

**MEMORANDUM**

**TO:** Vermont House of Representatives  
**FROM:** Margaret Dore, Esq.  
**RE:** Vote "NO" on S.77 (Assisted Suicide, Version passed by Senate on May 8, 2013)  
**DATE:** May 10, 2013

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## **I. OVERVIEW**

I am an attorney in Washington State where physician-assisted suicide is legal.<sup>1</sup> Our law is similar to S.77, which seeks to legalize physician-assisted suicide.<sup>2</sup> Moreover, it's well known that financial reasons are "an all too common motivation for killing someone."<sup>3</sup>

S.77 allows an heir, or another person who will benefit financially from a patient's death, to help the patient sign up for the lethal dose. S.77 also allows an heir, or someone else who will benefit financially from the death, to pick up the lethal dose at the pharmacy. Once the lethal dose is in the house, there is no oversight.

S.77 is sold as promoting patient choice and control. The bill is instead a recipe for elder abuse. Don't make Washington's mistake.

## **II. FACTUAL AND LEGAL BACKGROUND**

### **A. Physician-assisted Suicide**

The American Medical Association (AMA) defines physician-assisted suicide as occurring "when a physician facilitates a

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<sup>1</sup> I am an elder law/appellate attorney in Washington state who has been licensed to practice law since 1986. I am a former Law Clerk to the Washington State Supreme Court. I am a former Chair of the Elder Law Committee of the American Bar Association Family Law Section. I am also President of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide. See [www.margaretdore.com](http://www.margaretdore.com) and [www.choiceillusion.org](http://www.choiceillusion.org)

<sup>2</sup> S.77, as passed by the Senate on May 7, 2013, is attached hereto at A-1.

<sup>3</sup> People v. Stuart, 67 Cal. Rptr. 3rd 129, 143 (2007).

patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act."<sup>4</sup> An example would be a doctor's prescription of a lethal dose to facilitate a patient's suicide.<sup>5</sup> The AMA rejects this practice, stating:

Physician-assisted suicide is fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks.<sup>6</sup>

## **B. Most States Reject Assisted Suicide**

Oregon and Washington are the only states where physician-assisted suicide is legal. Oregon's law was enacted by a ballot initiative in 1997.<sup>7</sup> Washington's law was enacted by another initiative in 2008 and went into effect in 2009.<sup>8</sup> No such law has made it through the scrutiny of a legislature despite more than 100 attempts.<sup>9</sup> In a third state, Montana, there is a court decision that gives doctors who assist a suicide a defense to prosecution for homicide. The meaning of this decision is

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<sup>4</sup> AMA Code of Medical Ethics, Opinion 2.211, available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2211.page>

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Oregon's physician-assisted suicide act was passed as Ballot Measure 16 in 1994 and went into effect after a referendum in 1997.

<sup>8</sup> Washington's act was passed as Initiative 1000 on November 4, 2008 and went into effect on March 5, 2009. See <http://www.doh.wa.gov/dwda/default.htm>

<sup>9</sup> See tabulation at [http://epcdocuments.files.wordpress.com/2011/10/attempts\\_to\\_legalize\\_001.pdf](http://epcdocuments.files.wordpress.com/2011/10/attempts_to_legalize_001.pdf)

subject to ongoing litigation.<sup>10</sup>

In the last two years, three states have strengthened their laws against assisted suicide.<sup>11</sup> These states are: Idaho; Georgia; and Louisiana.<sup>12</sup>

### III. THE BILL

#### A. Patients are Not Necessarily Dying; They May Have Years to Live

S.77 applies to patients with a "terminal condition," defined as having a medical prediction of less than six months to live.<sup>13</sup> Such patients are not necessarily dying and may have years to live. This is because doctor predictions of life expectancy can be wrong and because the requirement of six months to live is based on the patient's not being treated.<sup>14</sup> Consider Oregon resident, Jeanette Hall, who was diagnosed with cancer in

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<sup>10</sup> See Matt Gouras, Associated Press, "Fight over assisted suicide moves back to court," *Billings Gazette*, May 8, 2013, available at [http://billingsgazette.com/news/state-and-regional/montana/fight-over-assisted-suicide-moves-back-to-court/article\\_7985baad-87a0-592a-b6dd-187073a4c47f.html?print=true&cid=print](http://billingsgazette.com/news/state-and-regional/montana/fight-over-assisted-suicide-moves-back-to-court/article_7985baad-87a0-592a-b6dd-187073a4c47f.html?print=true&cid=print) (Attached at A-9 & A-10)

<sup>11</sup> See Margaret Dore, "US Overview," updated July 30, 2012, at <http://www.choiceillusion.org/p/us-overview.html>

<sup>12</sup> *Id.*

<sup>13</sup> S.77, § 5281(a)(10). (Attached at A-2)

<sup>14</sup> See 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](http://www.seattleweekly.com/2009-01-14/news/terminal-uncertainty). (Attached at A-11 to A-16). See also Affidavit of Kenneth Stevens, MD, September 18, 2012 (attached at A-17 to A-23); and Affidavit of John Norton (when he was eighteen years old, he was told that he would die of ALS and paralysis in three to five years; he is now 75 years old). (Attached at A-24).

