Assisted suicide law stands

High court rules 6-3 that the federal government went too far to block state's rule.

By David Whitney and Clea Benson -- Bee Staff Writers
Published 2:15 am PST Wednesday, January 18, 2006

WASHINGTON - Physicians in Oregon do not risk criminal prosecution or other punishment for prescribing life-ending drugs after the Supreme Court on Tuesday rejected the federal government's bid to block the state's assisted suicide law.

Oregon is the only state that has such a law. But other states, including California, are considering the legalization of doctor-assisted suicide for terminal patients, and Tuesday's 6-3 ruling was seen as an encouragement of that movement.

"More and more Americans are demanding a greater say in how they live and how they die," said Peg Sandeen, executive director of the Death with Dignity National Center in Portland. She called the court's ruling "a historic milestone that will protect the people's rights as patients."

California Assemblywoman Patty Berg, D-Eureka, said the decision could spark the momentum necessary to legalize physician-assisted suicide in California.

The court's majority decision by Justice Anthony Kennedy did not uphold the Oregon law so much as it repudiated the Justice Department's basis for going after physicians who prescribe life-ending drugs.

That rule, advanced in 2001 by former Attorney General John Ashcroft, authorized the prosecution of doctors under the federal Controlled Substances Act on the basis that assisted suicide is not a "legitimate medical purpose" for drugs controlled under that law.

Kennedy said that was an overreach, that the federal drug law did not give the
Justice Department the authority to regulate the practice of medicine.

To conclude otherwise, Kennedy wrote, would put the attorney general in the business of regulating doctors using controversial medical treatments over which the attorney general has no legal authority or expertise.

The decision drew a strong dissent by Justice Antonin Scalia, who was joined by Clarence Thomas and the high court's newest member, Chief Justice John Roberts, in his first dissent.

"If the term 'legitimate medical purpose' has any meaning, it surely excludes the prescription of drugs to produce death," Scalia wrote.

Since the voter-approved Oregon law took effect in November 1997, 208 terminally ill people have swallowed sufficient quantities of prescribed pills to die, according to a 2005 report by the Oregon Department of Human Services. Figures from 2005 are due in March.

The numbers have grown gradually, with 16 the year after the law took effect, and 42 in 2003 and 37 in 2004.

In 2004, according to the report, 60 life-ending prescriptions were issued by 40 doctors, but about a third of them were not used.

In California, Berg and Assemblyman Lloyd Levine, D-Van Nuys, last July shelved an assisted-suicide measure, Assembly Bill 651, after they failed to find enough votes to pass it.

Catholic groups and disability-rights groups opposed the bill. And many members of the Legislature said they thought it was premature to enact assisted-suicide legislation while the matter was before the Supreme Court.

"I'm elated with the Supreme Court ruling," Berg said. "I think it's going to change some people's minds. I'm very hopeful."

The bill is scheduled for a committee hearing in the state Senate in March. Gov. Arnold Schwarzenegger has not said whether he would sign the measure, which includes safeguards such as a 15-day waiting period and a rule that two doctors agree on a patient's prognosis.

The move by California and other states to advance legislation could still be thwarted by the Republican-controlled Congress, which could amend the federal drug-control laws and forbid physicians from prescribing lethal medications. Congress also could pass laws explicitly banning doctor-assisted suicide.
White House spokesman Scott McClellan said President Bush was disappointed in the Supreme Court's decision.

"The president remains fully committed to building a culture of life, a culture of life that is built on valuing life at all stages," he said.

Ashcroft issued the Justice Department ruling in November 2001, effectively blocking Oregon's law by authorizing Drug Enforcement Agency agents to find and punish doctors who prescribe life-ending drug overdoses.

The rule was challenged by Oregon in federal court.

The Justice Department was enjoined from enforcing the rule by a federal court in Portland that regarded assisted suicide as a matter that states should be free to decide for themselves.

The 9th U.S. Circuit Court of Appeals in San Francisco upheld that ruling, adding to its reasoning the fact that the Controlled Substances Act gives the attorney general no role in deciding medical policy.

Tuesday's majority opinion embraced that argument, saying the drug law gives the attorney general authority to control diversions of drugs to illicit use but does not "give him the authority to define diversions based on his view of legitimate medical practice."

Scalia, in his dissent, pointed to the impact of the opinion on another drug-use issue - anabolic steroids sometimes used by athletes and bodybuilders.

By limiting the federal drug law to control of addiction and recreational uses, Scalia said, "dispensation of these drugs for bodybuilding could not be proscribed."

But Scalia recognized that assisted suicide for the terminally ill has popular appeal.

"The court's decision today is perhaps driven by a feeling that the subject of assisted suicide is none of the federal government's business," he said. "It is easy to sympathize with that position."

One of the case's 16 plaintiffs, Charlene Andrews, 68, of Salem, Ore., said the important point behind the Oregon law is that she will have a choice about the time and circumstances of her death.

Andrews has been living with breast cancer for five years and has been on chemotherapy for nearly four. While she hopes to make it to her 70th birthday,
she said in an interview that she takes great comfort in knowing she will control when the end will come.

"This law gives me a lot of peace of mind," she said.

"I can die with dignity, with compassion and love surrounding me. I don't have to be unconscious and without all my bodily functions."

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