

SENATE COMMITTEE ON HEALTH CARE & BIO-ETHICS

February 4, 1993 Hearing Room C 3:00 PM Tapes 3 - 5A

MEMBERS PRESENT: Sen. Shoemaker, Chair Sen. Hamby, Vice-Chair Sen. Cohen Sen. G.H. Smith

MEMBER EXCUSED:

VISITING MEMBER:

STAFF PRESENT: Barbara Coombs, Committee Administrator Dick Shoemaker, Committee Administrator/Asst. Stasi Kitchen, Committee Assistant

WITNESSES: Janine Sarti, Oregon State Bar, Health Care Section Susan Tolle, M.D., Center for Ethics in Health Care,

OHSU Robert W. Smith, United Seniors of Oregon Ted Falk, Lane, Powell, Spears & Lubersky Dean McGinty, M.D., Alzheimer's Association Tina Kitchen, M.D., Office of Development of

Disability Services Paula McNeil, Executive Director, Oregon Health Decisions

MEASURES CONSIDERED: SB 286 - Establishes Oregon Health Care Decisions Act.

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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 ---]

Public Hearing on SB 286

TAPE 3, SIDE A

001 CHAIR SHOEMAKER: Calls to order at 3:00 p.m.

007 JANINE SARTI, OREGON STATE BAR, HEALTH CARE SECTION. Overview of Oregon Law. Presentation of Exhibit A.

059 Chair Shoemaker: Please identify the hospitals that you represent, as an attorney.

109 Sarti: Legacy Health System is my employer. I work with Good Samaritan Hospital, Emanuel Hospital, Mt. Hood Medical Center, Meridian Park, and two long term care facilities. Returns to presentation of Exhibit A. 124 SEN. HAMBY: Please go into further detail regarding the common law standards.

125 Sarti: The common law standards state there is nothing in the Power of Attorney Law or Living Will Law that would apply to a situation.

134 SEN. McCOY: Do you have a list of who compiled the End of Life Decision document?

135 Sarti: Yes.

136 McCoy: Who introduced the Power of Attorney for health care?

141 Chair Shoemaker: This was introduced in the 1989 Session.

142 McCoy: Was anyone present from the health law section?

143 Sarti: Yes.

144 Chair Shoemaker: I was involved.

150 SUSAN TOLLE, M.D., CENTER FOR ETHICS IN HEALTH CARE, OHSU: Shares experiences: 1) In counseling with patients, and 2) In counseling with

physicians around the state.

200 Chair Shoemaker: Have you encountered complications with the Power of attorney?

201 Tolle: The Power of Attorney does allow for much more flexibility.

TAPE 4, SIDE A

001 Tolle: Continues discussion regarding counseling patients and physicians. Concerned with SB 286 Section 11.

094 Hamby: Does the Bill speak to alternative surgical procedures and administering of anti-biotics?

103 Tolle: Yes.

110 Hamby: Would it allow non-surgical intervention?

111 Tolle: There is a definite need for surgical intervention.

112 Hamby: Let me be more specific. A hair line fracture, taking into consideration the age of the patient?

114 Tolle: I do not believe that is included.

115 Chair Shoemaker: If the patient were incompetent and had signed Power of Attorney, the decision would then move to the Power of Attorney?

121 Tolle: Yes.

122 SEN. SMITH: Is going without food and water while being unconscious painful to the patient?

124 Tolle: It differs in varying circumstances.

143 Smith: Are we facilitating something that in anyway is unusual or cruel?

150 Tolle: If we completely stopped a patients comfort care, this includes pain medication, there would be a level of discomfort. We can provide

the medications and they will not suffer.

172 Chair Shoemaker: We tend to couple hydration and nutrition, in responding to Sen. Smith's question, is there a difference between

depriving artificial hydration and artificial nutrition?

180 Tolle: You cannot separate them for long term.

191 Chair Shoemaker: What is the pain sensation of being deprived of water artificially, as contrasted with wetting the lips?

192 Tolle: It depends on the sensation of the patient and the comfort level.

212 ROBERT W. SMITH, UNITED SENIORS OF OREGON: Describes concern with the ability to control ones own medical treatment and finances.

