

The Oregon Death with Dignity Act Six Years of Data

**A Document Prepared for:
Vermont Legislative Council
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Submitted by

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Background, Introduction and Overview

The proposed Vermont Death with Dignity (**DWD**) Act is based point by point on the existing Death with Dignity Act in Oregon.¹ The Oregon Act has been responsibly implemented since 1997, with successful utilization of the safeguards built into the Act and with no indication of abuse documented by the Oregon Department of Human Services or any other authority. The entire process proposed by the bill is within the patient-doctor relationship. It is patient initiated and patient driven at every stage.

At its core, Oregon's Act is about acknowledging that the practice of assisted dying happens in every state². The difference in Oregon is that the state has chosen to acknowledge the practice and regulate it, ensuring that safeguards against abuse are in place and that the process is reported on so that it can be monitored. Oregon's medical community has taken this responsibility very seriously – recognizing that Oregon is the only place in the country where this legal option exists, researchers have meticulously followed and reported on the implementation and practice of the Act both through the state's official annual reports³ and through independent research published in the country's most prestigious medical journals.⁴

Public opinion polls in Vermont have shown that a death with dignity law containing appropriate safeguards is supported by more than two-thirds of us.⁵ The experience in Oregon indicates that for most people, simply knowing that the option exists is enough. Each year, hundreds of Oregonians explore the death with dignity option—and most of them find the comfort they need without using Oregon's law.⁶

The Act has also served as a catalyst for improving end-of-life care; Oregon is a universally recognized leader in end-of-life care across the entire continuum of options and the Death with Dignity Act is a part of that success. In fact, since the debate concerning death with dignity began in 1994, care for the terminally ill has improved in substantial and quantifiable ways.⁷ With the passage of the Death with Dignity law, Oregon could be considered the leader in the nation because it offers a fuller range of options in end-of-life care. Local and national media, both friendly and unfriendly to the law, have recognized Oregon's improvement in the care of the terminally ill.

¹ Oregon Death with Dignity Act, Oregon Revised Statutes, secs. 127.800-127.995.

² Emanuel, Ezekiel J, MD, PhD, Elisabeth R. Daniels, BA, Diane L. Fairclough, DPH, and Brian R. Clarridge, PhD. The Practice of Euthanasia and Physician-Assisted Suicide in the United States. *JAMA*, Vol. 280, No. 6. August 12, 1998.

³ Oregon Department of Human Services annual statistical reports on Oregon's Death with Dignity Act, www.dhs.state.or.us/publichealth/chs/pas/pas.cfm (accessed June 30, 2004).

⁴ Ganzini, Linda, M.D., Theresa A. Harvath RN PhD, Ann Jackson MBA, Elizabeth R. Goy PhD, Lois L. Miller PhD RN, and Molly A. Delorit BA. Experiences of Oregon Nurses and Social Workers With Hospice Patients Who Requested Assistance With Suicide. *The New England Journal of Medicine*, Vol. 347, No. 8. August 22, 2002; Bascom, Paul B., MD, and Susan W. Tolle, MD. Responding to Requests for Physician-Assisted Suicide. *JAMA* Vol. 288, No. 1. July 3, 2002; Ganzini, Linda, M.D., Heidi D. Nelson MD MPH, Melinda A. Lee MD, Dale F. Kraemer PhD, Terri A. Schmidt MD, and Molly A. Delorit BA. Oregon Physicians' Attitudes About and Experiences With End-of-Life Care Since Passage of the Oregon Death with Dignity Act. *JAMA*, Vol. 285, No. 18. May 9, 2001.

⁵ Macro Vermont Poll, February 2003 (INSERT DETAILS)

⁶ J. Schwartz and J. Estrin, "In Oregon, Choosing Death Over Suffering," *The New York Times*, June 1, 2004, D1.

⁷ Spann, Jeri. State Initiatives in End-of-Life Care: Using Qualitative and Quantitative Data to Shape Policy Change. *A publication of the National Program Office for Community-State Partnerships to Improve End-of-Life Care.* Issue 1. June 1998.

