

Legislature rejected euthanasia

Dear Editor:

I have several concerns with the article in the recent August, 2010 *Advocate* by Kathryn Tucker entitled "Aid in Dying: Law, Geography and Standard of Care in Idaho." Whatever one may think of Euthanasia, whether denominated "Aid in Dying" as the author calls it, or "physician assisted suicide" or "mercy killing", as it is also known, the article's suggestion that Idaho, like Montana, could legally adopt that practice by judicial decision, simply by changing the standard of care for doctors, is a gross misunderstanding of Idaho law. The article's statement that "Most medical care is not governed by statute or court decision, but is instead governed by the standard of care," relies solely on 61 Am. Jur. 2d, for that statement, without recognizing that the standard of care for doctors in Idaho is established by statute, I.C. 6-1012. The article's implication that Idaho courts can change that standard simply by judicially adopting the statutory euthanasia policies of Washington, Oregon or Montana is simply an attempt to conduct an end run around the legislature with the kind of judicial activism that prevailed in many U.S. courts during the 1970s and 80s, and which not only diminished the public's respect for the courts, but has turned judicial elections into expensive partisan contests. The author's suggestion that Idaho can judicially adopt euthanasia is false and dangerous, and fails to recognize that in both the Idaho criminal statutes as well as I.C.6-1012, the Idaho legislature has rejected physician assisted suicide.

Hon. Robert E. Bakes
Retired Chief Justice
Idaho Supreme Court

Montana doesn't permit it

Dear Editor:

I am a Montana State Senator. I disagree with Kathryn Tucker's discussion of our law in her article, "Aid in Dying: Law, Geography and Standard of Care in Idaho." (August, 2010). Contrary to her implication, a physician can still find himself criminally or civilly liable for assisting a suicide in Montana. The recent Supreme Court decision merely gives

physicians a potential defense to criminal liability. I have also proposed a bill, "The Montana Patient Protection Act," which would overrule the Supreme Court decision to eliminate the defense and render it clear that assisted suicide is prohibited in Montana.

The vast majority of states to consider legalizing assisted suicide, have rejected it. The most recent states to reject it are Connecticut and New Hampshire. Only two states allow it.

Assisted suicide, regardless, provides a path to elder abuse and steers citizens to take their own lives. These results are contrary to our state's public policies designed to value all of our citizens regardless of age.

Senator Greg Hinkle
Thompson Falls, MT

Heirs will abuse older people

Dear Editor:

I am a State Representative in New Hampshire where, in January, we voted down an Oregon-style "aid in dying" law. I write in response to Kathryn Tucker's article promoting such laws, which she claims promote "choice" for patients at the end of life. [Tucker & Salmi, "Aid in Dying: Law, Geography and Standard of Care in Idaho," August 2010]

Aid in dying is more commonly known as assisted suicide. In New Hampshire, many legislators who initially thought they were for the law, became uncomfortable when they studied it further. Contrary to promoting "choice," it was a prescription for abuse. The vote to defeat it was 242 to 113 (nearly 70%).

Assisted suicide laws empower heirs and others to pressure and abuse older people to cut short their lives. This is especially an issue when the older person has money. There is NO assisted suicide law that you can write to correct this huge problem.

Do not be deceived.

Representative Nancy Elliott
Merrimack, New Hampshire

No assisted suicide in Idaho

To the Editor:

This letter questions your decision to publish "Aid in Dying: Law, Geography

and Standard of Care in Idaho" in the August 2010 edition of *The Advocate*. Either the legal reasoning contained in the "Aid in Dying" article was reviewed prior to its publication in *The Advocate* or it was not. Hopefully, no attorney associated with the Bar read and endorsed the legal arguments contained in this article. I will only cite two of the most obvious fallacies in the authors' reasoning:

(1) the claim that a recent Montana Supreme Court case recognizing the possibility of using a "consent defense" to a charge of homicide as is allowed under Montana statutory law in cases of physician assisted suicide would provide any defense to a charge of homicide for the same conduct in Idaho, and
(2) the claim that, because Oregon, Washington and Montana allegedly permits physician assisted suicide, Idaho courts would likely find that physician assisted suicide meets the local community standard of care for doctors practicing in Idaho.

