

## **I. INTRODUCTION**

I am an attorney in Washington State where assisted suicide is legal.<sup>1</sup> Our law is based on a similar law in Oregon. Both laws are similar to A2270, which is titled "Aid in Dying for the Terminally Ill Act."<sup>2</sup>

"Aid in Dying" is a euphemism for assisted suicide and euthanasia.<sup>3</sup> The term is also deceptive because it implies that A2270 is limited to people who are dying, which is untrue. A2270 applies to people who may have years, even decades, to live.

A2270 is, regardless, a recipe for elder abuse. Key provisions include that a patient's heir, who will benefit from his death, is allowed to help him sign up for the lethal dose. I urge you to reject this measure.

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

### **A. Compassion & Choices is a Successor Organization to the Hemlock Society**

Passage of A2270 is being spearheaded by the suicide

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<sup>1</sup> I am an elder law attorney who has been licensed to practice law since 1986. I am a former Law Clerk to the Washington State Supreme Court and the Washington State Court of Appeals. I also worked for a year with the United States Department of Justice. I am a former Chair of the Elder Law Committee of the American Bar Association Family Law Section. I am President of Choice is an Illusion, a human rights organization opposed to assisted suicide and euthanasia. For more information, please see [www.margaretdore.com](http://www.margaretdore.com) and [www.choiceillusion.org](http://www.choiceillusion.org)

<sup>2</sup> A copy of A2270 is attached hereto at A-1 through A-15.

<sup>3</sup> The term, "aid in dying" means euthanasia. See, for example, the 1989 Model Aid-in-Dying Act at this link using the letters "euthan" (for euthanasia) at <http://www.uiowa.edu/~sfklaw/euthan.html>

advocacy group, Compassion & Choices.

Compassion & Choices was formed in 2004 as the result of a merger/takeover of two other organizations.<sup>4</sup> One of these organizations was the former Hemlock Society, originally formed by Derek Humphry.<sup>5</sup>

In 2011, Humphry was the keynote speaker at Compassion & Choices' annual meeting here in Washington State.<sup>6</sup> In 2011, he was also in the news as a promoter of mail-order suicide kits.<sup>7</sup> This was after a depressed 29 year old man used one of the kits to kill himself.<sup>8</sup>

**B. Physician-Assisted Suicide, Assisted Suicide and Euthanasia**

The American Medical Association defines "physician-assisted suicide" as occurring when "a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act (e.g. the physician provides sleeping pills and information about the

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<sup>4</sup> See Ian Dowbiggin, A Concise History of Euthanasia 146 (2007) ("In 2003, [the] Hemlock [Society] changed its name to End-of-Life Choices, which merged with Compassion in Dying in 2004, to form Compassion & Choices").

<sup>5</sup> Id. See also Compassion & Choices Newsletter excerpt, attached at A-20.

<sup>6</sup> Compassion & Choices newsletter at A-20.

<sup>7</sup> Randi Bjornstad, "Suicide Kits Sell Death by Mail," *The Register-Guard*, March 20, 2011 ("All roads lead to Derek Humphry"). (Attached, A-21 to A-23).

<sup>8</sup> Id., at A-23 ("For \$60, they blew his life apart").

lethal dose, while aware that the patient may commit suicide)."<sup>9</sup> "Assisted suicide" is a general term in which the aiding person is not necessarily a physician. "Euthanasia," by contrast, is the direct administration of a lethal agent with the intent to cause another person's death.<sup>10</sup> "Euthanasia" is also known as "mercy killing"<sup>11</sup>

The American Medical Association rejects assisted suicide and euthanasia, stating they are:

fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks.<sup>12</sup>

### **C. Most States Have Rejected Assisted Suicide and Euthanasia**

There have been more than 100 attempts to legalize assisted suicide and/or euthanasia in the United States.<sup>13</sup> The overwhelming majority of these attempts have failed. Indeed,

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<sup>9</sup> The AMA Code of Medical Ethics, Opinion 2.211 - Physician-Assisted Suicide. Available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2211.page>? (Attached at A-24).

<sup>10</sup> Compare, AMA Code of Ethics, Opinion 2.21 - Euthanasia. Available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion221.page#> (Attached at A-65).

<sup>11</sup> The American Heritage Dictionary of the English Language, Fourth Edition copyright 2000 by Houghton Mifflin Company. Updated in 2009. Definition available at <http://www.thefreedictionary.com/p/mercy%20killing>

<sup>12</sup> AMA Code of Ethics, Opinions 2.211 and 2.21, supra at footnotes 9 & 10.

