

## **I. INTRODUCTION**

HB 160 seeks to legalize physician-assisted suicide, assisted suicide and euthanasia as those terms are traditionally defined.<sup>1</sup> The bill applies to people with years or decades to live. The bill is a recipe for elder abuse.

Patient protections, such as a second doctor and waiting periods, are unenforceable. Indeed, the bill allows legal murder. I urge you to reject this measure.

## **II. DEFINITIONS**

"Physician-assisted suicide" occurs when a doctor provides the means or information to enable a patient to perform the life-ending act.<sup>2</sup> For example, the doctor

provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide.<sup>3</sup>

Assisted suicide is a general term in which an assisting person is not necessarily a physician. "Euthanasia" is the administration of a lethal agent to cause another person's death.<sup>4</sup>

## **III. ELDER ABUSE**

Elder abuse is one of the most under-reported social

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<sup>1</sup> A copy of HB 160 is attached in the appendix at A-101 to A-111.

<sup>2</sup> The American Medical Association ("AMA") Code of Medical Ethics, Opinion 5.7, attached hereto at A-5.

<sup>3</sup> Id.

<sup>4</sup> Id, Opinion 5.8, "Euthanasia," attached at A-5 (lower half of the page).

problems in our society today.<sup>5</sup> Perpetrators are often family members who start out with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or to coercing victims to change their wills or to liquidate their assets.<sup>6</sup>

Perpetrators can also be calculating criminals who resort to murder. Consider Melissa Ann Shepard, the "Internet Black Widow," who preyed on older men. A *Washington Post* article states:

[These men] sought companionship and found instead . . . someone who siphoned their savings, slipped drugs into their food and, in the case of one man, ran him over with a car and left him dead on a dirt road.<sup>7</sup>

#### **IV. PUSHBACK AGAINST ASSISTED SUICIDE**

##### **A. This Year, the South Dakota Legislature Passed a Nearly Unanimous Resolution Opposing Assisted Suicide**

This year, the South Dakota Legislature passed Senate Concurrent Resolution 11, opposing physician-assisted suicide.<sup>8</sup>

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<sup>5</sup> Delaware Adult Protective Services publication excerpt attached hereto at A-6. Entire publication available at <http://www.dhss.delaware.gov/dhss/dsaapd/files/aps.pdf>

<sup>6</sup> Met Life Mature Market Institute, *Broken Trust: Elders, Family and Finances*, March 2009, available at <https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>

<sup>7</sup> Yanan Wang, "This 80-year-old 'Black Widow,' who lured lonesome old men to horrible fates, is out of prison again," *The Washington Post*, 03/21/16, [https://www.washingtonpost.com/news/morning-mix/wp/2016/03/21/this-80-year-old-black-widow-who-lured-lonesome-old-men-to-horrible-fates-is-out-of-prison-again/?utm\\_term=.b67b8fa5e4cf](https://www.washingtonpost.com/news/morning-mix/wp/2016/03/21/this-80-year-old-black-widow-who-lured-lonesome-old-men-to-horrible-fates-is-out-of-prison-again/?utm_term=.b67b8fa5e4cf). Excerpts attached at A-7 to A-10, quote at A-8.

<sup>8</sup> Bill History, South Dakota Senate Concurrent Resolution 11, "Opposing physician-assisted suicide," attached hereto at A-10.

The vote was nearly unanimous.<sup>9</sup>

**B. Last Year, the New Mexico Supreme Court Overturned Assisted Suicide**

Last year, the New Mexico Supreme Court overturned a lower court decision that had recognized a right to physician aid in dying, meaning physician assisted suicide.<sup>10</sup> Physician-assisted suicide is no longer legal in New Mexico.

