



OLR RESEARCH REPORT

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RIGHT TO DIE LAWS

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You asked about laws or legislation in other states concerning the right to die. You also asked about Connecticut bills on this topic.

SUMMARY

Two states, Oregon and Washington, currently have statutes providing a procedure for a terminally ill patient to request medication to end his or her life. These laws are sometimes referred to as “death with dignity” or “physician-assisted suicide” laws.

Oregon was the first state to enact a death with dignity act, when it passed a ballot measure in 1994. The act was not implemented until 1997 due to legal challenges. Oregon’s act allows terminally ill state residents to obtain and use prescriptions from their physicians for self-administered, lethal medications. Physicians and patients who follow the act’s requirements are protected from criminal prosecution and the choice of legal physician-assisted suicide cannot affect the status of a patient's health or life insurance policy. Washington’s act was enacted following a ballot measure in 2008 and is substantially similar to Oregon’s.

Massachusetts voters considered a ballot initiative this year to enact a law similar to Oregon's and Washington's. The initiative (Question 2) would have allowed state-licensed physicians to prescribe medication for

terminally ill patients, under prescribed procedures, to end the person's life. Voters rejected the initiative by a narrow margin, 51% to 49%.

While Montana does not have an assisted suicide statute, the state's Supreme Court ruled in 2009 that doctors have a defense to prosecution for assisting a suicide with the person's consent. Under Montana law, a victim's consent to conduct is a defense to prosecution. But consent is ineffective when it is against public policy to permit the conduct or the resulting harm. The court ruled that a physician's aid to a terminally ill, mentally competent adult is not against public policy and thus a person's consent can be a defense to prosecution (*Baxter v. Montana*, 354 Mont. 234 (2009)).

Connecticut last considered a right to die bill in 2009. The Judiciary Committee bill (SB 1138) was similar to the Oregon and Washington laws. The committee voted to box the bill. In recent years, similar bills were introduced in a handful of other states (such as Hawaii, New Jersey, New York, and Pennsylvania).

Below, we summarize Oregon's Death with Dignity Act. The Washington act, Connecticut bill, and Massachusetts ballot initiative are all substantially similar to the Oregon act.

OREGON LAW

Background

The following history of Oregon's Death with Dignity Act is drawn in part from a document on the state's Public Health Division [website](#). The act passed in 1994 through a voter referendum, with 51% voting in favor. Due to a legal challenge, the act was not implemented until 1997. In 1997, another ballot measure sought to repeal the act, but the measure was defeated by a margin of 60% to 40%.

In 2001, U.S. Attorney General John Ashcroft issued an interpretative rule indicating that physicians who assist suicide patients pursuant to Oregon's Death With Dignity Act would be violating the federal Controlled Substances Act (CSA), because using controlled substances to assist suicide is not a legitimate medical practice. After the state challenged the rule, a federal district court issued a temporary restraining order against the rule pending a hearing, and a federal district court later upheld the act.

The case eventually reached the U.S. Supreme Court. In a 6-3 opinion, the Supreme Court affirmed the lower court's decision, upholding the validity of Oregon's act (*Gonzalez v. Oregon*, 546 U.S. 243 (2006)). The court ruled that the CSA does not allow the attorney general to prohibit doctors from prescribing controlled substances for use in physician-assisted suicide under state law permitting the procedure.

Summary

Oregon's Death with Dignity Act (Ore. Rev. Stat. §§ 127.800 *et seq.*) allows terminally ill Oregon residents to obtain and use prescriptions for lethal medications from their physicians. The patient administers the medication to "end his or her life in a humane and dignified manner."

Under the act, ending one's life in accordance with the law does not constitute suicide or assisted suicide. However, the law is often referred to as "physician-assisted suicide" because it allows people to end their lives through the voluntary self-administration of lethal medications prescribed by a physician for that purpose.

The act specifically prohibits euthanasia, where a physician or other person directly administers a medication to end another's life.

