


TO: The Senate Committee on Judiciary, Oregon

FROM:  Margaret Dore, Esq., MBA, President
Choice is an Illusion, a nonprofit corporation opposed
to assisted suicide and euthanasia

RE: Vote "No" on HB 2217 A
The Bill Will Create a Perfect Crime (Legal Murder).
Euthanasia Will Be Allowed or Will Nonetheless Occur.

HEARING: Thursday May 9, 2019, at 8:30 am
Public Hearing and Work Session

MEMO
DATE: May 8, 2019

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I. INTRODUCTION

I am an attorney in Washington State where assisted suicide is legal.¹ Our law is similar to Oregon's Death with Dignity Act.² In the fine print, both laws allow euthanasia.

The proposed bill, HB 2217 A, amends the Oregon Act by requiring that the lethal dose be "self-administered" as defined by the bill.³ On close examination, the proposed definition will create a perfect crime (legal murder).

If enacted, the bill will apply to people with years or decades to live. Individuals with money, meaning the middle class and above, will be especially at risk. I urge you to reject HB 2217 A.

II. DEFINITIONS (TRADITIONAL)

A. Physician-Assisted Suicide, Assisted Suicide and Euthanasia

The American Medical Association defines physician-assisted suicide as occurring when "a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act."⁴ For example:

[T]he physician provides sleeping pills and information about the lethal dose, while aware

¹ Please see my CV attached in the appendix at pp. A-1 to A-4.

² The Act is attached in the appendix at pp. A-5 to A-16.

³ The proposed bill, HB 2217 A, is attached hereto at pp. A-17 to A-22.

⁴ The AMA Code of Medical Ethics, Opinion 5.7, in the appendix, at A-23.

that the patient may commit suicide.⁵

Assisted suicide is a general term in which an assisting person is not necessarily a physician. Euthanasia is the administration of a lethal agent "by another person."⁶

B. Withholding or Withdrawing Treatment

Withholding or withdrawing treatment ("pulling the plug") is not euthanasia if the purpose is to remove burdensome treatment, as opposed to an intent to kill the patient. More importantly, the individual will not necessarily die. Consider this quote from Washington State regarding a man removed from a ventilator:

[I]nstead of dying as expected, [he] slowly began to get better.⁷

III. ASSISTING PERSONS CAN HAVE AN AGENDA

Persons assisting a suicide or euthanasia can have an agenda. Consider Oregonian Tammy Sawyer, trustee for Thomas Middleton. Two days after his death by legal assisted suicide, she sold his home and deposited the proceeds into bank accounts for her own benefit.⁸ Consider also Graham Morant, convicted of counseling his wife to kill herself in Australia, where assisted suicide is

⁵ Id.

⁶ AMA Opinion 5.8, "Euthanasia," attached in the appendix at page A-24.

⁷ Nina Shapiro, "Terminal Uncertainty: Washington's new 'Death With Dignity' law allows doctors to help people commit suicide—once they've determined that the patient has only six months to live. But what if they're wrong?," *Seattle Weekly*, 01/13/09, attached at pp. A-25 to A-27; quote at A-27

⁸ "Sawyer Arraigned on State Fraud Charges," KTVZ.COM, 08/16/16, attached in the appendix at page A-28.

not legal. The Court found:

[Y]ou counseled and aided your wife to kill herself because you wanted . . . the 1.4 million [life insurance].⁹

Medical professionals too can have an agenda. Michael Swango, MD, now incarcerated, got a thrill from killing his patients.¹⁰ Consider also Harold Shipman, a doctor in the UK, who not only killed his patients, but stole from them and in one case made himself a beneficiary of the patient's will.¹¹

IV. THE ACT APPLIES TO PEOPLE WITH YEARS OR DECADES TO LIVE

The Act applies to adults with a "terminal disease," predicted to have less than six months to live. Such persons may, in fact, have years or decades to live. This is true for three reasons.

A. The Act Applies to People With Chronic Conditions Such as Diabetes

The Act states:

⁹ *R v Morant* [2018] QSC 251, 11/02/18, excerpts in the Appendix at pp. A-29 to A-30, quote at A-30. Full opinion here: <https://archive.sclqld.org.au/qjudgment/2018/QSC18-251.pdf>

¹⁰ Charlie Leduff, "Prosecutors Say Doctor Killed to Feel a Thrill," *The New York Times*, 09/07/00, attached in the appendix at pages A-31 to A-33, <https://choiceisanillusion.files.wordpress.com/2019/03/ny-times-killed-to-feel-a-thrill-1.pdf> ("Basically, Dr. Swango liked to kill people. By his own admission in his diary, he killed because it thrilled him.") See also: CBSNEWS.COM STAFF, "Life in Jail for Poison Doctor," 07/12/00, <https://www.cbsnews.com/news/life-in-jail-for-poison-doctor>

