MEMORANDUM

TO: Peter Sacks and Michelle Tassinari

FROM: Margaret Dore, Esq.

RE: Petition 11-12, Assisted Suicide, Objection to Draft Ballot Question Title and One-Sentence Statements

DATE: April 9, 2012

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APPENDIX
I. INTRODUCTION

The proposed act in Petition 11-12 protects persons who cause or assist the death and/or suicide of another person. This memo discusses why the draft title and one-sentence statements for the act are misleading and should be amended.

II. THE ACT

A. The Act Protects People who Cause or Assist a Patient’s Death and/or Suicide

Under current law, people who cause or assist another person’s death or suicide face serious legal consequences. They can be convicted of a crime, including murder.¹ They can be found civilly liable for assisting a suicide, committing malpractice and/or causing a wrongful death.² They can also be deprived of an inheritance or life insurance proceeds payable due

¹ See Commonwealth v. Bowen, 13 Mass. 356 (1816) ("If one counsel another to commit suicide, and the other, by reason of the advice, kill himself, the advisor is guilty of murder, as principal"); and In re Joseph G., 194 Cal.Rptr 163, 165-167 (1983), citing Bowen, supra, as authoritative.

² See Nelson v. Massachusetts Port Authority, 55 Mass.App.Ct. 433, 435-6, 771 N.E.2d 209 (2002) (These cases fit into two patterns: (1) the defendant's negligence was the cause of the decedent's uncontrollable suicidal impulse; or (2) the decedent was in the defendant's custody and the defendant had knowledge of the decedent's suicidal ideation); Edwards v. Tardif, 240 Conn. 610, 692 A.2d 1266 (1997) (affirming a large judgment against a physician who had prescribed an "excessively large dosage" of barbiturates to a foreseeably suicidal patient who killed herself via the barbiturates); and Cramer v. Slater, 146 Idaho 868, 878, 204 P.3d 508 (2009), stating that doctors "can be held liable for [a] patient's suicide." In Cramer, doctors negligently informed a patient about his HIV/AIDS status, which allegedly caused him to commit suicide. For another example, see William Dotinga, "Grim Complaint Against Kaiser Hospital," at http://www.courthousenews.com/2012/02/06/43641.htm (Patient’s son suing Kaiser Foundation Hospitals and affiliates, a doctor and two social workers arising out of the intentional death of his father via a "terminal extubation").
to the death.\textsuperscript{3}

With the proposed act, however, persons who cause or assist another person's death and/or suicide are protected from these consequences. The act also opens the door to new paths of elder abuse.

How the act works, some of its protections and how it will promote elder abuse are described below.

B. How the Act Works

The act has an application process to obtain a lethal dose for the purpose of causing a patient's death.\textsuperscript{4} The application process includes a written request form with two required witnesses.\textsuperscript{5} One of the witnesses is allowed to be an heir who will benefit financially from the patient’s death.\textsuperscript{6}

The act also requires that the patient be "terminal," which does not necessarily mean that the patient is dying anytime

\textsuperscript{3} See Minasian v. Aetna Life Ins. Co., 295 Mass. 1, 3 N.E.2d 17 (1936), ("It is settled law that a mentally responsible person who commits murder loses all right to the proceeds of a life insurance policy on the life of the person murdered") An inheritance can be set aside for undue influence, for example, when an heir actively participated in the making of the will and/or was present when the will was executed. See e.g., M.G.L.A. 190B § 2-505(b) and Burns v. Kabboul, 595 A.2d 1153, 1163 (Pa. Super. Ct. 1991) ("It will weigh heavily against the proponent [of the will] on the issue of undue influence when the proponent was ... present at [its] dictation ...").

\textsuperscript{4} The act, §§ 2-13, and 21. (Act attached at A-1 to A-8)

\textsuperscript{5} Id., §§ 3 and 21.

\textsuperscript{6} Id. (providing that one of two required witnesses on the lethal dose request form cannot be a patient's heir or other person who will benefit financially from the death; the other witness may be an heir or other person who will benefit financially from the death).
soon. The act states that only substantial compliance is required with its provisions.\textsuperscript{8}

Once the lethal dose is issued by the pharmacy, there is no oversight.\textsuperscript{9} The death is not required to be witnessed.\textsuperscript{10} Indeed, no one is required to be present.\textsuperscript{11}

C. Protections

The proposed act protects persons who cause or assist a patient's death and/or suicide, as follows.

