

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL  
ADMINISTRATION

April 28, 1993      Hearing Room 357 1:00 p.m.      Tapes 93 - 94

MEMBERS PRESENT:    Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson  
Rep. Tom Mason

VISITING MEMBERS:            Rep. Hayden

STAFF PRESENT:            Holly Robinson, Committee Counsel Carole  
Souvenir, Committee Counsel Sarah May, Committee Clerk

MEASURES CONSIDERED:            HB 286 - Establishes Oregon Health Care  
Decisions Act

[--- Unable To Translate Graphic ---]

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in  
quotation marks report a speaker's exact words. For complete contents  
of the proceedings, please refer to the tapes. [--- Unable To Translate  
Graphic ---]

TAPE 93, SIDE A

003      CHAIR BRIAN:    Calls meeting to order at 1:24 P.M.

SB 286 - WORK SESSION

011    CAROLE    SOUVENIR,    COMMITTEE    COUNSEL:    Explains bill  
section by section. (EXHIBIT A,B) SB 286 - Section 1, Pg. 2, Line  
40,42. Pg. 3,

Line 4.

045    CHAIR BRIAN:    If leave presumptions in SB 286, with list of  
exceptions, how does it effect necessity of proposed language?

050    CAROLE    SOUVENIR,    COMMITTEE    COUNSEL:    Presumption under ORS 127  
.580, depends on if you keep it as currently stated or amended. If  
amended,

deal with artificial administered nutrition and hydration as life  
sustaining procedure, then use language on Pg. 3, Line 6. Currently  
"life sustaining procedure", does not include artificial nutrition and  
hydration. (EXHIBIT C)

060    CHAIR BRIAN:    Where do we find presumption language? ORS 127  
.580? Section 1 uses phrase artificial nutrition, hydration.

072 CAROLE SOUVENIR, COMMITTEE COUNSEL: ORS 127.580 deals with artificial nutrition and hydration, but life sustaining procedures are dealt

elsewhere in the procedure. SB 286 proposes the including of "artificial nutrition, hydration", within definition of life sustaining procedure. 079 REP. HAYDEN: Cites -5 amendments that are hand engrossed. (EXHIBIT D,E) On Page 1, Line 5, line through ORS 127.580. Food and water are basic

needs, not medical treatments.

108 CAROLE SOUVENIR, COMMITTEE COUNSEL: Cites -6 amendments. (EXHIBIT F) Retain ORS 127.580. Adds additional circumstances.

127 REP. EDMUNSON: SB 286-5 amendments, retaining presumption, moving language to delete artificial nutrition, hydration, would be acceptable?

133 REP. HAYDEN: Cites (EXHIBIT E). All language retains presumption consistent with Section 30 as amended.

148 CAROLE SOUVENIR, COMMITTEE COUNSEL: Explains Section 1, p. 3, Line 24, SB 286. 172 REP. MASON: Questions language of principals that includes children.

208 CAROLE SOUVENIR, COMMITTEE COUNSEL: A child who is confirmed permanently unconscious meets one of the four conditions in the bill.

259 TED FALK, ATTORNEY: SB 286 extends concept of principal, to children. This bill creates protective provisions, and explains procedures by

which the decisions have to be made about children.

309 FALK: This would make parents the health care representatives. This bill creates procedures by which any decision of that sort is made.

325 REP. MASON: No relationship between philosophical movement and relative moral movement that Mr. Singer embodies in this bill?

333 FALK: SB 286 attempts to vindicate the notion of individual rights, by decisions that allow these procedures to be carried out.

341 REP. MASON: The values that this bill represents, are those utilitarian values?

347 FALK: They are autonomy and self evaluation.

350 REP. MASON: How do you justify those values?

351 FALK: Same values in U.S. constitution. With regard to children, it would create an analytical way to make decisions instead of intuitive

basis. Children are being allowed to die now. That is not being

created by this bill. This bill creates an orderly procedure for making those decisions.

370 REP. MASON: Ultimate value is autonomy?

387 FALK: Section 11, A. There are basic human rights that cannot be denied.

406 REP. MASON: Where is the analytical framework for the idea of human dignity?

423 REP. MASON: The reason why people don't want to debate SB 286 is because they wouldn't be happy with values behind bill. What type of

values motivated this bill?

431 FALK: People with variety of ethical outlooks, give support of bill. To try to connect this bill to any one view, would take complicated

reasoning and wouldn't be pertinent to how bill operates.

TAPE 94, SIDE A

010 REP. HAYDEN: Would autonomy and self determination also extend to patient where people wanted full medical services at any cost.

015 FALK: Yes, this bill allows a person to make that election.

017 REP. HAYDEN: How many people in America are in a persistent vegetative state at this time?

018 FALK: 10,000 - about 100 in Oregon.

020 REP. HAYDEN: What would be your response if all feeding tubes were removed at once, and all people died within a week? Would that be an

ethical situation?

