Capen says Canadian physicians should keep an eye on the ruling because Canada and the US have similar standards of medical practice and ethical principles. Any solution remains difficult because the gap between supporters and opponents of physician-assisted suicide is so wide.

En bref

LA COUR SUPRÊME DES ÉTATS-UNIS se prononcera bientôt sur la question de savoir si la Constitution accorde aux Américains le droit à l'aide médicale au suicide. Karen Capen, avocate, affirme que les médecins du Canada devraient être à l'affût de la décision parce que le Canada et les États-Unis ont des normes de pratique de la médecine et des principes éthiques semblables. Elle affirme que toute solution demeure difficile à trouver parce que l'écart entre les partisans et les adversaires de l'aide médicale au suicide est tellement vaste.

In January the US Supreme Court heard arguments for the first time on the controversial topic of physician-assisted suicide. It had many issues to consider. Is there a constitutional right to this type of suicide? If so, does the government still have the right to prohibit its use? When it agreed to rule on the constitutionality of 2 states' prohibitions against physician-assisted suicide, the court was reopening the debate on what advocates often call "the right to die."

A review of the cases — *[State of] Washington* v. *Glucksberg (Compassion in Dying)* and New York's *Vacco* v. *Quill* — will help Canadian doctors understand the US ruling when it is released, likely sometime this summer. The approaches taken by the lower courts and the Supreme Court are of interest here because there are many similarities between our countries, both in terms of practice standards and in the ethical principles that guide the profession.

Washington's state law was challenged by 4 physicians, 3 terminally ill patients and Compassion in Dying, an organization that provides support, counselling and assistance to mentally competent terminally ill adults considering suicide. The statute states that "a person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide." The penalty is imprisonment for a maximum of 5 years and a fine of up to $10 000. The court challenge focused on the ban on physician-assisted suicide by competent, terminally ill adults who choose to hasten their death.

District court Judge Barbara Rothstein referred to the "protected-liberty interest" in the Fourteenth Amendment to the US Constitution, which says a state may not "deprive any person of life, liberty or property, without due process of law." She based her analysis of the liberty interest on 2 cases. Rothstein said *Planned Parenthood* v. *Casey* was significant concerning a terminally ill person's *choice* to commit suicide: "The decision of a terminally ill person 'involv[es] the most intimate and personal choices a person may make in a lifetime' and constitutes a 'choice central to personal dignity and autonomy.' "

Rothstein also considered *Cruzan* v. *Director*, *Missouri Department of Health*, a landmark case concerning the right to refuse life-sustaining treatment and an incompetent person's right to die. However, *Cruzan* is not generally considered a "right-to-die" case and its impact has been limited to the state of Missouri.

Rothstein thinks the Supreme Court will reaffirm the tentative ruling from *Cruzan* that a competent person has a protected-liberty interest in refusing unwanted medical treatment, even when it is life sustaining and refusal or withdrawal will mean certain death. She ruled that the Washington statute is unconstitutional.

In March 1996, the US Court of Appeals (Ninth Circuit) released its decision in *Washington* v. *Glucksberg*, affirming the district court's judgement and invalidating similar assisted-suicide provisions in all states covered by the Ninth Circuit.

One significant aspect of the majority ruling was that it agreed with Rothstein that there are "compelling similarities" between the "right to die" and abortion. The appellate court found that "matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment." It also ruled that "having lived nearly the full measure of his life" and "being reduced at the end of his existence to a childlike state of helplessness, diapered, sedated, incontinent," a competent adult's "decision whether to endure or avoid such an existence" is as "personal, intimate or important" as any.

The same lawyer who argued the Washington case subsequently filed suit in New York, challenging that state's criminal sanctions against physician-assisted suicide. The plaintiffs were Dr. Timothy Quill, author of a controversial 1994 article that described his personal experience with a dying patient (Doctor, I want to die. Will you help me? *JAMA* 1993;270:870-3), as well as 2 other physicians and 3 terminally ill patients. The patients wanted access to lethal prescribed drugs if their conditions became unbearable, but their physicians were unable to comply because of a state law that specifically prohibited assisting in a suicide.

Shortly after the *Washington* v. *Glucksberg* appellate decision, the Court of Appeals for the Second Circuit ruled on New York's *Vacco* v. *Quill* case. "The alleged distinction between physicians forgoing treatment and providing lethal drugs could not survive [constitutional] scrutiny," the ruling said, and "such laws . . . cannot be applied to physicians who wish to prescribe lethal drugs for 'mentally competent, terminally ill adults' to 'self-administer at the time and place of their choice for the purpose of hastening their impending deaths.' "

This decision reversed a lower court ruling in favour of the state, which had invalidated parts of New York state law that criminalize intentionally aiding another person to commit or attempt suicide.