**C. Five Other States Have Strengthened Their Laws Against Assisted Suicide**

In the last six years, five other states have strengthened their laws against assisted suicide. These states are Arizona, Louisiana, Georgia, Idaho and Ohio.<sup>11</sup>

**IV. THE OREGON AND WASHINGTON LAWS**

HB 160 is based on laws in Oregon and Washington State, enacted by ballot measures in 1997 and 2008, respectively. Since then, just three states and the District of Columbia have passed similar laws (Vermont, California and Colorado). In the fine print, these laws also allow euthanasia.

**VI. HOW THE BILL WORKS**

HB 160 has an application process to obtain the lethal dose,

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<sup>9</sup> Id., 32 to 3 in the Senate; 67 to 1 in the House.

<sup>10</sup> *Morris v. Brandenburg*, 376 P.3d 836 (2016). (Excerpt attached at A-11)

<sup>11</sup> See: AP, "Brewer signs law targeting assisted suicide," *Arizona Capitol Times*, 04/30/14, attached at A-12; AP, "La. assisted-suicide ban strengthened," *The Daily Comet*, 04/24/12, attached at A-13; Georgia HB 1114, attached at A-14; "Idaho Strengthens Law Against Assisted Suicide," attached at A-15 ("The law explicitly provides that causing or aiding a suicide is a felony"); and Ohio HB 470, at <https://choiceisanillusion.files.wordpress>

which includes patient protections including an attending physician, a second doctor and waiting periods.

Once the lethal dose is issued by the pharmacy, there is no oversight. No witness, not even a doctor, is required to be present at the death.

## **VII. THE BILL APPLIES TO PEOPLE WITH YEARS OR DECADES TO LIVE**

HB 160 applies to persons with a "terminal disease," meaning those predicted to have less than six months to live. Such persons may, in fact, have years or decades to live. This is true for three reasons:

### **A. If Delaware Follows Oregon's Interpretation of "Terminal Disease," the Bill Will Apply to People with Chronic Conditions Such as Insulin Dependent Diabetes**

HB 160 states:

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within 6 months.<sup>12</sup>

Oregon's law has a nearly identical definition:

"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>13</sup>

In Oregon, this nearly identical definition is interpreted to include chronic conditions such as "diabetes mellitus," better

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<sup>12</sup> HB 160, § 2501B (13), attached hereto at A-102, lines 41-42.

<sup>13</sup> Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-18.

known as diabetes.<sup>14</sup> Oregon doctor, William Toffler, explains:

[P]eople with chronic conditions are "terminal" [for the purpose of Oregon's law] if without their medications, they have less than six months to live. This is significant when you consider that a typical insulin-dependent 20 year-old will live less than a month without insulin.<sup>15</sup>

Dr. Toffler adds:

Such persons, with insulin, are likely to have decades to live. In fact, most diabetics have a normal life span given appropriate control of their blood sugar.<sup>16</sup>

If the proposed bill is enacted, assisted suicide and euthanasia will be allowed for people with chronic conditions such as insulin dependent diabetes. Such persons may have years or decades to live.

#### **B. Predictions of Life Expectancy Can Be Wrong**

Eligible persons may also have years to live because predictions of life expectancy can be wrong.<sup>17</sup> Consider John Norton, who was diagnosed with ALS (Lou Gehrig's disease) at age 18.<sup>18</sup> He was told that he would get progressively worse (be

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<sup>14</sup> See Declaration of William Toffler, MD, at A-16 to A-17, ¶¶ 2-4. The entire declaration, including exhibits, can be viewed at A-16 to A-20.

<sup>15</sup> Toffler Declaration, attached hereto at A-17, ¶ 5.

<sup>16</sup> Id., ¶ 6.

<sup>17</sup> Cf. Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14, attached hereto at A-21, 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*, 01/14/09. (Excerpts attached at A-22 to A-24).

