


**MEMORANDUM**

**TO:** The Minnesota Legislature  
**FROM:**  Margaret Dore, Esq., MBA  
Choice is an Illusion  
**RE:** Vote No on SF 1880. (No Assisted Suicide/Euthanasia)  
**DATE:** June 25, 2015

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**APPENDIX**

## **I. INTRODUCTION**

I am an attorney in Washington State where assisted suicide is legal.<sup>1</sup> Our law is modeled on a similar law in Oregon. Both laws are similar to the proposed bill, SF 1880.<sup>2</sup>

The proposed bill is promoted as assuring patient choice and control, which is false. The bill is also not limited to people who are necessarily dying anytime soon. "Eligible" persons may have years, even decades, to live.

I urge you to reject this measure. Do not make Washington and Oregon's mistake.

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

### **A. 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."<sup>3</sup> "Assisted suicide" is a general term in which the aiding person is not necessarily a doctor. "Euthanasia," by contrast, is the direct

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<sup>1</sup> I have been licensed to practice law in Washington State 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 president of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide and euthanasia. See [www.margaretdore.com](http://www.margaretdore.com), [www.choiceillusion.org](http://www.choiceillusion.org) and [www.margaretdore.org](http://www.margaretdore.org).

<sup>2</sup> A copy of SF 1880 is attached hereto at A-1 through A-10

<sup>3</sup> The AMA Code of Medical Ethics, Opinion 2.211. (Attached at A-11).

administration of a lethal agent with the intent to cause another person's death.<sup>4</sup>

**B. Withholding or Withdrawing Treatment is Not Assisted Suicide or Euthanasia.**

Withholding or withdrawing treatment ("pulling the plug") is not assisted suicide or euthanasia. The purpose is to withhold or remove burdensome treatment, *i.e.*, as opposed to an intent to kill the patient. More importantly, the patient does not necessarily die. Consider this quote from an article in Washington state regarding a man removed from a ventilator:

[I]nstead of dying as expected, [he] slowly began to get better.<sup>5</sup>

**C. Assisters Can Have Their Own Agendas.**

People who assist a suicide can have their own agendas. In Oregon, there is the Thomas Middleton case, in which legal physician-assisted suicide was part of an elder abuse fraud. The fraud financially benefited Middleton's trustee, Tammy Sawyer.<sup>6</sup>

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<sup>4</sup> The AMA Code of Medical Ethics, Opinion 2.21. (Attached at A-12).

<sup>5</sup> 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. (Attached at A-13, quote at A-15).

<sup>6</sup> See "Sawyer Arraigned on State Fraud Charges," KTVZ.com, 07/14/11, <http://www.ktvz.com/news/Sawyer-Arraigned-on-State-Fraud-Charges/619440?view=print>, which states:

Middleton deeded his home to the trust and directed [Sawyer] to make it a rental until the real estate market improved.

Instead, Sawyer signed documents that month to list the property for sale, two days after Middleton died by physician-assisted suicide. The property sold in

In California, there is the case of Victorino Noval, allegedly killed (euthanized) by doctors via a "terminal extubation." His daughters had allegedly urged this result in order to obtain large inheritances.<sup>7</sup>

Consider also *People v. Stuart*, 67 Cal.Rptr.3d 129 (2007), in which a daughter killed her mother with a pillow under circumstances that dovetailed with the daughter's financial interests. *Stuart* observed:

Financial considerations [are] an all too common motivation for killing someone.<sup>8</sup>

#### IV. THE BILL

##### A. How the Bill Works.

SF 1880 has an application process to obtain the lethal dose, which includes a lethal dose request form.<sup>9</sup>

Once the lethal dose is issued by the pharmacy, there is no oversight.<sup>10</sup> The death is allowed to occur in private with no

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October of that year for more than \$200,000, the documents show, and it was deposited into [accounts for Sawyer's benefit]. (Emphasis added) (Attached at A-27).

<sup>7</sup> See William Dotinga, "Grim Complaint Against Kaiser Hospital," *Courthouse News Service*, Feb. 6, 2012, <http://www.courthousenews.com/2012/02/06/43641.htm> See also "Lawsuit: Sisters Have Hospital Kill Multi Millionaire Father For Inheritance," *The Law Med Blog*, February 10, 2012, <http://lawmedconsultant.com/3019/lawsuit-sisters-have-hospital-kill-multi-millionaire-father-for-inheritance/#sthash.e1plGxaQ.dpuf> For more information and legal documentation, see <http://legalstuff.kaiserpapers.org/victorino-noval.html> (Attached at A-28).

