

End of Life Oregon Death with Dignity Act

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Oregon Death with Dignity Act

- What are the requirements for individuals seeking to utilize the Act?
 - Must be Oregon resident (driver's license, voter registration, property or income tax)
 - Must be "capable" (can communicate health care decisions) of making an informed decision
 - Decision must be voluntary (no coercion)
 - Must have terminal disease (similar WA Advance Dir)
 - Must not have significant mental illness (depression)

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How Process of Act is Initiated..

- Patient must submit a written request to his/her attending physician, signed and dated, witnessed by at least two individuals who attest patient capable, acting voluntarily, no coercion.
- One witness can't be relative, attending MD, owner/operator/EE of HCF (except for individual designated by facility)

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What attending MD must do:

- Determine if terminal
- Verify OR residency
- Refer patient to consulting MD for diagnosis confirmation and verification that patient is capable, acting voluntarily
- Refer patient for mental health counseling as appropriate
- Recommend notification of next-of-kin

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What attending MD must do (cont'd)

- Explain ability to rescind, how to rescind
- To ensure informed decision, discuss:
 - Medical diagnosis/prognosis
 - Risk associated with medication prescribed
 - Result of taking medication prescribed
 - Feasible alternatives, including comfort care, hospice care, pain control (ABCD handout)

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Consulting MD:

- Shall examine patient and relevant medical records
- Shall confirm terminal disease, verify capable, acting voluntarily, making an informed decision
 - (Put this confirmation in writing)

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At least 15 days after making initial oral request:

- Patient may make second oral request
- At that time, MD shall offer patient opportunity to rescind request
- May write prescription at that time, provided that 48 hours has elapsed since patient submitted written request

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Providing medication:

- May dispense directly, if registered as dispensing physician with Board of Medical Examiners and DEA
- With patient's written consent:
 - Contact RPh and inform of nature of RX
 - Send or personally deliver Rx to pharmacy. Pharmacy will then dispense to pt, MD, or expressly identified agent of pt.

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State oversight:

- Copy of Rx filed with Department of Human Services
- HHS collects information based on their rules; information not made available to the public except in the form of an annual statistical report

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Immunities

- To attending MD
- To person(s) present when patient takes medication
 - Usually barbiturate “cocktail”. See “A Woman Ends Her Life Among Friends”, NY Times, F4, June 1, 2004.
- To HCP participating [*but see* ORS 127.885 Sec 4.01 (4) and (5)]

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Effect on wills/contracts/statutes; insurance

- Invalidates any provision in a will, contract or statute to the extent that it would affect a persons ability to make or rescind request
- No obligation in existing contract shall be conditioned on making or rescinding request
- Life/health/accident insurance shall not be conditioned upon or affected by making, rescinding, or executing request. Includes rates.

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Block Statute? State of Oregon v. Ashcroft, US Court of Appeals 9th Circuit (May 2004)

- Oregon filed suit against US Attorney General John Ashcroft, who in 2001 issued the “Ashcroft Directive”, declaring that physician assisted suicide violated the Controlled Substance Act.
- Originally filed in US District Court; judge ruled for Oregon and entered a permanent injunction against enforcement of directive.

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State of Oregon v. Ashcroft (cont'd)

- Transferred to US Court of Appeals, which has original jurisdiction over “final determinations, findings, and conclusions of the Attorney General” under the CSA. 21 USC Sec. 877.
- 9th Circuit held for the State of Oregon, restored permanent injunction against enforcement of directive.

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Basis of 9th Circuit Ruling

- Directive lacked clear congressional authority because AG may NOT exercise control over an area of law traditionally reserved for the states unless Congress gives AG a directive to exercise that authority that is “unmistakably clear”.
- Directive violated plain language of CSA, which expressly limits federal authority under the Act to field of drug abuse and prevention, while the Directive attempts to regulate medical practices outside this field.

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Basis of 9th Circuit Ruling (cont'd)

- Directive reaches beyond the bounds of the AG’s statutory authority. Intent of Congress was to limit CSA to problems associated with drug abuse and prevention. To the limited extent that Congress allowed federal government to step in regarding scope of medical practice, Congress empowered the Secretary of HHS, not the AG.

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Appeal filed by AG, US Supreme Court granted certiorari.

- Gonzales v Oregon heard October 5, 2005.
- Similar issues argued before the justices, little indication as to how they will decide.

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Questions