

Social Workers and End-of-Life Decisions

Introduction

End-of-life care decisions have increasingly become a focus of attention in recent years. The Terri Schiavo case personalized the emotional agony that family members experience if loved ones do not clarify their care expectations when they are legally competent. The U.S. Supreme Court issued a decision in January 2006 addressing the legality of Oregon's Death with Dignity Act (ODWDA). This Legal Issue of the Month article will review the Supreme Court's decision, as well as NASW policies and standards on end-of-life care.

Gonzales v. Oregon

The U.S. Supreme Court upheld Oregon's Death with Dignity Act in a 6 to 3 decision that avoided larger policy discussions about hastening death in *Gonzales v. Oregon*. Instead, the Court focused on the constitutional issues of federalism, states' rights, and delegation of authority. In 1994, Oregon passed a law permitting physicians to prescribe lethal doses of medications to patients who were suffering from terminal conditions and had a life expectancy of less than six months. The law required that in order to receive such a prescription, it must be clear that the patient is not subject to coercion or duress, and is not suffering from mental conditions that would impair his or her ability to make independent decisions about end-of-life care.

In *Gonzales*, the Court interpreted the federal Controlled Substances Act (CSA), and determined that although that federal law authorized only licensed physicians to prescribe certain drugs, it did not preempt the state's right or ability to regulate and define the practice of medicine. Whether or not to prescribe specific medications in certain amounts under certain conditions constitutes the practice of medicine, according to the Court. Congressional enactment of the CSA did not remove the state's ability to regulate the practice of medicine, as Oregon has done in its Death with Dignity Act.

The Court found that former Attorney General Ashcroft overstepped the bounds of his authority in issuing an Interpretative Rule that defined the use of certain medications in lethal doses to be a danger to public health, putting physicians who relied on the Oregon law in violation of the CSA. A physician charged with violating the CSA could then expect that their federal registration to prescribe controlled substances would be suspended or revoked, effectively ending their ability to practice medicine. Thus, Ashcroft's policy would impermissibly interfere with Oregon physicians' practice of medicine by hampering their ability to freely make decisions in accordance with patients' medical conditions and self-determination.

The Court also pointed out that the Attorney General is to share authority for federal interpretation on medical concerns with the Secretary of the Department of Health and Human Services. Recommendations from the HHS Secretary were not obtained prior to the Attorney General's rulemaking, making it suspect.

NASW Involvement

NASW and the Oregon Chapter of NASW signed an *amicus curiae* brief at two stages of the appeal process in the Gonzales case. The NASW brief did not take a position for or against the involvement of healthcare professions in hastening death for terminally ill patients, but indicated that many social workers are involved in providing care to patients at the end of life.

As part of the ODWDA, an assessment of a patient's mental health condition by a physician or psychologist is required if there is any concern that mental illness may be interfering with client decision-making. The brief signed by NASW and other mental health professionals pointed out that assessment tools exist that permit professionals to make objective determinations as to whether an individual patient is impaired by mental illness or other factors. The brief also highlighted Oregon statistics that indicate physicians do not approve all requests for lethal doses of medication under the ODWDA, nor do all patients who receive such prescriptions actually use them to end life. This suggests that both patients and medical caregivers are carefully and thoughtfully utilizing the provisions of this Oregon law.

NASW Policy and Standards

The NASW policy, *Client Self-Determination in End-of-Life Decisions*, states "Social workers have an important role in helping individuals identify the end-of-life options available to them. . . . A key value for social workers is client self-determination. Competent individuals should have the opportunity to make their own choices, but only after being informed of all options and consequences. . . . without coercion" (NASW, 2003).

In 2004, NASW published the *NASW Standards for Social Work Practice in Palliative and End of Life Care*. These standards emphasize client self-determination and protection of the vulnerable as well:

Consequently, NASW does not take a position concerning the morality of end-of-life decisions, but affirms the right of the individual to determine the level of his or her care. Particular consideration should be given to special populations, such as people with mental illness, with developmental disability, individuals whose capacity or competence is questioned, children, and other groups who are vulnerable to coercion or who lack decisional capacity (NASW, 2004).

Social workers providing hospice and palliative care are expected to develop specialized expertise in addressing issues of bereavement, dying, and cultural sensitivity to end-of-life decisions. However, social workers are not required to participate in end-of-life activities with clients if it would conflict with their own moral or religious beliefs.

If a social worker is unable to help with decisions about assisted suicide or other end-of-life choices, he or she has a professional obligation to refer patients and their families to competent professionals who are available to address end-of-life issues. It is inappropriate for social workers to deliver, supply, or personally participate in the commission of an act of assisted suicide when acting in their professional role (NASW, 2003).

It is permissible for a social worker to be present at the death of a patient if so requested.

Conclusions

Social work service provision to the elderly can only be expected to increase as the Baby Boomer generation ages. This area of practice will present social workers with many new opportunities, as well as challenges. One of these challenges is how to respond to clients with terminal conditions who seek to take control of their lives through active means of termination. Social workers may anticipate that other states will attempt to follow Oregon's lead, now that the Supreme Court has approved the Death with Dignity Act. Inclusion of social workers in any new legal programs that require mental health evaluations is important for the profession to remain competitive.

To provide the most effective care, social workers will need to carefully examine their own beliefs and biases regarding end-of-life and refer clients to other competent professionals if they are unable to provide professional support for client end-of-life decisions.

References

- Gonzales v. Oregon*, -- S. Ct. --, 2006 WL 89200 (January 17, 2006).
- National Association of Social Workers. (2003). Client self-determination in end-of-life decisions. *Social work speaks: National Association of Social Workers policy statements, 2003–2006* (6th ed., p. 46). Washington, DC: NASW Press.
- National Association of Social Workers. (2004). *NASW standards for social work practice in palliative and end of life care*. [Online]. Retrieved on January 30, 2006 from <http://www.socialworkers.org/practice/bereavement/standards/default.asp>

*The information contained in this Web site is provided as a service to members and the social work community for educational and information purposes only and does not constitute legal advice. We provide timely information, but we make no claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in or linked to this Web site and its associated sites. Transmission of the information is not intended to create, and receipt does not constitute, a lawyer-client relationship between NASW, LDF, or the author(s) and you. NASW members and online readers should not act based on the information provided in the LDF Web site. Laws and court interpretations change frequently. Legal advice must be tailored to the specific facts and circumstances of a particular case. **Nothing reported herein should be used as a substitute for the advice of competent counsel.***