**DREDF Testimony, Senate Health Committee 3-25-2015 re SB 128**

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**Introduction**

I am Marilyn Golden, Senior Policy Analyst with the Disability Rights Education & Defense Fund, a leading national law and policy center on disability civil rights.

If assisted suicide is legal, some people’s lives will be ended without their consent, through mistakes and abuse. No safeguards have ever been enacted or even proposed that can prevent this outcome, which can never be undone.

**Deadly mix**

Why? For one thing, it’s a “deadly mix” to combine our broken health-care system and assisted suicide, which would instantly become the cheapest treatment. Direct coercion is not even necessary. If insurers deny, or even merely delay, expensive, life-sustaining treatment, patients are steered toward hastening their deaths. Do we think insurers will do the right thing, or the cheap thing?

This applies to private and public insurers alike. Barbara Wagner and Randy Stroup, Oregonians with cancer, were both informed by the Oregon Health Plan that the Plan wouldn’t pay for a prescribed chemotherapy, but would pay for their assisted suicide. Though called a free choice, for these patients, it would have been a phony form of freedom.

And remember that Oregon is largely white. California’s diverse communities – particularly those of Latinos and African Americans - unfortunately face much larger disparities in health care than those found in Oregon. An even more deadly mix.

**Danger & Abuse**

Elder abuse is a rising problem, and abuse of people with disabilities as well. This policy is a recipe for abuse. Where assisted suicide is legal, an heir (someone who stands to inherit from the ill person) or abusive caregiver can steer someone towards it, witness the request, pick up the lethal dose, and even give the drug -- no objective witnesses are required at the death, so who would know?

This Committee’s analysis acknowledges there have been documented abuses.

When proponents claim that there have been no abuses in Oregon, let us remember Kate Cheney. Let us remember Michael Freeland, with a history of depression and suicide attempts, who was prescribed lethal drugs. Let us remember Wendy Melcher. And Linda Fleming and Thomas Middleton, whose cases showed economic pressures & financial abuse. These are just some of the cases we know about; what about those that have gone unreported? More on those individuals in a moment.

**Legal solution today for end-of-life pain:** Importantly, anyone dying in discomfort that is not otherwise relievable or being relieved, may legally now, receive palliative sedation, wherein the patient is sedated to the point where the discomfort is relieved while the dying process takes place. So we already have a legal solution to any uncomfortable deaths that does not endanger others the way an assisted suicide law does.

**The supposed ”safeguards” in this bill are utterly hollow.**

*“6 months to live”* is intended to keep everyone else safe. But in fact, misdiagnosis and incorrect prognosis of terminal illness, common in medicine, has deadly consequences if assisted suicide is legal.

Jeanette Hall, diagnosed with cancer and given six months to a year to live, sought to die under Oregon’s law.  Her doctor persuaded her to fight the disease, and she is alive and well nearly 15 years later, and grateful to be.

John Norton was diagnosed with ALS at age 18 and given 3-5 years to live. Six years later, the progression of his disease suddenly stopped and he is alive at age 77, with a wife, children, and retired from a successful career. He stated that if assisted suicide had been legal at the time, he would have used it, but is so grateful to be alive.

*And, Doctor-shopping* gets around any of the hollow safeguards in this bill.

That’s when, if you ask for lethal drugs and your doctor says no, you don’t qualify; you or your family shops for another doctor who will say “yes.” That’s what happened to Kate Cheney, age 85. Although a psychiatrist concluded that she had dementia and was being pressured by her daughter, she died after taking the suicide prescription.

Did you know that the overwhelming majority of reported Oregon deaths under its law were facilitated in some way by Compassion & Choices, formerly Compassion in Dying, and earlier, known as the Hemlock Society. They can refer you to a doctor if yours says no.

