

SENATE COMMITTEE ON JUDICIARY

March 17, 1999 Hearing Room 343

3:00 PM Tapes 77 - 80

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

STAFF PRESENT: Bill Taylor, Counsel

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: SB 491 - Public Hearing

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
TAPE 77, SIDE A		
008	Chair Bryant	Calls meeting to order at 3:10 PM.
<u>SB 491 PUBLIC HEARING</u>		
012	Chair Bryant	Discusses legislative history of SB 491 which amends the Oregon Death with Dignity Act (the Act). Requests witnesses to limit testimony to the implementation of SB 491.
041	Grant Higginson	Oregon Health Division Deputy Administrator

		Testifies and submits written testimony with neutrality to SB 491. (EXHIBITS A and B) Discusses the state health division's annual report regarding the Act which includes patient demographic data, functional status, and end of life concerns. Discusses safeguards and the attending physician's role in the Act.
143	Chair Bryant	Did the Health Division use a standard list of questions during physician interviews?
144	Higginson	Yes. Refers committee to the last page of Exhibit A.
158	Chair Bryant	Did you review length of residency in Oregon?
159	Higginson	Yes, all but one of those who used the Act to obtain medication resided in Oregon at least one year.
168	Sen. Tarno	Discusses a newspaper article about Mr. Patrick of Coos Bay who used the Act. Are blood tests to confirm the presence of barbiturates performed after such deaths?
181	Higginson	We completed a follow up interview with the physician in the Patrick case. As for subsequent blood tests, that issue is outside of our jurisdiction.
193	Sen. Qutub	Explains that a standard follow up interview would not have ascertained whether Mr. Patrick's brother in law helped him die, as reported.
198	Higginson	Our follow up interview addressed only the time in which the attending physician was present.
205	Chair Bryant	Explains that the David Schumann letter is not clear whether one can assist a patient with taking the lethal medication. (EXHIBIT C)
281	Higginson	Explains that the Oregon Health Division report provides evidence that the Act works. Discusses investigation procedures in ambiguous cases. Explains the 10 amendments which provide greater safeguards in the Act's implementation. (EXHIBIT D)
402	Chair Bryant	Suggests procedures to review proposed amendments during the hearing.
413	Counsel Taylor	Discusses the differences between the SB 491 -8, -9 and 10 amendments. (EXHIBITS E and F)
TAPE 78, SIDE A		
004	Higginson	Explains that the 10 amendments will be the consolidated amendment.

009	Chair Bryant	Explains workgroup procedure in drafting 10 amendments. Discusses which amendments are not incorporated in the 10 amendments.
028	Steve Telfer	Oregon Right To Die Testifies and submits written testimony in support of SB 491. (EXHIBIT G)
058	Martha Lovell	Concerned widow Testifies and submits written testimony in support of SB 491. (EXHIBIT H) Shares story about husband who obtained lethal medication under the Act but died before using it. Asserts that the Act must remain accessible to terminally ill patients and their families.
132	Dr. Rick Bayer	Oregon Death With Dignity Legal Defense & Education Center Testifies and submits written testimony in support of SB 491. (EXHIBIT I) Discusses his Internal medicine practice with terminally ill patients. Asserts that the physician reporting requirements are adequate and the law should not be amended.
230	Chair Bryant	If a physician will not prescribe medication under the Act, does he or she have an obligation to refer a patient to another physician?
233	Bayer	Not necessarily. That's a personal decision.
241	Chair Bryant	Does a physician have an ethical obligation if a patient requests a referral to another physician?
244	Dr. Bayer	I consider a physician's role in the Act a medical procedure, so a referral is fitting. I would not, however, say it is unethical for a physician not to make a referral.
255	Chair Bryant	Are physicians who support the Act visible in the medical community?
257	Dr. Bayer	It varies. Some are visible; some prefer confidentiality.
272	Sen. Qutub	Suggests that physicians could identify themselves for patient self-referral.
284	Bayer	Explains that Compassion in Dying makes confidential referrals.
293	Sen. Qutub	Explains that a public listing of physicians who support the Act would assist patients in selecting a physician consistent with one's convictions.
306	Bayer	Explains that physicians reserve the right to choose a desired level of visibility

