

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL  
ADMINISTRATION

April 5, 1993                      Hearing Room 357 1:30 p.m.                      Tapes 60- 63  
MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim  
Edmunson Rep. Tom Mason VISITING MEMBER: Rep. Cedric Hayden Rep. Del  
Parks, Chair STAFF PRESENT:        Carole Souvenir, Committee Counsel  
Melanie Thompson, Committee Clerk MEASURES CONSIDERED: SB 286 -  
Health Care Decisions

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in  
verbatim notation reports a speaker's exact words. For complete contents of  
the proceedings, please refer to the tapes. TAPE 60, SIDE A

001 CHAIR BRIAN: Calls the meeting to order at 1:45 p.m.

SB 286 - PUBLIC HEARING Witnesses:        Senator Bob Shoemaker, Dist. 3  
Susan Tolle, M.D., Oregon Health Sciences University for Ethics in  
Health Care Maureen Lore, Mother Dean McGinty, M.D., Gerontologist  
Senator Gordon Smith, Dist. 29 Ted Falk, Attorney, Lane, Powell, Spears  
and Lubersky Sister Diana Bader, Sisters of Providence Winston Maxwell,  
M.D., Sacred Heart Health System

SB 286 combines the power of attorney form for health care and advance  
directive into a single form and the form includes directions regarding  
tube feeding; Repeals the presumption in favor of consent to artificial  
nutrition and hydration; Establishes procedures for withholding and  
withdrawing life sustaining procedures; Requires that comfort care be  
administered following the withdrawal or withholding of life sustaining  
procedures; Recognizes health care directives executed in other states;  
Repeals sunset on Oregon's Patient Self-Determination Act. House  
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010 SEN. BOB SHOEMAKER, DIST. 3: Testifies in support of SB  
257. Addresses Section 21(d), encourages removal. Section 21  
addresses a presumption clause. 130 REP. MASON: Asks which section  
referring to.

131 SEN. SHOEMAKER: Section 21, page 20, line 33. Points out various  
parts of the bill. Addresses ORS 127.580 (EXHIBIT A)

248 REP. HAYDEN: Asks philosophically what the difference is between  
death by starvation and death by lethal injection, and the preference of  
one over the other.

253 SEN. SHOEMAKER: Explains that at a certain point with a fatal  
illness the body does not want food anymore.

281 REP. HAYDEN: Addresses that in some situations it is not possible  
to administer water by a squeeze bottle. Understands in some situations  
it is not legal to administer water, asks if there is a reason for that.

290 SEN. SHOEMAKER: Doesn't have the expertise to answer that.

302 REP. HAYDEN: Asks if the bill will change approval of  
hydration/nutrition procedures from two to one doctors.

307 SEN. SHOEMAKER: Doesn't believe it states that in the bill.

339 REP. HAYDEN: Addresses that in some situations it is merciful to remove hydration/nutrition, asks how that relates to Section 17, regarding condoning mercy killing.

358 SEN. SHOEMAKER: Explains Section 17(2), It does not regard withdrawal of life support as mercy killing.

365 REP. HAYDEN: States that if something exists cannot by law say it does not exist.

369 SEN. SHOEMAKER: Does not believe withdrawal of life support is mercy killing.

376 REP. MASON: Asks what would be considered mercy killing.

380 SEN. SHOEMAKER: Gives examples.

385 REP. MASON: Asks what is the philosophical difference from removing hydration/nutrition and strangulation?

392 SEN. SHOEMAKER: Explains dying process and the body rejecting food, etc.

406 REP. MASON: Asks Sen. Shoemaker to expand on the assertion that people in the dying process do not want food or water.

411 SEN. SHOEMAKER: Prefers to have a physician testify on the dying process. House Committee on Judiciary Subcommittee on Civil Law and Judicial Ad~i~ April 5, 1993 Page 3

421 CHAIR PARKS: Asks if the form in the advance directive is at the sixth grade level.

440 SEN. SHOEMAKER: Yes.

470 DR. SUSAN TOLLE, DIRECTS THE CENTER FOR ETHICS IN HEALTH CARE, OREGON HEALTH SCIENCES UNIVERSITY: Submits and reviews written testimony. (EXHIBIT B)

TAPE 61, SIDE A

107 CHAIR BRIAN: Asks if procedurally there is any difference between administration of hydration and the administration of nutrition.

