

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.

Measures Heard SB 494

SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS

January 29, 1991Hearing Room C 3:00p.m.Tapes 8 - ?

MEMBERS PRESENT:Sen. Bob Shoemaker, Chair Sen. Joyce Cohen,
Vice-Chair Sen. Jeannette Hamby Sen. Lenn Hannon Sen. Frank Roberts

STAFF PRESENT: Barbara Coombs, Committee Administrator Mark
Sigel, Committee Assistant

WITNESSES: Barbara Glidewell, Oregon Health Sciences
University Robert Smith, United Seniors Karen Creason, Oregon
Association of Hospitals

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TAPE 7, SIDE A

003 CHAIR SHOEMAKER: Calls meeting to order at 3:09. SB 494 replaces SB 322.

043 BARBARA GLIDEWELL, OMBUDSMAN or PATIENT ADVOCATE at UNIVERSITY HOSPITAL: Presents (EXHIBIT A) which summarizes her support for SB 494 and her concern that certain terms are clarified to help patients and families understand what is going on. - When families arrive at hospitals to see a family member who is unconscious, the functional families hear what the providers say but worry they will mke a wrong decision. The disfunctional family members may arrive with their own agendas and may not hear the care providers ideas.

110 CAROL ROMM, OSHU NURSE: Presents (EXHIBIT B) which summarizes her support for SB 494 based on her experience with her mother's illness and death.

205 IAN TIMM, OREGON HEALTH DECISIONS: Presents (EXHIBIT C) which summarizes their support for SB 494. They believe that health care patients should be able to retain their autonomy and dignity.

335 DR. BARRY OKEN, NEUROLIGIST at OSHU: Presents (EXHIBIT D) which

explains the intricacies of the issues surrounding patients in persistent vegetative states and the decision to withdraw or continue life support. Explains that people don't have problems with the concept of people who are brain dead being considered dead.

385 SENATOR ROBERTS: Are there gray areas in terms of whether patients in persistent vegetative states are considered conscious?

393 OKEN: People may have lost all motor activity but they may be quite conscious. - Additionally, people have been comatose for three to six months and have woken up and regain most or all of their intellectual functions and most of their physical functions. - However, after 6 months of being comatose, patients have only a 1 out of 1,000 to 1 out of 10,000 chance of waking up.

446 CHAIR SHOEMAKER: What's the difference between permanent unconsciousness and persistent vegetative states?

460 OKEN: Permanent unconsciousness is a general term. In a persistent vegetative state people have their eyes open, they have their sleep/wake cycles and they may make noises but not words. They are unaware, I believe. They have no memory or integration of visual stimuli. There are parts of their brains that are still functioning.

TAPE 9, SIDE B

032 CHAIR SHOEMAKER: Are you saying that not everyone in a persistent vegetative state is unconscious?

033 OKEN: Certainly comatose people are unconscious, but it is not completely clear that those in persistent vegetative states are unconscious.

093 CHAIR SHOEMAKER: This bill addresses when a person has not declared whether they want life support if they are in persistent vegetative state.

102 OKEN: It is important to spell out who this committee of physicians will be. It should include people familiar with unconscious patients, not ophthalmologists for instance. It is also important to require an independent exam and not just a medical opinion.

169 CHAIR SHOEMAKER: Do you think that a 6 month period for a patient being in a persistent vegetative state is long enough for doctors, and lawmakers to assume that the patient won't wake up?

184 OKEN: For adults this period is adequate. For children the period should be 12 months.

197 SENATOR HAMBY: Since technology advances will these standards be appropriate after ten years.

204 OKEN: For cases of acute damage to the cortex or the gray matter of the brain then the period will likely continue to be appropriate. However, in cases of only localized damage to parts of the brain stem then it is possible that new therapies may emerge.

244 OKEN: Board certified neurologists are equal in number to board eligible neurologists. Anyone who has completed an accredited neurology residency would be acceptable.

280 SENATOR HANNON: Are there cases where patients are clearly not going to recover at all and their support should be withdrawn before 6 months?

311 OKEN: Yes. It's important to make the decision before 6 months in cases such as when Alzheimers' patients have had cardiac arrests ... after a month or maybe a week it would be appropriate to withdraw life support.

405 BOB CASTAGNA: OREGON CATHOLIC CONFERENCE: Presents (EXHIBIT E) which summarizes the group's opposition to SB 494.

480 CHAIR SHOEMAKER: Are you saying that a delegation of authority to make decisions regarding nutrition and hydration is the same as clearly and specifically stating that you would not consent to them?

TAPE 8, SIDE B

032 CASTAGNA: No clear answer.

082 CHAIR SHOEMAKER: 494 would allow us to humanely deal with Nancy Cruzan. 523 would put this state where Missouri decided it was in regards to Nancy Cruzan. Under 523, Oregon has a situation where for a person who has signed no document and is permanently unconscious a presumption has been created that that person would consent to feeding tubes. Do you believe that this good public policy and we should stay in that spot?

