

PROFESSION

## 5 Hawaii doctors offer assisted suicide to terminally ill patients

Whether the practice is allowed under state law is unclear.

By KEVIN B. O'REILLY, amednews staff. Posted April 17, 2012.

A group of Hawaii physicians is offering to write lethal prescriptions for terminally ill patients in a bid to test whether doctor-assisted suicide is allowed under state law.

Unlike Oregon and Washington, the only two states where writing such a prescription is explicitly allowed and regulated, Hawaii has no law authorizing physician-assisted suicide. Moreover, Hawaii Attorney General David M. Louie issued an opinion in December 2011 saying that manslaughter charges could be brought against physicians who write prescriptions with the intention of causing death.

But that legal opinion is not stopping Robert "Nate" Nathanson, MD. Around Valentine's Day, the retired general practitioner wrote a prescription for a lethal amount of the sedative secobarbital to help a terminally ill patient hasten his death. Shortly thereafter, the patient lost the ability to swallow and therefore self-administer the medication, so the patient's wife never filled the prescription, Dr. Nathanson said. The patient died of his underlying disease, cancer, within 48 hours.

In January, Dr. Nathanson co-founded the Physician Advisory Council for Aid in Dying, which now has five doctor members. The council has started a hotline to field queries from patients and doctors about end-of-life care issues and physician-assisted suicide. The idea is that Hawaii physicians who fear the legal consequences of writing life-ending prescriptions could refer their patients to the council for help, said Dr. Nathanson, 78.

"That's the thing — I'm retired," he said. "I think the worst that would happen is that they'd take my license away. I don't think I'm going to put in any jail time. ... My livelihood doesn't depend on it, so I can be very brave."

Dr. Nathanson said he is ready to be involved in the case that tests where Hawaii law stands on physician-assisted suicide.

The council has established guidelines similar to the regulations in Oregon and Washington. They call for the patient seeking doctor-assisted suicide to be diagnosed as terminally ill by two physicians, evaluated for mental competency and depression, and referred to a psychiatrist or psychologist if needed. However, there is no specified 15-day waiting period as there is in Oregon. Patients are urged to involve family in the decision, but there is no requirement to have any witnesses — relatives or otherwise — sign off on the patient's written request.

"We would never write a prescription like this without consulting the patient's primary care doctor and reviewing, in-depth, the case with him, primarily to confirm the terminal diagnosis and the patient's competency," said Charles F. Miller, MD, a retired oncologist who co-founded the council.

### The debate over Hawaii's law

Compassion & Choices Hawaii, which supports legal access to physician-assisted suicide, argues that the state constitution's privacy clause and state laws on advance directives and patient rights "as a whole comprise a constellation of laws, all of which reflect that it is the policy of the state of Hawaii to vest its citizens with broad autonomy over end-of-life decision-making."

The organization's lawyers have cited a 1909 law that allows "any remedial agent" to be given to "a person affected with any disease hopeless and beyond recovery," arguing that physician-assisted suicide is a kind of relief from the symptoms associated with the underlying disease. In his opinion, Attorney General Louie disagreed, saying the legislative record shows legislators at the time had traditional Hawaii herbal medicines in mind.

A poll of 631 Hawaiian adults conducted in December 2011 on behalf of Compassion & Choices found that 77% favor "allowing those who are dying of a terminal disease to have the choice to request and receive medication from their physician to bring about their peaceful death." The group surveyed 43 physicians in January, and 76% of them agreed with a similarly worded statement. However, due to the small number of doctors surveyed, that poll has a 14-point margin of error. A 2005 nationwide survey conducted by the market-research firm HCD Research found that 59% of physicians agreed that doctors across the nation should be allowed to dispense lethal prescriptions to terminally ill patients who want to end their lives.

The Hawaii Medical Assn. opposes physician-assisted suicide and fought several attempts to enact an Oregon-like death-with-dignity law through the state Legislature. The association's executive director, Christopher D. Flanders, DO, said physicians should steer clear of writing lethal prescriptions for terminally ill patients.

"I would give [the doctor] the attorney general's opinion that physician-assisted suicide is not legal in Hawaii," Dr. Flanders said. "The attorney general issued the state's legal opinion, so we have no reason to disagree. My feeling is that it's a dangerous game with legalities like that."

American Medical Association policy "strongly opposes any bill to legalize physician-assisted suicide" because the practice is

American Medical Association policy strongly opposes any effort to legalize physician-assisted suicide because the practice is “fundamentally inconsistent with the physician’s role as healer.”

At least 30 states have laws explicitly criminalizing assisted suicide. Nine other states criminalize the practice through common law.

The Montana Supreme Court ruled in December 2009 that physicians who prescribe life-ending medication to patients with terminal illnesses are not subject to state homicide statutes. Since then, state legislators have not acted to regulate doctor-assisted suicide or outlaw the practice, leaving Montana physicians in legal limbo.

Whatever Hawaii law may say, Dr. Miller has no qualms about the medical ethics of what he and his colleagues have committed to doing.

“I know people call it assisted suicide, but this is not suicide,” said Dr. Miller, who retired about two years ago. “These patients are going to die. All they’re asking for is, ‘Can I have a choice in how to do that — of how to end my life?’”

---

Copyright 2012 American Medical Association. All rights reserved.

#### RELATED CONTENT

- » **Georgia high court strikes down assisted suicide law** Feb. 20
- » **51 died under Washington’s assisted-suicide law in 2010** March 28, 2011
- » **Oregon still stands alone: Ten years of physician-assisted suicide** May 12, 2008
- » **Doctors favor physician-assisted suicide less than patients do** Nov. 21, 2005