		and confidentiality. Asserts that public listing of physicians will not improve health care.
331	Sen. Qutub	Asserts that confidentiality should be in the patient's best interest.
333	Bayer	Confidentiality relates to the patient, the doctor and the family.
346	Sen. Qutub	Suggests that physicians often publicize their specialties. Why shouldn't a physician publicize his or her willingness to participate in the Act?
350	Bayer	A physician may do so, if he or she chooses.
364	Jim Davis	<p>Oregon State Council of Senior Citizens</p> <p>Testifies and submits written testimony in support of SB 491. (EXHIBIT J) Discusses how SB 491 strengthens counseling and residency requirements and establishes non-compliance sanctions.</p>
TAPE 77, SIDE B		
005	Tom Holt	<p>Oregon State Pharmacists Association, Oregon Society of Health Systems Pharmacists</p> <p>Testifies and submits written testimony with neutrality on SB 491. (EXHIBIT K) Advocates that all cases involving the Act should be reviewed. Suggests the term "provide" in the SB 491 amendments be changed to "dispense." Supports pharmacists' choice to opt out of participation in the Act.</p>
056	Chair Bryant	If a pharmacist opts out of the Act, must he or she refer a patient to another pharmacist?
059	Holt	Explains the general expectation of referral when a physician cannot render service.
065	Chair Bryant	Does the pharmaceutical community know which pharmacists will participate in the Act?
067	Holt	Some pharmacists make themselves visible.
071	Counsel Taylor	Do you propose that pharmacists be included in the term "health care providers" in SB 491?
076	Holt	Yes.

082	Sen. Tarno	Are barbiturates the preferable treatment prescribed under the Act?
083	Holt	Yes, the pills are ingested with liquid.
088	Sen. Tarno	Is "barbiturates" a trade name or a generic class of drugs?
088	Holt	"Barbiturates" is a generic class of drugs.
098	Dr. James Bryan	Oregon Psychological Association Testifies in opposition of SB 491. Explains opposition to mandatory requirement for patients to undergo psychiatric or psychological evaluation prior to using the Act.
106	Chair Bryant	Explains that the -8, -9 and -10 amendments do not include that requirement.
107	Dr. Bryan	Supports mental health services for a patient who chooses to use the Act when such services are necessary.
125	Sen. Qutub	Discusses the potential liability of mental health care professionals in cases involving the Act. Is this your concern, Dr. Bryan?
142	Dr. Bryan	No. Explains the cumbersome nature of counseling in terms of costs, time and energy.
152	Joan Mahler	Providence Health Systems of Oregon Planning and Government Relations Testifies in opposition to SB 491.
155	Alitha Leon Jenkins	Providence Health Systems of Oregon, Senior Attorney Testifies and submits written testimony in support of SB 491. (EXHIBIT L) Discusses health care providers' option of non-participation in the Act. Explains how the ñ8 amendments clarify existing law regarding sanctions against physicians who participate in the Act.
292	Sen. Brown	Inquires about loss of hospital privileges against a physician who is not a member of Providence Hospitals.
299	Leon Jenkins	Explains the membership application process and the initial disclosure of hospital regulations that ban its members to participate in the Act.
322	Sen. Brown	How can a physician practice without access to hospital privileges?