In Oregon:

- Hospice utilization is double the national average;⁸
- More people die at home than in hospitals or care facilities;⁹
- Oregon consistently ranks in the top three for the medical use of morphine to control pain.¹⁰

To better inform their deliberations on the proposed Vermont Death with Dignity Act, Vermont lawmakers have requested that Legislative Council investigate Oregon's experience with the nation's only Death with Dignity Act to independently establish a foundation of facts.

Supporters of the Death with Dignity Act are submitting a package of materials to support this investigation. This material identifies areas where facts are in dispute and provides contacts and resources in Oregon and nationally that can assist Legislative Council's resolution of these matters.

The Act has spawned a great public discussion about the need for both comprehensive improvements to Vermont's end-of-life care continuum and adoption of the Vermont Death with Dignity Act. The state medical society has engaged in a spirited discussion of the matter, dozens of local organizations have sponsored public forums where supporters and opponents of the Act have made presentations, and the Legislature has held public and expert hearings. Additionally, both supporters and critics of the Act have distributed written materials about the Act to lawmakers, to the public, and in the press.

In Oregon, the Death with Dignity Act is accepted as one option along a continuum of options for care at the end of life. We encourage the researchers to spend some time in Oregon in order to understand that the Act is no longer a hotly debated issue; it is simply a personal matter that is discussed openly in the context of the doctor-patient relationship. The law is supported by nearly seven out of ten Oregon voters¹¹ and by key statewide officials, including the current Governor¹² and former Governor John Kitzhaber, MD¹³, the Secretary of State¹⁴, and the State

⁸ Jackson, Ann: personal communication citing Medicare data on hospice penetration (meaning access and use of hospice services): "Oregon is 41%; national average 19%."

⁹ Jackson, Ann: personal communication citing data collected by Oregon Dept. of Human Services Center for Health Statistics and reported by Oregon Hospice Association:

"Oregon's home death rate in 1997 was 35 percent, the highest in the nation. Its hospital death rate was the lowest at 32.5 percent and nursing home death rate at 32.4 percent, among the highest. The hospital death rate in Oregon is estimated at less than 25 percent in 2001. It is estimated that 50 percent of Americans die in the hospital. It is estimated that only 24.9 percent of Americans die at home."

¹⁰ Jackson, Ann: personal communication citing data on the medical use of morphine reported by the US Drug Enforcement Agency (DEA): "Oregon's rating fluctuates year to year, though has been 1, 2, or 3 for over five years."

¹¹ P. Goodwin, "Findings from Post-Election Survey," GLS Research memorandum, February 9, 1998.

¹² Oregon Death with Dignity State PAC Endorsement (2002), on file at Oregon Death with Dignity Political Action Fund, Portland; D. Hamilton, "Election 2002: Back Talk—Talk Back," *Portland (Ore.) Tribune*, October 4, 2002, A4.

¹³ Oregon Right to Die PAC Endorsement (1996), on file at Oregon Death with Dignity Political Action Fund, Portland.

¹⁴ Oregon Right to Die PAC Endorsement (2000) and Death with Dignity FEC PAC Endorsement (2002), on file at Oregon Death with Dignity Political Action Fund, Portland, OR; S. Wolfe, "Candidate Bradbury Stumps in Ashland," *Daily Tidings (Ashland, Ore.)*, October 1, 2002, 1.

Treasurer.¹⁵ Six of Oregon's seven congressional delegates have rigorously defended Oregon's Act in Congress.¹⁶

What follows is an enumeration of the points of contention subject to debate among those pro and con on DWD in public discussions. Accompanying each item is a listing of published sources that document the facts that pertain to that item and a list of contacts knowledgeable about the issues because of direct involvement with medical, legal or governmental practice as it pertains to the Oregon DWD experience and law.

Overview

The following is a compilation of information prepared in response to the Legislators' request for Vermonters interested in the Death with Dignity Law to identify the specific facts that supporters and opponents of the Act dispute.

As supporters of the Act, we've identified eight general topics where factual matters should be resolved so that Vermonters can continue the dialogue about enacting the Oregon patient-initiated and controlled end-of-life choice law based on a common set of accepted facts.

