MEMORANDUM

TO: The Rhode Island House Committee on Health, Education and Welfare

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

RE: Vote "No" H 7659; No Assisted Suicide/Euthanasia

HEARING: Wednesday, March 23, 2016

MEMO DATE: March 21, 2016

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I. INTRODUCTION

I am an attorney in Washington State where assisted suicide is legal.[1] Our law is based on a similar law in Oregon. Both laws are similar to the proposed bill, H 7659.[2]

The proposed bill seeks to legalize physician-assisted suicide and euthanasia as those terms are traditionally defined. The bill describes these practices as "hastening death" but there is no requirement that a person be near death. "Eligible" persons may have years, even decades, to live.

The bill is also sold as assuring patient choice and control. The bill is instead stacked against the patient and a recipe for elder abuse. I urge you to vote "No" on H 7659. Don't be fooled.

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

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[1] I am an elder law attorney licensed to practice law in Washington State since 1986. I am also 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 am president of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide and euthanasia. See www.margaretdore.com and www.choiceillusion.org.

[2] H 7659 is attached in the appendix, at pages A-1 through A-7.

act."[3] The AMA gives this example:

> [A] physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide.[4]

"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.[5]

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

Withholding or withdrawing treatment ("pulling the plug") is not assisted suicide or euthanasia if the purpose is to withhold or remove burdensome treatment -- 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.[6]

C. The AMA Rejects Assisted Suicide and Euthanasia

The AMA rejects assisted suicide and euthanasia, stating

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[3] The AMA Code of Medical Ethics, Opinion 2.211, attached at A-8.

[4] Id.

[5] AMA Opinion 2.21, Euthanasia, attached hereto at A-9.

[6] 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*, 01/14/09. (Article at A-10; quote at A-12).

they are:

> [F]undamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks.[7]

D. Elder Abuse is a Pervasive Problem, Which Includes the Neglect, Financial Exploitation and Murder of Older Adults

The National Center on Elder Abuse estimates that 10 percent of seniors are subjected to elder abuse each year.[8] The majority of perpetrators are "family members and other trusted individuals."[9] They often start out with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or to coercing victims to sign over deeds to their homes, to change their wills or to liquidate their assets.[10] Victims may even be murdered.[11] Amy Mix, of the AARP Legal Counsel of the Elderly, explains why older people are especially vulnerable:

> The elderly are at an at-risk group for a lot of reasons, including, but not limited to diminished capacity, isolation from family and other caregivers, lack of sophistication

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7 AMA Code of Medical Ethics, Opns 2.211 and 2.21, supra at A-8 and A-9.

8 Larry Grimaldi, "Taking Charge: Putting a stop to elder abuse is everybody's business," *Providence Journal*, October 6, 2014. (Attached hereto at A-13 and A-14).

9 MetLife Mature Market Institute Study: "Broken Trust: Elders, Family and Finances," March 2009, at p. 14, available at https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf.

10 Id.

11 Id., p. 24.

> when it comes to purchasing property, financing, or using computers . . . .
>
> We had a senior victim who had given her life savings away to some scammer who told her that she'd won the lottery and would have to pay the taxes ahead of time. . . . The scammer found the victim using information in her husband's obituary.[12]

E. Victims Do Not Report

Elder abuse is prevalent in part because victims do not report.[13] "One study estimated that only 1 in 14 cases ever comes to the attention of the authorities."[14] In another study, it was 1 out of 25 cases.[15] Reasons for the lack of reporting include victim embarrassment and a reluctance to get family members into trouble.[16] Victims can also be afraid to report due to their dependence on the perpetrator for help with daily tasks.[17]

III. THE BILL

A. Patients May Have Years, Even Decades, to Live

The bill applies to persons diagnosed with a "terminal

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[12] Kathryn Alfisi, "Breaking the Silence on Elder Abuse," *Washington Lawyer*, February 2015. (Attached hereto at A-15 to A-16, quote at A-16).

[13] Nat'l Center on Elder Abuse, http://www.ncea.aoa.gov/Library/Data, p.2

[14] Id.

[15] Id.

[16] Minnesota Elder Justice Center, "Know the Basics: Protecting People at Risk," at http://elderjusticemn.org/know-the-basics/protecting-people-at-risk.

