

Judge Blocks U.S. Bid to Ban Suicide Law

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A federal judge in Oregon yesterday rejected an effort by the Justice Department to block the state's assisted suicide law. In a decision sharply critical of Attorney General John Ashcroft, the judge said Mr. Ashcroft lacked the authority to decide "what constitutes the legitimate practice of medicine."

The law took effect in 1997 and has, according to the court, been used to help end the lives of about 70 people. Oregon is the only state that sanctions assisted suicide.

"This is an important victory not only for Oregon," said Stephen K. Bushong, an assistant state attorney general, "but also for people of the states who want to look at their own laws and decide for themselves how to handle medical practices."

The Justice Department said it had not decided whether to appeal. It referred reporters to Assistant Attorney General Robert McCallum, who said: "The Department remains convinced that its interpretation of the Controlled Substances Act as prohibiting the use of federally controlled drugs to assist suicide is correct.

"A just and caring society should do its best to assist in coping with the problems that afflict the terminally ill. It should not abandon or assist in killing them. Doctors should not use controlled substances to assist suicide."

The decision involved a Justice Department effort to use the Controlled Substances Act, a statute mainly concerned with drug abuse and illegal drug trafficking, to punish doctors who complied with requests from patients under the Oregon law. The law allows mentally competent patients who are terminally ill to ask their doctors for lethal drugs.

Doctors must register with the Drug Enforcement Administration to dispense drugs, and Congress has authorized the attorney general to revoke those registrations in some situations.

In November, Mr. Ashcroft issued a directive saying doctors who dispensed controlled substances were at risk of having their registrations revoked because those prescriptions were not for a legitimate medical purpose. The directive reversed a 1998 determination by Attorney General Janet Reno, which said the federal government would not pursue Oregon doctors who complied with the assisted suicide law.

Oregon sued the federal government after the directive was issued. It asked the court to prohibit enforcement of the directive, a request the court granted yesterday.

Eli D. Stutsman, a Portland lawyer who represented a doctor and a pharmacist in the case, said the directive, if enforced, would have had serious consequences for his clients. "For both individuals, it would have meant the end of their professional practices," Mr. Stutsman said.

The decision by Judge Robert Jones, who was appointed to the bench by the first President Bush, said Mr. Ashcroft ignored a promise to Attorney General Hardy Myers of Oregon that he would consider the state's views. Before issuing the directive, Judge Jones wrote, Mr. Ashcroft "did not consult with Oregon public officials, provide notice to any of them or to the Oregon general public, or provide opportunity for any public comment anywhere."

The judge left open the question of whether Congress itself could pass a law overriding a state's determination of what constitutes a legitimate medical practice. But, he wrote, there is no indication in any federal statute, including the drug law, "that Congress delegated to federal prosecutors the authority to define what constitutes legitimate medical practices."

Mr. Ashcroft's directive, Judge Jones wrote, was the result of an effort by Congressional leaders "to get through the administrative door what they could not get through the Congressional door, seeking refuge with the newly appointed attorney general whose ideology matched their views."

Nicholas W. van Aelstyn represented nine terminally ill patients in the case. Five of them have since died, Mr. van Aelstyn said, adding, "Two of them availed themselves of the law, and the other three were comforted to know they could have."

Judge Jones declined to certify the case as a class action but ruled that additional patients might be added as plaintiffs later. That ruling appeared to address the fear that the original plaintiffs would not live to see the conclusion of the litigation.

Oregon voters approved the law, the Death with Dignity Act, in 1994, and it has since survived many attacks, including a constitutional challenge in the courts, a voter initiative to repeal it and failed legislation in Congress, supported by Mr. Ashcroft when he was a Missouri senator.

Mr. van Aelstyn was critical of the way the federal government attacked the Oregon law, saying, "Attorney General Ashcroft attempted to do by executive fiat what he was twice unable to do as a U.S. Senator."

Dr. Greg Hamilton, a spokesman for Physicians for Compassionate Care, which opposes assisted suicide laws, said that the decision ignored a

need for national standards in this area. "Assisted suicide is not a legitimate medical purpose in Oregon or anywhere in the world."

Judge Jones emphasized that "opposition to assisted suicide may be fully justified, morally, ethically, religiously or otherwise." But, he wrote, such opposition "does not permit a federal statute to be manipulated from its true meaning, even to satisfy a worthy goal."

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