

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

March 13, 1997 Hearing Room 357

3:15 P.M. Tapes 47 - 48

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

MEMBER EXCUSED: Rep. George Eighmey, Vice-Chair

GUEST MEMBER: Rep. Jo Ann Bowman

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

Measure pertaining to Oregon's Death with Dignity Act

HB 3362 - Public Hearing continued from March 12, 1997.

HB 2952 - 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 47, A		
004	Chair Sunseri	Calls the meeting to order at 3:20 P.M. Allows a witness to testify from March 12, 1997 public hearing on HB 3362 as time did not permit the testimony.

010	Betty L. Lewis	<p>Private citizen.</p> <p>Testifies on HB 3362.</p> <p>>refers to page 3 of the printed bill <u>Section 6 (2)</u> - I see protection for those now employed, however, will the new graduates soon to be employed be able to exercise their conscience or can a facility require them to sign a statement agreeing to fill a prescription to aide in assisted suicide?</p> <p>>suggests adding a statement as such: an employer can not require a new employee to sign a statement agreeing to write or fill a prescription which is to be used in aiding assisted suicide</p>
<u>HB 2952 - PUBLIC HEARING</u>		
020	Chair Sunseri	Opens a public hearing on HB 2952.
027	Thomas J. Marzen	<p>General Counsel of the National Legal Center for the Medically Dependent and Disabled.</p> <p>Testifies in support and provides written testimony on HB 2952. (EXHIBIT A)</p> <p>>Measure 16 incorporated language from the Living Will Statutes - good faith standard</p> <p>>Measure 16 provides a physician a blank check of a subjective good faith standard any time he operates. This being a lower standard of care than doctors would be operating under normal every day practice.</p>
067	Chair Sunseri	What is the consequences of that?
068	Marzen	<p>The consequences are that it would be virtually impossible to penalize a physician who operates under this standard and provides an example.</p> <p>Proving a doctor acted in bad faith under this statute is more difficult than applying the reasonable standards.</p>
093	Chair Sunseri	The laws that deal with negligence or malpractice standards which would be normally in place are now removed from Measure 16, correct?
		<p>Measure 16 removes higher standards for the doctor who operates under the statute. He only has to act in good faith. The doctor does not have to act in accord with objective standards. Thus, a doctor is acting under lower standards than, for instance, a surgeon's standards.</p> <p>Whether civil or criminal liability, these lower standards apply under Measure 16.</p>

096	Marzen	<p>Continues testimony.</p> <p>Measure 16 provides for a 15 day waiting period before requesting a lethal prescription. A person who is told they are facing a terminal illness may immediately request a lethal prescription. However, most people are shocked and depressed upon hearing the news of a terminal illness. Their mental and emotional state usually remains unsettled for 5 weeks. In Lee v. Oregon there was incontrovertible evidence it took at least 5 weeks to resolve a depressive episode.</p>
140	Chair Sunseri	How do you substantiate five weeks to resolve a depressive episode?
141	Marzen	<p>There are affidavits presented in the case, Lee v. Oregon brought up by psychologists and psychiatrists. I can bring those before the committee, if requested.</p> <p>Continues testimony.</p> <p>Raises concerns that Measure 16 opens the door for abuse. The New York Task Force on Life of the Law concluded that in order to accommodate the so called hard cases, the door is open inevitably for you to have a exponential number cases of abuses. The laws can not be drawn that well. The advocates of assisted suicide know that and are willing to tolerate the large number of abuses in order to cover the hard cases.</p>
189	Chair Sunseri	<p>Are you a doctor?</p> <p>Could you elaborate for the Committee not on what New York did but what you think could be abuses of Measure 16 in Oregon?</p>
190	Marzen	<p>Responds by stating I am an attorney.</p> <p>Anything under the Measure anything that is not a terminal disease, and anything where there is not a capable person would be an abuse.</p> <p>If there was an assisted suicide for someone who was truly not capable (someone who is incapacitated mentally or emotionally) that would be an abuse.</p> <p>If someone truly did not have a terminal disease and yet had an assisted suicide, that would be an abuse.</p> <p>Any assisted suicide not strictly performed in compliance with the safeguards set up within Measure 16 would be an abuse.</p> <p>You are going to have a large number of people who are incapacitated who get assisted suicide and, therefore, fall under the abuse category under the Oregon law.</p>
		This is why you think these abuses will take place and I agree that those

