**TO:** The Alaska House Health & Social Services Committee

**FROM:** Margaret Dore, Esq., MBA, President
Choice is an Illusion, a nonprofit corporation[1]

**RE:** Reject HB 54, Sponsor Substitute Version
(No Assisted Suicide/No Euthanasia)

- Bad Things Happen in the Dark
- Don't Let Alaska Become Corrupt Like Oregon

**HEARING:** **Thursday, April 6, 2017 at 3 p.m.**
120 East 4th Street, Room 106
Juneau, Alaska

**MEMO DATE:** March 31, 2017

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* Margaret Dore, Law Office of Margaret K. Dore, PS, Choice is an Illusion, a nonprofit corporation, www.margaretdore.com, www.choiceillusion.org and www.hawaiiagainstassistedsuicide.org 1001 4th Avenue, Suite 4400, Seattle, WA 98154, 206 697 1217

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1. In Oregon, the police officer assigned to the case was not able to get information from the State; the decedent's death certificate was falsified; the officer obtained information from Compassion & Choices . . . . . 4

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## I. INTRODUCTION

HB 54 legalizes physician-assisted suicide and euthanasia as those terms are traditionally defined. The bill is based on a similar law in Oregon, which has a near complete lack of transparency.

If Alaska enacts HB 54 and follows Oregon practice, there will be a similar lack of transparency. The safely and welfare of individual patients will be unverifiable from Alaska State sources.

## II. DISCUSSION

### A. If Alaska Follows Oregon's Interpretation of "Not a Public Record," the Department of Health & Social Services Will Be Insulated from Review, Even by Law Enforcement

HB 54 charges the Department of Health and Social Services with issuing an annual statistical report based on data collected pursuant to the bill.[1] The bill also states:

> The information collected is not a public record under AS 40.25.110, and the department may not make the information available for inspection by the public. (Emphasis added).[2]

Oregon's law has a similar provision, as follows:

> Except as otherwise required by law, the information collected shall not be a public record and may not be made available for

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[1] HB 54, Sponsor Substitute Version, Section 3, § 13.55.210. (Attached hereto at A-1 & A-2).

[2] Id., § 13.55.210 (c).

inspection by the public. (Emphasis added).[3]

In Oregon, this similar provision is interpreted to bar release of information about individual cases, to everyone, including law enforcement. Oregon's website states:

> [T]he Act specifically states that information collected is not a public record and is not available for inspection by the public (ORS 127.865 (2)). The protection of confidentiality conferred by the Death with Dignity Act precludes the Oregon Health Authority [which oversees Oregon's Department of Health] from releasing information that identifies patients or participants, to the public, media, researchers, students, advocates, or other interested parties.... [4]

Consider also this e-mail from Alicia Parkman, Mortality Research Analyst for the Oregon Health Authority, which states:

> We have been contacted by law enforcement . . . in the past, but have not provided identifying information of any type. (Emphasis added).[5]

If Alaska enacts HB 54 and follows Oregon's interpretation of "not a public record," there will be a similar lack of transparency in which even law enforcement will have no access to information about individual cases. The bill will create a government entity above the law.

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[3] ORS 127.865 s.3.11(2) (Attached hereto at A-3)

[4] Oregon Data Release Policy, copy attached hereto at A-62.

[5] E-mail from Alicia Parkman to me, 01/04/12, attached hereto at A-63.

### B. If Alaska Follows Oregon's Data Collection Protocol, Patient Identities Will Not Be Recorded in Any Manner, Source Documentation Will Be Destroyed

Oregon's website describes the data collection protocol for its annual reports, as follows:

> The identity of participating physicians is coded, but the identity of individual patients is not recorded in any manner. Approximately one year from the publication of the Annual Report, all source documentation is destroyed. (Emphasis added).[6]

Alicia Parkman, Mortality Research Analyst for the Oregon Health Authority, makes a similar representation as follows:

> To ensure confidentiality, our office does not maintain source information on participants. (Emphasis added).[7]

The significance is that Oregon's annual reports are unverifiable. If Alaska, based on its similar statutory language, follows Oregon, Alaska's annual reports will also be unverifiable.

### C. If Alaska Follows Oregon, Compassion & Choices, a Non-Governmental Entity, Will Displace the Department of Health and Social Services to Become the Defacto "Agency" Overseeing HB 54

Passage of HB 54 is being spearheaded by the suicide

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[6] Oregon Health Authority, Frequently Asked Questions, attached at A-67.

[7] E-mail from Alicia Parkman to Margaret Dore, 01/04/12, attached hereto at A-63.

promotion group, Compassion & Choices.[8] In Oregon, this organization has used the Oregon law to disable and largely displace the Department of Health as the entity overseeing Oregon's law. See below.

**1. In Oregon, the police officer assigned to the case was not able to get information from the State; the decedent's death certificate was falsified; the officer obtained information from Compassion & Choices**

In 2010, I had client who wanted to know if his father had died under Oregon's law. I referred him to an Oregon attorney, Isaac Jackson, who asked the police to investigate. Jackson's subsequent declaration states:

> 2. I write to inform the court regarding a lack of transparency under Oregon's assisted suicide act. <u>Even law enforcement is denied access to information collected by the State of Oregon. Moreover, according to the current Oregon State website, this lack of access is official Oregon State Policy</u>.
>
> 3. In 2010, I was retained by a client whose father had apparently died under Oregon's law. The client wanted to know whether that was true. I therefore made inquiry on his behalf. <u>However and unlike other deaths I have investigated, it was difficult to get information</u>. . . .
>
> 6. <u>I . . . received a copy of the decedent's death certificate, which is the official death record in Oregon.</u> A true and correct,

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[8] Compassion & Choices is a successor organization to the Hemlock Society, originally founded by suicide promoter, Derek Humphry. See newsletter attached hereto at A-73