103 CASTAGNA: We are willing to discuss additional criteria to this presumption that would address the persistent vegetative state and the irreversible comatose state but not in the context of taking the presumption out or eliminating many of the other patients' safeguards that the Legislature agreed to put into the law last year... We are willing to agree in the long term that nutrition and hydration could be withdrawn from patients in persistent vegetative states or irreversible comatose states even if the patient is not in a terminal state and even if the patient has signed no document.

132 SENATOR HANNON: Are you in agreement with Dr. Oken's proposed 6 and 12 month standards for withdrawing life support from adults and children in persistent vegetative states?

134 CASTAGNA: I'd like to examine them in more detail. I've had conversations with the National Legal Center for the Medically dependent and Disabled and they are talking about an 18 month standard.

147 CHARLES WILLIAMSON, OREGON TRIAL LAWYER'S ASSOCIATION: We have one concern. On page 10 the bill expands the exemption given to health care providers' liability for negligence. Our association believes that physicians should be responsible in civil court for those damages. In line 33 through 39 physicians are allowed to be exempt from those damages. We don't mind if they are exempt from criminal prosecution or professional disciplinary action.

218 HANK BERSANI, ASSOCIATION FOR RETARDED CITIZENS: Presents (EXHIBIT F) which emphasizes that the Association wants certain terms and standards defined to safeguard Oregon's vulnerable retarded citizens from being adversely affected by this bill. Physicians and people in the general public may not share the same evaluation of the relative worth of the lives of people who are retarded. This bill refers to withdrawing life support systems from people who rely on respirators for their breathing and IV feeding systems for their nutrition. Many of our clients fit this description and we don't want this bill to be so broadly defined that our clients, who we consider healthy and valuable, to have their life support systems withdrawn.

288 BERSANI: I am uncomfortable about the provisions of this bill

because I don't know who would make life support decisions for a retarded individual who does not have a guardian.

TAPE 9, SIDE B

001 KAREN CREASON, OREGON ASSOCIATION OF HOSPITALS: Hospitals generally support SB 494. They agree that the process ought to be clear for patients and can exercise their rights knowledgeably. Hospitals don't want to intrude into the doctor patient relationship. Hospitals want a bill that's easy to administer and they want a bill that does not increase the legal risk. We want the forms revised to be clearer and easier to understand by the patients.

067 SENATOR COHEN: We think it's important to have forms in the precise legal language.

195 ROBERT SMITH: RETIRED UNIVERSITY OF OREGON PROFESSOR: Presents (EXHIBIT G) and emphasizes his support for SB 494.

272 JANE MARNCHIANES: OREGONIANS FOR PATIENTS RIGHTS: Presents (EXHIBIT H) which summarizes her groups' opposition to SB 494. The withdrawal of life support systems amounts to inflicting a cruel death of starvation on people who can't speak for themselves. Furthermore, it is unjust that such an action can be taken against a person who never signed a document authorizing the removal of life support systems.

383 LISA CLAY, FRIENDS OF SISTERS ON THE STREET: Opposes SB 494 and sees these bills as a threat to racial minorities, mentally ill and retarded citizens and elders. It is never good to call human beings vegetables. It's important to recognize our elders as keepers of our culture and I'm concerned that this bill will cause us to unnecessarily lose elders who still have contributions to make. Additionally, the spirit of a human being and not the intellect is what makes them a human being. Even when humans are unconscious their spirits are present. Therefore, a person can never be a vegetable.

TAPE 10, SIDE A

126 DR. TINA KITCHEN, OFFICE OF DEVELOPMENTAL DISABILITIES: We are concerned

that great numbers of developmentally disabled individuals have been inadvertently included in this bill. The people who work with these individuals are very aware of the developmentally disabled patients' responses to their environment. The caregivers know these people are aware. In this bill we need an amendment redefining principal so that someone can not be declared terminal, permanently unconscious or incapable solely on the basis of their developmental disability. We will help you draft such a redefinition. We think that instead of talking about patients suffering from terminal illnesses you should talk about cases where death is proximate even with treatment.

298 SENATOR ROBERTS: As I understand it you can't be a health care representative unless you've been authorized by the principal; to be one.

300 CHAIR SHOEMAKER: Health care representatives can be guardians appointed by a court.

350 BRUCE BISHOP, KAISER PERMANENTE: Presents (EXHIBITS I AND J) which summarize Kaiser's position that until numerous technical and definitional glitches are addressed the bill should not be approved.

TAPE 11, SIDE A

193 SCOTT GALANT, OREGON MEDICAL ASSOCIATION: Will have amendments to SB
494

on February 1.

435 CHAIR SHOEMAKER: We will include you in our work session on this
bill.

216 CHAIR SHOEMAKER: Adjourns the meeting at 5:50.