¹¹ David Batty, "Q & A: Harold Shipman," *The Guardian*, 08/25/05, at <https://www.theguardian.com/society/2005/aug/25/health.shipman>. (Attached hereto at A-34 to A-36). See also Fiona Guy, "Healthcare Serial Killers: Doctors and Nurses Who Kill," *Crime Traveller*, (2015, Sept 09), available at <https://choiceisanillusion.files.wordpress.com/2019/03/doctors-and-nurses-who-kill.pdf>

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.
(Emphasis added).¹²

In practice, this definition is construed to include people with chronic conditions, such as diabetes, which is listed as a qualifying illness in Oregon government reports.¹³ Such persons can have years or decades to live. Oregon doctor, William Toffler, explains:

[P]eople with chronic conditions are "terminal," if without their medications, they have less than six months to live. This is significant when you consider that, without insulin, a typical insulin-dependent 20 year-old will live less than a month

Such persons, with insulin, are likely to have decades to live. In fact, most diabetics have a normal life span given appropriate control of their blood sugar.¹⁴

B. Predictions of Life Expectancy Can Be Wrong

Eligible persons may also have years or decades to live because predictions of life expectancy can be wrong. This is true due to actual mistakes (the test results got switched), and because predicting life expectancy is not an exact science.¹⁵

¹² Or. Rev. Stat. 127.800 s.1.01(12), attached in the appendix at p. A-6.

¹³ See Oregon annual report excerpt, attached at A-37, listing diabetes

¹⁴ Declaration of William Toffler, MD, ¶¶ 5-6, declaration attached in the appendix at A-38 to A-39, quote at A-39.

¹⁵ See: Jessica Firger, "12 Million Americans Misdiagnosed Each Year," CBS NEWS, 4/17/14, attached at A-40; and Nina Shapiro, *supra* at A-25 to A-27.

Consider John Norton, diagnosed with ALS at age 18.¹⁶ He was told that he would get progressively worse (be paralyzed) and die in three to five years.¹⁷ Instead, the disease progression stopped on its own.¹⁸ In a 2012 affidavit, at age 74, he states:

If assisted suicide or euthanasia had been available to me in the 1950's, I would have missed the bulk of my life and my life yet to come.¹⁹

C. Treatment Can Lead to Recovery

Consider also Jeanette Hall, who was diagnosed with cancer in 2000 and made a settled decision to use Oregon's law.²⁰ Her doctor convinced her to be treated instead.²¹ Her declaration states:

It has now been 18 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.²²

V. HOW THE ACT WORKS

The Act has an application process to obtain the lethal dose, which includes a lethal dose request form.²³ Once the lethal dose

¹⁶ Affidavit of John Norton, attached hereto at A-41 to A-43.

¹⁷ Id., ¶ 1.

¹⁸ Id., ¶ 4.

¹⁹ Id., ¶ 5.

²⁰ Affidavit of Kenneth Stevens, MD, ¶¶ 3 to 7; attached at A-44 to A-46; Hall declaration, 11/28/18, attached at A-47.

²¹ Id.

²² Declaration of Jeanette Hall, Nov 28, 2018, ¶4, attached at A-50.

²³ The form is attached hereto, beginning at p. A-14 (bottom of the page).

is issued by the pharmacy, there is no oversight.²⁴ No witness, not even a doctor, is required to be present at the death.²⁵

VI. THE BILL WILL CREATE A PERFECT CRIME

A. The Definition of "Self-Administer" Does Not Require the Patient to Know or Understand That He or She Is Taking a Lethal Dose

The bill states:

"Self-administer" means a qualified patient's affirmative, conscious and voluntary act to take into his or her body medication to end his or her life in a humane and dignified manner.²⁶

With this definition, the patient is not required to know or understand that the medication being taken is a lethal dose.

B. The Death Certificate Will List a Terminal Disease as the Cause of Death

ORS 127.880 § 3.14, states:

Actions taken in accordance with ORS 127.800 to 127.897 [the Death with Dignity Act] shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. (Emphasis added).²⁷

In Oregon, this provision is construed to require the death certificate to list a terminal disease as the cause of death. Craig New, Research Analyst for the Oregon Health Authority, explains:

²⁴ See the Act in its entirety, attached hereto at pp. A-5 through A-16.

²⁵ Id.

²⁶ HB 2217 A, attached in the appendix, at p. A-18, lines 21-23.

²⁷ Attached in the appendix at page A-11.

