

MEMORANDUM

TO: The Washington State Senate

FROM: Margaret Dore, Esq.

RE: Vote "Yes" on SB 5433 (informed decision; death with dignity act).

DATE: February 4, 2017

I. INTRODUCTION

I am a lawyer licensed to practice in Washington State since 1986. I urge you to vote "yes" on SB 5433, which will clarify that persons considering assisted suicide under Washington's Death With Dignity Act have a right to be told of their options for cure or to extend life. This is unclear under the Act's current language.

II. ARGUMENT

A. Background.

The Act was enacted pursuant to Initiative 1000 and marketed as providing individual choice and autonomy for patients. Making sure that patients are told of their options for cure or to extend life is consistent with this purpose.

B. What the Act Says Now.

The Act says that patients considering its use have the right to be fully informed of "feasible alternatives" to obtaining a lethal dose. Per the Act, these alternatives include "comfort care, hospice care and pain control."

C. What the Bill Does.

The bill clarifies that patients are entitled to be told of their options for cure or to extend life. RCW 70.245.010 (7) will be amended as follows:

Informed decision" means a decision . . . that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of . . . [t]he feasible alternatives including, but not limited to, comfort care, hospice care, and pain control, treatment for the purpose of cure, and treatment for the purpose of extending the patient's life. (Emphasis added)

SB 5433, page 2, lines 26-28.

This same language will be added to RCW 70.245.040. (Id., p. 3). Similar language will be added to RCW 70.245.050. (Id., p. 5). This is the entire bill. There are no other changes.

D. Why the Bill is Needed.

The bill is needed due to the rule of statutory construction, *ejusdem generis*, which could cause the Act to be interpreted such that patients have no right to be told of options for cure or to extend life.¹

¹ See: <http://dictionary.law.com/Default.aspx?selected=607> regarding *ejusdem generis* (eh-youse-dem generous) v adj. Latin for "of the same kind," used to interpret loosely written statutes. Where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. Example: if a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, "vehicles" would not include airplanes, since the list was of land-based transportation." In the Death with Dignity Act, a patient has a right to be informed about "feasible alternatives," with the examples given all having to do with death, sickness and dying ("comfort care, hospice care, and pain control"). Per the rule of *ejusdem generis*, these examples could be seen as limiting the patient's right

E. Why the Bill Matters.

The Act applies to patients with a "terminal disease," meaning less than six months to live.² Such persons are not necessarily dying and may have years, even decades, to live. See below.

1. Doctor predictions of life expectancy can be wrong.

Maryanne Clayton had Stage IV lung cancer, the most advanced form there is.³ Her doctor gave her two to four months to live.⁴ Four years later, her prognosis had proven to be "quite wrong." A *Seattle Weekly* article states:

Since the day she was given two to four months to live, Clayton has gone with her children on a series of vacations

"We almost lost her because she was having too much fun, not from cancer," [her doctor chuckles].⁵

to be informed to items having to do with death, sickness and dying.

² The Act, RCW 70.245.010(13), 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. (<http://app.leg.wa.gov/RCW/default.aspx?cite=70.245.010>).

³ 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. (<https://choiceisanillusion.files.wordpress.com/2015/08/terminal-uncertainty-w-o-ad.pdf>)

⁴ Id.

⁵ Id.

2. Life can go on.

John Norton was diagnosed with ALS when he was 18 or 19 years old and told that he would get progressively worse (be paralyzed) and die in three to five years.⁶ He lost the ability to grip with his hands, became depressed and was treated for depression.⁷ Then, at year six, the disease progression stopped. In 2012, he met me at the airport, at which time he was 74 years old. His affidavit states:

I still can't grip with my hands. . . . But, I have a wonderful life. I am married to Susan. We have three children and one grandchild. . . . I am a retired bus driver (no gripping required) . . . I help other people by working as a volunteer driver.⁸

3. The six months to live is determined without treatment.

In 2000, Jeanette Hall was diagnosed with terminal cancer and was adamant that she would "do" Oregon's law. Her doctor convinced her to be treated instead.⁹ Today, 16 years later, she is thrilled to be alive. Her declaration, dated June 30, 2016, states: "I am so happy to be alive!"¹⁰

⁶ John Norton Affidavit at https://choiceisanillusion.files.wordpress.com/2014/08/signed-john-norton-affidavit_001.pdf.

⁷ Id., page 2.

⁸ Id.

⁹ Affidavit of Kenneth Stevens, MD, available at https://maasdocuments.files.wordpress.com/2014/08/dr-stevens-affidavit_001.pdf

¹⁰ Declaration of Jeanette Hall, at <https://choiceisanillusion.files.wordpress.com/2016/10/md-jeanette-2016.pdf>

The bill matters because what looks like a dismal situation, may not be so bad. The bill matters because we all deserve the right to know.

III. CONCLUSION.

This is a simple bill, which clarifies that patients considering Washington's Act have a right to be told of their options for cure or to extend life. Passing the bill will be consistent with how the Act was marketed to the voters, as providing choice for patients. I urge you to vote "Yes."

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