[17] Grimaldi, supra, attached hereto at A-13 to A-14.

condition." Such persons may have years, even decades, to live. This is true for three reasons:

1. If Rhode Island follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for people with chronic conditions such as insulin dependent diabetes

The bill states:

> "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six (6) months or less.[18]

Oregon's law has a similar definition of "terminal disease," 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.[19]

In Oregon, this similar definition is interpreted to include chronic conditions such as "chronic lower respiratory disease" and "diabetes mellitus" (diabetes).[20] Oregon doctor William Toffler explains:

> Persons with these conditions are considered terminal if they are dependent on their

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18 H 7659, § 23-4.13-2(10). (Attached hereto at A-2, lines 16-17).

19 Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-17.

20 See Oregon government report attached hereto at A-23 and A-24 (listing "chronic lower respiratory disease" and "diabetes mellitus" as "underlying illness[es]" for the purpose of assisted suicide). The entire report is attached hereto at A-18 to A-24.

medications, such as insulin, to live.[21]

If Rhode Island enacts the proposed bill and follows Oregon's interpretation of terminal disease, assisted suicide and euthanasia will be legalized for people with chronic conditions such as insulin dependent diabetes.

2. Doctor predictions of life expectancy can be wrong

Patients may also have years to live because doctor predictions of life expectancy can be wrong. This is due to misdiagnosis and the fact that predicting life expectancy is not an exact science.[22] Consider John Norton, who was diagnosed with ALS (Lou Gehrig's disease) at age 18.[23] He was told that he would get progressively worse (be paralyzed) and die in three to five years.[24] Instead, the disease progression stopped on its own.[25] 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.[26]

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[21] Published Letter to the Editor, William Toffler MD, New Haven Register, February 24, 2014, ¶2. (My private copy is attached hereto at A-25. I verified the accuracy of the content with Dr. Toffler).

[22] See Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14 (attached at A-45); and Nina Shapiro, supra at footnote 6.

[23] Affidavit of John Norton, ¶ 1 (Attached hereto at A-26).

[24] Id., ¶ 1.

[25] Id., ¶ 4.

[26] Id., ¶ 5.

3. 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 made a settled decision to use Oregon's law.[27] Her doctor convinced her to be treated instead.[28] In a 2012 affidavit, she states:

> This last July, it was 12 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.[29]

B. Someone Else is Allowed to Speak for the Patient

The bill requires a patient requesting the lethal dose to be "capable."[30] This is, however, a relaxed standard in which someone else is allowed to speak for the patient. The bill states:

> "Capable" means that a patient has the ability to make and communicate health care decisions to a physician, <u>including communication through persons familiar with the patient's manner of communicating</u> . . . (Emphasis added.)[31]

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27 Affidavit of Kenneth Stevens, MD, attached at A-29 to A-35; Jeanette Hall discussed at A-29 to A-30. Affidavit of Jeanette Hall, ¶¶ 5-9 attached at A-36 to A-37.

28 Id.

29 Affidavit of Jeanette Hall, ¶4, at A-37. She is alive today, 15 years later.

30 H 7659, § 23-4.13-3(a)(5)(ii), attached hereto at A-3, lines 3-6.

31 The bill states:

> "Capable" means that a patient has the ability to make and communicate health care decisions to a physician,

With someone else allowed to speak for the patient, the patient's choice and control is not guaranteed.

C. Someone Else is Allowed to Administer the Lethal Dose to the Patient

Generally accepted medical practice allows a doctor, or a person acting under the direction of a doctor, to administer prescription drugs to a patient.[32] Common examples include parents who administer drugs to their children and adult children who administer drugs to their parents.[33] This is normal medical practice.

The bill allows a physician to prescribe the lethal dose to be self-administered.[34] The bill does not say that administration of the lethal dose "must" be by self-administration.[35] With self-administration not mandatory, generally accepted medical practice allows someone else to administer the lethal dose to the patient.

With someone else allowed to administer the lethal dose, the patient is not necessarily in control of his or her fate.

> including communication through persons familiar with the patient's manner of communicating if those persons are available.

§ 23-4.13-2(2), attached hereto at A-1, lines 11-13.

[32] Declaration of Dr. Kenneth Stevens, MD, 01/06/16, at A-48, ¶¶ 9-10.

[33] Id.

[34] See e.g. § 23-4.13-3, attached at A-2, lines 20-32.

[35] See the bill in its entirety, at A-1 to A-7.

D. Allowing Someone Else to Administer the Lethal Dose is Euthanasia as that Term is Traditionally Defined

Allowing someone else to administer the lethal dose to a patient is euthanasia under generally accepted medical terminology. The AMA Code of Ethics, Opinion 2.21, states:

> Euthanasia is the administration of a lethal agent by another person to a patient . . . . (Emphasis added.)[36]

The bill authorizes euthanasia as that term is traditionally defined.

