

SENATE COMMITTEE ON HEALTH CARE & BIO-ETHICS

February 11, 1993 Hearing Room C 3:00 p.m. Tapes 7 - 8

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

MEMBER EXCUSED:

VISITING MEMBER:

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

MEASURES CONSIDERED: SB 286 - Public Hearing & Work Session SB 50 - Public Hearing & Possible Work Session

WITNESSES: Scott Gallant, Oregon Medical Association Ellen Lowe, Associate Director, Ecumenical Ministries of Oregon Susan Tolle, M.D., Center for Ethics in Health Care,

OHSU Ted Falk, Lane, Powell, Spears & Lubersky Dean McGinty, M.D., Alzheimer's Association Tina Kitchen, M.D., Office of Development of

Disability Services Molly Weinstein, Member, Bar Subcommittee, Health Law Section Glenn Rodriguez, OHSU Bob Castagna, Oregon Catholic Conference Caroline R. Lobitz, M.D. [--- 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 ---]

PUBLIC HEARING & POSSIBLE WORK SESSION - SB 286, SB 50 - EXHIBITS A - R

TAPE 7, SIDE A

002 CHAIR SHOEMAKER: Calls to order at 3:00 p.m., SB 286.

005 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Provides testimony in support of SB 286 (EXHIBIT G [1] [2]). States concerns: SB 286, Section 6, subsection (2) page 6, lines 5-10, page 14, lines 41-45, Section 13, Section 21 - page 22, Section 22 - page 23.

110 Chair: We will be getting proposed amendments to Section 21.

150 SEN. SMITH: Are you supporting SB 286 on a procedural basis? Do you discuss the philosophical sides of SB 286?

164 Gallant: Responds to Sen. Smith's question.

180 Chair: Have you heard physicians state the decision is often theirs to make when to decide enough is enough?

184 Gallant: Yes.

194 SUSAN TOLLE, DIRECTOR, CENTER FOR ETHICS IN HEALTH CARE:  
Provides testimony in support of SB 286 (EXHIBIT I).

280 Smith: Do you see anything in this bill which provides the means which takes us toward euthanasia?

291 Tolle: No.

TAPE 8, SIDE A

043 Smith: Is there any sympathy within the medical community, among your colleagues, for the Kavorikian approach?

045 Tolle: No.

073 Smith: I do not want to support anything that will lead to euthanasia.

074 SEN. MC COY: Have all doctors had courses in ethics?

080 Tolle: No.

083 McCoy: They are all exposed to the ethics, but they may not even subscribe to it, or believe in it, or even read it.

090 Tolle: Yes.

104 McCoy: Why do we need documentation?

112 Tolle: The documentation offers guidance and structure.

123 McCoy: Dr. Kubler Ross was not concerned regarding the conflict of comfort and cleanliness, why are we?

132 Tolle: The issues we are dealing with are at the beginning of the death process, Dr. Ross deals with the end of the death process.

155 Smith: Is there anything in the code of ethics for the doctor, which would say that he/she should not help in suicide through over

prescription of medicines, etc?

161 Tolle: Yes.

171 Chair: Sen. Smith, do you feel the response you received was complete in regards to your question of nutrition and hydration?

174 Smith: Yes.

184 ELLEN LOWE, ASSOCIATE DIRECTOR, ECUMENICAL MINISTRIES OF OREGON:  
Speaks in support of SB 286.

262 Chair: Can you tell us how the decision making process works within Ecumenical Ministries?

263 Lowe: The commissions at Ecumenical Ministries, recommended the policy statements and forwarded them to our board of directors. On the board

of directors we have the bishops and executives of all 17 denominations. The board did concur with the legislative commissions support. There were no dissenting votes on this issue.

281 McCoy: Did you take the stand on the proposed legislation which is continually being revised?

284 Lowe: Our stand is taken on the intent spoken in SB 286.

294 Chair: Your committee reviewed the sensitive parts of SB 286, such as nutrition and hydration, progressive illness, and the committee process?

300 Lowe: Yes.

303 Chair: Within view and known to those reviewing was the revocation of the presumption regarding the consent to feeding tubes?

304 Lowe: Yes.

305 Chair: They were aware that this bill would revoke the consent?

306 Lowe: Yes.

TAPE 7, SIDE B

013 DEAN MCGINTY, M.D., ALZHEIMER'S ASSOCIATION: I would like to address the areas of nutrition and fluids and would like to second Dr. Tolle's

comments regarding the use of forced fluids and nutrition. There are two things that make fluids burdensome: 1) Some patients are thirsty, although the majority of them are not, and 2) They have dry mouths, which is uncomfortable.