*And, family pressures*, whether financial or emotional, which distort patient choice, can also get around any safeguard. Let’s look at just one aspect of this, economic factors. Two stories:

1. Economic pressure: Linda Fleming. The first to use the Washington State law, was divorced, had had financial problems, had been unable to work due to a disability, and was forced to declare bankruptcy. Yet the Director of Compassion & Choices of Washington said that her situation presented "none of the red flags" that might have given his group pause in supporting her request for death. Yet we are told by proponents that financial pressures have never played a role.

2. Financial abuse: Thomas Middleton was diagnosed with Lou Gehrig’s disease, moved into the home of Tami Sawyer in July 2008, and died by assisted suicide later that very month. Thomas Middleton had named Tami Sawyer his estate trustee and put his home in her trust. Two days after he died, Tami Sawyer listed the property for sale and deposited $90,000 into her own account. It took a federal investigation into real estate fraud to expose this abuse. Tami Sawyer was indicted for first- degree criminal mistreatment and first-degree aggravated theft, partly over criminal mistreatment of Thomas Middleton. But the Oregon state agency responsible for the assisted suicide law never even noticed.

*And, Good faith.* While it creates two new felonies, the bill would also protect anyone who acts in, quote, “good faith.” It is virtually impossible to disprove an allegation of one’s own good faith, making all other safeguards effectively unenforceable.

**Oregon model is characterized by the lack of oversight or monitoring; and by secrecy, not transparency**

The minimal published statistical data, derived from asking prescribing doctors a few questions, looks fine on the surface. But this data does not reflect what’s actually happening. It’s not what the data shows – it’s what the data fails to show. There is no investigation for abuse. The data shows no abuses because the system is set up not to find them. The State of Oregon readily admits they have no funding nor authority to investigate anything. SB 128 is the same.

One example of the lack of transparency, under SB 128, doctors are required to falsify death certificates, stating as the cause of death the underlying illness rather than the lethal prescription—even if the person takes the lethal drugs during a week or month when they have no symptoms of their disease! This hides the ball, making accurate data impossible to collect.

**Suicide contagion**

While proponents deny evidence of suicide contagion, Oregon’s suicide rate, since it legalized AS, has climbed much faster than the national average. According to the Centers for Disease Control, the increase was 49 percent for Oregon versus 28 percent nationally.

*[for people age 35-64 from 1999 through 2010]*

Let us remember that for LGBT teenagers and bullied disabled young people, assisted suicide sends the dangerous message that, as C&C puts it, “my death” is “my choice.”

**Momentum -** Bills nearly identical to this one have been rejected over 140 times in 25 U.S. states. In the last year, bills were defeated in 7 states including Colorado, Massachusetts, and Connecticut. Already in 2015, since Brittany Maynard’s case was publicized, it was defeated in 4 states**.**

[Full list, 2014 and so far in 2015: Massachusetts, New Hampshire, and Connecticut in late 2014; Colorado, Montana, Wyoming, and Utah so far in 2015.]

When lawmakers see the fine print, the dangers and problems, these bills are rejected.

**Conclusion**

Assisted suicide is bad medicine for California. Please oppose this risky, reckless bill.

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**Additional material, “What You Don't Know Can Kill You”**

Let’s look at the supposed safeguards to see if California’s remaining 3 or 4 million uninsured, and masses of underinsured, would be safe.

• Two doctors must agree the person meets the law’s criteria. But there’s considerable evidence that in Oregon, if your doctor tells you no, you can shop for a doctor who will say yes. An overwhelming number of Oregon’s suicides were facilitated via the organization Compassion and Choices.[[1]](#endnote-1) How often do these referred physicians say no? We don’t know. The reports don’t tell us.

• The person must be terminally ill with 6 months or less to live. Are depressed persons who are misdiagnosed as terminal given lethal drugs? We don’t know. In Oregon over the last few years, only in 3% of reported cases were people were sent for a psychological assessment, according to Oregon’s own figures, yet depression is the most common cause of a request for death. Have people whose depression could have been successfully treated, died in Oregon? We can’t know.

Now let’s look closer at the annual statistical reports mandated by Oregon’s law and this bill. Do they really show us the full picture?

