IN THE STATE OF NEW MEXICO

IN RE HB 90 AND SB 153	**DECLARATION OF WILLIAM TOFFLER, MD**

I, WILLIAM TOFFLER, declare the following under penalty of perjury.

1. I am a professor of Family Medicine and a practicing physician in Oregon for over 30 years. I write to provide some insight on the issue of physician-assisted suicide, which is legal in Oregon, and which I understand has been proposed for legalization in New Mexico.

2. Oregon's law applies to persons with a terminal disease who are predicted to have less than six months to live. Our law 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.

ORS 127.800 §1.01(12), attached hereto, at A-2.

3. In practice, this definition is interpreted to include people with chronic conditions such as "diabetes mellitus," better known as "diabetes."

4. Attached hereto, at A-3 and A-4, are excerpts from the most recent government statistical report regarding our law. The excerpts list diabetes mellitus as "underlying illnesses" sufficient to justify assisted suicide. The full report can be read at this link:
https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year20.pdf

5. In Oregon, people with chronic conditions are "terminal," 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.

6. 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. Indeed, treatment with insulin can allow patients to live happy, healthy and productive lives.

7. The New Mexico proposals, HB 90 and SB 153, have a similar terminal criteria applying to deaths within the foreseeable future:

> "Terminal illness" means a disease or condition that is incurable and irreversible and that, in accordance with reasonable medical judgment, will result in death within the foreseeable future.

Attached hereto at A-6 and A-7.

8. In my professional judgment, the New Mexico definition also applies to persons with chronic conditions such as insulin dependent diabetes. This is because treatments such as insulin do not reverse or cure the underlying disease or condition. The disease remains in place despite treatment.

9. Patients, instead, are able to function. This is especially true with diabetes in which treatment with insulin can allow them to live happy, healthy and productive lives.

Signed under penalty of perjury, this 1st day of February 2019

William L Toffler MD

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THE OREGON DEATH WITH DIGNITY ACT

OREGON REVISED STATUTES

(General Provisions)

(Section 1)

Note: The division headings, subdivision headings and leadlines for 127.800 to 127.890, 127.895 and 127.897 were enacted as part of Ballot Measure 16 (1994) and were not provided by Legislative Counsel.

127.800 §1.01. Definitions. The following words and phrases, whenever used in ORS 127.800 to 127.897, have the following meanings:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(11) "Qualified patient" means a capable adult who is a resident of Oregon and has satisfied the requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

X

(12) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. [1995 c.3 §1.01; 1999 c.423 §1]

(Written Request for Medication to End One's Life in a Humane and Dignified Manner)

(Section 2)

127.805 §2.01. Who may initiate a written request for medication. (1) An adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.

(2) No person shall qualify under the provisions of ORS 127.800 to 127.897 solely because of age or disability. [1995 c.3 §2.01; 1999 c.423 §2]

127.810 §2.02. Form of the written request. (1) A valid request for medication under ORS 127.800 to 127.897 shall be in substantially the form described in ORS 127.897, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

Table 1. Characteristics and end-of-life care of 1,275 DWDA patients who have died from ingesting a lethal dose of medication as of January 19, 2018, by year, Oregon, 1998–2017

