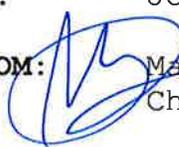


MEMORANDUM

TO: Joint Committee on Public Health, Massachusetts

FROM:  Margaret Dore, Esq., MBA.
Choice is an Illusion, a nonprofit corporation

RE: Vote "NO" on H.1991, Assisted Suicide
Hearing, Tuesday, October 27, 2015

DATE: October 26, 2015

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I. INTRODUCTION

I am President of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide and euthanasia.¹ I am also an attorney in Washington State where assisted suicide is legal.²

H.1991 is similar to Ballot Question 2, which was defeated by a vote of the people in 2012.³ This memo discusses why H.1991 is a recipe for elder abuse. Passage will also cause family trauma, and encourage people with years to live to throw away their lives. There are other problems.

II. FACTUAL AND LEGAL BACKGROUND

A. Definitions: Physician-Assisted Suicide; Assisted Suicide; and Euthanasia.

The American Medical Association (AMA) 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."⁴ The AMA gives this example:

¹ See www.choiceillusion.org and www.massagainstassistedsuicide.org

² I am an elder law/appellate attorney licensed to practice since 1986. I am a former Law Clerk to the Washington State Supreme Court and a former Chair of the Elder Law Committee of the American Bar Association Family Law Section. I have testified against assisted suicide before legislative committees in many states, including Massachusetts, New Hampshire and Connecticut. For more information, see www.margaretdore.com and www.choiceillusion.org

³ A copy of H.1991 is attached hereto at A-1 through A-18.

⁴ The AMA Code of Medical Ethics, Opinion 2.211, Physician-assisted suicide. (Attached hereto at A-19).

[A] physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide.⁵

"Assisted suicide" is a general term in which the assisting 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.⁶

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.⁷

C. The AMA Rejects Assisted Suicide and Euthanasia.

The AMA rejects assisted suicide and euthanasia, stating that they are:

⁵ Id.

⁶ Opinion 2.21, Euthanasia. (Attached hereto at A-20).

⁷ 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. (Article at A-21, quote at A-23).

[F]undamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks.⁸

D. Most States Reject Assisted Suicide.

In the last five years, four states have strengthened their laws against assisted suicide.⁹ In August 2015, the New Mexico Court of Appeals struck down a lower court decision that had allowed assisted suicide in that state.¹⁰ Assisted suicide is once again prohibited in New Mexico.¹¹

There are just three states where assisted suicide is legal: Oregon; Washington; and Vermont.¹² In California, a bill to legalize assisted suicide has been passed, but is not in effect.¹³ In Montana, case law gives doctors who assist a suicide a potential defense to a homicide charge.¹⁴ In Vermont,

⁸ See AMA Code of Medical Ethics, Opinions 2.211 and 2.21, *supra*.

⁹ These states are: Arizona, Idaho, Georgia and Louisiana. For more information, see the materials attached hereto at A-24 through A-27

¹⁰ Valerie Richardson, "New Mexico court strikes down ruling that allowed assisted suicide," *Washington Times*, August 11, 2015, available at <http://www.washingtontimes.com/news/2015/aug/11/assisted-suicide-new-mexico-ruling-struck-higher-c/> (Attached hereto at A-28 to A -29).

¹¹ *Id.*

¹² *Id.*

¹³ Margaret Dore, "California's New Assisted Suicide Law: Whose Choice Will it Be?," *JURIST - Professional Commentary*, October 23, 2015, <http://jurist.org/hotline/2015/10/margaret-dore-physician-assisted-suicide.php>

¹⁴ Valerie Richardson, *supra*. See also Greg Jackson, Esq. & Matt Bowman, Esq., "Analysis of Implications of the *Baxter Case* on Potential Criminal Liability," available at

California and Montana, there are ongoing efforts to push back against assisted suicide legalization.¹⁵