026 FALK: The proper way to make those decisions is individual by individual. That's what this bill encourages, making an individual

decision, based on person's values and interests.

036 REP. HAYDEN: This bill as written presumes that those people want their tubes clamped.

038 FALK: It is not presumed that they want their feeding tubes clamped. The representative makes the decision based on what they believe person would want, or best interest.

044 REP. HAYDEN: It's a neutral presumption.

051 BOB CASTAGNA, OREGON CATHOLIC CONFERENCE: I've looked at -5, -6 amendments, and they look like what we've previously discussed.

058 CHAIR BRIAN: They both restore the presumption.

062 CAROLE SOUVENIR, COMMITTEE COUNSEL: -5 amendments restores ORS 127.580 and does not repeal it, -6 amendments restore ORS 127.580 and adds

circumstances. Presumptions that could be rebutted, -6 amendments.

Discusses five circumstances that could be rebutted.

087 CHAIR BRIAN: Are changes in -5 amendments incorporated into -6 amendments.

091 CAROLE SOUVENIR, COMMITTEE COUNSEL: Yes, life sustaining procedures definition did not change. Artificial nutrition, hydration would still

be in definition of life sustaining procedure.

098 CHAIR BRIAN: Is that acceptable?

099 CASTAGNA: It seems along right lines.

100 REP. HAYDEN: Wants Lines 12-20 on Pg. 2 of -6 amendments discussed.

106 CHAIR BRIAN: Options, -6 in lieu of -5 amendments.

108 REP. HAYDEN: Except -5 amendment changes that need to be incorporated.

118 FALK: Pg. 1, Lines 4-5, court appointed representative would not be authorized to withdraw artificially administered nutrition, hydration.

Why is there distinction?

130 CAROLE SOUVENIR, COMMITTEE COUNSEL: It should be those appointed by court as well as, those appointed in advanced directive?

135 FALK: Why is one drawing distinction between powers of court appointed representative, versus powers of advanced directive representative?

Change in language takes away power of court appointed authority.

146 REP. HAYDEN: If retain ORS 127.580, then have to delete Lines 26-30.

152 FALK: Not consistent with way LC drafted -6 amendments, instead of deleting have to create additional sub-section F, on Pg. 1, Line 7-12 of -6 amendments.

159 CAROLE SOUVENIR, COMMITTEE COUNSEL: Whether or not valid appointed health care representatives should include Lines 8-11. That gives

specific authority to health care representative to make decisions. Put in additional language in -6 amendments.

173 FALK: If we keep ORS 127.580, language at bottom of Pg. 2 of -6 amendments. Deleting sub section 2.

187 REP. HAYDEN: Consider hostile amendment. Does not want removal of that section.

191 CHAIR BRIAN: Are those words incorporated into lines 16-20 Pg. 1?

195 FALK: It does not incorporate that by cup, hand, bottle, straw, or utensil. Same concept, but broader.

205 REP. HAYDEN: That language has meaning.

208 FALK: Pg. 1, Line 18, -6 amendments, made clearer, except in "one of the following circumstances".

217 CHAIR BRIAN: One or more.

220 FALK: Overcome presumption if any one of those clauses is satisfied.

230 REP. MASON: If we do pass this bill, I would like to keep statistics of how much of this actually happens.

244 FALK: Yes, that would be good.

246 REP. MASON: Any objection to society knowing how often this is done?

253 REP. MASON: Keep statistics of who these health care representatives are, and if propose conceptual amendment, take place, that it be noted

on death certificate.

273 FALK: Not even in Oregon, is the cause of death noted on the publicly available part of the death certificate.

281 REP. MASON: If someone is going to assume the responsibility, they should then have that part of the public record.

289 FALK: Helpful to ask medical or hospital people what the standard is for medical records under these circumstances.

296 REP. MASON: I want it to be part of public record.

299 CHAIR BRIAN: Would want a central source someone could go to if there was withdrawal of nutrition, hydration, of who made the decision and

under what provision.

307 REP. MASON: And who physician was.

324 REP. HAYDEN: Some precedent in Netherlands. They do notify central registry and are immune from prosecution.

331 CHAIR BRIAN: Would be like health department?

332 REP. MASON: You should defend decision.

336 FALK: Principally a statistical reporting, or by name so as to have accountability.

341 REP. MASON: Individual accountability and statistical would serve dual purpose.

342 CAROLE SOUVENIR, COMMITTEE COUNSEL: When do they have to report it, before?

344 REP. MASON: After.

346 FALK: It raise privacy issues.

360 REP. MASON: If it's not family member, but a health representative. 363 FALK: Representative is either appointed or by family list.