At its core, the authors' argument in "Aid in Dying: Law, Geography and the Standard of Care" amounts to no more than a plea to Idaho doctors that they ignore Idaho law and instead act based upon the law of the surrounding states. What Idaho lawyer would provide this advice to any doctor client?

Perhaps "Aid in Dying" was published in *The Advocate* out of some misguided notion of free speech rights as providing Idaho attorneys a platform to express their personal views. Although the authors certainly have a right to advocate for their personal views, they have no right to do so in *The Advocate*. And, even if one were to contend that allowing such advocacy in *The Advocate* is a good idea, that would not justify *The Advocate* allowing publication of an article falsely claiming that assisted suicide was already legal under Idaho law.

False claims about what the law of Idaho actually is, published in *The Advocate*, cannot possibly benefit public debate on this issue. If presented to Idaho doctors as a peer reviewed legal analysis of the law related to assisted suicide in Idaho, "Aid in Dying" could actually lead some Idaho doctor to assist a patient take his or her life in reliance upon the legal analysis presented in this article. While achieving this result may be understood as an important milestone in the authors'

LETTERS TO THE EDITOR

quest to legalize assisted suicide in Idaho, the particular doctor used by those authors to make their point may feel betrayed if an Idaho court fails to find the legal analysis contained in their article applicable to the Idaho doctor's conduct. And, whatever the court ultimately decides about the legality of the doctor's conduct will come too late for the doctor's former "patient" by now likely buried in Idaho.

Richard A. Hearn, M.D.
Racine Olson Nye Budge & Bailey, Chtd.

Wrong article for *The Advocate*

Dear Editor:

I was appalled to read the article "Aid in Dying: Law, Geography and Standard of Care in Idaho" in the last issue of *The Advocate*. What was your rationale for publishing such malarkey? Was this a vain attempt on your part to increase readership, or do you have a more sinister political motive?

According to your website:

"*The Advocate* features articles written by attorneys on topics of interest to members of the legal community."

Kathryn L. Tucker is not an Idaho attorney. She is an extremely well-paid political activist stirring up controversy through her erroneous rhetoric. I find it extremely difficult to believe that this subject matter would be of interest to the majority of your readers. Which leads me to ask why publish such an article? Are you using your position as editor to help promote your own political agenda?

Robin Sipe
Eagle, ID

Oregon's law doesn't work

Dear Editor:

I am a doctor in Portland Oregon where assisted suicide is legal. I disagree with Kathryn Tucker's rosy description of our assisted suicide law, which she terms "aid in dying."

In Oregon, the so-called safeguards in our law have proved to be a sieve. Although we are reassured that "only the patient" is supposed to take the lethal dose, there are documented cases of family members administering it.

Family members often have their own agendas and also financial interests

that dovetail with a patient's death. Yet the true extent of such cases is not known as the only data published comes from second- and even third-hand reports (often from doctors who themselves who were not present at the death and who are active suicide promoters). What we do know about assisted suicide in Oregon is essentially shrouded in secrecy.

The scant information provided by the "official" Oregon statistics report that the majority of patients who have died via Oregon's law have been "well educated" with private health insurance. See official statistics at <http://www.oregon.gov/DHS/ph/pas/docs/year12.pdf>.

In other words, they were likely people with money. Was it really their "choice?"

Preserve choice in Idaho. Reject assisted suicide.

William L. Toffler MD
Professor of Family Medicine
OHSU--FM
Portland, OR

Doctors not always right

Dear Editor:

I live in Idaho, but formerly lived in Washington state where assisted suicide is legal. I was appalled to see Kathryn Tucker's article promoting "aid in dying," which is not only a euphemism for assisted suicide, but euthanasia. Indeed, in 1991, an "aid in dying" law was proposed in Washington State, which would have legalized direct euthanasia "performed in person by a physician." Legalizing these practices is bad public policy for many reasons. One personal to me is that doctors are not always right.