E. H.1991 Applies to People With Years, Even Decades, to Live.

H.1991 applies to "terminally ill" people, meaning those with a terminal illness or condition predicted to have less than six months to live.¹⁶ Such persons, in reality, can have years, even decades to live with the more obvious reasons being misdiagnosis and the fact that predicting life expectancy is not an exact science.¹⁷ Indeed, doctors can be very wrong. Consider Massachusetts resident, John Norton, who was diagnosed with ALS (Lou Gehrig's Disease) at age 18.¹⁸ He was told that he would

<http://www.montanansagainstassistedsuicide.org/p/baxter-case-analysis.html>

¹⁵ This year in Montana, HB 477, which would have reversed the "Baxter" case giving doctors who assist a suicide a defense to a homicide charge, passed the House, but was unable to clear the Senate. See <http://www.montanansagainstassistedsuicide.org/2015/03/hb-477-passes-house.htm>
1 Another bill, SB 202, seeking to legalize assisted suicide in Montana, was defeated. See <http://www.montanansagainstassistedsuicide.org/2015/05/sb-202-dead.html> In California, there are discussions of a referendum and lawsuits to reverse that state's new assisted suicide law. See also True Dignity Vermont regarding that state's repeal efforts, at www.truedignityvt.org

¹⁶ H.1991, Section 1, states: "'Terminally ill' means having a terminal illness or condition which can reasonably be expected to cause death within 6 months, whether or not treatment is provided." (Attached hereto at A-5, lines 77-78).

¹⁷ See, for example: Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, April 17, 2014 (attached at A-30); 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?," *The Seattle Weekly*, January 14, 2009. (Attached hereto at A-21).

¹⁸ Affidavit of John Norton, ¶ 1 (Attached hereto, beginning at A-31).

get progressively worse (be paralyzed) and die in three to five years.¹⁹ Instead, the disease progression stopped on its own.²⁰

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.²¹

F. Elder Abuse is a Problem in Massachusetts

In Massachusetts, elder abuse is on the rise.²² Nationwide, elder financial abuse is a crime growing in intensity, with perpetrators often family members, but also strangers and new "best friends."²³ "Victims may even be murdered by perpetrators

¹⁹ Id.

²⁰ Id.

²¹ Id., ¶ 5 (Attached at A-32)

²² Madeline McNeilly, "Elder Abuse is a growing problem that's underreported," The Sun Chronicle, August 14, 2011, <http://www.thesunchronicle.com/articles/2011/06/15/columns/9727616.txt>. (Attached at A-34 & A-35) See also: Jaclyn Reiss, "Elder-abuse cases on the rise in Massachusetts," Metro West Daily News, February 19, 2011, at <http://www.metrowestdailynews.com/lifestyle/health/x268608620/Elder-abuse-cases-on-the-rise-in-Massachusetts> (attached at A-36 & A-37); and Steve Adams, "Elder abuse and neglect complaints on rise in Massachusetts," Gate House News Service, September 6, 2010, at <http://www.wickedlocal.com/swansea/archive/x128163064/Elder-abuse-and-neglect-complaints-are-on-the-rise-in-Massachusetts#axzz1Vlxksjt4> (Attached at A-38).

²³ 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-broken-trust.pdf> (last visited February 27, 2012); 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 February 27, 2012) (elderly homeless men killed as part of an insurance scam); and William Dotinga, "Grim Complaint Against Kaiser Hospital," Courthouse News Service, February 6, 2012, at <http://www.courthousenews.com/2012/02/06/43641.htm> (last visited February 27, 2012) (daughters allegedly manipulated doctors to withdraw treatment and/or terminally sedate their father in order to get an inheritance).

who just want their funds and see them as an easy mark."²⁴

Elder abuse is often unreported and therefore difficult to detect. The lack of reporting is due to factors including "the victim's fear of retaliation, apprehension to prosecute family members, or lack of capacity to describe the crime or the perpetrator."²⁵ "[S]eniors [also] do not report abusers for fear of being taken out of their home[s]."²⁶

G. How the Bill Works

H.1991 has an application process to obtain a lethal dose for the purpose of causing a patient's death.²⁷ The application process includes a written lethal dose request form with two required witnesses.²⁸ One of the witnesses is allowed to be the patient's heir who will benefit financially from the patient's death.²⁹

Once the lethal dose is issued by the pharmacy, there is no oversight over its administration.³⁰ No one, not even a doctor,

²⁴ MetLife Mature Market Institute, "Broken Trust," supra, p. 24.

