Written submission of Richard M. Doerflinger

Associate Scholar, Charlotte Lozier Institute; Vita Faculty Fellow, University of Notre Dame's de Nicola Center for Ethics and Culture; Public Policy Fellow, National Catholic Bioethics Center

To: House Committee on Health Care
Oregon State Legislature

Re: Opposition to HB 2217 on "death with dignity"

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I have studied and analyzed legislative proposals on end-of-life issues for almost four decades, and I now live in Washington state which, like Oregon, has a law allowing "death with dignity." The pending bill would change Oregon law to more closely adhere to the wording of Washington's 2008 law, requiring that the lethal dose be "self-administered" by the patient.

Requiring that the patient must "self-administer" the lethal drugs seems at first glance to be a new safeguard against lethal action by third parties – that is, against allowing assistance in suicide to blur over into homicide.

However, this first impression is extremely misleading. HB 2217 proceeds to define "self-administer" as "a qualified patient's physical act of ingesting or delivering by another method medication to end his or her life in a humane and dignified manner" [amending 127.800]. The Washington law also defines "self-administer" in terms of "ingesting."

Dictionaries define "ingest" as "take (food, drink, or another substance) into the body by swallowing or absorbing it" (Oxford), "take in for or as if for digestion" (Merriam-Webster), "take food or drink into the body" (MacMillan). A common synonym is "swallow." This is something ***passive***, a way of ***receiving*** the drugs; it is not inconsistent with someone else placing or forcing the drugs into the patient's body.

Current Oregon law refers to the patient as "taking" the lethal drugs. For example, the patient request form has the patient sign a statement that "I understand the full import of this request and I expect to die when I **take** the medication to be prescribed" [127.897]. This was always ambiguous: Did it mean the patient simply "takes" the drugs **into** his or her body, as by swallowing? Or did it mean that the patient will be the only person introducing the drugs into his or her body?

The new language seems to resolve this ambiguity, in the direction of the former option. Anyone can provide the drugs, introduce them into the body, even insert them into the patient's mouth; the patient need only "ingest" (swallow or absorb) them.

One might imagine that this scenario is prevented by the existing Oregon law's rule of construction stating: "Nothing in 127.800 to 127.897 shall be construed to authorize a physician

or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law." [ORS 127.880] But this is not the case.

The first sentence of this provision has an unclear meaning because these terms (lethal injection, mercy killing, active euthanasia) are not defined. But in any case, the second sentence nullifies the first sentence, rendering this supposed safeguard circular and meaningless. If "self-administer" means "swallow," then the patient is "self-administering" the drugs by definition when he or she receives them into the body. And then the practice is legal under the Death with Dignity Act, and legally cannot be construed as a case of "lethal injection, mercy killing or active euthanasia." This circular process simply sends us back to HB 2217's new definition of "self-administer" in 127.800 that creates the loophole.

Of course this second sentence of the provision has always had this euphemistic effect in other areas. It also says that actions taken in accordance with this law may not be construed as "assisted suicide" – although in physical fact they are exactly what everyone calls assisted suicide, and identical with what Oregon's own law calls the Class B felony of "assisting another person to commit suicide" (ORS 163.193) when the victim is more able-bodied.

In short, the new definition helps ensure that people who kill the patient by introducing the lethal drugs into his or her body will have a "safe harbor" from prosecution. It seems that as long as it is the patient who absorbs the drugs, those who took the patient's life can claim that they were self-administered. It is noteworthy that while the bill also purports to forbid other people to administer the drugs, like the existing Oregon law it provides no penalty for doing exactly that. But of course, if administering means **swallowing**, no one else involved in the process is likely to volunteer to do **that** on behalf of the patient.

The Oregon legislature must of course act as it sees fit. But in my view, legislators would garner more respect from their constituents, even those who disagree with them, if they openly expressed what they are trying to achieve instead of engaging in verbal shell games. But perhaps it is a back-handed compliment to more traditional views against homicide that when the legislators seek to authorize this practice, they feel more comfortable doing so by misdirection.