110 DR. TOLLE: Explains that through a feeding tube any kind of substance can be put in. It is usually a combination of nutrition and calories, one without the other may increase the patient's suffering.

121 CHAIR BRIAN: Asks how is the quality of life until death defined if one withdrew nutrition but not hydration versus both being withdrawn.

128 DR. TOLLE: Explains if patients are receiving appropriate care, the patient will die relatively painlessly. Explains there is not a sense of suffering when a patient is appropriately cared for.

158 REP. MASON: Asks if the bill doesn't apply to the accident victim. . , 161 DR. TOLLE: Suggests it doesn't apply immediately to the accident victim.

183 REP. MASON: Asks if an accident victim doesn't have an advance directive and is suffering from a massive injury, do the doctors wait until they find all information about the patient or do they withdraw treatment.

190 DR. TOLLE: Explains the doctors are extremely aggressive with medical treatment, unless there is absolute clear evidence, usually a prior, written, advance directive to withdraw treatment.

209 REP. MASON: Asks if emergency rooms, and hospitals anticipate this bill and will try to adapt themselves to the bill.

220 DR. TOLLE: Explains that emergency rooms are very aware of the goal of saving lives, and early on one cannot recognize those who can and cannot be saved.

235 REP. MASON: Asks where the statistic 70% of patients die when life support is withdrawn, comes from.

243 DR. TOLLE: Explains the figures come from the Hospital Association, and are based on estimates of 1.3 million people who die each year.

251 REP. MASON: Asks if the statistic is an estimate or how it was derived at. House Committee on Judiciary Subcommittee on Civil Law and Judicial Administration April 5, 1993 - Page 4

263 DR. TOLLE: Explains in her own personal experience she has seen about 70% of the people in University Hospital die as a result of life sustaining treatment being withdrawn.

271 REP. MASON: Asks where the statistic 90% of the people do not have advance directives comes from. 274 DR. TOLLE: Explains the statistic is highly variable from one community to another. It is an average figure. 286 REP. MASON: Asks if the 90% of those not covered by advance directives would be covered by the presumption of hydration and nutrition? 290 DR. TOLLE: Explains the doctors look carefully at what the presumption says and the patient says. Gives example.

290 DR. TOLLE: Explains the doctors look carefully at what the presumption says and the patient says. Gives example.

307 REP. MASON: Asks if the presumption is removed, if it will impact the 90% 310 DR. TOLLE: It may impact the 10% as well. 311 REP. MASON: The 10% have directives.

312 DR. TOLLE: Yes. Explains some of the nuances of the directives are not clear as to what a patient does and does not want.

332 REP. MASON: Asks the bill is needed if there is only a small percentage that will be affected by the bill.

346 DR. TOLLE: Explains the bill is needed for people who are sustained for 37 years, despite what their family or even the patient wants.

365 REP. MASON: Asks what a pluralistic society has to do with this situation.

369 DR. TOLLE: Believes that not everyone shares the same set of values.

388 REP. MASON: Asks if there is any other value that might go beyond cherishing one's own life, asks about those that cherish other people's lives.

393 DR. TOLLE: Explains that cherishing lives is not the point, that we all cherish lives. Explains that forcing one to be maintained on life sustaining support is unacceptable.

403 REP. MASON: Asks about Dr. Tolle's example of the logger who would

not have his leg amputated. 410 DR. TOLLE: Explains the man could have lived a life that others may value, but does not mean she would have amputated his leg against his wishes, or given him medical treatment he specifically did not want. H - e C e on Judicirary Subcommidee on Ciril L-aw and Judi~l A~ April 5, 199 3 - Page 5

430 REP. MASON: Explains his condition could have been prevented with treatment, or any other situation like that, asks what the difference is.

434 DR. TOLLE: Explains that if the patient wants to be treated, then treatment will take place.

438 CHAIR BRIAN: Asks if treatment can be refused in either instance.

439 DR. TOLLE: Correet.

448 REP. HAYDEN: Explains that to eat is a basic instinct and that the bill states if one hasn't written down that one doesn't want to eat, they won't be fed.

477 DR. TOLLE: Explains the bill is misinterpreted.

TAPE 60, SIDE B

035 REP. HAYDEN: Proposes an example about an individual who comes into the emergency room with a head injury from a car accident. If the person has not signed a statement saying they want to be fed, they would not be fed.

049 DR. TOLLE: Explains the bill does not presume that most people do not want to eat, and after an accident one cannot make the diagnosis for permanent vegetative state for three months.

