

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

CIV-2015-485-235

UNDER The Declaratory Judgments Act 1908 and the  
New Zealand Bill of Rights Act 1990

BETWEEN LECRETIA SEALES

Plaintiff

AND ATTORNEY-GENERAL

Defendant

DW  
[Signature]

[Affidante  
DRCube  
MD.]

Case Manager <i>Carolyn</i>
Next Event: <i>6/5/15</i>
- 5 MAY 2015
THE HIGH COURT WELLINGTON

RUSSELL McVEAGH

AFFIDAVIT OF DAVID RAYMOND GRUBE

AFFIRMED

APRIL 2015

A S Butler | C J Curran | C M  
Marks  
Phone +64 4 499 9555  
Fax +64 4 499 9556  
PO Box 10-214  
Wellington 11189

I, **DAVID RAYMOND GRUBE, MD** of Corvallis, Oregon, United States affirm:

### Introduction

1. I am a retired general practitioner, residing in Oregon, United States of America.
2. I have been asked to give evidence concerning my experience in dealing with patients' requests under the Death With Dignity Act 1997 ("**DWDA**").
3. I have read the Code of Conduct for Expert Witnesses and agree to comply with it.

### Personal profile

4. I had a practice for over 30 years as a doctor practising general medicine in Oregon and retired in 2012.
5. I am the national medical director at Compassion and Choices and teach at the University of Oregon Health and Sciences University, Portland Oregon, and the Western School of Medicine, Lebanon, Oregon.
6. I attach a full copy of my CV as exhibit "**DG01**".

### Prescriptions of lethal medication under the DWDA

7. The DWDA was passed in 1997. I wrote my first prescription under that legislation in 1999. In 30 years of practice, I was involved with the prescription of drugs under this legislation for 30 patients.
8. The process for prescribing drugs under the DWDA is set out in the medical practice of the State, ORS 127.8. I **attach** a copy of that document as exhibit "**DG02**".
9. In summary, the requirements for a doctor to prescribe lethal medication under the DWDA are that the doctor must be satisfied that the patient is:
  - (a) 18 years old;
  - (b) a resident of Oregon;
  - (c) has full capacity;
  - (d) is acting under their own volition and without influence of others; and
  - (e) has a terminal diagnosis. This means that they are expected to die within six months of the date of the consultation at the doctor's best estimation.
10. Once the consulting doctor has made their assessment, the patient must be seen by a second doctor to consider the same five matters. If either doctor considers that the patient's judgement is impaired by a mental illness they will decline to issue a prescription and refer the patient to a psychiatrist.
11. In this regard I draw an important distinction between clinical depression in the sense of mental illness that affects a patient's competence and the

sadness that a person feels at the end of life. That distinction is one doctors make regularly, and which I have made many times in my practice. In my own experience, of the 30 patients whose prescriptions I was involved in, I knew almost all of them very well and had known them for a long period of time. I was therefore able to draw on that knowledge in my assessment of their mental capacity.

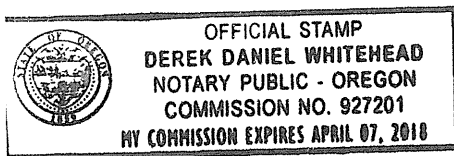
12. Following the determination by two physicians that the patient meets the requirements of the DWDA, the patient is required to issue a written request. The patient must then wait 15 days before making a second oral request for medication under the DWDA. After this, the patient must wait 48 hours before being issued with a prescription for the lethal medication under the DWDA.