Requesting a Prescription. To request a prescription for lethal medications, the act requires that a patient voluntarily express his or her wish to die and be:

1. an adult (age 18 or older),
2. an Oregon resident,
3. capable (able to make and communicate health care decisions),
and
4. diagnosed with a terminal illness (a medically confirmed incurable and irreversible condition that, within reasonable medical judgment, will lead to death within six months).

The act specifies that someone cannot be qualified under it solely because of age or disability.

Patients meeting these requirements are eligible to request a prescription for lethal medication from a licensed Oregon physician. Before receiving a prescription, a patient must (1) make two oral requests to his or her physician, separated by at least 15 days and (2) provide a written, witnessed request to his or her physician (with two witnesses) at least 48 hours before the physician write the prescription.

The act specifies the information that must be included in the written request, including that the patient has been fully informed about various aspects relating to his or her condition, the risks and expected results of the medication and feasible alternatives (see below). The person's physician cannot be a witness. One of the witnesses must be someone who is not (1) a relative; (2) someone entitled to part of the estate; or (3) an owner, operator, or employee of the facility where the patient is receiving treatment or is a resident. If the patient is an inpatient at a health care facility, one of the witnesses must be an individual designated by the facility.

Process to Grant a Prescription. Before a person can receive such a prescription, the attending physician and a consulting physician must also take several steps. For example:

1. the attending physician must make the diagnosis of and determine that the patient is capable and has made the request voluntarily;
2. the physician must inform the patient of (a) his or her diagnosis and prognosis; (b) the potential risks and probable results of taking the medication; and (c) feasible alternatives, including comfort care, hospice care, and pain control;
3. the physician must refer the patient to another physician (consulting physician);
4. the consulting physician must confirm the diagnosis and determine whether the patient is capable, has made the request voluntarily, and has made an informed decision (i.e., in accord with the information provided by the attending physician as described above);
5. if either physician believes the patient's judgment is impaired by a psychiatric or psychological disorder, that physician must refer the patient for a psychological examination;

6. the attending physician must recommend, but may not require, the patient to notify his or her next-of-kin of the prescription request; and
7. the physician must give the patient an opportunity to rescind the request (a patient can rescind such a request at any time).

The physician may dispense the medication directly, or if the patient consents, a pharmacist may dispense it.

Other Provisions. Physicians and health care systems are under no obligation to participate in the Death with Dignity Act. Physicians and patients who adhere to the act's requirements are protected from criminal prosecution, civil liability, or professional disciplinary action. But if a hospital or other health care facility chooses not to participate in the act and notifies its providers of that policy, the facility can impose sanctions under specified circumstances on providers who fail to comply with that policy.

The choice of legal physician-assisted suicide cannot affect the status of a patient's health or life insurance policies.

The law specifies the information that physicians must document in medical records relating to a patient's request for life-ending medication. To comply with the law, physicians must also report to the Oregon Health Authority all prescriptions for lethal medications. The authority must make an annual statistical report on information it receives regarding such prescriptions.

Penalties. It is a class A felony to (1) coerce or exert undue influence on a patient to request medication for the purpose of ending the patient's life or to destroy a rescission of such a request or (2) without the patient's authorization, willfully alter or forge such a request or conceal or destroy a rescission with the intent or effect of causing the patient's death. This is punishable by up to 20 years in prison, a fine of up to \$375,000, or both (Ore. Rev. Stat. § 161.605 and .625).

LINKS

Text of Oregon Law: <http://www.leg.state.or.us/ors/127.html>

Text of Washington Law:
<http://apps.leg.wa.gov/rcw/default.aspx?cite=70.245>.

Text of Failed Massachusetts Ballot Initiative:
http://www.sec.state.ma.us/ele/ele12/ballot_questions_12/full_text.htm#two

Text of Connecticut Bill:
<http://www.cga.ct.gov/2009/TOB/S/2009SB-01138-R00-SB.htm>

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