1. Secrecy, privacy and protection from inquiry

Under the act, § 4(2), the death certificate is required to list a terminal disease as the cause of death, not the true cause of death, a lethal dose.\textsuperscript{12} This makes it less likely that anyone will know that the person died under the act.

Under the act, § 12, required record keeping regarding a doctor's compliance with the act is maintained in the patient's

\textsuperscript{7} See act, § 1(3) and Nina Shapiro, Terminal Uncertainty - Washington's new 'Death with Dignity' law allows doctors to help people commit suicide – once they've determined that the patient has only six months to live. But what if they're wrong?, Seattle Weekly, January 14, 2009, available at www.seattleweekly.com/2009-01-14/news/terminal-uncertainty

\textsuperscript{8} The act, § 18(1)(a) states: "A person who substantially complies in good faith with the provisions of this chapter shall be deemed to be in compliance with this chapter." (Attached at A-5).

\textsuperscript{9} See the act in its entirety. (Attached at A-1 through A-8).

\textsuperscript{10} Id.

\textsuperscript{11} Id.

\textsuperscript{12} § 4(2) states: "The attending physician may sign the patient's death certificate which shall list the underlying disease as the cause of death." (Attached at A-3).
medical record, which is a private document protected by HIPPA.\textsuperscript{13} This makes it less likely that any lack of compliance by the doctor will be exposed.

Under the act, §15, the department of public health is to collect data for the purpose of an annual statistical report.\textsuperscript{14} The data is to be self-reported by doctors and dispensers of the lethal dose.\textsuperscript{15} In the event a report is incomplete, the department is charged with contacting the person "to request" a complete report.\textsuperscript{16} No investigation is authorized.\textsuperscript{17} Moreover, the data collected:

shall not be a public record to the extent it contains material or data that could be used to identify individual patients, physicians, or other health care providers.\textsuperscript{18}

In Oregon, one of just two states with a similar law, the Oregon Health Authority has interpreted a similar provision to prevent legal representatives and law enforcement from obtaining access to the information.\textsuperscript{19} Once again, it is less likely that

\textsuperscript{13} § 12 is attached at A-3 & A-4.
\textsuperscript{14} § 15 is attached at A-4.
\textsuperscript{15} § 15(1).
\textsuperscript{16} Id.
\textsuperscript{17} See entire act.
\textsuperscript{18} § 15(2).
\textsuperscript{19} See E-mail from Alicia Parkman, Mortality Research Analyst with the Oregon Health Authority, to Margaret Dore, January 4, 2012 ("We have been contacted by law enforcement and legal representatives in the past, but have not provided identifying information of any type"). (Attached at A-9).
any lack of compliance will be exposed.

2. **No witnesses**

As noted above, the act does not require witnesses at the death. This creates the opportunity for an heir, or another person who will benefit from the patient’s death, to administer the lethal dose to the patient without his consent, in private. Even if the patient struggled, who would know?

3. **Immunity**

Under the act, persons who cause or assist a patient’s death and/or suicide are given immunity from criminal and civil liability, and also immunity from professional discipline. § 18(1)(a) states:

> No person shall be subject to civil or criminal liability or professional disciplinary action by any regulatory agency for any actions undertaken in compliance with this chapter.

4. **More immunity**

The act also provides that deaths and/or suicides under the act:

> shall not constitute suicide, assisted suicide, mercy killing or homicide under any criminal law of the commonwealth.\(^2\)

In Washington state, the other state with a similar law, similar language has been interpreted to require medical examiners, coroners and prosecuting attorneys

\(^2\) The Act, § 18(1)(b).
to treat the death as “Natural.” If so interpreted in Massachusetts, persons who cause or assist a patient’s death and/or suicide would be given another layer of protection against prosecution.

