
A BILL FOR AN ACT

RELATING TO HAWAII DEATH WITH DIGNITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The United States Supreme Court in *Gonzales*,
2 *Attorney General v. Oregon*, No. 04-623 (January 17, 2006), in
3 effect let stand the Oregon death with dignity act (section
4 127.800 et seq., Oregon Revised Statutes) as not being a
5 violation of the federal Controlled Substances Act (CSA). The
6 court stated in pertinent part:

7 [T]he prescription requirement [referring to the
8 federal Act] is better understood as a provision that
9 ensures patients use controlled substances under the
10 supervision of a doctor so as to prevent addiction and
11 recreational abuse. As a corollary, the provision
12 also bars doctors from peddling to patients who crave
13 the drugs for those prohibited uses. . . . To read
14 prescriptions for assisted suicide as constituting
15 "drug abuse" under the CSA is discordant with the
16 phrase's consistent use throughout the statute, not to
17 mention its ordinary meaning. . . .



1 [W]e conclude the CSA's prescription requirement does
2 not authorize the Attorney General to bar dispensing
3 controlled substances for assisted suicide in the face
4 of a state medical regime permitting such
5 conduct. . . . The text and structure of the CSA
6 shows that Congress did not have this far-reaching
7 intent to alter the federal-state balance and the
8 congressional role in maintaining it.

9 The legislature finds that doctors in Hawaii have been
10 restrained from prescribing controlled substances to terminally
11 ill patients for fear of violating the federal and state
12 controlled substances Act. However, the *Gonzales v. Oregon* case
13 has removed this impediment.

14 Hawaii's uniform health-care decisions Act, chapter 327E,
15 Hawaii Revised Statutes, provides for an agent of an individual
16 to make health-care decisions for the individual under certain
17 circumstances. However, chapter 327E does not allow a
18 terminally ill patient to authorize the patient's physician to
19 prescribe medications to end life.

20 The purpose of this Act is to enact the Hawaii death with
21 dignity act to allow the attending physician of the terminally

1 ill patient, with appropriate safeguards, to prescribe
2 medication to end the patient's life.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 HAWAII DEATH WITH DIGNITY ACT

8 § -A Definitions. As used in this chapter:

9 "Adult" means an individual who is eighteen years of age or
10 older.

11 "Attending physician" means the physician who has primary
12 responsibility for the care of the patient and treatment of the
13 patient's terminal disease.

14 "Capable" means that in the opinion of a court or in the
15 opinion of the patient's attending physician or consulting
16 physician, psychiatrist, or psychologist, a patient has the
17 ability to make and communicate health care decisions to health
18 care providers, including communication through persons familiar
19 with the patient's manner of communicating if those persons are
20 available.



1 "Consulting physician" means a physician who is qualified
2 by specialty or experience to make a professional diagnosis and
3 prognosis regarding the patient's disease.

4 "Counseling" means one or more consultations as necessary
5 between a state licensed psychiatrist or psychologist and a
6 patient for the purpose of determining that the patient is
7 capable and not suffering from a psychiatric or psychological
8 disorder or depression causing impaired judgment.

9 "Department" means the department of health.

10 "Health care provider" means a person licensed, certified,
11 or otherwise authorized or permitted by state law to administer
12 health care or dispense medication in the ordinary course of
13 business or practice of a profession, and includes a health care
14 facility.

15 "Informed decision" means a decision by a qualified
16 patient, to request and obtain a prescription to end his or her
17 life in a humane and dignified manner, that is based on an
18 appreciation of the relevant facts and after being fully
19 informed by the attending physician of:

- 20 (1) The patient's medical diagnosis;
21 (2) The patient's prognosis;



- 1 (3) The potential risks associated with taking the
- 2 medication to be prescribed;
- 3 (4) The probable result of taking the medication to be
- 4 prescribed; and
- 5 (5) The feasible alternatives, including, but not limited
- 6 to, comfort care, hospice care, and pain control.

