

JAN 19 2007

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



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

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

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

19 The purpose of this Act is to enact the Hawaii death with  
20 dignity act to allow the attending physician of the terminally  
21 ill patient, with appropriate safeguards, to prescribe  
22 medication to end the patient's life.



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

4 "CHAPTER

5 HAWAII DEATH WITH DIGNITY ACT

6 § -1 Definitions. As used in this chapter:

7 "Adult" means an individual who is eighteen years of age or  
8 older.

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

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

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



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

6 "Department" means the department of health.

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

12 "Informed decision" means a decision by a qualified  
13 patient, to request and obtain a prescription to end the  
14 patient's life in a humane and dignified manner, that is based  
15 on an appreciation of the relevant facts and after being fully  
16 informed by the attending physician of:

- 17 (1) The patient's medical diagnosis;  
18 (2) The patient's prognosis;  
19 (3) The potential risks associated with taking the  
20 medication to be prescribed;  
21 (4) The probable result of taking the medication to be  
22 prescribed; and



1 (5) The feasible alternatives, including, but not limited  
2 to, comfort care, hospice care, and pain control.

3 "Medically confirmed" means the medical opinion of the  
4 attending physician has been confirmed by a consulting physician  
5 who has examined the patient and the patient's relevant medical  
6 records.

7 "Patient" means a person who is under the care of a  
8 physician.

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

11 "Qualified patient" means a capable adult who is a state  
12 resident and has satisfied the requirements of this chapter in  
13 order to obtain a prescription for medication to end the adult's  
14 life in a humane and dignified manner.

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

18 § -2 Who may initiate a written request for medication.

19 (a) An adult who is capable, is a state resident, and has been  
20 determined by the attending physician and consulting physician  
21 to be suffering from a terminal disease, and who has voluntarily  
22 expressed the adult's wish to die, may make a written request



1 for medication for the purpose of ending the adult's life in a  
2 humane and dignified manner in accordance with this chapter.

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

5 § -3 Form of the written request. (a) A valid request  
6 for medication shall be in substantially the form described in  
7 section -20, signed and dated by the patient and witnessed by  
8 at least two individuals who, in the presence of the patient,  
9 attest that to the best of their knowledge and belief the  
10 patient is capable, acting voluntarily, and is not being coerced  
11 to sign the request.

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

13 (1) A relative of the patient by blood, marriage, or  
14 adoption;

15 (2) A person who at the time the request is signed would  
16 be entitled to any portion of the estate of the  
17 qualified patient upon death under any will or by  
18 operation of law; or

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



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

3 (d) If the patient is a patient in a long-term care  
4 facility at the time the written request is made, one of the  
5 witnesses shall be an individual designated by the facility who  
6 has the qualifications required by rules adopted by the  
7 department.

8 § -4 Attending physician responsibilities. (a) The  
9 attending physician shall:

10 (1) Make the initial determination whether a patient has a  
11 terminal disease, is capable, and has made the request  
12 voluntarily;

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

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

16 (A) The patient's medical diagnosis;

17 (B) The patient's prognosis;

18 (C) The potential risks associated with taking the  
19 medication to be prescribed;

20 (D) The probable result of taking the medication to  
21 be prescribed; and



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





1 (10) Fulfill the medical record documentation requirements  
2 of section -12; and

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

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

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

18 (1) Contact a pharmacist and inform the pharmacist of the  
19 prescription; and

20 (2) Deliver the written prescription personally or by mail  
21 to the pharmacist, who shall dispense the medications



1 to the patient, the attending physician, or an  
2 expressly identified agent of the patient.

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

5 § -5 **Consulting physician confirmation.** Before a  
6 patient becomes a qualified patient, a consulting physician  
7 shall examine the patient and the patient's relevant medical  
8 records and confirm, in writing, the attending physician's  
9 diagnosis that the patient is suffering from a terminal disease,  
10 and verify that the patient is capable, is acting voluntarily,  
11 and has made an informed decision.

12 § -6 **Counseling referral.** If, in the opinion of the  
13 attending physician or the consulting physician, a patient may  
14 be suffering from a psychiatric or psychological disorder or  
15 depression causing impaired judgment, either physician shall  
16 refer the patient for counseling. No medication to end a  
17 patient's life in a humane and dignified manner shall be  
18 prescribed until the person performing the counseling determines  
19 that the patient is not suffering from a psychiatric or  
20 psychological disorder or depression causing impaired judgment.

21 § -7 **Informed decision.** No qualified patient shall  
22 receive a prescription for medication to end the patient's life



1 in a humane and dignified manner unless the patient has made an  
2 informed decision. Immediately prior to writing a prescription  
3 for medication, the attending physician shall verify that the  
4 patient is making an informed decision.

5       **§ -8 Family notification.** The attending physician shall  
6 recommend that the patient notify the next of kin of the  
7 patient's request for medication pursuant to this chapter. A  
8 patient who declines or is unable to notify next of kin shall  
9 not have the request denied for that reason.