328	Leon Jenkins	A physician may have hospital privileges at several hospitals.
337	Sen. Brown	Discusses how Providence's monopoly of hospitals in specific areas could curtail or end physician's career.
344	Leon Jenkins	Explains that participation in the Act is not dependent upon access to a Providence Hospital privileges.
353	Chair Bryant	You bar participation in your facilities, not elsewhere in the community, correct?
361	Leon Jenkins	Yes.
365	Sen. Brown	Maintains that loss of hospital privileges could significantly limit a physician's medical practice. Do you agree?
376	Leon Jenkins	Yes, potentially, but we disclose our policies to physicians during the application process.
415	Sen. Brown	Inquires about Providence Hospital's rules regarding lease agreements if a physician participates in the Act.
TAPE 78, SIDE B		
001	Leon-Jenkins	Discusses sanctions for participation in the Act in leased facilities.
013	Sen. Brown	Define "participation" in the Act, please?
015	Leon Jenkins	Participation in the Act includes performing the attending physician or counselor role as defined in the Act. Explains that participation does not include making an initial diagnosis, providing information about the Act and making a referral to another health care provider.
029	Sen. Brown	Do you have authority to sanction employees under the current law?
036	Leon Jenkins	No. Explains how the Act hinders sanctions.
058	Sen. Brown	Requests specific Providence Hospital membership documents for reference.
060	Leon Jenkins	I can provide that information for you.
070	Chair Bryant	Explains that the ñ1 and ñ2 amendments have been incorporated into the ñ11 amendments. (EXHIBIT M)

075	Jerome Wernow	Northwest Consortium for Health Care Policy Testifies and submits written testimony in support of SB 491 ñ2. (EXHIBIT N) Discusses the primary safeguards of the ñ2 amendments: the presence of a practitioner, patient assessment, intervention options, and a patientís freedom of choice.
151	Dr. Kay Bruce	Northwest Consortium for Health Care Policy Testifies and submits written testimony in support of SB 491. (EXHIBIT O) Discusses psychological assessment tools for depression and mental duress.
317	Michael Millard	Northwest Consortium for Health Care Policy Testifies and submits written testimony in support of SB 491 ñ11. (EXHIBIT P) Explains procedures for a patient to reverse a decision to use the Act.
TAPE 79, SIDE A		
010	Millard	Discusses how the consortium could provide oversight and review outcome information of cases involving the Act.
039	Dennis Carnaby	Oregon Hospice, Task Force to Improve the Care of Terminally Ill Oregonians Testifies and submits written testimony with neutrality on SB 491. (EXHIBIT Q) Discusses the importance of informing patients of other options to lethal medication to hasten death. Proposes that notification of next of kin be encouraged but not required.
171	Chair Bryant	Suggests that Mr. Carnaby circulate the ñ8, -9, ñ10 and ñ11 amendments among his colleagues.
190	Gwen Dayton	Oregon Health Care Association Testifies in support of SB 491. Discusses the impact of SB 491 on long term health care facilities. Suggests that a definition of "long term health care facilities" be included in SB 491.
240	Sen. Brown	Expresses concerns about barring people who reside in long-term health care facilities from using the Act.
244	Dayton	Explains that a long-term health care facility should disclose its non-participation in the Act to potential residents.
264	Sen. Courtney	Do you consider an adult care facility a long-term health care facility?
267	Dayton	Yes.

279	Sen. Brown	Explains the cumbersome impact of barring terminally ill persons from using the Act in their place of residence.
291	Chair Bryant	Stresses that people should inquire if a facility opts out of the Act prior to moving into a facility.
293	Sen. Courtney	Some adult care facilities are public facilities. Does this have any bearing on the implementation of SB 491?
298	Chair Bryant	Explains that most of the referenced organizations use public funds. Mr. Taylor does the attorney general opinion address this?
303	Taylor	Explains that the attorney general attempts to clarify the statutes that are contradictory regarding disciplining employees who participate in the Act.
344	Chair Bryant	If a person receives and takes the medication in a nursing home, what is your recourse? Do you make a claim against the estate of the person who used the Act?
359	Dayton	No. We have no recourse.
378	Jim Anderson	Oregon Medical Association (OMA) Testifies and submits written testimony with neutrality to SB 491. (EXHIBIT R)
391	Mark Bonanno	Oregon Medical Association Legal Counsel Testifies with neutrality on SB 491. Explains that OMA members' choice to participate in the Act varies. Discusses the ways that the OMA seeks to protect patient-physician relationships.
TAPE 80, SIDE A		
001	Sen. Qutub	Expresses concerns that patients may become vulnerable to physician abuse under the guise of privacy.
015	Bonanno	What is your question, Sen. Qutub?
019	Sen. Qutub	How can we make sure that "privacy" doesn't protect the physician who actively practices euthanasia?
039	Anderson	Explains that the OMA does not represent or take responsibility for the actions of all physicians in Oregon.

