COMING TO A COUNTRY/STATE NEAR YOU: PHYSICIAN-ASSISTED SUICIDE

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Learning Objectives:

- Define and compare physician assisted suicide, euthanasia and hospice care.
- Review the history of physician assisted suicide in the US.
- Explore the current political, ethical and legal issues.

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Physician Assisted Dying
Coming to a Country/State Near You

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Causes of Dying

• Natural death, accidents, trauma
• Euthanasia
  – Voluntary, non-voluntary, involuntary
  – Passive, active
• Mercy killing
• Physician-assisted suicide
• Suicide

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Goals of Medical Care

• Primum Non Nocere
  – First, Do No Harm
• "I will give no deadly medicine to anyone if asked, nor suggest any such counsel." – Hippocratic Oath, 5th Century BCE
• "I will maintain the utmost respect for human life." – Declaration of Geneva, 1948
• "A physician shall always bear in mind the obligation to respect human life." – International Code of Medical Ethics, 2006

Principles of Medical Ethics

• Autonomy
• Non-maleficence
• Beneficence
• Justice

Palliative Care

• Relief of Symptoms
  – Physical: pain, dyspnea, nausea
  – Emotional: depression, anxiety
  – Spiritual: grief
  – Existential
Hospice

• Delivery system for palliative care for terminally ill people.

Euthanasia

• “Good death”
  – Painless
  – Relieves suffering
  – Intentional merciful death
• Passive
  – Withholding of common treatments that are necessary for the continuance of life.
• Active
  – Use of lethal substances or forces in order to kill.

Doctrine of Double Effect

• An action having foreseen harmful effects practically inseparable from the good effect is justifiable if the following are true:
  – the nature of the act is itself good, or at least morally neutral;
  – the agent intends the good effect and not the bad either as a means to the good or as an end itself;
  – the good effect outweighs the bad effect in circumstances sufficiently grave to justify causing the bad effect and the agent exercises due diligence to minimize the harm.

• Thomas Aquinas, Summa Theologiae (1265-1274)
Euthanasia

- Voluntary
  - Conducted with the consent of the patient
  - Active: legal in Belgium, Luxembourg, Netherlands
  - Passive: legal throughout the US, based on Cruzan

Euthanasia

- Non-voluntary
  - Conducted where the consent of the patient is unavailable
  - Illegal worldwide
  - Child euthanasia decriminalized in Netherlands per Groninger Protocol

Groninger Protocol

- For the Dutch public prosecutor, the termination of a child’s life (under age 12) is acceptable if 4 requirements were properly fulfilled:
  - The presence of hopeless and unbearable suffering
  - The consent of the parents to termination of life
  - Medical consultation having taken place
  - Careful execution of the termination
Euthanasia

- Involuntary
  - Conducted against the will of the patient.
  - Illegal

- Mercy Killing?

Definition of Physician Assisted Suicide

- The physician: "knowingly and intentionally providing a person with the knowledge or means or both required to commit suicide, including counseling about lethal doses of drugs, prescribing such lethal doses or supplying the drugs." – Canadian Medical Association
Physician Assisted Suicide

- Legal only for terminally ill patients.
- Oregon, Washington, Montana, Vermont, Bernalillo County, NM, California; legislation pending in 24 states and Washington, DC. [14 states in 2014]
- Australia, Quebec, Belgium, Luxembourg, Netherlands.
- Canada 2015

New Mexico

- “This court cannot envision a right more fundamental, more private or more integral to the liberty, safety and happiness of a New Mexican than the right of a competent, terminally ill patient to choose aid in dying.” - Judge Nan G. Nash, Second District Court, NM 2014

California

- End of Life Options Act
- Senate approved June 2015
- Assembly approved 9/11/2015
- Governor Jerry Brown signed the bill on 10/5/2015:
  - “I do not know what I would do if I were dying in prolonged and excruciating pain. I am certain, however, that it would be a comfort to be able to consider the options afforded by this bill. And I wouldn’t deny that right to others.”
- Law will take effect in 90 days.
Oregon Death with Dignity Act of 1997

• An eligible patient must be:
  – 18 years of age or older
  – Resident of Oregon
  – Capable of making and communicating healthcare decisions for him/herself
  – Diagnosed by 2 physicians with a terminal illness that will cause death within 6 months.

