

**HOUSE JUDICIARY COMMITTEE ON CIVIL LAW**

**May 13, 1999 Hearing Room 357**

**1:00 p.m. Tapes 160 - 162**

**MEMBERS PRESENT: Rep. Lane Shetterly, Chair**

**Rep. Max Williams, Vice-Chair**

**Rep. Judy Uherbelau, Vice-Chair**

**Rep. Randall Edwards**

**Rep. Kathy Lowe**

**Rep. Vicki Walker**

**Rep. Larry Wells**

**Rep. Bill Witt**

**MEMBER EXCUSED: Rep. Vic Backlund**

**STAFF PRESENT: Aaron Felton, Counsel**

**Bill Taylor, Counsel**

**Nancy Richards, Administrative Support**

**MEASURE/ISSUES HEARD: SB 491A - Public Hearing & Work Session**

**HB 2985 - Public Hearing & Work Session**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
<b>TAPE 160, A</b>		
003	Chair Shetterly	Calls meeting to order at 1:40 p.m.

**SB 491A - PUBLIC HEARING**

005	Counsel Taylor	SB 491A amends Oregon Death with Dignity Act.
013	<b>Sen. Neil Bryant</b>	<b>State Senator, District 27</b>  Testifies in support of SB 491A. Gives the history of the Oregon Death with Dignity Act that resulted in proposing SB 491A. Explains the purpose of SB 491A.
076	<b>Rep. Kevin Mannix</b>	<b>State Representative, House District 32</b>  Testifies in opposition to SB 491A. Discusses how the "freedom of conscious clause" in current law relates to SB 491A which could conflict with the moral concepts of an employer. Explains why an employer should not be prohibited from denying employee participation in assisted suicide after working hours.
158	Chair Shetterly	Does SB 491A allow doctors to perform assisted suicide on hospital premises?
175	Rep. Mannix	Yes.
192	<b>Steve Telfer</b>	<b>Oregon Right to Die</b>  Testifies and submit written testimony in support of 491A ( <b>EXHIBITS A &amp; B</b> ). Explains what entities were involved with the creation of SB 491A.
228	<b>Gwen Dayton</b>	<b>Oregon Health Care Association</b>  Testifies in support of SB 491A. Discusses lines 35-40, page 4 of SB 491A, which provides the health care provider the right to prohibit an employee from participating in assisted suicide on the premises.
265	Chair Shetterly	Would a doctor be in violation against a contract with the hospital that prohibits moonlighting if he assists in suicide outside work hours?
297	Counsel Taylor	States that very few doctors have an employer-employee relationship with the hospital, it is usually an independent contract relationship.
300	Chair Shetterly	Discusses the sanction of the contract by practicing medicine outside of hospital.
310	Rep. Witt	Explains the concern with the language in SB 491A that could allow a physician to step outside the independent contract or employment agreement to assist in a suicide.
324	Chair Shetterly	States that a hospital could protect the contract agreement of a doctor moonlighting with SB 491A.

340	Scott Gallant	<b>Oregon Medical Association (AMA)</b>  Testifies in support of SB 491A. Explains how it would be highly unusual if there was a contract that prohibited a doctor from performing services outside a medical facility. Discusses the controversy with the subject of SB 491A concerning referring a patient to another facility for physician assisted suicide.
492	Chair Shetterly	Would SB 491A give the distinction of a doctor services between the hospital and the office?
500	Gallant	Yes.
<b>Tape 161, A</b>		
032	Chair Shetterly	Is the situation of a doctor working in his own office outside the hospital's contract hours a more common scenario for engaging in assisted suicide?
034	Gallant	Yes. Most doctors have an independent contract with a medical facility and work outside the hospital.
037	Chair Shetterly	Would a doctor have an outside practice if employed with a medical facility?
039	Gallant	Not usually.
043	Rep. Uherbelau	Would there be any restrictions for the volunteer physician?
051	Gallant	Explains how a volunteer physician's services relate to SB 491A.
069	Rep. Edwards	What if a physician had an ethical reason not to refer a patient to another physician for assisted suicide?
080	Gallant	Explains the policy provision in SB 491A which does not obligate a physician to assist in suicide, but is obligated to refer that patient to another physician for those services. Current law would address the situation as physician abandonment if the physician didn't refer the patient to another physician.
108	Rep. Witt	Do you believe that a medical facility with a moral stand against suicide should not be forced to refer a patient to another doctor for the assisted suicide?
115	Gallant	Explains how SB 491A accommodates the medical facility's concerns with assisted suicide.
137	Rep. Witt	Suggests that SB 491A does not accommodate the situation of a physician going outside the facility to assist in suicide.