> but redacted copy, is attached hereto . . . . The "immediate cause of death" is listed as "cancer." The "manner of death" is listed as "Natural."
>
> 7. Per my request, a police officer was assigned to the case. Per the officer's confidential report, he did not interview my client, but he did interview people who had witnessed the decedent's death.
>
> 8. The officer's report describes how he determined that the [father's] death was under Oregon's assisted suicide law due to records other than from the State of Oregon. The officer's report also describes that he was unable to get this information from the Oregon Health Authority, which was not willing to confirm or deny whether the deceased had used the act . . . . (Emphasis added).[9]

I also read the officer's report. According to the report, Compassion & Choices provided the records necessary for the officer to determine that the decedent had, in fact, died under Oregon's law. In Oregon, Compassion & Choices, a non-governmental entity, has displaced the Department of Health as the agency overseeing Oregon's law.

### 2. In Oregon, Compassion & Choices is like "the fox in the proverbial chicken coop" reporting to the farmer what's happening in the coop

In 2008, the Editorial Board for *The Oregonian*, which is Oregon's largest newspaper, urged Washington State voters to

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[9] Isaac Jackson, Declaration of Testimony, 09/18/12, at A-57 to A-58.

reject its then pending assisted suicide measure.[10] The Editorial Board stated:

> Oregon's physician-assisted suicide program has not been sufficiently transparent. Essentially, a coterie of insiders run the program, with a handful of doctors and others deciding what the public may know. (Emphasis added).[11]

Four days later, Oregon doctors, Kenneth Stevens and William Toffler, published a follow up article, stating:

> The group promoting assisted suicide, so-called "Compassion and Choices (C&C)", are like the fox in the proverbial chicken coop; in this case the fox is reporting its version to the farmer regarding what is happening in the coop. . . .
>
> In 2006, C&C's attorneys intimidated the Oregon Department of Human Services (DHS) to change to euphemisms in referring to Oregon's assisted suicide law. The limited DHS reports of assisted suicides is another indication of this organization's influence. Information that is damaging to the "good public image" of Oregon's assisted suicide law is hidden or glossed-over in the DHS reports. . . . [12]

## III. CONCLUSION

The proposed Oregon-style "oversight" is a sham and will create the opportunity for a non-governmental entity to displace

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[10] The Oregonian Editorial Board, "Washington state's assisted-suicide measure: Don't go there," *The Oregonian*, September 20, 2012, available at http://www.oregonlive.com/opinion/index.ssf/2008/09/washington_states_assisted suic.html

[11] Id.

[12] Kenneth Stevens MD and William Toffler MD, "Assisted suicide: Conspiracy and control," *The Oregonian*, September 24, 2008.

a government agency. The safely and welfare of individuals will be unverifiable from state sources. I urge you to vote "No" on HB 54.

Respectfully submitted this 31ST day of March 2017

Margaret Dore, Esq., MBA
Law Offices of Margaret K. Dore, P.S.
Choice is an Illusion, a nonprofit corporation
www.margaretdore.com
www.choiceillusion.org
1001 4th Avenue, Suite 4400
Seattle, WA 98154
206 697 1217

# Appendix

# Margaret Dore Memo

# Reject HB 54

# as of

# March 31, 2017

individual's request; or

(2) exerts undue influence on an individual to request medication for the purpose of ending the individual's life or to destroy a rescission of the individual's request; in this paragraph, "undue influence" means the control of an individual by a person who stands in a position of trust or confidence to exploit wrongfully the trust, dependency, or fear of the individual to gain control over the decision making of the individual.

(b) Abuse of life-ending process is a class A felony and may be punished as provided in AS 12.55.

(c) This chapter does not prevent the imposition of criminal penalties that apply under another law for conduct that is inconsistent with this chapter.

**Sec. 13.55.190. Civil penalties.** This chapter does not limit liability for civil damages resulting from a person's negligent conduct or intentional misconduct.

**Sec. 13.55.200. Claims for costs incurred.** A governmental entity that incurs expenses that result from a qualified individual's ending the qualified individual's life under this chapter in a public place may file a claim against the estate of the individual to recover the costs and attorney fees related to enforcing the claim.

**Sec. 13.55.210. Duties of department.** (a) The department shall annually review a sample of records maintained under this chapter.

(b) After dispensing medication under this chapter, a health care provider shall file with the department a copy of the record of dispensing the medication.

(c) The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) to facilitate the collection of information about compliance with this chapter. The information collected is not a public record under AS 40.25.110, and the department may not make the information available for inspection by the public.

(d) The department shall generate and make available to the public an annual statistical report of the information collected under (c) of this section. The statistical report may not disclose information that is confidential under (c) of this section, but shall present the information in a manner that prevents the identification of particular persons.

(e) In this section, "department" means the Department of Health and Social

1 Services.

2 **Sec. 13.55.220. Attending physician qualifications.** (a) To qualify as an
3 attending physician under this chapter, a physician must

4 (1) have primary responsibility for the patient's health care;

5 (2) have primary responsibility for the treatment of the patient's
6 terminal illness; and

7 (3) routinely provide medical care to patients with advanced and
8 terminal illnesses in the normal course of the physician's practice.

9 (b) Notwithstanding (a)(3) of this section, an attending physician's practice
10 may not be primarily or solely made up of individuals requesting medication under
11 this chapter.

12 **Sec. 13.55.230. Construction of chapter.** (a) This chapter may not be
13 construed to authorize or require a health care provider to provide health care contrary
14 to generally accepted health care standards applicable to the health care provider.

15 (b) This chapter may not be construed to authorize a physician or another
16 person to end an individual's life by lethal injection, mercy killing, or active
17 euthanasia. An action allowed by this chapter is an affirmative defense to a criminal
18 charge of homicide, murder, manslaughter, criminally negligent homicide, suicide,
19 assisted suicide, mercy killing, or euthanasia under the law of this state.