TAPE 3, SIDE B

001 SEN. COHEN: If you were to check the place on the Advance Directive form enabling the physician to end your life and you lived for six

months, which would you prefer?

002 R. Smith: I prefer death rather than living in that condition for six months.

004 Cohen: Are we facilitating death before the patient's time?

011 R. Smith: Now that you have the ability to keep people alive, I do not believe this is right.

025 Hamby: Would beginning another form of therapy jeopardize any other instructions you had left?

041 R. Smith: If one had left clear instructions, or if SB 286 passes, and under the Living Will aspect, I can write down some things that I

believe, then I can address these issues.

061 TED FALK, LANE, POWELL, SPEARS & LUBERSKY: I am more or less the author of SB 286. Presents an overview of the bill (Exhibit C). 1) The bill

completely revises the existing advance directive forms, 2) The bill gives a set of standards for withdrawal of life support, 3) The bill

furnishes a health care representative when an individual has not appointed one, and 4) The bill identifies, more specifically, the medical conditions for which, the majority of people think withdrawal of life support can be appropriate.

112 Smith: Is a person considered in a comma while in a permanently vegetative state? 114 Falk: A person is in a comma when they have been diagnosed as being permanently, completely unresponsive to the environment.

120 Smith: Are there no special presumptions to artificial nutrition and hydration as opposed to other things?

135 Falk: Refers to Exhibit C. Describes ten areas where the law does not work.

212 Cohen: What section of the Bill relates to vulnerable patients?

213 Falk: The sections are throughout the Bill.

TAPE 4, SIDE B

001 Falk: Continues with discussion.

072 Hamby: What is the reading grade level of the Bill?

078 Falk: The long form is 10.5 grade level; the short form is 11th grade level. We would prefer them to be at the 8th grade level.

092 Smith: Are these forms tamper proof?

093 Falk: No. SB 286 has a criminal prohibition, that would be felony.

095 Chair Shoemaker: There is a procedure to take the document to court if intervention is necessary.

104 Falk: Continues with discussion.

160 DEAN MCGINTY, M.D., ALZHEIMER'S ASSOCIATION. Discusses Alzheimer's disease. 230 Chair Shoemaker: Please explain the organization's concerns in more detail.

232 McGinity: The statewide advocacy committee does have concerns regarding the wording. Refers to SB 286, page eight, line 40, and page eight,

line 18, and concerns with food and fluids being coupled together.

271 Hamby: Is this intravenous?

273 McGinity: Yes. Fluids can be done, foods cannot be done.

283 Hamby: Do they recognize that this would prolong their life?

285 McGinity: Yes.

286 BARBARA COOMBS: It would ask that the person filling out the form, while they are still capable, be given a separate choice. 291 McGinity: Yes.

TAPE 5, SIDE A

001 Chair Shoemaker: The purpose of this organization is to help the victims and their families through the varying degrees of the illness.

Is this correct?

002 McGinity: Yes.

012 TINA KITCHEN, M.D., OFFICE OF DEVELOPMENT OF DISABILITY SERVICES. Discusses definition of SB 286 Section 21.

030 Chair Shoemaker: Are you referring to the Alternate Section 21 of SB 286? Do you agree this is appropriate?

034 Kitchen: Yes.

042 Chair Shoemaker: This is reference to a patient who does not have a health care representative and deals with this decision. Except for

this dilemma, do you feel you can support SB 286?

054 Kitchen: Yes.

060 Smith: Are there other states who have laws similar to the Advance Directive or is the State of Oregon the first?

065 Falk: Nearly every state has laws relating to Advance Directives. SB 286 is much more specific than any other state on the books.

081 PAULA McNEIL, EXECUTIVE DIRECTOR, OREGON HEALTH DECISIONS. Refers to Exhibit 1.

133 Chair Shoemaker: Closes hearing at 5:30 p.m.

Submitted by:

Reviewed by:

Stasi Kitchen
Administrator

Dick Shoemaker Assistant

EXHIBIT LOG

A - END OF LIFE DECISIONS IN OREGON - JANINE SARTI - 77 PAGES B - TESTIMONY - ROBERT W. SMITH - 2 PAGES C - LANE, POWELL, SPEARS, LUBERSKY - THEODORE C. FALK - 41 PAGES D - TESTIMONY - DEAN MCGINITY - 5 PAGES