149	Gallant	Discusses the ramifications of a law or contract that would prohibit a physician from doing any kind of services outside the medical facility.
170	Chair Shetterly	Could the hospital break into the doctor's records to see if the doctor assisted in suicide outside the hospital?
189	Gallant	I am not sure, but facilities have a right under their contract to review medical records of physicians under contract, even outside of their practice.
206	Rep. Witt	Do the Sisters of Providence support SB 491A?
209	Counsel Taylor	The Sisters of Providence assisted in the work group to amend SB 491.
218	Rep. Witt	States that the Sisters of Providence have some concerns with SB 491A.
240	<b>Bob Castagna</b>	<b>Oregon Catholic Conference (OCC)</b>  Testifies and submits written testimony in opposition to SB 491A ( <b>EXHIBIT C</b> ). Discusses a pastoral letter entitled " <i>Living and Dying Well, A Pastoral Letter about the End of Life</i> ". States that the OCC has opposed and continues to oppose the public policy contained in Measure 16 which is the decriminalization of physician-assisted suicide. Discusses the -A20 amendments to SB 491A concerning the referral to another physician for assisted suicide ( <b>EXHIBIT D</b> ).
415	Chair Shetterly	What are the OCC concerns with SB 491A providing more protection for religious hospitals to not refer patients for assisted suicide?
428	Castagna	Explains what 491A provides with the sanctioning of physicians to refer patients to another facility for assisted suicide.
<b>Tape 160, B</b>		
030	Counsel Taylor	Explains the interpretation of the Attorney General for the State of Oregon that gives hospitals the right to regulate what a doctor does on the premises, but not regulate services off the premises.
052	Castagna	Explains the definition of "participate" in the Attorney General's opinion. States that the OCC is in support of the -A19 amendments concerning protection for health care providers for refusing to refer a patient to another facility for assisted suicide ( <b>EXHIBIT E</b> ). States that the OCC opposes SB 491A because of the inability for the Catholic hospitals to refuse participation in physician-assisted suicide. Explains that even a depressed patient can request assisted suicide.
116	Chair Shetterly	Expresses support for SB 491A. Explains who participated in the work group for creation of SB 491.

143	Castagna	Discusses the lack of opportunity for the OCC and the Sisters of Providence to know of the amendments to SB 491 at the Senate work session.
161	Chair Shetterly	What is the relationship between the Sisters of Providence and the OCC?
163	Castagna	Explains the relationship between the Sisters of Providence and the OCC. States that OCC is opposed to SB 491A, which includes sections 3 & 4.
179	Rep. Witt	Are the Catholic hospitals under the direction of the Archbishop in the Catholic Church?
180	Castagna	Yes. National ethical directives also direct the Catholic hospitals.
183	Rep. Edwards	Asks if OCC does not want SB 491A because it is better to have no bill than to have a bill with the objectionable amendments that are included in SB 491A.
197	Castagna	States that the interests of OCC can be covered by the Attorney General's opinion of 2-22-99.
202	Chair Shetterly	States that it was understood that the OCC was in support of SB 491A because the Attorney General's opinion was not law.
213	Rep. Witt	Expresses the concern that the Civil Law committee should have the opportunity to consider the amendments to SB 491A.
221	Chair Shetterly	Explains the tenuous work that went into SB 491A.
235	Counsel Taylor	Is SB 491A addressing a physician referral between a doctor and a patient?
239	Castagna	Yes.
240	Counsel Taylor	The physician referral between a patient and doctor is privileged. Could a doctor be required to testify in court concerning this referral?
245	Castagna	Explains how physician assisted suicide could be a potential scandal for the general public and the Catholic church.
262	Counsel Taylor	How would you prove that the doctor assisted in suicide because the doctor/patient knowledge is privileged?
264	Castagna	Explains the doctor contributed publicity involved in assisted suicide.

