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To live and to die

Living will addresses end of life

THERE WAS A TIME when health care meant staying home and death was a shared experience.

Long before hospitals and today's medical technology, a loved one spent his last days at home with family members. There were no machines to help him breath; no tubes to provide nutrients and antibiotics.

Today, death, for the most part, takes place in a sterile environment. The marvelous medical advances of the 20th century have radically changed the way we live . . . and the way we die. And at a time when physicians can preserve and prolong life, patients are taking a closer look at their definition of life.

Through living wills and durable powers of attorney, they are deciding their own fate, putting themselves at odds with age-old state laws and medical ethics.

In Death By Choice, we will take a look at the issue of who shall decide when and how death comes.

This is not an easy subject to address. It is a far-reaching national issue that may forever be locked in a legal struggle between opponents and proponents.

— Sue Mason

Suicide and the law

Suicide is not a crime in Michigan. A bill prohibiting assisted suicide, introduced by Sen. Fred Dillingham, R-Fowlerville, was voted out of committee March 7. SB 32 would amend the penal code to make it a four-year felony for a person who helps another person attempt or commit suicide. If adopted, it would take effect in 1993. But suicide and assisted suicide has been a part of the legal system for years:

- English common law held suicide to be a serious crime, an offense against God, nature and the king, who was deprived of a subject. Penalty was forfeiture of property. Because suicide was a crime, so was an attempt, incitement and conspiracy also were a crime.
- In early U.S. history, forfeiture of property as punishment was never accepted. Thus there were no traditional punishments for suicide.
- As recently as 1986, no state statute criminalized attempts to commit suicide. Although not a crime, a minority of states theoretically punish suicide assistance as manslaughter or murder.

Assistance is differentiated by facilitating or aiding. A majority of states impose criminal liability other than murder or manslaughter. In practice, however, assisted suicide has been ignored or sporadically enforced by police and prosecutors.

There are six basic fact situations concerning assistance statutes that are being addressed in model penal codes:

1. Passive assistance–failing to prevent.
2. Facilitation–relatively slight assistance, not necessary to accomplish the act. Examples are doctors who provide advice on fatal dosages, persons who address suicide notes for the victim, allow their homes to be used, or yell "Jump!"
3. Providing the means–the act, like hooking up a hose to a car's exhaust system, against which most statutes are aimed.
4. Active participation–helping the person, such as depressing the plunger of a syringe.
5. Causing suicide–brutality, for instance, incitement or psychological coercion.
6. Suicide pacts–although suicide is not punishable, the surviving member of a suicide pact can be charged as an aider and abettor of suicide.

–Source: Columbia Law Review

By Larry O'Connor
staff writer

Victor Bleimeister's legs are weak. He has arthritis and hardening of the arteries. He also experienced congestive heart failure once.

In the past year, he's been to the doctor several times.

"I've got a lot of problems," said Bleimeister, 85, who lives at American House Retirement Home in Livonia.

Such recurring ailments can give cause for thoughts of the future. Things such as the consequences a long, debilitating illness would have on loved ones — both emotional and financial.

Lately, many people have been pondering those issues. Mainly with the recent furor surrounding Dr. Jack Kevorkian and his suicide machine. The issue of a person's right to die has also led to heated debate in the courtrooms and the legislature.

Bleimeister's been keeping up on the assisted-suicide case, something he doesn't agree with.

"It's absolutely wrong," Bleimeister said. "That's the Christian viewpoint.

"That's wrong, deliberately helping someone take their own life."

But as that controversy rages on, Bleimeister has acted on another option somewhat lost in the tumult of Kevorkian's extreme methods.

Bleimeister has drawn up a living will. Such a document states, in essence, that no mechanical means would be used to prolong his life if he's incapacitated and admitted into a hospital.

WITH A living will, Bleimeister would refuse the use of such things as a respirator or tube feedings. He would be allowed to die naturally.

"Why?," asked Bleimeister rhetorically, sitting in his living room. "For a matter of convenience. To save expense on the survivors.

"I've been thinking about it for a long time. It's not anything I've just started thinking about."

There are a few things to consider, such as the legality of such a document. Currently, living wills are not valid in Michigan — one of only nine states not to recognize them.

Although state law does provide for a health care proxy. In certain situations, a patient advocate is chosen by the person to make medical care decisions if that individual becomes incapacitated (see related story).

Bleimeister believes it's not a decision of the courts, rather an individual's right to choose.

"That's the way it should be," he said. "A person should have that option to do that (have a living will)."

His two daughters, Corrine Lehman of Westland and Lois Willis of Taylor, only recently learned of his decision. He added both are aware of his feelings on the issue.

ANOTHER consideration was the living will itself. There are several different types.

In his possession are a couple of samples, including one from his church, St. Matthew's Lutheran in Westland. His pastor signed as one of the two witnesses required.

"It (the example from church) takes it more from the moral aspect," he said. "It (says) not to use mechanical means to prolong your life. Situations where they have to pump food into your stomach or blood . . . That type of thing."

"Of course, there are borderline cases," he added. "That's a problem, too, where you have a gray area."

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–Victor Bleimeister

Personal decision vs. public dilemma

file photo

To Ann Thomas, president of Right to Life/Lifespan, the right-to-die issue is potentially bigger than Roe vs. Wade (the Supreme Court decision on abortion) because of an aging population.

"I don't believe the majority of people are murderers ..."
–Ann Thomas

"A living will and assisted suicide are exactly the same."
–Geoffrey Fieger

JIM RIDER/staff photographer

Southfield attorney Geoffrey Fieger also believes the right to die is a once in a generation issue like Roe vs. Wade and its "enemy" is the right to life movement.

