

FAQ about the Death With Dignity Act

In 1997, Oregon enacted the Death with Dignity Act which allows physicians to write prescriptions for a lethal dosage of medication to Oregonians with a terminal illness. This law requires the Oregon Department of Human Services to collect and analyze data on who participates in the Act and issue an annual report. These data are important to parties on both sides of the issue. Our position is a neutral one, and we offer no subjective opinions about these questions. We routinely receive inquiries about the Act. Here are some answers to frequently asked questions.

Q: What is Oregon's Death with Dignity Act?

A: The Death with Dignity Act permits physicians to write prescriptions for a lethal dosage of medication to people with a terminal illness.

The Death with Dignity Act was a citizens' initiative passed twice by Oregon voters. The first time was in a general election in November 1994 when it passed by a margin of 51% to 49%. An injunction delayed implementation of the Act until it was lifted on October 27, 1997. In November 1997, a measure was placed on the general election ballot to repeal the Death with Dignity Act. Voters chose to retain the Act by a margin of 60% to 40%.

There is no state "program" for Death with Dignity. People interested in participating do not "make application" to the State of Oregon or the Department of Human Services. It is up to qualified patients and licensed physicians to implement the Act on an individual basis. The Act requires the Department of Human Services to collect data on patients who participate each year in order to determine compliance with the terms of the Act and to issue an annual report.

Q: Who can participate in the Act?

A: The law states that, in order to participate, a patient must be: 1) 18 years of age or older, 2) a resident of Oregon, 3) capable of making and communicating health care decisions for him/herself, and 4) diagnosed with a terminal illness that will lead to death within six (6) months. It is up to the attending physician to determine whether these criteria have been met.

Q: Can someone who doesn't live in Oregon participate in the Act?

A: No. Only patients who establish that they are residents of Oregon can participate if they meet certain criteria.

Q: How does a patient demonstrate residency?

A: A patient must provide adequate documentation to the attending physician to verify that s/he is a current resident of Oregon. Documentation might include an Oregon Driver License, a lease agreement or property ownership document showing that the patient rents or owns property in Oregon, an Oregon voter registration, a recent Oregon tax return, etc. It is up to the attending physician to determine whether or not the patient has adequately established residency.

Q: How long does someone have to be a resident of Oregon to participate in the Act?

A: There is no minimum residency requirement. A patient must simply be able to establish that s/he is currently a bona fide resident of Oregon.

Q: Can a non-resident move to Oregon in order to participate in the Act?

A: There is nothing in the law that prevents someone from doing this. However, the patient must be able to prove to the attending doctor that s/he is currently a bona fide resident of Oregon.

Q: Who can give a patient a prescription under the Death with Dignity Act?

A: Patients who meet certain criteria can request a prescription for lethal medication from a licensed Oregon physician. The physician must be a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. The physician must also be willing to participate in Death with Dignity. Physicians are not required to provide prescriptions to patients and participation is voluntary. Additionally, some health care systems (for example, a Catholic hospital or the Veterans Administration) have prohibitions against practicing Death with Dignity that physicians must abide by as terms of their employment.

Q: If a patient's doctor does not participate in Death with Dignity, how can s/he get a prescription?

A: The patient must find another M.D. or D.O. licensed to practice medicine in Oregon who is willing to participate. The Oregon Department of Human Services does not recommend doctors, nor do we provide the names of participating physicians or patients due to the need to protect confidentiality.

Q: If a patient's primary care doctor is located in another state, can that doctor write a prescription for the patient?

A: No. Only M.D.s or D.O.s licensed to practice medicine by the Board of Medical Examiners for the State of Oregon can write a valid prescription for lethal medication under the Death with Dignity Act.

Q: How does a patient get a prescription from a participating physician?

A: The patient must meet certain criteria to be able to request to participate in the Act. Then, the following steps must be fulfilled: 1) the patient must make two oral requests to the attending physician, separated by at least 15 days; 2) the patient must provide a written request to the attending physician, signed in the presence of two witnesses, at least one of whom is not related to the patient; 3) the attending physician and a consulting physician must confirm the patient's diagnosis and prognosis; 4) the attending physician and a consulting physician must determine whether the patient is capable of making and communicating health care decisions for him/herself; 5) if either physician believes the patient's judgment is impaired by a psychiatric or psychological disorder (such as depression), the patient must be referred for a psychological examination; 6) the attending physician must inform the patient of feasible alternatives to the Act including comfort care, hospice care, and pain control; 7) the attending physician must request, but may not require, the patient to notify their next-of-kin of the prescription request. A patient can rescind a request at any time and in any manner. The attending physician will also offer the patient an opportunity to rescind his/her request at the end of the 15-day waiting period following the initial request to participate.

The law makes every attempt to ensure that patients who participate in the Act are doing so voluntarily, fully informed, and with the ability to make rational health care decisions for themselves.

Physicians must report all prescriptions for lethal medications to the Department of Human Services, Vital Records. As of 1999, pharmacists must be informed of the prescribed medication's ultimate use.