10       **§ -9 Written and oral requests.** In order to receive a  
11 prescription for medication to end a qualified patient's life in  
12 a humane and dignified manner, the qualified patient shall have  
13 made an oral request and a written request, and reiterate the  
14 oral request to the attending physician no less than fifteen  
15 days after making the initial oral request. At the time the  
16 qualified patient makes the second oral request, the attending  
17 physician shall offer the patient an opportunity to rescind the  
18 request.

19       **§ -10 Right to rescind request.** A patient may rescind  
20 the written request at any time and in any manner without regard  
21 to the patient's mental state. No prescription for medication  
22 under this chapter may be written without the attending



1 physician offering the qualified patient an opportunity to  
2 rescind the request.

3       § -11 **Waiting periods.** No less than fifteen days shall  
4 elapse between the patient's initial oral request and the  
5 writing of a prescription under this chapter. No less than  
6 forty-eight hours shall elapse between the patient's written  
7 request and the writing of a prescription.

8       § -12 **Medical record documentation requirements.** The  
9 following shall be documented or filed in the qualified  
10 patient's medical record:

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



1 (5) A report of the outcome and determinations made during  
2 counseling, if performed;

3 (6) The attending physician's offer to the patient to  
4 rescind the patient's request at the time of the  
5 patient's second oral request pursuant to  
6 section -9; and

7 (7) A note by the attending physician indicating that all  
8 requirements under this chapter have been met and  
9 indicating the steps taken to carry out the request,  
10 including a notation of the medication prescribed.

11 § -13 **Residency requirement.** Only requests under this  
12 chapter made by state residents shall be granted. Factors  
13 demonstrating state residency include, but are not limited to:

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

20 § -14 **Reporting requirements.** (a) The department shall  
21 annually review a sample of records maintained pursuant to this  
22 chapter.



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

4 (c) The department shall adopt rules pursuant to chapter  
5 91 to facilitate the collection of information regarding  
6 compliance with this chapter. Except as otherwise required by  
7 law, the information collected shall not be a public record and  
8 may not be made available for inspection by the public.

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

12 **§ -15 Effect on construction of wills, contracts, and**  
13 **statutes.** (a) No provision in a contract, will, or other  
14 agreement, whether written or oral, to the extent the provision  
15 would affect whether a person may make or rescind a request for  
16 medication to end the person's life in a humane and dignified  
17 manner, shall be valid.

18 (b) No obligation owing under any currently existing  
19 contract shall be conditioned or affected by the making or  
20 rescinding of a request, by a person, for medication to end the  
21 person's life in a humane and dignified manner.



1           **§ -16 Insurance or annuity policies.** The sale,  
2 procurement, or issuance of any life, health, or accident  
3 insurance or annuity policy or the rate charged for any policy  
4 shall not be conditioned upon or affected by the making or  
5 rescinding of a request, by a person, for medication to end the  
6 person's life in a humane and dignified manner pursuant to this  
7 chapter. Neither shall a qualified patient's act of ingesting  
8 medication to end the patient's life in a humane and dignified  
9 manner have an effect upon a life, health, or accident insurance  
10 or annuity policy.

11           **§ -17 Construction.** This chapter shall not be construed  
12 to authorize a physician or any other person to end a patient's  
13 life by lethal injection, mercy killing, or active euthanasia.  
14 Actions taken in accordance with this chapter shall not, for any  
15 purpose, constitute suicide, assisted suicide, mercy killing, or  
16 homicide.

17           **§ -18 Immunities; basis for prohibiting health care**  
18 **provider from participation; notification; permissible**  
19 **sanctions.** (a) No person shall be subject to civil or criminal  
20 liability or professional disciplinary action for participating  
21 in good faith compliance with this chapter, including by being



1 present when a qualified patient takes the prescribed medication  
2 to end the patient's life in a humane and dignified manner.

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

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

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





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

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

17 (1) Loss of privileges, loss of membership, or other  
18 sanction provided pursuant to the medical staff  
19 by-laws, policies, and procedures of the sanctioning  
20 health care provider if the sanctioned provider is a  
21 member of the sanctioning provider's medical staff and  
22 participates in procedures under this chapter while on



1 the health care facility premises of the sanctioning  
2 health care provider, but not including the private  
3 medical office of a physician or other provider;

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

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

19 Nothing in this paragraph shall be construed to  
20 prevent:

21 (A) A health care provider from participating in the  
22 procedures under this chapter while acting



1 outside the course and scope of the provider's  
2 capacity as an employee or independent  
3 contractor; or

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

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

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

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

21 (j) For purposes of this section:



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

6 "Participation in the procedures under this chapter" means  
7 to perform the duties of an attending physician pursuant to  
8 section -4, the consulting physician function pursuant to  
9 section -5, or the counseling function pursuant to  
10 section -6. "Participation in the procedures under this  
11 chapter" does not include:

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



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

3 § -19 Liabilities. (a) A person who without  
4 authorization of the patient wilfully alters or forges a request  
5 for medication or conceals or destroys a rescission of that  
6 request with the intent or effect of causing the patient's death  
7 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 § -20 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 § -21 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 wilfully 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. This Act shall take effect upon its approval.

7

INTRODUCED BY: *Imaine R. Furuya*  
*Chad Zukerman*



**Report Title:**

Death with Dignity

**Description:**

Enacts the Hawaii death with dignity act.

