INTERNAL MEDICINE GRAND ROUNDS

THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER

JUNE 17, 1999

TREATMENT ALTERNATIVES FOR THE DYING PATIENT: MEDICAL ETHICS AND THE LAW

Robert L. Fine, M.D.
Thomas W. Mayo, J.D.

This is to acknowledge that Robert L. Fine, M.D. and Thomas W. Mayo, J.D. have disclosed no financial interests or other relationships with commercial concerns related directly or indirectly to this program.

Internal Medicine
Medical Ethics Grand Rounds

Treatment Alternatives for the Dying Patient: Medical Ethics and Law

Robert L. Fine, M.D., Chair, BUMC Institutional Ethics Committee
Thomas Wm. Mayo, J.D., Assoc. Prof., SMU School of Law

March 31, 1998

BAYLOR UNIVERSITY MEDICAL CENTER
An Affiliate of Baylor Health Care System

HOW ANNANDALE WENT OUT

Edward Arlington Robinson, 1869 - 1935

"They called it Annandale -- and I was there
To flourish, to find words, and to attend;
Liar, physician, hypocrite, and friend,
I watched him; and the site was not so fair
As one or two that I have seen elsewhere;
An apparatus not for me to mend --
A wreck, with hell between him and the end,
Remained of Annandale; and I was there."

"I knew the ruin as I knew the man;
So put the two together, if you can,
Remembering the worst you know of me.
Now view yourself as I was, on the spot --
With a slight kind of engine. Do you see?
Like this . . . You wouldn't hang me? I thought not."

Options For Treating The Dying Patient

- **Continued Aggressive Treatment** - the "technologic imperative"
- **Alternative Approaches** - bringing the "ethical imperative" and "spiritual imperative" into the decision process
  - Passive Euthanasia
  - Indirect Euthanasia
  - Physician Assisted Suicide
  - Active Euthanasia

Passive Euthanasia (PE)

Terminating or withholding life sustaining treatments, allowing the patient to die

Indirect Euthanasia (IE)

Administering narcotics or other pharmaceuticals to relieve pain, dyspnea, nausea, or other symptoms of dying with the unintended or incidental consequence of causing death

Physician-Assisted Suicide (PAS)

The physician provides medications or other interventions with the understanding that the patient intends to use them to commit suicide

Active Euthanasia (AE)

Intentionally administering medications or other interventions to cause the patient's death

Ethical arguments for and against AE or PAS center around:

- Autonomy
- Beneficence
- Intent and Action
- Public Policy Concerns

Autonomy

Proponents of AE/PAS argue:

The right to self governance is absolute and must include the ultimate autonomous act of choosing when and how to die

Autonomy

"Human life is sacred, but only to the extent that it contributes to the joy and happiness of the one possessing it, and to those about him, . . .

Autonomy

". . . and it ought to be the privilege of every human being to cross the River Styx in the boat of his own choosing, when further human agony cannot be justified by the hope of future health and happiness."

-- *Eugene Debs*

Autonomy

Opponents of AE/PAS argue:

Not all voluntary acts are themselves justified by autonomy (as a society we prevent dueling or the selling of oneself into slavery). Not all agree that autonomy is absolute, arguing that we belong to either God or our community.

Autonomy

"It is not freedom to be able to alienate his freedom." -- *J. S. Mill*

Beneficence

Proponents of AE/PAS argue:

In the face of unmitigated suffering, the most beneficent act is to kill the patient. A duty to practice beneficently then can become a duty to kill the suffering patient.

(*E.g., Dr.* Adina Blady Szwajger and the Warsaw Childrens' Hospital)

Beneficence

Opponents of AE/PAS argue:

The most beneficent act in the face of suffering is good palliative care.

Rare cases of unmitigated suffering do not justify changing medicine's historic rules.

The Hippocratic tradition of refusing to give a deadly potion.

Intent and Action

Proponents of AE/PAS argue:

Intent and action are relatively unimportant. It is the end result that counts.