5. **Substantial compliance and good faith**

As noted above, the act only requires substantial compliance with its provisions, which makes it less likely that persons who cause or assist a person’s death and/or suicide will run afoul of the act. The act also holds participants to a “good faith” standard, as follows:

A person who substantially complies in good faith with the provisions of this chapter shall be deemed to be in compliance with this chapter.\(^{22}\)

The act does not define what is meant by good faith. In the context of former G.L. c. 106, § 65(2), “good faith” was interpreted to mean “in fact done honestly, whether it be done negligently or not.”\(^{23}\) If so interpreted here, the above provision gives participants a further protection from liability.

6. **Patients are not allowed to opt out**

Persons who cause or assist a patient’s death and/or suicide

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\(^{22}\) §18(1)(a).

\(^{23}\) See Westlaw printout attached at A-11.
are also protected because patients are not allowed to opt out of the act’s provisions. Consider, for example, a wealthy gentleman concerned that his daughters are more interested in his money than him and/or that they will be pushing him to request a lethal dose. A counter-move would be for him to make their inheritance contingent on his death not being via a lethal dose. Under the act, however, any such provision in a contract and/or will is invalid. The act, § 16(1) states:

No provision in a contract, will, insurance policy, annuity, or other agreement, whether written or oral, made on or after January 1, 2013, shall be valid to the extent the provision would condition or restrict a person’s decision to make or rescind a request for medication to end his or her life in a humane and dignified manner.

D. The Act will Promote Elder Abuse

In Massachusetts, elder abuse is on the rise. If the proposed act is enacted, new paths of abuse will be created against the elderly, with the most obvious path being due to the lack of witnesses at the death. Even if the elder struggled, who would know?

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E. The Title and One Sentence Statements

The Attorney General’s Office has provided the following ballot question title and one sentence statements:

Title: Prescribing Medication to End Human Life

A Yes vote would enact the proposed law allowing a physician licensed in Massachusetts to prescribe medication, at a qualifying, terminally-ill patient’s request, to end that person’s life.

A No vote would make no change in the laws relating to prescribing medication to end human life.

III. ISSUES

A. Whether the ballot question title should be amended and replaced because it is misleading?

B. Whether the one-sentence statements should be amended and replaced because they are misleading?

C. Whether the replacement title and statements proposed herein should be adopted?

IV. ARGUMENT

A. The Law

G.L. c. 54, § 53 states that one-sentence statements describing “the effect of a yes or no vote” shall be “fair and
neutral." § 53 also states that a court may issue an order requiring an amendment when the ballot question title or the one-sentence statements are "misleading."

B. The Title is Misleading

As described above, the proposed act is a multi-layer protection bill for people who cause or assist a patient’s death and/or suicide. The persons protected include heirs and other people who benefit financially from the deaths. The act is also a major change in the law, for example, conduct that is now "murder" would be legalized and/or allowed to occur without penalty.

In this context, the draft title, "Prescribing Medication to End Human Life," is misleading for three reasons. First, the title’s central thrust, "prescribing medication," is only a small part of the act and a side issue to the act’s central effect, which is the protection of people who cause or assist a patient’s death and/or suicide. Second, with the title’s focus on "prescribing medication," there is the implication that the act is limited to doctors or healthcare, when the act also protects heirs. Third and finally, the title uses the term, "human life," which is not a term used by the act. In common parlance, "human life" includes the unborn. Reading the title, a voter could reasonably understand that the act seeks to legalize a "morning after" pill or some other method of prescription abortion.
C. A Fair and Neutral Title

A "fair and neutral" title would instead capture the central effect of the act, which is the protection of people who cause or assist a patient’s death and/or suicide under the act. A fair and neutral title would therefore be along these lines: "Protection for Persons who Cause or Assist Deaths and/or Suicides."

D. The Yes Statement is Misleading

The Yes statement states:

A Yes vote would enact the proposed law allowing a physician licensed in Massachusetts to prescribe medication, at a qualifying, terminally-ill patient’s request, to end that person’s life.

The above statement is misleading because it focuses on "medication," not the essence of the act, which is to protect people who cause or assist a patient’s death and/or suicide. The statement is also misleading because it refers to a patient’s "request," thereby implying that the act is always voluntary for patients, which is not the case. As described above, the act does not allow patients to opt out of its provisions. There is also a complete lack of oversight when the lethal dose is administered. Even if the patient struggled, who would know?

