Questions from **Fabian Stahle** (Ståhle), Sweden to Oregon Health Authority, DWDA.INFO@dhsoha.state.or.us about applications of Death With Dignity Act

Answers from **Craig New,** Research Analyst, OREGON HEALTH AUTHORITY, Center for Public Health Practice, Public Health Division

Q1
Does the attending physician need to send the patient's medical record to Oregon State Public Health Division?

A1 December 4th 2017
No. The Attending Physician must submit a compliance form to the Oregon Health Authority. They can choose to submit the "long form" or the "short form." If they choose the long form, they do not need to send medical records to OHA. If they choose the short form, they must send the records. No one has chosen to use the short form in years.
Link to forms:

http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/pasforms.aspx

Q2
Is the consultant physician required to meet with the patient, or could he/she base the decision on a review of the patient's medical record only?

A2 December 4th 2017
Yes, the law states that the Consulting physician must examine the patient and confirm that s/he qualifies for a prescription under the Act.

127.820 s.3.02. Consulting physician confirmation.

Before a patient is qualified under ORS 127.800 to 127.897, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made an informed decision.

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Q3
In the law, "Terminal disease" is defined as an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment (in the opinion of the patient's attending physician and consulting physician), produce death within six months.

Is this rule interpreted as "without administration of life-sustaining treatment"?

A3 December 4th 2017
For your additional question, your interpretation is correct. The question is: Should the disease be allowed to take its course, absent further treatment, is the patient likely to die within six months?

Q4
If the doctor suggest an eligible patient a treatment that possibly could a) prolong the life or b) transform the terminal illness to a chronic illness or c) even cure from the disease - and if the patient doesn't give his/her consent to the proposed treatment is he/she still eligible to take use of the Act?

Q5
If a patient with a chronic disease (for instance diabetes) by some reason decides to opt out from the life-sustaining medication/treatment and by doing so is likely to die within 6 months, thereby transforming the chronic disease to a terminal disease - does he/she then become eligible to take use of the Act?

A4, A5 December 6th 2017
Interesting questions. While this is not addressed specifically in the law, the answer in both cases is yes – those patients would qualify.

The law is best seen as a permissive law, and states only that patients must have a terminal illness with six months or less to live. It does not compel patients to have exhausted all treatment options first, or to continue current treatment. It is up to the patient and doctor to discuss disease and treatment options. But if the patient decides they don't want treatment, that is their choice.

Q6
If the doctor suggest an eligible patient a treatment that possibly could a) prolong life or b) transform the terminal illness to a chronic illness or c) possibly cure the illness - and if the patients health care provider/insurance company is not willing to pay for the proposed treatment - is the patient still eligible to take use of the Act?

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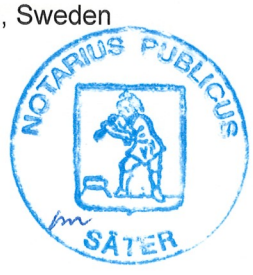

Q7
If a patient having a chronic disease (for instance diabetes) making the patient dependent on treatment/ medication - and the patients health care provider/insurance company is not willing to pay anymore for the treatment/medication whereby the patient is likely to die within 6 months, does the patient then become eligible to take use of the Act?

A6, A7 December 15th 2017
The Oregon law does not address patient eligibility in such great detail, and we have not had the types of legal challenges to the law that tend to flesh out these details. We are left with the requirement that the patient must be suffering from a "terminal disease," which is defined by the law as "an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months." The patient's physician makes the final judgement with regard to patient eligibility, and there is no legal framework for making these determinations (although guidelines have been promulgated by medical professionals).

In your two examples, both patients would qualify for the DWDA. Patients suffering from any disease (not just those that typically qualify one for the DWDA) may not be able to afford some treatments or medication, and may choose not to pursue some treatments or take some medication for personal reasons. This is the patient's decision and the law does not compel them to do otherwise. If the patient does not receive treatment or medication (for whatever reason) and is left with a terminal illness, then s/he would qualify for the DWDA. I think you could also argue that even if the treatment/medication could actually cure the disease, and the patient cannot pay for the treatment, then the disease remains incurable.

Q8
Do you know if the meaning of terminal disease has been interpreted in the same way (=without administration of life-sustaining treatment/medication) from the very beginning when the law came into force or is it an interpretation that has come gradually since one have realized the meaning of what the law actually says and does not say?