Characteristics	2017 (N=143)	1998–2016 (N=1,132)	Total (N=1,275)
Sex	N (%)[1]	N (%)[1]	N (%)[1]
Male (%)	83 (58.0)	585 (51.7)	668 (52.4)
Female (%)	60 (42.0)	547 (48.3)	607 (47.6)
Age			
18-34 (%)	0 (0.0)	9 (0.8)	9 (0.7)
35-44 (%)	2 (1.4)	24 (2.1)	26 (2.0)
45-54 (%)	3 (2.1)	70 (6.2)	73 (5.7)
55-64 (%)	23 (16.1)	225 (19.9)	248 (19.5)
65-74 (%)	46 (32.2)	342 (30.2)	388 (30.4)
75-84 (%)	43 (30.1)	292 (25.8)	335 (26.3)
85+ (%)	26 (18.2)	170 (15.0)	196 (15.4)
Median years (range)	74 (41-99)	72 (25-102)	72 (25-102)
Race			
White (%)	135 (94.4)	1,088 (96.5)	1,223 (96.3)
African American (%)	0 (0.0)	1 (0.1)	1 (0.1)
American Indian (%)	0 (0.0)	2 (0.2)	2 (0.2)
Asian (%)	4 (2.8)	15 (1.3)	19 (1.5)
Pacific Islander (%)	0 (0.0)	1 (0.1)	1 (0.1)
Other (%)	0 (0.0)	3 (0.3)	3 (0.2)
Two or more races (%)	1 (0.7)	5 (0.4)	6 (0.5)
Hispanic (%)	3 (2.1)	12 (1.1)	15 (1.2)
Unknown	*0*	*5*	*5*
Marital status			
Married (including Registered Domestic Partner) (%)	75 (52.4)	514 (45.7)	589 (46.5)
Widowed (%)	26 (18.2)	258 (22.9)	284 (22.4)
Never married (%)	6 (4.2)	86 (7.6)	92 (7.3)
Divorced (%)	36 (25.2)	267 (23.7)	303 (23.9)
Unknown	*0*	*7*	*7*
Education			
Less than high school (%)	7 (5.0)	63 (5.6)	70 (5.5)
High school graduate (%)	36 (25.5)	242 (21.6)	278 (22.0)
Some college (%)	29 (20.6)	299 (26.6)	328 (26.0)
Baccalaureate or higher (%)	69 (48.9)	518 (46.2)	587 (46.5)
Unknown	*2*	*10*	*12*

A-3

Characteristics	2017 (N=143)		1998–2016 (N=1,132)		Total (N=1,275)	
Residence						
Metro counties (Clackamas, Multnomah, Washington) (%)	55	(38.5)	484	(43.1)	539	(42.6)
Coastal counties (%)	12	(8.4)	80	(7.1)	92	(7.3)
Other western counties (%)	65	(45.5)	471	(41.9)	536	(42.3)
East of the Cascades (%)	11	(7.7)	88	(7.8)	99	(7.8)
Unknown	*0*		*9*		*9*	
End of life care						
Hospice						
Enrolled (%)	130	(90.9)	989	(90.1)	1119	(90.2)
Not enrolled (%)	13	(9.1)	109	(9.9)	122	(9.8)
Unknown	*0*		*34*		*34*	
Insurance						
Private (%)	36	(31.3)	569	(53.8)	605	(51.6)
Medicare, Medicaid or other governmental (%)	78	(67.8)	474	(44.8)	552	(47.1)
None (%)	1	(0.9)	14	(1.3)	15	(1.3)
Unknown	28		75		103	
Underlying illness						
Cancer (%)	**110**	**(76.9)**	**883**	**(78.0)**	**993**	**(77.9)**
Lung and bronchus (%)	23	(16.1)	193	(17.0)	216	(16.9)
Breast (%)	6	(4.2)	86	(7.6)	92	(7.2)
Colon (%)	6	(4.2)	73	(6.4)	79	(6.2)
Pancreas (%)	15	(10.5)	74	(6.5)	89	(7.0)
Prostate (%)	10	(7.0)	48	(4.2)	58	(4.5)
Ovary (%)	4	(2.8)	41	(3.6)	45	(3.5)
Other cancers (%)	46	(32.2)	368	(32.5)	414	(32.5)
Neurological disease (%)	**20**	**(14.0)**	**114**	**(10.1)**	**134**	**(10.5)**
Amyotrophic lateral sclerosis (%)	10	(7.0)	90	(8.0)	100	(7.8)
Other neurological disease (%)	10	(7.0)	24	(2.1)	34	(2.7)
Respiratory disease [e.g., COPD] (%)	**2**	**(1.4)**	**59**	**(5.2)**	**61**	**(4.8)**
Heart/circulatory disease (%)	**9**	**(6.3)**	**40**	**(3.5)**	**49**	**(3.8)**
Infectious disease [e.g., HIV/AIDS] (%))	**0**	**(0.0)**	**13**	**(1.1)**	**13**	**(1.0)**
Gastrointestinal disease [e.g., liver disease] (%)	**0**	**(0.0)**	**8**	**(0.7)**	**8**	**(0.6)**
Endocrine/metabolic disease [e.g., diabetes] (%)	**1**	**(0.7)**	**7**	**(0.6)**	**8**	**(0.6)**
Other illnesses (%)[2]	**1**	**(0.7)**	**8**	**(0.7)**	**9**	**(0.7)**