For each of these eight general topics, we concisely articulated the supporters' basic factual observation and identified the opponents' claim on the matter. To assist with the resolution of these specific facts, we suggest questions to answer, provide a package of resources to substantiate our factual observations and list suggested contacts who can offer valuable information on the specific matters raised.

The eight general topics where factual matters should be resolved are:

- 1) The Oregon Death with Dignity Act's Impact on End-of-Life Care
- 2) Patient Utilization of the Oregon Death with Dignity Act
- 3) Safeguards Govern the Proper Application of the Act
- 4) Patients' Right to Select A Medical Care Provider
- 5) The Act is About Patient Choice and Control. It Does Not Authorize Euthanasia
- 6) Government and Independent Monitoring of the Act's Application
- 7) Oregon Medical Providers' Views of the Act
- 8) Legal Issues Related to the Death with Dignity Law

¹⁵ Oregon Right to Die PAC Endorsement (2000), on file at Oregon Death with Dignity Political Action Fund, Portland, OR.

¹⁶ Oregon Right to Die PAC Endorsement (1998), on file at Oregon Death with Dignity Political Action Fund, Portland, OR; "David Wu on Health Care: Voted No on Banning Physician-Assisted Suicide," On the Issues, www.issues2000.org/House/David_Wu_Health_Care.htm (accessed March 4, 2004); "Blumenauer Testifies Against Proposed Legislation on Assisted Suicide," press release, July 14, 1998, www.house.gov/blumenauer/press_releases/pr051.htm (accessed March 4, 2004); "Walden Opposes Efforts to Overturn Will of Voters: Keeps Commitment to Uphold Oregon Law on Assisted Suicide," press release, October 26, 2000, www.walden.house.gov/press/releases/2000/oct/pf102600.html (accessed March 4, 2002); "Darlene Hooley on Health Care: Voted No on Banning Physician-Assisted Suicide," On the Issues, www.issues2000.org/House/Darlene_Hooley_Health_Care.htm (accessed March 4, 2004); "DeFazio Blasts House Vote on Assisted Suicide: Remains Hopeful About Chances for Defeat in Senate," press release, October 27, 1999, www.hous.gov/defazio/102799HCRRelease.html (accessed March 4, 2004); "Standing Alone, Senator Wyden Kept the United States Senate from Overturning Oregon's Twice-Passed Ballot Measure Legalizing Physician-Assisted Suicide," www.wyden.senate.gov/meet/bio/pas.html (accessed March 4, 2004); S. Power, "Smith Backs Suicide Repeal," *Statesman Journal (Salem, Ore.)*, April 26, 2000, 1A.

Factual Matters to Resolve

I. Oregon Death with Dignity Act's Impact on End-of-Life Care

- a. ***Factual Observation:*** Oregon, which for many years has excelled in end-of-life care, has demonstrated significant further improvement since Death with Dignity became law.

Opponents Claim: Opponents claim the adoption of the Oregon Act has not coincided with improvements in end-of-life care options and that adoption of the Act in Vermont would decrease hospice use and referrals as patients choose assisted dying.

i. Questions to be Resolved by Legislative Council:

1. Do Oregon experts and government officials believe adoption of the Act coincided with system-wide improvements in end-of-life care?
2. Has adoption of the act reduced the utilization of any of the most common end-of-life care options, such as hospice care, aggressive pain management evidenced by the medical use of morphine to control terminally-ill people's pain, or the percentage of people dying at home instead of in a hospital or a health care facility?

ii. Resources⁺:

1. Tolle, S.W. [1]
2. Spann, Jeri [2]
3. Death with Dignity National Center [3]
4. Ganzini, Linda, MD, 2002 [4]
5. Bascom, Paul B., MD [5]
6. Ganzini, Linda, MD, 2001 [6]
7. Ostrum, Carol [7]

iii. Contacts: *

1. Susan Tolle, director of Oregon Health & Science University's (OHSU's) Center for Ethics in Health Care

⁺ Complete citations are provided for all Resources at the end of this document

^{*} Complete contact information is provided for all Contacts at the end of this document