A8 December 15th 2017
My understanding is that the language of the law has not changed since it was passed. There has been discussion and debate among advocates on both sides of the law, but none of this has materialized into changes (or clarifications) to the law itself.

We at the Public Health Division (which is directed by the law to monitor compliance) have always held this interpretation of "terminal illness."

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Q9
How does the Public Health Division/Oregon Health Authority check that the eligibility criteria are really fullfilled?

A9 December 18th 2017
The attending physician indicates whether the eligibility criteria have been met on his/her compliance form, which they submit to the Public Health Division as required by the law. The consulting physician does the same, and acts as a check on the first physician. We (the Public Health Division) do not independently verify the eligibility of the patients.

Q10
Is it a concern if a patient intending to make use of the DWDA may have undiagnosed depression?

A10 December 18th 2017
The law states that a patient who is suspected of having a mental illness "causing impaired judgment" must be evaluated and cleared by a psychiatrist or psychologist before a DWDA prescription is written. Some have argued that the low percentage of patients referred for psychiatric evaluation (5%, and falling) suggests that some number of depressed patients are not being properly evaluated. Others argue that some depression is expected with a terminal illness, and that judgement is not necessarily impaired by this.

Q11
As for your answer 1. below I wonder if you are stating that if a physician approved assisted suicide for someone who, technically, did not fulfill the requirements of the law, that based on the reporting procedure, you would never know? *In this summary added clarification: "answer 1. below" refer to A9.*

A11 December 21st 2017
It is correct that OHA does not independently verify patient eligibility, other than monitoring the compliance forms as they are submitted. However, the law requires the physician to determine a patient's eligibility. If a physician believes that a patient meets the criteria (and a second physician agrees), then (technically) that patient does meet the criteria. Does that make sense? This is not to say physicians are always 100% correct. Patients may outlive their prognoses. This is part of the "art" of medicine. But as long as the physician makes a good faith determination of the patient's eligibility, the law is satisfied.

Are you asking about a situation where a physician knows a patient does not meet the criteria, and falsifies documentation and reporting and proceeds with the DWDA process anyway? This is guarded against by the requirement that a second physician confirm the diagnosis and prognosis of the first physician, as well as by

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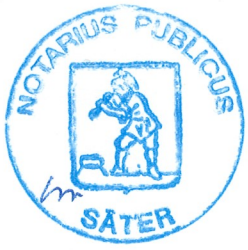

the physician who ends up completing the death certificate. Several professionals would have to be willing to risk their medical licenses to pull off something like that.

Q12
I have also a follow up question regarding your information that Oregon Public Health Division always have held the interpretation that under DWDA "terminal disease" is to be understood as without administration of life-sustaining treatment/medication.

I happened to find the "State of Oregon Official Voters' Pamphlet November 1994". From page 123 I read about Measure 16 and find in the section Definitions that "terminal disease" means an incurable and irreversible disease, that has been medically confirmed and will, within reasonable medical judgement, produce death within six (6) months. In the absence of further definition in the pamphlet of the terms "incurable and irreversible disease" it seems to me as the most straightforward and immediate interpretation of "incurable and irreversible disease" should be a disease for which there is no treatment or medication - in the meaning that all hope is gone. Neither in the Explanatory Statement, nor in the Arguments - Favour or in Opposition, are there any language suggesting a wider interpretation. And then, looking at "State of Oregon Official Voters' Pamphlet November 1997", Measure 51 about repealing DWDA according to previous Measure 16, I cannot find among all Arguments in Favour of repealing the DWDA any suggestions that "terminal disease" could be interpreted wider than the obvious interpretation as stated above.

So, my follow up question is what was the basis for the Oregon Public Health Division to hold the wider interpretation of terminal disease already from the very beginning?

A12 December 21st 2017
I think the key for us is that the patient is not compelled (by law or any other reason) to begin or continue treatment for any disease. If you have brain cancer (as an easy example), you have an incurable and irreversible disease. Treatments such as chemotherapy or surgery won't "cure" the disease. Perhaps they will reverse the course of the disease, perhaps not. I guess in terms of your interpretation, the patient gets to decide the part about whether "all hope is gone."

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