²⁵ Madeline McNeilly, supra. (Attached at A-34-35).

²⁶ Jaclyn Reiss, supra. (Attached at A-38).

²⁷ H.1991, §§ 2-12, attached hereto at A-5 to A-14.

²⁸ H.1991, §§ 3 & 4.

²⁹ H.1991, §3, attached at A-6 (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).

³⁰ See H.1991 in its entirety. (Attached at A-1 through A-18).

is required to be present at the death.³¹ There is a complete lack of oversight.

III. ARGUMENT

A. Patient Control Is Illusory

Proponents claim that the bill's passage will assure patient choice and control, which is not true. See below.

1. Someone else is allowed to speak for the patient.

Under H.1991, a qualified patient is required to be "capable."³² The definition of this term allows someone else to talk for the patient during the lethal dose request process as long as that person is "familiar with the patient's manner of communicating." H.1991 states:

"Capable" means having the capacity to make informed, complex health care decisions; understand the consequences of those decisions; and to communicate them to health care providers, *including communication through persons familiar with the patient's manner of communicating* (Emphasis added).³³

Being familiar with the patient's "manner of communicating"

³¹ Id.

³² H.1991, § 1, lines 59-60. (Attached at A-4).

³³ H.1991 states:

"Capable" means having the capacity to make informed, complex health care decisions; understand the consequences of those 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. (Bill, lines 14-17). (Attached at A-2).

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 she, herself, does not understand Spanish. That, however, would be good enough for her to speak for the patient during the lethal dose request process. The patient would not necessarily be in control of his or her fate.

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

H.1991 states that patients may choose to "self-administer" the lethal dose.³⁴ There is no language stating that administration "must" be by self-administration.³⁵ Also, the term, "self-administer," does not mean that administration will necessarily be by the patient. "Self-administer" is instead defined as the "the act of ingesting." H.1991 states:

*"Self-administer" means a qualified patient's act of ingesting medication obtained pursuant to this chapter. (Emphasis added)*³⁶

H.1991 does not define "ingest." Dictionary definitions include:

[T]o take (food, drugs, etc.) into the body, as by swallowing, inhaling, or absorbing."
(Emphasis added).³⁷

³⁴ H.1991, § 1, lines 9-11.

³⁵ H.1991 in its entirety.

³⁶ H.1991, Section 1. (Attached at A-5, lines 75 to 76).

³⁷ Webster's New World College Dictionary, ingest. (Attached at A-39).

With these definitions, someone else putting the lethal dose in the patient's mouth qualifies as proper 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 dose, *i.e.*, "ingesting" it. Gas administration, similarly, qualifies because the patient will be "inhaling" the dose, *i.e.*, "ingesting" it. With self-administer defined as mere ingesting, someone else is allowed to administer the lethal dose to the patient. The patient will not necessarily be in control of his or her fate.

3. No oversight at the death: If the patient resisted or even struggled, who would know?

The lack of oversight at the death puts patients at risk by creating the opportunity for an heir, or someone else who will benefit from the patient's death, to administer the lethal dose to the patient without the patient's consent. If the patient resisted or even struggled, who would know? In case, I'm being too subtle, the drugs used are water and alcohol soluble, such that they can be administered to a sleeping or restrained person without consent.³⁸

³⁸ The drugs used for assisted suicide in Oregon and Washington, Secobarbital and Pentobarbital (Nembutal), are water and alcohol soluble, such that they can be injected without consent, for example, to a sleeping or restrained person. See "Secobarbital Sodium Capsules, Drugs.Com, at <http://www.drugs.com/pro/seconal-sodium.html> and

Without required oversight, the patient's choice and control is not guaranteed.

