

*Submitted to Portland City Council
11/17/99 as supplemental testimony.
in support of "leave our laws alone" resolution.*

35842

Hearing on H R 2260

"The Pain Relief Promotion Act of 1999"

June 24, 1999

SUBCOMMITTEE ON THE CONSTITUTION

Committee on the Judiciary

U S House of Representatives

Oral Testimony of

ANN JACKSON, M M

Executive Director and Chief Executive Officer of the Oregon Hospice Association

Chairman Canady and Members of the Subcommittee,

My name is Ann Jackson I am the executive director and chief executive officer of the Oregon Hospice Association Today I am speaking on behalf of the OHA, the Task Force to Improve Care of Terminally-ill Oregonians, and Oregon's hospice providers, as well as many other hospice workers nationwide who share the views I will express today

We are all very concerned that the Pain Relief Promotion Act of 1999, like the Lethal Drug Abuse Prevention Act of 1998, will have a negative impact on pain and symptom management throughout the health care continuum in Oregon and throughout the country Because of this, we vigorously oppose its passage.

We don't believe it possible that a law that will increase regulatory scrutiny and judge "intent" - of doctors, nurses, pharmacists, even family members - can promote pain relief We are also concerned about the potential long term negative impact that may result from restrictively defining palliative care and drawing too narrow a line between appropriate and inappropriate uses of controlled substances

Before I continue I would also like to make it clear that the organizations I represent today are decidedly neutral on the question of physician assisted dying as practiced under Oregon's Death With Dignity Act In fact, the Oregon Hospice Association opposed the act up until the time it became law and only then did we move to a neutral position to assist our members in understanding how to deal with the law

I believe this is an important point to make because regardless of your opinion on Oregon's law, if you are concerned about improving end-of-life care you must recognize that the Pain Relief Promotion Act represents a huge step backward. Opposing this bill does not make you a supporter of assisted dying

Unrelieved pain is epidemic throughout the country Even in Oregon, the recognized national leader in end-of-life care, unrelieved pain is still a serious problem At every meeting of the Task Force on Pain and Symptom Management, a parade of physicians testified that regulatory scrutiny was the cause of this problem Even the threat of an investigation has a chilling effect on

prescribing practices, regardless of whether that threat comes from the DEA, the Board of Medical Examiners, or the local coroner, and regardless of whether that threat is real or perceived. This is not to suggest that no rules should apply to health care workers. It is, however, meant to say that the climate that already exists in end-of-life care encourages levels of caution which too frequently result in increased pain and suffering for sick and dying people. This proposed bill would only worsen those conditions.

While others are comforted that a medical advisory board is not included in the proposed 1999 legislation, we are still alarmed. We believe that this year's provision for the education and training of state, local and federal law enforcement personnel in the appropriate use of controlled substances is an even more hazardous substitute. It is unrealistic to think the Secretary of Health and Human Services will be more successful at effectively training law enforcement officials than medical schools or Boards of Medical Examiners have been at training physicians. If this bill is passed, the standard of care for any community will be determined by the investigative judgement or whim of its local law enforcement personnel. Rather than one unified standard across the states, there will be many, often conflicting standards, even within each state.

While we applaud efforts to establish that controlled substances should be used for pain control, even if the use may increase the likelihood of death, the bill's definition of palliative care negates that provision when it codifies into law ambiguous goals. Palliative care seeks to neither hasten nor postpone death. But hastening or postponing the dying process does happen under good palliative care. Palliative care is an evolving specialty, but it is so narrowly defined in the Pain Relief Promotion Act that the effect will be to put its practitioners into a too rigid box.

A goal of the Pain Relief Promotion Act is to make a clear distinction between an appropriate use of controlled substances to manage pain, even if death is hastened inadvertently, and an inappropriate use to assist in a suicide. It encourages pharmacists, nurses, health aides, or family members to raise questions based solely on what they perceive to be unusually large doses of narcotics or other drugs or a death following soon on the heels of a prescription. These questions will precipitate an investigation. These investigations will significantly undermine physicians' prescribing practices.

