Testimony of Matt Whitaker, Director of Integrated Programs, Compassion & Choices Regarding HB 2217, Relating to the Oregon Death with Dignity Act House Committee On Health Care Tuesday, March 19, 2019 at 3:00pm

Good morning Chair and Members of the Committee. My name is Matt Whitaker and I am the Director of Integrated Programs for Compassion & Choices, the nation's oldest and largest nonprofit organization working to improve care and expand choice at the end of life.[1,2,3,4,5] Compassion & Choices advocates for legislation to improve the quality of end-of-life care for terminally ill adult patients and affirms their right to determine their own medical treatment options as they near the end of life.

The Oregon Death with Dignity Act has demonstrated for over 20 years that medical aid-in-dying laws work as intended by affirming patient autonomy while ensuring a high standard of care.

Compassion & Choices believes that it is the strict eligibility criteria and the core safeguards embedded in the act are the primary reason the Journal of Medical Ethics concluded in 2007 that: "Rates of assisted dying (in Oregon)...showed no evidence of heightened risk for the elderly, women, the uninsured...people with low educational status, the poor, the physically disabled or chronically ill...people with psychiatric illnesses including depression, or racial or ethnic minorities, compared with background populations."[6]

However after two decades of rigorously examined experience, we now know that many of the well-intentioned regulatory requirements within the Act actually disincentivize provider

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[1] Compassion & Choices brought landmark federal cases establishing that dying patients have the right to aggressive pain management, including palliative sedation. *Vacco v. Quill, 521 U.S. 793 (1997); Washington v. Glucksberg*, 521 U.S. 702 (1997).

[2] Compassion & Choices drafted and sponsored introduction of legislation requiring comprehensive counseling regarding end-of-life care options. See, California Right to Know End-of-Life Options Act, Cal. Health & Safety Code §442.5; New York Palliative Care Information Act, N.Y. Pub. Health Law § 2997-c.

[3] For example, Compassion & Choices is pursuing accountability for failure to honor a patient's wishes as documented in a POLST, *DeArmond v Kaiser,* No. 30-2011-00520263 (Superior Court, Orange County, CA). In another case, Compassion & Choices represented a family in bringing into the public eye a situation where patient wishes to forego food and fluid were obstructed. See Span, "Deciding to Die, Then Shown the Door," *The New York Times*, Aug. 24, 2011, available at http://newoldage.blogs.nytimes.com/2011/08/24/deciding-to-die-then-shown-the door/? ref=health; Uyttebrouck, "Couple Transported Out of Facility After Refusing Food," *Albuquerque Journal*, Jan. 08, 2011, available at http://www.abqjournal.com/news/metro/08232859metro01-08-11.htm.

[4] Compassion & Choices brought two federal cases to the United States Supreme Court urging recognition of a federal constitutional right to choose aid in dying. *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Vacco v. Quill, 521 U.S. 793(1997).* Compassion & Choices was in leadership in the campaigns to enact the Death with Dignity Acts in Oregon and Washington. Or. Rev. Stat. § 127.800 (2007); Wash. Rev. Code Ann. § 70.245 (West 2011).

[5] See supra n. 1, Bergman, Tomlinson, Tolliver, Hargett; See supra n. 3, DeArmond.

[6] Margaret P Battin, Agnes van der Heide, Linda Ganzini, Gerrit van der Wal, Bregje D Onwuteaka-Philipsen. Legal physician-assisted dying in Oregon and the Netherlands: evidence concerning the impact on patients in "vulnerable" groups. Journal of Medical Ethics, Volume 33, Issue 10, 2007. http://jme.bmj.com/content/33/10/591

participation and make it very difficult for terminally ill individuals to access this compassionate end-of-life care option. Based on this experience, Compassion & Choices supports increasing access to medical aid in dying by removing unnecessary regulatory requirements that create barriers while maintaining the established four eligibility criteria that has demonstrated the safety of the practice, as well as updating antiquated or ambiguous language within the context of the law.

While we appreciate the bill sponsors noble intention of expanding access, we do not believe this particular bill is will achieve the desired goal or reduce unnecessary barriers and burdens, and instead may open the time tested and proven effective practice of medical aid in dying to unnecessary ethical and legal challenges.

With this in mind, we cannot offer our support for HB 2217 as it is currently drafted.

We believe that enumerating the specific types of self-administration could potentially have the unintended consequence of actually narrowing allowable means of self-administration as medical practices and technology continue to evolve.

In order for Compassion & Choices to offer support for HB 2217, the following amendment to the definition of self-administration would be necessary. Newly proposed language is underlined, language suggested for removal is ~~struck through~~:

> "Self-administer" means a qualified patient's affirmative, conscious and voluntary ~~physical~~ act to take ~~of ingesting, or delivering by another method~~, into his or her body, medication to end his or her life in a humane and dignified manner.

Again, we are pleased to see that now with more than 20 years of experience in the state with the practice, the Oregon legislature is seeking to refine the law based on that experience and we appreciate the opportunity to share our thoughts with you regarding this proposed legislative language. We are hopeful that with the adoption of this amendment, we will meet our shared goal of improving care and expanding choice at life's end.

Thank you, Chair and members of the Committee for your timely leadership on this issue.

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