B. A Comparison to Probate Law.

Again, H.1991 allows one of two witnesses on the lethal dose request form to be an heir. In the context of a will, an heir's acting as one of two witnesses on the will creates a presumption of "fraud or undue influence." The Massachusetts probate code states that when one of two witnesses receives a gift ("bequest") under a will, such "interested witness" must establish that "the bequest was not inserted, and the will was not signed, as a result of fraud or undue influence by the witness."³⁹

H.1991's lethal dose request process, which allows an heir to act as a witness on the lethal dose request form, does not promote voluntary action by the patient. The process instead invites fraud and undue influence.

C. Legalization Will Create New Paths of Elder Abuse.

In Massachusetts, preventing elder abuse is official state

<http://www.drugs.com/pro/nembutal.html> See also Oregon's report, page 5, attached at A-44 & A-45 (listing these drugs).

³⁹ M.G.L.A. 190B § 2-505(b) states:

The signing of a will by an interested witness shall not invalidate the will or any provision of it except that a devise to a witness or a spouse of such witness shall be void unless there are 2 other subscribing witnesses to the will who are not similarly benefited thereunder or the interested witness establishes that the bequest was not inserted, and the will was not signed, as a result of fraud or undue influence by the witness. (Attached at A-46).

policy.⁴⁰ If assisted suicide is legalized via H.1991, new paths of abuse will be created against older persons, which is contrary to that policy. The most obvious new path will be due to the lack of oversight at the death. If the patient resisted or struggled, who would know?

D. The Death Must Be Certified as Natural.

H.1991 states:S

[T]he patient's death certificate . . . shall state, "Self-administered due to a terminal diagnosis of (the underlying terminal disease)," as the cause of death [and]

Actions taken . . . pursuant to this chapter, . . . shall not for any purpose, constitute elder abuse, neglect, assisted suicide, mercy killing, or homicide under any civil or criminal law or for purposes of professional disciplinary action.⁴¹

In Washington State, similar language in Washington's assisted suicide law is interpreted to require the death certificate to list the underlying terminal disease as the cause of death, and the "manner" of death as "Natural" if the assisted suicide law was used. The Washington State Department of Health's "Instructions for Medical Examiners, Coroners and Prosecuting Attorneys," states:

⁴⁰ See e.g. M.G.L.A. Chapter 19A, Department of Elder Affairs, § 16, Protective services system (directing department to develop "protective services for elderly persons who are determined to be abused"). (Attached at A-47).

⁴¹ H.1991, §§ 6 and 19.

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 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." (Emphasis added).

Attached hereto at A-48.

With the death required to be marked as "Natural" simply because the act was used, the Medical Examiner, the Coroner and the Prosecutor are required to certify the death as "Natural" no matter what the facts. If Massachusetts follows this interpretation, no matter what the facts, even a "murder for the money" will be certified as "Natural." There will be no ability to prosecute outright murder. H.1991 will create the perfect crime.

E. Patients and Families Will Be Traumatized.

In 2012, a study was published addressing trauma suffered by

persons who witnessed a legal assisted suicide in Switzerland.⁴² The study found that one out of five family members or friends present at an assisted suicide were traumatized. These people:

[E]xperienced full or sub-threshold PTSD (Post Traumatic Stress Disorder) related to the loss of a close person through assisted suicide.⁴³

Two of my clients, whose fathers signed up for the lethal dose in Washington and Oregon, suffered similar trauma. In the first case, one side of the family wanted the father to take the lethal dose, while the other side did not. The father spent the last months of his life caught in the middle and torn over whether or not he should kill himself. My client, his adult daughter, was severely traumatized. The father did not take the lethal dose and died a natural death. In the other case, it is not clear that administration of the lethal dose was voluntary. A man who was present told my client that the client's father had refused to take the lethal dose when it was delivered, stating: "You're not killing me. I'm going to bed." But then took the lethal dose the next night when he was already intoxicated on alcohol. My client, although he was not present, was traumatized over the incident, and also by the sudden loss of his father.

⁴² "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-49).

⁴³ Id.