268	<b>Dr. Miles Edwards</b>	<b>Physicians for Compassionate Care (PCC)</b>  Testifies and submits written testimony in opposition to SB 491A ( <b>EXHIBIT E</b> ). Explains the purpose of the -A19 amendment concerning the referral of a patient to a new health care provider for assisted suicide.
304	Rep. Witt	A doctor or medical facility would have to refer a patient for assisted suicide without the -A19 amendments.
310	Dr. Edwards	Explains that PCC should not be obligated to refer a patient for assisted suicide.
334	<b>Ric Burger</b>	<b>American Disabled for Attended Program Today (ADAPT), Not Dead Yet (NDY)</b>  Testifies in support of SB 491A. Expresses why ADAPT and NDY support SB 491A. Relates personal incidences that portray disabled persons as better off being dead. States that the issue is not death with dignity, but life with dignity.
431	<b>Ellie Jenny</b>	<b>Not Dead Yet (NDY)</b>  Testifies and submits written testimony in support of SB 491A ( <b>EXHIBIT F</b> ). Explains how disabled people feel about SB 491A and what the assisted suicide means to the future. Discusses what the word "choice" means in relationship to assisted suicide.
<b>Tape 161, B</b>		
030	Jenny	Discusses why lawmakers need to look at the disabled world and how the disabled feel about the assisted suicide laws, that could lead to voluntary euthanasia. States that the best way Measure 16 will serve the State of Oregon is with limitations to SB 491A.
089	<b>Dr. Grant Higginson</b>	<b>Oregon Health Division</b>  Testifies neutrally to SB 491A. Discusses why the Oregon Health Division is involved with SB 491A. Explains how the amendments to SB 491A addressed the concerns of the Oregon health Division concerning the reporting system.
<b><u>SB 491A - WORK SESSION</u></b>		
112	<b>Rep. Witt</b>	<b>MOTION: Moves to ADOPT SB 491A-A19 amendments dated 05/11/99.</b>
116	Rep. Witt	Discusses the concern that physicians have with referring patients to another physician for assisted suicide.
122	Chair Shetterly	Explains why there is no need for -A19 amendments because of current law.

130	Rep. Witt	Expresses support for SB 491A, which is a reasonable and responsible measure.
138	Rep. Uherbelau	Expresses support for SB 491A without amendments.
148	Rep. Williams	Explains why SB 491A with the amendments is an improvement to Measure 16.
161	Rep. Lowe	Expresses opposition to any amendments to SB 491A.
173	Rep. Walker	Expresses support for the amendments to SB 491A.
180	Rep. Witt	Explains why the -A19 amendments were proposed.
191	Chair Shetterly	Explains why the -A19 amendments could have a broader influence on Measure 16 in the future.
200	Rep. Witt	States that Oregon is the only state that has a physicians assisted suicide law which puts us on new turf because of the compelling requirement of physician referral.
		<p><b>VOTE: 1-7</b></p> <p><b>AYE: 1 - Witt</b></p> <p><b>NAY: 7 - Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b></p> <p><b>EXCUSED: 1 - Backlund</b></p>
	<b>Chair Shetterly</b>	<b>The motion FAILS.</b>
<b>215</b>	<b>Rep. Witt</b>	<b>MOTION: Moves to ADOPT SB 491A-A20 amendments dated 05/12/99.</b>
219	Rep. Witt	The -A20 amendments put Catholic hospitals in a position to let physicians refer patients for assisted suicide, which effects the hospital's moral beliefs.
		<p><b>VOTE: 1-7</b></p> <p><b>AYE: 1 - Witt</b></p> <p><b>NAY: 7 - Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b></p> <p><b>EXCUSED: 1 - Backlund</b></p>