Intent and Action

Proponents of AE/PAS argue:

If passive euthanasia is acceptable, then active euthanasia is acceptable since the end result is the death of a patient who could have been kept alive.

Intent and Action

Proponents of AE/PAS argue:

It is disingenuous for those in support only of passive euthanasia or indirect euthanasia to argue that they do not intend for the patient to die when they withdraw treatment or engage in aggressive symptom control to the point of "terminal sedation".

Intent and Action

Opponents of AE/PAS argue:

End results are not as important in the moral life as the *intent* and *action*.

Intent and Action

Opponents of AE/PAS argue:

The *intent* in PE is to relieve suffering by allowing nature to take its course and the *action* is to withdraw a treatment that does not so much prolong life as it prolongs dying.

Intent and Action

Opponents of AE/PAS argue:

The *intent* in IE is to relieve suffering and the *action* is to give only enough medication to to do just that.

Public Policy Concerns

Proponents of AE/PAS argue:

- The practice happens currently in an unregulated fashion.
- It is bad for society to erect false barriers to a practice that is tolerated or endorsed by so many members of the society.

Public Policy Concerns

Proponents of AE/PAS argue:

- By making AE or PAS legally available, patients will be protected by careful regulation of the practice.

Public Policy Concerns

Proponents of AE/PAS argue:

- Patients who might refuse to embark on certain aggressive treatments for fear of being trapped by the treatment would now know they have the ability to quickly and easily end their life if things do not turn out the way they want.

Public Policy Concerns

Opponents of AE/PAS argue "slippery slope":

The Nazi Germany experience: *The Permission to Kill Life Unworthy of Life* (1920) by Hoche and Binding convinces majority of German physicians there are some human conditions so bad as to warrant the killing of the patient.

Public Policy Concerns

Opponents of AE/PAS argue "slippery slope":

German physicians and nurses go on to murder several hundred thousand retarded, deformed, or chronically ill Aryan citizens before helping Hitler implement the Shoah.

Public Policy Concerns

Opponents of AE/PAS argue the failures of the Dutch experience:

Remelink Commission Report - based on study of 405 physicians and 5,197 deaths

Public Policy Concerns

Opponents of AE/PAS argue the failures of the Dutch experience:

- 9,000 requests for AE per year with 3,000 cases actually occurring. (1.8% of all deaths)
- 84% of all Dutch MDs had discussed AE at least once and 54% had participated.

Public Policy Concerns

Opponents of AE/PAS argue the failures of the Dutch experience:

- In 40% of AE cases, at least one of the three safeguard criteria for approved AE were violated.

Public Policy Concerns

Opponents of AE/PAS argue the failures of the Dutch experience:

- Extrapolated to the United States, this would mean 150,000 requests, 50,000 cases, and 20,000 violations of safeguards.

Public Opinion on PAS

"Rule of Thirds"

- 1/3 support under wide variety of circumstances
- 1/3 oppose under any circumstances
- 1/3 support it in a few cases but oppose under most circumstances

Legal/Ethical Status of Euthanasia

	PE/IE	PAS	AE
State Law	Legal	Illegal in 46 states & D.C.	Homicide
AMA	Permitted	Not Permitted	Not Permitted

End-of-Life Issues in the U.S. Supreme Court

- PE:
  - *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990)
- PAS:
  - *Washington v. Glucksberg*, 117 S. Ct. 2303 (1997)
  - *Vacco v. Quill*, 117 S. Ct. 2293 (1997)

End-of-Life Issues in the U.S. Supreme Court

Cruzan v. Director, Missouri Dep't of Health:

- PE primarily a matter of state law, not federal
- Implicitly: strong support for advance directives

End-of-Life Issues in the U.S. Supreme Court

Washington v. Glucksberg & *Vacco v. Quill*:

- States are permitted to prohibit PAS
- PE distinguished from PAS on basis of *causation* and *intent*
- IE: states may permit "terminal sedation" if based upon informed consent and double effect

Oregon's "Death With Dignity" Act

[Ore. Revised Statutes, secs. 127.800-.897 (1997)]