E. A Fair and Neutral Yes Statement

A fair and neutral yes statement would describe the effect of the act if enacted, which would be something along these
lines:

A Yes vote would enact the proposed law providing protections for persons who cause or assist a patient's death and/or suicide, under circumstances that would not necessarily be voluntary for the patient.

F. The No Statement is Misleading

The No statement states:

A No vote would make no change in the laws relating to prescribing medication to end human life.

The statement is misleading due to its use of the term, "human life," which again, is not a term used by the act and which also connotes abortion. The statement is also misleading because with the last part of the statement, "relating to prescribing medication to end human life," there is the implication that a No vote might change some other law (not "relating to prescribing medication to end human life").

G. A Fair and Neutral No Statement.

To be fair and neutral, the no statement should read: "A No vote would make no change in the law."

VI. Conclusion

The draft title and one-sentence statements are misleading. They should be amended and replaced as submitted herein.

Respectfully submitted this 9th day of April 2012,

Margaret Dore
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AN INITIATIVE PETITION

AN ACT RELATIVE TO DEATH WITH DIGNITY

Be it enacted by the People, and by their authority, as follows:

SECTION 1. It is hereby declared that the public welfare requires a defined and safeguarded process by which an adult Massachusetts resident who has the capacity to make health care decisions and who has been determined by his or her attending and consulting physicians to be suffering from a terminal disease that will cause death within six months may obtain medication that the patient may self administer to end his or her life in a humane and dignified manner. It is further declared that the public welfare requires that such a process be entirely voluntary on the part of all participants, including the patient, his or her physicians, and any other health care provider or facility providing services or care to the patient. This act, being necessary for the welfare of the Commonwealth and its residents, shall be liberally construed to effect the purposes thereof.

SECTION 2. The General Laws of Massachusetts shall be amended by inserting after chapter 201F the following new chapter 201G:

CHAPTER 201G

MASSACHUSETTS DEATH WITH DIGNITY ACT

Section 1. Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Capable" means having the capacity to make health care decisions and to communicate them to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:
(a) his or her medical diagnosis;

(b) his or her prognosis;

(c) the potential risks associated with taking the medication to be prescribed;

(d) the probable result of taking the medication to be prescribed; and

(e) the feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient’s relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in Massachusetts by the board of registration in medicine.

(11) "Qualified patient" means a capable adult who is a resident of Massachusetts and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient’s act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

Section 2. Written request for medication.

(1) An adult resident of Massachusetts who is capable and has been determined by his or her attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability.

Section 3. Form of the written request.

(1) A valid request for medication under this chapter shall be in substantially the form set forth in section 21, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(2) At least one of the witnesses shall be a person who is not:

(a) a relative of the patient by blood, marriage, or adoption;

(b) a person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; and

(c) an owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.
(3) The patient's attending physician at the time the request is signed shall not serve as a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility.

Section 4. Attending physician responsibilities.

(1) The attending physician shall:

(a) make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;

(b) request that the patient demonstrate Massachusetts residency;

(c) to ensure that the patient is making an informed decision, inform the patient of:

   (i) his or her medical diagnosis;
   (ii) his or her prognosis;
   (iii) the potential risks associated with taking the medication to be prescribed;
   (iv) the probable result of taking the medication to be prescribed; and
   (v) the feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;

(d) refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;

(e) refer the patient for counseling if appropriate pursuant to section 6;

(f) recommend that the patient notify next of kin;

(g) advise the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;

(h) inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period required by section 9;

(i) verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) fulfill the medical record documentation requirements of section 12;

(k) ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l) (i) dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under law to dispense and has a current drug enforcement administration certificate; or

   (ii) with the patient's written consent: (A) contact a pharmacist and inform the pharmacist of the prescription; and (B) deliver the written prescription personally, by mail, or by otherwise permissible electronic communication to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this paragraph (l) shall not be dispensed by mail or other form of courier.
(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death.

Section 5. Consulting physician responsibilities.

A patient may not be considered qualified under this chapter until a consulting physician has examined the patient and his or her relevant medical records and confirmed, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verified that the patient is capable, is acting voluntarily, and has made an informed decision.

Section 6. Counseling referral.

If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed unless and until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Section 7. Informed decision.

