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OREGON DEATH WITH DIGNITY ACT

BACKGROUND BRIEF

The Oregon Death with Dignity Act (the Act) allows an adult Oregon resident suffering from a terminal disease to terminate his or her life through the use of medication. To utilize the Act, the person must voluntarily express 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 that will result in the person's death within six months. At least 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, physician-assisted suicide, euthanasia, mercy killing or homicide. Only patients may administer the medications to end their own lives; physicians or persons other than patients cannot. The Act protects persons acting in good-faith, within the parameters of the law, from criminal or civil liability and prohibits an insurance company from requiring an insured to use Death with

Dignity or for penalizing a person if the person does so.

HISTORY

The citizens of Oregon passed the Act in November of 1994 by a margin of 51 percent to 49 percent. A legal injunction delayed initial implementation until October 27, 1997, when the Ninth Circuit Court of Appeals lifted the injunction. In 1995, the Oregon legislature referred to the November 1997 ballot, Measure 51 (authorized by House Bill 2954), asking voters whether to repeal the Death with Dignity Act. Oregon voters chose to retain the Act by a margin of 60 percent to 40 percent.

Oregon, Washington,

Vermont and California are the only states with statutes allowing physician-assisted death. Montana allows physician-assisted death through a 2009 court ruling.¹

HOW MANY OREGONIANS HAVE USED THE ACT?

According to the Office of Disease Prevention and Epidemiology in the Oregon Department of Human Services, the number of

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¹ See *Baxter v Montana*, 2009 MT 449.



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Oregonians requesting a prescription and then using the prescription to end their lives is as follows:

Year	Received Prescription	Used Prescription
1997	10	8
1998	24	16
1999	33	27
2000	39	27
2001	44	21
2002	58	38
2003	68	42
2004	60	37
2005	65	38
2006	65	46
2007	85	49
2008	88	60
2009	95	59
2010	97	65
2011	114	71
2012	116	85
2013	121	73
2014	155	105
2015	218	132

The average age of those who used the 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 the prescription medication under the Act. 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

For a patient to make a request for a prescription under the Act, the person 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



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impossible for a doctor to issue a prescription under the Act.

Oregon Attorney General Hardy Myers challenged the Ashcroft directive and obtained from a 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 Court of Appeals upheld Oregon's landmark physician-assisted suicide law. On January 17, 2006, the U.S. Supreme Court upheld the Ninth Circuit (*Gonzales v. Oregon*, 546 U.S. 243 (2006)).

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