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Proponent, HCR 5010

House Health and Human Services Committee — March 6, 2017

Chairman Hawkins and committee members,

Kansans for Life advocates for protection of life from conception through natural death. Kansas has a strong public policy against assisting in a suicide *(see attached)* which has served us well since enactment in 1998.

As background, nearly every state across the country has long had a law against assisting another in a suicide. In 1997, the U.S. Supreme Court ruling in *Washington v. Glucksberg*, unanimously rejected the claim that there was a constitutional "right" to assist a suicide. Many of the concurring Justices, however, suggested they agreed only because there was not yet enough evidence to show that states could not rationally fear abuses.

The accrued evidence validates the fear of abuse. *(see attached "failure of safeguards")*

There has been an ongoing attempt by U.S. pro-euthanasia advocates, as a first step, to carve out an exemption that says your doctor can give you a lethal prescription to take home and overdose on if you meet several scant legal requirements.

The primary organization behind these efforts is Compassion and Choices (formerly the Hemlock Society). While seeking to legalize much broader euthanasia, this group has made a strategic decision to begin with this thin-edge-of-the wedge approach.

Already, doctor-prescribed suicide is legal in Oregon, Washington, Vermont, California, Colorado and Washington D.C. – and it may have some legal immunity in Montana, due to a court decision. Sadly, the American Medical Association is currently considering a retreat from its long-held position of opposition to physician-assisted suicide to one of neutrality.

Kansans for Life supports this resolution and hopes the committee will pass it out favorably.

Kathy Ostrowski, KFL Legislative Director

Under Kansas law, assisting a suicide is a felony with medical board penalties for licensed physicians.

K.S.A. 21-5407.
Assisting suicide.
(a) Assisting suicide is:
(1) Knowingly, by force or duress, causing another person to commit or attempt to commit suicide; or
(2) intentionally assisting another person to commit or to attempt to commit suicide by:
(A) Providing the physical means by which another person commits or attempts to commit suicide; or
(B) participating in a physical act by which another person commits or attempts to commit suicide.

(b) Assisting suicide as defined in:
(1) Subsection (a)(1) is a severity level 3, person felony; and
(2) subsection (a)(2) is a severity level 9, person felony.

K.S. A. 65-2836.
A licensee's license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2015 Supp. 21-5407, and amendments thereto, as established by any of the following:

(1) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2015 Supp. 21-5407, and amendments thereto.
(2) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.
(3) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

ROBERT POWELL CENTER for MEDICAL ETHICS
AT THE NATIONAL RIGHT TO LIFE COMMITTEE

Assisting Suicide: Why Safeguards Do Not Work

Looking at both legal analysis of doctor prescribed suicide laws and the experience in Oregon and Washington, there is evidence that any so-called safeguards that might come attached to the proposals do not work.

Updated July, 2015

MYTH: This law is only for the terminally ill.
FACT: **A large number of non-terminally ill persons are given lethal prescriptions where assisting suicide is legal.**

- Terminal illness is often difficult to predict. Nearly everyone has known someone who outlived a 6 month or less diagnosis.
- The Oregon Department of Health reports that the range of time between the first request and death has been as long as almost 3 years.[1] This grossly exceeds the six month requirement.
- The definition of terminal illness has come to include people who will die without treatment in six months. According to Oregon state-issued reports patients with diabetes, hepatitis, and HIV have all received lethal drugs.[2]

MYTH: People won't feel cost pressures to seek inexpensive suicide drugs.
FACT: **Insurers have and continue to deny life-saving medical treatment and cover cheap lethal drugs where assisting suicide is legal.**

- Barbara Wagner, an Oregon resident, was seeking a cancer treatment from her state health care plan. Astoundingly, she was sent a letter from the Department of Health telling her that her plan would not cover her cancer drugs (about $4,000 a month) but reminding her that she had the option to kill herself with a suicide prescription (about $100), for which the Department would pay.[3] She was not the only resident to receive such a letter.
- As for private insurers, according to the Oregon Health Department, "Individual insurers determine whether the procedure is covered under their policies (just as they do with any other medical procedure). Oregon statute specifies that participation under the Act is not suicide, so should not affect insurance benefits by that definition."[4]

MYTH: There are protections against abuse.
FACT: **There is no requirement for a witness at the time of death:**

- It is unknown if the person is still competent at the time she or he actually ingests the lethal prescription.
- The range of time between the first request and death is 15 -1009 days (nearly 3 years).[5] A lot can happen in that time. Did the person's mental state deteriorate? Did caregivers tire of caring for a sick relative?
- Assisted suicide is a recipe for elder and disability abuse because it puts lethal drugs in the hands of abusers. In fact, an heir can serve as a witness for a lethal drug request.
- An abusive relative or caregiver can pick up the lethal drugs and administer them without the patient's knowledge or consent since there is no oversight and no witnesses are required once the lethal drugs leave the pharmacy.