E. The Bill Does Not Prohibit Euthanasia

The bill appears to prohibit "euthanasia," also known as "mercy killing."[37] The bill states:

> Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia.[38]

This prohibition is defined away in the next sentence:

> Action taken in accordance with this chapter shall not be construed for any purpose to constitute . . . mercy killing [euthanasia][39]

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[36] See AMA Opinion 2.21 attached hereto at A-9.

[37] See http://medical-dictionary.thefreedictionary.com/mercy+killing (defining "mercy killing" as euthanasia).

[38] § 23-4.13-12, attached hereto at A-6, lines 25-27.

[39] Id., lines 27-28.

F. There is No Oversight Over Administration of the Lethal Dose

If for the purpose of argument, the bill does not allow euthanasia, patients are still at risk to the actions of other people. This is because the bill does not require a doctor or even a witness to be present when the lethal dose is administered.[40] There is a complete lack of oversight at the death.[41]

Without oversight, the opportunity is created for someone else to administer the lethal dose to the patient; the drugs used are water and alcohol soluble such that they can be injected into a sleeping or restrained person.[42] Even if the patient struggled, who would know? Alex Schadenberg, chair for the Euthanasia Prevention Coalition, International, elaborates:

> With assisted suicide laws in Washington and Oregon [and with the Rhode Island bill], 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. . . . [I]f a patient struggled, "who would know?" (Emphasis added.)[43]

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40 See the bill in its entirety, attached hereto at A-1 to A-7.

41 Id.

42 The drugs used for assisted suicide in Oregon and Washington include Secobarbital and Pentobarbital (Nembutal). See Oregon's government report, page 5, attached at A-23 (listing these drugs). These drugs are water and alcohol soluble. Seehttp://www.drugs.com/pr/seconal-sodium.html and http://www.drugs.com/pro/nembutal.html.

43 Alex Schadenberg, Letter to the Editor, "Elder abuse a growing problem," *The Advocate*, Official Publication of the Idaho State Bar, October 2010, page 14, available at http://www.margaretdore.com/info/October_Letters.pdf.

G. If Rhode Island Follows Washington State, the Death Certificate Will Report a Natural Death Without Even a Hint That the Actual Cause of Death was Assisted Suicide or Euthanasia

The bill states:

> Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law.[44]

In Washington State, similar language is interpreted by the Washington State Department of Health to require the death certificate to list a natural death without even a hint that the true cause of death was assisted suicide or euthanasia. The Department's "Death Certificate Instructions for Medical Examiners, Coroners and Prosecuting Attorneys," states:

> Washington's [law] . . . 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 the decedent used [Washington's law], 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 [Washington's law] was used, such as:

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[44] § 23-4.13-12, lines 27-28.

a. Suicide
b. Assisted suicide
c. Physician-assisted suicide
d. Death with Dignity
e. I-1000 [Washington's law was passed by I-1000]
f. Mercy killing
g. Euthanasia
h. Secobarbital or Seconal
i. Pentobarbital or Nembutal (Emphasis added.)[45]

If Rhode Island enacts the proposed bill and follows Washington's example, death certificates will be required to list a natural death without even a hint that the actual cause of death was assisted suicide or euthanasia. The significance is a legal inability to prosecute criminal behavior, for example, in the case of an outright murder for the money. The cause of death will be a natural death as a matter of law.

V. OTHER CONSIDERATIONS

A. Compassion & Choices' Mission is to Promote Suicide, Assisted Suicide and Euthanasia

The bill's passage is being spearheaded by the suicide/euthanasia advocacy group, Compassion & Choices.

Compassion & Choices was formed in 2004 as the result of a merger/takeover of two other organizations.[46] One of these organizations was the former Hemlock Society, originally formed

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[45] A copy of the Washington State Department of Health death certificate instruction is attached hereto at A-43.

[46] 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."). Accord. Compassion & Choices Newsletter attached at A-44 ("Years later, the Hemlock Society would become End of Life Choices and then merge with Compassion in Dying to become Compassion & Choices").

by Derek Humphry.[47]

In 2011, Humphry was the keynote speaker at Compassion & Choices' annual meeting here in Washington State.[48] He was also in the news as a promoter of mail-order suicide kits.[49] This was after a depressed 29 year old man used one of the kits to kill himself.[50] Compassion & Choices' newsletter, promoting Humphry's presentation, references him as "the father of the modern movement for choice."[51] Compassion & Choices' mission is to promote suicide, assisted suicide and euthanasia.