Right of access to abortion and suicide

In addition to briefs submitted last January by the parties in the 2 cases, the Supreme Court also heard 60 *amicus curiae* (friends of the court) briefs filed on behalf of hundreds of individuals and organizations. (In Canada, briefs are called factums and friends of the court are "intervenors.") A review suggests that such a compelling array of perspectives had not reached the Supreme Court in many years. Points of contention included the relationship between an unestablished right to assisted suicide and the limited legal right to choose to have an abortion, and the implications of a ruling in these cases on the precedent used to support the principle of choice for abortion services.

One organization, the Center for Reproductive Law and Policy, addressed the Ninth Circuit Court's reasoning that the right to physician-assisted suicide flows directly from the Supreme Court's *Planned Parenthood* decision. Concerned that the already limited right to choose to have an abortion will be further weakened if the Supreme Court rejects the circuit court's conclusion, the centre supported right of access to both physician-assisted suicide and abortion services, but also tried to separate the 2 issues.

"Unlike the freedom at issue here," it stated, "the decision to choose abortion . . . has deep connections to a women's ability to shape her family life and her role in American society. . . . The differences, coupled with a history of discrimination against women, justify a different standard of review but do not support a different result. Indeed, this Court need not even consider its abortion cases in deciding this case. Because the Washington statutes cannot be constitutionally applied to respondents under this Court's bodily integrity and autonomy precedents, including this Court's only decision concerning an individual's constitutionally protected freedom to hasten death [*Cruzan*], the judgement of the Court of Appeals must be affirmed."

A number of the briefs presented physicians' views. The American Medical Association, which also represented 45 other medical societies, stated that "the power to assist in intentionally taking the life of a patient is antithetical to the central mission of healing that guides both medicine and nursing. It is a power that most health care professionals do not want and could not control. Once established, the right to physician-assisted suicide would create profound danger for many ill persons with undiagnosed depression and inadequately treated pain, for whom

physician-assisted suicide rather than good palliative care could become the norm."

On the other hand, the American Medical Students Association and a coalition of medical professionals said that the principle that doctors should not intentionally harm patients currently "trumps all the other ethical considerations that support physician-assisted suicide. This takes an unreasonably narrow view of what may constitute harm for a patient suffering irremediable and severe pain and confronting an imminent and unavoidable death. For such a patient, death may constitute not harm but the only available relief; the true harm may lie in being compelled either to continue unnecessary suffering or to end one's life in a lonely and violent manner."

A group of bioethicists also entered the debate: "Petitioners stress the long tradition of prohibition against suicide, including penal laws dating to the founding of this country. But such laws derive from a time when death was rarely preceded by long periods of physiologically degenerative suffering. . . . The cases before the Court, however, involve degenerative death, a creature of modern medicine; they should therefore be decided on a historically clean slate."

In Canada, the most recent physician-assisted-suicide case to reach the Supreme Court involved Sue Rodriguez, a British Columbia women who had amyotrophic lateral sclerosis. Her request to have sections 241 and 14 of the Criminal Code, which prevent a terminally ill person from receiving help to commit suicide, declared unconstitutional by the BC Supreme Court was denied. The BC Court of Appeal, by a 2-to-1 margin, subsequently decided that her appeal should be dismissed.

The Supreme Court upheld the decisions of the 2 lower courts, but only by a 5-to-4 vote. Rodriguez had asked Canada's highest court to consider physician-assisted suicide a matter of national importance, one of the formal bases for the court to hear an appeal. The court also indicated that the issue of physician-assisted suicide requires a legislative solution. The split decisions at both the BC Court of Appeal and the Supreme Court of Canada demonstrate the difficulties in reaching a consensus on this professional, ethical and legal dilemma.

In 1995, a number of Criminal Code changes were proposed in a report issued by the Senate's Special Committee on Euthanasia and Assisted Suicide, but on the assisted-suicide issue the committee recommended that aiding suicide remain a criminal offence. Even a legislated solution would be hard-pressed to close the gap between supporters and opponents of physician-assisted suicide. In the meantime, physicians must continue to provide a range of health care services and alternatives to ensure that the needs of dying patients are met.