Safeguards

- Adults with decision making capacity
- Terminal disease (as determined by attending and consulting physicians)
- Patient's request: oral (twice) and in writing

Oregon's "Death With Dignity" Act

[Ore. Revised Statutes, secs. 127.800-.897 (1997)]

Safeguards

- Detailed informed-consent disclosures
- Mandatory counseling if patient *may be* suffering from psychological disorder

Oregon's "Death With Dignity" Act

[Ore. Revised Statutes, secs. 127.800-.897 (1997)]

Safeguards

- Minimum 15-day waiting period after first oral request before written request
- Minimum 2-day waiting period between written request and written prescription

Oregon's "Death With Dignity" Act

[Ore. Revised Statutes, secs. 127.800-.897 (1997)]

Safeguards

- Physician must ask if next-of-kin may be notified of request
- Physician must offer opportunity to rescind before writing prescription

Public Policy: Choice Between "Two Lies"

- Prohibition will effectively prevent the practice of PAS from occurring
- Legalization of PAS would not systematically and routinely be used to push dying people into death

"On the Spot" with the Dying Patient

- Assess and treat pain, nausea, dyspnea, and other symptoms of dying.
- Assess and deal with psychological issues including grief, depression, and anxiety.

"On the Spot" with the Dying Patient

- Assess and deal with spiritual and values issues.
- Assess and deal with difficulties in interpersonal relationships

"On the Spot" with the Dying Patient

Eschew the *I - It* relationship,
Embrace the *I - Thou* relationship

Suggested References

For those interested in further study of the topics covered in this Grand Rounds, there is a very extensive literature. We suggest any of the following sources as a good starting point.

Emanuel EJ. Euthanasia: Historical, Ethical, and Empiric Perspectives. ***Arch Intern Med.*** **1994; 154: 1890-1901.** An excellent brief overview of the subject.
Quill TE, Lo B, Brock DW. Palliative Options of Last Resort. ***JAMA.*** **1997; 278: 2099 - 2104.** Timothy Quill in particular has been a strong proponent of PAS. In this paper, the authors compare and contrast four options (voluntarily stopping eating and drinking, terminal sedation, PAS, and AE) for treating terminally ill patients who are not experiencing a good response to palliative care.
Block SD, Billings JA. Patient Requests to Hasten Death: Evaluation and Management in Terminal Care. ***Arch Intern Med.*** **1994; 154: 2039 - 2047.** A pragmatic approach for dealing with patient requests to die. Neither a philosophical nor legal treatise, this is just a reminder of what good old fashioned competent clinical care demands of those who would care for the dying.
Miles SH. Physicians and Their Patients' Suicides. ***JAMA.*** **1994; 271: 1786-1788.** A brief essay on the psychology of PAS, including the effect of PAS on physicians themselves.
Hendin H. Seduced by Death: Doctors, Patients, and the Dutch Cure. New York, NY: W.W. Norton and Co. 1997. Hendin is a psychiatrist who has a very negative view of PAS and AE. He devotes a large amount of the book to an exploration of the situation in the Netherlands and makes a well reasoned if not dispassionate argument against what he calls "the Dutch cure."
Rachels J. The End of Life: Euthanasia and Morality. Oxford University Press. 1986. A philospher who strongly supports AE on ethical grounds alone makes a fairly concise argument (for a philosopher!) in favor of it.
Meisel A. The Right to Die. John Wiley and Sons. 1995. A comprehensive legal treatise (2 volumes) on the laws related to the "right to die."

WEB Resources:
Symptoms in Terminal Illness. NIH Research Workshop.
http://www.nih.gov/ninr/end-of-life.htm
Approaching Death: Improving Care at the End of Life. Institute of Medicine: Commitee on Improving Care at the End of Life.
http://www.nap.edu/readingroom/books/approaching/index.html
Tom Mayo's Home Page. http://smu.edu/~tmayo/bio.htm

Arch Intern Med. 1994; 154: 1890-1901. An excellent brief overview of the subject.