• It is up to the attending physician to determine whether these criteria are met.

Oregon Death with Dignity Act of 1997

• The patient must request the medication orally at least twice and in writing at least once.
• The physician must advise the patient of alternatives, such as palliative care, hospice and pain management.
• The physician must request/but not require that the patient notify their next of kin that they are requesting a prescription for a lethal dose of medication.

Oregon Death with Dignity Act of 1997

• If all guidelines are met, the patient is deemed competent and completely sure that they wish to end their life, the physician will prescribe the medication.
• The patient self-administers the medication.
• Over 1100 prescriptions written since 1997.
• Over 750 deaths.
• In 2013, 22 PAS deaths/ 10,000 deaths in Oregon.
Dr. Kevorkian

• “Dying is not a crime.”
• “My aim in helping the patient was not to cause death. My aim was to end suffering. It’s got to be decriminalized.”
• "What difference does it make if someone is terminal? We are all terminal."

Dr. Kevorkian

• Advertised “death counseling” starting in 1987.
• Participated in >130 deaths between 1990 and 1998 with his “euthanasia devices”:
  – Thanatron: the patient controlled the administration of IV medication to cause death.
  – Mercitron: the patient controlled the administration of inhaled carbon monoxide to cause death.

Dr. Kevorkian’s first patient

• Janet Adkins was diagnosed with Alzheimer’s disease in 1989. She was 54 years old.
• In 1990, Dr. Kevorkian spoke with her husband to plan the PAS. He met her 2 days before she died. “He made no real effort to discover whether Ms. Adkins wished to end her life,” as the Michigan Court of Appeals put it in 1995.
• Dr. Kevorkian was charged with murder, but Michigan did not have a law against PAS.
• In 1991, Michigan revoked Dr. Kevorkian’s medical license.
Dr. Kevorkian’s last patient

- Thomas Youk had late stage Amyotrophic Lateral Sclerosis. He was age 52.
- He provided informed consent.
- His voluntary active euthanasia was videotaped and shown on “60 Minutes” in 1998. Dr. Kevorkian administered the lethal injection. Dr. Kevorkian dared the authorities to convict him or stop him from carrying out mercy killings.
- Youk’s family described the lethal injection as humane, not murder.

Murder Charges

- Dr. Kevorkian was previously acquitted of murder charges 3 times before the video. A fourth indictment resulted in mistrial.
- In 1999, Dr. Kevorkian was charged with second-degree murder and delivery of a controlled substance. Because his license had been revoked, he was not legally allowed to possess the drug. He was found guilty. [He represented himself.]
- He served 8 years of a 10-25 year sentence.

Parole

- Dr. Kevorkian was repeatedly denied parole until 2007, when he was paroled for good behavior, with the requirement that he not help anyone else die or provide care for anyone who was disabled or over 62.
- He had Hepatitis C was later diagnosed with liver cancer.
- He died in 2011. There were no attempts to keep him alive and his death was painless.
Dr. Kevorkian's Patients

- 60% were not terminally ill.
- Autopsies showed that 5 patients had no medical disease at all.
- At least 13 patients had no complaints of pain.
- At least 17 patients with chronic pain were not referred to a pain specialist.
- Counseling was brief – 19 patients died within 24 hours after meeting Dr. Kevorkian.
- At least 19 patients had no psychiatric evaluation, even though at least 5 had a history of depression.
- Medical records were not always reviewed.