And it will be America's rural communities that suffer most. Rural physicians are often subject to more scrutiny. Urban physicians have more ready access to the latest information concerning pain management. Urban physicians have better access to pain specialists. Therefore urban physicians are more confident in their ability to defend their use of a controlled substance.

Regardless of this bill's "intent", by trying to draw a clear line, the Pain Relief Promotion Act will prompt frequent questioning of the intent to manage pain versus the intent to cause death. It's very safe to say that every hospice in the country has had a request for help to die from at least one of its patients. Is that patient no longer entitled to have their symptoms relieved because someone may question whether the intent of the physician was to grant their request or to relieve their symptoms?

OHA and the Task Force to Improve Care of Terminally Ill Oregonians have grave concerns about the Pain Relief Promotion Act of 1999. We are strongly convinced that this legislation, if passed, will have a profoundly negative impact on physician prescribing practices all across the United States. We are as strongly committed as we were last year that this law be challenged and defeated.

The Conquering Pain Act and the Advance Planning and Compassionate Care Act are more likely to accomplish much needed improvement in end-of-life care than is the Pain Relief Promotion Act of 1999. These bills more broadly address problems associated with delivering end-of-life and palliative care without the negative consequences of amending the Controlled Substances Act. Efforts to reduce unwarranted, unnecessary, and excessive regulatory scrutiny of the nation's hospices will accomplish improvement in end-of-life care. The Pain Relief Promotion Act will not.

Respectfully submitted,
Ann Jackson

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OHA is a 501(c)(3) public benefit organization dedicated to ensuring that all Oregonians have access to high quality hospice and comfort care.

A Brief Chronology of the Oregon Death With Dignity Act

1994

- On Nov. 8, 1994, Oregon Voters passed Ballot Measure 16 by a slim 51% to 49%. It was the first Death With Dignity Act passed in the world
- Two weeks after the Measure passed, the National Right to Life filed a motion for an injunction. Judge Michael Hogan placed a temporary restraining order on the Measure in early December of that year.

1995

- After four hearings, Judge Hogan ruled that Measure 16 was unconstitutional and placed a permanent injunction on the Measure in August of 1995

1996

- In March of 1996, the Ninth Circuit Court of Appeals ruled in *Compassion In Dying v The State of Washington* that there was a constitutionally protected right for terminally ill persons to determine the manner and timing of their own death as a "liberty interest" under the 14th amendment to the U.S. Constitution. A month later, the Second Circuit Court of Appeals made a similar ruling in another case, Quill v. The State of New York. Both rulings were appealed to the U S Supreme Court.
- As a result of the Ninth's ruling, The Center for Oregon Death With Dignity filed an emergency motion with the Ninth Circuit Court of Appeals asking that the injunction on the Act be stayed. The Court promptly denied this motion and sent the question back to Judge Hogan who subsequently denied the motion to lift the injunction.
- The injunction on the Oregon Death With Dignity Act was appealed again to the Ninth Circuit Court in May of 1996.

1997

- Judge Hogan was ordered to lift the injunction in February of 1997 by the Ninth Circuit Court of Appeals
- National Right To Life, Inc. files a motion with the Ninth Circuit Court of Appeals requesting an *en banc* rehearing of the ruling to lift the injunction on the Act.
- In the 69th Oregon Legislative Session in 1997, several bills were introduced to repeal the Act. By early June, both houses of the Oregon Legislature passed HB 2954 referring Measure 16 back to the voters for repeal in the Nov. 1997 election.
- The U.S. Supreme Court unanimously ruled on the NY & WA cases in late June of 1997 that there is no constitutionally protected right to die. However, the ruling left the door open that states could make their own laws regarding physician assisted dying

- In mid-October of 1997, the Supreme Court refused to review the decision of the Ninth Circuit Court of Appeals on the Oregon Death With Dignity Act and thus releases an order that the injunction be lifted on the Act. Judge Hogan completed this nearly two weeks later and the Act went into effect on October 27th.
- Oregon voters overwhelmingly defeated the attempt to repeal the Act under Measure 51 by a 60%-40% vote on Nov. 4, 1997.

