

TO: The New York Legislature

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

RE: Reject Medical Aid in Dying Act, A.2694 and S.3947

* The Act will apply to people with years or decades to live;

* People with money, meaning the middle class and above will be rendered sitting ducks to their heirs and other predators;

* Euthanasia will be allowed.

DATE: January 10, 2020

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* Dore resume in the appendix, pp. A-1 to A-4.
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I. INTRODUCTION

The proposed bills amend New York's public health law by adding a new article (28F), the Medical Aid in Dying Act.¹ The Act is based on similar laws in Oregon and Washington State.²

"Aid in Dying" is a euphemism for euthanasia.³ The Act, however, purports to prohibit euthanasia. On close examination, this prohibition will be unenforceable.

If enacted, the Act will apply to people with years or decades to live. It will also facilitate financial exploitation, especially in the inheritance context. Don't render yourself or someone you care about a sitting duck to heirs and other predators. I urge you to reject the proposed Act.

II. DEFINITIONS (TRADITIONAL)

A. Physician-Assisted Suicide, Assisted Suicide and Euthanasia

The American Medical Association defines physician-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 For example:

¹ The proposed bills, A 2694 and S 3947, are attached in the appendix, beginning at pages A-5 and A-19.

² ORS 127.800 s.1.01. and seq.; RCW Chapter 70.245.

³ Cf. Craig A. Brandt, Model Aid-in-Dying Act, Iowa Law Review, 1989 Oct; 75(1): 125-215, ("Subject: Active Euthanasia"); and Maria T. Celoz Cruz, "Aid-in-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed Euthanasia?," American Journal of Law and Medicine, 1992; 18(4): 369-394. For more information, view the appendix at pp. A-32 & A-33.

⁴ The AMA Code of Medical Ethics, Opinion 5.7, in the appendix, at p. A-34

[T]he 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 an assisting person is not necessarily a physician. Euthanasia is the administration of a lethal agent by another person.⁶

B. Withholding or Withdrawing Treatment

Withholding or withdrawing treatment ("pulling the plug") is not euthanasia if the purpose is to remove burdensome treatment, as opposed to an intent to kill the patient. More importantly, the individual will not necessarily die. Consider this quote regarding a man removed from a ventilator:

[I]nstead of dying as expected, [he] slowly began to get better.⁷

III. ASSISTING PERSONS CAN HAVE AN AGENDA

Persons assisting a suicide or euthanasia can have an agenda. Consider Tammy Sawyer, trustee for Thomas Middleton in Oregon. Two days after his death by legal assisted suicide, she sold his home and deposited the proceeds into bank accounts for her own benefit.⁸ Consider also Graham Morant, convicted of

⁵ Id.

⁶ Opinion 5.8, "Euthanasia," attached in the appendix at page A-35.

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*, 1/13/09, attached at pp. A-36 to A-39; quote at A-38.

⁸ "Sawyer Arraigned on State Fraud Charges," KTVZ.COM, 08/16/16, attached in the appendix at page A-40.

counseling his wife to kill herself in Australia, to get the life insurance.⁹ The Court found:

[Y]ou counselled and aided your wife to kill herself because you wanted ... the 1.4 million.¹⁰

Medical professionals too can have an agenda. New York physician, Michael Swango, got a thrill from killing his patients.¹¹ Consider also Harold Shipman, a doctor in the UK, who not only killed his patients, but stole from them and in one case made himself a beneficiary of the patient's will.¹²

IV. HOW THE ACT WORKS

The Act has an application process to obtain the lethal dose.¹³ Once the lethal dose is issued by the pharmacy, there is no oversight.¹⁴ No witness, not even a doctor, is required to present at the death.¹⁵

⁹ *R v Morant* [2018] QSC 251, Order, 11/02/18, excerpts in the appendix at pp. A-41 and A-42. Full opinion available here: <https://archive.sclqld.org.au/qjudgment/2018/QSC18-251.pdf>

¹⁰ Morant opinion, ¶ 78, attached in the appendix at page A-42.