According to The Economist: "Studies of those who sought out Dr. Kevorkian, however, suggest that though many had a worsening illness ... it was not usually terminal. Autopsies showed five people had no disease at all. ... Little over a third were in pain. Some presumably suffered from no more than hypochondria or depression."
Richard Douglas "Dick" Lamm

• Governor of Colorado (1975–1987)
  — Democrat
  — Age 80
• “We’ve got a duty to die and get out of the way with all of our machines and artificial hearts and everything else like that and let the other society, our kids, build a reasonable life.” 1984
• Governor Gloom
• Ran for President, 1996, Reform Party

Governor Lamm

• People who die without having life artificially extended are similar to “leaves falling off a tree and forming humus for the other plants to grow up.”
• “We are really approaching a time of almost technological immortality when the machine and the tubes and the drugs and the heart pacemakers . . . literally force life on us.
• ”I believe we really should be very careful in terms of our technological miracles that we don’t impose life on people who, in fact, are suffering beyond the ability for us to help.”

Hemlock Society

- National right-to-die organization
- Founded by Derek Humphrey, 1980
- Mission:
  - (a) provide information to dying persons who were currently considering hastening their ends;
  - (b) to pass legislation permitting physician-assisted suicide with accompanying guidelines to prevent abuse.
- Final Exit: The Practicalities of Self-Deliverance and Assisted Suicide for the Dying, 1991
- Now, Compassion and Choices

Suicide Bag/ Exit Bag/ Helium Hood
- Large plastic bag with a drawcord
- Inert gas, such as helium or nitrogen
- Gas prevents the panic, sense of suffocation and struggling caused by oxygen deprivation in the presence of carbon dioxide.
- Cause of death is difficult to determine if the bag and gas canister are removed before the death is reported.
- Recommended as certain, fast and painless.
- Illegal in Oregon.
Supreme Court of Canada [SCC]

• On 2/6/2015, the SCC ruled unanimously that Canadians have a right to physician-assisted suicide.
• The reason for the reversal is intriguing. If citizens have a right to life, the judges said, they have a right to end it, too. The Charter of Rights and Freedoms, Canada’s constitution, grants everyone “the right to life, liberty and security of the person.”
• That doesn’t mean, however, that people are obligated to live, the judges said; it simply means that neither the state nor other individuals can deprive them of it.

SCC

• This would create a “duty to live”, rather than a “right to life”, and would call into question the legality of any consent to the withdrawal or refusal of lifesaving or life-sustaining treatment.
• To qualify, an individual must be a consenting adult; must have a “grievous and irremediable” condition; and that condition must cause “endless suffering,” physical or psychological.

SCC

• The court stayed its decision for 12 months, allowing Parliament to act to regulate physician-assisted suicide; until then, aiding or abetting suicide will be illegal.
• For obvious reasons, it’s impossible to ban individuals from killing themselves, but in the case of severely ill people unable to do so themselves, any assistance could be penalized with as much as 14 years in prison.
SCC

• Since the Canadian charter covers individuals "without discrimination based on race, national or ethnic origin," this ruling would seem to allow Americans access to assisted suicide in Canada—perhaps opening up a corridor for suicide tourism— but no one is exactly sure what the ruling means for foreign nationals, and the answer could depend on what sort of law if any parliament passes.

Canadian Parliament

• Parliament now has several options:
  – It could enact a new law laying out a scheme for physician-assisted suicides — setting out guidelines for determining consent, timelines, residency requirements, or the extent of medical assistance for example, as Quebec has done.
  – It could decide not to draft a new law, allowing the ruling to stand as an expression of principles and leave details up to provinces or medical regulatory bodies and authorities to oversee.

SCC ruling

Discussion

- How do you feel about legalizing physician assisted suicide?
- Would you participate? Write prescriptions?
- How would it change medical practice here?
  - Especially geriatrics, palliative care and hospice
  - Medicare, Affordable Care Act
  - Hospitals, Long term care
- How would you write the laws regulating PAS?