041 SEN. HAMBY: There are comfort care procedures that can alleviate the dry mouth.

045 Smith: Is there any language that could be added in regards to specifically outlawing what euthanasia represents?

052 McGinty: I am not sure that this legislation addresses that, I would have to do research.

083 CAROLINE R. LOBITZ, M.D.: Presents testimony in favor of SB 286 (EXHIBIT J).

185 GLENN RODRIGUEZ, OHSU: Responds to Sen. McCoy's question. I have one concern I would like to address regarding SB 286, Section 1,

page 16,

page 3, lines 3-5, and Section 11, page 16.

241 Smith: Does this include a person in a comma?

242 Rodriguez: Yes.

250 Smith: Will we hear testimony from the life insurance industry on SB 286.

252 Chair: In the 1991 hearings of the bill that was before this, we spent a lot of time with the concept of comma, and persistent vegetative

state. We were very careful to provide for permanent unconscious, as completely lacking an awareness of self and external environment with no reasonable possibility of return to a conscious state.

264 Smith: And that can be completely ascertained by medical technology?

265 Chair: No.

266 Rodriguez: It is a judgement call.

035 Hamby: Is it safe to assume that deterioration, as well as, time is measured?

041 Rodriguez: Yes.

055 Smith: Are we affecting the pay out of life insurance?

061 Chair: SB 286 specifically says that nothing that is done under the bill, whatever your choice may be or having a power of attorney or not

having a power of attorney, may affect any life insurance policy?

090 BARBARA COOMBS: I would like to inform the committee I have access, from the 1991, session, information that speaks specifically to the

nature of persistent vegetative state and the diagnosis of comma, and the likelihood, the certainty that it will persist overtime, and the theology of the comma, I will make those available to you.

100 ROBERT CASTAGNA, OREGON CATHOLIC CONFERENCE: The president of my board serves on the Ecumenical Ministries of Oregon (EMO) board and it was not my understanding from my dialogue from the president of the Oregon

Catholic Conference that EMO's position extended to support for repeal of the presumption in favor of nutrition and hydration. Our understanding was that EMO's support was for the concept of resolving

difficulties between the directive to physicians and the power of attorney for health care, conceptually but not to the full extent of support of all the terms of SB 286. I would appreciate the opportunity for us to go back to our principals to be able to resolve the misunderstanding or confusion and get back to you with a statement of where EMO stands on this bill.

111 Chair: That would be fine.

115 MOLLY WEINSTEIN, MEMBER, BAR SUBCOMMITTEE, HEALTH LAW SECTION: Presents exhibits regarding the readability of SB 286. (EXHIBITS N - R).

125 TED FALK, LANE, POWELL, SPEARS, & LUBERSKY: Presents testimony regarding SB 286 (EXHIBIT C). 1) The long form attempts to make the advance

directive forms more readable, and 2) The short form gets into policy issues and the other version of section 21. The bar committee recommended another version of the priority approach which is more complex, the approach here is an attempt to blend the two approaches and I would like Tina Kitchen to explain the concepts here.

170 TINA KITCHEN, M.D., OFFICE OF DEVELOPMENT OF DISABILITY SERVICES: Section 21 asks that the hospital start at the beginning of a

prioritized list of relatives and the first one who is contacted, who is willing or able, then names that natural group of people who should be making this decision, proceeds to contact them and work for a consensus of a decision and then returns to the hospital with the decision.

180 Chair: What we are arriving at here is a consensus but with a spokesperson approach.

185 Falk: Yes.

200 Chair: Adjourns at 5:00 p.m.

#### EXHIBIT LOG:

Exhibit A - SB 50 - Pages, 1 Exhibit B - SB 50 - Pages, 1 Exhibit C - SB 286- Pages, 11 - Ted Falk Exhibit D - SB 47 - Pages, 1 Exhibit E - SB 47 - Pages, 1 Exhibit F - SB 286- Pages, 7 Exhibit G (1) - Pages, 2 - Testimony - Scott Gallant Exhibit G (2) - Pages, 8 - Testimony - Scott Gallant Exhibit H - SB 286- Pages, 19 Exhibit I - SB 286- Pages, 6 - Susan Tolle Exhibit J - Pages, 9 - Testimony - Caroline R. Lobitz Exhibit K - Pages, 1 - Testimony - Caroline R. Lobitz

Exhibits L-O-SB 286-Pages, 9, 3, 4, 2, - Molly Weinstein Exhibit P -  
SB 286- Pages, 3 Exhibit Q - SB 286- Pages, 2 Exhibit R - SB 286- Pages,  
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Submitted by:

Reviewed by:

Stasi Kitchen

Dick Shoemaker Assistant Administrator