377 REP. MASON: Isn't that what we call responsibility? Making decision to cancel one's life.

441 CAROLE SOUVENIR, COMMITTEE COUNSEL: Section 3, Pg. 4, Line 9. Issue on exhibit whether advanced directive should be limited in time.

TAPE 93, SIDE B

013 CHAIR BRIAN: Currently seven years? Pg. 7, Lines 20-23.

020 REP. MASON: Cites example of advanced director appointing someone then, twenty years later not knowing that advanced director is still out

there.

032 REP. HAYDEN: Should be proactive statement, every five or seven years. Move through life, needs change.

041 CHAIR BRIAN: If in completing advanced directive, someone failed to indicated time allotment? 050 REP. HAYDEN: Could be "other period of years".

053 CHAIR BRIAN: Leave lines 20-23, and except that, if fail to pick time, then someone would pick one.

056 REP. MASON: Uncomfortable with "all my life".

059 CHAIR BRIAN: People do that with a will.

062 REP. HAYDEN: Can staff make Lines 21, Pg. 21-23, consistent with section 3, Pg. 4.

067 CHAIR BRIAN: Leave Lines 20-23, Pg. 7, and leave Pg. 4 the same?

073 REP. HAYDEN: In the absence of 7 years.

075 CHAIR BRIAN: People filing out health representative forms can indicate for the rest of their lives.

077 CAROLE SOUVENIR, COMMITTEE COUNSEL: Section 8, Pg. 6. Whether term substantially on Line 14, should remain.

082 REP. MASON: The advanced directive needs to be literal.

085 CHAIR BRIAN: Under what circumstances would an institution vary the wording?

090 CAROLE SOUVENIR, COMMITTEE COUNSEL: If typographical error or word is left out. If doesn't have word "substantially" would form still be

valid?

093 CHAIR BRIAN: Is there a common way to say that? 095 REP. MASON: There is a doctrine that allows a typographical error to be made up by court. 105 REP. HAYDEN: Choose alternative which offers greatest protection and autonomy. Are we honoring oral directives?

114 CHAIR BRIAN: It would have to be written as advanced directive. There are other times where an oral directive would work, but when people are supplying form for advanced directive, it should be this form.

118 REP. HAYDEN: This is a notice to printers. It doesn't have to do with the principal of patient.

121 CHAIR BRIAN: Notice to anyone who is going to reproduce and provide an advanced directive. 127 REP. HAYDEN: Not substantially this form, but this form.

133 REP. MASON: What are granted signatures for people about to die?

154 CHAIR BRIAN: Take out word "substantial". Doesn't want to give that flexibility. We want it to be that literal.

162 CAROLE SOUVENIR, COMMITTEE COUNSEL: If take out word substantially this form would be required to follow this layout. Pg. 9, Line 11, whether

language should instead to make it track the same language as life support.

175 CHAIR BRIAN: No objection to that.

178 CAROLE SOUVENIR, COMMITTEE COUNSEL: Pg. 9, Line 32, should be further defined. 184 REP. HAYDEN: Wasn't there agreement between everyone that this section would be deleted? 193 CHAIR BRIAN: Pg. 20, Line 33-34, delete references.

198 REP. HAYDEN: B-3 refers to progressive illness that is eventually fatal.

208 CHAIR BRIAN: It wouldn't allow someone in earlier stages of illness. They would have to come to the point were they couldn't swallow food

safely, care for themselves, or recognize family members.

216 REP. HAYDEN: This legislation deals with people who are in the end stages in life. Amending it for people who are comatose. This

amendment for people who can live for years, may not be able to do things, but will live for long time.

231 REP. MASON: These people may be conscious but unable to do things for themselves. How long can a person live in this state?

246 FALK: It was drafted by Alzheimer Association and was intended to describe a late stage of Alzheimer condition. 254 CASTAGNA: Concern was some explanation that accompanied section by section analysis where advanced alzheimer intended. Question whether

life support might ethically be withdrawn, what progressive illness means. Some legislative if not definition of specificity, to what progressive illness means.

275 FALK: This definition is one option on advanced directive form. Castagna was referring to position that a patient may fall outside

boundaries of Section 11.

291 CHAIR BRIAN: Lines 41-44, Pg. 13, intent is advanced stages, it just needs to be more clear.

300 CASTAGNA: Eliminate element of terminal condition from definition of life sustaining procedures, time element lacking. Within most advanced

stages of alzheimer, what is time frame to be anticipated when has progressive illness.

313 REP. MASON: Cites example of person who could not communicate at all. Uncomfortable with pulling term "terminal" out of Section 11, Pg. 13,

with no directive.

341 REP. HAYDEN: It is covered by: close to death, permanently unconscious, extraordinary suffering. Under conditions, do/do not want to be fed.