• Oregon statistics are based solely on self-reporting by doctors. Reporting is required on paper, but there are no penalties if doctors don’t. How many have failed to report? We don’t know. The law authorizes no investigations; nor does this bill.

• How many people who died under the Oregon law, first asked their own doctors and were told “no?” We don’t know – this isn’t counted.

• How accurate and comprehensive are the Oregon statistics? We don’t know because the state actually destroys its data once each annual report is published, making independent verification impossible.[[2]](#endnote-2)

• Have people used assisted suicide that could have lived many happy years if treated? We can’t know.

• How many doctors wrote lethal prescriptions for multiple people last year? We don’t know – starting in approximately 2006, the Oregon reports stopped including this. Why? We don’t know.

• How many people actually used assisted suicide for pain, rather than depression or fear of the future? Before, I believe, 2006, it was very low. But now, we can no longer know, because starting then, the report combines “inadequate pain control” with “fear of *future* inadequate pain control.” If this continues, Oregon will have successfully kept hidden how few people actually use lethal drugs due to pain. Why? We don’t know.

• How many assisted suicides were based on financial concerns? We don’t really know, because doctors don’t always know their patients’ motivations. More than one-third were on either Medicare or Medicaid up through the 8th year, but the Oregon reports don’t tell us whether Medicaid (for poor people) or Medicare. Why not? We don’t know.

Is this the model California really wants to use for something this important? We urge your “no” vote on SB 128.

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**Sources (in order cited):**

Kenneth R. Stevens, Jr., M.D., *Oregon Rationing Cancer Treatment But Offering Assisted Suicide to Cancer Patients—Paying to Die But Not to Live*, Physicians for Compassionate Care Educational Foundation, June 6, 2008, available at [www.pccef.org/articles/art67.htm](http://www.pccef.org/articles/art67.htm)(accessed July 9, 2009). Stevens is Professor Emeritus and former Chairman of Radiation Oncology at Oregon Health & Science University.

Dan Springer, “Oregon Offers Terminal Patients Doctor-Assisted Suicide Instead of Medical Care,” *Fox News*, July 28, 2009, available at [www.foxnews.com/story/0,2933,392962,00.html](http://www.foxnews.com/story/0,2933,392962,00.html)(accessed July 9, 2009).

Margaret Dore, Elder law attorney, in writings such as “What Do We Advise Our Clients?,” King County Bar Association, May 2009 Bar Bulletin, available at <http://dredf.org/assisted_suicide/What-Do-We-Advise-Our-Clients.pdf>.

Stephen Mendelsohn, Testimony in strong opposition to HB 7015, An Act Concerning Aid in Dying for Terminally Ill Patients, Connecticut, March 18, 2015. (Cited several times)

Jeanette Hall, King City, Oregon, Letter to the Editor, The Boston Globe, “She pushed for legal right to die, and - thankfully - was rebuffed,” October 4, 2011, available at <http://articles.boston.com/2011-10-04/bostonglobe/30243525_1_suicide-doctor-ballot-initiative> (accessed March 23, 2015).

Mass Against Assisted Suicide, “John Norton: A Cautionary Tale”: [www.massagainstassistedsuicide.org/2012/09/john-norton-cautionary-tale.html](http://www.massagainstassistedsuicide.org/2012/09/john-norton-cautionary-tale.html" \t "_blank)

Erin Barnett, *A family struggle: Is Mom capable of choosing to die? Oregonian*, Oct. 17, 1999.

Transcript of tape of Peter Goodwin, *Oregon*, January 11, 2003, Presentation at 13th National Hemlock Society Biennial Conference, “Charting a New Course, Building on a Solid Foundation, Imagining a Brighter Future for America’s Terminally Ill,” January 9 – 12, 2003, Bahia Resort Hotel, San Diego, California.

Compassion in Dying of Oregon*, Summary of Hastened Deaths*, data attached to Compassion in Dying (now called Compassion and Choices) of Oregon’s IRS Form 990 for 2003.