A patient shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the patient is making an informed decision.

Section 8. Notification of next of kin.

No patient shall receive a prescription for medication to end his or her life in a humane and dignified manner unless the attending physician has recommended that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

Section 9. Written and oral requests.

In order to receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

Section 10. Right to rescind request.

A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

Section 11. Waiting periods.

(1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the time the patient signs the written request and the writing of a prescription under this chapter.

Section 12. Medical record documentation requirements.

The following items shall be documented or filed in the patient's medical record:
(1) all oral requests by a patient to a physician for medication to end his or her life in a humane and dignified manner;

(2) all written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) the attending physician's diagnosis and prognosis, and determination that the patient is capable, is acting voluntarily, and has made an informed decision;

(4) the consulting physician's diagnosis and prognosis, and verification that the patient is capable, is acting voluntarily, and has made an informed decision;

(5) a report of the outcome and determinations made during counseling, if performed;

(6) the attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under section 9; and

(7) a note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

Section 13. Residency requirement.

Only requests made by Massachusetts residents may be granted under this chapter. Factors demonstrating Massachusetts residency include but are not limited to: possession of a Massachusetts driver's license; registration to vote in Massachusetts; or the filing of a Massachusetts resident tax return for the most recent tax year.

Section 14. Disposal of unused medications.

Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means.

Section 15. Information reporting; disclosure of information collected; annual statistical report.

(1) Not later than March 20, 2013, the department of public health shall promulgate rules requiring any health care provider upon dispensing medication pursuant to this chapter to file a copy of the dispensing record with the department and to otherwise facilitate the collection of information regarding compliance with this chapter; provided that all administratively required documentation shall be mailed or otherwise transmitted to the department as provided by rule no later than thirty days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) Except as otherwise required by law, the information collected pursuant to subsection (1) shall not be a public record to the extent it contains material or data that could be used to identify individual patients, physicians, or other health care providers.

(3) The department shall annually review the records maintained pursuant to this chapter and shall generate and make available to the public an annual statistical report of information collected under subsection (1) of this section.

Section 16. Contracts, wills, insurance policies, annuities.

(1) No provision in a contract, will, insurance policy, annuity, or other agreement, whether written or oral, made on or after January 1, 2013, shall be valid to the extent the provision would condition or restrict a person's decision to make or rescind a request for medication to end his or her life in a humane and dignified manner.

(2) No obligation owing under any contract, will, insurance policy, annuity, or other agreement made before the
effective date of this chapter shall be affected by the provisions of this chapter, a person’s making or rescinding a request for medication to end his or her life in a humane and dignified manner, or by taking any other action authorized by this chapter.

(3) On and after January 1, 2013, the sale, procurement, or issuance of any life, health, or accident insurance policy or annuity or the premium or rate charged for any such policy or annuity shall not be conditioned upon or otherwise take into account the making or rescinding of a request for medication under this chapter by any person.

Section 17. No authorization of lethal injection, etc.; no reduction in standard of care.

(1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, active euthanasia, or mercy killing.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter.

Section 18. Immunities; permissible sanctions.

(1) Except as provided in section 19 and subsection (3) of this section:

   (a) No person shall be subject to civil or criminal liability or professional disciplinary action by any regulatory agency for any actions undertaken in compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner. A person who substantially complies in good faith with the provisions of this chapter shall be deemed to be in compliance with this chapter.

   (b) Actions taken in accordance with this chapter shall not constitute suicide, assisted suicide, mercy killing or homicide under any criminal law of the commonwealth.

   (c) A patient's request for or the provision of medication in compliance with this chapter shall not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(2) Participation in this chapter shall be voluntary. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(3) (a) A health care provider may prohibit another health care provider from participating in this chapter on the premises of the prohibiting provider if the prohibiting provider has given prior notice to all health care providers with privileges to practice on the premises of the prohibiting provider's policy regarding participation in this chapter. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation in this chapter.