<sup>13</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)

the New Hampshire House of Representatives recently defeated a bill similar to A2270.<sup>14</sup> The vote was 219 to 66.<sup>15</sup> In New Hampshire, the House of Representatives is controlled by the Democratic Party.<sup>16</sup>

There are four states where assisted suicide is legal: Oregon, Washington, Vermont and New Mexico (in one county). Oregon's law was enacted by a ballot initiative in 1997.<sup>17</sup> Washington's law was enacted via another initiative in 2008 and went into effect in 2009.<sup>18</sup> Vermont's law was passed by its legislature in 2013. No one, however, has died under that law and opponents are calling for a repeal.<sup>19</sup> In New Mexico, there is a district court opinion, which legalized assisted suicide in one county. That case is on appeal.<sup>20</sup> Moreover and contrary to

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<sup>14</sup> See "Live Free or Die. New Hampshire Obliterates Oregon-style Death with Dignity Act!," Choice is an Illusion, March 6, 2014, <http://www.choiceillusion.org/2014/03/live-free-or-die-new-hampshire.html> See also HB 1325 Roll Call, voting 219 to 66 "yea" to defeat the bill as "ITL" (inexpedient to legislate). (Attached at A-25)

<sup>15</sup> Id.

<sup>16</sup> See New Hampshire House Leadership page listing Democrats as Speaker of the House (Rep Norelli) and Majority Leader (Rep Shurtleff). (Attached A-26). See also Shurtleff's bio page at A-27 (showing his membership in the Democratic party).

<sup>17</sup> Oregon's physician-assisted suicide law was passed as Ballot Measure 16 in 1994 and went into effect after a referendum in 1997.

<sup>18</sup> Washington's law 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>19</sup> See e.g., Morgan True, "Opponents Call for Repeal of Assisted Suicide," VT.Digger.org, February 27, 2014. (Excerpt attached at A-28).

<sup>20</sup> See e.g., Associated Press, "N.M. official appeals 'right to die' ruling," KFDA News Channel 10, March 13, 2014. (Attached at A-29)

claims made by suicide proponents, assisted suicide is not legal in Montana.<sup>21</sup>

In the last three years, four states have strengthened their laws against assisted suicide.<sup>22</sup> These states are: Arizona, Idaho, Georgia and Louisiana.<sup>23</sup>

### III. THE BILL

#### A. "Eligible" Patients May Have Years, Even Decades, to Live.

A2270 applies to "terminal" patients, meaning those predicted to have less than six months to live.<sup>24</sup> Such persons may, in fact, have years or decades to live. This is due to at least three reasons:

1. **If New Jersey follows Oregon's interpretation of "terminal disease," assisted suicide will be legalized for persons with chronic conditions such as diabetes.**

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<sup>21</sup> I am counsel of record for Montanans Against Assisted Suicide (MAAS), which is currently in litigation against the Montana Medical Examiners Board (Board) over the status of assisted suicide in Montana. As part of that lawsuit, we succeeded in getting the Board to remove a position paper implying that assisted suicide is legal in Montana. We are also seeking to overturn a case called *Baxter*, which gives doctors who assist a suicide potential defenses to a homicide charge. For more information, See: Sanjay Talwani, MTV News, "Montana Judge hears assisted suicide arguments," December 13, 2013 (attached hereto at A-30 & A-31); my client's press release (attached at A-32 to A-33); and "SB 220 Defeated." (Attached at A-34).

<sup>22</sup> See: Associated Press, "Arizona Gov. Jan Brewer signs 35 bills into law," *The Washington Times*, April 30, 2014 ("Another bill signed Wednesday aims to make it easier to prosecute people who help someone commit suicide")(attached at A-35); and Margaret Dore, "US Overview," updated May 20, 2013, at <http://www.choiceillusion.org/p/us-overview.html>

<sup>23</sup> Id.

<sup>24</sup> A2270, § 3. (Attached at A-4, lines 1-3).

Under A2270, assisted suicide is available for persons with a "terminal disease," which is defined as follows:

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in a patient's death within six months.<sup>25</sup>

In Oregon, a nearly identical definition of "terminal disease," has been interpreted to include chronic conditions such as insulin dependent diabetes.<sup>26</sup> Oregon doctor, William Toffler, explains:

Our [assisted suicide] law applies to "terminal" patients who are predicted to have less than six months to live. In practice, this idea of terminal has recently become stretched to include people with chronic conditions . . . . Persons with these conditions are considered terminal if they are dependent on their medications, such as insulin, to live.<sup>27</sup>

If New Jersey enacts A2270 and follows Oregon's

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<sup>25</sup> Id.