067 MAUREEN LORE, MOTHER OF A CHILD IN VEGETATIVE STATE: Testifies in support of SB 286, and gives a personal example.

120 CHAIR BRIAN: Asks how long of a period it was in Maureen Lore's mind before it was decided her son would not recover.

123 LORE: Two years.

124 CHAIR BRIAN: Asks if at that time was the desire expressed to remove her son from the system.

125 LORE: Yes. Explains she was told that they were not allowed to shut off the system, and that it was against the law.

128 CHAIR BRIAN: Asks if this was the late Seventies.

129 LORE: Yes.

130 REP. BAKER: Asks when Maureen Lore was told that by the medical community if she sought legal counsel.

131 LORE: No. Explains she believed the doctors.

statements made during deposition. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. House Committee on Judiciary Subcommittee on Civil Law and Judicial Administration April 5, 1993 - Page 6

136 DR. DEAN MCGINTY, GERIATRICIAN: Testifies in support of SB 286. Addresses three areas of the bill, the power of attorney, the Alzheimer's amendment, and the "language consistently and permanently". Addresses nutrition and hydration and explains the difference between offering and administering.

383 REP. MASON: Asks if Dr. McGinty has followed what the Irish IRA soldiers went through when they starved themselves to death.

388 MCGINTY: Explains he has not looked at that literature.

393 REP. MASON: Asks if there is a difference from someone who chooses to starve to death than one where nutrition has been removed.

398 MCGINTY: Discusses the process and what happens to the body when one dies.

416 REP. MASON: Asks how long it takes to get to the point where one does not want food or water.

436 MCGINTY: Explains body process.

453 REP. MASON: Asks if it is Dr. McGinty's testimony, if a person who has had hydration and nutrition withdrawn will not suffer.

458 MCGINTY: Explains that a person may suffer from an underlying disease process. There is good evidence that artificial hydration and nutrition does not add to the patient's comfort, and may add discomfort.

TAPE 61, SIDE B

027 REP. MASON: Asks if hydration and nutrition ever add to our comfort.

029 MCGINTY: Yes, occurs every day. Explains there is a point in a progressive or terminal illness that hydration and nutrition do not add comfort.

037 REP. HAYDEN: Asks why the patients would be suffering, asks if morphine wouldn't be administered to alleviate pain.

039 MCGINTY: If the patients are in pain, they would be getting morphine, however drugs cannot alleviate all pain.

056 REP. HAYDEN: Addresses the differentiation between offering and administering food and water. Gives two scenarios.

062 MCGINTY: Explains there are not enough details in the scenarios to answer his question. Explains the bill allows people to request that if the patient is not able to take what is offered they can have it administered.

084 REP. HAYDEN: Asks at what point is the condition considered irreversible. House Committee on Judiciary Subcommittee on Civil Law and

089 MCGINTY: Depends on the condition.

101 SEN. GORDON SMITH, DIST. 29: Testifies in support of SB 286. Gives five reasons to support the bill. Suggest improvements to the bill, such as eliminating Section 21(d). 181 REP. MASON: Asks if the Senator feels the bill supports physician assisted suicide. 208 SEN. SMITH: Explains the bill does not support physician assisted suicide. 248 REP. HAYDEN: Asks if the withholding of food and water is a merciful act, is it logical to say it is a mercy killing. 266 SEN. SMITH: Encourages Rep. Hayden to make those amendments to clarify mercy killing. 280 TED FALK, ATTORNEY WITH LANE, POWELL, SPEARS, LUBERSKY, PRESIDENT OF OREGON HEALTH DECISIONS: Submits and reviews testimony in support of SB 286. (EXHIBITS C & D) 303 CHAIR BRIAN: Asks regarding Maureen Lore's case if the same thing would happened today. 308 FALK: Discusses there have been some changes in the law but there are still many cases unresolved. 360 CHAIR BRIAN: Asks in the case of a younger person where preference would not come up, can't make the decision, what can a family member do. 377 FALK: Discusses the presumption applies to all persons in Oregon and explains it is not clear a court could come up with a clearer outcome. Explains there are several legal procedures a person can follow. Points out the advance directive form is at the 8th grade reading level and not at the 6th grade level.

TAPE 62, SIDE A

125 REP. HAYDEN: Asks if the bill removes the rights of people who have not signed an advance directive either way.

130 FALK: Explains that is not correct and the fundamental decision making rule attempts to follow what the patient's own values are.