### **The consultations**

13. As part of a consultation with a patient who requests medication under the DWDA a doctor is required to ensure informed consent. In addition to assessing competence this involves discussing all of the potential options a patient has as alternatives to ingesting lethal medication. This includes discussing with a patient the following options:
- (a) further treatment options that are available, if any;
  - (b) referral to a hospice or palliative care;
  - (c) the option of doing nothing and letting the disease take its course; and
  - (d) the fact that the prescription is lethal and will have the effect of ending their life within a number of minutes once ingested.
14. In my experience, by the time a patient first requests a DWDA prescription they will invariably have been discussing their end of life options with me for many months. Over the course of that period, we will have discussed in depth all of the other options that are available to the patient, as described above.
15. Although two doctors must approve the decision to write the prescription, a much larger team, including consulting specialists, will be involved in assessing treatment options, making the prognosis and providing palliative care.
16. Many of my patients suffering from terminal illness have raised the question of a prescription only once, we will discuss it and the other options, and then they decide against it and they never raise it again. These patients usually go on to die in the normal course of their terminal illness. However, many patients and their families have reported to me that the discussions are very beneficial for the patient and their family.
17. We have found in Oregon that of those who do get a prescription only about two-thirds go on to use it.
18. Without exception, every patient of mine who has been prescribed the medication under the DWDA has found the mere fact of the prescription to be an enormous relief. They describe it to me as decreasing their anxiety and distress, and improving their family relationships because

they are in such a better frame of mind. That makes the family worry less too.

19. Obtaining the medicine provides a very powerful release for patients. That is because prior to obtaining the medicine, very many of them feel that they have lost control. Obtaining the medicine gives them some control back. The fact of regaining control assuages the distress for many and often is all that is required.
20. Of course those who do go on to use the prescription, can do so in a way that gives them control over the timing and the nature of their death. For them, this allows them to have what they feel is a good death, and that can be very important to them. That allows them to say their goodbyes and have a celebration or whatever they want to do. It is extraordinarily relieving.
21. One particular example of this was a patient of mine with end-stage emphysema. For many years she had been entirely dependent on oxygen for her existence. She was extremely anxious and had a fear of being smothered by her disease. Following the process described I ultimately wrote her a prescription for DWDA medication. She asked me to attend her death and I agreed. When I arrived at her house she was surrounded by her family and for the first time in years she was not hooked up to an oxygen tank. She was very calm and entirely at peace. Just prior to taking the medication she delivered a soliloquy to her family about her life thanking them for their part in it. She then took the medication and died within a few minutes peacefully.
22. By stark contrast, in 1988 when I was first in practice, I had a neighbour who was suffering from cancer that had metastasised into his bones. He had discussed with me his fear of the suffering that he would endure towards the end of his life and he was in great pain. At that time, he took a shotgun and killed himself. I was the person to find his body and I am still traumatised to this day by that event. His family endured a horrible grieving process as a result of his violent and unexpected death. His wife told me that she could never go into her bedroom again. He had had to keep his intentions secret from his family and die alone, without saying goodbye. If aid in dying had been available, his death could have been very different, and perhaps would not have happened until much later.
23. In my experience, the purpose and effect of the prescription is first and foremost to alleviate patients' distress. That is the object that I know the prescription will achieve. It may also allow a patient to live longer. If the patient chooses to take the medication, that choice will be made some time in the future, in accordance with what the patient sees as a good death. That death is not my purpose in writing the prescription. I do not know whether it will even happen, and it is secondary to the important benefits patients obtain from knowing they have the control.



AFFIRMED at Corvallis, Oregon,  
United States this 24<sup>th</sup> day of April  
2015 before me: Derek Daniel Whitehead

*David Raymond Grube*  
David Raymond Grube

*Derek Daniel Whitehead*  
A person duly authorised to administer  
oaths in Oregon

"DG01"