20 **Sec. 13.55.240. Insurance or annuity policies; contracts.** Notwithstanding
21 AS 21.45.250 or another provision of law to the contrary, a person may not condition
22 the sale, procurement, issuance, rate, delivery, issuance for delivery, or other aspect of
23 a life insurance policy, health insurance policy, accident insurance policy, or annuity
24 policy, or another contract on the making or rescission of a request by a qualified
25 individual for medication under this chapter.

26 **Sec. 13.55.250. Coordination with other law.** A request for medication under
27 this chapter is not an advance health care directive under AS 13.52, and AS 13.52 does
28 not apply to an activity allowed by this chapter.

29 **Sec. 13.55.900. Definitions.** In this chapter, unless the context indicates
30 otherwise,

31 (1) "attending physician" means a physician who qualifies under

(4) Filing of an Oregon tax return for the most recent tax year. [1995 c.3 s.3.10; 1999 c.423 s.8]

**127.865 s.3.11. Reporting requirements.**

(1)(a) The Health Services shall annually review a sample of records maintained pursuant to ORS 127.800 to 127.897.

(b) The division shall require any health care provider upon dispensing medication pursuant to ORS 127.800 to 127.897 to file a copy of the dispensing record with the division.

(2) The Health Services shall make rules to facilitate the collection of information regarding compliance with ORS 127.800 to 127.897. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

(3) The division shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [1995 c.3 s.3.11; 1999 c.423 s.9]

**127.870 s.3.12. Effect on construction of wills, contracts and statutes.**

(1) No provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid.

(2) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [1995 c.3 s.3.12]

**127.875 s.3.13. Insurance or annuity policies.**

The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy. [1995 c.3 s.3.13]

**127.880 s.3.14. Construction of Act.**

Nothing in ORS 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. [1995 c.3 s.3.14]

(Immunities and Liabilities)

(Section 4)

**127.885 s.4.01. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions.**

Except as provided in ORS 127.890:

(1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with ORS 127.800 to 127.897. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.

(2) No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to 127.897.

(3) No request by a patient for or provision by an attending physician of medication in good faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(4) No health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under ORS 127.800 to 127.897, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in ORS 127.800 to 127.897.

(b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider may subject another health care provider to the sanctions stated in this paragraph if the sanctioning health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to 127.897 that it prohibits participation in ORS 127.800 to 127.897:

(A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

A-3

## DECLARATION OF TESTIMONY

I, Isaac Jackson, declare under penalty of perjury the following:

1. I am a lawyer licensed to practice law in the State of Oregon, USA. I am in private practice with my own law firm specializing injury claims, including wrongful death cases. I previously served as a Law Clerk to Judge Charles Carlson of the Lane County Circuit Court. I was also an associate lawyer with a firm that specializes in insurance defense and civil litigation.

2. I write to inform the court regarding a lack of transparency under Oregon's assisted suicide act. Even law enforcement is denied access to information collected by the State of Oregon. Moreover, according to the current Oregon State website, this lack of access is official Oregon State Policy.

3. In 2010, I was retained by a client whose father had apparently died under Oregon's law. The client wanted to know whether that was true. I therefore made inquiry on his behalf. However and unlike other deaths I have investigated, it was difficult to get information.

4. I wrote Dr. Hedberg, the State epidemiologist. Attached hereto as Exhibit 1 is a true and correct copy of a letter I received back from the Office of the Attorney General of Oregon dated November 3, 2010. The letter describes that the Oregon Health Authority is only allowed to release annual statistical information about assisted suicide deaths. The letter states:

> ORS [Oregon Revised Statutes] 127.865 prevents OHA [Oregon Health Authority] from releasing any information to you or your client. OHA may only make public annual statistical information.

5. I also wrote the Oregon Medical Board. Attached hereto as Exhibit 2 is a true and correct redacted copy of a letter I received back, dated November 29, 2010, which states in part:

> While sympathetic to [your client's] concerns about the circumstances of his father's death, the Board is not able to provide the information requested. The Board does not possess the requested documents nor does the Board routinely receive these documents. Under Oregon law the Oregon Department of Health collects these documents for their purposes. Further, if the Board did have the documents as a part of an investigation, the Board would be prevented from releasing them by ORS 676.175. *See* Exhibit 2.

6. I also received a copy of the decedent's death certificate, which is the official death record in Oregon. A true and correct, but redacted copy, is attached hereto as Exhibit 3. The "immediate cause of death" is listed as "cancer." The "manner of death" is listed as "Natural."

///

7. Per my request, a police officer was assigned to the case. Per the officer's confidential report, he did not interview my client, but he did interview people who had witnessed the decedent's death.

8. The officer's report describes how he determined that the death was under Oregon's assisted suicide law act due to records other than from the State of Oregon. The officer's report also describes that he was unable to get this information from the Oregon Health Authority, which was not willing to confirm or deny whether the deceased had used the act. The officer closed the case.

9. Attached hereto as Exhibit 4 is a true and correct copy of the Oregon Health Authority's data release policy, as of September 18, 2012, which states in part:

> The Death with Dignity Act requires that the Oregon Health Authority collect information pertaining to compliance (ORS 127.865 (2)) and to make available to the public an annual statistical report (ORS 127.865 (3)).
>
> The Oregon Health Authority's role is limited to collecting information so that we can monitor compliance and provide a report regarding the effects of this legislation. Confidentiality is critical and the Act specifically states that information collected is not a public record and is not available for inspection by the public (ORS 127.865 (2)). The protection of confidentiality conferred by the Death with Dignity Act precludes the Oregon Health Authority from releasing information that identifies patients or participants, to the public, media, researchers, students, advocates, or other interested parties.
>
> The Oregon Health Authority will NOT confirm on a case-by-case basis whether an individual has used, or a provider has been involved with, Death with Dignity. We will not release a report when the first case occurs and we will not respond to questions regarding number of cases within a specific time period. (Emphasis in original).