MYTH: Only competent people can ask for lethal drugs.
FACT: **There is nothing in the law to protect those with mental illness.**

- It is a well-established psychological fact that nearly every terminally ill patient who desires death is suffering from a treatable mental disorder.[6]
- There is no requirement that the patient be given a psychiatric evaluation. Over nearly a decade and a half, Oregon Department of Health statistics show that only 5.5% of all patients were referred for an evaluation.[7]
- A major state paper, *The Oregonian*, has documented that many patients suffering from depression and dementia are receiving doctor prescribed suicide.[8]

MYTH: This is a peaceful death.
FACT: **There are numerous complications that can and will occur.**

- Barbiturates, the most commonly used method for doctor-prescribed suicide in Oregon and Washington, do not necessarily lead to a peaceful death. Under the law, the patient is prescribed dozens of pills and sent home to overdose. Overdosing on barbiturates has caused documented cases of persons vomiting while becoming unconscious and then aspirating the vomit.[9] People have begun gasping for breath or begun to spasm. Overdosing on these drugs can cause feelings of panic, terror, and confusion. There have also been cases of the drugs taking days to kill the patient. This is hardly the peaceful death that advocates claim.

MYTH: This law is for people in pain.
FACT: **Dying in pain is unacceptable, and everyone agrees patients in pain need better options. Startlingly, the assisted suicide law is rarely invoked for pain**.

- Over the history of the Oregon law, the three most frequently mentioned end-of-life concerns were: loss of autonomy (91%), decreasing ability to participate in activities that made life enjoyable (87%), and loss of dignity (71%). Fear of future pain or experiencing current pain does not even rank in the top five.10

MYTH: Doctors will act in a patient's best interest.
FACT: **There is no requirement that the doctor has any knowledge of or relationship with the patient.**

- "Doctor shopping" is common. A network of doctor-prescribed suicide proponents ensures that patients will receive lethal prescriptions[11], even when their family doctor knows their desire for death is transient and could be alleviated.

MYTH: The law can punish doctors who run afoul of the law.
FACT: **It is nearly impossible to penalize doctors under the law.**

- The doctor prescribing death is held only to a "good faith standard" which is far lower than the malpractice standard applied to other health providers.[12]
- There is no mechanism to ensure doctors report (they self-report) or comply.
- The underlying reported data in OR and WA is destroyed by the state yearly.[13]
- In OR and WA, the death certificates are falsified by statute, listing only the underlying illness as the cause of death, making the real number of suicides unknowable.[14]

[1] Under the law, a patient is supposed to have 6 months to live or less. However, patients are holding on to lethal prescriptions for nearly 3 years. Oregon Public Health Division, *2014 Report on Oregon's Death with Dignity Act,* Released February 12, 2015.

[2] Oregon Public Health Division, *2014 Report on Oregon's Death with Dignity Act,* released Released February 12, 2015.
https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year17.pdf

[3] (Source: ABC News, Death Drugs Cause Uproar in Oregon, 8/6/08)
http://abcnews.go.com/Health/story?id=5517492

[4] See "Frequently Asked Questions" page on Oregon's Public Health Department website:
https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/faqs.aspx#insurance

[5] Oregon Public Health Division, *2014 Report on Oregon's Death with Dignity Act,* released February 12, 2015.

[6] Barraclough, Bunch, Nelson, & Salisbury, *A Hundred Cases of Suicide: Clinical Aspects*, 125 BRIT. J. PSYCHIATRY 355, 356 (1976) and E. Robins, THE FINAL MONTHS 12 (1981).

[7] Oregon Public Health Division, *2014 Report on Oregon's Death with Dignity Act,* released February 12, 2015.

[8] Erin Barnett, "A family struggle: Is Mom capable of choosing to die?" *Oregonian*, Oct. 17, 1999.

[9] Oregon Public Health Division, *2014 Report on Oregon's Death with Dignity Act,* released February 12, 2015

[10] Oregon Public Health Division, *2014 Report on Oregon's Death with Dignity Act,* released February 12, 2015

[11] Erin Barnett, "A family struggle: Is Mom capable of choosing to die?" *Oregonian*, Oct. 17, 1999.

[12] See statutory language available at:
http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx

[13] See both statutory language available at:
http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx and the Oregon Health Department Press release at:
http://www.oregon.gov/DHS/news/2005news/2005-0304a.shtml which states "The state law authorizing physician-assisted suicide neither requires nor authorizes investigations by DHS, said Barry S. Kast, DHS assistant director for health services."

[14] *See endnote 13.*