7 "Medically confirmed" means the medical opinion of the
8 attending physician has been confirmed by a consulting physician
9 who has examined the patient and the patient's relevant medical
10 records.

11 "Patient" means a person who is under the care of a
12 physician.

13 "Physician" means a doctor of medicine or osteopathy
14 licensed to practice medicine in this State.

15 "Qualified patient" means a capable adult who is a state
16 resident and has satisfied the requirements of this chapter in
17 order to obtain a prescription for medication to end his or her
18 life in a humane and dignified manner.

19 "Terminal disease" means an incurable and irreversible
20 disease that has been medically confirmed and will, within
21 reasonable medical judgment, produce death within six months.

1 § **-B Who may initiate a written request for medication.**

2 (a) An adult who is capable, is a state resident, and has been
3 determined by the attending physician and consulting physician
4 to be suffering from a terminal disease, and who has voluntarily
5 expressed his or her wish to die, may make a written request for
6 medication for the purpose of ending the person's life in a
7 humane and dignified manner in accordance with this chapter.

8 (b) No person shall qualify under this section solely
9 because of age or disability.

10 § **-C Form of the written request.** (a) A valid request
11 for medication shall be in substantially the form described in
12 section -T, signed and dated by the patient and witnessed by
13 at least two individuals who, in the presence of the patient,
14 attest that to the best of their knowledge and belief the
15 patient is capable, acting voluntarily, and is not being coerced
16 to sign the request.

17 (b) One of the witnesses shall be a person who is not:

18 (1) A relative of the patient by blood, marriage or
19 adoption;

20 (2) A person who at the time the request is signed would
21 be entitled to any portion of the estate of the

1 qualified patient upon death under any will or by
2 operation of law; or

3 (3) An owner, operator or employee of a health care
4 facility where the qualified patient is receiving
5 medical treatment or is a resident.

6 (c) The patient's attending physician at the time the
7 request is signed shall not be a witness.

8 (d) If the patient is a patient in a long-term care
9 facility at the time the written request is made, one of the
10 witnesses shall be an individual designated by the facility who
11 has the qualifications required by rules adopted by the
12 department.

13 § -D **Attending physician responsibilities.** (a) The
14 attending physician shall:

15 (1) Make the initial determination whether a patient has a
16 terminal disease, is capable, and has made the request
17 voluntarily;

18 (2) Request that the patient demonstrate state residency;

19 (3) Ensure that the patient is making an informed
20 decision, by informing the patient of:

21 (A) The patient's medical diagnosis;

22 (B) The patient's prognosis;

- 1 (C) The potential risks associated with taking the
- 2 medication to be prescribed;
- 3 (D) The probable result of taking the medication to
- 4 be prescribed; and
- 5 (E) The feasible alternatives, including, but not
- 6 limited to, comfort care, hospice care and pain
- 7 control;
- 8 (4) Refer the patient to a consulting physician for
- 9 medical confirmation of the diagnosis, and for a
- 10 determination that the patient is capable and acting
- 11 voluntarily;
- 12 (5) Refer the patient for counseling if appropriate;
- 13 (6) Recommend that the patient notify next of kin;
- 14 (7) Counsel the patient about the importance of having
- 15 another person present when the patient takes the
- 16 medication prescribed pursuant to this chapter and of
- 17 not taking the medication in a public place;
- 18 (8) Inform the patient that he or she has an opportunity
- 19 to rescind the request at any time and in any manner,
- 20 and offer the patient an opportunity to rescind at the
- 21 end of the fifteen day waiting period pursuant to
- 22 section -I;



1 (9) Verify, immediately prior to writing the prescription
2 for medication, that the patient is making an informed
3 decision;

4 (10) Fulfill the medical record documentation requirements
5 of section -L; and

6 (11) Ensure that all appropriate steps are carried out in
7 accordance with this chapter prior to writing a
8 prescription for medication to enable a qualified
9 patient to end the qualified patient's life in a
10 humane and dignified manner.

