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Judge refuses to suspend California's assisted death law

By Associated Press

A California judge on Friday rejected a request by physicians to immediately suspend a new state law allowing terminally ill people to end their lives.

Riverside County Superior Court Judge Daniel A. Ottolia said the law will remain in effect for now. He also agreed to allow the physicians to pursue their lawsuit claiming the law lacks safeguards to protect against abuse.

The law took effect June 9 and allows terminally ill adults to obtain a prescription for life-ending drugs if a doctor has determined they have six months or less to live.

Advocates argued that terminally ill people could face prolonged, painful deaths if the law is suspended.

Elizabeth Wallner, a Sacramento resident with stage IV colon cancer who attended the hearing, said she cried with relief when the judge denied the motion to suspend the law.

"I want to have the ability to control the end of life and protect my child from watching me be tortured to death," she said. "It just gave me an immeasurable sense of peace."

California is one of five states in which terminally ill people can end their lives. Oregon was the first to provide the option in 1997.

The California law is being challenged by the Life Legal Defense Foundation, American Academy of Medical Ethics and several physicians.

Opponents of the law say hastening death is morally wrong, puts all kinds of patients at risk for coerced death by loved ones, and could become a way out for people who are uninsured or fearful of high medical bills.

Attorney Stephen Larson, who represents the plaintiffs, said his clients want the law declared unconstitutional. Determining when someone has six months or less to live is arbitrary and opens the door for abuse, and doctors are not held accountable after

they prescribe the life-ending drugs, he said.

"There are plenty of cases of elderly people suffering and people just want them gone," Larson said. "This makes it too easy."

The state attorney general's office countered that medical professionals can refuse to prescribe and dispense the drugs. The law also specifies that the terminally ill person must be able to self-administer the drugs.

Both sides are due back in court Dec. 5.

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In battle over reproductive healthcare, ACLU hunts for best challenge to Catholic hospitals' ethical rules

By [Lisa Schencker](#) | October 24, 2015

In Tamesha Means' case, the ACLU alleges she received negligent care because of the Catholic directives.

A Michigan hospital didn't terminate Tamesha Means' pregnancy despite a potentially life-threatening complication, according to the American Civil Liberties Union.

The ACLU says a different hospital in Michigan refused to allow Jessica Mann's tubes to be tied during her scheduled cesarean section, against the advice of her doctor who said a brain tumor could make future pregnancies dangerous.

And in California, the ACLU says a hospital balked at Rachel Miller's request for a tubal ligation during her scheduled C-section.

In each situation, the ACLU intervened. Some say the cases—which involve **Catholic hospitals** that refuse to provide certain types of care because of religious policies—are a harbinger, especially as Catholic hospitals merge or partner with secular ones. Those making the challenges are testing a host of legal theories to see which ones might stick.

"It's kind of uncharted territory," said Jessie Hill, a constitutional and health law professor at Case Western Reserve University who previously worked for the ACLU. "We don't have a really clear body of law here."

Catholic hospitals, meanwhile, say the guidelines, called the Ethical and Religious Directives for Catholic Health Care Services, issued by the U.S. Conference of Catholic Bishops, are applied to each unique patient and situation. Catholic hospitals have a "stellar history of caring for mothers and infants," said Jeff Tieman, chief of staff at the **Catholic Health Association**.

The directives prohibit abortion and say, "Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available."

"There is nothing in the Ethical and Religious Directives that prevents the provision of quality clinical care for mothers and infants in obstetrical emergencies or other

situations,” Tieman said.

The ACLU has alleged that denying such care violates state law on corporate practice of medicine, as well as federal law, and amounts to negligence and/or constitutes sex discrimination.

Legal experts say some of those arguments may carry weight, while others might be a stretch. But if the ACLU succeeds with one of these legal strategies, it may mean future lawsuits. What follows are three legal theories the ACLU is pursuing.

Violation of federal law

A recent lawsuit filed by the ACLU against **Trinity Health** argues that failing to provide certain types of care for women suffering pregnancy complications violates, among other federal laws, the Emergency Medical Treatment and Labor Act.

EMTALA requires any hospital with an emergency department receiving Medicare funds to stabilize any person determined to have an emergency medical condition. The lawsuit, filed in federal court in Michigan this year, argues that for some patients, stabilization requires terminating a pregnancy.

The EMTALA argument might prove a strong one, depending on the facts of a case, said Douglas Laycock, a University of Virginia law professor. Courts will, however, have to decide how EMTALA relates to other laws permitting healthcare providers to withhold abortions, he said.

“In the true emergency cases where withholding care does real harm to the patient, I think courts are going to be inclined to the view that EMTALA trumps, but it’s too early to know that for sure,” Laycock said.

Trinity said in a statement that the ACLU’s case against the system, which operates in 21 states, has no merit: “The Ethical and Religious Directives are entirely consistent with high-quality healthcare, and our clinicians continue to provide superb care throughout the communities we serve.”

Negligence

Legal experts say alleging negligence might also prove a strong argument.

“That’s the more promising route when you have an actual instance of denial of care or plaintiff who’s been damaged,” Hill said. “Courts are more comfortable making these decisions based on concrete facts.”

That argument, however, has already failed the ACLU at least once.

The ACLU sued the U.S. Conference of Catholic Bishops over the care of Tamesha

Means at Trinity's Mercy Health Muskegon (Mich.). The suit alleged she sought emergency care when she was pregnant and experiencing contractions. It turned out she had a bacterial infection, but Means was never told that early termination was an option or that continuing with the pregnancy could harm or even kill her, according to the lawsuit. She gave birth at 18 weeks and the baby died.

Means alleged negligence, but a U.S. District Court judge said in June he could not determine whether the establishment of the directives itself constituted negligence because it would involve an inquiry into church doctrine.

The ACLU filed an appeal with the 6th U.S. Circuit Court of Appeals in July.

Sex discrimination and corporate practice of medicine laws

In another case, the ACLU threatened to sue Dignity Health's Mercy Medical Center Redding (Calif.) for denying Rachel Miller's request for tubal ligation at the time of her C-section.

The ACLU argued the decision constituted sex discrimination, which is prohibited by California and federal law. Women must be allowed to receive procedures in line with standards of care, the ACLU argued.

Laycock said the argument doesn't seem strong. But Hill said it might carry some weight.

The ACLU also alleged that the hospital violated the state's corporate practice of medicine law by inserting its corporate entity's religious beliefs into the decision about Miller's care.

Elizabeth Sepper, an associate law professor at Washington University, called the argument "clever" but noted that it couldn't be used nationwide because not all states have such laws.

Mercy ultimately agreed to allow the tubal ligation, the ACLU said.

Dignity said in a statement that it can't discuss specific patient care but its practice is to not provide tubal ligations except on a case-by-case basis when a formal review by a committee of physicians and others gives permission. It said the hospital has always and will continue to operate in accordance with the Catholic directives and medical staff bylaws.

Brigitte Amiri, an ACLU senior staff attorney, said the ACLU stands ready to evaluate additional stories from other women to see if more legal action is warranted. The organization is trying a number of legal approaches, she said.

"We're still at the beginning wave of these attempts to try to get the law enforced," Amiri said.