<sup>8</sup> *People v. Stuart*, 67 Cal.Rptr.3d at 143 (2007).

<sup>9</sup> See SF 1880 in its entirety at A-1 to A-10.

<sup>10</sup> *Id.*

doctor or anyone else present.<sup>11</sup>

**B. No Witnesses at the Death.**

SF 1880 does not require a witness at the death.<sup>12</sup> Without disinterested witnesses, the opportunity is created for someone else to administer the lethal dose to the patient without his consent. And in case I'm being too subtle, the drugs used are water and alcohol soluble, such that they can be injected into a restrained or sleeping person.<sup>13</sup> Even if the patient struggled, who would know?

Without disinterested witnesses, the patient's control over the time, place and manner of his death is not guaranteed.

**C. Assisted Suicide and Euthanasia Can Be Traumatic for Family Members as Well as Patients.**

**1. The Swiss study.**

In 2012, a journal article was released, addressing trauma suffered by persons who witnessed a legal assisted suicide in Switzerland.<sup>14</sup> The study found that 1 out of 5 family members or

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> The drugs used are Secobarbital and Pentobarbital (Nembutal). See Oregon's annual report for 2014, page 5, listing these drugs. (Attached at A-23). They are water and alcohol soluble: <http://www.drugs.com/pro/seconal-sodium.html> and <http://www.drugs.com/pro/nembutal.html>

<sup>14</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-32).

friends present at an assisted suicide were traumatized. These persons:

[E]xperienced full or sub-threshold PTSD [Post Traumatic Stress Disorder] related to the loss of a close person through assisted suicide.<sup>15</sup>

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

I have had two clients whose fathers signed up for the lethal dose.<sup>16</sup> In the first case, one side of the family wanted the father 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 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 he 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.

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<sup>15</sup> *Id.*

<sup>16</sup> These cases are described in my article, 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.choiceillusion.org/2014/02/preventing-abuse-and-exploitation.html> (Attached at A-29 to A-31).

**D. If Minnesota Follows Washington State, the Death Certificate Will be Required to Reflect a Natural Death: This Will Allow the Perfect Crime.**

SF 1880 states that the patient's death certificate "shall list the underlying terminal illness as the cause of death."<sup>17</sup>

The bill also states:

Nothing in this section authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, assisting a suicide, or any other active euthanasia.<sup>18</sup>

In Washington State, similar language is interpreted to require the death certificate to reflect a natural death if Washington's act was "used" (not complied with). Moreover, there must not be even a hint that the actual cause of death was assisted suicide or euthanasia. The Washington State Department of Health, "Instructions for Medical Examiners, Coroners and Prosecuting Attorneys: Compliance with the Death with Dignity Act," states:

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."

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<sup>17</sup> SF 1880, § 10(b). (Attached at A-7, line 7.23).

<sup>18</sup> Id., § 17(a). (Attached at A-10, lines 10.7 to 10.9).



If you know that 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 (Emphasis added)

Attached hereto at A-26.

With the death required to be treated as "Natural" simply because the act was used, there is no criminal recourse if the patient was pressured into taking the lethal dose, or even outright murdered via the lethal dose. The Medical Examiner, the Coroner and the Prosecutor must certify the death as Natural without any indication of the true cause of death:

If Minnesota adopts a similar interpretation based on SF 1880's similar language, there will be a similar situation. Patients will be unprotected under the law no matter how egregious the facts of the particular case. SF 1880 will create

the perfect crime.

**D. "Eligible" Patients May Have Years, Even Decades, to Live.**

SF 1880 applies to "terminal" patients, meaning those predicted to have less than six months to live.<sup>19</sup> Such persons may, actually have years, even decades, to live, *i.e.*, unless the bill passes and they commit suicide or are euthanized thereunder. This is true for at least three reasons:

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

SF 1880 states:

"Terminal illness" means the final stage of an incurable and irreversible medical condition that an attending physician anticipates, within reasonable medical judgment, will produce a patient's death within six months.<sup>20</sup>

Oregon's law has a similar definition, as follows:

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.<sup>21</sup>

In Oregon, this similar definition is interpreted to include

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<sup>19</sup> SF 1880, §§ 2(r) & (t). (Attached at A-3, lines 3.5 to 3.6, and lines 3.9 to 3.11).

<sup>20</sup> *Id.*, § 2(t).