11 (b) For purposes of this section, notwithstanding any law
12 to the contrary, the attending physician shall dispense
13 medications directly, including ancillary medications intended
14 to facilitate the desired effect to minimize the patient's
15 discomfort, provided the attending physician is authorized to
16 dispense controlled substances under section 329-38, has a
17 current Drug Enforcement Administration certificate, and
18 complies with any applicable administrative rule.

19 (c) The attending physician, with the patient's written
20 consent, shall:

21 (1) Contact a pharmacist and inform the pharmacist of the
22 prescription; and



1 (2) Deliver the written prescription personally or by mail
2 to the pharmacist, who shall dispense the medications
3 to the patient, the attending physician, or an
4 expressly identified agent of the patient.

5 (d) Notwithstanding any other provision of law, the
6 attending physician may sign the patient's death certificate.

7 § **-E Consulting physician confirmation.** Before a
8 patient becomes a qualified patient, a consulting physician
9 shall examine the patient and the patient's relevant medical
10 records and confirm, in writing, the attending physician's
11 diagnosis that the patient is suffering from a terminal disease,
12 and verify that the patient is capable, is acting voluntarily,
13 and has made an informed decision.

14 § **-F Counseling referral.** If in the opinion of the
15 attending physician or the consulting physician, a patient may
16 be suffering from a psychiatric or psychological disorder or
17 depression causing impaired judgment, either physician shall
18 refer the patient for counseling. No medication to end a
19 patient's life in a humane and dignified manner shall be
20 prescribed until the person performing the counseling determines
21 that the patient is not suffering from a psychiatric or
22 psychological disorder or depression causing impaired judgment.



1 § **-G Informed decision.** No qualified patient shall
2 receive a prescription for medication to end the patient's life
3 in a humane and dignified manner unless the patient has made an
4 informed decision. Immediately prior to writing a prescription
5 for medication, the attending physician shall verify that the
6 patient is making an informed decision.

7 § **-H Family notification.** The attending physician shall
8 recommend that the patient notify the next of kin of the
9 patient's request for medication pursuant to this chapter. A
10 patient who declines or is unable to notify next of kin shall
11 not have the request denied for that reason.

12 § **-I Written and oral requests.** In order to receive a
13 prescription for medication to end a qualified patient's life in
14 a humane and dignified manner, the qualified patient shall have
15 made an oral request and a written request, and reiterate the
16 oral request to the attending physician no less than fifteen
17 days after making the initial oral request. At the time the
18 qualified patient makes the second oral request, the attending
19 physician shall offer the patient an opportunity to rescind the
20 request.

21 § **-J Right to rescind request.** A patient may rescind
22 the written request at any time and in any manner without regard

1 to the patient's mental state. No prescription for medication
2 under this chapter may be written without the attending
3 physician offering the qualified patient an opportunity to
4 rescind the request.

5 § -K **Waiting periods.** No less than fifteen days shall
6 elapse between the patient's initial oral request and the
7 writing of a prescription under this chapter. No less than
8 forty-eight hours shall elapse between the patient's written
9 request and the writing of a prescription.

10 § -L **Medical record documentation requirements.** The
11 following shall be documented or filed in the qualified
12 patient's medical record:

- 13 (1) All oral requests by a patient for medication to end
14 the patient's life in a humane and dignified manner;
- 15 (2) All written requests by a patient for medication to
16 end the patient's life in a humane and dignified
17 manner;
- 18 (3) The attending physician's diagnosis and prognosis,
19 determination that the patient is capable, acting
20 voluntarily, and has made an informed decision;



- 1 (4) The consulting physician's diagnosis and prognosis,
2 and verification that the patient is capable, acting
3 voluntarily, and has made an informed decision;
- 4 (5) A report of the outcome and determinations made during
5 counseling, if performed;
- 6 (6) The attending physician's offer to the patient to
7 rescind the patient's request at the time of the
8 patient's second oral request pursuant to
9 section -I; and
- 10 (7) A note by the attending physician indicating that all
11 requirements under this chapter have been met and
12 indicating the steps taken to carry out the request,
13 including a notation of the medication prescribed.

