

PRESCRIBING DEATH



By Jan LaRue, Chief Counsel

The ancient Hippocratic Oath required doctors to swear, "I will neither give a deadly drug to anybody who asked for it." The oath has been discarded as a relic of history, with deadly consequences.

Oregon voters enacted a ballot initiative in 1994—the first and only state law permitting physician-assisted suicide. The Oregon Death with Dignity Act (ODDA) permits Oregon doctors to issue lethal prescriptions to qualified Oregon adults

who request them.

U.S. Attorney General John Ashcroft concluded that dispensing federally controlled substances to aid suicide is not a "legitimate medical purpose" under The Controlled Substances Act (CSA). Consequently, he issued a directive permitting the U.S. Drug Enforcement Agency to suspend or revoke CSA registration of physicians and pharmacists who do so, regardless of whether state law permits it. Concerned Women for America (CWA) supports this directive.

As a result, a doctor, a pharmacist, sev-

eral terminally ill patients and the state of Oregon filed suit in federal court. They claimed that Ashcroft's directive interferes with Oregon's right to regulate the practice of medicine under the 10th Amendment to the U.S. Constitution. The court agreed and issued an injunction against enforcement of the directive. The 9th Circuit affirmed. The Department of Justice (DOJ) filed a petition with the U.S. Supreme Court seeking review and reversal.

If the Supreme Court takes the case, CWA intends to submit an amicus brief in support of the DOJ. The brief's arguments will include:

- ★ Only the Oregon Legislature may regulate medicine. The Legislature didn't enact the ODDA and, in fact, tried to repeal it.
- ★ Doctors are not trained how to prescribe lethal doses of drugs.
- ★ Prescribing drugs to cause death is inconsistent with the physician's role as healer and violates medical ethics.
- ★ Under Oregon law, violation of medical ethics by a physician is unprofessional or dishonorable conduct and is grounds for revoking a physician's license to practice medicine.
- ★ Federal and state laws permit physicians to inject patients with lawfully prescribed drugs. The ODDA, however, *prohibits* physicians to *inject* the same lethal drugs they are permitted to prescribe. The only rational explanation is that a lethal drug is not medicine by definition, nor is it the practice of medicine to inject a patient with a lethal drug to cause death. Consequently, the lethal drug is not medicine when prescribed; therefore it is not the practice of medicine to prescribe it.

- ★ Even if the ODDA regulates the practice of medicine, the Ashcroft directive does not interfere with Oregon's right to do so, because neither Ashcroft's directive nor the CSA regulates the practice of medicine. The CSA regulates commerce in dispensing drugs under Congress' Commerce Clause authority in order to protect the health and welfare of the American people. Dispensing controlled

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substances directly and substantially impacts the commercial market for the substances. Physicians who prescribe controlled substances and the pharmacists who dispense them are paid to do so, which is the essence of a commercial transaction.

- ★ Oregon essentially argues that, for Oregon physicians, the ODDA acts as an exemption from the CSA; the Supreme Court has consistently rejected any state law exemption from the CSA.

Even if the Supreme Court grants review and reverses the 9th Circuit's ruling, it will not make physician-assisted suicide illegal in Oregon. It will, however, make it much more difficult for doctors to aid suicide if they can't prescribe drugs to do so. ■

To Learn More:

Read CWA's paper, *Euthanasia and Assisted Suicide: The Myth of Mercy Killing*, at www.cwfa.org, or call 1-800-323-2200 to request your copy.