CURRICULUM VITAE

**DAVID R GRUBE, MD**

David.GrubeMD@gmail.com

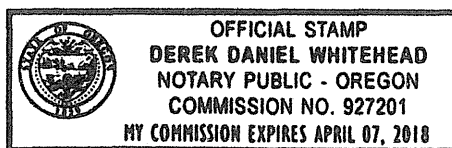
<b>PERSONAL DATA</b>	Birth date: November 18, 1946
<b>PRIVATE PRACTICE</b>	1979 - 2012: Philomath Family Medicine, Philomath, OR (a division of the Corvallis Clinic since 1992) Chair, Dept. of Family Practice 1995, 1999, 2006, 2007 Chair, Peer Review 1997 - 2000 Chair, Community Relations 2002 - 2004 Chair, Professional Standards 2008 - 2012
<b>EDUCATION</b>	1965 Lathrop High School, Fairbanks, AK 1969 Lewis and Clark College, Portland, OR, <i>cum laude</i> , BA 1973 University of Oregon Medical School, Portland, OR, MD
<b>POST GRADUATE</b>	1973 - 1974 Rotating 0 Internship, Tucson Hospital Medical Education Program, Tucson, AZ
<b>SERVICE</b>	1974 - 1977 US Public Health Service, National Health Service Corps Grand Coulee Field Station, Grand Coulee, WA 1977 - 1979 US Public Health Service, National Health Service Corps, Philomath Field Station, Philomath, OR
<b>SPECIALTY</b>	1977 Diplomate, American Board of Family Practice 1983 Recertification, American Board of Family Practice 1989 Recertification, American Board of Family Practice 1995 Recertification, American Board of Family Practice 2002 Recertification, American Board of Family Practice 2009 Recertification, American Board of Family Medicine 1993 Certification, Medical Review Officer, American Association of Medical Review Officers 1998 Recertification, Medical Review Officer, American Association of Medical Review Officers
<b>HONORS</b>	1978 Distinguished Service Award, USPHS, NHSC 1986 Oregon Family Doctor of the Year, Oregon Academy of Family Physicians 1 1987 Finalist/Runner-up, American Family Doctor of the Year, American Academy of Family Physicians 1994 Distinguished Alumni, Lewis and Clark College 1997 Meritorious Achievement Award, School of Medicine, Pennington Lecturer, OHSU 2000 OAFP President's Award 2001 Benton County Leadership Recognition, Corvallis Gazette- Times, Corvallis, OR 2003 Oregon Health & Science University, School of Medicine, Community Preceptor Award 2009 OMA Oregon Citizen Doctor of the Year

This is the annexure marked "DG01" referred to in the affidavit of  
David Raymond Grube affirmed at Oregon this            day of  
April 2015 before me

Signature

A person duly authorized to administer oaths in Oregon

*Derek Daniel Whitehead*



2009 Philomath Area Chamber of Commerce Samaritan Award  
2013 OAFP President's Award

## STATE

State of Oregon, Board of Medical Examiners 2001-2008  
Secretary, 2004  
Vice-Chair, 2005  
Administrative Affairs Committee - Chair, 2004  
Investigating Committee - Chair, 2005  
Chair, 2006; 2007  
*Pro - Tem* Medical Director 2012; 2013; 2014  
Consultant: 2012 - present  
License: MD10373 Active

## NATIONAL

Fellow, Federal Board of Medical Examiners 2001-2010  
PLAS Committee 2005 - 2013  
Chair 2010 - 2012  
PLAS Governing Committee 2013 - 2016  
Nominating Committee 2006 - 2008

## FELLOWSHIP

1972 American Association of Medical Schools, USPHS  
Fellowship in Public Health, Belgrade, Yugoslavia

## PUBLICATIONS

Hepatic Ameobic Abscess, *Journal of the American Medical Association*, July 1, 1974, Vol 229  
Cancer Pain Management, *Ambulatory Medicine*, Mengel & Schwiebert, Ed. 2, 1996, Ed. 3 1999  
The Despondent Patient, *Textbook of Family Medicine*, Saultz, McGraw/Hill, 2000

## FILM

"CLEAR CUT: The Story of Philomath." 2005

## AFFILIATIONS

Oregon Academy of Family Physicians  
Board of Directors 1980 - 1983, 1989 - 2000  
Vice-Speaker, House of Delegates, 1981, 1982  
Speaker, House of Delegates, 1983  
President-Elect, 1989  
President, 1990  
Oregon Academy of Family Physicians-Foundation 1995 - 2004  
Secretary-Treasurer 1995, 1996  
Vice President 1996, 1997  
President 1998 - 2001  
American Academy of Family Physicians, Congress of Delegates  
Alternate Delegate 1992-1995  
Delegate 1995-1999  
Benton County, OR, Medical Society  
President 1980  
Physicians for Social Responsibility  
Charter Member, Benton County, OR  
President 1981-1993

National Board of Directors, Regional Director, 1983 - 86  
The Foundation for Medical Excellence  
Philomath Community Foundation 2002 - 2005  
Secretary 2003 - 2005  
Greenbelt Land Trust 2008 – 2010  
Compassion and Choices  
Oregon Medical Director 2014 –  
National Medical Director 2015 –

