Virtual Mentor
American Medical Association Journal of Ethics
December 2013, Volume 15, Number 12: 1056-1061.

HEALTH LAW

Legal Constraints on Pursuit of a "Good Death"

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Introduction

Death is an inevitable topic of conversation all families grapple with at one time or another. Whether it is the steady deterioration of an aging grandfather, or the sudden and unexpected passing of a young child, the simple fact that we are all going to die is a realization that can surprise us and our loved ones when we are least prepared. Yet these seemingly disarming discussions can be illustrative; they can clarify the kind of death each of us wants to have, the "good death," if you will. Some people want the intervention of medical science to keep them alive for as long as is humanly possible, while others want nature to take its swift course. Either way, when the time to depart this world arrives, each of us would like to die in a way that accords with our values.

A dignified death has become quite a hot topic in medicine in recent years. This trend is attributed in particular to the baby boomer generation, many of whose members have had to witness the difficult and prolonged deaths of their parents and are now considering how they would like to die [1]. More and more personal accounts of aging adults who have asserted control over how they would like to die have come to the public's attention [2, 3] and a growing number of organizations and resources are speaking to society's struggles with end-of-life decision making [4, 5]. The law plays a role in defining what is allowed when a person wishes to take the end of life into his or her own hands.

This article briefly discusses where federal law has spoken on the topic of achieving a "good death" during the last 30 years, focusing on the two main cases that have come before the United States Supreme Court on this matter. Since 1990, the court has chosen to hear four cases that have dealt with the right to die, examining situations in which citizens have sought the ability to determine how they die either through the removal of life-sustaining treatment or by obtaining the assistance of a physician in taking their own lives. The two cases below exemplify the court's effort to grapple with this emotionally and politically charged subject.

Cruzan v. Director, Missouri Department of Public Health

Facts of the case. On the night of January 11, 1983, a 25-year-old woman by the name of Nancy Cruzan was driving home from work when her car overturned on a winding road near Carthage, Missouri [6]. Nancy was not wearing her seatbelt and was thrown from the vehicle [7]. When state troopers and paramedics arrived at the scene of the crash, they found Cruzan lying face down in a water-filled ditch where

she exhibited no respiratory or cardiac function [8, 9]. Medical personnel were able to restart her heart, but Nancy had stopped breathing for almost 15 minutes and as a result suffered severe brain damage [8, 9]. A month after the accident, Cruzan's then husband consented to the implantation of a feeding and hydration tube to keep her alive, although she was able to breathe without the assistance of a ventilator [8, 9]. Following the accident, all rehabilitative efforts failed, and Nancy remained in a persistent vegetative state for years in a Missouri state hospital [9]. She experienced occasional seizures, vomited, and, at times, opened and moved her eyes, yet she displayed no cognitive activity [8]. Nancy had no documentation of her wishes for medical treatment under such circumstances and had only mentioned in passing to a roommate that she would never want to be a "vegetable" [10].

Struggles in state court. Nancy's parents, believing in their hearts that their daughter would never want to live life as she now did, sought and received authorization from a state trial court to remove her feeding tube [11]. A divided vote by the Supreme Court of Missouri reversed this decision, however [12]. The court did not find a right under the Missouri Constitution that would support a person's refusal of medical treatment in every circumstance and doubted whether such a right even existed in the U.S. Constitution [13]. Furthermore, the state supreme court, guided by the state's living will statute and policy favoring the "preservation of life," found that the evidence provided by her family did not offer "clear and convincing" proof of Nancy's wish to be removed from life-sustaining treatment [14]. The Cruzans appealed their decision to the U.S. Supreme Court.

The Supreme Court's review. The specific question before the Supreme Court was whether the U.S. Constitution permitted Missouri to set an evidentiary standard requiring surrogate decision makers to provide "clear and convincing" evidence that a decisionally incapable person would wish to forgo life-sustaining treatment [15]. In a five-to-four decision, the court found that it did. The Fourteenth Amendment's due process clause holds that no state "shall deprive any person of life, liberty, or property, without due process of law" [16], and, through its examination of legal precedent, the court determined that the ability to refuse medical treatment lies within an individual's right to liberty [17]. The court reached this conclusion through its analysis of substantive constitutional freedoms supported by the Fourteenth Amendment, which looked to whether the right in question was "deeply rooted in [the] Nation's history and tradition" [18].

In its review of existing law, the court found that time and again state courts had come to recognize a right *not* to consent to treatment, just as there existed a right to consent to treatment (e.g., the common-law doctrine of informed consent), and that this spoke to a decisionally capable person's ability to decline life-sustaining medical care [15]. The majority determined, however, that the right of an individual to decline life-saving medical interventions was not absolute and must be balanced against the reasonable interests of the state in preserving life [19]. In the specific case of Nancy Cruzan, despite the questionable evidence that she herself stated she would not want to be kept alive, or her parents' fervent belief that continuing artificial

feeding and hydration were not in her best interest, Missouri's policy of preserving life was held to be reasonable under the U.S. Constitution unless there was clear and convincing evidence to the contrary [20]. As the court concluded in its opinion:

> Close family members may have a strong feeling—a feeling not at all ignoble or unworthy, but not entirely disinterested, either—that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless, and even degrading. But there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent. All of the reasons previously discussed for allowing Missouri to require clear and convincing evidence of the patient's wishes lead us to conclude that the State may choose to defer only to those wishes, rather than confide the decision to close family members [21].