<sup>18</sup> Affidavit of John Norton, attached hereto at A-25 to A-27.

paralyzed) and die in three to five years.<sup>19</sup> Instead, the disease progression stopped on its own.<sup>20</sup> 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.<sup>21</sup>

### **C. Treatment Can Lead to Recovery**

Consider also Jeanette Hall, who was diagnosed with cancer in 2000 and made a settled decision to use Oregon's law.<sup>22</sup> Her doctor convinced her to be treated instead.<sup>23</sup> In a 2016 declaration, she states:

This July, it will be 16 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.<sup>24</sup>

## **VIII. THE BILL IS STACKED AGAINST THE INDIVIDUAL**

### **A. Someone Else Is Allowed to Communicate on the Patient's Behalf**

A patient obtaining the lethal dose is required to be "capable."<sup>25</sup> This is a relaxed standard in which someone else is

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<sup>19</sup> Id., ¶ 1.

<sup>20</sup> Id., ¶ 4, attached hereto at A-26.

<sup>21</sup> Id., ¶ 5.

<sup>22</sup> Affidavit of Kenneth Stevens, MD, attached at A-28 to A-34; Jeanette Hall discussed at A-28 to A-29; Hall declaration attached at A-35.

<sup>23</sup> Id.

<sup>24</sup> Declaration of Jeanette Hall, ¶4, at A-34.

<sup>25</sup> HB 160, § 2501B(3), attached hereto at A-101, lines 10-14

allowed to communicate for the patient, as long as the communicating person is "familiar with the patient's manner of communicating." The bill states:

"Capable" means that in the opinion of an individual's attending physician and consulting physician, or licensed medical professional if an opinion is requested by the attending or consulting physician, the individual has the ability to make and communicate an informed medical decision to healthcare providers, including communication through a person familiar with the individual's manner of communicating if that person is available.<sup>26</sup>

Being familiar with a patient's manner of communicating is a very minimal standard. Consider, for example, a doctor's assistant, who is familiar with the 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.

With this situation, patient choice and control is far from guaranteed.

**B. "Even If a Patient Struggled, Who Would Know?"**

HB 160 has no oversight over administration of the lethal dose.<sup>27</sup> In addition, the drugs used are water and alcohol soluble, such that they can be injected into a sleeping or

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<sup>26</sup> Id.

<sup>27</sup> See HB 160 in its entirety, attached hereto at A-101 to A-111.

restrained person without consent.<sup>28</sup> Alex Schadenberg, Executive Director for the Euthanasia Prevention Coalition, puts it this way:

With assisted suicide laws in Washington and Oregon [and with the proposed 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. Even if a patient struggled, "who would know?" (Emphasis added).<sup>29</sup>

**C. The Death Certificate Will List a Terminal Illness as the Cause of Death, Which Will Prevent Prosecution for Murder**

The bill states:

The death certificate must list the underlying terminal illness as the cause of death. (Emphasis added).<sup>30</sup>

The significance of requiring a terminal illness to be listed as the cause of death is that it creates a legal inability to prosecute. The official legal cause of death is a terminal illness (not murder) as a matter of law.

More to the point, a perpetrator will be let off the hook: The bill will create the perfect crime.

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<sup>28</sup> In Oregon, the drugs used include Secobarbital, Pentobarbital (Nembutal) and Phenobarbital. See the Oregon government report excerpt, attached hereto at A-36 (listing these drugs). Secobarbital and Pentobarbital are soluble in water and alcohol. See <http://www.drugs.com/pr/seconal-sodium.html> and <http://www.drugs.com/pro/nembutal.html>. Phenobarbital is soluble in alcohol. See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013>

<sup>29</sup> 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](http://www.margaretdore.com/info/October%20Letters.pdf)

<sup>30</sup> The bill, § 2504B(b), attached hereto at A-104, lines 95-96.