## HOSPITAL

Good Samaritan Hospital, Corvallis, OR  
Chief, Department of Family Practice 1979, 1993  
Chief, Department of Medicine 1985  
Medical Executive Committee 1999 - 2002  
President-Elect, Medical Staff 1988  
President, Medical Staff 1989  
Ethics Committee Chair 1991-1992; 2013 - present  
Board of Directors 1989 - 1993  
Foundation Board Member 1998 - 2001

## ACADEMIC

Oregon Health Sciences University, Department of Family  
Medicine, Clinical Instructor, 1979 - 1993  
Oregon Health Sciences University, Department of Family  
Medicine, Clinical Associate Professor, 1993 - 2012  
Oregon State University, Depart. of Religion, Assoc. Professor  
1989  
Lecturer: Pre-Medical Students 2009 - 2015  
College of Osteopathic Medicine of the Pacific-Northwest  
Lecturer: 2011, 2012, 2013, 2014  
"Physician in Society"

## OTHER

Benton Hospice Service  
Board of Directors 1991 – 1997, 2014 - present  
Chair-Elect 1996  
Chair 1997  
Chair – Ethics Committee 2014 - present  
Oregon Pacific Area Health Education Center  
Board of Directors 1992 - 1997  
Chair 1996 - 1997  
Philomath School District, Board of Directors  
1997 - 1999, 2000 - 2001  
Chair, 2000 - 2001  
The Foundation for Medical Excellence, Lecturer 2002 – 2006  
Friends of the Library, Board of Directors (Corvallis-Benton  
County Library) 2014 -

## FAMILY

Wife: Lynn Ann (Hansard) Grube, m. 1973  
Children: Heidi Lynn, b. 1975  
Anton David, b. 1978  
Margaret Miae, b. 1982

## **PRESENTATIONS**

Smallpox/Yugoslavia 1972;  
Enjoying the Practice of Medicine;  
Humor in Medicine;  
End of Life Care;  
Advance Directives;  
Hospice Care;  
Professionalism;  
Physician Aid in Dying / Death With Dignity (ORS.127)



"DG02"

**THE OREGON DEATH WITH DIGNITY ACT**

**OREGON REVISED STATUTES**

(General Provisions)

(Section 1)

**Note:** The division headings, subdivision headings and leadlines for 127.800 to 127.890, 127.895 and 127.897 were enacted as part of Ballot Measure 16 (1994) and were not provided by Legislative Counsel.

**127.800 §1.01. Definitions.** The following words and phrases, whenever used in ORS 127.800 to 127.897, have the following meanings:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.
- (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.
- (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.
- (5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
- (6) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.
- (7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

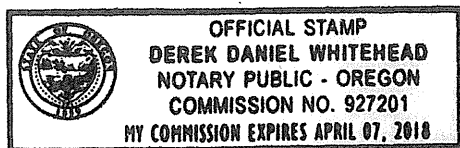
- (a) His or her medical diagnosis;

This is the annexure marked "DG02" referred to in the affidavit of David Raymond Grube affirmed at Oregon this      day of April 2015 before me

Signature

A person duly authorized to administer oaths in Oregon

*Derek Daniel Whitehead*



(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

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

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

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(11) "Qualified patient" means a capable adult who is a resident of Oregon and has satisfied the requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

(12) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. [1995 c.3 §1.01; 1999 c.423 §1]

(Written Request for Medication to End One's Life in a Humane and Dignified Manner)

(Section 2)

**127.805 §2.01. Who may initiate a written request for medication.** (1) An adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.

(2) No person shall qualify under the provisions of ORS 127.800 to 127.897 solely because of age or disability. [1995 c.3 §2.01; 1999 c.423 §2]

**127.810 §2.02. Form of the written request.** (1) A valid request for medication under ORS 127.800 to 127.897 shall be in substantially the form described in ORS 127.897, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

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

(a) A relative of the patient by blood, marriage or adoption;

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

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

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

(4) If the patient is a patient in a long term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Department of Human Services by rule. [1995 c.3 §2.02]

(Safeguards)

(Section 3)

**127.815 §3.01. Attending physician responsibilities.** (1) The attending physician shall:

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

(b) Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(A) His or her medical diagnosis;

(B) His or her prognosis;

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

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

(E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;

