DEATH PENALTY, DEATHS, HEALTH CARE / MEDICINE, POLITICS, SUICIDE

If Oregon Can Give Death With Dignity, Why Can't Death Row?

By TAMARA TABO

Nov 24, 2014 at 3:59 PM

51
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This week, the Utah state legislature approved a bill that would allow the state to impose the death penalty by firing squad if the drugs approved for lethal injection are not available. Meanwhile, Ohio legislators proposed a bill that would ensure the anonymity of independent compounding pharmacies that provide lethal drugs to the state's prisons. Many pharmacies are reluctant to sell drugs to used for capital punishment, fearing public backlash.

At the same time, a forceful public debate about physician-assisted death for terminally ill patients and laws such as Oregon's Death With Dignity Act (DWDA) has developed, which I have previously weighed in on. Observers might wonder how doctors can help terminally ill patients gently, painlessly, and quickly end their lives, while prison officials seem hard-pressed to do the same for inmates sentenced to death. For example, in Arizona earlier this year, Joseph Wood took nearly two hours to die by lethal injection, though prison officials had previously estimated that

he would die within about ten minutes. In April, Oklahoma prisoner Clayton Lockett's execution took over 45 minutes.

Why can't prisons use the same drugs that doctors in Oregon use? The answer is: they often do. Why then don't Death With Dignity Act patients experience the same sorts of complications that some capital offenders have? The answer is: they often do.

In Belgium and the Netherlands, where active euthanasia has been legal since 2002 and 2001, respectively, the standard protocol advises injections of the barbiturate sodium thiopental, followed by pancuronium bromide (a paralytic agent). Until recently, most state executions in the United States used a standard 3-drug combination for capital punishment: sodium thiopental or pentobarbital, pancuronium bromide, and potassium chloride (which causes cardiac arrest). So, for years the drug protocol was, indeed, extremely similar.

Beginning in 2011, the European Union placed an embargo on sodium thiopental and other drugs used in the standard lethal injection protocol in U.S. prisons. The European Commission also added "short and intermediate acting barbiturate anaesthetic agents" like pentobarbital and sodium thiopental to its Regulation on Products used for Capital Punishment and Torture. In response, prisons scrambled for alternatives to commercial drug manufacturers. States began ordering pentobarbital and other lethal drugs from FDA-unregulated compounding pharmacies. Nine states have either used or intend to use compounding pharmacies to obtain their drugs for lethal injection.

Fourteen states also began using a simpler single-drug protocol of pentobarbital. According to the Death Penalty Information Center, four of the six executions carried out in various states in January 2014 used the drug by itself. Unfortunately, when Oklahoma officials used pentobarbital in the execution of Michael Lee Wilson, witnesses reported the inmate saying aloud that he could feel his "whole body burning" during the execution process. Tanya Greene of the ACLU called pentobarbital's use "basically an experiment on human beings; the risk of extended, painful death is very high."

Why don't prisons use whatever concoction doctors prescribe to terminally ill patients then? Well, according to the state of Oregon's Death With Dignity Act 2013 Annual Report, in 2013, 90.1% of patients prescribed lethal medication under the DWDA received . . . pentobarbital.

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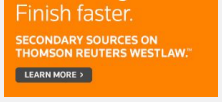

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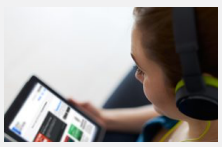

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Most of us wish for ourselves and those we love a peaceful, graceful exit from life. When our final moments inevitably come, we want to see our family and friends gathered round us, letting us know that we are loved and that we won't be forgotten. Some patients' wishes may come true. Others, though, will vomit (before or after losing consciousness), seize, and gasp. Some will pass in minutes from waking, to unconsciousness, to death. Others will remain conscious for much longer and will remain alive for longer still. Some others, a small but notable minority, will regain consciousness after taking the supposedly lethal medication.

Witnesses at executions are sometimes horrified by an inmate whose execution does not proceed as quietly or smoothly, or whose death does not come as quickly, as expected. Lethal drugs don't necessarily spare patients seeking physician assisted death from similar complications, unfortunately.

Research from the Netherlands, where active euthanasia has been legal since 2001, reports patient self-administration of physician-prescribed lethal medication did not work as expected in 16% of cases. In an additional 7% of cases, patients experienced unexpected side effects. The study describes patients regaining consciousness after ingesting the drugs, vomiting, and gasping for breath, and seizures. In 6% of cases, patients either regained consciousness or took significantly longer to die than expected. In the Netherlands, times between drug administration and death varied considerably, with a median range of 3.8 hours.

In Oregon between 1998 and 2012, six out of 681 DWDA patients ***regained consciousness after ingesting the lethal DWDA medications. (***Their numbers are included in the metrics for patients receiving and ingesting DWDA drugs, but they are not included in tallies for DWDA deaths.) In

2005, a patient regained consciousness 65 hours after taking the medication, subsequently dying from the underlying illness fourteen days after awakening. In 2010, one patient regained consciousness 88 hours after ingesting the medication, subsequently dying from underlying illness three months later. Another patient the same year regained consciousness within 24 hours, subsequently dying from underlying illness five days following ingestion. In 2011, a patient regained consciousness approximately 14 hours after ingesting the medication and died about 38 hours later. Another patient briefly regained consciousness after ingestion and died from the underlying illness 30 hours later. One 2004 prescription recipient became unconscious 25 minutes after ingestion, then regained consciousness 65 hours later. Oregon Public Health reports that the patient "*did not obtain a subsequent prescription* and died 14 days later of the underlying illness (17 days after ingesting the medication)."

Would you ask for a refill of pentobarbital if this happened to you? Talking about an idealized version of euthanasia or physician-assisted death is comforting. Drinking prescribed poison, slipping into what you believe will be your final rest . . . then waking up? Not so comforting.

In Judge Alex Kozinski's dissent in Joseph Wood's case, Kozinski chastises the government for continuing to carry out the death penalty but insisting upon lethal drugs instead of "more primitive — and foolproof — methods of execution" such as the guillotine or the firing squad. Kozinski writes, "Sure, firing squads can be messy, but if we are willing to carry out executions, we should not shield ourselves from the reality that we are shedding human blood. If we, as a society, cannot stomach the splatter from an execution carried out by firing squad, then we shouldn't be carrying out executions at all."

Perhaps we need to be as clear-sighted about voluntary, physician-assisted death as Judge Kozinski urges us to be about involuntary, penal system-imposed death. The methods are similar. The complications are similar. If we, as a society, cannot stomach the thought of physicians employing more foolproof — even if more primitive — methods of aiding their patients' deaths, then perhaps we shouldn't enter this arena either. Clear vision about voluntary death need not necessarily lead to firing squads for leukemia patients and guillotines for grannies, but it would prevent us from misunderstanding the process and its consequences. The upshot for both voluntary, physician-assisted death and for capital punishment is that death is difficult. Our sentimentality may lead us to romanticize it, but our social consciences should never allow us to sanitize it.

Earlier: Do Physician-Assisted Death Laws Deserve to Die With Dignity?

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51
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