

TO: The General Assembly of Maryland

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

RE: Reject SB 701 and HB 643. The bills legalize active euthanasia and physician-assisted suicide for people with years or decades to live, on both a voluntary and non-voluntary basis.

Don't make yourself and the people you care about sitting ducks to heirs and other predators

DATE: March 8, 2020

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* View my CV in the appendix at pp A-1 to A-4.

**LAW OFFICES OF
MARGARET K. DORE, P.S.
CHOICE IS AN ILLUSION,
a nonprofit corporation**
1001 FOURTH AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98154
www.choiceillusion.org
www.margaretdore.org
(206) 697-1217

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I. INTRODUCTION

Bills SB 701 and HB 643 seek to legalize "aid in dying," a euphemism meaning active euthanasia and physician-assisted suicide.¹

The bills employ other euphemisms, and also non sequiturs, which render the bills difficult to understand. As an example, the bills refer to the lethal dose used to kill patients as "medication," a word normally defined as a "substance used to treat disease or injury."²

The bills are also not limited to dying people, "eligible" persons may have years or decades to live. Voluntary patient action is allowed, but not required. For all these reasons, I urge you to vote "No" on SB 701 and HB 643.

II. DEFINITIONS (TRADITIONAL)

A. 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-

¹ Copies of the bills are attached in the appendix, beginning at pages A-5 and A-27 respectively. See also Georgetown University article summaries in the appendix at pages A-81 and A-82, describing aid in dying as euthanasia.

² See the bills at pages A-8 and A-30 (referring to the lethal dose as "medication"). This is versus the usual definition of medication, attached hereto at A-49.

ending act.”³ For example:

[T]he 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 an assisting person is not necessarily a physician. Euthanasia is the administration of a lethal agent “by another person.”⁵

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 from Washington State regarding a man removed from a ventilator:

[I]nstead of dying as expected, [he] slowly began to get better.⁶

III. FACTUAL AND LEGAL BACKGROUND

A. Assisting Persons Can Have an Agenda

Persons assisting a suicide or euthanasia can have an agenda. Consider Tammy Sawyer, trustee for Thomas Middleton in

³ The AMA Code of Medical Ethics, Opinion 5.7, in the appendix at p. A-50.

⁴ Id.

⁵ Id., Opinion 5.8, attached hereto at A-51.

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; in the Appendix, beginning at page A-52; quote at A-54.

Oregon where assisted suicide is legal. Two days after his death by assisted suicide, she sold his home and deposited the proceeds into bank accounts for her own benefit.⁷ Consider also Graham Morant, convicted of counseling his wife to kill herself in Australia, to get the life insurance.⁸ The Court found:

[Y]ou counselled and aided your wife to kill herself because you wanted ... the 1.4 million.⁹

Medical professionals too can have an agenda. New York physician, Michael Swango, got a thrill from killing his patients.¹⁰ 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.¹¹

B. Most States Reject Assisted Suicide and Euthanasia

Most states reject assisted suicide and euthanasia.¹² In

⁷ "Sawyer Arraigned on State Fraud Charges," KTVZ.COM, 08/16/16, attached in the appendix at page A-55.

⁸ R v Morant [2018] QSC 251, Order, 11/02/18, excerpts in the appendix at pp. A-56 and A-57. Full opinion available here: <https://archive.sclqld.org.au/qjudgment/2018/QSC18-251.pdf>

⁹ Morant opinion, ¶ 78, attached hereto at A-57.

¹⁰ Charlie Leduff, "Prosecutors Say Doctor Killed to Feel a Thrill," *The New York Times*, 09/07/00, attached in the appendix at pages A-58 to A-60, <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.")

¹¹ David Batty, "Q & A: Harold Shipman," *The Guardian*, 08/25/05, at <https://www.theguardian.com/society/2005/aug/25/health.shipman>. (Attached hereto at A-61 to A-63).

¹² As of this writing, 42 states do not allow assisted suicide.