**D. Someone Else Is Allowed to Administer the Lethal Dose to the Patient**

The bill allows a doctor, or a person acting under the direction of a doctor, to administer the lethal dose to the patient. This is true for two reasons:

**1. Self-administration is not required**

The bill says that a patient may self-administer the lethal dose.<sup>31</sup> There is no language that administration "must" be by self-administration.<sup>32</sup>

**2. Generally accepted medical practice allows a doctor, or a person acting under the direction of a doctor, to administer medication**

The bill describes prescribing the lethal dose as part of the attending physician's "medical practice."<sup>33</sup> Generally accepted medical practice allows a doctor, or a person acting under the direction of a doctor, to administer prescription drugs

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<sup>31</sup> See HB 160, § 2501B(7), attached hereto at A-102, line 24 ("the individual may self-administer . . . .")

<sup>32</sup> See HB 160 in its entirety, attached hereto at A-101 to A-111.

<sup>33</sup> The bill, § 2501B(2), states:

"Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease, and who routinely provides medical care to patients with advanced and terminal illnesses in the normal course of their medical practice. Such practice may not be primarily or solely comprised of persons requesting medication to end their life in a humane and dignified manner. (Emphasis added).

Attached hereto at A-101, lines 7 to 10.

to a patient.<sup>34</sup> Common examples of persons acting under the direction of a doctor include parents who administer prescription drugs to their children and adult children who administer prescription drugs to their parents.<sup>35</sup>

With self-administration not mandatory, generally accepted medical practice allows a doctor, or a person acting under the direction of a doctor, to administer the lethal dose (a prescription drug) to the patient.

**E. Allowing Someone Else to Administer the Lethal Dose Is Euthanasia**

Allowing someone else to administer the lethal dose to a patient is "euthanasia" under generally accepted medical terminology. The American Medical Association's Ethics Opinion, "Euthanasia," 5.8 states:

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

The bill allows euthanasia as traditionally defined.

**F. The Bill Merely Requires That Actions Be in "Accordance" With Its Provisions; Actual Compliance Is Not Required**

The bill describes both the attending physician and the patient as acting in "accordance" with the bill. The bill

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<sup>34</sup> Declaration of Kenneth Stevens, MD, January 6, 2016, attached hereto at A-37 to A-39, relevant material at A-39, ¶¶ 9 & 10.

<sup>35</sup> Id.

<sup>36</sup> Opinion 5.8, Attached hereto at A-5 (lower half of the page).

states:

The attending physician shall do all of the following: . . .

(11) Ensure that all appropriate steps are carried out in accordance with the provisions of this chapter prior to writing a prescription for medication to enable a qualified patient to end their life in a humane and dignified manner.<sup>37</sup>

[and]

An adult [the patient] who is capable, is a resident of Delaware, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed a wish to die, may make a written request for medication for the purpose of ending their life in a humane and dignified manner in accordance with this chapter. (Emphasis added).<sup>38</sup>

The bill does not define "accordance."<sup>39</sup> Dictionary definitions include "in the spirit of," meaning "in thought or intention."<sup>40</sup> A mere thought or intention to comply with the bill is to act in accordance with the bill. Actual compliance is not required.

For an example of how "accordance" is interpreted in practice, see the discussion below regarding Washington State.

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<sup>37</sup> HB 160, § 2504B(a), lines 62 to 85, attached hereto at A-103 to A-104.

<sup>38</sup> Id., § 2502B(a), lines 44-47, attached hereto at A-102.

<sup>39</sup> See the bill in its entirety, attached at A-101 to A-111.

<sup>40</sup> See "accordance" definition attached hereto at A-58, and "in the spirit" definition attached hereto at A-59.

**G. If Delaware Follows Washington State, There Will Be an Official Legal Cover Up; Compliance With Patient Protections Will Be Irrelevant**

Again, the bill states:

The death certificate must list the underlying terminal illness as the cause of death.<sup>41</sup>

The bill also states:

Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide.<sup>42</sup>

In Washington State, nearly identical language is interpreted by the Washington State Department of Health to require the death certificate to list a terminal disease as the cause of death, without even a hint that the actual cause of death was assisted suicide or euthanasia. The only relevant inquiry is whether the law was "used."