14 § -M **Residency requirement.** Only requests under this
15 chapter made by state residents shall be granted. Factors
16 demonstrating state residency include, but are not limited to:

- 17 (1) Possession of a state driver license;
- 18 (2) Registration to vote in the State;
- 19 (3) Evidence that the person owns or leases property in
20 the State; or
- 21 (4) Filing of a state income tax return for the most
22 recent tax year.

1 § **-N Reporting requirements.** (a) The department shall
2 annually review a sample of records maintained pursuant to this
3 chapter.

4 (b) The department shall require any health care provider
5 upon dispensing medication pursuant to this chapter to file a
6 copy of the dispensing record with the department.

7 (c) The department shall adopt rules pursuant to chapter
8 91 to facilitate the collection of information regarding
9 compliance with this chapter. Except as otherwise required by
10 law, the information collected shall not be a public record and
11 may not be made available for inspection by the public.

12 (d) The department shall generate and make available to
13 the public an annual statistical report of information collected
14 under this section.

15 § **-O Effect on construction of wills, contracts and**
16 **statutes.** (a) No provision in a contract, will or other
17 agreement, whether written or oral, to the extent the provision
18 would affect whether a person may make or rescind a request for
19 medication to end his or her life in a humane and dignified
20 manner, shall be valid.

21 (b) No obligation owing under any currently existing
22 contract shall be conditioned or affected by the making or



1 rescinding of a request, by a person, for medication to end the
2 person's life in a humane and dignified manner.

3 § **-P Insurance or annuity policies.** The sale,
4 procurement, or issuance of any life, health, or accident
5 insurance or annuity policy or the rate charged for any policy
6 shall not be conditioned upon or affected by the making or
7 rescinding of a request, by a person, for medication to end the
8 person's life in a humane and dignified manner pursuant to this
9 chapter. Neither shall a qualified patient's act of ingesting
10 medication to end the patient's life in a humane and dignified
11 manner have an effect upon a life, health, or accident insurance
12 or annuity policy.

13 § **-Q Construction.** This chapter shall not be construed
14 to authorize a physician or any other person to end a patient's
15 life by lethal injection, mercy killing, or active euthanasia.
16 Actions taken in accordance with this chapter shall not, for any
17 purpose, constitute suicide, assisted suicide, mercy killing or
18 homicide.

19 § **-R Immunities; basis for prohibiting health care**
20 **provider from participation; notification; permissible**
21 **sanctions.** (a) No person shall be subject to civil or criminal
22 liability or professional disciplinary action for participating



1 in good faith compliance with this chapter, including by being
2 present when a qualified patient takes the prescribed medication
3 to end his or her life in a humane and dignified manner.

4 (b) No professional organization or association, or health
5 care provider may subject a person to censure, discipline,
6 suspension, loss of license, loss of privileges, loss of
7 membership, or other penalty for participating or refusing to
8 participate in good faith compliance with this chapter.

9 (c) No request by a patient for or provision by an
10 attending physician of medication in good faith compliance with
11 this chapter shall constitute neglect for any purpose of law or
12 provide the sole basis for the appointment of a guardian or
13 conservator.

14 (d) No health care provider shall be under any duty,
15 whether by contract, by statute or by any other legal
16 requirement, to participate in the provision to a qualified
17 patient of medication to end the patient's life in a humane and
18 dignified manner. If a health care provider is unable or
19 unwilling to carry out a patient's written request under this
20 chapter, and the patient transfers care to a new health care
21 provider, the prior health care provider shall transfer, upon



1 request, a copy of the patient's relevant medical records to the
2 new health care provider.