<sup>26</sup> The Oregon definition states:

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

Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-16.

<sup>27</sup> Letter to the Editor, from William Toffler MD to the New Haven Register, February 24, 2014, ¶2. (Attached at A-61). For further information, see Oregon's annual assisted suicide report for 2013, which lists "chronic lower respiratory disease" and "diabetes" as underlying illnesses for the purpose of assisted suicide. The report is attached hereto at A-54 to A-60. "Chronic lower respiratory disease" and "diabetes" are listed at A-59 & A-60, respectively.

interpretation of "terminal disease," assisted suicide will be legalized for people in New Jersey with chronic conditions such as diabetes. Dr. Toffler states:

Such persons, with treatment, could otherwise have years or even decades to live."<sup>28</sup>

## **2. Treatment can lead to recovery.**

Patients may also have years to live because treatment can lead to recovery. Consider Oregon resident, Jeanette Hall, who was diagnosed with cancer in 2000 and wanted to "do" Oregon's assisted suicide law.<sup>29</sup> Her doctor, who did not believe in assisted suicide, convinced her to be treated instead.<sup>30</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>31</sup>

## **3. Predictions can be wrong.**

Finally, patients may have years to live because predicting life expectancy is not an exact science.<sup>32</sup> Consider John Norton

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<sup>28</sup> Toffler letter at A-61.

<sup>29</sup> Affidavit of Jeanette Hall Opposing Assisted Suicide, August 17, 2012 (Attached at A-45); and Affidavit of Kenneth R. Stevens, JR., MD, September 18, 2012, ¶¶ 3-6. (Attached at A-47).

<sup>30</sup> Id.

<sup>31</sup> Affidavit of Jeanette Hall, ¶ 4. (Attached at A-46).

<sup>32</sup> See e.g., Shapiro, Nina, *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. (Attached hereto at A-36 to A-41). See also Affidavit of Kenneth Stevens, MD, filed by the Canadian government in

who was diagnosed with ALS. He was told that he would get progressively worse (be paralyzed) and die in three to five years. Instead, the disease progression stopped on its own. In a 2012 affidavit, at age 74, he states:

If assisted suicide or euthanasia had been available to me in the 1950's, I would have missed the bulk of my life and my life yet to come.<sup>33</sup>

#### **B. How the Bill Works**

A2270 has an application process to obtain the lethal dose, which includes a written lethal dose request form.<sup>34</sup> Once the lethal dose is issued by the pharmacy, there is no oversight.<sup>35</sup> The death is not required to be witnessed by disinterested persons.<sup>36</sup> Indeed, no one is required to be present.<sup>37</sup>

After the death occurs, the death certificate is required to be falsified. There is otherwise a lack of transparency and accountability.

#### **C. Specific Problems with the Bill**

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*Leblanc v. Canada*, dated 9/18/12, ¶ 11 ("There are always some people who beat the odds"). (Attached hereto at A-49).

<sup>33</sup> Affidavit of John Norton, Attached at A-43.

<sup>34</sup> The lethal dose request form can be viewed at A2270, § 20. (Attached at A-10 & A-11)

<sup>35</sup> See A2270 in its entirety. (Attached at A-1 through A-15).

<sup>36</sup> Id.

<sup>37</sup> Id.

A2270 implies that its provisions are "entirely voluntary."

For example, § 2.b. states:

The public welfare requires that such a process be entirely voluntary on the part of all participants, including the patient ...<sup>38</sup>

This comforting thought, however, is an illusion and propaganda when compared to what A2270 actually says and does. Please consider some of the bill's specific problems discussed below.

#### **1. No witnesses at the death**

A2270 does not require witnesses at the death.<sup>39</sup> Without disinterested witnesses, the opportunity is created for someone else to administer the lethal dose to the patient without his consent.<sup>40</sup> Even if he struggled, who would know? This situation is especially significant for people with money. A California case, *People v. Stuart*, 67 Cal.Rptr.3d 129, 143 (2007), states:

[F]inancial considerations [are] an all too common motivation for killing someone.<sup>41</sup>

Without disinterested witnesses, the patient's voluntary

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<sup>38</sup> A2270, attached at A-2, lines 22-25.

<sup>39</sup> See A2270 in its entirety, attached hereto at A-1 to A-15.