- (e) Refer the patient for counseling if appropriate pursuant to ORS 127.825;
- (f) Recommend that the patient notify next of kin;
- (g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to ORS 127.800 to 127.897 and of not taking the medication in a public place;
- (h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day waiting period pursuant to ORS 127.840;
- (i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to 127.897, that the patient is making an informed decision;
- (j) Fulfill the medical record documentation requirements of ORS 127.855;
- (k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897 prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and
- (L)(A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided the attending physician is registered as a dispensing physician with the Board of Medical Examiners, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule; or
- (B) With the patient's written consent:
  - (i) Contact a pharmacist and inform the pharmacist of the prescription; and
  - (ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient.
- (2) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate. [1995 c.3 §3.01; 1999 c.423 §3]

**127.820 §3.02. Consulting physician confirmation.** Before a patient is qualified under ORS 127.800 to 127.897, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made an informed decision. [1995 c.3 §3.02]

**127.825 §3.03. Counseling referral.** If in the opinion of the attending physician or the consulting physician a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. [1995 c.3 §3.03; 1999 c.423 §4]

**127.830 §3.04. Informed decision.** No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision as defined in ORS 127.800 (7). Immediately prior to writing a prescription for medication under ORS 127.800 to 127.897, the attending physician shall verify that the patient is making an informed decision. [1995 c.3 §3.04]

**127.835 §3.05. Family notification.** The attending physician shall recommend that the patient notify the next of kin of his or her request for medication pursuant to ORS 127.800 to 127.897. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason. [1995 c.3 §3.05; 1999 c.423 §6]

**127.840 §3.06. Written and oral requests.** In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician no less than fifteen (15) days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the patient an opportunity to rescind the request. [1995 c.3 §3.06]

**127.845 §3.07. Right to rescind request.** A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under ORS 127.800 to 127.897 may be written without the attending physician offering the qualified patient an opportunity to rescind the request. [1995 c.3 §3.07]

**127.850 §3.08. Waiting periods.** No less than fifteen (15) days shall elapse between the patient's initial oral request and the writing of a prescription under ORS 127.800 to 127.897. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription under ORS 127.800 to 127.897. [1995 c.3 §3.08]

**127.855 §3.09. Medical record documentation requirements.** The following shall be documented or filed in the patient's medical record:

- (1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

- (2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;
- (3) The attending physician's diagnosis and prognosis, determination that the patient is capable, acting voluntarily and has made an informed decision;
- (4) The consulting physician's diagnosis and prognosis, and verification that the patient is capable, acting voluntarily and has made an informed decision;
- (5) A report of the outcome and determinations made during counseling, if performed;
- (6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request pursuant to ORS 127.840; and
- (7) A note by the attending physician indicating that all requirements under ORS 127.800 to 127.897 have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed. [1995 c.3 §3.09]

**127.860 §3.10. Residency requirement.** Only requests made by Oregon residents under ORS 127.800 to 127.897 shall be granted. Factors demonstrating Oregon residency include but are not limited to:

- (1) Possession of an Oregon driver license;
- (2) Registration to vote in Oregon;
- (3) Evidence that the person owns or leases property in Oregon; or
- (4) Filing of an Oregon tax return for the most recent tax year. [1995 c.3 §3.10; 1999 c.423 §8]

**127.865 §3.11. Reporting requirements.** (1)(a) The Department of Human Services shall annually review a sample of records maintained pursuant to ORS 127.800 to 127.897.

(b) The department shall require any health care provider upon dispensing medication pursuant to ORS 127.800 to 127.897 to file a copy of the dispensing record with the department.

(2) The department shall make rules to facilitate the collection of information regarding compliance with ORS 127.800 to 127.897. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

(3) The department shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [1995 c.3 §3.11; 1999 c.423 §9; 2001 c.104 §40]

**127.870 §3.12. Effect on construction of wills, contracts and statutes.** (1) No provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid.

(2) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [1995 c.3 §3.12]

**127.875 §3.13. Insurance or annuity policies.** The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy. [1995 c.3 §3.13]

**127.880 §3.14. Construction of Act.** Nothing in ORS 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. [1995 c.3 §3.14]

(Immunities and Liabilities)

(Section 4)

**127.885 §4.01. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions.** Except as provided in ORS 127.890:

(1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with ORS 127.800 to 127.897. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.