Pursuant to Oregon Rules of Civil Procedure 1E, I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated Sept. 18 2012

Isaac Jackson, OSB 055494
Jackson Law Office, LLC

Post Office Box 41240
Eugene, OR 97404
541.225.5061
Jackson@irjlaw.com

JOHN R. KROGER
Attorney General

MARY H. WILLIAMS
Deputy Attorney General

**DEPARTMENT OF JUSTICE**
GENERAL COUNSEL DIVISION

RECEIVED
11/4/10

November 3, 2010

Isaac Jackson
Jackson Law Office, LLC
P.O. Box 279
Eugene, OR 97440

Re: Death with Dignity Act Records Request

Dear Mr. Jackson:

Dr. Hedberg, the state epidemiologist, received your letter dated October 27, 2010, requesting certain Death with Dignity Act records that may have been filed under OAR 333-009-0010. If records cannot be provided, you also ask Dr. Hedberg to investigate the existence of the documents and report findings to you, or lastly, to at least verify whether the Oregon Health Authority (OHA) has any record of contact with your client's deceased father. In sum, your client would like any information that might shed light on his father's death.

While Dr. Hedberg understands the difficult time your client must be going through, ORS 127.865 prevents OHA from releasing any information to you or your client. OHA may only make public annual statistical information. Please be assured that if irregularities are found on paperwork submitted to the OHA under OAR 333-009-0010, OHA can and has reported information to the Oregon Medical Board who can then investigate the matter.

I understand that you are in the process of getting the death certificate for your client's father and that may shed some light on the matter for your client. If your client believes that some nefarious actions have taken place he certainly could contact law enforcement.

Please contact me if you have additional questions.

Sincerely,

Shannon K. O'Fallon
Senior Assistant Attorney General
Health and Human Services Section

SKO:vdc/Justice# 2345752
cc: Katrina Hedberg, M.D, DHS

1515 SW Fifth Ave, Suite 410, Portland, OR 97201
Telephone: (971) 673-1880 Fax: (971) 673-18868 TTY: (503) 378-5938 www.doj.state.or.us

11/29/10

# Oregon

Theodore R. Kulongoski, Governor

RECEIVED 12-6-10

Medical Board
1500 SW 1st Ave Ste 620
Portland, OR 97201-5847
(971) 673-2700
FAX (971) 673-2670
www.oregon.gov/omb

November 29, 2010

Isaac Jackson
Jackson Law Office
PO Box 279
Eugene, OR 97440

Dear Mr. Jackson:

The Oregon Medical Board has received your letter regarding .... and his death, apparently under the Oregon Death with Dignity Act. In order for the Board to proceed with a formal investigation, a medical and/or legal basis must exist to support an allegation that a physician licensed by the Board may have violated Oregon law. In our review of the information that you presented we did not find a physician identified nor was there a specific allegation of misconduct on the part of a physician. As such, the board is not able to initiate a formal investigation.

While sympathetic to concerns about the circumstances of his father's death, the Board is not able to provide the information requested. The Board does not possess the requested documents nor does the Board routinely receive these documents. Under Oregon law the Oregon Department of Human Services collects these documents for their purposes. Further, if the Board did have the documents as a part of an investigation, the Board would be prevented from releasing them by ORS 676.175.

Thank you for bringing your concerns to the attention of the Oregon Medical Board. If you have any further questions regarding this matter, you may contact me at 971-673-2702.

Sincerely,

Randy H. Day
Complaint Resource Officer
Investigations/Compliance Unit

Exhibit 2

CERTIFICATION OF VITAL RECORD

OREGON DEPARTMENT OF HUMAN SERVICES
CENTER FOR HEALTH STATISTICS
CERTIFICATE OF DEATH

I.D. TAG NO. [redacted] STATE FILE NUMBER [redacted]

TO BE COMPLETED BY FUNERAL FACILITY

| | | | |
|---|---|---|---|
| Legal Name First [redacted] | Middle [redacted] | Last [redacted] | Suffix | Death Date [redacted] 2010 |
| Sex Male | Age [redacted] | Social Security Number [redacted] | County of Death [redacted] |
| Birthdate [redacted] | Birthplace [redacted] | Was Decedent Ever in U.S. Armed Forces? [redacted] |
| Residence: [redacted] | City/Town [redacted] |
| Residence County [redacted] | State or Foreign Country Oregon | Zip Code + 4 [redacted] | Inside City Limits? [redacted] |
| Marital Status at Time of Death [redacted] | Spouse's Name Prior to First Marriage [redacted] |
| Father's Name [redacted] | Mother's Name Prior to First Marriage [redacted] |
| Informant's Name [redacted] | Telephone Number Not Available | Relationship to Decedent [redacted] | Mailing Address [redacted] |
| Place of Death Decedent's Residence | Facility Name [redacted] |
| Location of Death [redacted] | City/Town of Location of Death [redacted] | State Oregon | Zip Code + 4 [redacted] |
| Method of Disposition Donation and cremation | Place of Disposition [redacted] Cremation Center | Location (City/Town and State) [redacted] Oregon |
| Name and Complete Address of Funeral Facility [redacted] |
| Date of Disposition TBD | Funeral Director's Signature /S/ [redacted] | OR License Number [redacted] |
| Registrar's Signature /S/ [redacted] | Date Received [redacted] 2010 | Local File Number [redacted] |
| Amendment | |