2016, the Supreme Court of New Mexico overturned a prior court order allowing assisted suicide.¹³ In the last ten years, eight other states have strengthened their laws against assisted suicide and/or euthanasia.¹⁴

C. The Swiss Study: Physician-Assisted Suicide Can Be Traumatic for Family Members

A European research study addressed trauma suffered by persons who witnessed legal physician-assisted suicide in Switzerland.¹⁵ 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.¹⁶

IV. HOW THE BILLS WORK

The bills have an application process to obtain the lethal dose.¹⁷ Once the lethal dose is issued by the pharmacy, there is

¹³ *Morris v. Brandenburg*, 376 P.3d 836 (2016).

¹⁴ Margaret Dore, "U.S. States Strengthen Their Laws Against Assisted Suicide, April 2, 2019, attached hereto at A-64, also available at <https://www.choiceillusion.org/2019/04/in-last-ten-years-at-least-nine-us.html>

¹⁵ "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>

¹⁶ Id.

¹⁷ The bills have a written request form, which can be viewed in the appendix, at pages A-12 to A-14, and A-34 to A-36, respectively.

no oversight. No doctor, not even a witness, is required to be present at the death.¹⁸

V. THE BILLS APPLY TO PEOPLE WITH YEARS OR DECADES TO LIVE

The bills apply to "terminally ill" adults 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 Maryland Follows Oregon Practice, Chronic Conditions Such as Diabetes Will Qualify for Death via the Bills, Including for Young Adults

The bills state:

"Terminal illness" means a medical condition that, within reasonable medical judgment, involves a prognosis for an individual that likely will result in the individual's death within 6 months. (Emphasis added).¹⁹

Oregon's law has a similar definition, 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.²⁰

In Oregon, this definition is interpreted to include chronic conditions such as "diabetes mellitus," better known as diabetes.²¹ Oregon doctor, William Toffler, explains:

¹⁸ See the bills in their entirety at A-5 through A-48.

¹⁹ The bills, attached hereto at A-11 and A-33.

²⁰ Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-66.

²¹ See excerpt from Oregon's annual report for 2017 (listing "diabetes" as an underlying illness for deaths via its assisted suicide law). Attached hereto at A-67.

In Oregon, people with chronic conditions [such as diabetes] 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. (Emphasis added).²²

With insulin, such persons can have years or decades to live, often with a normal life span.

B. Doctor Predictions of Life Expectancy Can Be Wrong

Eligible persons may also have years or decades 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.²³

Consider John Norton, who was diagnosed with ALS (Lou Gehrig's disease) at age 18.²⁴ He was told that he would get progressively worse (be paralyzed) and die in three to five years.²⁵ Instead, the disease progression stopped on its own.²⁶ In a 2012 affidavit, at age 74, he states:

²² Declaration of William Toffler, MD, attached hereto at A-68 to A-72; the quote is set forth at A-69, ¶ 5.

²³ See Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14 (attached at A-73); 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 hereto at A-52 to A-54).

²⁴ Affidavit of John Norton, ¶ 1 (Attached hereto at A-74 through A-76).

²⁵ Id., ¶ 1.

²⁶ Id., ¶ 4.

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.²⁷

C. Treatment Can Lead to Recovery

Patients may also have years or decades 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.²⁸ Her doctor convinced her to be treated instead.²⁹ In a 2019 affidavit, she states:

It has now been 19 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.³⁰

VI. THE BILLS ALLOW EUTHANASIA

The bills are sold as limited to assisted suicide. Euthanasia as traditionally defined is, however, allowed. See below.

A. "Aid in Dying" Means Euthanasia

As discussed previously, aid in dying is a traditional euphemism for active euthanasia.

B. The Lethal Dose Is "Medication"

The bills refer to the lethal dose as "medication."

²⁷ Id., ¶ 5.

²⁸ Affidavit of Kenneth Stevens, MD, attached at A-77 to A-80; Jeanette Hall discussed at A-77 to A-78. Affidavit of Jeanette Hall, attached at A-80.

²⁹ Id.

³⁰ Affidavit of Jeanette Hall, ¶4, at A-80.

Generally accepted medical practice allows doctors and family members to administer medication to a patient.³¹ If the medication administered is a lethal dose, this is euthanasia as traditionally defined.

C. The Term, "Self-Administer," Paradoxically Allows Another Person to Administer the Lethal Dose

The bills state:

"Self-administer" means a qualified individual's act of taking medication prescribed under §5-6A-07(A) of this subtitle. (Emphasis added.)³²

The bills do not define "taking."³³ Dictionary definitions include "consume as food, drink, medicine, or drugs."³⁴ With this definition, another person putting the lethal dose in a patient's mouth qualifies as self-administration, because the patient thereby takes the lethal dose.

