

FILED

2002 APR 17 A 9:00

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

STATE OF OREGON,

Plaintiff,

and

PETER A. RASMUSSEN; ET AL.,

Plaintiff-Intervenors,

v.

JOHN ASHCROFT, in his official capacity
as United States Attorney General; ASA
HUTCHINSON, in his official capacity as
Administrator of the Drug Enforcement
Administration; KENNETH W. MAGEE, in his
official capacity as Director of the Drug
Enforcement Administration, Portland Office;
UNITED STATES OF AMERICA; UNITED
STATES DEPARTMENT OF JUSTICE; and
UNITED STATES DRUG ENFORCEMENT
ADMINISTRATION,

Defendants.

Civil No. 01-1647-JO

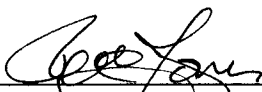
PERMANENT INJUNCTION

JONES, Judge:

Pursuant to and in accordance with the Opinion and Order filed this date, and having determined that defendants exceeded their authority under the Controlled Substances Act, 21 U.S.C. § 801 et seq., in issuing the directive that is the subject of this action, I hereby enter a permanent injunction as follows:

1. Defendants are permanently enjoined from enforcing, applying, or otherwise giving any legal effect to the directive issued by Attorney General John Ashcroft (attached as Exhibit 1) on November 6, 2001, and published in the Federal Register, 66 FR 56607-08, on November 9, 2001. Physicians, pharmacists and other health care providers in Oregon shall not be subject to criminal prosecution, professional disciplinary action or other administrative proceedings for any actions taken in compliance with the Oregon Death with Dignity Act.
2. Based on defendant's agreement stated in open court on the record and in lieu of class certification, defendants are enjoined from objecting to the addition or substitution of patient plaintiff-intervenors during the pendency of this action and any appeal.
3. This permanent injunction shall become effective immediately upon entry by the court. Plaintiff and plaintiffs-intervenors are not required to post a bond or other security.
4. The temporary restraining order previously entered in this case expires upon entry of this permanent injunction.

DATED this 17th day of April, 2002.



ROBERT E. JONES
U.S. District Judge



Office of the Attorney General
Washington, D. C. 20530

November 6, 2001

MEMORANDUM FOR ASA HUTCHINSON
ADMINISTRATOR
THE DRUG ENFORCEMENT ADMINISTRATION

FROM:

John Ashcroft
Attorney General

SUBJECT:

Dispensing of Controlled Substances to Assist Suicide

As you are aware, the Supreme Court reaffirmed last term that the application of federal law regulating controlled substances is uniform throughout the United States and may not be nullified by the legislative decisions of individual States. See *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001). In light of this decision, questions have been raised about the validity of an Attorney General letter dated June 5, 1998, which overruled an earlier Drug Enforcement Administration (DEA) determination that narcotics and other dangerous drugs controlled by federal law may not be dispensed consistently with the Controlled Substances Act, 21 U.S.C. §§ 801-971 (1994 & Supp. II 1996) (CSA), to assist suicide in the United States. Upon review of the *Oakland Cannabis* decision and other relevant authorities, I have concluded that the DEA's original reading of the CSA – that controlled substances may not be dispensed to assist suicide – was correct. I therefore advise you that the original DEA determination is reinstated and should be implemented as set forth in greater detail below.

The attached Office of Legal Counsel opinion, entitled "*Whether Physician-Assisted Suicide Serves a 'Legitimate Medical Purpose' Under The Drug Enforcement Administration's Regulations Implementing the Controlled Substances Act*" (June 27, 2001) ("OLC Opinion") (attached) sets forth the legal basis for my decision.

1. Determination on Use of Federally Controlled Substances to Assist Suicide. For the reasons set forth in the OLC Opinion, I hereby determine that assisting suicide is not a "legitimate medical purpose" within the meaning of 21 C.F.R. § 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the CSA. Such conduct by a physician registered to dispense controlled substances may "render his registration . . . inconsistent with the public interest" and therefore subject to possible suspension or revocation under 21 U.S.C. § 824(a)(4). This conclusion applies regardless of



whether state law authorizes or permits such conduct by practitioners or others and regardless of the condition of the person whose suicide is assisted.

I hereby direct the DEA, effective upon publication of this memorandum in the Federal Register, to enforce and apply this determination, notwithstanding anything to the contrary in the June 5, 1998, Attorney General's letter.

2. *Use of Controlled Substances to Manage Pain Promoted.* Pain management, rather than assisted suicide, has long been recognized as a legitimate medical purpose justifying physicians' dispensing of controlled substances. There are important medical, ethical, and legal distinctions between intentionally causing a patient's death and providing sufficient dosages of pain medication necessary to eliminate or alleviate pain.

3. *No Change in Current DEA Policies and Enforcement Practices Outside Oregon.* The reinstated determination makes no change in the current standards and practices of the DEA in any State other than Oregon. Former Attorney General Janet Reno's June 5, 1998, letter relating to this matter emphasized that action to revoke the DEA registration of a physician who uses federally controlled substances to assist a suicide "may well be warranted . . . where a physician assists in a suicide in a state that has not authorized the practice under any conditions." The reinstated determination does not portend any increase in investigative activity or other change from the manner in which the DEA presently enforces this policy outside of Oregon.

4. *Enforcement in Oregon.* Under 3 Oregon Revised Statutes (O.R.S.) § 127.855 (1999), an attending physician who writes a prescription for medication to end the life of a qualified patient must document the medication prescribed. Under 3 O.R.S. § 127.865(1)(b) (1999), the State of Oregon's Health Division must require any health care provider upon dispensing medication pursuant to the Death with Dignity Act to file a copy of the dispensing record with the Division. Those records should contain the information necessary to determine whether those holding DEA registrations who assist suicides in accordance with Oregon law are prescribing federally controlled substances for that purpose in violation of the CSA as construed by this Memorandum and the attached OLC Opinion.

The Department has the authority to take appropriate measures to obtain copies of any such reports or records sent to the Oregon State Registrar. See 21 U.S.C. § 876. When inspection of these documents discloses prohibited prescription of controlled substances to assist suicide following the effective date of this memorandum, then appropriate administrative action may be taken in accordance with 21 C.F.R. §§ 1316.41 to 1316.68 (2001).

Thus, it should be possible to identify the cases in which federally controlled substances are used to assist suicide in Oregon in compliance with Oregon law by obtaining reports from the Oregon State Registrar without having to review patient medical records or otherwise investigate doctors. Accordingly, implementation of this directive in Oregon should not change the DEA's

current practices with regard to enforcing the CSA so as materially to increase monitoring or investigation of physicians or other health care providers or to increase review of physicians' prescribing patterns of controlled substances used for pain relief.

5. Distribution. Please ensure that this Memorandum and the OLC opinion on which it is based are promptly distributed to appropriate DEA personnel, especially those with authority over the enforcement of the CSA in Oregon.

Attachment