<sup>21</sup> Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-33.

chronic conditions such as insulin dependent diabetes.<sup>22</sup> Oregon doctor, William Toffler, explains:

Our 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>23</sup>

If Minnesota enacts SF 1880 and follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for people with chronic conditions such as diabetes. Dr. Toffler states:

Such persons, with treatment, could otherwise have years or even decades to live.<sup>24</sup>

**2. Predictions of life expectancy can be wrong.**

Patients may also have years to live because predicting life expectancy is not an exact science.<sup>25</sup> Consider John Norton 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

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<sup>22</sup> See, for example, the most recent annual report for Oregon's law (listing "chronic lower respiratory disease" and "diabetes mellitus" as qualifying underlying illnesses). (Attached hereto at A-20, quotes at A-24 & A-25).

<sup>23</sup> Letter to the Editor, William Toffler MD, New Haven Register, February 24, 2014, ¶2. (Attached at A-34). (I verified the content with him).

<sup>24</sup> *Id.*

<sup>25</sup> Compare *Terminal Uncertainty*. (Attached hereto at A-13).

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.

Affidavit of John Norton, ¶ 5, attached beginning at A-36.

**3. Treatment can lead to recovery.**

Consider also Oregon resident, Jeanette Hall, who was diagnosed with cancer in 2000 and wanted to do assisted suicide.<sup>26</sup> Her doctor convinced her to be treated instead.<sup>27</sup> In a 2013 affidavit, she states:

This last July, it was 13 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.<sup>28</sup>

**F. If SB 128 Is Enacted, There Will be Pressure to Expand its Reach.**

In Washington State, our law was passed in November 2008. A few months later, in New Hampshire, there was a bill similar to SF 1880, which proposed assisted suicide for people with a "terminal condition." The definition of terminal condition was broad enough to include someone in a wheelchair who wasn't even sick.<sup>29</sup> The bill did not pass.

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<sup>26</sup> Affidavit of Kenneth Stevens, MD ¶¶ 3-7. (Affidavit attached at A-40 to A-42).

<sup>27</sup> Id.

<sup>28</sup> Affidavit of Jeanette Hall, ¶ 4, attached hereto at A-38 to A-39. Jeanette is still alive today, nearly 15 years later.

<sup>29</sup> Stephen Drake, of the disability rights group, Not Dead Yet, wrote this analysis:

Meanwhile, in Washington State, we have had informal "trial balloon" proposals to expand our law to non-terminal people. For me, the most disturbing one was in the *Seattle Times*, which is our largest paper. A column suggested euthanasia as a solution for people without funds in their old age, which could be any of us, say if the company pension plan went broke.<sup>30</sup>

If SF 1880 is enacted in Minnesota, it's not unlikely that there will be a similar push for expansion.

**G. "Aid in Dying" Means Euthanasia.**

SF 1880 refers to deaths occurring under its provisions as "aid in dying." This is a traditional term for euthanasia. See, for example, this link to the 1989 "Model Aid-in-Dying Act," with the letters, "euthan," for "euthanasia":

<http://www.uiowa.edu/~sfklaw/euthan.html>

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Read that definition carefully, terminality is defined as having a condition that is irreversible and will result in a premature death. My partner [a wheelchair user] would fit that definition. Many people I work with also fit the definition.

None of them are dying. (Emphasis added).

Stephen Drake, "New Hampshire Poised to Redefine "Terminally Ill" to [People with Disabilities] and Others for Assisted Suicide Eligibility," Not Dead Yet Blog, Jan. 30, 2009, at <http://www.notdeadyet.org/2009/01/new-hampshire-poised-to-redefine.html>

<sup>30</sup> See Jerry Large, "Planning for old age at a premium," *The Seattle Times*, March 8, 2012 ("After Monday's column, . . . a few [readers] suggested that if you couldn't save enough money to see you through your old age, you shouldn't expect society to bail you out. At least a couple mentioned euthanasia as a solution.") (Emphasis added). (Attached at A-43).

**H. The Term, "Self-administer," Allows Administration of the Lethal Dose by Another Person: This is Euthanasia.**

SF 1880 says that a patient "may" self-administer medication to bring about his or her death.<sup>31</sup> There is, however, no provision that administration of the lethal dose "must" be by self-administration.<sup>32</sup> SF 1880 also defines "self-administer" as the patient's "act of ingesting."<sup>33</sup> The bill does not define "ingesting." Dictionary definitions include:

[T]o take (food, drugs, etc.) into the body, as by swallowing, inhaling, or absorbing."<sup>34</sup>

With this definition, someone else putting the lethal dose 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 or providing a lethal injection will also qualify because the patient will thereby be "absorbing" the dose, *i.e.*, "ingesting" it. Someone else turning on lethal gas will qualify because the patient will thereby be "inhaling" the dose, *i.e.*, "ingesting" it.