TO BE COMPLETED BY MEDICAL CERTIFIER

| | | | |
|---|---|---|---|
| Was case referred to Medical Examiner? No | Autopsy? No | Were autopsy findings available to complete the cause of death? | Time of Death [redacted] |
| CAUSE OF DEATH | | | Approximate Interval: Onset to Death |
| IMMEDIATE CAUSE a. [redacted] cancer | | | [redacted] years |
| Due to (or as a consequence of) b. [redacted] | | | years |
| Due to (or as a consequence of) c. | | | |
| Due to (or as a consequence of) d. | | | |
| Other significant conditions contributing to death [redacted] Disease; | | | |
| Manner of Death Natural | If Female: | Did tobacco use contribute to death? [redacted] | |
| Date of Injury | Time of Injury | Place of Injury | Injury at Work? |
| Location of Injury | | | |
| Describe how injury occurred | | If transportation injury, specify. | |
| Name and Address of Certifier [redacted] | | | |
| Name and Title of Attending Physician (if Other than Certifier) | | Date Signed [redacted] 2010 | |
| Medical Certifier /S/ [redacted] | Title of Certifier M.D. | License Number [redacted] | |
| Amendment | | | |

[redacted]

THIS IS A TRUE AND EXACT REPRODUCTION OF THE DOCUMENT OFFICIALLY REGISTERED AT THE OFFICE OF THE [redacted] REGISTRAR.

DATE ISSUED: [redacted] 2010 [redacted], OREGON

THIS COPY IS NOT VALID WITHOUT INTAGLIO STATE SEAL AND BORDER.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

Exhibit 3

Google traduction Afficher cette page en: Français Traduire Désactiver pour l'anglais Options ▼

Learn about air quality and health issues related to the 2012 Oregon wildfires.

Oregon Health Authority

# Data Release Policy

**Release of Information Regarding the Death with Dignity Act**

The Death with Dignity Act requires that the Oregon Health Authority collect information pertaining to compliance (ORS 127.865 (2)) and to make available to the public an annual statistical report (ORS 127.865 (3)).

The Oregon Health Authority's role is limited to collecting information so that we can monitor compliance and provide a report regarding the effects of this legislation.

Confidentiality is critical and the Act specifically states that information collected is not a public record and is not available for inspection by the public (ORS 127.865 (2)). The protection of confidentiality conferred by the Death with Dignity Act precludes the Oregon Health Authority from releasing information that identifies patients or participants, to the public, media, researchers, students, advocates, or other interested parties.

The Oregon Health Authority will **NOT** confirm on a case-by-case basis whether an individual has used, or a provider has been involved with, Death with Dignity. We will not release a report when the first case occurs and we will not respond to questions regarding number of cases within a specific time period.

Within the principles of confidentiality, the Oregon Health Authority will publish an annual report which will include information on how many prescriptions are written, and how many people actually take the prescribed medication. The specificity of any data released will depend upon whether we can ensure that confidentiality will not be breached.

To reiterate, the Oregon Health Authority's role in reporting on the Death with Dignity Act is similar to other public health data we collect. The data are population-based and our charge is to maintain surveillance of the overall effect of the Act. The data are to be presented in an annual report, but the information collected is required to be confidential. Therefore, case-by-case information will not be provided, and specificity of data released will depend on having adequate numbers to ensure that confidentiality will be maintained.

Frequently Asked Questions Related to Additional Data Requests

Exhibit 4

Margaret K. Dore

Margaret Dore <margaretdore@margaretdore.com>

# RE: Death with Dignity Act

1 message

**Parkman Alicia A** <alicia.a.parkman@state.or.us>
To: Margaret Dore <margaretdore@margaretdore.com>
Cc: BURKOVSKAIA Tamara V <tamara.v.burkovskaia@state.or.us>

Wed, Jan 4, 2012 at 7:57 AM

Thank you for your email regarding Oregon's Death with Dignity Act. For all of your questions, the answer is no. Since our office is charged with maintaining absolute confidentiality, our policy is to never release identifying information. We can neither confirm nor deny participation of any individual patient or physician. We have been contacted by law enforcement and legal representatives in the past, but have not provided identfying information of any type. To ensure confidentiality, our office does not maintain source documentation on participants.

Please let me know if you have further questions.

Thank you,

Alicia

**Alicia Parkman**

Mortality Research Analyst

Center for Health Statistics

Oregon Health Authority

Ph: 971-673-1150

Fax: 971-673-1201

**From:** Margaret Dore [mailto:margaretdore@margaretdore.com]
**Sent:** Monday, January 02, 2012 5:48 PM
**To:** alicia.a.parkman@state.or.us
**Subject:** Death with Dignity Act

Thank you for answering my prior questions about Oregon's death with dignity act.

I have these follow up questions:

1. Would your office release copies of completed reporting forms, e.g., a doctor's completed "Oregon Death with Dignity Act Attending Physician Follow-up Form," in response to a civil subpoena?

X 2. Would your office release copies of completed reporting forms in answer to a request by law enforcement?

X 3. Would your office confirm to law enforcement whether a person had in fact died under Oregon's Death with Dignity Act?

Margaret Dore
Law Offices of Margaret K. Dore, P.S.
www.margaretdore.com
1001 4th Avenue, 44th Floor
Seattle, WA 98154
206 389 1754

Margaret K. Dore

Margaret Dore <margaretdore@margaretdore

# Re: Record Retention Policy

1 message

**DWDA INFO** <dwda.info@state.or.us>
To: Margaret Dore <margaretdore@margaretdore.com> Mon, Jun 27, 2011 at 4:18 PM

Hello Ms. Dore,

Thank you for your email regarding Oregon's Death with Dignity Act (DWDA). To answer your question, no, we would not have that information on file. Because the DWDA forms and data are not public records, they do not fall under the retention schedule. We (the Public Health Division) compile the data we need for our reports and then destroy all source documentation after one year.

