End of Life Issues

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Oregon Death with Dignity Act ("ODWDA"; ORS 127.800 to 127.995)

- 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 (compare to WA Law)
  - Must not have significant mental illness (depression)

“Terminal Disease” under ODWDA

- “An incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.”

Pt. may initiate process w/ attending MD by oral/written request. MD must then:

- 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 pt notify next-of-kin
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 drug prescribed (usually lethal barbiturate dose)
  - Result of taking drug prescribed
  - Feasible alternatives, including comfort care, hospice care, pain control

Consulting MD:

- Shall examine patient and relevant medical records
- Shall confirm terminal disease, verify capable, acting voluntarily, making an informed decision
  - MD shall put this confirmation in writing.

Requirements of written request

- 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).
- Must be submitted prior to Rx being issued; see below.

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
- MD may write prescription at that time, provided that 48 hours has elapsed since patient submitted written request
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.

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

Immunities
- To attending MD
- To person(s) present when patient takes medication
- To HCP participating [but see ORS 127.885 Sec 4.01 (4) and (5)]

Effect on wills/contracts/statutes; insurance
- Invalidates any provision in a will, contract or statute to the extent that it would affect a person’s 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.
Oregon v. Ashcroft in US Court of Appeals

- 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.

Basis of 9th Circuit Ruling

- “Ashcroft 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.
Appeal filed by 2nd Term AG Gonzales, US Supreme Court granted certiorari.


Justice Kennedy in his majority opinion affirmed the analysis and holding of the 9th Circuit Court of Appeals.