2000 and wanted to do assisted suicide.<sup>15</sup> Her doctor convinced her to be treated instead.<sup>16</sup> In a 2012 affidavit, she states:

This July, it was 12 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.<sup>17</sup>

**B. How S.77 Works**

S.77 has an application process to obtain a lethal dose, which includes a written request with two required witnesses.<sup>18</sup>

Once the lethal dose is picked up at the pharmacy, there is no oversight. The death is not required to be witnessed.<sup>19</sup> No one, not even a doctor, is required to be present.<sup>20</sup>

**IV. ARGUMENT**

**A. Patient "Control" is an Illusion**

**1. No witnesses at the death**

As noted above, S.77 does not require witnesses at the death. Without disinterested witnesses, the opportunity is created for the patient's heir, or for another person who will benefit financially from the death, to administer the lethal dose to the patient without his consent. Even if the patient

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<sup>15</sup> Affidavit of Kenneth Stevens, MD, ¶¶ 3-7, attached at A-17 to A-18; Affidavit of Jeanette Hall Opposing Assisted Suicide, August 17, 2012 (Attached at A-27).

<sup>16</sup> *Id.*

<sup>17</sup> Affidavit of Jeanette Hall, ¶ 4. (Attached at A-28)

<sup>18</sup> See § 5283(a)(4), attached at A-3.

<sup>19</sup> See S.77 in its entirety. (Attached at A-1 through A-8).

<sup>20</sup> *Id.*

struggled, who would know?

Without disinterested witnesses, the patient's choice and control over his death is not guaranteed.

**2. Someone else is allowed to talk for the patient**

Under S.77, patients obtaining the lethal dose are required to be "capable."<sup>21</sup> This is, however, a relaxed standard in which someone else is allowed to talk for the patient. S.77 states:

"Capable" means that a patient has the ability to make and communicate health care decisions to a physician, *including communication through persons familiar with the patient's manner of communicating . . .*" (Emphasis added).<sup>22</sup>

The person talking for the patient is not required to be a trusted person designated by the patient, for example, an agent under an advanced directive.<sup>23</sup> The person talking for the patient is allowed to be an heir.<sup>24</sup> With this circumstance, the patient is not necessarily in control of his fate.

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<sup>21</sup> § 5281(a)(2), attached at A-2.

<sup>22</sup> § 5281(a)(2) states:

"Capable" means that a patient has the ability to make and communicate health care decisions to a physician, including communication through persons familiar with the patient's manner of communicating if those persons are available.

Attached at A-2.

<sup>23</sup> See S.77 in its entirety.

<sup>24</sup> S.77 does not prohibit heirs, or other persons who benefit financially from the patient's death, to talk for the patient during the lethal dose request process. See S.77 in its entirety.

**3. An heir is allowed to procure the patient's request for the lethal dose**

S.77 prohibits an heir from acting as a witness on the written request for the lethal dose.<sup>25</sup> S.77 does not, however, prohibit an heir from procuring that request.<sup>26</sup> An example of procuring would be: providing the written request to the patient; recruiting the witnesses; and supervising the signing. S.77, which allows an heir to procure the request, does not promote patient choice and control. It invites coercion.

**4. An heir is allowed to pick up the lethal dose at the pharmacy**

S.77 allows the lethal dose to be picked up at the pharmacy by "an expressly identified agent of the patient."<sup>27</sup> S.77 does not prohibit an heir, or another person who will benefit financially from the death, from being this agent.<sup>28</sup>

**B. Legalization will Create New Paths of Elder Abuse**

In Vermont, there are an estimated 3,750 cases of violence and abuse against elders each year.<sup>29</sup> Nationwide, elder financial abuse is a crime growing in intensity, with

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<sup>25</sup> See § 5281(a)(6)(defining "interested persons," including an heir) and § 5283(a)(4)(regarding "interested persons"). (Attached at A-2 & A-3).

<sup>26</sup> See S.77 in its entirety, attached hereto at A-1 through A-8.

<sup>27</sup> § 5283(a)(13)(B)(ii), attached at A-5.

<sup>28</sup> See S.77 in its entirety.