More information can be found in our "Frequently Asked Questions" document, available on our website (http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/faqs.pdf).

The FAQ does contain a question specific to how data are collected, used and maintained by the agency:

*Q: Are participating patients reported to the State of Oregon by name?*

*A: The State does collect the names of patients in order to cross-check death certificates. However, the law guarantees the confidentiality of all participating patients (as well as physicians) and the Department of Human Services does not release this information to the public or media. The identity of participating physicians is coded, but the identity of individual patients is not recorded in any manner. Approximately one year from the publication of the Annual Report, all source documentation is destroyed.*

Please let me know if you have further questions.

Thank you,

Alicia

Alicia Parkman
Mortality Research Analyst
Center for Health Statistics
Oregon Health Authority
971-673-1150
alicia.a.parkman@state.or.us

>>> "Margaret Dore" <margaretdore@margaretdore.com> 6/25/2011 11:04 AM >>>

Hi. I am an attorney in Washington State.

I would like to know what is Oregon's document retention policy regarding DWDA reporting.

For example, if there were a question about a death occurring five years ago, would the original doctor after-death report still be on file with your office?

Thanks.

Margaret Dore
Law Offices of Margaret K. Dore, P.S.
www.margaretdore.com
1001 4th Avenue, 44th Floor
Seattle, WA 98154
206 389 1754

There is no state "program" for participation in the Act. People do not "make application" to the State of Oregon or the Oregon Health Authority. It is up to qualified patients and licensed physicians to implement the Act on an individual basis. The Act requires the Oregon Health Authority to collect information about patients who participate each year and to issue an annual report.

**Q: Are there any other states that have similar legislation?**

A: Yes. The Death with Dignity National Center, which advocates for the passage of death with dignity laws, tracks the status of these laws around the country (see: https://www.deathwithdignity.org/take-action).

**Q: Who can participate in the Act?**

A: The law states that, in order to participate, a patient must be: 1) 18 years of age or older, 2) a resident of Oregon, 3) capable of making and communicating health care decisions for him/herself, and 4) diagnosed with a terminal illness that will lead to death within six (6) months. It is up to the attending physician to determine whether these criteria have been met.

**Q: Can someone who doesn't live in Oregon participate in the Act?**

A: No. Only patients who establish that they are residents of Oregon can participate if they meet certain criteria.

**Q: How does a patient demonstrate residency?**

A: A patient must provide adequate documentation to the attending physician to verify that s/he is a current resident of Oregon. Factors demonstrating residency include, but are not limited to: an Oregon Driver License, a lease agreement or property ownership document showing that the patient rents or owns property in Oregon, an Oregon voter registration, a recent Oregon tax return, etc. It is up to the attending physician to determine whether or not the patient has adequately established residency.

**Q: How long does someone have to be a resident of Oregon to participate in the Act?**

A: There is no minimum residency requirement. A patient must be able to establish that s/he is currently a resident of Oregon.

**Q: Can a non-resident move to Oregon in order to participate in the Act?**

A: There is nothing in the law that prevents someone from doing this. However, the patient must be able to prove to the attending doctor that s/he is currently a resident of Oregon.

**Q: Are participating patients reported to the State of Oregon by name?**

A: The State does collect the names of patients in order to cross-check death certificates. However, the law guarantees the confidentiality of all participating patients (as well as physicians) and the Oregon Health Authority does not release this information to the public or media. The identity of participating physicians is coded, but the identity of individual patients is not recorded in any manner. Approximately one year from the publication of the Annual Report, all source documentation is destroyed.

**Q: Who can give a patient a prescription under the Act?**

A: Patients who meet certain criteria can request a prescription for lethal medication from a licensed Oregon physician. The physician must be a Doctor of Medicine (M.D.) or Doctor of Osteopathic Medicine (D.O.) licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. The physician must also be willing to participate in the Act. Physicians are not required to provide prescriptions to patients and participation is voluntary. Additionally, some health care systems (for example, a Catholic hospital or the Veterans Administration) have prohibitions against practicing the Act that physicians must abide by as terms of their employment.

**Q: If a patient's doctor does not participate in the Act, how can s/he get a prescription?**

A: The patient must find another M.D. or D.O. licensed to practice medicine in Oregon who is willing to participate. The Oregon Health Authority does not recommend doctors, nor can we provide the names of participating physicians or patients due to the need to protect confidentiality.

**Q: If a patient's primary care doctor is located in another state, can that doctor write a prescription for the patient?**

A: No. Only M.D.s or D.O.s licensed to practice medicine by the Board of Medical Examiners for the State of Oregon can write a valid prescription for lethal medication under the Act.

**Q: How does a patient get a prescription from a participating physician?**

A: The patient must meet certain criteria to be able to request to participate in the Act. Then, the following steps must be fulfilled:

1. The patient must make two oral requests to the attending physician, separated by at least 15 days;
2. The patient must provide a written request to the attending physician, signed in the presence of two witnesses, at least one of whom is not related to the patient;
3. The attending physician and a consulting physician must confirm the patient's diagnosis and prognosis;
4. The attending physician and a consulting physician must determine whether the patient is capable of making and communicating health care decisions for him/herself;
5. If either physician believes the patient's judgment is impaired by a psychiatric or psychological disorder (such as depression), the patient must be referred for a psychological examination;
6. The attending physician must inform the patient of feasible alternatives to the Act including comfort care, hospice care, and pain control;
7. The attending physician must request, but may not require, the patient to notify their next-of-kin of the prescription request. A patient can rescind a request at any time and in any manner. The attending physician

# Confidentiality of Death Certificates

OREGON DEPARTMENT OF HUMAN RESOURCES
HEALTH DIVISION

(503) 731-4412 Center for Health Statistics
FAX (503) 731-4084 P.O. Box 14050
TDD-Nonvoice (503) 731-4031 Portland, OR 97293-0050

December 12, 1997

TO: County Vital Records Registrars and Deputies
FROM: Sharon Rice, Manager, Registration Unit Center for Health Statistics

SUBJECT: CONFIDENTIALITY—DEATH WITH DIGNITY

This memo is to insure your continued support of the Vital Records strict code of confidentiality on all birth and death certificates.