   (b) A health care provider may subject another health care provider to the sanctions stated in this paragraph (b) if the sanctioning health care provider has notified the sanctioned provider before participation in this chapter that it prohibits participation in this chapter:

      (i) loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in this chapter while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

      (ii) termination of a lease or other contract for the occupancy of real property or other nonmonetary remedies.
provided by such lease or contract if the sanctioned provider participates in this chapter while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; provided, however, that no lease or other contract made on and after January 1, 2013, shall authorize or permit nonmonetary remedies for participation in this chapter in the form of loss or restriction of medical staff privileges or exclusion from a provider panel; or

(iii) termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in this chapter while acting in the course and scope of the sanctioned provider’s capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subparagraph (iii) prevents: (A) a health care provider from participating in this chapter while acting outside the course and scope of the provider’s capacity as an employee or independent contractor; or (B) a patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all otherwise applicable due process and other procedures the sanctioning health care provider may have in place that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection (3), the following terms and their variants shall have the meanings given:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider’s participation in this chapter of the sanctioning health care provider’s policy about participation in activities covered by this chapter.

(ii) "Participate in this chapter" means to perform the duties of an attending physician under section 4, the consulting physician function under section 5, or the counseling function under section 6. "Participate in this chapter" does not include: (A) making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis; (B) providing information about the Massachusetts death with dignity act to a patient upon the request of the patient; (C) providing a patient, upon the request of the patient, with a referral to another physician; or (D) a health care provider’s contracting with a patient to act outside of the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

Section 19. Willful alteration or forgery; coercion, etc., penalties.

(1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient’s death shall be guilty of a felony punishable by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years or by a fine of not more than five thousand dollars or by both such fine and imprisonment.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient’s life, or to destroy a rescission of a request, shall be guilty of a felony punishable by imprisonment in the state prison for not more than three years or in the house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars or by both such fine and imprisonment.

(3) Nothing in this chapter limits liability for civil damages resulting from the negligence or intentional misconduct by any person.

(4) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter.

Section 20. Claims by governmental entity for costs incurred.
Any governmental entity that incurs costs resulting from a person terminating his or her life under this chapter in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim.

Section 21. Form of the request.
A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I, . . . . . . . . . . , am an adult of sound mind and a resident of the Commonwealth of Massachusetts.

I am suffering from . . . . . . . . . . , which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

INITIAL ONE:

. . . . I have informed my family of my decision and taken their opinions into consideration.

. . . . I have decided not to inform my family of my decision.

. . . . I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die if and when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: . . . . . . . .

Dated: . . . . . . . .

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:
Witness 1          Witness 2
Initials           Initials

1. Is personally known to us or has provided proof of identity;
2. Signed this request in our presence on the date of the person's signature;
3. Appears to be of sound mind and not under duress, fraud, or undue influence; and
4. Is not a patient for whom either of us is the attending physician.

Printed Name of Witness 1: ..................
Signature of Witness 1/Date: ..............

Printed Name of Witness 2: ..................
Signature of Witness 2/Date: ..............

NOTE: At least one witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Section 22. Title.

This chapter may be known and cited as the Massachusetts death with dignity act.

Section 23. Severability.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[End of proposed law. Signatures of subscribing petitioners appear on the following page.]

Pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment, the undersigned qualified voters of the Commonwealth of Massachusetts hereby submit the foregoing measure for approval by the people.

Marcia Angell
13 Ellery Sq., Cambridge MA

John W. Roberts
321 Huron Ave., Cambridge MA

Norma L. Shapiro
269 Laws Brook Rd., Concord MA

Dan W. Brock
180 Washington St., Newton MA
Thank you for your email regarding Oregon's Death with Dignity Act. For all of your questions, the answer is no. Since our office is charged with maintaining absolute confidentiality, our policy is to never release identifying information. We can neither confirm nor deny participation of any individual patient or physician. We have been contacted by law enforcement and legal representatives in the past, but have not provided identifying information of any type. To ensure confidentiality, our office does not maintain source documentation on participants.

Please let me know if you have further questions.

Thank you,

Alicia

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From: Margaret Dore [mailto:margaretdore@margaretdore.com]
Sent: Monday, January 02, 2012 5:48 PM
To: alicia.a.parkman@state.or.us
Subject: Death with Dignity Act

Thank you for answering my prior questions about Oregon's death with dignity act.