<sup>40</sup> The drugs used for assisted suicide in Oregon and Washington, Secobarbital and Pentobarbital (Nembutal), are water soluble, such that they can be injected without consent, for example, to a sleeping person. See "Secobarbital Sodium Capsules, Drugs.Com, at <http://www.drugs.com/pro/seconal-sodium.html> and <http://www.drugs.com/pro/nembutal.html> See also Oregon's report, page 6, attached at A-59 (listing these drugs).

<sup>41</sup> Excerpt attached at A-62.

action is not guaranteed.

## **2. Adding witnesses will not fix the problem**

Requiring disinterested witnesses at the death would protect against overt murder. Generally, however, witnesses are not much of a safeguard. Many wills are properly witnessed and nonetheless set aside for undue influence, fraud, etc.

## **3. Witnesses can be coercive**

Witnesses can also be coercive. Consider Oregon resident Lovelle Svart, who threw herself an "exit party," during which she danced the polka with George Eighmey of Compassion & Choices. The party was reported in the newspaper, which wrote an article implying that she was in control.<sup>42</sup> At the end of the party, however, when it was time for her to die, the paper also reported this exchange between her and Eighmey, which took place in front of ten people:

"Is this what you want?"

"Actually, I'd like to go on partying," Lovelle replied, laughing before turning serious. "But, yes."

"If you do take it, you will die."

"Yes."<sup>43</sup>

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<sup>42</sup> See Don Colburn, "Last day of life all planned out, down to the polka," October 26, 2007, available at [http://seattletimes.com/html/localnews/2003918100\\_suicide02.html](http://seattletimes.com/html/localnews/2003918100_suicide02.html)

<sup>43</sup> Id.

The situation is similar to a wedding when it's time to take your vows. Everyone's watching and it's the thing to do. So even if you are having second thoughts or would rather "go on partying," you go forward to take the lethal dose. If Eighmey had actually wanted to give her an out, he could have said:

"You are having so much fun, you don't have to do this today or even next week."

Instead, he proceeded according to the script that she would die at the end of the party. His role was to preside over her death. Her role was to comply. Once she was in this role, she no longer had control. The situation was inherently coercive.

**4. The patient's heir is allowed to be a witness on the lethal dose request form**

A2270 allows one of two witnesses on the lethal dose request form to be the patient's heir who will financially benefit from the patient's death.<sup>44</sup> In the context of making a will, such active participation by an heir is a marker of undue influence. Consider, for example, Washington's probate statute. It states that when one of two witnesses receives a gift under a will, there is a rebuttable presumption that the receiver/witness:

procured the gift by duress, menace, fraud,  
or undue influence.

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<sup>44</sup> A2270 requires two witnesses on the lethal dose request form. See: § 5, lines 15-25 and § 20. (Attached at A-4 & A-11). At least one of these witnesses shall be a person who is not an heir, i.e., "entitled to any portion of the estate of the patient upon the patient's death under any will or by operation of law." (Id.) The other witness is allowed to be an heir. (Id.)

Rev. Code Wash. 11.12.160, attached at A-63.

**5. Someone else, even a stranger, is allowed to speak for the patient during the lethal dose request process.**

Under A2270, a patient requesting a lethal dose is required to be "capable."<sup>45</sup> This is, however, a relaxed standard in which someone else is allowed to speak for the patient. Moreover, the speaking person does not have to be the patient's designated agent such as an attorney-in-fact under a power of attorney. The only requirement is that the speaking person be "familiar with the patient's manner of communicating." A2270 states:

"Capable" means having the capacity to make health care decisions and to communicate them to a health care professional, including communication through persons familiar with the patient's manner of communicating . . . (Emphasis added).<sup>46</sup>

Being "familiar with the patient's manner of communicating" is a very minimal standard. Consider, for example, a doctor's assistant who is familiar with a patient's "manner of communicating" in Spanish, but does not herself understand Spanish. That would be enough to meet the test for "capable" under A2270. Indeed, the doctor's janitor could speak for the patient as long as he was "familiar with the patient's manner of

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<sup>45</sup> A2270, § 4.b, attached hereto at A-3, lines 38-9.

<sup>46</sup> A2270, § 3, attached at A-2, lines 35-8.

communicating."

With someone else allowed to speak for the patient, including a stranger who is merely "familiar" with the patient's manner of communicating, patient voluntariness is not assured.