051	Sen. Qutub	I would like a balance between protecting the patient and safeguarding against the physician to practice euthanasia.
074	Dan Field	Oregon Association of Hospitals and Health Systems Testifies in support of SB 491 ñ10. Discusses the importance of health care providers to ensure care to terminally ill patients. Explains opposition to access to patient records.
133	Ellie Jenny	Concerned Citizen Testifies and submits written testimony in support of SB 491. (EXHIBIT S) Shares personal experience as a disabled person and the inadequacy of the public health system. Discusses the importance of separating functional disability issues from objective physical illness.
224	Ellen Greenlaw	Concerned Citizen Testifies and submits written testimony in support of SB 491. (EXHIBIT T) Discusses the impact of personal autonomy on perceived quality of life. Explains that disability is a natural inevitable part of every person's life.
265	Sen. Qutub	Do you know how much the Act costs the Oregon Health Plan?
270	Jenny	Not much.
272	Greenlaw	Asserts that killing seldom costs much.
285	Jenny	Explains that promoting the Act is a means of rationing health care.
290	Sen. Qutub	Agrees that the cost of the Act is minimal.
320	Bob Joondeph	Oregon Advocacy Center (OAC) Testifies and submits written testimony in support of SB 491. (EXHIBIT U) Proposes changes to SB 491 regarding the psychiatric evaluation requirements.
418	Sen. Brown	What is the OAC's position regarding SB 491's counseling requirements?
TAPE 79, SIDE B		
005	Joondeph	Discusses the intricate mental health issues of a patient who uses the Act. Explains patient's vulnerability and need for their lives to be valued.
23	Telfer	Expresses concern about the Providence Hospital's position that extends

		sanctions against those who participate in the Act beyond the landlord-tenant relationship. Explains that the authority to revoke hospital privileges yields control over one's ability to earn a living.
138	Chair Bryant	Dr. Bayer, do you perform a mental health assessment if a patient requests information from you regarding the Act?
148	Dr. Bayer	Yes. Explains that a physician should perform an informal mental health assessment during all medical examinations.
165	Chair Bryant	Adjourns meeting at 6:08 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Manager

EXHIBIT SUMMARY

A. Oregon's Death With Dignity Act, The First Year's Experience, Grant Higginson, 21pp

- B. Testimony in support of SB 491, Grant Higginson, 6pp**
- C. Letter on the Act and anti-discrimination laws, David Schuman, 2pp**
- D. SB 491 ñ10 amendments, Counsel Bill Taylor, 5pp**
- E. SB 491 ñ9 amendments, Counsel Bill Taylor, 5pp**
- F. SB 491 ñ8 amendments, Counsel Bill Taylor, 5pp**
- G. Oregon Right to Die Choice Overview, Steve Telfer, 12pp**
- H. Testimony in support of SB 491, Martha Lovell, 2pp**
- I. Testimony in support of SB 491, Rick Bayer, 3pp**
- J. Testimony in support of SB 491, Jim Davis, 1p**
- K. Testimony in support of SB 491, Tom Holt, 2pp**
- L. Testimony in support of SB 491, Alitha Leon Jenkins, 4pp**
- M. SB 491 ñ11 amendments, Counsel Bill Taylor, 3pp**
- N. Testimony in support of SB 491, Jerome Wernow, 2pp**
- O. Testimony in support of SB 491, Kay Bruce, 2pp**
- P. Testimony in support of SB 491, Michael Millard, 2pp**
- Q. Testimony with neutrality of SB 491, Denis Carnaby, 7pp**
- R. Testimony in support of SB 491, Jim Anderson, 2pp**
- S. Testimony in support of SB 491, Ellie Jenny, 3pp**

- T. Testimony in support of SB 491, Ellen Greenlaw, 2pp**
- U. Proposed Amendments to SB 491, Bob Joondeph, 1p**