With "self-administer" defined as the act of taking, another person is allowed to administer the lethal dose to the patient. This is euthanasia as traditionally defined.

³¹ Declaration of Kenneth Stevens, MD, dated January 6, 2016, ¶¶ 9-10, attached hereto at page A-79.

³² SB 701 and HB 643, § 5-6A-01(R), attached hereto at A-11 and A-33

³³ See the bills in their entirety.

³⁴ Definition attached hereto at A-83.

VII. THE AMERICANS WITH DISABILITY ACT (ADA) WOULD TRUMP REQUIRED SELF-ADMINISTRATION

If for the purpose of argument, the bills require self-administration of the lethal dose, any such requirement would be unenforceable per the Americans with Disability Act ("ADA").

The ADA is "a federal civil rights law that prohibits discrimination against individuals with disabilities in every day activities, including medical services."³⁵ "Medical care providers are required to make their services available in an accessible manner."³⁶ This includes:

Reasonable modifications to policies, practices, and procedures 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).³⁷

Here, the bills legalize the medical practice of "aid in dying" as part of Maryland healthcare. If for the purpose of argument, the bills in fact require self-administration as traditionally defined, the ADA will require a reasonable accommodation for individuals unable to self-administer. This

³⁵ U.S. Department of Justice, Civil Rights Division, 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, available at https://www.ada.gov/medcare_mobility_ta/medcare_ta.htm

³⁶ Id.

³⁷ Id.

will mean administration by another person. The bills will thereby allow euthanasia as traditionally defined.

VIII. VOLUNTARINESS IS NOT ASSURED

A. "Even If the Patient Struggled, Who Would Know?"

The bills have no required oversight over administration of the lethal dose.³⁸ In addition, the drugs used are water and alcohol soluble, such that they can be injected into a sleeping or restrained person without consent.³⁹ 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 bills], 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).⁴⁰

B. Someone Else Is Allowed to Communicate on the Patient's Behalf

The bills use the word, "capacity," which is specially defined to allow another person to communicate on the patient's

³⁸ See the bills in their entirety, attached hereto at A-5 through A-48.

³⁹ Reported drugs 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-84 and A-85 (listing these drugs). See also <http://www.drugs.com/pro/nembutal.html> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013>

⁴⁰ Alex Schadenberg, Letter to the Editor, "Elder abuse a growing problem," *The Advocate*, Official Publication of the Idaho State Bar, October 2010.

behalf. The bills state:

"Capacity to make medical decisions" means the ability of an individual [patient] to
....

make and communicate an informed decision to health care providers, including communication through another individual familiar with the [patient's] manner of communicating, if the other individual is available. (Emphasis added).⁴¹

Being "familiar with the patient's manner of communicating" is a very minimal standard. Consider, for example, a doctor's assistant who is familiar with a patient's "manner of communicating" in Spanish, but she herself does not understand Spanish. That, however, would be good enough for her to communicate on the patient's behalf during the lethal dose request process. The patient would not be in control of his or her fate.

C. Patient Protections Are Illusory

The bills set forth various patient protections.⁴² The bills also say that actions of the attending physician and other participants are to be performed in "accordance" with the bills. See, for example, § 5-6A-02(A), which states:

An individual may request aid in dying by:

(1) making an initial oral request to the

⁴¹ SB 701 and HB 643, § 5-6A-01(D), attached hereto at A-8 and A-30.

⁴² Id., § 5-6A-02 et seq., attached hereto beginning at A-11 and A-33.

individual's attending physician;

(2) after making an initial oral request, making a written request to the individual's attending physician, in accordance with § 5-6A-03 of this subtitle (Emphasis added).⁴³

The bills do not define "accordance."⁴⁴ Dictionary definitions include "in the spirit of," meaning "in thought or intention."⁴⁵ With these definitions, a mere thought or intention to comply with patient protections is good enough. Patient protections are illusory.

