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Testimony of James L. Young, Jr., Esq.
On Behalf of the Elder Law Section of the Connecticut Bar Association

IN CONDITIONAL SUPPORT OF COMMITTEE BILL 5898,
An Act Concerning Aid in Dying For Terminally Ill Patients

Public Health Committee Public Hearing
March 18, 2019

Honorable Members of the Public Health Committee:

My name is James L. Young, Jr., I reside in Mystic, Connecticut, and have practiced law in Connecticut since 1988. I am here today on behalf of the Elder Law Section of the Connecticut Bar Association, which is comprised of 470 members, to give conditional support in favor of Committee Bill No. 5898, An Act Concerning Aid in Dying for Terminally Ill Patients. The support is conditional because we believe a modest change should be made to the bill.

The proposed bill allows a “qualified patient” to voluntarily request a prescription from their attending physician that the patient may self-administer to bring about his or her death earlier than the natural disease process would. No physician is obligated to grant the request. For an individual who is dying, this proposal promotes the individual’s autonomous and informed choice to determine how he or she will die, and to alleviate that person’s emotional and physical suffering. Competent adults should be free to make this deeply personal end of life decision.

Numerous and strict safeguards against abuse are contained in the proposed bill. They include:

- Only a “qualified patient” may obtain the prescription. A qualified patient is a person who is a competent adult, and a resident of Connecticut who has a terminal illness that will soon lead to their death, and who is acting voluntarily, and who meets the strict criteria set out in the statute. Those who do not want to choose Aid in Dying do not have to. If a physician objects to providing such a prescription, he or she does not have to do so, as participation by any physician is purely voluntary.



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- No person, including a guardian, conservator, agent under a power of attorney or health care proxy, may act on behalf of a patient for the purpose of obtaining Aid in Dying.
- Two dated written requests by the patient signed in the presence of two witnesses (who are not relatives of the patient, nor entitled to the patient's estate upon his or death, nor an owner, operator or employee of a health care facility where the patient is residing or receiving treatment, nor the patient's attending physician, must be made at least 15 days apart, which may be rescinded at any time in any manner.
- Section 19 of the Bill broadly prohibits any person who served as an attending or consulting physician or as a witness, from inheriting or receiving any part of the estate of the patient, whether under a Will or under the laws of intestacy, or as beneficiary or survivor of the patient.
- The attending physician must offer the patient an opportunity to rescind his or her request at the time of the second request, and again before prescribing medication for Aid in Dying.
- The attending physician cannot provide a prescription to any patient suffering from a psychological condition including depression that is causing impaired judgment, and must refer such a patient for counseling.
- The proposal does not permit a physician or any other person to end a patient's life by lethal injection, mercy killing, assisting a suicide or any other active euthanasia.
- The act provides that anyone who willfully alters or forges a request for aid in dying or coerces or exerts undue influence on a patient to request aid in dying with the intent or effect of causing the patient's death is guilty of murder.
- A consulting physician must examine the patient and his or her relevant medical records, confirm in writing the attending physician's diagnosis that the patient has a terminal illness, verify that the patient is competent, is acting voluntarily and has made an informed decision to request aid in dying, and refer the patient for counseling if the physician believes the patient may be suffering from a psychological condition that is causing impaired judgment, so that the patients' competency to request aid in dying can be determined.
- Nothing in the act shall limit the jurisdiction or authority of any entity designated by the Governor to serve as the Connecticut protection and advocacy entity..

In addition to the safeguards identified above, we request that Sec. 7 of the Bill be revised to add a requirement that a consulting physician (as well as the attending physician) inform the patient about the availability of counseling.

The Elder Law Section of the Connecticut Bar Association conducted an intensive and extensive review of this proposal and other states' laws regarding aid in dying. The proposed bill is in



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some ways fashioned after an Oregon law which has been in effect since 1997, where as of March 2015 (the last date for which I have information) only 59% of the 1,173 individuals who requested a prescription (81% of which had a diagnosis of cancer) actually used it. The Oregon Medical Board which oversees Oregon's program reported (again as of March 2015) that they have found no cases of coercion, abuse, or misuse of the law, and nine independent studies have confirmed these results. Hospice care has increased in Oregon according to the Journal of the American Medical Association reporting that "End of life care including increased use of hospice care has actually improved in Oregon since the passage of their Death with Dignity Act." In Oregon, 98% of those requesting a prescription had health insurance.

Since the last time this legislation was considered here in Connecticut the list of States with aid in dying laws has increased.

Compassionate Aid in Dying is now legally allowed in California, Oregon, Washington, Vermont, Colorado, the District of Columbia and Hawaii. Montana does not have a statute safeguarding aid in dying but its Supreme Court ruled in 2009 that nothing in its laws prohibited a physician from honoring a terminally ill, mentally competent patient's request. We expect more and more states will adopt aid in dying legislation as time goes on.

It is noteworthy that the Connecticut State Medical Society (CSMS) has adopted a position of "engaged neutrality" regarding compassionate aid in dying, as in some other States, such a change in position has presaged legislative adoption of aid in dying laws. I am attaching hereto a copy of the press release issued recently by the CSMS that respects the personal ethics and judgment of individual physicians, in deciding whether or not to provide aid in dying.

This change by the CSMS follows that in many other States, including:

- »» California Medical Association
- »» New York State Academy of Family Physicians
- »» Colorado Medical Society
- »» Maryland State Medical Society
- »» Medical Society of the District of Columbia
- »» Nevada State Medical Association
- »» Maine Medical Association
- »» Minnesota Medical Association
- »» Vermont Medical Society
- »» Massachusetts Medical Society.

Voices are raised by those who worry that aid in dying laws would be used to abuse the disabled. I ask that you review the attached letter from the Disability Rights Oregon organization. This letter is strong evidence that aid in dying laws have not led to abuse of the disabled in Oregon, which has had this law on its books for over twenty years. Our study group looked hard at this



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issue, and we did not find evidence of abuse of the disabled. Our Section strongly advocates for the rights of the disabled and the elderly. We would not advocate for this law if we thought it might be used for abuse.

Failure to adopt aid in dying laws in prior sessions has resulted in continuing suffering by those Connecticut residents who would avail themselves of the law if adopted.

Such suffering is real.

This suffering is caused by the legislature's failure to act. It is going on now, and has gone on during the years the legislature has refused to recognize that Connecticut residents should have the same rights as exist in other States that have had these laws.

Without aid in dying legislation, terminally ill individuals who wish to end their lives before the natural disease process would do so, will in some cases continue to resort to other more dire means, often guns hidden away in the home. In such cases family members and health care professionals may be exposed to potential criminal prosecution if they are deemed to have somehow facilitated the death by gun. This has happened in Connecticut. It is reasonable to think that in some cases these firearms might be found by minors, or others who should not be in possession of the firearm, with unintended consequences.

Abuse in end of life decision making is less likely to occur in an open and transparent system rather than one where people are forced into clandestine actions. A Quinnipiac University Poll found that 61% of Connecticut voters from all age, party and gender groups favor allowing a mentally competent adult dying of a terminal disease to obtain aid in dying.

With the adoption of the change requested above, the Elder Law Section of the Connecticut Bar Association urges this Committee to act favorably on the Bill.

I would be happy to try to answer any questions you may have.



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