1998

- In June of 1998, Attorney General Janet Reno released a Justice Department ruling that said that the DEA has no authority to revoke the prescribing licenses of Oregon physicians who prescribe life ending medications for terminally ill Oregonians under the guidelines of the Federal Controlled Substance Act. Essentially this ruling meant that prescriptions written under the Oregon Death With Dignity Act **constitute a legitimate medical purpose.**
- The same day that this ruling was made public, Representative Henry Hyde of Ill, Chairman of the House Judiciary Committee introduced H.R. 4006, the "**Lethal Drug Abuse Prevention Act of 1998.**" This bill would have provided the DEA the authority that Attorney General Reno had decided it did not have. Senator Don Nickles of OK introduced an almost identical bill, S.2151, three days later.
- In July of 1998, Governor John Kitzhaber testified before the House Judiciary Committee's Subcommittee on the Constitution in opposition to the Lethal Drug Abuse Prevention Act along with the American Medical Association, the American Pharmaceutical Association and Oregon's Democratic House members and others.
- In August of 1998, the Oregon Health Division released its first report on the new law. Ten Oregonians had received prescriptions for life-ending medication. Eight had actually used the prescriptions.
- In September, Judge Hogan made his final ruling against reopening the lawsuit against the Act.
- Although, both the Senate and House committees referred the Lethal Drug Abuse Prevention Acts to their respective floors for full membership consideration, time simply ran out and the measures died without a full Senate or House vote. Both Senator Nickles and Representative Hyde vowed to revisit the issue in the next Congress.

1999

- The 70th session of the Oregon Legislature saw several bills dealing with the Oregon Death With Dignity Act. For example, one dealt with requiring mandatory psychiatric evaluation.

- In February of this year, the Oregon Health Division released a report on the first year of the law. It stated that no abuses or problems were reported and that all physicians were in full compliance.
- On June 17, 1999, Representative Hyde introduced H.R. 2260, the "**Pain Relief Promotion Act** of 1999. Representative Hyde made it clear that he does not want the federal government to sanction assisted suicide by allowing the use of federally controlled drugs
- The bill would amend the Federal Controlled Substances Act to provide that alleviating pain or discomfort is a legitimate medical purpose for the dispensing or administering of controlled substances even if such use increases the risk of death. However, the bill makes it clear that dispensing a controlled substance to end life is prohibited and can result in criminal sanctions
- Supporters of this measure have stated that this bill does not overturn Oregon's law and that doctors could prescribe other drugs that do not fall under the Federal Controlled Substances Act to cause death. However, the family of drugs that is widely viewed as the most appropriate for physician assisted suicide falls under the Federal Controlled Substances Act.
- On October 27th, the full House passed the Hyde bill 271-156
- The American Medical Association has supported this bill claiming, among other things, that it protects doctors from undue sanction and promotes good pain care. However, the Oregon Medical Association's executive committee is asking the AMA to reconsider its position because they believe it still would deter doctors from adequately treating pain out of fear of investigation
- Most recently, Senator Nickles has been looking for a vehicle for the Senate's Pain Relief Promotion Act. However, due to the fact that there is little time left in the first session of this Congress, the fact that there are still several appropriation measures that must receive the President's signature and the fact that attaching this measure to an appropriations bill might invite a possible veto, Senator Nickles has apparently conceded that he will have to wait until next year. It should be noted that because this measure has already passed the House, it will only have to pass the Senate next year in the same form in order for it to be sent to the President for his consideration.

RESOLUTION NO.

