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Background Brief on ...

# Oregon Death with Dignity Act

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## Background

The Oregon Death with Dignity Act allows an adult, who is an Oregon resident and is suffering from a terminal disease that will cause death within six months, to terminate his or her life through the use of medication. To do so, the person must express voluntarily his or her wish to die, must make a written request for the medication, and be found by the person's attending physician and consulting physician to be suffering from a terminal disease. No less than 15 days must elapse between the patient's initial oral request and the writing of the prescription for the medication and no less than 48 hours must elapse between the patient's written request and the writing of the prescription.

The Act states that ending one's life in accordance with its provisions does not constitute suicide. The Act specifically prohibits euthanasia. A physician or person other than the patient cannot directly administer the medication to end the patient's life; only the patient can do this. The Act prohibits subjecting to criminal or civil liability or professional censure any person who in good faith compliance with the Act assists a patient to end his or her life. The Act prohibits an insurance company from requiring an insured to use the Act or for penalizing a person if the person does so.

## History

The citizens of Oregon enacted the Oregon Death with Dignity Act in November of 1994 by a margin of 51 percent to 49 percent. A legal injunction delayed initial implementation of the Act until October 27, 1997, when the Ninth Circuit Court of Appeals lifted the injunction. The 1995 Legislature referred Ballot Measure 51 (authorized by House Bill 2954) to voters on the November 1997 ballot, which would have repealed the Death with Dignity Act. Oregon voters chose to retain the Act by a margin of 60 percent to 40 percent. Oregon is the only state in the union that allows physician-assisted suicide.

## How Many Oregonians Have Used the Act?

According to the Health Division, the number of Oregonians requesting a prescription and then using the prescription to end their

lives is as follows:

- November and December 1997 - ten persons received a prescription and 8 used it.
- 1998 (first full year) - 23 persons received a prescription and 15 used it.
- 1999 – 33 persons received a prescription and 27 used it.
- 2000 – 39 persons received a prescription and 27 used it.
- 2001 – 44 persons received a prescription and 21 persons used it.
- 2002 – 58 persons received a prescription and 38 used it.
- 2003- 67 persons received a prescription and 42 used it.
- 2004-60 persons received a prescription and 37 used it.
- 2005-64 persons received a prescription and 38 used it.<sup>1</sup>

The average age of those who used a prescription under the Act was 70. Most patients choosing to end their lives in this manner suffered from terminal cancer.

### **Reasons for Using the Act**

Physicians and families reported that patients have several reasons for requesting lethal medication. These include concerns about losing autonomy, losing control of bodily functions, a decreasing ability to participate in activities that make life enjoyable, and physical suffering. Also, many family members added that patients wanted to control the manner and time of their death.

### **Who Cannot Use the Act**

In order to make a request for a prescription under the Act, a patient must be “capable.” This means the patient has the ability to make and communicate health care decisions to health care providers. In order to receive the prescription, the patient must be able to make an “informed decision.” This means that the patient is able to make a decision to request and obtain a prescription to end his or her life that is based on an appreciation of the relevant facts, including the person’s medical illness and how long he or she has to live. A person who is suffering from Alzheimer’s, dementia or, for some other reason is

mentally deficient, probably is incapable of making a health care decision and thus not eligible to use the Act.

### **Current Litigation**

In November of 2001, the Attorney General of the United States, John Ashcroft, citing his authority under the Controlled Substances Act, issued a directive in which he declared that controlled substances may not be dispensed to assist suicide. The decision would render a physician’s right to dispense controlled substances inconsistent with public policy and subject those who did so to suspension or revocation. Since a doctor cannot effectively practice medicine without the right to dispense medication containing a controlled substance, this would make it impossible for a doctor to issue a prescription under the Oregon Death with Dignity Act.

Oregon Attorney General, Hardy Myers, challenged the Ashcroft directive and obtained from federal district court judge, Robert Jones, on April 17, 2002, a permanent injunction preventing Attorney General Ashcroft from enforcing his directive. The United States Department of Justice has appealed this decision to the 9<sup>th</sup> Circuit Court of Appeals. On May 26, 2004, the 9<sup>th</sup> Circuit Court of Appeals upheld Oregon’s landmark physician-assisted suicide law. On January 17, 2006, the United States Supreme Court upheld the 9<sup>th</sup> Circuit. See *Gonzales v. Oregon*, 546 U.S. \_\_\_ (2006).

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<sup>1</sup> The Office of Disease Prevention and Epidemiology, Department of Human Services.