I have these follow up questions:

1. Would your office release copies of completed reporting forms, e.g., a doctor's completed "Oregon Death with Dignity Act Attending Physician Follow-up Form," in response to a civil subpoena?
2. Would your office release copies of completed reporting forms in answer to a request by law enforcement?
3. Would your office confirm to law enforcement whether a person had in fact died under Oregon's Death with Dignity Act?

Margaret Dore
Law Offices of Margaret K. Dore, P.S.

4/9/2012
Instructions for Medical Examiners, Coroners, and Prosecuting Attorneys: Compliance with the Death with Dignity Act

Washington's Death with Dignity Act (RCW 70.245) states that "...the patient's death certificate...shall list the underlying terminal disease as the cause of death." The act also states that, "Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law."

If you know the decedent used the Death with Dignity Act, you must comply with the strict requirements of the law when completing the death record:

1. The underlying terminal disease must be listed as the cause of death.
2. The manner of death must be marked as "Natural."
3. The cause of death section may not contain any language that indicates that the Death with Dignity Act was used, such as:
   a. Suicide
   b. Assisted suicide
   c. Physician-assisted suicide
   d. Death with Dignity
   e. I-1000
   f. Mercy killing
   g. Euthanasia
   h. Secobarbital or Seconal
   i. Pentobarbital or Nembutal

The Washington State Registrar will reject any death certificate that does not properly adhere to the requirements of the Death with Dignity Act. If a death certificate contains any reference to actions that might indicate use of the act, the Local Registrar and Funeral Director will be instructed, under RCW 70.58.030, to obtain a correction from the medical certifier before a permit to proceed with disposition will be issued.

Call the Department of Health's Center for Health Statistics (360-236-4307) for guidance on how to proceed if you have any questions regarding compliance with cause of death reporting under the Death with Dignity Act.

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1 Under state law, the State Registrar of Vital Statistics "shall prepare and issue such detailed instruction as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. ... The State Registrar shall carefully examine the certificates received monthly from the local registrars, county auditors, and clerks of the court and, if any are incomplete or unsatisfactory, the State Registrar shall require such further information to be furnished as may be necessary to make the record complete and satisfactory." RCW 43.70.160.
Prior Statutory Provisions:

Subsec. (1)

G.L. c. 106 c. 65.

Definitions:

Buyer, Seller: The Code eliminates the phrase "or any legal successor in interest of such person", which appears as part of the definitions of buyer and seller in the Uniform Sales Act. (G.L. c. 106 § 65(1) ). With this exception the definitions are the same. This change indicates that successors in interest may not acquire all the interests of their assignees. See the comments under § 2-210.

Good Faith: G.L. c. 106 § 65(2) provided that a thing is done "in good faith" when it is in fact done honestly, whether it be done negligently or not. The Code drops the reference to negligence and provides two definitions of good faith. One, which applies to a merchant, and another, which applies to all others. The definition, applying to a merchant, is the definition under this Section and adds a requirement to the Uniform Sales Act concept to the effect that there be an observance of reasonable commercial standards of fair dealing within the trade. The other definition of good faith is in § 1-201(19) and is essentially the same as the Uniform Sales Act definition. It provides that good faith means honesty in fact in the conduct or transaction concerned.

Receipt: Receipt was not defined in G.L. c. 106 § 65. It requires taking physical possession.

General:

It is to be noted that all definitions are not defined in this Section, but that it is necessary to check particular sections of this Article as well as definitions in other articles listed in subsection (3) Article 1, which contains certain general definitions and principles of construction and interpretation applying to this Article.

UNIFORM COMMERCIAL CODE COMMENT


Changes:

The definitions of "buyer" and "seller" have been slightly rephrased, the reference in Section 76 of the prior Act to "any legal successor in interest of such person" being omitted. The definition of "receipt" is new.

Purposes of Changes and New Matter:

1. The phrase "any legal successor in interest of such person" has been eliminated since Section 2-210 of this Article, which limits some types of delegation of performance on assignation of a sales contract, makes it clear that not every such successor can be safely included in the definition. In every ordinary case, however, such successors are as of course included.

2. "Receipt" must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to "deliver" even though the buyer may never "receive" the goods. Delivery with respect to documents of title is defined in Article 1 and requires transfer of physical delivery. Otherwise the