**6. The term, "self-administer," allows someone else to administer the lethal dose to the patient.**

Proponents may claim that patients under A2270 are, nonetheless, in control due to a requirement of "self-administration." A2270, however, only says that a patient "may" self-administer a lethal dose.<sup>47</sup> There is no provision that administration of the lethal dose "must" be by self-administration.<sup>48</sup> A2270 also defines "self-administer" as the patient's "act of ingesting." § 3 says:

"Self-administer" means a qualified patient's act of ingesting medication to end that individual's life . . . . (Emphasis added).<sup>49</sup>

A2270 does not define "ingesting." Dictionary definitions include:

[T]o take (food, drugs, etc.) into the body, as by swallowing, inhaling, or absorbing."<sup>50</sup>

With these definitions, someone else putting the lethal dose

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<sup>47</sup> See, e.g., A2270, § 2.a. (Attached hereto at A-2).

<sup>48</sup> See Bill A2270 in its entirety, attached hereto at A-1 to A-15.

<sup>49</sup> Attached at A-3, lines 44-46.

<sup>50</sup> Webster's New World College Dictionary, ingest. (Attached at A-64).

in the patient's mouth qualifies as self-administration because the patient will thereby be "swallowing" the lethal dose, *i.e.*, "ingesting" it. Someone else placing a medication patch on the patient's arm will also qualify because the patient will thereby be "absorbing" the lethal dose, *i.e.*, "ingesting" it. Someone else turning on lethal gas will qualify because the patient will thereby be "inhaling" the lethal dose, *i.e.*, "ingesting" it.

With self-administer defined as mere ingestion, someone else is allowed to administer the lethal dose to the patient.

**7. A2270 legalizes euthanasia, physician-assisted suicide and assisted suicide generally.**

With someone else allowed to administer the lethal dose to the patient, A2270 legalizes "euthanasia" under generally accepted medical terminology. The AMA Code of Medical Ethics, Opinion 2.21, states:

Euthanasia is the administration of a lethal agent by another person to a patient . . . <sup>51</sup>

If instead, the patient administers the lethal dose to himself, this is "physician-assisted suicide," under generally accepted medical terminology. The AMA Code of Medical Ethics, Opinion 2.211 states:

Physician-assisted suicide occurs when a physician facilitates a patient's death by providing the necessary means and/or

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<sup>51</sup> Attached hereto at A-65.

information to enable the patient to perform the life-ending act (e.g., the physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide).

Attached at A-24.

A2270 also allows the active participation of non-physicians such as the patient's heirs. For this reason, the general term, "assisted suicide," is also appropriate.

In summary, A2270 legalizes euthanasia and physician-assisted suicide, *i.e.*, under generally accepted medical terminology. The term, "assisted suicide" is also appropriate.

**8. A2270 does not prohibit involuntary administration of the lethal dose.**

A2270 does not require that the patient be capable or even aware when the lethal dose is administered.<sup>52</sup> There is also no language requiring the patient's consent at the time of administration.<sup>53</sup> Without these requirements when the lethal dose is administered, A2270 does not prohibit non-consensual and/or involuntary administration of the lethal dose.

Similarly, there is no criminal penalty for administering a

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<sup>52</sup> A2270 addresses whether the patient is "capable" in conjunction with the lethal dose request, not later at the time of administration. See: §§ 2.a., 3., 4.b., 5.a., 6.a.(1), 6.a.(4), 7.c., 11.c.(2) & (3), and 20 (regarding "sound mind").

<sup>53</sup> A2270 requires that a determination of whether a patient is acting "voluntarily" be made in conjunction with the lethal dose request, not later. See: §§ 4.c., 5.a., 6.a.(1), 6.a.(4), 7.c., 11.c.(2) & (3), and 20 (regarding making the request "voluntarily").

lethal dose a patient without his or her consent. See, for example, §18, which provides criminal penalties for failing to comply with the act.<sup>54</sup> None of these penalties apply to a person who has administered a lethal dose to a patient without his or her consent.<sup>55</sup>

**9. A patient may not have the ability to rescind.**

Proponents may argue that patient consent is, nonetheless, required at the time of administration because a patient may rescind the request for the lethal dose "at any time."<sup>56</sup> A provision that a patient "may" rescind is not, however, the same thing as a right to give consent when the lethal dose is administered. Consider, for example, a patient who obtained the dose on a "just-in-case" basis, *i.e.* without consenting to taking

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<sup>54</sup> A2270, §18 states:

a. A person who, without authorization of the patient, willfully alters or forges a request for medication pursuant to this act, or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death, is guilty of a crime of the second degree.

b. 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, is guilty of a crime of the third degree.

c. Nothing in this act shall limit liability for civil damages resulting from the negligence or intentional misconduct of any person.

d. The penalties set forth in this section shall not preclude the imposition of any other criminal penalty applicable under law for conduct that is inconsistent with the provisions of this act.

