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## FOREWORD

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# WESTERN NEW ENGLAND LAW REVIEW

## PHYSICIAN-ASSISTED SUICIDE: A SYMPOSIUM

### FOREWORD

DAVID R. MOSS\*

Should doctors help patients kill themselves? In March 1996, the United States Court of Appeals for the Ninth Circuit struck down a criminal statute prohibiting physician-assisted suicide, holding that competent, terminally ill individuals have a right to determine the time and manner of their own deaths which is protected by the Fourteenth Amendment's Due Process Clause.<sup>1</sup> Less than one month later, the United States Court of Appeals for the Second Circuit reached the same result on equal protection grounds, holding that there is no rational distinction between withholding life-sustaining treatment, which is legal, and prescribing life-ending medication, which is not.<sup>2</sup> Early last fall, the United States Supreme Court announced that it would review these two cases.<sup>3</sup>

On October 18, 1996, a distinguished group of scholars and practitioners in the fields of law and medicine gathered at Western New England College School of Law to explore the legal, medical, and ethical implications of the Ninth and Second Circuits' decisions,

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1. See *Compassion in Dying v. Washington*, 79 F.3d 790 (9th Cir. 1996), *rev'd sub nom.* *Washington v. Glucksberg*, 138 L. Ed. 2d 772 (1997).

2. See *Quill v. Vacco*, 80 F.3d 716 (2d Cir. 1996), *rev'd*, 138 L. Ed. 2d 834 (1997).

3. See *Washington v. Glucksberg*, 117 S. Ct. 37 (1996); *Quill v. Vacco*, 117 S. Ct. 36 (1996).

as well as of the Supreme Court's decision to grant review.<sup>4</sup> The four articles presented in this issue of the Western New England Law Review grew out of that conference. While the Supreme Court unanimously reversed the Ninth and Second Circuits' decisions in June 1997,<sup>5</sup> debate regarding legalizing physician-assisted suicide will undoubtedly continue to rage before state legislatures and state courts well into the next millennium. The articles by Professors Scofield, Burt, Baron, and Jones in this issue focus on the public policy implications of legalizing physician-assisted suicide, rather than the constitutionality of criminal statutes prohibiting the practice, and are as relevant to the public policy debate which is yet to come as they are to the constitutional debate which the Supreme Court recently resolved.

Giles Scofield, in *Natural Causes, Unnatural Results, and the Least Restrictive Alternative*, argues that the movement to legalize physician-assisted suicide is not really what it purports to be—a natural progression from the movement to give patients the right to refuse invasive end-of-life treatment, a vehicle to empower patients vis-à-vis their doctors. Legalizing physician-assisted suicide would empower doctors, not patients, he argues, further medicalizing the process of death. Professor Scofield contends that our society must exhaust less restrictive approaches to improve the care of the dying before taking the more drastic step of permitting physicians to kill their patients.

Robert Burt, in *Rationality and Injustice in Physician-Assisted Suicide*, contends that the effect of legalizing physician-assisted suicide on doctor-patient relations at the end-of-life is both unknown and unknowable. Given this uncertainty, Professor Burt argues that legalization should occur, if at all, incrementally through legislation which can be modified or repealed as its consequences become known, rather than through judicial decree. In contrast,

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4. In addition to the individuals whose work appears in this issue of the Western New England Law Review, speakers at the conference included George Annas, Utey Professor and Chair of the Health Law Department at the Boston University Schools of Public Health and Medicine; William Bennett, Hampden County District Attorney; Mark Goldblatt, M.D., Instructor at Harvard Medical School and Attending Psychiatrist at McLean Hospital; Betsy Johnson, M.A., Health Care Ethicist with the Massachusetts Department of Mental Retardation; Gary Reiter, M.D., Instructor at Tufts University School of Medicine and Specialist in Internal Medicine; Anita Sarro, J.D., Partner at Bulkley, Richardson & Gelinias; and Maureen Skipper, R.N., President of the Visiting Nurse Association and Hospice of the Pioneer Valley. An audio recording of the symposium is available on the worldwide web at <http://www.law.wnec.edu/physdyingprog.html>.

5. See *Washington v. Glucksberg*, 138 L. Ed. 2d 772 (1997).

Charles Baron argues in *Pleading for Physician-Assisted Suicide in the Courts* that the judiciary cannot abdicate its responsibility to declare the law in cases which come before it. Reasoning by analogy to the incremental, case-by-case approach courts have used to develop a body of law regarding the right to refuse life-sustaining treatment, Professor Baron contends that courts have the capacity to both recognize the existence of a right to physician-assistance in dying and to place appropriate limits on the scope of that right.

Catherine Jones, in *Assistance in Dying: Accounting for Difference*, contends that the debate regarding legalizing physician-assisted suicide will be incomplete if it fails to take into consideration the needs, values, and perspectives of persons other than western, white, heterosexual males. Like Professor Burt, Professor Jones argues that something critical is missing from the debate if it is cast purely in rational, abstract, theoretical terms, focusing on hypothetical cases.

Special thanks are due to the editors and staff of the *Western New England Law Review*. Thanks are also due to Joan Mahoney, Dean of Western New England College School of Law when this project began, and Interim Dean Donald Dunn, without whose support and encouragement the October 1996 conference and this issue of the law review would not have been possible.