

Final Assignment
“Should the Commonwealth of Massachusetts
Adopt a Law like Oregon’s Death with Dignity Act?”

Your final assignment for the course is a research paper of 8-10 pages, due December 17. During the first week of December I will give you instructions about when and how to submit the paper. It will be essential that you comply exactly with the submission date, time, and place.

The paper should be typed, double-spaced, no bigger than 1” margins on all sides, numbered pages, font no larger than 12-point. This is a research paper. The paper must **include careful references** to what you have discovered in your research (legal, social science, ethics, medical, etc.) as well as references to materials assigned for the last third of the course, where appropriate. You may use any system for indicating your references (i.e. footnotes, endnotes, references in parentheses with bibliography attached, etc.), as long as you are consistent and provide complete information about the references so that I can look them up myself. Do not use excessive space in your memo for lengthy quotations. Quotations of more than two lines should be single-spaced and indented.

Consider yourself to be a staff member of the **Physician-Assisted Suicide and Palliative Care Study Commission** (the *Commission*), appointed by the Governor of Massachusetts to advise him about whether to recommend the adoption of a physician-assisted suicide bill like the one that is already on the books in Oregon (the Death With Dignity Act) or like the law recently adopted by Washington State in a November, 2008 referendum. The Governor is aware that the Supreme Court has stated in *Glucksberg* that states have considerable freedom to adopt policies on physician-assisted suicide without constitutional restrictions. But he also knows that there are important issues of law, medicine, ethics and public policy at stake in deciding about PAS and that many of these issues are reflected in the reasoning of the courts on this issue. The *Commission* is considering three possible recommendations:

- 1) Adopting the Oregon law as is;
- 2) Adopting the Oregon law, but recommending changes in the law’s language concerning particular regulations of legalized PAS, and perhaps recommending the adoption of a guarantee that palliative care be available to any terminally-ill person;
- 3) Not adopting the Oregon law, and instead recommending the criminalization of physician-assisted suicide such as was done in New York.

Your job is to **do research on two (2) of the topics** below and to **write a memo** to the *Commission* Chair, Dr. P.R. Matalagata, showing how your research and your understanding of the two issues support one of the three alternative recommendations being considered by the *Commission*. In other words, you are to do a two-issue legal and policy analysis, and to use that analysis to make an argument for one of the three alternative recommendations above, using your research as a basis of your reasoning.

Remember that the best analysis and recommendation is often the one that considers not only the strengths but the weaknesses of the arguments made. Please stick to substantive issues and do not base your analysis or research on considerations of electoral politics. Please **indicate clearly at the head of your memo to Dr. Matalagata the two capital letters (A-K) that correspond to the two topics that you are analyzing.**

TOPICS

Remember that even where a topic refers to legal conflicts or to cases, research into the literature of biomedical ethics, medical practice, sociology, history, economics and other areas of social science, humanities or science is recommended as a means of doing a good job on your assignment.

A) Check into the report on death and dying in America called “Means to a Better End” published by R W. Johnson Foundation’s project, “Last Acts.” What are the realities of death and dying in America? Are there other sources of information about these realities? What might these realities indicate about which of the three alternative policies Massachusetts should adopt?

B) Professor Robert Burt’s article in NEJM, read for the course, discusses “palliative care” as an alternative to physician-assisted suicide. See what you can learn about what might be meant by “palliative care” and whether it seems like a reasonable alternative or addition to an Oregon-type law.

C) In conflicts or cases in which a patient or the patient’s family has refused life-sustaining medical treatment or asked that it be withdrawn, what legal and ethical issues have arisen? What does Dr. Naramore’s case (Kansas) tell us about the complexity of providing palliative care, terminating unwanted medical treatment, dealing with death in the family? Are there other cases of doctors or nurses who followed standard medical practice and yet were accused of malpractice or of homicide for following the wishes of family members or patients who desire termination of life-support? What can we learn from these situations about either the dangers of, or need for PAS?

D) What can we learn from the legal and medical conflict over Attorney General Ashcroft’s effort to undermine the Oregon law (*Gonzales v. Oregon*)—or from the recent abortion case (*Gonzales v. Carhart*)—with respect to the problems of, or need for guaranteeing the provision of palliative care?

E) In the *Vacco v. Quill* case, the plaintiff’s claimed that there were two groups of terminally-ill patients, one which the state permitted to have a physician’s assistance in dying, and the other which it did not. Look into what realities lay behind this case in particular and this argument in general. Should these two groups of patients be treated differently?

F) Are the safeguards presently contained in the Oregon law (which is the model for what Massachusetts will be considering) adequate for dealing with the possibility of abuses or discrimination directed against disabled persons, or against racial and ethnic minorities or those without adequate medical insurance? Would they be adequate to deal with economic pressures on patients and families? Does the current healthcare system (without PAS) create this kind of abuse, discrimination or pressure already? Would additional safeguards in the proposed bill be advisable as a means to protect patients or families against this kind of abuse, at least for PAS?

G) What is the relationship of advance directives to the physician’s ability to provide care for a terminally-ill person? Could such directives be used to provide additional evidence of, or safeguards for the voluntariness of patient decisions about PAS? If adopted in Massachusetts, might restrictions on advance directives like those in other states provide protections for patient autonomy? Or might they justifiably limit that autonomy? How do you understand and evaluate

the arguments made by President Bush's *Council on Bioethics* on the topic of patient autonomy and advance directives?

H) What does the data about the experience of the first few years under the Oregon Death with Dignity Act tell us about that the success or problems of the Oregon law and about whether or not the Massachusetts bill should be adopted?

I) What does the experience of other countries, such as the Netherlands, tell us about whether Massachusetts would be wise to adopt the pending physician-assisted suicide bill? How persuasive is the argument that adopting the Oregon bill in Massachusetts would be the first step on a "slippery slope" that might end with approving involuntary euthanasia imposed by the state or imposed, in effect, by a healthcare system short on resources?

J) Should the Oregon law be extended in the Massachusetts bill to allow physicians to physically assist in a suicide by competent, terminally ill patients if such patients are not *physically* able to administer medications themselves? Should the Massachusetts bill be extended to provide active physician assistance to *incompetent*, terminally ill patients who have advance directives demonstrating, by clear and convincing evidence, that their intentions would be to desire physician-assisted suicide when they are within six months of death and have no reasonable medical hope of regaining consciousness?

K) What is the most convincing general argument that you can find—either for or against PAS—in biomedical ethics, in jurisprudence, or in philosophy? Is the argument based on the principle of patient autonomy and individual liberty? On the protection of medical ethics and the doctor/patient relationship? On issues of moral or religious principle? On some other principle?