F. Enactment Will Allow Massachusetts Health Care Providers to Steer Patients to Suicide.

If H.1991 is enacted, Massachusetts health care providers and insurers will be able to steer patients to suicide through coverage incentives, a practice that is well documented in Oregon. For more information, see: the attached affidavit of Oregon doctor Kenneth Stevens; and the attached news articles regarding Barbara Wagner and Randy Stroup.⁴⁴

Dr. Stevens' affidavit describes steerage in the Oregon Health Plan: The Plan will not necessarily pay for a patient's treatment to cure a disease, but it will pay for the patient's suicide. Dr. Stevens also describes his patient, Jeanette Hall, who he talked out of doing Oregon's law in 2000, and who is alive today. He states:

For Jeanette, the mere presence of legal assisted suicide ... steered her to suicide.⁴⁵

G. In Oregon, Other 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 (conventional) suicides. The statistical correlation is consistent with a suicide contagion in

⁴⁴ Dr. Stevens' affidavit is attached at A-50 through A-56; the articles about Barbara Wagner and Randy Stroup are attached at A-57 to A-59.

⁴⁵ Affidavit of Kenneth Stevens, MD, at A-51, ¶7.

which legalizing and normalizing physician-assisted suicide encouraged other suicides. Please consider the following:

Oregon's assisted suicide act went into effect "in late 1997."⁴⁶

By 2000, Oregon's conventional suicide rate was "increasing significantly."⁴⁷

By 2007, Oregon's conventional suicide rate was 35% above the national average.⁴⁸

By 2010, Oregon's conventional suicide rate was 41% above the national average.⁴⁹

According to the Oregon Health Authority, the financial cost of these other suicides is "enormous." One reason is that people who attempt suicide (and fail) can injure themselves or become disabled by the attempt. The Oregon Health Authority states:

[T]he estimate of total lifetime cost of suicide in Oregon was over 680 million dollars.⁵⁰

If Massachusetts, with its larger population, enacts H.1991 and has the same experience as Oregon, the financial cost could

⁴⁶ Oregon's assisted suicide report for 2014, first line, attached at A-40.

⁴⁷ See Oregon Health Authority News Release, 09/09/10, 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-72)

⁴⁸ *Id.*

⁴⁹ Oregon Health Authority Report, *Suicides in Oregon, Trends and Risk Factors* (2012 Report), at A-77.

⁵⁰ See report at A-78.

be larger.⁵¹

E. Brittany Maynard's Story Presents a Cautionary Tale.

The push to legalize assisted suicide in Massachusetts is being spearheaded by the former Hemlock Society, using Brittany Maynard's story, to justify it. Ms. Maynard was a twenty nine year old woman with a brain tumor who participated in a highly publicized marketing campaign to promote Oregon's law and her upcoming death under that law, which took place on November 1, 2014.

It is difficult to see how Ms. Maynard's death was voluntary. She had told the whole world that she was going forward. In a video shortly before her death, she vacillated but then nonetheless died on the set date, which, incidently, facilitated the marketing campaign to its next level and also, has led to the apparent full time employment of her husband.

A few weeks after Ms. Maynard's death, a young man became actively suicidal after watching her videos, produced by the former Hemlock Society.⁵² A few months after Ms. Maynard's death, breakthroughs were announced regarding the treatment of brain tumors like hers ("glioblastoma").⁵³

⁵¹ Oregon has 3.9 million people vs. 6.7 million for Massachusetts. See https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_population

⁵² Email from Will Johnston MD to the Committee. (Attached at A-79)

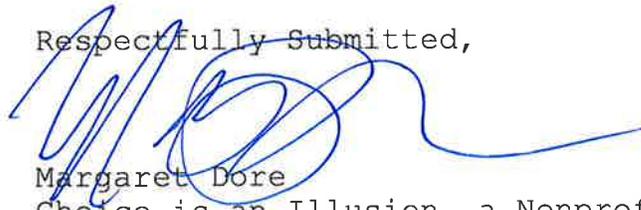
⁵³ 60 Minutes article, at A-83.

IV. CONCLUSION

If H.1991 becomes law, people with years to live will be encouraged to throw away their lives. Patients and their families will be traumatized. The bill, regardless, is a recipe for elder abuse with the most obvious reason being a complete lack of oversight at the death.

Even if you are for the concept of assisted suicide, H.1991 is the wrong bill.

Respectfully Submitted,



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