Dr. Elizabeth Goy of Oregon Health and Science University (OHSU) is an Assistant Professor in the Department of Psychiatry, School of Medicine, OHSU and has worked with Dr. Linda Ganzini in surveys dealing with Oregon’s law. In 2004, members of the British House of Lords traveled to Oregon seeking information regarding Oregon’s assisted-suicide law for use in their deliberations about a similar proposal that was under consideration in Parliament. They held closed-door hearings on December 9 and 10, 2004 and published the proceedings on April 4, 2005. House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill, *Assisted Dying for the Terminally Ill Bill [HL*] Vol. II: Evidence (London: The Stationery Office Limited, 2005), p. 291, Question 768, available at: [www.publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/86ii.pdf (](http://www.publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/86ii.pdf%20()accessed March 10, 2015).

Kenneth R. Stevens, Jr. MD, former Chairman of Radiation Oncology at Oregon Health & Science University, *The Proportion of Oregon Assisted Suicides by Compassion & Choices Organization*.

Stevens, *Concentration of Oregon’s Assisted Suicide Prescriptions & Deaths  
from a Small Number of Prescribing Physicians.*

First Death for Washington Assisted-Suicide Law, New York Times, 5/23/2009, [www.nytimes.com/2009/05/23/us/23suicide.html?\_r=0](http://www.nytimes.com/2009/05/23/us/23suicide.html?_r=0) (accessed March 10, 2015).

Sawyer Arraigned on State Fraud Charges, KTVZ.com, Sept. 7, 2011. [hwww.ktvz.com/news/Sawyer-Arraigned-on-State-Fraud-Charges/619440](http://www.ktvz.com/news/Sawyer-Arraigned-on-State-Fraud-Charges/619440) (accessed March 23, 2015)

California SB 128, Section 443.12. (a)

California SB 128, Section 443.7. (b)

Attempts to Legalize Euthanasia/Assisted-Suicide in the United States, Patients Rights Council, [www.patientsrightscouncil.org/site/failed-attempts-usa/](http://www.patientsrightscouncil.org/site/failed-attempts-usa/) (accessed March 23, 2015)

Dr. Katrina Hedberg, DHS news release, “No authority to investigate Death with Dignity case, DHS says,” March 4, 2005.

Oregon Death with Dignity Act Annual Reports, Oregon Health Authority Public Health Division, [https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/P ages/ar-index.aspx](https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/P%20ages/ar-index.aspx).

Oregon Revised Statute, <https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx> (accessed March 23, 2015).

1. Dr. Peter Goodwin, the group's former medical director said that about 75% of those who died using Oregon’s assisted-suicide law through the end of 2002 did so with the organization's assistance. (Transcript of tape of Peter Goodwin, "Oregon" Jan. 11, 2003, presented at 13th National Hemlock Biennial Conference, "Charting a New Course, Building on a Solid Foundation, Imagining a Brighter Future for America’s Terminally Ill," Jan. 9-12, 2003, Bahia Resort Hotel, San Diego California.)

   During the 2003 calendar year, the organization was involved in 79% of assisted-suicide deaths. ("Compassion in Dying of Oregon Summary of Hastened Deaths," Data attached to Compassion in Dying of Oregon’s IRS Form 990 for 2003.)

   According to Dr. Elizabeth Goy of OHSU, Compassion in Dying (now called Compassion and Choices) sees "almost 90 percent of requesting Oregonians...." (Testimony of Elizabeth Goy, p. 291, question 768. (Goy is an assistant professor, Dept. of Psychiatry, School of Medicine, OHSU, and has worked with Linda Ganzini in formulating results of surveys dealing with Oregon's law.)) [↑](#endnote-ref-1)
2. House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill, *Assisted Dying for the Terminally Ill Bill [HL]* Volume II: Evidence. Apr. 4, 2005.Testimony of Katrina Hedberg, p. 262, question 592. [↑](#endnote-ref-2)