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Background Brief on ...

# Death with Dignity Act

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 end 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 a consulting physician to be suffering from a terminal disease. At least 15 days must lapse between the patient's initial oral request and the writing of the prescription for the medication, and no less than 48 hours must lapse 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, assisted suicide, euthanasia, mercy killing or homicide. 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. Any person who provides other assistance, in compliance with the provisions of the Act in good faith, is protected from criminal or civil liability or from professional censure. The Act also 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 Death with Dignity Act in November of 1994 by a margin of 51 percent to 49 percent, but implementation was delayed until October 27, 1997, due to a legal challenge and corresponding injunction. By the time the Ninth Circuit Court of Appeals lifted the injunction, the 1995 Legislative Assembly had prepared Ballot Measure 51 (authorized by House Bill 2954) for referral to the voters on the November 1997 ballot. Ballot Measure 51 would have repealed the Act, essentially allowing citizens to change their minds; but instead, Oregonians preserved the Death with Dignity Act by a margin of 60 to 40

percent. Washington passed a similar measure in 2008, and is the only other state to do so, to date.

### **How Many Oregonians Have Used the Act?**

According to the Office of Disease Prevention and Epidemiology in the Department of Human Services, the number of Oregonians requesting a prescription and then using the prescription to end their lives is as follows:

- November and December 1997 – 10 persons received a prescription and 8 used it
- 1998 (first full year) – 24 persons received a prescription and 16 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 – 68 persons received a prescription and 42 used it
- 2004 – 60 persons received a prescription and 37 used it
- 2005 – 65 persons received a prescription and 38 used it
- 2006 – 65 persons received a prescription and 46 used it
- 2007 – 85 persons received a prescription and 49 used it
- 2008 – 88 persons received a prescription and 60 used it
- 2009 – 95 persons received the prescription and 59 used it
- 2010 – 97 persons received the prescription and 65 used it
- 2011-114 persons received the prescription and 71 used it

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 report 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” and have 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” meaning that his or her decision 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, is incapable of making an informed decision and thus is not eligible to use the Act.

### **Litigation**

In November of 2001, U.S. Attorney General John Ashcroft, citing his authority under the Controlled Substances Act, issued a directive declaring 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 Act.

Oregon Attorney General Hardy Myers challenged the Ashcroft directive and obtained from federal district court judge, Robert Jones, a permanent injunction on April 17, 2002, that prevented Attorney General Ashcroft from enforcing his directive. The U.S. Department of Justice appealed this decision to the Ninth Circuit Court of Appeals. On May 26, 2004, the Ninth Circuit upheld Oregon’s landmark Death

with Dignity Act, and this decision was later affirmed by the U.S. Supreme Court, on January 17, 2006 (*Gonzales v. Oregon*, 546 U.S. 243 (2006)).

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