3 (e) Notwithstanding any other provision of law, a health
4 care provider may prohibit another health care provider from
5 participating in the procedures under this chapter on the
6 premises of the prohibiting provider, if the prohibiting
7 provider has notified the health care provider of the
8 prohibiting provider's policy regarding participating in the
9 procedures under this chapter. Nothing in this paragraph
10 prevents a health care provider from providing health care
11 services to a patient that do not constitute participation in
12 the procedures under this chapter.

13 (f) Notwithstanding the provisions of subsections (a) to
14 (d), a health care provider may subject another health care
15 provider to the following sanctions if the sanctioning health
16 care provider has notified the sanctioned provider prior to
17 participation in the procedures under this chapter that this
18 chapter prohibits such participation:

19 (1) Loss of privileges, loss of membership or other
20 sanction provided pursuant to the medical staff
21 by-laws, policies and procedures of the sanctioning
22 health care provider if the sanctioned provider is a



1 member of the sanctioning provider's medical staff and
2 participates in procedures under this chapter while on
3 the health care facility premises of the sanctioning
4 health care provider, but not including the private
5 medical office of a physician or other provider;

6 (2) Termination of a lease or other property contract or
7 other nonmonetary remedies provided by the lease or
8 contract, not including loss or restriction of medical
9 staff privileges or exclusion from a provider panel,
10 if the sanctioned provider participates in procedures
11 under this chapter while on the premises of the
12 sanctioning health care provider or on property that
13 is owned by or under the direct control of the
14 sanctioning health care provider; or

15 (3) Termination of a contract or other non-monetary
16 remedies provided by contract if the sanctioned
17 provider participates in procedures under this chapter
18 while acting in the course and scope of the sanctioned
19 provider's capacity as an employee or independent
20 contractor of the sanctioning health care provider.

21 Nothing in this paragraph shall be construed to
22 prevent:

1 (A) A health care provider from participating in the
2 procedures under this chapter while acting
3 outside the course and scope of the provider's
4 capacity as an employee or independent
5 contractor; or

6 (B) A patient from contracting with the patient's
7 attending physician and consulting physician to
8 act outside the course and scope of the
9 provider's capacity as an employee or independent
10 contractor of the sanctioning health care
11 provider.

12 (g) A health care provider that imposes sanctions pursuant
13 to subsection (f) shall follow all due process and other
14 procedures that the sanctioning health care provider may have
15 that are related to the imposition of sanctions on another
16 health care provider.

17 (h) Action taken pursuant to this section shall not be the
18 sole basis for a report of unprofessional or dishonorable
19 conduct for professional disciplinary purposes.

20 (i) No provision of this chapter shall be construed to
21 allow a lower standard of care for patients in the community
22 where the patient is treated or a similar community.

1 (j) For purposes of this section:

2 "Notify" means a separate statement in writing to the
3 health care provider specifically informing the health care
4 provider prior to the provider's participation in the procedures
5 under this chapter of the sanctioning health care provider's
6 policy about participation in procedures under this chapter.

7 "Participation in the procedures under this chapter" means
8 to perform the duties of an attending physician pursuant to
9 section -D, the consulting physician function pursuant to
10 section -E, or the counseling function pursuant to
11 section -F. "Participation in the procedures under this
12 chapter" does not include:

- 13 (1) Making an initial determination that a patient has a
14 terminal disease and informing the patient of the
15 medical prognosis;
- 16 (2) Providing information about this chapter to a patient
17 upon the request of the patient;
- 18 (3) Providing a patient, upon the request of the patient,
19 with a referral to another physician; or
- 20 (4) A patient contracting with his or her attending
21 physician and consulting physician to act outside of
22 the course and scope of the provider's capacity as an

1 employee or independent contractor of the sanctioning
2 health care provider.