We rely on ORS 127.880 s.3.14 which states that actions taken in accordance with the DWDA [Death with Dignity Act] ... do not constitute suicide or assisted suicide.²⁸

The significance of requiring a terminal disease to be listed as the cause of death on the death certificate is that it creates a legal inability to prosecute. Even if the qualified patient thought that he or she was taking a cold medication instead of the lethal dose, the official legal cause of death will be a terminal disease (not murder) as a matter of law. The bill will create a perfect crime.

VII. DR. SHIPMAN AND THE CALL FOR DEATH CERTIFICATE REFORM

Per a 2005 article in the UK's Guardian newspaper, there was a public inquiry regarding Dr. Shipman's conduct, which determined that he had "killed at least 250 of his patients over 23 years."²⁹ The inquiry also found:

that by issuing death certificates stating natural causes, the serial killer [Shipman] was able to evade investigation by coroners.³⁰

Per a subsequent article in 2015, proposed reforms included having a medical examiner review death certificates, so as to improve patient safety.³¹ Instead, the instant bill moves in the

²⁸ Declaration of Charles Bentz, MD, attached at A-49 (quoting Mr. New).

²⁹ David Batty, supra attached hereto at A-34.

³⁰ Id., attached hereto at A-36.

³¹ Press Association, "Death Certificate Reform Delays 'Incomprehensible,'" *The Guardian*, January 21, 2015, attached hereto at A-50 to A-51.

opposite direction to require mandatory cover for murder.

VIII. "EVEN IF THE PATIENT STRUGGLED, WHO WOULD KNOW?"

The Act and bill have no required oversight over administration of the lethal dose.³² In addition, the drugs used are water and alcohol soluble, such that they can be injected into a sleeping or restrained person without consent.³³ Alex Schadenberg, Executive Director for the Euthanasia Prevention Coalition, puts it this way:

With assisted suicide laws in Washington and Oregon, perpetrators can take a "legal" route, by getting an elder to sign a lethal dose request. Once the prescription is filled, there is no supervision over administration. Even if a patient struggled, "who would know?" (Emphasis added).³⁴

IX. EUTHANASIA WILL BE ALLOWED OR WILL NONETHELESS OCCUR

The bill states:

Medication [the lethal dose] prescribed under ORS 127.800 to 127.897 [the Act] must be self-administered by the patient and may not be administered on behalf of the patient by any other person. (Emphasis added).³⁵

³² See: the Act in its entirety, attached hereto at A-5 through A-16; and the bill in its entirety, attached hereto at pp. A-17 to A-22.

³³ In Oregon and Washington State, the drugs used include Secobarbital, Morphine Sulfate, Pentobarbital and Phenobarbital, which are water and/or alcohol soluble. See excerpts from Oregon's and Washington's annual reports, in the appendix at pp A-52 & A-53. See also <http://www.drugs.com/pr/seconal-sodium.html>, <http://www.drugs.com/pro/nembutal.html> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013>

³⁴ Alex Schadenberg, Letter to the Editor, "Elder abuse a growing problem," *The Advocate*, Official Publication of the Idaho State Bar, October 2010.

³⁵ HB 2217 A, Section 2, lines 7-9, attached hereto at A-17.

With this language, the bill does not allow and indeed prohibits euthanasia as traditionally defined. This language, however, also lacks unenforceability. This is because euthanasia will nonetheless occur due to the Act's complete lack of oversight over administration. As noted previously, "Who would know?"

Consider also the information below from an article in the New England Journal of Medicine, regarding a study of assisted suicide versus euthanasia: Identified problems included complications, such as myoclonus (spasmodic jerky contractions) and vomiting. Problems were experienced more frequently with assisted suicide, which by necessity led to euthanasia:

The physician decided to administer a lethal medication in 21 of the cases of assisted suicide (18 percent), which thus became cases of euthanasia. The reasons for this decision included problems with completion (in 12 cases) and the inability of the patient to take all the medications (in 5). (Emphasis added).³⁶

X. CONCLUSION

If enacted, the bill will apply to people with years or decades to live. Assisting persons, including doctors and family members, can have an agenda, with the more obvious reasons being inheritance and life insurance, but also, as in the case of Dr. Swango, the thrill of seeing someone die.

³⁶ Johanna H. Groenewoud, MD, "Clinical Problems with the Performance of Euthanasia and Physician-Assisted Suicide in the Netherlands," The New England Journal of Medicine, 02/24/00, excerpts attached hereto at A-54 & A-55. See also <https://www.nejm.org/doi/full/10.1056/NEJM200002243420805>

The bill's lack of required oversight at the death, coupled with the mandatory falsification of the death certificate, will provide cover for murder and create a perfect crime: "Even if the patient struggled, who would know?" I urge you to vote "No" on HB 2217.

Respectfully Submitted,



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