208	Chair Sunseri	would be abuses. However, why do you think that abuse will take place under this law?
212	Marzen	I do not think the definitional criteria under the law provides any strict guidance to what constitutes criminal conduct and what isn't criminal conduct. There will be a lot of latitude under the law. Difficult to prosecute or to sue a physician over service provided. Continues testimony. >raises an issue regarding "botched" suicide attempts
259	Chair Sunseri	Testimony was given yesterday that no human body could survive 9 grams of barbiturates. You may have some people who would linger for a couple of days but all would ultimately end in death. Do you suggest there may be a situation where this may not be the case and people will fully survive the attempted suicide?
267	Marzen	Responds by examples.
284	Chair Sunseri	Would you predict then that there could be malpractice or liability connected to a failed suicide?
286	Marzen	If the doctor acts under the statute, it has to be shown either in a civil or criminal case that he acted in bad faith. How are you going to prove the doctor acted in bad faith? Continues by sharing an example. Continues testimony.
316	Marzen	Continues testimony.
366	Marzen	Continues testimony.
416	Marzen	Continues testimony.
Tape 48, A		
031	Marzen	Continues testimony.
081	Marzen	Continues testimony.
113	Rep. Uherbelau	I understand you are general counsel for the National Legal Center for the Medically Dependent and Disabled, correct?
117	Marzen	Yes.
118	Rep. Uherbelau	Where is that located?
119	Marzen	Indianapolis, Indiana.
120	Rep. Uherbelau	What is the funding source for the Center?
121	Marzen	Private funding.
122	Rep. Uherbelau	Are you licensed to practice law in Oregon?
123	Marzen	I am not licensed to practice in the State of Oregon.

124	Rep. Uherbelau	I would like to know the source of page 2, paragraph 2 - "It is verifiably the case that at least 95% of all persons contemplating suicide, whether or not they have been diagnosed to have terminal condition, are suffering from a mental or emotional illness."?
130	Marzen	There are multiple authorities. For instance, one authority is The New York State Task Force on Life and the Law report, "When Death is Sought Assisted Suicide and Euthanasia in the Medical Context."
135	Rep. Uherbelau	I would like to know the source of page 7, paragraph 1 - "The most recent research on this issue plainly demonstrates that a determination of the time-frame in which death ..."?
136	Marzen	The authority comes from a support study by Dr. Joanne Lynn. A comprehensive study of multiple hospitals. I can provide both the article and the amicus brief before the Supreme Court by Dr. Lynn.
140	Chair Sunseri	Could you provide those to Committee Counsel for distribution?
141	Marzen	Yes.
142	Rep. Uherbelau	Are you the legal counsel involved in the case Lee v. Oregon sent back from the Ninth Circuit Court?
144	Marzen	I am not Counsel of record nor directly associated with the case Lee v. Oregon. Our organization on behalf of some clients did write an amicus brief to the Court of Appeals in that case.
148	Rep. Bowman	Does your organization have a local chapter in Oregon?
153	Marzen	No, we do not have a local chapter in Oregon. We have had clients in the State of Oregon which we have represented in the Court of Appeals and so forth.
155	Rep. Bowman	Your organization does not exist as a body in the State of Oregon?
156	Marzen	No.
157	Taylor	In your testimony you spoke about someone on a dialysis machine. What about that person refusing to continue treatment? Does that person have a legal right to discontinue treatment?
160	Marzen	Yes, that person would have the right to discontinue treatment. This person would be considered terminally ill under Measure 16 as they would not likely survive the withdrawal of the dialysis machine. The definition of terminality depends upon whether or not treatment is given in many circumstances. One can render oneself terminal simply by refusing treatment.
169	Taylor	That person would have the legal right to refuse treatment by dialysis.
170	Marzen	Yes, but then that person would have the legal right under Measure 16 to secure an assisted suicide.
172	Taylor	Is good faith a subjective standard?

175	Marzen	That's correct. Defines objective standards and provides an example.
183	Taylor	Responds by giving an example of a diabetic person who asked for an assisted suicide due to a shortened life span. Could a doctor in good faith give a lethal dose under Measure 16 to this person?
191	Marzen	Responds by stating it depends on the person. I am concerned with what irreversible means under Measure 16. You have to be irreversible under the statute prior to asking for an assisted suicide. Further shares his concerns.
209	Rep. Courtney	"If a person is on a dialysis machine and they choose to go off the machine, what is that?"
211	Marzen	"I am asking what the statute means. The statute is unclear about what that means. My own view is that person is terminal."
214	Rep. Courtney	If they choose to go off the machine, is that suicide?
218	Marzen	No, that would not be suicide.
219	Rep. Courtney	"If the person was unable to decide to go off the dialysis machine and others made the decision for them, what is that?"
218	Marzen	It depends. I would want to make a distinction between withholding treatment on one hand, and action that causes death on the other. Withholding treatment is not within the category of suicide. You have a right to refuse medical treatment or refuse care. Sometimes that right is imputed to third parties that is distinct from what we are hearing here in terms of a lethal injection or overdose. My reason for bringing up the dialysis and insulin examples was to demonstrate the ambiguity of what is a terminal condition. Continues by presenting an example.
234	Rep. Uherbelau	"Aren't we playing a game of semantics when we say someone who asks for you to turn off a machine knowingly knows the result will be death and that is why they want you to turn off the machine and yet, we are saying that is not suicide but some other cases are?"
246	Marzen	Responds by stating their is a distinction between laws and ethics by example. >law has a huge distinction between the act and omission >pedigree in the law of batteries is a right to refuse treatment >suicide is a felony of common law
284	Rep. Uherbelau	We don't always distinguish between acting and not acting and provides an example of double effect.