2. Linda Ganzini, associate professor of psychiatry at Oregon Health & Science University (OHSU), Director of Geriatric Psychiatry at the Portland Veterans Affairs Medical Center, senior scholar at OHSU Center for Ethics in Health Care
3. Ann Jackson, Executive Director, Oregon Hospice Association
4. Pat Dunn, MD, Chair, The Task Force to Improve the Care of Terminally-Ill Oregonians
5. Susan Hedlund, MD, Cancer Care Resources, member of the Task Force to Improve the Care of Terminally-Ill Oregonians

II. **Patient Utilization of the Oregon Death with Dignity Act**

- a. ***Factual Observation:*** *The Oregon Death with Dignity Act provides terminally-ill people struggling with serious suffering such as loss of autonomy, loss of control of body function, etc., or intolerable pain the choice of controlling the timing and manner of their death. It gives dignity to people at the end of a terminal illness through increased choice and control.*

Opponents Claim: *Opponents make a number of allegations aiming to demonstrate the law is unnecessary or utilized for improper reasons.*

i. **Question to be Resolved by Legislative Council:**

1. What are the complete statistics regarding utilization of the Act?

ii. **Resources:**

1. Oregon Department of Human Services [8]
2. Ganzini, Linda, MD, 2002 [4]

iii. **Contacts:**

1. Darcy Niemeyer, Oregon Department of Human Services, Office of Disease Prevention & Epidemiology

- b. ***Factual Observation:*** *Most terminally-ill people interested in the Act only make an initial request with their doctor regarding utilization of the Act, but they do not complete the rigorous process required to actually acquire a prescription. For most, the law provides them the comfort of knowing they could control the timing and manner of their death.*

Opponents Claim: *Opponents of the Act make allegations criticizing utilization of the Act using loose or partial statistical comparisons.*

i. Questions to be Resolved by Legislative Council:

How many terminally-ill Oregonians each year are estimated to make an initial request with their doctors to consider hastening their death through the Act?

1. How many terminally-ill Oregonians each year fill prescriptions written under the Act?
2. How many terminally-ill Oregonians each year hasten their deaths through self-administration of a prescription written under the Act?

ii. Resources:

1. Oregon Department of Human Services [8]
2. Ganzini, Linda, MD, 2002 [4]
3. Ganzini, Linda, MD, 2001 [6]
4. Schwartz, J. [9]

iii. Contacts:

1. Darcy Niemeyer, Office of Disease Prevention & Epidemiology, 503-731-4023
2. Ann Jackson, Executive Director, Oregon Hospice Association
3. Linda Ganzini, associate professor of psychiatry at Oregon Health & Science University (OHSU), Director of Geriatric Psychiatry at the Portland Veterans Affairs Medical Center, senior scholar at OHSU Center for Ethics in Health Care

- c. **Factual Observation:** In the face of a terminal illness, many patients experience pain, suffering and loss of dignity that is multi-dimensional. While the intolerable, untreatable pain that some terminally-ill people suffer from is a factor for some who use the Act, it is not the most common; loss of autonomy and loss of control of bodily functions are among the more important factors.*

***Opponents claim:** The Act is unnecessary because the medical profession has the means to control pain and people who choose to use it have not been properly cared for.*

i. Questions to be Resolved by Legislative Council:

1. What are the actual, primary motivating factors patients cite when they utilize the Oregon Death with Dignity Act?
2. Are there indications that those who use the law do not have access to proper care such as hospice services?
3. Are there any factual indications that patients who use the Oregon Death with Dignity Act may not have access to proper care because of their income level, level of education, availability of health insurance, or disability?

ii. Resources

1. Hedberg, Katrina, MD, MPH, 2003 [10]
2. Hedberg, Katrina, MD, MPH, 2002 [11]
3. Colburn, Don [12]
4. Oregon Department of Human Services [8]
5. Quill, Timothy E., MD, 1997 [13]

iii. Contacts

1. Katrina Hedberg, Oregon Department of Human Services
2. Darcy Niemeyer, Oregon Department of Human Services, Office of Disease Prevention & Epidemiology
3. Ann Jackson, Executive Director, Oregon Hospice Association
4. Barbara Glidewell, Director and Ombudsman, Patient Advocate, OHSU Department of Patient Relations
5. Barry Heath, D.Min., Director of Pastoral Care, Salem Hospital