(2) No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to 127.897.

(3) No request by a patient for or provision by an attending physician of medication in good faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(4) No health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under ORS 127.800 to 127.897, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in ORS 127.800 to 127.897.

(b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider may subject another health care provider to the sanctions stated in this paragraph if the sanctioning health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to 127.897 that it prohibits participation in ORS 127.800 to 127.897:

(A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(B) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in ORS 127.800 to 127.897 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(C) Termination of contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in ORS 127.800 to 127.897 while acting in the course and scope of the sanctioned provider's capacity as an employee or independent



contractor of the sanctioning health care provider. Nothing in this subparagraph shall be construed to prevent:

(i) A health care provider from participating in ORS 127.800 to 127.897 while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(ii) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions pursuant to paragraph (b) of this subsection must follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For purposes of this subsection:

(A) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider prior to the provider's participation in ORS 127.800 to 127.897 of the sanctioning health care provider's policy about participation in activities covered by ORS 127.800 to 127.897.

(B) "Participate in ORS 127.800 to 127.897" means to perform the duties of an attending physician pursuant to ORS 127.815, the consulting physician function pursuant to ORS 127.820 or the counseling function pursuant to ORS 127.825. "Participate in ORS 127.800 to 127.897" does not include:

(i) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(ii) Providing information about the Oregon Death with Dignity Act to a patient upon the request of the patient;

(iii) Providing a patient, upon the request of the patient, with a referral to another physician; or

(iv) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(6) Suspension or termination of staff membership or privileges under subsection (5) of this section is not reportable under ORS 441.820. Action taken pursuant to ORS 127.810, 127.815, 127.820 or 127.825 shall not be the sole basis for a report of unprofessional or dishonorable conduct under ORS 677.415 (2) or (3).

(7) No provision of ORS 127.800 to 127.897 shall be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community. [1995 c.3 §4.01; 1999 c.423 §10]

**Note:** As originally enacted by the people, the headline to section 4.01 read "Immunities." The remainder of the headline was added by editorial action.

**127.890 §4.02. Liabilities.** (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death shall be guilty of a Class A felony.

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

(3) Nothing in ORS 127.800 to 127.897 limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in ORS 127.800 to 127.897 do not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of ORS 127.800 to 127.897. [1995 c.3 §4.02]

**127.892 Claims by governmental entity for costs incurred.** Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to the provisions of ORS 127.800 to 127.897 in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim. [1999 c.423 §5a]

(Severability)

(Section 5)

**127.895 §5.01. Severability.** Any section of ORS 127.800 to 127.897 being held invalid as to any person or circumstance shall not affect the application of any other section of ORS 127.800 to 127.897 which can be given full effect without the invalid section or application. [1995 c.3 §5.01]

(Form of the Request)

(Section 6)

**127.897 §6.01. Form of the request.** A request for a medication as authorized by ORS 127.800 to 127.897 shall be in substantially the following form:

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REQUEST FOR MEDICATION  
TO END MY LIFE IN A HUMANE  
AND DIGNIFIED MANNER

I, \_\_\_\_\_, am an adult of sound mind.

I am suffering from \_\_\_\_\_, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

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

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

INITIAL ONE:

\_\_\_\_\_ I have informed my family of my decision and taken their opinions into consideration.

\_\_\_\_\_ I have decided not to inform my family of my decision.

\_\_\_\_\_ I have no family to inform of my decision.

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

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

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

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

DECLARATION OF WITNESSES

We declare that the person signing this request:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed this request in our presence;
- (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- (d) Is not a patient for whom either of us is attending physician.

\_\_\_\_\_ Witness 1/Date

\_\_\_\_\_ Witness 2/Date

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

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[1995 c.3 §6.01; 1999 c.423 §11]

#### PENALTIES

**127.990:** [Formerly part of 97.990; repealed by 1993 c.767 §29]

**127.995 Penalties.** (1) It shall be a Class A felony for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting the principal's desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the principal.

(2) Except as provided in subsection (1) of this section, it shall be a Class A misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a health care decision. [Formerly 127.585]