¹¹ Charlie Leduff, "Prosecutors Say Doctor Killed to Feel a Thrill," *The New York Times*, 09/07/00, attached in the appendix at pages A-43 to A-45, <https://choiceisanillusion.files.wordpress.com/2019/03/ny-times-killed-to-feel-a-thrill-1.pdf> ("Basically, Dr. Swango liked to kill people. By his own admission in his diary, he killed because it thrilled him.")

¹² David Batty, "Q & A: Harold Shipman," *The Guardian*, 08/25/05, at <https://www.theguardian.com/society/2005/aug/25/health.shipman>. Attached in the appendix at pages A-46 to A-48.

¹³ Bill A 2694, § 2899e, attached hereto at A-7; Bill S 3947, § 2899e, attached hereto at A-21.

¹⁴ See both bills in their entirety, attached hereto at A-5 through A-31.

¹⁵ Id.

V. YEARS OR DECADES TO LIVE

A. If New York Follows Oregon Practice, the Act Will Apply to Young Adults With Chronic Conditions Such as Diabetes

The Act applies to persons with a terminal illness or condition expected to produce death within six months. The Act states:

"Terminal illness or condition" means an incurable and irreversible illness or condition that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. (Emphasis added).¹⁶

Oregon's law has a similar criteria, 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.¹⁷

In Oregon, this similar criteria is construed to include chronic conditions, such as diabetes if the patient is insulin dependent. Oregon doctor, William Toffler, explains:

5. In Oregon, chronic conditions such as insulin dependent diabetes are sufficient for assisted suicide, if, without treatment, the patient has less than six months to live.

6. This is significant when you consider that, without insulin, a typical insulin-dependent 20 year old will live less than a month. Such persons, with insulin, are

¹⁶ Bill A. 2694 3, lines 16-18, and Bill S. 3947 3, lines 13-15, attached in the appendix at pages A-7 and A-21, respectively.

¹⁷ Or. Rev. Stat. 127.800 s.1.01(12), attached in the appendix at p. A-52.

likely to have decades to live....¹⁸

B. Predictions of Life Expectancy Can Be Wrong

Eligible persons may also have years or decades to live because predictions of life expectancy can be wrong. This is true due to actual mistakes (the test results got switched), and because predicting life expectancy is not an exact science.¹⁹

Consider John Norton, who was diagnosed with ALS at age 18.²⁰ He was told that he would get progressively worse (be paralyzed) and die in three to five years.²¹ Instead, the disease progression stopped on its own.²² His affidavit 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.²³

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.²⁴ Her

¹⁸ Declaration of William Toffler, MD, May 1, 2018, attached in the appendix at pages A-49 through A-54; quote at page A-50. See also Oregon report excerpt, attached at page A-53 (listing diabetes as an underlying illness sufficient for assisted suicide).

¹⁹ Cf. Jessica Firger, "12 Million Americans Misdiagnosed Each Year," CBS NEWS, April 17, 2014, attached in the appendix, at page A-55; and Nina Shapiro, "Terminal Uncertainty . . .," supra, attached at A-36 to A-39.

²⁰ Affidavit of John Norton, attached hereto at A-56 to A-58.

²¹ Id., at A-56, ¶ 1.

²² Id., at A-57, ¶ 4.

²³ Id., ¶ 5.

²⁴ Declaration of Kenneth Stevens, MD, ¶¶ 3 to 7; attached in the appendix at A-59 to A-61; Hall declaration attached at A-62.

doctor convinced her to be treated instead.²⁵ Her declaration states:

It has now been 19 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.²⁶

VI. "EVEN IF THE PATIENT STRUGGLED, WHO WOULD KNOW?"

The Act has no required oversight over administration of the lethal dose.²⁷ In addition, the drugs used are water or alcohol soluble, such that they can be injected into a sleeping or restrained person without consent.²⁸ 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 Act], 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).²⁹

VII. THE ACT'S EUTHANASIA PROHIBITION IS UNENFORCEABLE

The Act prohibits euthanasia as traditionally defined. The

²⁵ Id.

²⁶ Hall Declaration, ¶4, attached in the appendix at A-62.