- d. ***Factual Observation:*** *The Oregon Act has been carefully implemented, rarely used, and there have been no instances of abuse or coercion as documented by the Oregon Department of Human Services. Many patients and their family members have shared their experience with the law publicly – there has never been a complaint from a family member about any individual's use of the law.*

Opponents claim: *Despite the lack of any reliable evidence or complaints from people directly involved in their loved ones' use of the Oregon Act, opponents continue to misrepresent the facts in a number of cases.*

i. Question to be Resolved by Legislative Council:

1. In each specific case that opponents or critics of the Act cite to allege the safeguards are inadequate, what are the complete, actual facts relating to the patient's utilization of the Act?

ii. Resources:

1. Kate Cheney
 - a. Barnett, Erin Hoover, October 17, 1999 [14]
 - b. Duin, Steve [15]
 - c. Weiland, Dr. Allan [16]
2. Joan Lucas
 - a. Kettler, Bill [17]
3. Pat Matheny
 - a. Barnett, Erin Hoover, March 17, 1999 [18]
 - b. Barnett, Erin Hoover, March 13, 1999 [19]
4. "Helen"
 - a. Reagan, Peter, MD [20]
5. Michael Freeland
 - a. Schwartz, John [21]
6. Additional resources on individual's experience with the Act
 - a. Yeoman, Barry [22]
 - b. Rollin, Betty [23]
 - c. Van Loon, Adam [24]

iii. Contacts:

1. Kate Cheney
 - a. Dr. Robert Richardson, Head of Kaiser Permanente NW Ethics Service
 - b. Dr. Allan Weiland, Kaiser Permanente Northwest regional medical director
2. Joan Lucas
 - a. Bill Kettler, reporter, *The Medford Mail Tribune*
3. Pat Matheny
 - a. Erin Hoover Barnett, reporter, *The Oregonian*
 - b. Paul Burgett, District Attorney, Coos County, Oregon
4. "Helen"
 - a. Dr. Peter Reagan, Portland Family Practice
5. Michael Freeland
 - a. Dr. Peter Reagan, Portland Family Practice
6. ALL Cases

- a. Hardy Myers, Oregon Attorney General, Oregon Department of Justice.
- b. Michael Sims, Executive Assistant, Oregon Board of Medical Examiners.

III. Safeguards Govern the Proper Application of the Oregon Death With Dignity Act

****FORMAT NOTE: The observations and claims in Section III can be explored using a common set of resources and contacts which are listed at the end of this section.*

- a. ***Factual Observation:*** *The Oregon law contains a strict set of safeguards to ensure the law is properly applied. These safeguards work to ensure patients electing to utilize the Act are terminal, competent, and making a free decision.*

Opponents Claim: *Seeking to undermine the efficacy of the safeguards, opponents of the Act make a number of unsubstantiated allegations that it is abused.*

i. Questions to be Resolved by Legislative Council:

1. What are the safeguards built into the law to ensure it is properly applied?
2. According to Oregon state officials, are the safeguards working well?
3. What state or federal enforcement or legal actions have substantiated allegations that the law was abused? What are the complete, actual facts relating to any such actions?

- b. ***Factual Observation:*** *One requirement of the Act is that the patient be diagnosed with a terminal illness with a prognosis of six months or less (accepted by Medicare). Proponents of the law acknowledge a medical determination that a person's illness will produce death within six months cannot be determined with an exact certainty, but instead must be based on a reasonable medical judgment. While there is considerable variation in the time between acquiring a prescription and hastening death, patients wait as long as possible before using the medication.*

Opponents Claim: *Opponents of the law claim the safeguard that a patient be in a terminal condition does not provide adequate protection because the six-month prognosis is not infallible.*

i. Questions to be Resolved by Legislative Council:

1. According to medical experts, what is the generally accepted medical definition of a terminal condition?
2. Is the Oregon Act's definition of a terminal condition consistent with the generally accepted medical definition of a terminal condition?
3. What are the facts relating to the length of time between a terminally-ill person's initial election to utilize the Act, acquisition of a prescription provided under the Act, and actual self-administration of a prescription under the Act?