IX. DEATHS ARE "NATURAL" AS A MATTER OF LAW

A. Action Taken in Accordance with the Bills Is Not Suicide or Homicide

The bills state:

Actions taken in accordance with this subtitle do not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide. (Emphasis added).⁴⁶

B. Deaths are "Natural"

In Maryland, death certificates have five categories for reporting the manner of death, four of which are substantive: (1)

⁴³ Attached hereto at A-11 and A-33.

⁴⁴ See the bills in their entirety, attached hereto at A-5 through A-48.

⁴⁵ Definitions attached hereto at A-86 and A-87.

⁴⁶ The bills, § 5-6A-11(D)(2), attached hereto at pages A-21 and A-43.

Homicide; (2) Suicide; (3) Accidental; and (4) Natural.⁴⁷ The fifth category is "Undetermined."⁴⁸

As noted in the preceding section, a death occurring in accordance with the bills does not constitute suicide or homicide. The death is also not an accident due its having been an intended event. This leaves "natural." Deaths occurring pursuant to the bills are natural as a matter of law.

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

Per a 2005 article in the UK's Guardian newspaper, there was a public inquiry regarding Dr. Shipman's conduct, which determined that he had "killed at least 250 of his patients over 23 years."⁴⁹ The inquiry also found:

that by issuing death certificates stating natural causes, the serial killer [Shipman] was able to evade investigation by coroners. (Emphasis added).⁵⁰

Per a subsequent article in 2015, proposed reforms included having a medical examiner review death certificates, so as to

⁴⁷ Maryland Department of Health, Office of the Chief Medical Examiner, Cause and Manner of Death, printed 03/06/20, attached hereto at A-88.

⁴⁸ Id.

⁴⁹ David Batty, "Q & A: Harold Shipman," The Guardian, 08/25/05, at <https://www.theguardian.com/society/2005/aug/25/health.shipman>. (Attached hereto at A-61 to A-63).

⁵⁰ Id., attached hereto at A-63.

improve patient safety.⁵¹ The Maryland bills have instead moved in the opposite direction to require that deaths be reported as natural. If enacted, doctors and other perpetrators will be enabled to kill under mandatory legal cover.

XI. IF ENACTED, THE BILLS WILL RENDER MARYLAND RESIDENTS SITTING DUCKS TO THEIR HEIRS AND OTHER PREDATORS

Under current Maryland law, a "disqualified person" is not allowed to inherit from a person that he or she kills.⁵² The Maryland Code states:

In this section, "disqualified person" means a person who feloniously and intentionally kills, conspires to kill, or procures the killing of the decedent.⁵³

The rationale is that a criminal should not be allowed to benefit from his or her own crime.⁵⁴

Under the proposed bills, however, a person who intentionally kills another person is allowed to inherit. This is due to the deaths being certified as natural as a matter of law. In the event of the bills' passage, Maryland residents with money, meaning the middle class and above, will be rendered

⁵¹ Press Association, "Death Certificate Reform Delays 'Incomprehensible,'" *The Guardian*, January 21, 2015, attached hereto at A-89 and A-90

⁵² Maryland Code § 11-112, Treatment of disqualified persons, attached hereto at A-90 and A-91.

⁵³ Id.

⁵⁴ Cf. Ilene S. Cooper and Jaclene D'Agostino, "Forfeiture and New York's 'Slayer Rule'," *NYSBA Journal*, March/April 2015

sitting ducks to their heirs and other predators.

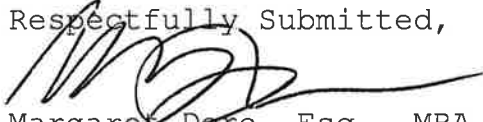
XII. CONCLUSION

If passed into law, the proposed bills will apply to people with years or decades to live. This will be especially true if Maryland follows Oregon practice to determine life expectancies without treatment. Young adults with chronic conditions, such as insulin dependent diabetes, will be considered terminal and therefore subject to the bills.

Assisting persons, including doctors and family members, 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 required 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 are legally allowed to inherit.

I urge you to reject the proposed bills.

Respectfully Submitted,



Margaret Dore, Esq., MBA
Law Offices of Margaret K. Dore, P.S.
Choice is an Illusion, a nonprofit corporation

www.margaretdore.org

www.choiceillusion.org

margaretdore@margaretdore.com

1001 4th Avenue, Suite 4400

Seattle, WA 98154

206 697 1217