**Written submission of Richard M. Doerflinger**

From the Desk of Representative Sherrie Sprenger

**To: Members, Oregon House of Representatives**

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**Re: Opposition to HB 2217 on "death with dignity"**

**April 17, 2019**

I have analyzed legislative proposals on end-of-life issues for almost four decades, and I now live in Washington state which, like Oregon, has a law allowing "death with dignity." HB 2217 would change Oregon law to more closely adhere to the wording of Washington's 2008 law, requiring that the lethal dose be "self-administered" by the patient.

Requiring that the patient must "self-administer" the lethal drugs seems at first glance to be a new safeguard against lethal action by third parties – that is, against allowing assistance in suicide to blur over into homicide. But this first impression is extremely misleading.

As introduced, HB 2217 defined "self-administer" as "a qualified patient's physical act of ingesting or delivering by another method medication to end his or her life in a humane and dignified manner" [amending 127.800]. (The Washington law also defines "self-administer" in terms of "ingesting.") But dictionaries define "ingest" as "take (food, drink, or another substance) into the body by swallowing or absorbing it" (Oxford), "take in for or as if for digestion" (Merriam-Webster), "take food or drink into the body" (MacMillan). A common synonym is "swallow." This is something ***passive***, a way of ***receiving*** the drugs; it is not inconsistent with someone else placing or forcing the drugs into the patient's body.

In committee, HB 2217 was amended so that "self-administer" means "a qualified patient's affirmative, conscious and voluntary act to *take into* his or her body medication to end his or her life in a humane and dignified manner" (emphasis added). This only repeats the problem, since dictionaries define "ingesting" as "taking" a substance "into" one's body as by swallowing it. (The original phrase about "delivering" the drugs by another method has been deleted, leaving "self-administer" to mean *only* swallowing or absorbing.)

Current Oregon law refers to the patient as "taking" the lethal drugs. For example, the patient request form has the patient sign a statement that "I understand the full import of this request and I expect to die when I **take** the medication to be prescribed" [127.897]. This was always ambiguous: Did it mean the patient simply "takes" the drugs **into** his or her body, as by swallowing? Or did it mean that the patient will be the only person engaged in introducing the drugs into his or her body? HB 2217 resolves the ambiguity in the direction of the former option: Anyone can provide the drugs, introduce them into the body, even insert them into the patient's mouth; the patient need only "take them into" his or her body by swallowing or absorbing them.

**The subheading of HB 2217 says that it "prohibits anyone other than patient from administering medication to end patient's life in humane and dignified manner." The opposite is the case. The bill contains no such prohibition, and certainly no penalties for doing such a thing. It takes the already ambiguous term "take" in current law, and changes it to refer only to "taking into one's body" drugs that may be administered by anyone.**

One might imagine that such involvement by others is prevented by the existing Oregon law's rule of construction stating: "Nothing in 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law" [ORS 127.880]. But this is also not the case.

The first sentence of this provision has an unclear meaning because these terms (lethal injection, mercy killing, active euthanasia) are not defined in the Oregon law. But in any case, the second sentence nullifies the first sentence, rendering this supposed safeguard circular and meaningless. If "self-administer" means to "take into" one's body, then the patient is "self-administering" the drugs whenever he or she receives them into the body. In such a case the practice is legal under the Death with Dignity Act, and legally *cannot* be construed as a case of "lethal injection, mercy killing or active euthanasia." This circular process simply sends us back to HB 2217's new definition of "self-administer" in 127.800 creating the loophole.

Obviously this second sentence of the provision was always meant to present a euphemism for what is really going on in "death with dignity." That sentence also says that actions taken in accordance with the Oregon law may not be construed as "assisted suicide" – although in physical fact they are exactly what everyone calls assisted suicide, and identical with what Oregon's own law calls the Class B felony of "assisting another person to commit suicide" (ORS 163.193) whenever the victim falls outside the definitions of the Death with Dignity Act.

In short, the new definition in HB 2217 only seems to help ensure that people who actively help kill the patient will have a "safe harbor" from prosecution. As long as it is the patient who absorbs the drugs, those who took the patient's life can claim that they were "self-administered."

Perhaps it is a back-handed compliment to more traditional views against homicide that when legislators seek to authorize it, they feel more comfortable doing so by euphemism and misdirection. But we should all be candid about what is going on. HB 2217 greases the slippery slope from assisted suicide to homicide.