- c. ***Factual Observation:*** *Thorough reporting of actions governed by the Act is required of all doctors. Doctors do not qualify for the legal safe harbor provided by the Act if they do not fully account for their actions and they face professional disciplinary action and criminal charges for failure to report. There is no incentive for physicians not to report.*

Opponents Claim: *Opponents claim that some doctors may not adequately report their activities governed by the law and therefore the data about utilization of the law are not accurate.*

i. Questions to be Resolved by Legislative Council:

1. What are the patient confidentiality considerations that govern the detail and content of doctor reporting of actions taken relative to a specific patient?
2. What are the incentives built into the law to ensure full reporting by doctors of activity governed by the Act?
3. Are there any incentives to fail to report activity regulated by the Act?
4. If a doctor fails to report activity governed by the Act, what penalties, sanctions and liabilities are applicable to the doctor?
5. What are the facts relating to enforcement or legal actions doctors have faced for failure to report activity governed by the Act? According to Oregon state officials, what are the complete, actual facts relating to any such action?

- d. ***Factual Observation:*** *The Act requires a second opinion to confirm the terminal diagnosis and six-month prognosis. It further requires that the patient be deemed capable (defined as able to make and communicate health care decisions).*

Depression renders one incompetent only in its most extreme manifestations. Depression per se does not necessarily preclude competence. If either physician determines that the patient's judgment is impaired, the patient must be referred for a psychological examination.

Opponents Claim: *Opponents claim that second opinions are easily obtained from a few doctors and that the fact that the psychological consultation is not required is evidence that the safeguards are inadequate.*

i. Questions to be Resolved by Legislative Council:

1. How many different doctors have been involved with providing the consulting second opinions?
2. How many patients who have used the law have undergone psychiatric or psychological evaluations?

- e. **Factual Observation:** *Even with the best care, end-of-life pain cannot be sufficiently relieved in some cases without rendering the patient unconscious. For these individuals, the choice between agony and terminal sedation is cruel, a violation of their belief system and concept of a well-lived life. For still others, there are weighty existential concerns that are raised by a terminal illness. Modern medical technology may ameliorate many things but there is no way to alleviate the loss of dignity, autonomy, and the control of bodily functions – some of the chief reasons people choose to avail themselves of the Oregon Death with Dignity law.*

Opponents Claim: *The Act is unnecessary because the medical profession has the means to control pain and people who choose to use it have not been properly cared for.*

i. Question to be Resolved by Legislative Council:

1. What are the actual, primary motivating factors patients cite when they utilize the Oregon Death with Dignity Act?

f. Resources:

- i. Oregon Death with Dignity Act [25]
- ii. Oregon Department of Human Services [8]
- iii. Hedberg, Katrina, MD, MPH, 2003 [10]
- iv. Lee, Daniel E. [26]
- v. Quill, Timothy E. MD, 2003 [27]
- vi. Ganzini, Linda, MD, 2002 [4]
- vii. Bascom, Paul B., MD [5]
- viii. Ganzini, Linda, MD, 2001 [6]
- ix. Colburn, Don [12]

g. **Contacts:**

- i. Darcy Niemeyer, Oregon Department of Human Services, Office of Disease Prevention & Epidemiology
- ii. Dr. Tim Quill, practicing primary care physician, Professor of Medicine, Psychiatry, and Medical Humanities at the University of Rochester
- iii. Hardy Myers, Oregon Attorney General, Oregon Department of Justice
- iv. Michael Sims, Executive Assistant, Oregon Board of Medical Examiners
- v. Barbara Glidewell, Director and Ombudsman, Patient Advocate, OHSU Department of Patient Relations
- vi. Barry Heath, D.Min., Director of Pastoral Care, Salem Hospital
- vii. Pat Dunn, MD, Chair, The Task Force to Improve the Care of Terminally-Ill Oregonians
- viii. Susan Hedlund, MD, Cancer Care Resources, member of the Task Force to Improve the Care of Terminally-Ill Oregonians

IV. **Patients' Right to Select a Medical Care Provider**

- a. ***Factual Observation:*** *A general, basic principle governing health care in America is that each patient chooses his or her doctor. Patients interested in a particular medical procedure at times must find a doctor whose practice will respond to the patient's legitimate medical choices.*

