
Oregon's Assisted-Suicide Law: Revealing Quotes from Those in the Know

Law creates legal immunity for doctors, not new rights for patients

Barbara Coombs Lee, co-author of Oregon's assisted-suicide law and now president of Compassion & Choices (the organization spearheading attempts to pass Oregon-type laws in other states), testified before Congress that the law provides legal protection for doctors.

"The [Death with Dignity] act **creates a safe harbor in Oregon's assisted suicide laws for an attending physician** to provide a prescription for lethal medication upon repeated voluntary and informed requests from a competent adult terminally-ill Oregon resident."

Barbara Coombs Lee, Transcript of "Oversight Hearing: Assisted Suicide in the United States," U.S. House of Representatives Subcommittee on the Constitution, Committee on the Judiciary, Washington D.C., 4/29/96, p. 71. (Emphasis added.)

15-day waiting period: Political strategy, not patient protection

Oregon's law requires a fifteen-day waiting period between the first request and the provision of drugs for suicide. Kathryn Tucker, legal counsel of Compassion & Choices, admitted that the waiting period was only included to assure passage of the law. She explained that, after failing in several states, their strategy evolved:

"In my view, the Oregon measure, in some sense, became overly restrictive. It has a fifteen-day waiting period. And my own view of the federal constitutional claim is that **a fifteen-day waiting period would be struck down immediately** as unduly burdensome. As we've seen in the reproductive rights context, you can't have a waiting period of that kind of duration. But in the legislative forum, to pass, you need to have measures that **convince people** that it's suitably protective so you see a fifteen day waiting period."

Presentation by Kathryn Tucker at Seattle Pacific University, "What's at Stake with Assisted Suicide," 7/12/97. (Emphasis added.)

Required life expectancy of six months is disregarded

Oregon's law requires that patients be diagnosed with a life expectancy of six months or less before they are eligible for assisted suicide. However, a physician who has been involved in numerous Oregon assisted-suicide deaths said that such life expectancy predictions are inaccurate. Dr. Peter Rasmussen, an advisory board member for Compassion & Choices of Oregon, dismissed the need for an accurate prognosis of life expectancy, saying:

"Admittedly, we are inaccurate in prognosticating the time of death under those circumstances. **We can easily be 100 percent off, but I do not think that is a problem.** If we say a patient has six months to live and we are off by 100 percent and it is really three months or even twelve months, I do not think the patient is harmed in any way...."

Peter Rasmussen, House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill, *Assisted Dying for the Terminally Ill Bill*, Volume II: Evidence. 4/4/05, p. 312, question 842. (Emphasis added.)

Lack of protections after prescription for lethal substance is written

Once doctors write the prescriptions for lethal drugs, the Oregon law provides no protections for patients. There are no provisions to assure that, at the time the fatal drugs are taken, the patient is in fact competent, not depressed, or not pressured by others to die.

“The Act merely regulates the conduct of all parties **up to the point of the drug prescription.**”

Barbara Coombs Lee, Eli D. Stutsman, Kelly T. Hagen, "Physician Assisted Suicide," *Oregon Health Law Manual, Volume 2: Life and Death Decisions*, (Oregon State Bar, 1997) p.8-13. (Emphasis added.)

No way to verify if information in official assisted-suicide reports is accurate or complete

Oregon's official assisted-suicide reports have conceded "there's no way to know if additional deaths went unreported" because the department charged with formulating the reports "has no regulatory authority or resources to ensure compliance with the law."

Linda Prager, "Details emerge on Oregon's first assisted suicides," *American Medical News*, 9/7/98.

The state department charged with formulating Oregon's official reports admitted:

“For that matter the entire account [received from a prescribing doctor] could have been a cock-and-bull story. We assume, however, that physicians were their usual careful accurate selves.”

Oregon Health Division, *CD Summary*, vol. 48, no. 6 (March 16, 1999) p. 2. <http://egov.oregon.gov/DHS/ph/cdsummary/1999/ohd4806.pdf>. (Last accessed 3/17/08.)

No authority to investigate botched assisted-suicide attempts

After media reported on a case in which the prescribed lethal drugs failed to cause death, Barbara Coombs Lee told the Portland Oregonian that Compassion & Choices had notified state officials immediately and that the Oregon Department of Human Services (DHS) was investigating "every possible cause" of the failed assisted suicide. However, DHS issued a press release the same day contradicting Lee's claim:

“The state law authorizing physician-assisted suicide neither requires nor authorizes investigations by DHS.”

Don Colburn, "“Why am I not dead?”" *Oregonian* (Portland, OR), 3/4/05; Barry S. Kast, Oregon Department of Human Services Press Release, "No authority to investigate Death with Dignity case, DHS says," 3/4/05.

