

7 FAM 200 APPENDIX E DEATH WITH DIGNITY

(CT:CON-156; 02-07-2007)
(Office Of Origin: CA/OCS/PRI)

7 FAM 210 APPENDIX E INTRODUCTION

(CT:CON-156; 02-07-2007)

- a. 7 FAM 351b(2)(e) explains that a consular officer cannot make decisions about treatment of patients. Likewise, a consular officer cannot make decisions regarding removal of life support system or withholding treatment. 7 FAM 358 provides general guidance about living wills and other advance directives. Laws pertaining to the removal of life support vary greatly from country to country. Consular officers can express the family's wishes regarding removal of life support or the patient's wishes as expressed in an advanced directive or living will, but consular officers need to be prepared to explain local laws governing this practice with next of kin (NOK). Removing life support in some countries is quite difficult and medical personnel will often refuse to comply with the NOK wishes because of local laws or practices.
- b. On occasion, CA/OCS receives inquiries from posts and the public regarding sensitive issues related to gravely ill U.S. citizens abroad and their families confronted with difficult decisions about the end of life. Questions we have received include:
 - (1) **Question:** Can a consular officer authorize removal of life support in the absence of instructions, consultation, or direction from any family member, also without a will or advance directive?
Answer: No. The consular officer cannot act in this capacity. The local law would govern. CA/OCS would work with post to try to find a family member, legal representative or other person who might be designated as guardian. In 2006, CA/OCS and a post faced such a case. Local authorities would not remove life support without a request from a family member, but also would not continue to allow the U.S. citizen to remain in a local hospital. Physicians determined that the individual could survive a flight to the United States with a full life support medical evacuation. CA/OCS and L/CA determined that the Department could not deny the medical evacuation since it would amount to making the decision to allow the person to die. The patient was medically evacuated to the United States where the

patient died shortly thereafter.

- (2) **Question:** Can a consular officer assist a family seeking to prevent removal of life support from a pregnant U.S. citizen to allow the viable unborn fetus one more month gestation to increase the chance that the child, to be delivered alive by cesarean section, might survive.

Answer: OCS advised post to assist the family in putting them in touch with appropriate local authorities, provide the family with a list of lawyers, and convey to local authorities the family's concern.

- (3) **Question:** Can a consular officer stop a U.S. citizen from availing him/herself of assisted suicide under local law?

Answer: No, but the consular officer should report the matter to CA/OCS. CA/OCS/ACS will confer with CA/OCS/PRI and L/CA to formulate an advisory opinion based on the facts of the case. This guidance may include a recommendation that the consular officer encourage the U.S. citizen to designate a legal representative or next of kin (NOK) to handle disposition of remains and personal effects. (See 7 FAM 240 Appendix E).

- c. Much debate has arisen in the United States over the question of euthanasia, and what constitutes actively causing death (positive euthanasia) and what constitutes merely allowing death to occur naturally.
- d. Questions regarding this subject should be addressed to ASKPRI@state.gov.

7 FAM 220 APPENDIX E U.S. LAW ON DEATH WITH DIGNITY, EUTHANASIA

(CT:CON-156; 02-07-2007)

- a. **Living Wills and Other Advance Directives:** Popular movements have supported the legalization of the living will, a statement written by a mentally alert patient that can be used to express a wish to forgo artificial means to sustain life during terminal illness. In 1977, California became the first to pass a state law to this effect, known as the death with dignity statute. (See 7 FAM 358).
- b. Positive euthanasia is illegal in the United States under the laws of many states, but physicians may lawfully refuse to prolong life when there is extreme suffering. In most U.S. states, assisting in a suicide is a crime. In 1997 the U.S. Supreme Court upheld state laws banning assisted suicide. In Oregon in 1994, voters approved physician assisted suicide for some patients who are terminally ill. The law went into effect in 1997.

In 2001, the U.S. Federal Government sought to limit the Oregon law with a directive under the Federal Controlled Substances Act. Oregon sued (*Oregon v. Ashcroft*) to prohibit enforcement of the directive. The U.S. Supreme Court ruled (*Gonzalez v. Oregon*) in 2006 that the Federal Government had exceeded its authority.

- c. The question of assisted suicide of the terminally ill continues to be a matter of debate in the United States that may be ultimately determined by the judiciary or legislature.

7 FAM 230 APPENDIX E FOREIGN LAW, DEATH WITH DIGNITY, EUTHANASIA

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The Department is aware that some foreign countries have enacted laws permitting assisted suicide or euthanasia. Since 1937 assisted suicide has not been illegal in Switzerland so long as the person who assists has no personal motive or gain. In 1993, the Netherlands decriminalized, under a set of restrictive conditions, voluntary positive euthanasia (essentially physician assisted suicide) for the terminally ill, and in 2002 that country legalized physician-assisted suicide if voluntarily requested by seriously ill patients who face ongoing suffering. In 2002, Belgium also legalized euthanasia for certain patients who have requested it. Posts should try to keep the Department (CA/OCS/PRI) apprised of developments in host country law regarding this subject (ASKPRI@state.gov).

7 FAM 240 APPENDIX E ROLE OF THE CONSULAR OFFICER - U.S. CITIZEN SEEKING ASSISTED SUICIDE IN THE CONSULAR DISTRICT

(CT:CON-156; 02-07-2007)

- a. The Department (CA/OCS) is aware of at least one case in which it came to a post's attention via the media that a U.S. citizen was seeking assisted suicide under local law.
- b. CA/OCS determined that while it may not give rise to a specific obligation to provide consular assistance, our underlying concern was whether the U.S. citizen was of sufficiently sound mind and otherwise receiving medical care appropriate to his/her condition, matters which may be known only to his/her attending physicians. In this regard, we recommended inquiring of local authorities whether they had been in

contact with the U.S. citizen's physicians with respect to these issues. The post was not aware of the citizen's exact whereabouts. CA/OCS advised post that if the practical difficulty of locating the citizen could be surmounted, the post should write to the citizen advising that the post has seen media reports of his/her situation and inquiring generally whether the post could be of any assistance. For example:

- (1) Could the post assist the citizen in contacting family or friends in the host country or in the United States?
 - (2) Could the post assist the citizen in seeking other medical advice?
 - (3) Was the citizen interested in returning to the United States or discussing with the consular officer arrangements to be made regarding a death notification, or disposition of remains and personal estate?
- c. With respect to press guidance, given our lack of any independent knowledge of any of the facts CA/OCS advised that there would seem to be no basis for offering any comment. If and when we did acquire such knowledge, and even were we to receive a Privacy Act waiver from the citizen in question, we think it unlikely that there would be a useful purpose in making any comment on a case of this sad, personal nature.

Reference:

- University of Buffalo Center for Clinical Ethics and Humanities in Health Care

7 FAM 250 THROUGH 290 APPENDIX E UNASSIGNED