B. 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 Montana State Senator Jeff Essmann to observe that any studies claiming that Oregon's law 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

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47 Id.

48 Compassion & Choices Newsletter, regarding Humphry's October 22, 2011 speaking date. (Attached hereto at A-44.)

49 See Jack Moran, "Police kick in door in confusion over suicide kit," *The Register-Guard*, September 21, 2011 (""A spotlight was cast on the mail-order suicide kit business after a 29-year-old Eugene man committed suicide in December using a helium hood kit. The Register-Guard traced the $60 kit to [the company, which] has no website and does no advertising; clients find [the] address through the writings of Humphry.")(Emphasis added)

50 Id.

51 Compassion & Choices Newsletter, at A-44.

> 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.[52]

C. The Oregon Health Plan Steers Patients to Suicide

With legal assisted suicide, Oregon's Health Plan (Medicaid) steers patients to suicide via coverage incentives.[53] Under the proposed Rhode Island bill, providers will have this same ability. Being steered to suicide or euthanasia is not "choice."

D. Legal Physician-Assisted Suicide Can Be Traumatic for Family Members

In 2012, a research study was released addressing trauma suffered by persons who witnessed a legal assisted suicide in Switzerland.[54] The study found that one out of five family members or friends present at an assisted suicide was traumatized. These people,

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[52] Hearing Transcript for the Montana Senate Judiciary Committee on SB 167, February 10, 2011,at http://www.margaretdore.com/pdf/senator_essmann_sb_167_001.pdf.

[53] See Susan Donaldson James, "Death Drugs Cause Uproar in Oregon," ABC News, August 6, 2008 (attached at A-61); KATU TV Web Staff, "Letter noting assisted suicide raises questions," July 30, 2008 (attached at A-64); and Affidavit of Kenneth Stevens, MD (attached at A-30, ¶8 through A-35).

[54] "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. (Cover page attached at A-65).

> experienced full or sub-threshold PTSD (Post Traumatic Stress Disorder) related to the loss of a close person through assisted suicide.[55]

E. My Clients and Their Fathers Suffered Trauma Due to Legal Assisted Suicide in Washington State and Oregon

In Washington State and Oregon, I have had two cases where my clients suffered trauma due to legal assisted suicide. 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's not clear that administration of the lethal dose was voluntary. A man who was present told my client that my 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 he (the father) took it the next night when he was intoxicated on alcohol. My client, although he was not present, was traumatized over the incident, and also by the sudden loss of his father.

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[55] Id.

F. 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. This statistical correlation is consistent with a suicide contagion in which legalizing physician-assisted suicide encouraged other suicides. Please consider the following:

> Oregon's assisted suicide act went into effect "in late 1997."[56]
>
> By 2000, Oregon's conventional suicide rate was "increasing significantly."[57]
>
> By 2007, Oregon's conventional suicide rate was 35% above the national average.[58]
>
> By 2010, Oregon's conventional suicide rate was 41% above the national average.[59]

There is a significant financial cost associated with these other suicides. One reason is that people who attempt suicide (and fail) can injure themselves or become disabled by the attempt. A government report from Oregon states:

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[56] Oregon's assisted suicide report for 2014, first line, at http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year17.pdf

[57] *See* Oregon Health Authority News Release, 09/09/10. ("After decreasing in the 1990s, suicide rates have been increasing significantly since 2000"). (Attached at A-72)

[58] *Id.*

[59] Oregon Health Authority Report, Suicides in Oregon, Trends and Risk Factors (2012 Report), at A-77.

> The cost of suicide is enormous. In 2010 alone, self-inflicted injury hospitalization charges exceeded 41 million dollars; the estimate of total lifetime cost of suicide in Oregon was over 680 million dollars. (Footnotes omitted.)[60]

If Rhode Island legalizes assisted suicide and has the same experience, there could be a similar financial cost.

VI. CONCLUSION

The bill is sold with the promise of choice and control, but the bill is stacked against the patient. Someone else is allowed to speak for the patient during the lethal dose request process and there is a complete lack of oversight at the death. Even if the patient struggled, who would know? The death certificate is required to reflect a natural death, with the significance being a legal inability to prosecute criminal behavior even in the case of an outright murder for the money. The cause of death will be a natural death as a matter of law.

The bill applies to people with years, even decades, to live. If enacted, healthcare care systems will be empowered to steer patients to suicide and euthanasia. Patients and their families will be traumatized. Even if you are for the concept of assisted suicide and euthanasia, not this bill. I urge you to vote "No" on H 7659.

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[60] See report at A-78.

Respectfully Submitted,

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