150 REP. HAYDEN: Gives example about an incident where the patient's desires are completely unknown, and asks what would happen with the patient.

155 FALK: Explains since the values of the patient are unknown, it would fall under the best interest determination.

166 REP. HAYDEN: Asks Mr. Falk to articulate what the best interests of the patient would be.

168 FALK: Cannot answer without knowing the condition of the patient.  
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179 CHAIR BRIAN: Addresses Page 9 of SB 286, items 1, 2, and 3. Asks what number 1, line 6, page 9, "close to death" means. 191 FALK: Explains it is an attempt to translate to the 8th grade level what the 11th grade level "imminently dying" meant. 200 CHAIR BRIAN: Asks if death is imminent why is there a question of tube feeding. 209 FALK: Explains close to death is a condition which almost any chronic illness will reach. Close to death there isn't any reasonable possibility in the change of your course. . 235 CHAIR BRIAN: Asks about Line 33, the language "consistently and permanently". 238 FALK: Responds that the language was put there at the specific request of the Alzheimer's Association. 244 CHAIR BRIAN: Asks about Line 19, and the category of permanently unconscious. 251 FALK: Explains the use of "permanently" instead of "impossible" because the language was too "strong."

281 SISTER DIANA BADER, SISTERS OF PROVIDENCE: Submits and reviews written testimony. (EXHIBIT E) 425 CHAIR BRIAN: Addresses page 5, of her testimony where suggestions are made to remove various aspects of the bill. 461 REP. HAYDEN: Addresses page 3 of her testimony. Asks if the provision of food and water as it relates to cost, is more than half the problem or less than half the problem of the concern over cost. 479 BADER: Discusses in their hospital the first issue is does the particular treatment benefit the patient. If the treatment is of no benefit both medically and ethically, then cost is important.

TAPE 63, SIDE A

034 REP. MASON: Addresses the question of costs, never come into play.

037 BADER: Explains there are situations where the question of cost comes into play, gives example.

056 REP. MASON: Asks if the hospitals address financial considerations in these cases, where the hospital may have to absorb a great amount of the cost.

065 BADER: Explains that the patient's preferences and desires are addressed first and try to provide that treatment for the patient. Her hospital doesn't address the financial consideration. House Committee on Judiciary Subcommittee on Civil Law and Judicial Admi~ April 5, 1993 - Page 9

104 DR. WINSTON MAXWELL, ETHICS COMMITTEE, SACRED HEART GENERAL -- . HOSPITAL: Testifies and supports SB 286.

260 REP. MASON: Asks how Dr. Maxwell would respond that SB 286 gives the physician immense power.

270 DR. MAXWELL: Responds that the physician has immense power now in every day practice. Gives example.

304 REP. MASON: Discusses that 15 years ago these type of questions were never asked in regards to hydration and nutrition. Asks how the idea of ethics committees came about.

324 DR. MAXWELL: Explains that ethics committees look at various issues and discuss what the best action is to take.

343 REP. MASON: Asks if it is significant in the year 1993 that the ethics committee is going through changes, both morally and ethically.

379 DR. MAXWELL: Explains his personal philosophy. 405 REP. MASON: Cites from Liberson regarding Advance Medical Directives. Addresses how euthanasia and advance medical directives. 434 DR. MAXWELL: Explains he cannot answer the question. Discusses his philosophy about not abandoning people in the dying process because they are afraid to treat them. 471 REP. MASON: Addresses the "Killing Granny" article. Discusses that occurrences happen behind closed doors. Gives example about ethical standards.

TAPE 62, SIDE B

072 DR. MAXWELL: Explains what he would do in a situation where a person is going to die, and how he tries to make them comfortable. Nothing is done behind closed doors.

111 CHAIR BRIAN: Adjourns meeting at 4:00 p.m.

Submitted by:  
May Committee Clerk

Reviewed by: Melanie Thompson  
Committee Coordinator

Anne

. EXHIBIT LOG:

A -ORS 127.580 Statute - Sen. Bob Shoemaker - 1 page  
B - Testimony on SB 286-Susan Tolle, M.D. - 8 pages  
C - Swrarnary of SB 286-Theodore Falk - 6 pages  
D -Section by section analysis of SB 286 Theodore Falk - 36 pages  
E -Testimony on SB 286 - Sister Diana Bader - 6 pages