3 § -S **Liabilities.** (a) A person who without
4 authorization of the patient willfully alters or forges a
5 request for medication or conceals or destroys a rescission of
6 that request with the intent or effect of causing the patient's
7 death shall be guilty of a class felony.

8 (b) A person who coerces or exerts undue influence on a
9 patient to request medication for the purpose of ending the
10 patient's life, or to destroy a rescission of such a request,
11 shall be guilty of a class felony.

12 (c) Nothing in this chapter limits further liability for
13 civil damages resulting from other negligent conduct or
14 intentional misconduct by any person.

15 (d) The penalties in this chapter do not preclude criminal
16 penalties under other law for conduct which is not authorized by
17 this chapter.

18 § -T **Form of the request.** A request for a medication
19 as authorized by this chapter shall be in substantially the
20 following form:

21 "REQUEST FOR MEDICATION
22 TO END MY LIFE IN A HUMANE

1 AND DIGNIFIED MANNER

2 I, _____, am an adult of sound mind. I am
3 suffering from _____, which my attending physician has
4 determined is a terminal disease and which has been medically
5 confirmed by a consulting physician.

6 I have been fully informed of my diagnosis, prognosis, the
7 nature of medication to be prescribed and potential associated
8 risks, the expected result, and the feasible alternatives,
9 including comfort care, hospice care, and pain control.

10 I request that my attending physician prescribe medication
11 that will end my life in a humane and dignified manner.

12 INITIAL ONE:

13 _____ I have informed my family of my decision and taken
14 their opinions into consideration.

15 _____ I have decided not to inform my family of my
16 decision.

17 _____ I have no family to inform of my decision.

18 I understand that I have the right to rescind this request
19 at any time.

20 I understand the full import of this request and I expect
21 to die when I take the medication to be prescribed. I further
22 understand that although most deaths occur within three hours,

1 my death may take longer and my physician has counseled me about
2 this possibility.

3 I make this request voluntarily and without reservation,
4 and I accept full moral responsibility for my actions.

5 Signed: _____

6 Dated: _____

7 DECLARATION OF WITNESSES

8 We declare that the person signing this request:

9 (a) Is personally known to us or has provided proof of
10 identity;

11 (b) Signed this request in our presence;

12 (c) Appears to be of sound mind and not under duress,
13 fraud, or undue influence;

14 (d) Is not a patient for whom either of us is attending
15 physician.

16 _____Witness 1/Date

17 _____Witness 2/Date"

18 NOTE: One witness shall not be a relative (by blood,
19 marriage or adoption) of the person signing this request, shall
20 not be entitled to any portion of the person's estate upon death
21 and shall not own, operate or be employed at a health care
22 facility where the person is a patient or resident. If the

1 patient is an inpatient at a health care facility, one of the
2 witnesses shall be an individual designated by the facility.

3 § -U **Penalties.** (a) It shall be a class felony
4 for a person without authorization of the principal to wilfully
5 alter, forge, conceal, or destroy an instrument, the
6 reinstatement or revocation of an instrument or any other
7 evidence or document reflecting the principal's desires and
8 interests, with the intent and effect of causing a withholding
9 or withdrawal of life-sustaining procedures or of artificially
10 administered nutrition and hydration which hastens the death of
11 the principal.

12 (b) Except as provided in subsection (a) of this section,
13 it shall be a misdemeanor for a person without authorization of
14 the principal to willfully alter, forge, conceal, or destroy an
15 instrument, the reinstatement or revocation of an instrument, or
16 any other evidence or document reflecting the principal's
17 desires and interests with the intent or effect of affecting a
18 health care decision."

19 SECTION 3. If any provision of this Act, or the
20 application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act, which can be given effect without the

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 5. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections of this Act.

10 SECTION 6. This Act shall take effect upon its approval.

11

INTRODUCED BY: Gracie R. Juvoye



SB. NO. 2900

Report Title:

Death with Dignity

Description:

Enacts the Hawaii death with dignity act.