<sup>55</sup> *Id.*

<sup>56</sup> A2270, § 11.b., attached hereto at A-6.

it. If such patient would later become incompetent, be sedated, or simply be sleeping, she would not have the ability to rescind. Without the right to consent, someone else could, nonetheless, administer the lethal dose to her. Without the right to consent, the patient's promised control over the time, place and manner of her death is an illusion.

**10. A2270 lacks transparency and accountability.**

**a. Record keeping is private.**

A2270 provides that a doctor's compliance with its provisions be tracked in the patient's medical record, which is a private document protected by HIPPA.<sup>57</sup>

**b. The cause of death is falsified.**

A2270, § 6.c., states that the death certificate, which is the official record of a person's death, "shall list the underlying terminal illness as the cause of death."<sup>58</sup> This is as opposed to the true cause of death, which is a lethal dose of medication. The official cause of death is thus falsified, which creates a lack of transparency regarding specific deaths and also a lack of transparency for the purpose of later review should anyone want to know how the law is working in practice.

A smaller point, vital statistics regarding disease survival

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<sup>57</sup> See Bill A2270, § 11.c., attached at A-7.

<sup>58</sup> Attached at A-5, lines 38-9.

rates will also be distorted (and artificially pushed downward).

- c. The Division of Consumer Affairs is without power to investigate other than to "request" a report; No disclosure of identifying information is permitted.**

A2270 provides for reporting by prescribing health care professionals to the Division of Consumer Affairs.<sup>59</sup> This is for the purpose of an annual statistical report to the public.<sup>60</sup> The Division is given no powers of investigation or enforcement, *i.e.*, other than to "request" a report.<sup>61</sup> Moreover, any information collected "that contains material or data that could be used to identify an individual patient or health care professional shall not be included under materials available to public inspection."<sup>62</sup>

- d. If New Jersey follows Washington State's interpretation of language similar to A2270, death investigations by the medical examiner will be eliminated other than to certify the deaths as "Natural."**

As noted above, A2270 states that the patient's death

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<sup>59</sup> A2270, § 14, at A.7 & A.8.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

certificate "shall list the underlying terminal illness as the cause of death."<sup>63</sup> A2270 also states:

Any action taken in accordance with the provisions of this act shall not constitute suicide, assisted suicide, mercy killing, or homicide under any criminal law of this State."<sup>64</sup>

In Washington State, similar language has been interpreted to require the Medical Examiner to certify the manner of death as "Natural" as long as Washington's death with dignity act was used, *i.e.*, regardless of the specific facts of the case.<sup>65</sup> In addition, the death certificate is not to contain any language indicating that Washington's act was used."<sup>66</sup> Prohibited words include "assisted suicide", "mercy killing" and "euthanasia."<sup>67</sup>

If New Jersey enacts A2270 and follows Washington's lead, there will be a similar result in which death investigations are effectively eliminated and there is a near complete lack of transparency and accountability regarding deaths under the New Jersey act.

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<sup>63</sup> Attached at A-5, lines 38-9.

<sup>64</sup> §17.a.(2), at A-9.

<sup>65</sup> See Washington State Department of Health "Instructions for Medical Examiners, Coroners, and Prosecuting Attorneys: Compliance with the Death with Dignity Act," at <http://www.doh.wa.gov/portals/1/Documents/5300/DWDAMedCoroner.pdf> (Attached hereto as A-66).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

#### **IV. THE OREGON AND WASHINGTON EXPERIENCE**

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

During Montana's 2011 legislative session, the lack of oversight in Oregon's law prompted Senator Jeff Essmann to make this observation: the Oregon studies are invalid. He 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>68</sup>

##### **B. Legal Assisted Suicide Allows Health Care Providers and Insurers to Steer Patients to Suicide.**

If A2270 is passed, health care providers and insurers in New Jersey will be able to steer patients to suicide.

Consider the case of Oregon resident, Barbara Wagner. In 2008, the Oregon Health Plan refused to cover a drug to possibly cure her cancer and offered to cover her assisted suicide instead.

"It was horrible," Wagner told ABCNews.com. "I got a letter in the mail that basically said if you want to take the pills, we will help you get that from the doctor and we will

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<sup>68</sup> [http://www.margaretdore.com/pdf/senator\\_essmann\\_sb\\_167\\_001.pdf](http://www.margaretdore.com/pdf/senator_essmann_sb_167_001.pdf)

stand there and watch you die. But we won't give you the medication to live."<sup>69</sup>

Wagner, who was unable to afford the drug, was steered to suicide. The drug's manufacturer then agreed to provide it for free.<sup>70</sup> She nonetheless died a short time later.