357 FALK: Phrase "terminal condition" is changing it's meaning, under new definition. "Terminal condition" under current definition has no time

limit.

391 CHAIR BRIAN: Pg. 9, Line 19, permanently unconscious and very unlikely are not comprehensive to one another.



405 REP. HAYDEN: Legislation presupposes that a certain number of lives will be sacrificed. The cost to society will be so great, can't

maintain all people in vegetative state, in hope of saving one or ten.

421 FALK: I would not have characterized cost savings as purpose of bill, it's about rights, not cost.

428 FALK: There are probable assessments that will sometimes be wrong.

432 REP. MASON: There will be people that will die because of this bill?

435 FALK: We are talking about life support.

437 REP. MASON: There will be circumstances where life support will be withdrawn. Had it not been withdrawn, the person would have lived.

443 FALK: That is entirely clear.

TAPE 94, SIDE B

010 CAROLE SOUVENIR, COMMITTEE COUNSEL: Pg. 11, Line 26, should there be additional sentence to Line 26?

013 CHAIR BRIAN: Some discussion between permanent and severe?

016 CAROLE SOUVENIR, COMMITTEE COUNSEL: Issue is all throughout bill, whether change word "suffering" to "permanent severe pain". Section 9,

Pg. 12, Lines 20-21.

027 CHAIR BRIAN: Reference to Pg. 10, 6-B. What was your reference?

029 CAROLE SOUVENIR, COMMITTEE COUNSEL: Pg. 12, Lines 20-21. The health care representative needs to do what they believe is the best interest

of principal. Issue to add Pg. 11, Line 26.

038 FALK: Would be useful addition. Suggest simpler language. Conceptually it's correct. "Act in what I believe to be their best

interest".

047 REP. MASON: Why do loose word, "good faith"?

051 FALK: No useful purpose, is acceptance for health care representative. If original phrase is better, fine.

065 CAROLE SOUVENIR, COMMITTEE COUNSEL: Leave in "good faith"?

066 REP. MASON: Words "good faith", impose some standard.

074 REP. HAYDEN: Leaving Pg. 11? Line 39, LC suggested we insert after 127.540, and 127.580.

083 CAROLE SOUVENIR, COMMITTEE COUNSEL: Whether committee wants to require disclaimer on advanced directive, be at top of front page.  
Inserted on

Section 26, Pg. 22, Line 35, of SB 286, question of where advanced directive should be placed.

093 REP. HAYDEN: This language came out of Human Resources Committee. This should be prominently displayed, and not hidden in text.

099 CASTAGNA: Discusses -7 amendments.(EXHIBIT G,& H) Pg. 1, Lines 12-16, on amendments, would take care of language and disclaimer question.

109 FALK: No objection to disclaimer. Will change position of disclaimer on page.

116 CAROLE SOUVENIR, COMMITTEE COUNSEL: Pg. 8, Lines 40-41, if sentence was misleading because implied that withholding withdraw of nutrition,

hydration was cause of death, rather than medical condition.

123 REP. HAYDEN: Don't think it's misleading, would like to delete "probably", Line 41.

136 CHAIR BRIAN: Depends on how long refuse food or water.

141 FALK: Medical issue, not very accurate warning. Some people can survive a long time by food and water given by mouth. 152 CHAIR BRIAN: Is tube feeding synonymous with hydration as well?

153 FALK: Yes.

155 CHAIR BRIAN: There could be conditions where there is water and not food. Someone could survive for extensive period of time.

159 REP. MASON: Cites exhibit submitted by Susan Tolle.(EXHIBIT I)

169 REP. HAYDEN: Death will almost always result, but if you want "probably" for legal term, o.k.

172 CHAIR BRIAN: Adjourns the meeting at 3:01 P.M.

Submitted by:

Reviewed by:

Sarah May  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Analysis of SB 286 - Committee Counsel - 2 pages B - Proposed Amendments to SB 286 - Committee Counsel - 4 pages C - ORS statute relating to SB 286 - Committee Counsel - 1 page D - SB 286-5 Proposed Amendments - Rep. Hayden - 2 pages E - A-Engrossed SB 286 - Legislative Counsel - 23 pages F - -6 Proposed Amendments to SB 286 - Committee Counsel - 3 pages G - Proposed Amendments to SB 286 - Oregon Catholic Conference - 1 page H - SB 286-7 Proposed Amendments - O.C.C - 3 pages I - Testimony on SB 286 - John Wheeler - packet J - Testimony on SB 286 - Oregon Advocacy Center - 5 pages K - Proposed Amendments to SB 286 - Oregon Assoc. of Hospitals - 4 pages L - Testimony and amendments to SB 286 - Rep. Hayden - 3 pages M - Testimony and amendments to SB 286 - Joan Stembridge - 2 pages