35842

Support Oregon's Death With Dignity Act and send message to U.S. Senate opposing any efforts to overturn the Act. (Resolution)

WHEREAS, Oregon has one of the oldest traditions of any state in the United States of America for providing popular votes on issues brought to the electorate through the ballot initiative petition process,

WHEREAS, through the ballot initiative petition process, Oregon voters have long demonstrated their willingness to deal with local issues of concern often before other local jurisdictions or the federal government,

WHEREAS, Oregon's tradition of providing for popular votes on issues brought to the electorate through the initiative petition process is a tradition worth protecting from outside interference,

WHEREAS, five years ago, the people of Oregon approved a ballot initiative legalizing physician assisted suicide with the passage of the Death With Dignity Act,

WHEREAS, two years ago, Oregon voters overwhelmingly reaffirmed their initial vote of passage of the Oregon Death With Dignity Act,

WHEREAS, the Oregon Death With Dignity Act allows for an adult of sound mind, who, under very limited circumstances and with many safeguards, in the opinion of two physicians has less than six months to live, to request authorization to procure lethal drugs which the adult may or may not elect to self-administer,

WHEREAS, the Oregon Death With Dignity Act does not require any physician or any other person to act, but merely provides a choice to some terminally ill persons,

WHEREAS, on Wednesday, October 27, 1999, the United States House of Representatives thwarted the will of the majority of Oregonians by passing the so-called federal Pain Relief Promotion Act, in an attempt to overturn Oregon's Death With Dignity Act by making it illegal for physicians to prescribe federally controlled substances for the purpose of aiding suicide,

WHEREAS, any physician or individual found in violation of the so-called Pain Relief Promotion Act could face up to 20 years in prison,

WHEREAS, the United States Senate will soon debate its version of the Pain Relief Promotion Act,

WHEREAS, if approved by both the United States Senate and House of Representatives, the President of the United States, William Jefferson Clinton, must then consider whether to sign the Pain Relief Promotion Act into law,

WHEREAS, the Oregon Medical Association and the Oregon Hospice Association oppose the federal Pain Relief Promotion Act,

WHEREAS, the Oregon congressional delegation should be united in opposing the so-called Pain Relief Promotion Act because it thwarts the will of the citizens of the State of Oregon,

WHEREAS, the willingness of the federal government to overturn Oregon law could easily be extended to laws in other states,

WHEREAS, it is important for local governments to take a public position on this important issue,

NOW, THEREFORE BE IT RESOLVED BY THE City Council of Portland, Oregon, that we do hereby respectfully but forcefully send the following message to the United States Senate, House of Representatives and President

Do not overturn our local decisions. Tampering with our rights to initiate and enact our own laws is an extraordinary, outrageous and unwarranted intrusion by the federal government into the local affairs of the people of Oregon and infringes upon legitimate state rights.

Oregonians know what's best for Oregon. Congress must resist the temptation to dismiss the will of the majority of Oregonians despite ideological opposition by certain Members of Congress to the Death With Dignity Act.

Oppose efforts to overturn Oregon's Death With Dignity Act. Oregonians have twice affirmed a desire to provide a compassionate end-of-life alternative. We urge you to respect their decision.

Adopted by the Council
Mayor Vera Katz
Sam Adams
November 10, 1999

NOV 17 1999

GARY BLACKMER
Auditor of the City of Portland

By

Britta Olson Deputy

1605
Agenda No

RESOLUTION NO

35842

Title

Support Oregon's Death With Dignity Act and send message to U S Senate opposing any efforts to overturn the Act (Resolution)

INTRODUCED BY	Filed NOV 12 1999
Mayor Vera Katz	Gary Blackmer Auditor of the City of Portland
NOTED BY COMMISSIONER	By <u>Greg Kurshner</u> Deputy
Affairs <u>Don Saltzman</u>	
Finance and Administration <u>VK</u>	
Safety <u>Charlie Hales</u>	
Utilities	
Works <u>ES RJD</u>	
BUREAU APPROVAL	For Meeting of _____
Bureau	ACTION TAKEN
Prepared for City Council By _____ Date _____	
Budget Impact Review	
Completed _____ Not Required _____	
Bureau Head	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS		
				YEAS	NAYS
Consent	Regular X	Francesconi	Francesconi	_____	
NOTED BY		Hales <u>Charlie Hales</u>	Hales	✓	
City Attorney		Saltzman <u>Don Saltzman</u>	Saltzman	✓	
City Auditor		Sten <u>ES RJD</u>	Sten	✓	
City Engineer		Katz	Katz	✓	