Methods approved under Oregon's assisted-suicide law

In a 1997 article, Barbara Coombs Lee and her co-authors wrote:

The route of administration is also discretionary, except that the Act expressly prohibits "lethal injection." ORS 127.880. **It appears that other routes of administration** — such as oral ingestion, rectal suppository, or transdermal absorption — **would fall within the Act.**

After asking the question if delivery of the lethal substance by inhalation would be permitted, the authors went on to answer it by stating:

“Because the goal of the Act is to regulate voluntary self-administration, the critical question is whether the medication, **by whatever route**, is self-administered.”

Barbara Coombs Lee, Eli D. Stutsman, Kelly T. Hagen, "Physician Assisted Suicide," *Oregon Health Law Manual, Volume 2: Life and Death Decisions*, (Oregon State Bar, 1997), pp. 8-19. (Emphasis added.)

Washington initiative intended to lead to laws permitting lethal injection

Oregon's assisted-suicide law has been an isolated piece of legislation. Any expansion of its provisions depends upon the successful passage of a similar law in other states. According to the December 2, 2007, New York Times Magazine cover story, "Death in the Family," about Booth Gardner's campaign for an Oregon-style law in Washington State:

“Gardner wants a law that would permit lethal prescriptions for people whose suffering is unbearable, a standard that can seem no standard at all; a standard that prevails in the Netherlands, the Western nation that has been boldest about legalizing aid in dying; a standard that elevates subjective experience over objective appraisal and that could engage the government and the medical profession in the administration of widespread suicide.... Gardner's campaign is a compromise; he sees it as a first step. If he can sway Washington to embrace a restrictive law, then other states will follow. And gradually, he says, the nation's resistance will subside, the culture will shift and laws with more latitude will be passed....”

<http://www.nytimes.com/2007/12/02/magazine/02suicide-t.html>. (Last accessed 3/17/08.)

Requirement of self-administration could be subject to a successful legal challenge

According to some observers, the lethal injection could be only a lawsuit away in any state that permits assisted suicide. Following media accounts of the assisted-suicide death of an Oregon man whose inability to swallow due to amyotrophic lateral sclerosis (Lou Gehrig's Disease) had made it necessary for his brother-in-law to assist him, a question arose about the constitutionality of the self-administration requirement in Oregon's law. In a letter to a state senator, then deputy attorney general David Schuman (now a judge of the Oregon Court of Appeals) wrote:

“The Death with Dignity Act does not, on its face and in so many words, discriminate against persons who are unable to self-administer medication. Nonetheless, it would have that effect....It therefore seems logical to conclude that persons who are unable to self-medicate will be denied access to a ‘death with dignity’ in disproportionate numbers. Thus, the Act would be treated by courts as though it explicitly denied the ‘benefit’ of a ‘death with dignity’ to disabled people....”

After explaining that the act's self-administration provision could be challenged under the Oregon Constitution, Schuman wrote that a challenge under the Americans with Disabilities Act could also be possible since both the ADA and the state could necessitate the provision of “reasonable accommodation’ that would enable the disabled to avail themselves of the Act's provisions.”

Letter from Oregon Deputy Attorney General David Schuman to State Senator Neil Bryant, 3/15/99 and “Oregon controversy: How assisted can suicide be?” *American Medical News*, 4/12/99.

Physical pain is not the reason for assisted suicide

Although assisted-suicide advocates promote Oregon's law and other similar proposals as a necessity to prevent excruciating, unremitting pain associated with terminal illness, their own accounts after passage of the Oregon law indicate otherwise.

"The No. 1 reason given to me [for obtaining a prescription for assisted suicide] is: 'I don't want to have anyone wipe my rear end,'" explained George Eighmey, Executive director of the assisted-suicide advocacy group Compassion in Dying of Oregon.

Andis Robeznieks, "Assisted-suicide numbers continue to rise in Oregon," *American Medical News*, 3/24-31/03.

Records used for reports are destroyed

According to Dr. Katrina Hedberg, the lead author of many of Oregon's official assisted-suicide reports,

"After we issue the annual report, we destroy the records."

Katrina Hedberg testimony, p. 257, response to question 555, given in Portland, Oregon, before a visiting committee from the British House of Lords. Committee proceedings were published in: House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill, "Assisted Dying for the Terminally Ill Bill," Volume II: Evidence. 4/ 4/05. Available at: <http://www.publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/86ii.pdf> . (Last accessed 3/17/08.)



International Task Force
on Euthanasia & Assisted Suicide

P.O. Box 760
Steubenville, OH 43952
1-800-958-5678

www.internationaltaskforce.org

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