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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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GONZALES, ATTORNEY GENERAL, ET AL. *v.* OREGON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–623. Argued October 5, 2005—Decided January 17, 2006

The Controlled Substances Act (CSA or Act), which was enacted in 1970 with the main objectives of combating drug abuse and controlling legitimate and illegitimate traffic in controlled substances, criminalizes, *inter alia*, the unauthorized distribution and dispensation of substances classified in any of its five schedules. The Attorney General may add, remove, or reschedule substances only after making particular findings, and on scientific and medical matters, he must accept the findings of the Secretary of Health and Human Services (Secretary). These proceedings must be on the record after an opportunity for comment. The dispute here involves controlled substances listed in Schedule II, which are generally available only by written prescription, 21 U. S. C. §829(a). A 1971 regulation promulgated by the Attorney General requires that such prescriptions be used "for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR §1306.04. To prevent diversion of controlled substances, the CSA regulates the activity of physicians, who must register in accordance with rules and regulations promulgated by the Attorney General. He may deny, suspend, or revoke a registration that, as relevant here, would be "inconsistent with the public interest." 21 U. S. C. §§824(a)(4), 822(a)(2). In determining consistency with the public interest, he must consider five factors, including the State's recommendation, compliance with state, federal, and local law regarding controlled substances, and "public health and safety." §823(f). The CSA explicitly contemplates a role for the States in regulating controlled substances. See §903.

The Oregon Death With Dignity Act (ODWDA) exempts from civil

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or criminal liability state-licensed physicians who, in compliance with ODWDA's specific safeguards, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill patient. In 2001, the Attorney General issued an Interpretive Rule to address the implementation and enforcement of the CSA with respect to ODWDA, declaring that using controlled substances to assist suicide is not a legitimate medical practice and that dispensing or prescribing them for this purpose is unlawful under the CSA. The State, a physician, a pharmacist, and some terminally ill state residents challenged the Rule. The District Court permanently enjoined its enforcement. The Ninth Circuit invalidated the Rule, reasoning that, by making a medical procedure authorized under Oregon law a federal offense, it altered the balance between the States and the Federal Government without the requisite clear statement that the CSA authorized the action; and in the alternative, that the Rule could not be squared with the CSA's plain language, which targets only conventional drug abuse and excludes the Attorney General from medical policy decisions.

Held: The CSA does not allow the Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide under state law permitting the procedure. Pp. 8–28.

(a) An administrative rule interpreting the issuing agency's own ambiguous regulation may receive substantial deference. *Auer* v. *Robbins,* 519 U. S. 452, 461–463. So may an interpretation of an ambiguous statute, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842–845, but only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority," *United States* v. *Mead Corp.,* 533 U. S. 218, 226–227. Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." *Skidmore* v. *Swift & Co.,* 323 U. S. 134, 140. Pp. 8–9.

(b) The Interpretive Rule at issue is not entitled to *Auer* deference as an interpretation of 21 CFR §1306.04. Unlike the underlying regulations in *Auer,* which gave specificity to a statutory scheme the Secretary of Labor was charged with enforcing and reflected the Labor Department's considerable experience and expertise, the underlying regulation here does little more than restate the terms of the statute itself. The CSA allows prescription of drugs that have a "currently accepted medical use," 21 U. S. C. §812(b); requires a "medical purpose" for dispensing the least controlled substances of those on the schedules, §829(c); and defines a "valid prescription" as one "issued for a legitimate medical purpose," 21 U. S. C. A. §830(b)(3)(A)(ii). Similarly, physicians are considered practitioners if

they dispense controlled substances "in the course of professional practice." 21 U. S. C. §802(21). The regulation just repeats two of these statutory phrases and attempts to summarize the others. An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language. Furthermore, any statutory authority for the Interpretive Rule would have to come from 1984 CSA amendments adding the "public interest" requirement, but 21 CFR §1306.04 was adopted in 1971. That the current interpretation runs counter to the intent at the time of the regulation's promulgation is an additional reason why *Auer* deference is unwarranted. Pp. 9–11.

