

Why So-Called Safeguards Don't Work: Physician Assisted Suicide

Background:

Looking at both legal analysis of doctor prescribed suicide laws and the experience in Oregon and Washington, there is evidence that any so-called safeguards that might come attached to the proposals do not work.

So Called Safeguard: **"The patient must be competent"**

Why this does not work:

There is nothing in the law to protect those with mental illness:

- It is a well-established psychological fact that nearly every terminally ill patient who desires death is suffering from a treatable mental disorder .¹
- There is no requirement that the patient be given a psychiatric evaluation. Over nearly a decade and a half, Oregon Department of Health statistics show that only 6.7% of patients were referred for an evaluation.²
- A major state paper, *The Oregonian*, has documented that many patients suffering from depression and dementia are receiving doctor prescribed suicide.³

There is no requirement for a witness at the time of death:

- It is unknown if the person is still competent at the time she or he actually ingests the lethal prescription.
- The range of time between the first request and death is 15 -1009 days (nearly 3 years).⁴ A lot can happen in that time. Did the person's mental state deteriorate? Did caregivers tire of caring for a sick relative?

There is no requirement that the doctor has any knowledge of or relationship with the patient:

- "Doctor shopping" is common. A network of doctor prescribed death proponents ensures that patients will receive lethal prescriptions⁵, even when their family doctor knows their desire for death is transient and could be alleviated.

So Called Safeguard: **"The patient must be terminally ill"**

Why this does not work:

- Terminal illness is often difficult to predict. Further, there is evidence that many non-terminally ill patients receive the lethal prescriptions. The Oregon Department of Health reports that the range of time between the first request and death has been as long as almost 3 years. ⁶
- The definition of terminal illness includes a person with an incurable irreversible disease that will...produce death within six months". Looking at one example under this definition, insulin reliant diabetics who stop taking their medication could qualify, even though they could live decades with treatment.



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So Called Safeguard: **“The request must be voluntary”**

Why this does not work:

- There is no language in the law prohibiting anyone from pressuring the patient to accede to doctor prescribed suicide. The Oregon Health Plan notified state health insurance recipients Barbara Wagner and Randy Stroup that the treatment they needed to survive would not be covered, but informed them that doctor prescribed death was available and would be covered.⁷
- There is insufficient protection from the improper motives of family or friends who apply pressure. In new proposals, an heir can actually serve as a witness for the request for doctor prescribed death.⁸
- In Oregon, studies and official reports show that people are regularly requesting doctor prescribed suicide because they fear becoming a burden on family and friends.^{9,10}
- Although the law states doctors must give patients “feasible alternatives” to assisted suicide – like pain control, and hospice, there is no requirement these are covered under insurance.

So Called Safeguard: **“The patient must self-administer”**, so it is not euthanasia

Why this does not work:

- Although the statute claims to allow only those who can “self-administer” to request the lethal prescription, many legal observers argue that this is one court challenge away from being overruled. If, for example, there was a person with disabilities who could not swallow, there is an official legal opinion from the Oregon Attorney General’s office stating that this is unconstitutionally discriminatory.¹¹ This means that lethal injection might be one legal challenge away. This could be the case in any state that legalized the practice of doctor prescribed death.

So Called Safeguard: **“The state can punish violations”**

Why this does not work:

- The doctor prescribing death is held only to a “good faith standard” which is far lower than the malpractice standard applied to other health providers.¹²
- There is no mechanism to ensure doctors report (they self-report) or comply.
- The underlying reported data in OR and WA is destroyed by the state yearly.¹³
- In OR and WA, the death certificates are falsified by statute, listing only the underlying illness as the cause of death, making the real number of suicides unknowable.¹⁴

ENDNOTES:

- [1] Barraclough, Bunch, Nelson, & Salisbury, *A Hundred Cases of Suicide: Clinical Aspects*, 125 BRIT. J. PSYCHIATRY 355, 356 (1976) and E. Robins, THE FINAL MONTHS 12 (1981).
- [2] Oregon Public Health Division, *2011 Report on Oregon's Death with Dignity Act*, released 3/6/12. The annual reports are available online at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ar-index.aspx>
- [3] Erin Barnett, "A family struggle: Is Mom capable of choosing to die?" *Oregonian*, Oct. 17, 1999.
- [4] Oregon Public Health Division, *2011 Report on Oregon's Death with Dignity Act*, released 3/6/12.
- [5] Erin Barnett, "A family struggle: Is Mom capable of choosing to die?" *Oregonian*, Oct. 17, 1999.
- [6] Under the law, a patient is supposed to have 6 months to live or less. However, patients are holding on to lethal prescriptions for nearly 3 years. Oregon Public Health Division, *2011 Report on Oregon's Death with Dignity Act*, released 3/6/12.
- [7] Susan Donaldson James, "[Death Drugs Cause Uproar in Oregon](#)," ABC News, Aug. 6, 2008, and Susan Harding and KATU web staff, "[Letter noting assisted suicide raises questions](#)," July 30, 2008.
- [8] See petition language: <http://www.mass.gov/ago/docs/government/2011-petitions/11-12.pdf>
- [9] Ganzini et al: *Journal of General Internal Medicine (J Gen Intern Med)* 2008 Feb; 23(2):154-7
- [10] 42% of respondents selected "Burden on family, friends/caregivers" as a reason for requesting doctor prescribed death. Oregon Public Health Division, *2011 Report on Oregon's Death with Dignity Act*, released 3/6/12.
- [11] Letter from Oregon Deputy Attorney General David Schuman to State Senator Neil Bryant, March 15, 1999, "Oregon controversy: How assisted can suicide be?" *American Medical News*, April 12, 1999.
- [12] See statutory language available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>
- [13] See both statutory language available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx> and the Oregon Health Department Press release at: <http://www.oregon.gov/DHS/news/2005news/2005-0304a.shtml> which states "The state law authorizing physician-assisted suicide neither requires nor authorizes investigations by DHS, said Barry S. Kast, DHS assistant director for health services."
- [14] See both statutory language available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx> and the Oregon Health Department Press release at: <http://www.oregon.gov/DHS/news/2005news/2005-0304a.shtml> which states "The state law authorizing physician-assisted suicide neither requires nor authorizes investigations by DHS, said Barry S. Kast, DHS assistant director for health services."