A-4

Characteristics	2017 (N=143)	1998–2016 (N=1,132)	Total (N=1,275)
DWDA process			
Referred for psychiatric evaluation (%)	5 (3.5)	57 (5.1)	62 (4.9)
Patient informed family of decision (%)[3]	139 (97.9)	982 (93.1)	1,121 (93.7)
Patient died at			
Home (patient, family or friend) (%)	129 (90.2)	1,052 (93.4)	1,181 (93.1)
Long term care, assisted living or foster care facility (%)	13 (9.1)	55 (4.9)	68 (5.4)
Hospital (%)	0 (0.0)	4 (0.4)	4 (0.3)
Other (%)	1 (0.7)	15 (1.3)	16 (1.3)
Unknown	*0*	*6*	*6*
Lethal medication			
Secobarbital (%)	71 (49.7)	676 (59.7)	747 (58.6)
Pentobarbital (%)	0 (0.0)	386 (34.1)	386 (30.3)
Phenobarbital (%)	6 (4.2)	57 (5.0)	63 (4.9)
Morphine sulfate (%)	66 (46.2)	6 (0.5)	72 (5.6)
Other (%)	0 (0.0)	7 (0.6)	7 (0.5)
End of life concerns[4]	**(N=143)**	**(N=1,132)**	**(N=1,275)**
Losing autonomy (%)	125 (87.4)	1,029 (91.4)	1,154 (90.9)
Less able to engage in activities making life enjoyable (%)	126 (88.1)	1,011 (89.7)	1,137 (89.5)
Loss of dignity (%)[5]	96 (67.1)	769 (76.9)	865 (75.7)
Losing control of bodily functions (%)	53 (37.1)	526 (46.8)	579 (45.7)
Burden on family, friends/caregivers (%)	79 (55.2)	475 (42.2)	554 (43.7)
Inadequate pain control or concern about it (%)	30 (21.0)	297 (26.4)	327 (25.8)
Financial implications of treatment (%)	8 (5.6)	39 (3.5)	47 (3.7)
Health-care provider present (collected since 2001)	**(N=143)**	**(N=1,062)**	**(N=1,205)**
When medication was ingested[6]			
Prescribing physician	24	163	187
Other provider, prescribing physician not present	24	270	294
No provider	6	91	97
Unknown	*89*	*538*	*627*
At time of death			
Prescribing physician (%)	23 (16.1)	149 (14.3)	172 (14.6)
Other provider, prescribing physician not present (%)	19 (13.3)	295 (28.4)	314 (26.6)
No provider (%)	101 (70.6)	595 (57.3)	696 (58.9)
Unknown	*0*	*23*	*23*
Complications[6]	**(N=143)**	**(N=1,121)**	**(N=1,264)**
Difficulty ingesting/regurgitated	1	24	25
Seizures	2	0	2
Other	1	6	7
None	38	554	592
Unknown	*101*	*537*	*638*

A-5

1 the Physician Assistant Act or the Osteopathic Medicine Act;
2 E. "medical aid in dying" means the medical
3 practice wherein a health care provider prescribes medication
4 to a qualified individual who may self-administer that
5 medication to bring about a peaceful death;
6 F. "mental health professional" means a state-
7 licensed psychiatrist, psychologist, master social worker,
8 psychiatric nurse practitioner or professional clinical mental
9 health counselor;
10 G. "prescribing health care provider" means a
11 health care provider who prescribes medical aid in dying
12 medication;
13 H. "qualified individual" means an individual who
14 has met the requirements of Section 3 of the Elizabeth
15 Whitefield End of Life Options Act;
16 I. "self-administer" means taking an affirmative,
17 conscious, voluntary action to give oneself a pharmaceutical
18 substance;
19 J. "telemedicine" means the remote consultation,
20 diagnosis or treatment of patients by means of
21 telecommunications technology; and
22 K. "terminal illness" means a disease or condition
23 that is incurable and irreversible and that, in accordance with
24 reasonable medical judgment, will result in death within the
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underscored material = new
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HB 90

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SB 153

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