(c) The Interpretive Rule is also not entitled to *Chevron* deference. The statutory phrase "legitimate medical purpose" is ambiguous in the relevant sense. However, *Chevron* deference is not accorded merely because the statute is ambiguous and an administrative official is involved. A rule must be promulgated pursuant to authority Congress has delegated to the official. The specific respects in which the Attorney General is authorized to make rules under the CSA show that he is not authorized to make a rule declaring illegitimate a medical standard for patient care and treatment specifically authorized under state law. Congress delegated to the Attorney General only the authority to promulgate rules relating to "registration" and "control" of the dispensing of controlled substances, 21 U. S. C. A. §821, and "for the efficient execution of his [statutory] functions," 21 U. S. C. §871(b). Control means "to add a . . . substance to a schedule," §802(5), following specified procedures. Because the Interpretive Rule does not concern scheduling of substances and was not issued under the required procedures, it cannot fall under the Attorney General's control authority. Even if "control" were understood to signify something other than its statutory definition, it could not support the Interpretive Rule. Nor can the Interpretive Rule be justified under the CSA's registration provisions. It does not undertake the Act's five-factor analysis for determining when registration is "inconsistent with the public interest," §823(f), and it deals with much more than registration. It purports to declare that using controlled substances for physician-assisted suicide is a crime, an authority going well beyond the Attorney General's statutory power to register or deregister physicians. It would be anomalous for Congress to have painstakingly described the Attorney General's limited authority to deregister a single physician or schedule a single drug, but to have given him, just by implication, authority to declare an entire class of activity outside the course of professional practice and therefore a criminal violation of the CSA. It is not enough that "public interest,"

"public health and safety," and "Federal law" are used in the part of the Act over which the Attorney General has authority. Cf. *Sutton* v. *United Air Lines, Inc.,* 527 U. S. 471. The first two terms do not call on the Attorney General, or any Executive official, to make an independent assessment of the meaning of federal law. The Attorney General did not base the Interpretive Rule on an application of the five-factor test generally, or the "public health and safety" factor specifically. Even if he had, it is doubtful that he could cite those factors to deregister a physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose. The federal-law factor requires the Attorney General to decide "[c]ompliance" with the law but does not suggest that he may decide what the law is. To say that he can define the substantive standards of medical practice as part of his authority would also put 21 U. S. C. §871(b) in considerable tension with the narrowly defined control and registration delegation. It would go, moreover, against the plain language of the text to treat a delegation for the "execution" of his functions as a further delegation to define other functions well beyond the Act's specific grants of authority. The authority desired by the Government is inconsistent with the Act's design in other fundamental respects, *e.g.,* the Attorney General must share power with, and in some respect defer to, the Secretary, whose functions are likewise delineated and confined by the Act. Postenactment congressional commentary on the CSA's regulation of medical practice is also at odds with the Attorney General's claimed authority. The Government's claim that the Attorney General's decision is a legal, not medical, one does not suffice, for the Interpretive Rule places extensive reliance on medical judgments and views of the medical community in concluding that assisted suicide is not a legitimate medical purpose. The idea that Congress gave him such broad and unusual authority through an implicit delegation is not sustainable. The importance of the issue of physician-assisted suicide makes the oblique form of the claimed delegation all the more suspect. Pp. 11–22.

(d) The Attorney General's opinion is unpersuasive under *Skidmore*. The CSA and this Court's case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, the Act manifests no intent to regulate the practice of medicine generally, which is understandable given federalism's structure and limitations. The CSA's structure and operation presume and rely upon a functioning medical profession regulated under the States' police powers. The Federal Government can set uniform standards for regulating health and safety. In connection

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with the CSA, however, the only provision in which Congress set general, uniform medical practice standards, 42 U. S. C. §2990bb2a, strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit statutory language. The difficulty in defending the Attorney General's declaration that the CSA impliedly criminalizes physician-assisted suicide is compounded by the Act's consistent delegation of medical judgments to the Secretary and its otherwise careful allocation of powers for enforcing the CSA's limited objectives. The Government's contention that the terms "medical" or "medicine" refer to a healing or curative art, and thus cannot embrace the intentional hastening of a patient's death, rests on a reading of 21 U. S. C. §829(a)'s prescription requirement without the illumination of the rest of the statute. Viewed in context, that requirement is better understood as ensuring that patients use controlled substances under a doctor's supervision so as to prevent addiction and recreational abuse. To read prescriptions for assisted suicide as "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the Act, not to mention its ordinary meaning. The Government's interpretation of the prescription requirement also fails under the objection that the Attorney General is an unlikely recipient of such broad authority, given the Secretary's primacy in shaping medical policy under the CSA and the Act's otherwise careful allocation of decisionmaking powers. Pp. 22–28.

368 F. 3d 1118, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined. THOMAS, J., filed a dissenting opinion.