<sup>29</sup> Elder Abuse Public Education Campaign, Vermont Center for Crime Victim Services, at [http://www.ccvvs.state.vt.us/pub\\_ed/index.html](http://www.ccvvs.state.vt.us/pub_ed/index.html) (last visited April 29, 2013). (Attached at A-29)

perpetrators often family members.<sup>30</sup> There are also victims reported murdered for their funds.<sup>31</sup>

Elder abuse is often difficult to detect. This is largely due to the unwillingness of victims to report. "Shame, dependence on the abuser, fear of retribution, and isolation from the community are significant obstacles that discourage elders from reporting these crimes."<sup>32</sup>

In Vermont, preventing abuse of vulnerable adults, which includes the elderly, is official state policy.<sup>33</sup> If assisted suicide is legalized via S.77, new paths of abuse will be created against the elderly, which is contrary to that policy. Alex Schadenberg, chair for the Euthanasia Prevention Coalition, International, states:

With assisted suicide laws in Washington and Oregon, perpetrators can . . . take a "legal" route, by getting an elder to sign a lethal dose request. Once the prescription is

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<sup>30</sup> See MetLife Mature Market Institute, *Broken Trust: Elders, Family and Finances, A Study on Elder Abuse Prevention*, March 2009, at <http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf> (last visited April 29, 2013); Miriam Hernandez, 'Black Widows' in court for homeless murders, March 18, 2008, ABC Local, <http://abclocal.go.com/kabc/story?section=news/local&id=6027370> (last visited October 2, 2010) (elderly homeless men killed as part of an insurance scam); and *People v. Rutterschmidt*, 98 Cal.Rptr.3d 390 (2009) (regarding this same case).

<sup>31</sup> *Id.* See also *People v. Stuart*, 67 Cal. Rptr. 3d 129, 143 (where daughter killed her mother with a pillow, "financial considerations [are] an all too common motivation for killing someone . . .").

<sup>32</sup> *Elder Abuse Public Education Campaign, supra.*

<sup>33</sup> See, e.g., Vermont Adult Protective Services Statute, "Reports of Abuse, Neglect and Exploitation of Vulnerable Adults," 33 V.S.A. § 6902(14)(D)(defining a "[v]ulnerable adult" as a person 18 years of age or older who "is impaired due to . . . infirmities of aging . . .")



filled, there is no supervision over the administration. . . . [E]ven if a patient struggled, "who would know?"<sup>34</sup>

**C. Any Study Claiming that Oregon's Law is Safe, is Invalid**

During Montana's 2011 legislative session, the lack of oversight over administration in Oregon's law prompted Senator Jeff Essmann to make the following observation: The Oregon studies are invalid. Senator Essmann, who is now President of the Senate, stated:

[All] the protections end after the prescription is written. [The proponents] admitted that the provisions in the Oregon law would permit one person to be alone in that room with the patient. And in that situation, there is no guarantee that that medication is self administered.

So frankly, any of the studies that come out of the state of Oregon's experience are invalid because no one who administers that drug . . . to that patient is going to be turning themselves in for the commission of a homicide.<sup>35</sup>

**D. My Cases**

In my law practice, I have had two clients whose parents signed up for the lethal dose.

In one case, one side of the family wanted the parent to

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<sup>34</sup> Alex Schadenberg, Letter to the Editor, *Elder abuse a growing problem*, *The Advocate*, the official publication of the Idaho State Bar, October 2010, page 14, available at [http://www.margaretdore.com/info/October\\_Letters.pdf](http://www.margaretdore.com/info/October_Letters.pdf)

<sup>35</sup> See link to hearing transcript for SB 167, February 10, 2011, [http://www.margaretdore.com/pdf/senator\\_essmann\\_sb\\_167\\_001.pdf](http://www.margaretdore.com/pdf/senator_essmann_sb_167_001.pdf)

take the lethal dose while the other did not. The parent spent the last months of his life struggling over the decision of whether or not to kill himself. My client, who was fearful that the other side of the family would use the lethal dose to kill the parent, who was no longer competent, was also torn and traumatized. The parent did not take the lethal dose and died a natural death.

In the other case, the parent reportedly refused to take the lethal dose at his first suicide party ("I'm going to bed. You're not killing me") and was high on alcohol the next night when he took the dose at his second party. The person who told this to my client subsequently recanted. My client did not want to pursue the matter further. As a lawyer who has worked on divorce cases, I couldn't help but notice that if the parent's much younger wife had divorced him, he would have got the house. This way, she got everything.

## **V. CONCLUSION**

If S.77 is enacted, patients affected by its passage will not necessarily be dying and may have years to live. S.77's assurance of patient choice and control is also untrue. The bill is instead a recipe for elder abuse. The most obvious problem is a complete lack of oversight over administration of the lethal dose. No doctor, not even a lay witness is required. Even if the patient struggled, who would know?

Don't make Washington's mistake. Reject S.77.

Respectfully submitted May 10, 2013

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