The Supreme Court's decision upheld the right of states to establish their own reasonable standards for evaluating evidence in favor or against the termination of a life-sustaining treatment for incompetent persons. Following the court's ruling, the Cruzans presented the state of Missouri with additional support regarding Nancy's wishes to bypass continued treatment, and this time the state found the evidence to be "clear" [8]. On December 14, 1990, Nancy Cruzan's feeding tube was removed, and, less than 2 weeks later, she passed away [8].

Washington v. Glucksberg

Facts of the case. In 1979, the state of Washington passed the Natural Death Act [22]. The act revised the state's criminal code to say that "withholding or withdrawal of life-sustaining treatment...shall not, for any purpose, constitute a suicide" but also that "nothing in this chapter shall be construed to condone, authorize, or approve mercy killing" [22]. Twelve years later, a ballot initiative in Washington that sought to permit a form of physician-assisted suicide failed to pass, and subsequently the state amended the existing Natural Death Act to expressly exclude physician-assisted suicide [23]. In response to the act, four physicians who practiced in Washington, along with three terminally ill patients and a nonprofit organization that counseled people considering physician-assisted suicide challenged the state's ban on physician-assisted suicide in federal court in 1994, claiming that the law was unconstitutional [24].

Challenging the state ban. The specific claim of the suit was that the statute unconstitutionally interfered with a competent, terminally ill adult's right to commit physician-assisted suicide, a right that they argued was found in the Fourteenth Amendment's protection of liberty [25]. Based in part on the precedent of *Cruzan*, the federal district court determined that the ban was unconstitutional and that the law placed an "undue burden" on the interest asserted by the physicians, patients, and organization bringing the case [26]. A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit disagreed with the lower court's ruling [27]. However,

when the case was reheard by the Ninth Circuit en banc (i.e., with all eleven active judges hearing the case), the court agreed and ruled that "the Constitution encompasses a due process liberty interest in controlling the time and manner of one's death—that there is, in short, a constitutionally recognized 'right to die,'" and that, according to this reasoning, the Washington state ban was unconstitutional [28].

The Supreme Court's review. The U.S. Supreme Court reversed the conclusion of the Ninth Circuit, finding that Washington's prohibition against "causing" or "aiding" suicide did not contradict the Fourteenth Amendment [29]. As the court had done in *Cruzan*, the majority examined whether there existed a specific right under the due process clause to pursue physician-assisted suicide, but the justices found nothing in the nation's history and traditions to support such a right [30]. Distinguishing the present case from *Cruzan*, Chief Justice Rehnquist wrote, "The decision to commit suicide with the assistance of another may be just as personal and profound as the decision to refuse unwanted medical treatment, but it has never enjoyed similar legal protection. Indeed, the two acts are widely and reasonably regarded as quite distinct" [31]. Justice Rehnquist added that "the history of the law's treatment of assisted suicide in this country has been and continues to be one of rejection of nearly all efforts to permit it" [32].

Furthermore, the court's majority stated that Washington's ban of assisted suicide was rationally related to legitimate government interests, including: pursuing the preservation of human life, understanding and preventing the occurrence of suicide, upholding the integrity and ethical duties of the medical profession, protecting vulnerable people who face coercion when making end-of-life decisions, and guarding against the slippery slope from voluntary to involuntary euthanasia [33]. Because the legal tradition of the country opposed the legality of assisted suicide, and given the rational state interests forwarded by Washington State, the Supreme Court upheld the ban in a decision in which all of the justices either joined the majority or concurred in its judgment.

Conclusion

As the cases of *Cruzan* and *Glucksberg* demonstrate, people place a tremendously high value on the right to achieve a death that accords with the dignity and respect so many of us desire in our lives. Both rulings clarified the boundaries of what is legally permissible: *Cruzan* in its announcement that the Constitution allows a state to require a reasonable standard of evidence when it comes to an incompetent patient's wishes to be removed from life-sustaining treatment, and *Glucksberg* in demarcating the U.S. Constitution's perspective on physician-assisted suicide. Since both cases were decided, Americans have become more knowledgeable about end-of-life care [34], and four states have made it legal for their citizens to seek the assistance of physicians in pursuing an end to terminal illnesses [35-38].

The discussions we have with our loved ones about death may seem grisly and even macabre, but, as contemporary Supreme Court jurisprudence demonstrates, these are

important conversations to have if we want to realize our desires to die on our own terms.

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