In 2005, I was diagnosed with a rare form of terminal endocrine cancer. This, along with having contracted Parkinson's disease, has made for a challenging life. Like most people, I sought a second opinion from the premier hospital in the nation that treats this form of cancer, M.D. Anderson, in Houston. But they refused to even see me, indicating they thought it was hopeless. Now five years later, it's obvious they were wrong.

Tucker's article refers to "aid in dying" is an "option." A patient hearing this "option" from a doctor, who he views as an authority figure, may just hear he has an obligation to end his life. A patient, hearing of this "option" from his children,

may feel that he has an obligation to kill himself, or in the case of euthanasia, be killed. As for me, I would have missed some of the best years of my life. These are but some of the tragedies of legalized "aid in dying."

I can only hope that the people of Idaho will rise up to chase this ugly issue out of town.

Chris Carlson
Medimont, ID

Article's lousy legal analysis

Dear Editor:

I read with some dismay the article on aid in dying in the August *Advocate*. While I realize that Ms. Tucker and Ms. Salmi have strong opinions on the subject, that is no excuse for *The Advocate* to publish a diatribe so lacking in rational analysis.

The authors first address an Idaho statute dealing with "euthanasia, mercy killing, ... or... an affirmative or deliberate act or omission to end life" and, in conclusory fashion, state that this passage does not include "aid in dying." Worse, they go on to cite the Montana Supreme Court case on the application of homicide statutes in support of the conclusion that Idaho physicians "should feel safe" in helping their patients to kill themselves. I wonder what percentage of the Idaho Bar would be willing to give this advice to a physician client when that client faces loss of liberty and/or their license to practice medicine should the attorney prove to be wrong? This article is editorial comment masquerading as legal analysis and, at the very least, should have been accompanied by someone making a counter-argument.

Robert Moody
Boise, ID

Oregon mistake cost lives

Dear Editor:

I was disturbed to see that the suicide lobby group, Compassion & Choices, is beginning an attempted indoctrination of your state, to accept assisted suicide as somehow promoting individual rights and "choice." I have been a cancer doctor in Oregon for more than 40 years. The combination of assisted-suicide legalization and prioritized medical care based on prognosis has created a danger for my

LETTERS TO THE EDITOR

patients on the Oregon Health Plan (Medicaid).

The Plan limits medical care and treatment for patients with a likelihood of 5% or less 5-year survival. My patients in that category who have a good chance of living another three years and who want to live, cannot receive surgery, chemotherapy or radiation therapy to obtain that goal. The Plan guidelines state that the Plan will not cover "chemotherapy or surgical interventions with the primary intent

to prolong life or alter disease progression." The Plan WILL cover the cost of the patient's suicide.

Under our law, a patient is not supposed to be eligible for voluntary suicide until they are deemed to have six months or less to live. In the cases of Barbara Wagner and Randy Stroup, neither of them had such diagnoses, nor had they asked for suicide. The Plan, nonetheless, offered them suicide. Neither Wagner nor Stroup saw this event as a celebration of

their "choice." Wagner said: "I'm not ready, I'm not ready to die," They were, regardless, steered to suicide.

In Oregon, the mere presence of legal assisted-suicide steers patients to suicide even when there is not an issue of coverage. One of my patients was adamant she would use the law. I convinced her to be treated. Ten years later she is thrilled to be alive. Don't make Oregon's mistake.

Kenneth Stevens, MD
Sherwood, OR

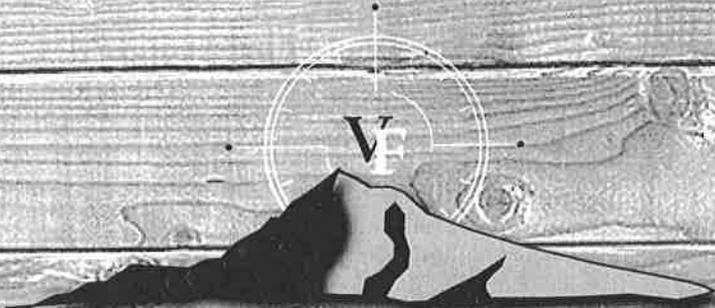
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