²⁷ See the bills in their entirety, beginning at A-5 and A-19, respectively

²⁸ The drugs used include Secobarbital, Pentobarbital, Phenobarbital and Morphine Sulfate, which are water and/or alcohol soluble. See Oregon and Washington report excerpts, in the appendix at pp. A-63 and A-64 (listing these drugs). See also <http://www.drugs.com/pro/nembutal.html> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013>

²⁹ Alex Schadenberg, Letter to the Editor, "Elder abuse a growing problem," *The Advocate*, Official Publication of the Idaho State Bar, October 2010.

Act states:

A health care professional or other person shall not administer the medication [lethal dose] to the patient. (Emphasis added).³⁰

This prohibition is unenforceable for two reasons: (1) due to the Americans with Disabilities Act (ADA); and (2) because deaths will be certified as due to a natural cause. See below.

**A. The ADA Will Trump the Proposed Act;
Euthanasia Will Be Allowed**

The ADA is "a federal civil rights law that prohibits discrimination against individuals with disabilities in every day activities, including medical services."³¹ Here, the proposed Act defines prescribing the lethal dose as a medical practice, which renders it a medical service.³²

Per the ADA, medical care providers are required "to make their services available in an accessible manner."³³ This

³⁰ Bill A. 2694 5, lines 5-6 and Bill S. 3947 5, lines 3-4. Attached in the appendix at pages A-10 and A-23, respectively.

³¹ U.S. Department of Justice, Civil Rights Division, *Disability Rights Section* and the U.S. Department of Health and Human Services, Office for Civil Rights, "Americans with Disabilities Act: Access to Medical Care for Individuals with Mobility Disabilities," July 2010, excerpts attached hereto at A-68 to A-69, quote at A-69. Also available at https://www.ada.gov/medcare_mobility_ta/medcare_ta.htm

³² The Act states:

"Medical aid in dying" means the medical practice of a physician prescribing medication to a qualified individual that the individual may choose to self-administer to bring about death.

Bill A. 2694 2, lines 40-42 and Bill S. 3947 2, lines 37-39. Attached in the appendix at pages A-7 and A-20.

³³ U.S. Department of Justice, *supra*, attached hereto at A-69.

includes:

[R]easonable modifications to policies, practices, and procedures when necessary to make healthcare services fully available to individuals with disabilities, unless the modifications would fundamentally alter the nature of the services (i.e., alter the essential nature of the services). (Emphasis added).³⁴

Here, the fundamental nature of the service is the provision of medication (the lethal dose) to end an individual's life. If the individual is unable to self-administer, the ADA will require providers to make a reasonable modification to procedures so as to make the service fully available, for example, by providing the assistance of another person. In the context of administering a lethal dose, this is euthanasia as traditionally defined. The ADA will trump the proposed Act to allow euthanasia.

B. Death Certificates Will Certify Deaths as Natural, Not Euthanasia

Death certificate forms provided by the New York State Department of Health have six categories for reporting the manner of death, four of which are substantive: (1) natural cause; (2) accident; (3) homicide; and (4) suicide.³⁵ The two other categories are: undetermined circumstances; and pending

³⁴ Id.

³⁵ See New York State Certificate of Death in the appendix at A-70.

investigation.³⁶

The Act states that action taken in "accordance" with the Act shall not be construed for any purpose to constitute suicide or homicide under the law.³⁷

The Act does not define accordance.³⁸ Dictionary definitions include "in the spirit of," meaning "in thought or intention."³⁹ In other words, a mere thought or intent to comply with the Act is sufficient to prevent a death from being treated as a suicide or homicide. The death will also not be an accident due its being an intended event. This leaves natural cause.

The certified manner of death will be natural cause, even if the actual cause of death was euthanasia. For this reason also, the Act's purported euthanasia prohibition will be unenforceable. Legally, deaths will be natural.

VIII. DR. SHIPMAN AND THE CALL FOR DEATH CERTIFICATE REFORM

Per a 2005 article in the UK's Guardian newspaper, there was

³⁶ Id.

³⁷ The Act, § 2899-n, 1.(b) states:

Action taken in accordance with this article [the proposed Act] shall not be construed for any purpose to constitute suicide, assisted suicide, attempted suicide, promoting a suicide attempt, euthanasia, mercy killing, or homicide under the law, including as an accomplice or accessory or otherwise. (Emphasis added). (Emphasis added).

