

## *Physician-Assisted Suicide in the United States*

**The Broader Picture:** We have recently seen a degradation of Fourth Amendment rights to personal privacy, witness the Federal Government tracking our phone calls and internet usage, without a warrant issued upon Probable Cause. On the flip side, in the “social issue” arena, there is a seeming reconsideration and expansion of Fourteenth Amendment rights to “due process” and “equal protection”. Among these expanded Fourteenth Amendment rights are the right to marry the person of our choice, regardless of gender; the right to use Marijuana for medical and other personal reasons; and the right to choose death with dignity, if we are in a terminal condition. These issues are being resolved on a state by state basis, with the federal government now “supporting” these rights by concluding that if a state considers these things legal, the federal government will not impede them, within limits. The implementation of some of these rights, such as the right to marry an individual of the same sex, and the concomitant implications for employment benefits and estate tax savings, among others, has reached a tipping point in their favor. Others such rights, as concerns marijuana use and physician assisted suicide, appear now to be building some consensus, though implementation is so far limited to a handful of states.

**Living Will & Health Care Proxy:** A Living Will and a Health Care Proxy are legal documents which allow an individual to express their wishes and specific instructions regarding end of life medical decisions, including the naming of an “Agent” to act on their behalf, as may be required in the event that the individual lacks “capacity” to personally express their wishes at a time when medical decisions need to be made.

**Physician Assisted Suicide:** In New York, Living Wills and Health Care Proxies do not provide individuals the opportunity to request physician assisted suicide: New York law provides that where an individual (including a physician) assists another in committing suicide, he is guilty of Manslaughter in the Second Degree, a Class C Felony (New York Penal Code 125.15). Neither does a New York Living Will or Health Care Proxy allow a person to request a hastening of death via medication, such as morphine, if the only purpose for the administration of these drugs is to hasten death. However, the United States Supreme Court has ruled that –upon the request of a patient or their properly authorized Agent-- doctors can legally hasten a person’s death with medication such as morphine, so long as the purpose of administering the medication is not solely to cause death (i.e. but to also alleviate pain.) Currently in New York, such treatment can be given at the behest of the patient, or the properly designated agent.

**Capacity of the Individual: Physician-assisted suicide, where legal,** is discussed between a physician and their patient when the patient is suffering from a terminal illness, i.e. one that cannot be cured or adequately treated and is expected to result in death within a short period of time—usually six months or less. In jurisdictions where Physician Assisted Suicide is legal, and at the clear and repeated urging of the patient, physicians assist these patients in ending their lives by prescribing lethal doses of medication, which is then voluntarily self-administered by patients with the expectation that death will occur.

**In the United States, four states currently permit physician-assisted suicide.** Oregon voters passed the first “Death with Dignity Act” in 1994, followed by Washington voters in 2008. While Montana has no legislation regarding physician-assisted suicide, the Montana State Supreme Court in 2009 held that there is no criminal penalty for physicians who participate in physician-assisted suicide; therefore, permitting the act. Most recently in 2013, Gov. Peter Shumlin signed a law which allows physician-assisted suicide in Vermont. A bill to allow physician assisted suicide in New York was proposed in 2012; however, it has not been signed into law and therefore physician assisted suicide remains illegal in New York.

## **Highlights of State Law where Physician Assisted Suicide is Allowed:**

### **Commonalities in requirements:**

- Determination by the acting physician that the patient:
  - Has a terminal illness,
  - Has capacity,
  - Is acting voluntarily,
  - Meets residency requirements (see below).
- A prognosis of fewer than 6 months to live
- 3 requests to or in the presence of the physician
  - Two oral, at least 15 days apart
  - One written, signed and dated by the patient and 2 witnesses
- 48-hour waiting period, after the last of the 3 requests, before prescribing medication
- Referral by physician for a second opinion on diagnosis/prognosis
- Referral by physician for counseling
- Physician must inform the patient that they have the opportunity to change their mind at any time.

### **Differences in requirements:**

- Oregon and Washington statutes require that in witnessing the written request, at least one witness is not:
  - A relative of the patient,
  - A beneficiary under the patient's estate,
  - An employee of the healthcare facility where the patient is receiving treatment, or
  - The patient's attending physician.
- Vermont statute requires that BOTH witnesses be entirely disinterested.

### **Residency requirements:**

- Under Oregon, Washington, and Vermont statutes, a person must be a resident of the state in which they are requesting physician-assisted suicide. Factors demonstrating residency include but are not limited to:
  - State driver's license
  - Registration to vote within the state
  - Owning or leasing property within the state
  - State tax return for the most recent year

## COMPARISON CHART

STATE	DATE PASSED	HOW IT WAS PASSED	RESIDENCY REQUIRED?	MINIMUM AGE	SPECIFIC REQUIREMENTS
<b>Oregon</b>	November 8, 1994	Voter referendum	Yes	18	Must be terminally ill with less than 6 months to live, must request 3 times (twice orally, once in writing) 15 days apart.
<b>Washington</b>	November 4, 2008	Voter referendum	Yes	18	Must be terminally ill with less than 6 months to live, must request 3 times (twice orally, once in writing) 15 days apart.
<b>Montana</b>	December 31, 2009	Court order	None specified	None specified	“A terminally ill, competent patient has a legal right to die with dignity under Article II, Sections 4 and 10 of the Montana Constitution”.
<b>Vermont</b>	May 20, 2013	Legislature	Yes	18	Must be terminally ill with less than 6 months to live, must request 3 times (twice orally, once in writing) 15 days apart.