You received a memo dated November 18, 1997 from Edward Johnson, II, State Registrar. In this memo he discussed the necessity of protecting the privacy of all parties when a death occurs by means of Oregon's death with dignity law.

I have received several calls from different counties asking for more information. After discussing these concerns with the Registrar and physicians within the Health Division the following rules will apply to all physician assisted deaths.

You will neither confirm nor deny if a death has occurred in your county. If this question is asked by employees within your own Health Department, those calls should be referred to Edward Johnson, II, State Registrar (503) 731-4109 or Katrina Hedberg, M.D. (503) 731-4024. If you are asked for information from any other source on this specific topic, those callers will be referred to Katrina Hedberg, M.D., Oregon Health Division, (503) 731-4024. Do not refer callers to me as I am not at liberty to discuss this topic, and I would only have to refer the caller again.

We will begin asking funeral directors to direct report all physicians assisted death certificates to this office thus eliminating the registration through the county office. This will assist in maintaining the confidentiality in your office. Only limited staff in records will be aware of this type of death, as these records will not be handled through regular channels. We will also be controlling the issuance of certified copies making sure the family is aware of the new abbreviated copies and recommending they receive this type of certified copy.

If the funeral home chooses to forward the death record to your office, you may forward it to this office for registration. You should not maintain a white copy of the death record for six months nor should you issue certified copies.

If you do register the death locally then you may not maintain a six-month copy of the death record. Before issuing any certified copies of the death record you will need to contact this office for special permission to do so. There are three people in this office that can grant that permission:

Edward Johnson, II—State Registrar (503) 731-4109
Carol Sanders, Manager, Certification Unit 731-4416
Sharon Rice, Manager, Registration Unit 731-4412

Since we do not anticipate a large number of these cases, the different rules for the handling, these deaths should not adversely affect your work. You may never have this type of death occur within your county.

If you haven't by now determined the seriousness of this, let me add one additional statement so you will know how seriously this matter is being taken by the State Health Division. Any staff within the Center for Health Statistics that reveals any information they are not authorized to release, will immediately be terminated. Any county vital records staff, releasing information will have their registrar-deputy registrar commissions immediately revoked, thus eliminating you from having any contact with vital records within your county.

Remember if you are asked if any physician assisted deaths have occurred in your county you may neither confirm nor deny their occurrence. This may put you in a difficult position if you are being asked from Personnel within your own health department. Again, you will need to explain that you have been told you are not to discuss this topic with anyone, and refer the caller as mentioned earlier in this memo.

# *The Oregon Death with Dignity Act:*

# *A Guidebook for Health Care Professionals*


***Developed by***
The Task Force to Improve the Care of Terminally-Ill Oregonians

***Convened by***
The Center for Ethics in Health Care, Oregon Health & Science University

Patrick Dunn, M.D., Task Force Chair and Co-Editor
Bonnie Reagan, M.D., R.N., Co-Editor
Susan W. Tolle, M.D., Reviewer and Major Contributor
Sarah Foreman, Manuscript Preparation



***Initial writing of the Guidebook was supported in part by***
The Greenwall Foundation

First Edition (print): March 1998

Current Edition (2008): Published on this website
Updated as information becomes available

Registrar, Center for Health Statistics, 800 NE Oregon St., Suite 205, Portland, OR 97232; or by facsimile to (971) 673-1201. Information to be reported to the Department shall include: (a) Patient's name and date of birth; (b) Prescribing physician's name and phone number; (c) Dispensing health care provider's name, address and phone number; (d) Medication dispensed and quantity; (e) Date the prescription was written; and (f) Date the medication was dispensed.

Attending physicians are encouraged to inform patients of the requirement that the Department of Human Services have access to data regarding implementation of the Oregon Act. They may wish to have the patient's written request for enacting the provisions of the statute include a statement of consent for release of medical records to the Department of Human Services. The patient and attending physician should discuss post-death arrangements as part of the overall plans. As discussed in the chapter, *Attending Physician and Consulting Physician*, the attending physician may want to be present at the time of death or make arrangements to be notified by the family immediately following the death. The attending physician could then notify the funeral home that this is an expected death and that he/she will be signing the death certificate. The death certificate will then be filed and processed according to routine procedures and the death will not go into the medical examiner's system. The Medical Examiner is required to investigate any death that is suspicious (i.e., not natural or expected).[6] In addition, if Emergency Medical Services (EMS) are present at the time of death the Medical Examiner will be called. Because medical examiner investigations allow for limited public disclosure,[7] the confidentiality of the patient cannot be assured in these instances. Additionally, family members may be questioned regarding the circumstances surrounding these deaths.

The death certificate originates in the mortician's office, and is sent to the physician to complete the cause of death information. The death certificate is then sent back to the mortician's office, which files it with the local health department. Finally, the death certificate is forwarded to the Department of Human Services, State Registrar for Vital Records. While the confidentiality of the death certificate can be assured once it has reached the local health department and the Department of Human Services, physicians must ensure confidentiality in the clinical setting. Because death certificates have multiple purposes, including settling the estate as well as for public health information, the Department of Human Services suggests physicians record the underlying terminal conditions as the cause of death and mark the manner of death "natural", rather than recording that the patient ingested a lethal dose of medication prescribed under the Oregon Death with Dignity Act. Death certificates should not be left on desktops or at nurses' stations. Health care professionals and institutions might consider implementing a policy of keeping all death certificates in envelopes marked "confidential" until they are formally filed.