Death: God's decision

By Susan Steinmueller
staff writer

The definitive law on death by choice has yet to be written in the American courts.

But for religious institutions in general, the law has been written for centuries. In traditional Judaeo-Christian laws, death is a matter to be left in God's hands.

"We have a very standard position as far as that goes," said Brenda Marshall, spokeswoman for the Archdiocese of Detroit. "The position of the church has always been that God is the giver of life and that he is the only one that can take a life. So one person cannot assume that responsibility even if it is for one's own life."

Marshall said the church teaching goes back to the Bible and the 10 Commandments, which include the commandment "Thou Shalt not Kill."

"Judaism believes in the sanctity of every minute of life," said Rabbi David Nelson of Congregation Beth Shalom in Oak Park. "There is a great reverence for life in Judaism, so it insists on prolonging life. Certainly, to assist in suicide is a grievious sin in my mind."

Religious convictions are among the more powerful reasons for opposition to using medical technology to end life for the terminally ill.

But opponents cite many more reasons to be against the practice, in a debate sparked last summer by Dr. Jack Kevorkian's helping Alzheimer's patient Janet Adkins, 54, take her own life with a "suicide machine."

SOME SAY simply that there are better and more peaceful ways to die, without prolonging the process through extraordinary and heroic measures.

Hospice, which allows a terminally ill patient to die at home while still receiving medical support, is often cited as the best solution.

"I think the answer is hospice and leave it in the hands of the Almighty," is the opinion of Dr. John W. Finn, medical director of the Southfield-based Hospice of Southeastern.

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Choice: A civil right

By Shirlee Rose Iden
staff writer

Americans overwhelmingly favor active euthanasia, assisted suicide, death by choice, whichever label is applied.

And, according to many polls of the medical profession, a plurality of physicians believe in helping those who suffer choose death over pain and profound disability.

Who says so? Doctors, lawyers, faith healers, and mothers, sons, brothers and sisters. And Socrates, Plato, and the Stoics.

"Lawyers are hired guns in an adversary position with one another," said Geoffrey Fieger, a Southfield attorney who represents Dr. Jack Kevorkian, whose suicide machine accomplished the death of a 54-year-old Alzheimer disease sufferer Janet Adkins last June. "I believe lawyers favor Kevorkian."

Unlike most attorneys who maintain a low profile in such controversial matters, Fieger has become deeply involved with the issue of death by choice. He has a book in the works on it and keeps "Dr. Death's" $30 suicide machine in his car while traveling between speaking engagements.

"Privately, there are thousands of Dr. Kevorkians," he said. "There is no reason to oppose death by choice for the terminally ill. A living will and assisted suicide are exactly the same."

FIEGER BELIEVES the application of death by choice should be a highly controlled medical specialty. "A person's mentally competence would have to be determined," he said.

The "enemy" to death by choice legislation is the right to life movement who are "really dangerous people who don't believe in civil rights," according to the attorney.

"Lawyers and doctors won't decide this issue, it will be people," said Fieger who considers death by choice a once in a generation issue as important as Roe vs. Wade (right to abortion).

Karen Haydu, of Southfield, a manicurist and healer, said diseases such as AIDS and cancer are so painful and debilitating they distort the very quality of life.

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Doctors deal with lethal decisions

"Finding out who has the legal right to make the patient's decision is one of the hardest issues."
- Dr. Calvin Kay

By Rebecca Haynes
staff writer

The question of death by choice is not a new one for those who ponder medical ethics.

"People who opt for it do so because they are afraid of losing control," said Tom Tomlinson, author and ethics professor at Michigan State University who helps run the Medical Ethics Resource Network out of the school's Center for Ethics and Humanities.

The option to refuse aggressive treatment and let the disease take its natural course has a strong history of respect in the medical field, both legally and ethically, he said. But the option to end a life before a disease takes it, however, is not so clear cut.

"Patients have long had a right to refuse medical treatment," Tomlinson said. "In fact; physicians who do things against a patient's will are committing a crime, a form of assault and battery."

And although there are physicians who favor euthanasia, Tomlinson said they are in the minority.

"It's an issue of active debate and has been for some years, many years before Kevorkian made the news," he said.

TOMLINSON SAID he believes that the more palliative care is offered to terminal patients, the less need they'll feel for euthanasia.

And because of the legal liability, even physicians who may agree with a patient's decision to forego treatment or to opt for euthanasia may be reluctant to do so. It's for that reason that hospitals have had to implement policies governing treatment of these patients and legislatures are adopting laws on living wills and durable power of attorney.

Dr. Calvin Kay, medical director at Garden City Osteopathic Hospital, said the hospital's policies have been revised almost every year for the past three years, staying in line with the Presidential Commission on Medical Ethics.

"Part of the problem has been to develop policies that people understand," he said. "We have to make things simpler, more direct."

Hospitals run into the most trouble when a patient becomes incompetent to make his or her own decisions. There may be a disagreement among family members about what should or shouldn't be done.

"Finding out who has the legal right to make the patient's decision is one of the hardest issues," Kay said. "People tend to put off the decision-making process until it's too late."

"AND THE family is trying to deal with the trauma of the illness and the guilt that comes from making a decision.

"The single most important thing to do is to sit down and talk to your loved ones about what you would want if something should happen to you," Kay said. "And it isn't just an issue for older people. Sometimes it's the young people who've been in accidents who are on respirators the longest."

Sister Dinah White is vice president for mission effectiveness at Providence Hospital in Southfield. She said the hospital asks physicians to let it know the wishes of seriously or terminally ill patients they admit.

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