A. 2694 10, lines 20-24, attached hereto at A-16; S. 3947 10, lines 16-20, attached hereto at A-29 to A-30.

³⁸ See the Act in its entirety.

³⁹ See definitions in the appendix at pages A-66 and A-67.

a public inquiry regarding Dr. Shipman's conduct, which determined that he had "killed at least 250 of his patients over 23 years."⁴⁰ The inquiry also found:

that by issuing death certificates stating natural causes, the serial killer [Shipman] was able to evade investigation by coroners.⁴¹

Per a subsequent article in 2015, proposed reforms included having a medical examiner review death certificates, so as to improve patient safety.⁴² Instead, the proposed Act moves in the opposite direction to require that deaths be reported as due to a natural cause. If enacted, doctors, heirs and other perpetrators will be able to kill with impunity under mandatory legal cover.

IX. PERPETRATORS WILL BE ALLOWED TO INHERIT

New York's "slayer rule" provides that a person who kills another person (commits homicide) forfeits any interest in the victim's estate.⁴³ New York attorneys, Ilene S. Cooper and Jaclene D'Agostino, explain:

The rationale is simple - no one should financially benefit from his or her own crime.⁴⁴

⁴⁰ David Batty, *supra*, attached in the appendix at page A-46.

⁴¹ *Id.*, attached hereto at A-48.

⁴² Press Association, "Death Certificate Reform Delays 'Incomprehensible,'" *The Guardian*, January 21, 2015, attached hereto at A-71 to A-72.

⁴³ Ilene S. Cooper and Jaclene D'Agostino, "Forfeiture and New York's 'Slayer Rule,'" *NYSBA Journal*, March/April 2015, excerpt attached at A-73.

⁴⁴ *Id.*

As noted above, however, deaths occurring in accordance with the Act will not be homicide as a matter of law. For this reason, there will be no slayer and therefore no crime. Perpetrators will be allowed to inherit.

X. PARTICIPANTS WILL BE TRAUMATIZED

A. The Swiss Study: Physician-Assisted Suicide Can Be Traumatic for Family Members and Friends

A European research study addressed trauma suffered by persons who witnessed legal physician-assisted suicide in Switzerland.⁴⁵ 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.⁴⁶

B. My Clients Were Traumatized

I have had two cases where my clients and their family members suffered severe emotional distress due to legal assisted suicide. One case was in Oregon, the other case was in Washington State.

In the first case, one side of the family wanted my client's

⁴⁵ "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>

⁴⁶ Id.

father to take the lethal dose, while the other side did not. He (the father) spent the last months of his life caught in the middle and torn over whether or not he should kill himself. He did not take the lethal dose and died a natural death. My client, his adult child, was severely traumatized.

In the other case, my client was told that his father had died at the second of two suicide parties. A person who had attended both parties, told my client that his father had refused to take the lethal dose at the first party, but had died via a lethal dose at the second party, while intoxicated on alcohol. My client, although he was not present, was severely traumatized by the incident.

XI. CONCLUSION

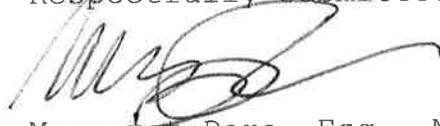
If enacted, the proposed Act will apply to people with years or decades to live. This will be especially true if New York follows Oregon practice to determine life expectancies without treatment. Young adults with chronic conditions, such as diabetes, will be considered terminal and therefore subject to the Act.

Assisting persons can have an agenda, with the more obvious reasons being inheritance and life insurance, but also, as in the case of Dr. Swango, the thrill of seeing someone die. The lack of oversight at the death, coupled with the mandatory falsification of the death certificate to report a natural death,

will create a perfect crime in which perpetrators will be allowed to inherit.

Consider also the UK's experience with Dr. Shipman, an actual serial killer. The public inquiry found that he was able to evade investigation for twenty three years. This was due in large part to his control and falsification of patient death certificates to report natural causes, a practice that will be mandatory under the proposed Act. Will you or the people you care about be safe? I urge you to reject the proposed Act. Say "No" to A 2694 and S 3947.

Respectfully Submitted,



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