To learn more about steerage to suicide, see the affidavit of Kenneth Stevens, MD, attached hereto at A-47 to A-53.

**C. Compassion & Choices' True Agenda is the Promotion of Managed Care with Less Choice for Individual Patients.**

On November 29, 2008, Compassion & Choices President, Barbara Coombs Lee, published an op-ed in *The Oregonian*, which is Oregon's largest paper.<sup>71</sup> Therein, she took issue with Wagner's choice to live.<sup>72</sup> Coombs Lee argued that Wagner should have instead given up hope and accepted her pending death. But, this was not Wagner's choice. In a KATU TV interview, Wagner said:

I'm not ready, I'm not ready to die. . . .  
I've got things I'd still like to do.<sup>73</sup>

Coombs Lee also defended the Oregon Health Plan and argued for a public policy change to discourage patients from seeking

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<sup>69</sup> Susan Donaldson James, "Death Drugs Cause Uproar in Oregon," ABC News, August 6, 2008 (Excerpt attached at A-67)

<sup>70</sup> "Letter noting assisted suicide raises questions," KATU TV, July 30, 2008. (Attached at A-68 & 69)

<sup>71</sup> Barbara Coombs Lee, "Sensationalizing a sad case cheats the public of sound debate," *The Oregonian*, November 29, 2008 (Attached hereto at A-70)

<sup>72</sup> Id.

<sup>73</sup> KATU story, *supra*. (Attached at A-68).

cures.<sup>74</sup> She thus showed her organization's true agenda: managed care, not individual choice.

Compassion & Choices President, Barbara Coombs Lee, is a former "managed care executive."<sup>75</sup>

**D. Oregon's Annual Report for 2013 is Consistent with Elder Abuse and the "Barbara Wagner" Scenario**

According to Oregon's annual assisted suicide report for 2013, most of the people who died from a lethal dose were white, aged 65 or older, and well-educated.<sup>76</sup> People with these attributes are typically well off, *i.e.*, the middle class and above.

The report's introduction implies that their deaths were voluntary, stating that Oregon's act "allows" residents to obtain a lethal dose for self-administration.<sup>77</sup> There is nothing in the report, however, which actually says that the deaths were voluntary.<sup>78</sup> Older well-off people are, regardless, in a

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<sup>74</sup> Coombs Lee stated:

The burning public policy question is whether we inadvertently encourage patients to act against their own self-interest, chase an unattainable dream of cure, and foreclose the path of acceptance that curative care has been exhausted . . . . Such encouragement serves neither patients, families, nor the public. (Attached at A-71)

<sup>75</sup> Barbara Coombs Lee Bio, attached hereto at A-73.

<sup>76</sup> Report, page 2, attached hereto at A-55, last full paragraph.

<sup>77</sup> Id., page 1, attached hereto at A-54.

<sup>78</sup> Report, pages 1-7, starting at A-54.

vulnerable demographic for abuse and exploitation. This includes murder. A 2009 MetLife Mature Market Institute Study states:

Elders' vulnerabilities and larger net worth make them a prime target for financial abuse . . . Victims may even be murdered by perpetrators who just want their funds and see them as an easy mark.<sup>79</sup>

The Oregon report, in which most of the people dying under the act were older and well-off, is consistent with financial elder abuse. The report, which also describes patients on Medicaid, is consistent with the "Barbara Wagner" scenario.

**E. In Oregon, Other (Regular) Suicides Have Increased with Legalization of Physician-Assisted Suicide; the Financial Cost is "Enormous."**

Government reports from Oregon show a positive statistical correlation between the legalization of physician-assisted suicide and an increase in other (regular) suicides. Of course, a statistical correlation does not prove causation. The statistical correlation is, however, consistent with a suicide contagion in which legalizing and thereby normalizing assisted suicide encouraged other suicides. Please consider the following:

Oregon's assisted suicide act went into effect "in late 1997."<sup>80</sup>

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<sup>79</sup> The MetLife Study can be viewed at this link: <https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf> See other MetLife materials at attached hereto at A-54 to A-59.

<sup>80</sup> Oregon's assisted suicide report for 2013, attached at A-54.