		Again, aren't we really playing games of semantics here?
295	Marzen	Others are here to testify whether or not that is an accurate statement of what happens when pain relief is given in this State. My opinion is that it is not a game of semantics and shares his concerns by an example.
309	Rep. Courtney	Within your testimony you address the law and ethics in regards to a person on a dialysis machine perhaps three or four times a week, who knows what will happen if they then refuse treatment, but yet, who chooses to go off treatment, is that unethical in your opinion?
314	Marzen	I think it would depend. The person certainly has a legal right to refuse treatment.
315	Rep. Courtney	But you brought up the law and ethics, what I am asking is it unethical in your opinion under this situation?
318	Marzen	It depends on whether or not its excessively burdensome to continue on the dialysis treatment for that patient. That is something the patient would have to evaluate. The dialysis could be extremely difficult and could be dying because of another underlying cause. If it was intended to cause his/her death, I think that is unethical. If it was intended to relieve a burden of some sort, it could be ethical.
331	Rep. Courtney	So it is not unethical or illegal to take pain medication although the risk could be great to bring about a person's death?
338	Marzen	I do not think it would be, however, I think there might be some circumstances where the known risk was very great. For instance, if you had a minor headache and you take a dosage of medication you know you are allergic to and knowingly die, I think there would be some type of ethical problem. Hypothetically, we are talking about a person with a severe case of cancer who requires some kind of pain medication which may decreases respiration. However, if the patient usually doesn't take pain medication, he will usually die quicker from the stress of the pain than from the depressed respiration. In this circumstance, I would think it would be ethical to take the pain medication even if risk of depressed respiration. The law has never prosecuted a physician who has given legitimate pain relief in a cancer type situation even if respiration was depressed. The principle of double effect is recognized in the practice of law because you always have a secondary effect of an action.
365	Rep. Bowman	Shares by an example her concerns of which one is ethical and which one is not under the law.
		In my earlier example, the dialysis treatment itself was causing the pain. The patient was being caused harm by the medical treatment he was receiving. The dialysis itself was causing the pain so the patient refused treatment.

391	Marzen	<p>The analogy would be similar to a person with cancer. The doctor proposes more chemotherapy and the patient refuses the treatment. A possible consequence of this choice is that death would be sooner than if they accepted the treatment.</p> <p>What I am referring to is the burden of treatment to the patient rather than to the pain the person is suffering. The treatment itself was causing the pain and that would be a legitimate ethical reason for the patient to reject treatment.</p> <p>I see this as distinguishable from attempting to relieve the pain by killing the patient.</p>
419	Rep. Bowman	<p>On page 9 item #4 of your written testimony, you state that "Measure 16 violates the conscientious and religious rights of third parties ..."</p> <p>Is it your opinion that someone else has more control over what I do with my body than I would as a thinking intelligent individual who has made a decision?</p>
433	Marzen	<p>My point in item #4 was that in a health care or nursing home facility that had a policy against assisted suicide, that under the statute they could not enforce disciplinary conduct against employees who wanted to participate in assisted suicide. The statute makes that impossible.</p> <p>It violates religious hospitals rights in disciplining employees who participate in assisted suicide within the facility.</p>
451	Taylor	<p>In regards to the issue of good faith, is that solely subjective under Oregon law? I believe there is a reasonable person element within the law. Good faith is widely used in the Oregon statutes. For instance, a police officer conduct is measured against a reasonable person's standards.</p>
466	Marzen	<p>"I am not saying that the standards for good faith is totally subjective. There is obviously an objective element in deciding whether or not the conduct falls in the category, but the state of mind is an additional element of good faith that has to be there."</p>
Tape 47, B		
031	Marzen	<p>Continues response.</p> <p>That is why the Court in the Lee v. Oregon said that the statute specifically warrants negligent conduct by physicians. A doctor does not have to act in accord with objective standards. I would be willing to provide further research in this area.</p>
043	Taylor	<p>Do you have any suggestions on changing the language in Measure 16?</p>
		<p>In regards to the definition of terminal conditions, I agree with one of the Ninth Circuit decisions in that you can not really define it with a great deal of clarity.</p>