Opponents Claim: *Opponents of the Act claim that it is inappropriate for terminally-ill patients to seek out a doctor who will make available to them all their legal end-of-life options.*

i. **Questions to be Resolved by Legislative Council:**

1. What are the complete, factual statistics relating to terminally-ill people in Oregon's utilization of their right to be cared for by a doctor who will make available to them all their legal end-of-life choices, including utilizing the Act?
2. What is the usual procedure in other fields of medicine when a doctor declines to provide an indicated procedure?

ii. **Resources**

1. Ganzini, Linda, MD, 2002 [4]
2. Ganzini, Linda, MD, 2001 [6]

iii. Contacts

1. Linda Ganzini, associate professor of psychiatry at Oregon Health & Science University (OHSU), Director of Geriatric Psychiatry at the Portland Veterans Affairs Medical Center, senior scholar at OHSU Center for Ethics in Health Care
2. George Eighmey, Executive Director, Compassion in Dying of Oregon

V. **The Death with Dignity Act is about patient choice and control. It does not authorize euthanasia.**

- a. ***Factual Observation:*** *While the entire process of utilizing the Act is within the patient-doctor relationship, it is patient initiated and patient driven at every stage. The Oregon Act does not authorize euthanasia. To qualify for the Act and to take the final step of hastening their imminent death, terminally-ill persons must be able to self administer and swallow the prescribed medication.*

Opponents Claim: *Opponents of the Act claim it opens the door for doctors to commit illegal euthanasia.*

i. Questions to be Resolved by Legislative Council:

1. Does the Act allow anyone other than the patient to administer a lethal prescription?
2. Does the Oregon Act legalize euthanasia?
3. What are the differences between the patient driven and controlled Oregon Act and euthanasia?
4. According to Oregon state officials, what are the complete, actual verified facts to substantiate claims that doctors in Oregon are administering lethal measures to patients, with or without their consent?
5. Has Oregon taken any steps to legalize euthanasia?
6. Opponents of the Act in Vermont have circulated to lawmakers printed material on the Oregon Act. Pictures on the materials show hands holding hypodermic needles, intimating that needles are used to administer a prescription provided through the Act.

Does the Act authorize a patient or anyone else to use a hypodermic needle to administer a prescription provided through the Act?

ii. Resources:

1. Oregon Death with Dignity Act [25]
2. Oregon Department of Human Services [8]

iii. Contacts:

1. Darcy Niemeyer, Oregon Department of Human Services, Office of Disease Prevention & Epidemiology
2. Barbara Glidewell, Director and Ombudsman, Patient Advocate, OHSU Department of Patient Relations
3. Kate Brown, Oregon Senate Democratic Leader
4. Neil Bryant, former Oregon State Senator (Republican)

VI. Government and Independent Monitoring of the Act's Application

- a. ***Factual Observation:*** *The Oregon Department of Human Services monitors and reports annually on the Act's implementation. A number of independent studies have been conducted on the Oregon experience with the Act, including independent research conducted by researchers at Oregon Health Sciences University. This monitoring shows the law is working well.*

Opponents Claim: *Opponents claim government monitoring of the law is inadequate and a failure.*

i. Questions to be Resolved by Legislative Council:

1. What information is collected by the State of Oregon to monitor implementation of the Act?
2. What procedures does Oregon use to collect monitoring information?
3. Do Oregon state officials believe there are additional data that should be collected to more rigorously monitor implementation of the Act?

4. Are there any plans to modify the government monitoring of and information collected about implementation of the Act?
5. Have epidemiological studies on the Oregon Act experience been conducted and published? In summary, what do they conclude?

ii. Resources:

1. Oregon Department of Human Services [8]
2. Hedberg, Katrina, MD, MPH, 2003 [10]
3. Ganzini, Linda, MD, 2002 [4]
4. Ganzini, Linda, MD, 2001 [6]

iii. Contacts:

1. Katrina Hedberg, Oregon Department of Human Services
2. Darcy Niemeyer, Oregon Department of Human Services, Office of Disease Prevention & Epidemiology
3. Linda Ganzini, associate professor of psychiatry at Oregon Health & Science University (OHSU), Director of Geriatric Psychiatry at the Portland Veterans Affairs Medical Center, senior scholar at OHSU Center for Ethics in Health Care
4. Ann Jackson, Executive Director, Oregon Hospice Association

VII. Oregon Medical Provider's Views of the Act

****FORMAT NOTE: The observations and claims in Section VII can be explored using a common set of resources and contacts which are listed at the end of this section.*

- a. **Factual Observation:** *Over the past six years, an increasing number of Oregon medical providers have accepted or supported the Act. The Oregon Medical Association has taken several positions on the Act. In 1994, the OMA took a neutral position. In 1997, it adopted a position calling for the law to be repealed because of several specific flaws in the original language of the Act. Subsequently, the Legislature specifically addressed the areas of concern identified in the 1997 OMA position. Since the legal flaws cited in the 1997 position have been addressed to the satisfaction of the OMA, the 1997 position, according to the Associate Executive Director of OMA, is for all intents and purposes moot. The 1994 position of neutrality on the concept of the Act remains in place.*

Opponents Claim: *Opponents of the Act claim the OMA remains opposed to the Act and that only a few doctors support the measure.*

i. Questions to be Resolved by Legislative Council:

1. According to Oregon experts, what percent of Oregon physicians whose practice includes terminally-ill patients accept or support the Act?
2. What percent of all of Oregon end-of-life medical care providers accept or support the Act?
3. According to the Oregon Medical Association, what is its position on the Act?

b. *Factual Observation:* *A diverse group of doctors have cared for patients under the Act. Doctors get their information about the Act from a wide range of sources, most commonly government agencies or publications.*

Opponents Claim: *Opponents argue that primary physicians are unwilling to utilize the Act and that almost all the lethal prescriptions written under the Act are by physicians associated with Compassion in Dying of Oregon.*

i. Questions to be Resolved by Legislative Council:

1. How many different doctors and in what specialties are those who have assisted patients under the Act?
2. Is there any factual basis to verify claims that most of these doctors are advocates for physician-aided dying?
3. What are the sources of information that doctors cite for their knowledge about the Act?

c. Resources:

- i. Ganzini, Linda, MD, 2001 [6]
- ii. Ganzini, Linda, MD, 2002 [4]
- iii. Kronenberg, Jim [28]

d. Contacts:

- i. Linda Ganzini, associate professor of psychiatry at Oregon Health & Science University (OHSU), Director of Geriatric Psychiatry at the Portland Veterans Affairs Medical Center, senior scholar at OHSU Center for Ethics in Health Care
- ii. Jim Kronenberg, CAE, Associate Executive Director, Oregon Medical Association
- iii. Peter Rasmussen, MD, Oregon Oncologist

- iv. Peter Goodwin, MD, Oregon physician, cancer survivor

VIII. Legal Issues Related to the Death With Dignity Law

- a. **Factual Observation:** *States have the legal authority to regulate the practice of medicine within their jurisdiction and to enact a Death with Dignity law. Under current law, the federal government does not have authority to restrict patient or doctor utilization of the Oregon Act.*

Opponents Claim: *Opponents claim that states cannot exempt themselves from federal law and that the use of medication to hasten death under a Death with Dignity law is not a legitimate medical purpose.*

i. Questions to be Resolved by Legislative Council:

1. Does Oregon have the legal authority required to enact its Death with Dignity Act?
2. Has the federal government taken action to limit or interfere with implementation of the Act? Have those actions been successful?
3. Under current law, does an Oregon doctor face federal liability for activities authorized under the Act?

ii. Resources:

1. United States Court of Appeals for the Ninth Circuit, No. 02-35587: STATE OF OREGON v. ASHCROFT [29]
2. U.S. Supreme Court, No. 96-110: WASHINGTON, et al, PETITIONERS v. HAROLD GLUCKSBERG et al [30]

iii. Contacts:

1. Hardy Myers, Oregon Attorney General, Oregon Department of Justice
2. Eli Stutsman, Attorney representing Oregon physician and pharmacist in *State of Oregon v. Ashcroft*

Resources

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