	<b>Chair Shetterly</b>	<b>The motion FAILS.</b>
<b>260</b>	<b>Rep. Uherbelau</b>	<b>MOTION: Moves SB 491A to the floor with a DO PASS recommendation.</b>
263	Chair Shetterly	Explains why voting on SB 491A creates a difficult situation concerning moral issues.
278	Rep. Edwards	Discusses the need to make the original Measure 16 work better.
292	Rep. Witt	Expresses concern with the committee making a mistake by passing SB 491A without the amendments and explains why he opposes SB 491A.
314	Rep. Walker	Explains why SB 491A protects the interest of the religious based hospitals and physicians.
319	Rep. Williams	Expresses opposition to Measure 16, but feels a need to pass 491A without the amendments.
340	Chair Shetterly	Explains why the committee relies on the decisions of the work groups.
362	Rep. Lowe	Relates a circumstance with a doctor who posted signs in his office that they are opposed to assisted suicide and how these signs become safeguards for the physicians.
		<b>VOTE: 7-1</b> <b>AYE: 7 - Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b> <b>NAY: 1 - Witt</b> <b>EXCUSED: 1 - Backlund</b>
<b>Chair Shetterly</b>		<b>The motion CARRIES.</b>  <b>REP. SHETTERLY will lead discussion on the floor.</b>
<b><u>HB 2985 - PUBLIC HEARING</u></b>		
411	Counsel Felton	HB 2985 reinstates doctrine of implied assumption of risk in tort actions. Explains the -2 amendments concerning intentional tort ( <b>EXHIBIT G</b> ).



429	Chair Shetterly	Closes public hearing.
<b><u>HB 2985 n WORK SESSION</u></b>		
434	Rep. Williams	<b>MOTION: Moves to ADOPT HB 2985-2 amendments dated 05/05/99.</b>
440	Chair Shetterly	Explains why HB 2985 needs to be amended.
480	Rep. Uherbelau	Why do we have an emergency clause in HB 2985?
<b>Tape 162, A</b>		
035	Rep. Williams	Explains why there is an emergency clause to HB 2985.
045	Rep. Uherbelau	Expresses support of the -2 amendments to HB 2985 without the emergency clause.
050	Chair Shetterly	Explains why HB 2985 needs to be law as soon as possible.
061	Rep. Uherbelau	Feels the emergency clause is being misused in HB 2985.
070	Rep. Lowe	Explains why HB 2985 is not needed.
		<b>VOTE: 5-2</b> <b>AYE: 5 - Edwards, Wells, Williams, Witt, Shetterly</b> <b>NAY: 2 - Lowe, Uherbelau</b> <b>EXCUSED: 2 - Backlund, Walker</b>
Chair Shetterly		<b>The motion CARRIES.</b>
115	Rep. Williams	<b>MOTION: Moves HB 2985 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-2</b> <b>AYE: 5 - Edwards, Wells, Williams, Witt, Shetterly</b> <b>NAY: 2 - Lowe, Uherbelau</b>

		<b>EXCUSED: 2 - Backlund, Walker</b>
	<b>Chair Shetterly</b>	<b>The motion CARRIES.</b>  <b>REP. WITT will lead discussion on the floor.</b>
168	Chair Shetterly	Closes work session.
		Adjourns meeting at 3:45 p.m.

Submitted By, Reviewed By,

Nancy Richards, Sarah Watson,

Assistant Administrator Office Manager

**EXHIBIT SUMMARY**

**A - SB 491A, Written testimony, Steve Telfer, p. 1**

**B - SB 491A, Written testimony, Steve Telfer, p. 3**

**C - SB 491A, Written testimony, Robert Castagna, p. 12**

**D - SB 491A, Proposed -A20 amendments, Bob Castagna, p. 1**

**E - SB 491A, Proposed -A19 amendments, Dr. Edwards, p. 1**

**F - SB 491A, Written testimony, Ellie Jenny, p. 2**

**G - HB 2985, Proposed -2 amendments, Counsel, p. 1**