

Chicago Lawyer

An International Perspective: Different health care, different debate

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As I watched President Obama explain the "need" for health-care reform a few weeks ago, I became acutely aware that my brain was unable to process what all the fuss was about. As a citizen of a country that provides free health care to every British citizen, watching the nation debate the merits of the president's health-care reform plan left me, simply, puzzled. Why can't *they* just do what *we* do? But as the war over Obama's health-care legislation ensued on this side of the Atlantic, on my side a long-standing debate about a different type of health care was heating up.

Unable to watch her brain-damaged son, Tom, continue to suffer from the debilitating effects of his condition, Frances Inglis, his 57-year-old mother, decided to take matters into her own hands. Tom, who could communicate only by blinking and squeezing his hands and who had to be fed through a tube, required round-the-clock care and lived in a nursing home. Unable to watch her son suffer anymore, in November 2007, Frances checked into Tom's nursing home under a false name, barricaded the door to Tom's room and injected him in both thighs and his arm with heroin. Minutes later, Tom was dead and Frances was placed under arrest.

Struck by the incurable viral illness myalgic encephalomyelitis - referred to as ME - at 14, Lynn Gilderdale spent the next 17 years of her life suffering from excruciating pain, paralyzed, unable to speak or swallow, sustained by the 24-hour-a-day care provided by her mother, Kay. Incapable of suffering anymore, on Dec. 3, 2008, merely weeks after the arrest of Frances Inglis, Lynn summoned her mother to her room and asked her to kill her. Twenty-eight hours later, Lynn was dead and Kay was arrested.

Although the stories sound remarkably similar, the endings were made in appellate court heaven, as the juries in the two cases reached very different verdicts. While Kay Gilderdale was found not guilty of attempted murder, Frances Inglis was found guilty of attempted murder and sentenced to a minimum term of nine years.

Under the law of England and Wales, assisted suicide is illegal.



But according to guidelines published months before the trials of Gilderdale and Inglis, certain public-interest factors weigh against a prosecution being brought.

These include whether the victim had a clear, settled, and informed wish to commit suicide, whether the victim asked personally on his or her own initiative for the assistance of the suspect, whether the victim had a terminal illness or a severe and incurable physical disability, and whether the suspect was wholly motivated by compassion.

But even applying these recently released guidelines to Inglis and Gilderdale, the cases are still difficult to reconcile. Despite the fact that both mothers were apparently motivated only by compassion, as the brain damage that constrained Tom Inglis prevented him from asking his mother to help him end his life, Frances Inglis cannot be said to have "assisted" her son's suicide and thus deserved to be sentenced for attempted murder. Lynn Gilderdale's desire to commit suicide, on the other hand, was so clearly communicated to her parents that the family had previously traveled to Switzerland, where assisted suicide is legal, and unsuccessfully attempted to end Lynn's life.

Temporarily ignoring the pink ARDC card presently burning a hole in my back pocket, I ask you: *Is this fair?*

As a lawyer, I should respect the fact that any contravention of the law, no matter how well-intentioned, is prohibited. Unfortunately, as a young lawyer, I still suffer from the affliction of compassion, and thus struggle with the idea that a mother taking it upon herself to enable her brain-damaged son to humanely end his life should be tantamount to murder. A large percentage of the U.K. agrees with me on this, and also wishes to see the current guidelines changed. However, no one seems to be able to agree on what the guidelines should say.

Ironically, a practical example may exist right here in the U.S. Enacted in 1994, the Oregon Death With Dignity Act permits physicians to prescribe a lethal dose of medication to a patient who is agreed by two doctors to be within six months of dying from an incurable condition.

Applicable only to citizens of Oregon, the act effectively removes much of the inequity that seemed to surround the verdicts handed down to Inglis and Gilderdale. Still, the act does not encompass the situation faced by Inglis: a mother whose son was brain-dead but who was not suffering from a terminal condition.

So maybe there is simply no place in the law for assisted suicide; it is a gray area that is too difficult to regulate and too dangerous for our legislatures to endorse.

That would be easier to accept if there weren't millions of people around the world yearning for assisted suicide every year. Although the British guidelines attempt to clarify the state's position on attempted suicide, they seem to have left only ambiguity in their wake.

Perhaps, in this debate, *we* should do what *you* do?

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