Confidentiality is of paramount importance in ensuring compliance with this Oregon Act. The Oregon Act ensures that "information collected shall not be a public record and may not be made available for inspection by the public" (see *Liability and Negligence*). Thus, information regarding the identity of patients, health care professionals, and health care facilities obtained by the Department of Human Services with respect to compliance with the Oregon Act shall be confidential. Summary information released in Department of Human Services' annual reports will be aggregated to prevent identification of individuals, physicians, or health care professionals complying with the Oregon Act. Death certificates are also confidential: OAR 333-11-096 (1) states that the Department of Human Services "... shall not permit inspection of, or

## Don't follow Oregon's lead: Say no to assisted suicide

Dear Editor:

I am an internal medicine doctor, practicing in Oregon where assisted suicide is legal. I write in support of Margaret Dore's article, Aid in Dying: Not Legal in Idaho; Not About Choice. I would also like to share a story about one of my patients.

I was caring for a 76 year-old man who came in with a sore on his arm. The sore was ultimately diagnosed as a malignant melanoma, and I referred him to two cancer specialists for evaluation and therapy. I had known this patient and his wife for over a decade. He was an avid hiker, a popular hobby here in Oregon. As he went through his therapy, he became less able to do this activity, becoming depressed, which was documented in his chart.

During this time, my patient expressed a wish for doctor-assisted suicide to one of the cancer specialists. Rather than taking the time and effort to address the question of depression, or ask me to talk with him as his primary care physician and as someone who knew him, the specialist called me and asked me to be the "second opinion" for his suicide. She told me that barbiturate overdoses "work very well" for patients like this, and that she had done this many times before.

I told her that assisted-suicide was not appropriate for this patient and that I did NOT concur. I was very concerned about my patient's mental state, and I told her that addressing his underlying issues would be better than simply giving him a lethal prescription. Unfortunately, my concerns were ignored, and approximately two weeks later my patient was dead from an overdose prescribed by this doctor. His death certificate, filled out by this doctor, listed the cause of death as melanoma.

The public record is not accurate. My patient did not die from his cancer, but at the hands of a once-trusted colleague. This experience has affected me, my practice, and my understanding of what it means to be a physician.

What happened to this patient, who was weak and vulnerable, raises several important questions that I have had to answer, and that the citizens of Idaho should also consider:

- If assisted suicide is made legal in Idaho, will you be able to trust your doctors, insurers and HMOs to give you and your family members the best care? I referred my patient to specialty care, to a doctor I trusted, and the outcome turned out to be fatal.
- How will financial issues affect your choices? In Oregon, patients under the Oregon Health Plan have been denied coverage for treatment and offered coverage for suicide instead. See e.g. KATU TV story and video at http://www.katu.com/home/video/26119539.html (about Barbara Wagner). Do you want this to be your choice?
- If your doctor and/or HMO favors assisted suicide, will they let you know about all possible options or will they simply encourage you to kill yourself? The latter option will often involve often less actual work for the doctor and save the HMO money.

In most states, suicidal ideation is interpreted as a cry for help. In Oregon, the only help my patient received was a lethal prescription, intended to kill him.

Is this where you want to go? Please learn the real lesson from Oregon.

Despite all of the so-called safeguards in our assisted suicide law, numerous instances of coercion, inappropriate selection, botched attempts, and active euthanasia have been documented in the public record.

Protect yourselves and your families. Don't let legalized assisted suicide come to Idaho.

Charles J. Bentz MD
Oregon Health & Sciences University
Portland, OR

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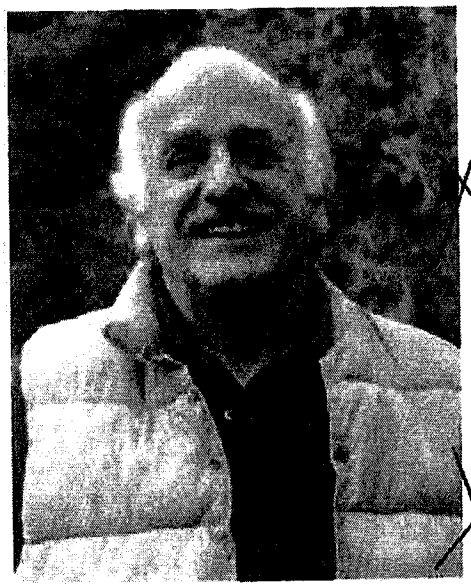
# Derek Humphry to be Keynote Speaker at 2011 Annual Meeting



This year our keynote speaker will be Derek Humphry, the author of *Final Exit* and the founder of the Hemlock Society USA in 1980. Derek is generally considered to be the father of the modern movement for choice at the end of life in America.

**Save the Date!**
Sat., October 22, 2011, 1-3 p.m.
University Unitarian Church
6556 35th Ave NE
Seattle, WA 98115-7393

Derek is a British journalist and author who has lived in the United States since 1978, the same year he published the book *Jean's Way* describing his first wife's final years of suffering from cancer and his part in helping her to die peacefully. The public response to the book caused him to start the Hemlock Society USA in 1980 from his garage in Santa Monica. Years later, the Hemlock Society would become End of Life Choices and then merge with Compassion In Dying to become Compassion & Choices.

In 1991 he published *Final Exit*. Much to his surprise, it became the national #1 bestseller within six months. Since then it has been translated into 12 languages and is now in its fourth edition.

Although not affiliated with – and sometimes even at odds with – Compassion & Choices, Derek is still actively involved in the movement. Always interesting and sometimes controversial, Derek will provide our supporters and their guests with his perspective about the evolution of the movement for choice at the end of life in A