By 2000, Oregon's regular suicide rate was "increasing significantly."<sup>81</sup>

In a 2010 report, Oregon's regular suicide rate was 35% above the national average.<sup>82</sup>

In a 2012 report, Oregon's regular suicide rate was 41% above the national average.<sup>83</sup>

In Oregon's most recent regular suicide report, the financial cost of these other (regular) suicides is huge. The report, page 3, elaborates:

The cost of suicide is enormous. In 2010 alone, self-inflicted injury hospitalization charges exceeded 41 million dollars; and the estimate of total lifetime cost of suicide in Oregon was over 680 million dollars.<sup>84</sup>

Oregon is the only state where there has been legalization of assisted suicide long enough to have statistics over time. The enormous cost of increased (regular) suicides in Oregon, positively correlated to physician-assisted suicide legalization, is a significant factor for this body to consider in its vote on A2270, which seeks to legalize physician-assisted suicide in New Jersey.

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<sup>81</sup> See Oregon Health Authority News Release, September 9, 2010, at <http://www.oregon.gov/DHS/news/2010news/2010-0909a.pdf> ("After decreasing in the 1990s, suicide rates have been increasing significantly since 2000"). (Attached at A-80)

<sup>82</sup> Id.

<sup>83</sup> Attached at A-82.

<sup>84</sup> Attached at A-83.

**F. Legal Assisted Suicide can be Traumatic for Patients and Their Families.**

**1. The Swiss study**

In 2012, a study was released in Switzerland, addressing trauma suffered by persons who witnessed an assisted suicide.<sup>85</sup> The study found that 1 out of 5 family members or friends present at an assisted suicide were traumatized.<sup>86</sup> These persons:

experienced full or sub-threshold PTSD [Post Traumatic Stress Disorder] related to the loss of a close person through assisted suicide.<sup>87</sup>

**2. My cases involving the Oregon and Washington assisted suicide laws**

I have had two clients whose parents signed up for the lethal dose.<sup>88</sup> In the first case, one side of the family wanted the parent to take the lethal dose, while the other did not. He spent the last months of his life caught in the middle and traumatized over whether or not he should kill himself. My

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<sup>85</sup> "Death by request in Switzerland: Posttraumatic stress disorder and complicated grief after witnessing assisted suicide," B. Wagner, J. Muller, A. Maercker; *European Psychiatry* 27 (2012) 542-546, available at <http://choiceisanillusion.files.wordpress.com/2012/10/family-members-traumatized-eur-psych-2012.pdf> (First page attached at A-85).

<sup>86</sup> Id.

<sup>87</sup> Id.

<sup>88</sup> Cf. Margaret Dore, "Preventing Abuse and Exploitation: A Personal Shift in Focus" (An article about elder abuse, guardianship abuse and assisted suicide), *The Voice of Experience*, ABA Senior Lawyers Division Newsletter, Vol. 25, No. 4, Winter 2014, available at [http://www.americanbar.org/publications/voice\\_of\\_experience/2014/winter/preventing\\_abuse\\_and\\_exploitationa\\_personal\\_shift\\_focus.html](http://www.americanbar.org/publications/voice_of_experience/2014/winter/preventing_abuse_and_exploitationa_personal_shift_focus.html)

client, his adult daughter, was also traumatized. The father did not take the lethal dose and died a natural death.

In the other case, it's not clear that administration of the lethal dose was voluntary. A man who was present told my client that his father refused to take the lethal dose when it was delivered ("You're not killing me. I'm going to bed"), but then took it the next night when he was high on alcohol. The man who told this to my client later recanted. My client did not want to pursue the matter further.

**G. Pain is not the Issue.**

The Oregon assisted suicide report for 2013 lists "concerns" as to why the people who ingested the lethal dose did so.<sup>89</sup> One listed concern is "inadequate pain control or concern about it."<sup>90</sup> There is, however, no claim that anyone who ingested the lethal dose was actually in pain.<sup>91</sup>

Per the report for 2013, there were 20 patients who listed a concern about "inadequate pain control or concern about it" as a reason to do Oregon's act.<sup>92</sup> This is 20 people out of 32,475 total deaths in Oregon.<sup>93</sup> Again, there is no claim that any one

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<sup>89</sup> Oregon Report, page 6, attached hereto at A-59.

<sup>90</sup> Id.

<sup>91</sup> See entire report, attached hereto at A-54 to A-60.

<sup>92</sup> Report at A-59.

<sup>93</sup> Report at A-55, footnote 1 (total Oregon deaths in 2012 was 32,475)

of these persons was actually in pain. Pain is not the issue.

## VII. CONCLUSION

A2270's promise of patient choice and voluntariness is an illusion. The bill is instead a recipe for elder abuse, especially for people with money (the middle class and above). The most obvious gap is the lack of witnesses at the death. Even if a patient struggled, who would know?

Don't make Washington's mistake. I urge you to reject A2270.

Respectfully submitted \_\_\_\_\_, 2014

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