045	Marzen	The only way to resolve conundrums in the statute is to provide no criterion at all. Simply need only to legalize assisted suicide across the board without regards to whether or not it applies to certain persons. Further explains by giving examples.
080	Kenneth R. Stevens, Jr. M.D.	Physician specialized in and practice the medical specialty of Radiation Oncology at Oregon Health Sciences University, also on staff at Portland Veterans Medical Center. Testifies in opposition of Measure 16 and presents written testimony. (EXHIBIT B)
130	Stevens	Continues testimony.
206	N. Gregory Hamilton, M.D.	Co-Founder for Physicians for Compassionate Care and a member of the Oregon Psychiatric Association Task Force on Assisted Suicide Testifies in opposition of Measure 16 and presents written testimony. (EXHIBIT C)
256	Hamilton	Continues testimony.
306	Hamilton	Continues testimony.
323	Rep. Uherbelau	You have talked about physicians having caring and concern, then can you tell me why we have sterilized mentally ill women without their consent? Psychiatrists use shock EST as a standard treatment. Can you tell me doctors will leave their patients in severe pain because they are more concerned about sanctions from the governing board? So how can you state there is caring and concern in the medical field? I would like your response.
351	Hamilton	Responds and states that I hope we don't get to the point on non-consensual termination of life, like they have in the Netherlands.
357	Rep. Bowman	When was The Physicians for Compassionate Care created?
358	Hamilton	It was created in 1994 within one week of Measure 16 being passed.
359	Rep. Bowman	So there was not a movement to provide compassionate care prior to the voters approval of Ballot Measure 16?
368	Hamilton	The hospice movement has a long history as an outstanding movement in the United States. It is 20 years ahead of where compassionate care is in the Netherlands. Assisted suicide will destroy the movements toward compassionate care that have already begun under the hospice movement.
377	Rep. Bowman	Since The Physicians for Compassionate Care was created right after the voters passed Ballot Measure 16, was that when doctor's became compassionate in this community and decided they were going to start working together to create an alternative to Ballot Measure 16?
386	Hamilton	Responds by stating that we recognize that not all doctors are

		compassionate and that is why we need laws.
388	Kenneth M. Wilson M.D.	Medical Doctor and teacher at The Oregon Health Sciences University Testifies in support of HB 2952 and presents written testimony. (EXHIBIT D)
438	Wilson	Continues testimony.
Tape 48, B		
031	Wilson	Continues testimony.
077	Dorothy Hoogstraat	Private citizen. Testifies in opposition to HB 2952 and presents written testimony and for others, also. (EXHIBIT L)
127	Hoogstraat	Continues testimony.
152	Dr. Joann Nielson	Pediatrician in Oregon City. Testifies in support of HB 2952. >concerns with mentally challenged individuals choosing assisted suicide >easier for doctors to give up than treat depression issues, for instance >society seems to want to give up and not take on the financial burden to treat our aging population >treatments around the corner which may cure the illness
197	Ellie Jenny (AKA Hazel Jenny)	Private citizen. Testifies in support of HB 2952 and presents written testimony and for others, also. (EXHIBIT E, F, I, J, and K)
265	Chair Sunseri	Adjourns meeting at 5:00 P.M.
		Additional written testimony presented to the Committee. Robert F. Blankholm, testimony in opposition of HB 2952. (EXHIBIT G) P. John Seward, M.D., testimony in support of HB 2952. (EXHIBIT H)

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2952, written testimony and article, Thomas Marzen, 28 pages.

B - HB 2952, written testimony, Kenneth R. Stevens, 3 pages.

C - HB 2952, written testimony, N. Gregory Hamilton, MD, 4 pages.

D - HB 2952, written testimony, Kenneth M. Wilson, 5 pages.

E - HB 2952, written testimony, Hazel Jenny AKA Ellie Jenny, 2 pages.

F - HB 2952, written testimony, Mathilda Lee, 1 page.

G - HB 2952, written testimony, Robert F. Blankholm, 2 pages.

H - HB 2952, written testimony, P. John Seward, MD, 1 page.

I - HB 2952, written testimony, Cathy O'Malley, 2 pages.

J - HB 2952, written testimony, Monica R. Jaramillo, 2 pages.

K - HB 2952, written testimony, Robert P. Jaramillo, 2 pages.

L - HB 2952, written testimonies and articles, Dorothy Hoogstraat, 16 pages.