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<sup>31</sup> See e.g., SF 1880, §§ 2(c) & (j), and 5 (stating that a patient "may" self-administer the lethal dose). (Attached hereto at A-1, A-2 and A-4).

<sup>32</sup> See SF 1880 in its entirety. (Attached hereto at A-1 to A-10).

<sup>33</sup> SF 1880, § 2(s) says: "'Self-administer' means a qualified patient's act of ingesting medication." (Attached at A-3).

<sup>34</sup> Webster's New World College Dictionary, "ingest." (Attached at A-48).

With self-administer defined as mere ingesting, another person is allowed to administer the lethal dose to the patient, which is euthanasia. The AMA Code of Medical Ethics, Opinion 2.21, states:

Euthanasia is the administration of a lethal agent by another person to a patient . . . (Emphasis added).<sup>35</sup>

#### **IV. PUBLIC POLICY, SAFETY AND WELFARE**

##### **A. Most States Have Rejected Assisted Suicide and/or Euthanasia.**

The vast majority of states to consider legalizing assisted suicide or euthanasia have rejected it.<sup>36</sup> In the last four years, four states have strengthened their laws against assisted suicide. These states are: Arizona, Idaho, Georgia and Louisiana.<sup>37</sup> In Minnesota, assisted suicide has been clarified by court decision.<sup>38</sup> Just last month, there was a conviction.<sup>39</sup>

##### **B. Elder Abuse Is a Large and Uncontrolled Problem.**

In 2009, the MetLife Mature Market Institute released a

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<sup>35</sup> Attached hereto at A-12.

<sup>36</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)

<sup>37</sup> See materials at A-44 to A-47.

<sup>38</sup> *State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014).

<sup>39</sup> Associated Press, "Right-to-Die Group Convicted of Assisting Minnesota Suicide," May 14, 2015.

landmark study on elder financial abuse.<sup>40</sup> The estimated financial loss by victims in the United States was \$2.6 billion per year. Two years later, in 2011, Met Life released another study, which described how financial abuse can be a catalyst for other types of abuse:

A woman barely came away with her life after her caretaker of four years stole money from her and pushed her wheelchair in front of a train. After the incident the woman said, "We were so good of friends . . . I'm so hurt that I can't stop crying."<sup>41</sup>

One reason that elder abuse is prevalent is that victims do not report. The statistics that I've seen vary, from only 2 in 4 cases being reported, to one in 20 cases. Elder abuse is, regardless, a largely hidden and uncontrolled problem.

**C. Legalization of Assisted Suicide and Euthanasia will Create New Paths of Elder Abuse.**

In Minnesota, preventing elder abuse is official state policy.<sup>42</sup> If assisted suicide and euthanasia are legalized pursuant to SF 1880, new paths of abuse will be created against

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<sup>40</sup> See [www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf](http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf)

<sup>41</sup> [www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf](http://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf),

<sup>42</sup> See e.g., the Minnesota Elder Justice Website, at <http://elderjusticemn.org/laws-and-public-policy/> ("Minnesota has been a leader in passing laws and reforming systems to prevent, detect, and respond to the victimization of vulnerable adults. The Vulnerable Adult Act, first passed in 1980, was among the earliest in the nation to require reporting suspected maltreatment and to trigger emergency social services.)



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 [and with SF 1880], perpetrators can . . . take a "legal" route, by getting an elder to sign a lethal dose request. Once the prescription is filled, there is no supervision over administration. . . . [E]ven if a patient struggled, "who would know?"<sup>43</sup>

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

In 2011, the lack of oversight over administration of the lethal dose in Oregon, prompted State Senator Jeff Essmann, of Montana, to make this observation: the Oregon studies claiming that assisted suicide is safe 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 [taken on a voluntary basis].

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>44</sup>

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<sup>43</sup> Alex Schadenberg, Letter to the Editor, *Elder abuse a growing problem*, *The Advocate*, October 2010, page 14, available at [http://www.margaretdore.com/info/October\\_Letters.pdf](http://www.margaretdore.com/info/October_Letters.pdf)

<sup>44</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)

## V. CONCLUSION

If SF 1880 becomes law, people with years, even decades to live, will be encouraged to throw away their lives; patients and their families will be traumatized.

SF 1880 will, regardless, allow the perfect crime. Even if the patient struggled, who would know?

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