

LAW OFFICES OF  
MARGARET K. DORE, P.S.

1001 FOURTH AVENUE, 44<sup>TH</sup> FLOOR  
SEATTLE, WASHINGTON 98154

MARGARET K. DORE

TELEPHONE (206) 389-1754  
FACSIMILE (206) 389-1530  
margaretdore@margaretdore.com  
[www.margaretdore.com](http://www.margaretdore.com)

September 7, 2015

**Re: Vote "No" on ABX2-15 (Assisted Suicide).**  
**The "Baker" amendments do not fix the bill's**  
**problems: ABX2-15 STILL allows non-voluntary**  
**and involuntary patient killing behind closed**  
**doors.**

Dear Assemblymembers:

On September 3, 2015, ABX2-15 was amended at the request of Assemblymember Baker with the goal of assuring voluntary patient consent to administration of the lethal dose. The amendments create a "final attestation form" and two new felonies. The amendments, while well meaning, do not achieve their intended goal. Indeed, ABX2-15 still allows non-voluntary and involuntary patient killing behind closed doors.

**A. The Amendments.**

**1. The final attestation form**

ABX2-15, § 443.5(a)(12), requires the attending physician to provide the patient with a final attestation form during the lethal dose request process.<sup>1</sup> A copy of the form is set forth in § 443.11(c) and attached hereto at A-2.

The form is to be filled out by the patient within 48 hours prior to his or her ingestion of the lethal dose.<sup>2</sup> The patient is to sign and date the form, which states:

---

<sup>1</sup> A copy of § 443.5(a)(12) is attached hereto at A-1 and A-2.

<sup>2</sup> § 443.11(c)(1), attached hereto at A-3.

I make this decision to ingest the aid-in-dying drug to end my life in a humane and dignified manner."<sup>3</sup>

After the death, the form is to be returned to the attending physician by the patient's representative. See § 443.11(c)(1). The attending physician is then required to add the form to the patient's medical record. § 443.11(c)(2), attached hereto at A-3.

## **2. The two felonies**

The felonies were created by amending § 443.17(b), to make it a felony: (1) to exert undue influence on a patient to "ingest" the lethal dose; or (2) "to administer an aid-in-dying drug to an individual without his or her knowledge or consent." (Attached hereto at A-5).

### **B. Why the Amendments Do Not Work.**

1. The most obvious problem with the form and the felony for administering an aid-in-dying drug without consent is that there is no required oversight when the form is executed by the patient and/or when the lethal dose is administered. Not even a witness is required.<sup>4</sup> If the patient protested about signing the form or even struggled against administration of the lethal dose, who would know?

The signed attestation form would also provide an alibi that everything was in order - no matter what the actual facts.

2. Under ABX2-15, the attending physician is not actually "required" to give the form to the patient given that health care professionals are merely held to a "good faith" standard under the bill.<sup>5</sup> This standard is not defined, but common meanings include that the person in question need not comply with legal technicalities when he or she has honest intent. See for example, this legal dictionary definition:

---

<sup>3</sup> Id.

<sup>4</sup> See ABX2-15 in its entirety. (Attached hereto at A-1 to A-12).

<sup>5</sup> See ABX@-15, §§ 443.19(d), 443.14(b), 443.14(d)(1) and 443.15(c) (setting forth a "good faith" standard).

C:\Users\Margaret\Documents\ASE Files\California7\Letter to the Assemblymembers Baker Amendments.wpd

[Good faith means an] honest intent to act without taking an unfair advantage over another person or to fulfill a promise to act, even when some legal technicality is not fulfilled. (Emphasis added).<sup>6</sup>

With the physician not actually required to give the patient the form, any purported protection it provides is illusory.

3. There is no enforcement mechanism for the patient's representative to return the attestation form to the attending physician. Indeed, the patient may have no such person to do it.

4. If the signed form is provided to the attending physician, the bill merely "requires" that he or she place the form in the in the patient's medical record as opposed to providing it to law enforcement to verify the signature, investigate, etc. Moreover, and once again, the physician is not actually "required" to do anything.

5. The other felony, concerning undue influence in the context of ingesting the lethal dose, is also unenforceable. This is because the felony of undue influence is not defined and otherwise vague. See below for more detail.

**C. The Provision Making Undue Influence a Felony is Too Vague to be Enforced.**

ABX2-15 imposes criminal liability for "undue influence," which is not defined. ABX2-15 merely states:

Knowingly coercing or exerting undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without his or her knowledge or consent, is punishable as a felony. (Emphasis added).<sup>7</sup>

In California's Welfare and Institutions Code, by contrast, a determination of undue influence is based on a list of

---

<sup>6</sup> <http://legal-dictionary.thefreedictionary.com/good+faith> (Copy attached hereto at A-6)

<sup>7</sup> ABX2-15, § 443.17(b), attached at A-5

enumerated factors, for example, that the victim was ill and the person influencing her was a health care professional.<sup>8</sup>

This scenario is specifically allowed by ABX2-15. Under ABX2-15, an "attending physician" is permitted to "counsel" (influence) an ill person to end his or her life.<sup>9</sup>

How do you prove that criminal "undue influence" occurred under ABX2-15, when the bill does not define it and specifically allows conduct used to prove undue influence in another context? It's hard to say.

When reasonable people must guess at the meaning of a criminal statute, which is the case here, the statute is too vague to be enforced. *People v. Acosta*, 226 Cal.App.4th 108, 116-117, 171 Cal.Rptr.3d 774 (2014), states:

A statute which . . . forbids . . . the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the due process requirement of adequate notice. (Internal punctuation removed).

With ABX2-15's prohibition against undue influence too vague to be enforced, a purported patient protection is once again illusory.

#### **D. ABX2-15 Allows Non-voluntary and Involuntary Killing.**

Under the current version of ABX2-15, there continues to be a complete lack of oversight at the death. Not even a witness is required. Even if the patient struggled, who would know?

The bill thus STILL allows non-voluntary and involuntary killing. ABX2-15 must be rejected.

Please contact me with any questions or concerns at 206 697 1217. Thank you.

---

<sup>8</sup> Welfare and Institutions Code, § 15610.70(a). (Attached at A-55)

<sup>9</sup> See e.g., ABX2-15, § 443.5(a)(5). (Attached at A-2).

Sincerely,

/S/

Margaret K Dore, Esq., MBA