The Washington State Department of Health, "Death Certificate Instructions for Medical Examiners, Coroners and Prosecuting Attorneys," state:

Washington's [law says] "[T]he patient's death certificate ... shall list the underlying terminal disease as the cause of death." [Washington's law] 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>41</sup> HB 160, § 2504B(b), attached hereto at A-104, lines 95-96.

<sup>42</sup> Id., § 2517, lines 186 to 187.

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. . . .
  
3. The cause of death section may not contain any language that indicates that [the law] was used, such as:
  - 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.)<sup>43</sup>

If Delaware enacts the proposed bill and follows Washington State, death certificates will list a terminal illness as the cause of death without even a hint that the actual cause of death was assisted suicide or euthanasia. This will be without regard to whether there was compliance with patient protections. There will be an official legal cover up.

#### **IX. OREGON IS NOT A VALID CASE STUDY**

Oregon is not a valid case study due to a near complete lack of transparency regarding its law.<sup>44</sup> Even law enforcement does

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<sup>43</sup> A copy of the Washington State Department of Health death certificate instruction is attached hereto at A-40.

<sup>44</sup> See: "Declaration of Testimony" by Oregon attorney Isaac Jackson, dated 09/18/12, attached at A-45 to A-50 (regarding the run-around he got when he attempted to learn whether his client's father had died under Oregon's law -

not have access to information collected by the state.<sup>45</sup> Source documentation is destroyed.<sup>46</sup> The bottom line: Oregon's official data cannot be verified.

## **X. PATIENTS AND FAMILIES WILL BE TRAUMATIZED**

### **A. The Swiss Study: Physician-Assisted Suicide Traumatic for Family Members**

In 2012, a European research study addressed trauma suffered by persons who witnessed legal physician-assisted suicide in Switzerland.<sup>47</sup> The study found that one out of five family members or friends present at an assisted suicide was traumatized. These people,

experienced full or sub-threshold PTSD (Post Traumatic Stress Disorder) related to the loss of a close person through assisted suicide.<sup>48</sup>

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the Oregon Health Authority would neither confirm nor deny whether the father had died under the law); E-mail from Alicia Parkman, Oregon Mortality Research Analyst, to Margaret Dore, dated 01/04/12, attached at A-51 to A-52 (law enforcement cannot get access to information); Excerpt from Oregon's website at A-53 (patient identities "not recorded in any manner"); E-mail from Parkman to Dore, 06/27/11, attached at A-55 to A-56 ("all source documentation" destroyed after one year); and "Confidentiality of Death Certificates" policy issued by the Oregon Department of Human Resources Health Division, 02/12/97 1997, (employees failing to comply with confidentiality rules "will immediately be terminated"), *Issues in Law & Medicine*, Vol. 14, No. 3, 1998.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</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) 1602-1606, available at <http://choiceisanillusion.files.wordpress.com/2012/10/family-members-traumatized-eur-psych-2012.pdf> (Cover page attached hereto at A-57)

<sup>48</sup> Id., at A-57.

## **B. My Clients Suffered Trauma in Oregon and Washington State**

In Oregon and Washington State, 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 at the death of my client's father told my client that his 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 had taken the lethal dose the next night when he was intoxicated on alcohol. The man who told this to my client subsequently changed his story.

My client, although he was not present at the death, was traumatized over the incident, and also by the sudden loss of his father.

## **XI. CONCLUSION**

Enacting the proposed bill will encourage people with years or decades to live to throw away their lives.

Administration of the lethal dose is allowed to occur in private without a doctor or witness present. If the patient

objected, or even struggled, who would know?

The death certificate will list a terminal illness as the cause of death. This will prevent prosecution for murder, no matter what the facts. The bill, if enacted, will create the perfect crime. Don't make Oregon and Washington's mistake. I urge you to reject HB 160.

Respectfully Submitted,

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