Q: What kind of prescription will a patient receive?

A: It is up to the physician to determine the prescription. To date, most patients have received a prescription for an oral dosage of a barbiturate.

Q: What will happen if a physician doesn't follow the prescribing or reporting requirements of the Act?

A: The Department of Human Services will notify the Board of Medical Examiners of any deviations. If a formal investigation is warranted by the Board of Medical Examiners, physicians might be subject to disciplinary action.

Q: Must a physician be present at the time the medications are taken?

A: The law does not require the presence of a physician when a patient takes lethal medication. A physician may be present if a patient wishes it, as long as the physician does not administer the medication him/herself.

Q: Can a patient rescind a request for Death with Dignity?

A: Yes, a patient can rescind a request at any time and in any manner. The attending physician will also offer the patient an opportunity to rescind his/her request at the end of the 15-day waiting period following the initial request to participate.

Q: How much does participation cost?

A: We do not collect cost data. However, direct costs for participation in the Act might include office calls relating to the request, a psychological consult (if required), and the cost of the prescription.

Q: Will insurance cover the cost of Death with Dignity?

A: The Act does not specify who must pay for the services. 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 Death with Dignity Act is not suicide, so should not affect insurance benefits by that definition. However, federal funding cannot be used for services rendered under Oregon's Death with Dignity Act. For instance, the Oregon

Medicaid program, which is paid for by federal funding, ensures that charges for Death with Dignity services are paid only with state funds.

Q: Can a patient's family members request Death with Dignity on behalf of the patient (for example, in cases where the patient is comatose)?

A: No. The law requires that the patient ask to participate voluntarily on his or her own behalf.

Q: Are euthanasia and Death with Dignity the same thing?

A: No. They are two legally distinct procedures for hastening death. In euthanasia, a doctor injects a patient with a lethal dosage of medication. In Death with Dignity, a physician prescribes a lethal dose of medication to a patient, but the patient – not the doctor – administers the medication. Euthanasia is illegal in every state in the union, including Oregon. Death with Dignity has been legal in Oregon since November 1997. Oregon is the only state in the Union that has legalized this procedure.

Q: What information is available on Oregon's Death with Dignity website?

A: You can find links to all our annual reports, forms, legislation, rules, press releases and other articles. The annual reports themselves contain an historical background of the Act, a description of the laws pertaining to Death with Dignity in Oregon, how data is reported, collected and analyzed, a summary of the year's results, and tables that outline the participant demographics and disease characteristics. The Department of Human Services does not collect some information (such as religious affiliation of participants or cost of the procedure); other information is strictly confidential (such as names of participating patients and physicians).

Q: What is the Department of Human Services' opinion of the Death with Dignity Act? Does it encourage people to hasten their deaths? Should this law have been passed? What are the pros and cons of Death with Dignity?

A: The Death with Dignity Act was a citizen's initiative, enacted because a majority of voting Oregonians believed that persons afflicted with certain terminal illnesses should have the legal right to hasten their deaths. The role of the Department of Human Services is to collect and analyze data annually on participation in Oregon. These data are important to parties on both sides of the

issue. Our position is a neutral one, and we offer no subjective opinions about these questions.

Q: What is the status of the federal lawsuit against Oregon's Death with Dignity law?

A: November 6, 2001: U.S. Attorney General John Ashcroft issues a directive which states, in part, that prescribing, dispensing or administering federally controlled substances to assist suicide violates the Controlled Substances Act (CSA). This new interpretation of the CSA allows the federal Drug Enforcement Agency (DEA) to pursue action to revoke prescription-writing privileges and to pursue federal criminal prosecution of participating Oregon physicians.

November 7, 2001: Oregon Attorney General Hardy Myers files suit in U.S. District Court for a temporary restraining order and preliminary injunction.

November 8, 2001: U.S. District Court Judge Robert Jones issues 10-day stay barring implementation of Ashcroft's order.

November 20, 2001: Judge Jones issues a temporary restraining order against Ashcroft's ruling pending a new hearing.

January 22, 2002: Oregon Attorney General Hardy Myers files a motion for summary judgment.

April 17, 2002: U.S. District Court Judge Robert Jones upholds the Death with Dignity Act. Permanent injunction is filed.

September 23, 2002: Attorney General Ashcroft files an appeal, asking the 9th U.S. Circuit Court of Appeals to overturn the District Court's ruling.

May 26, 2004: a three-judge panel upholds Judge Jones' ruling.

July 13, 2004: Ashcroft files an appeal requesting that the 9th U.S. Circuit Court of Appeals rehear his previous motion with an 11-judge panel.

August 13, 2004: 9th U.S. District Court of Appeals denies Ashcroft's request.

November 9, 2004: Ashcroft appeals the case to the U.S. Supreme Court.

February 22, 2005: U.S. Supreme Court agrees to hear the appeal.

October 5, 2005: U.S. Supreme Court hears oral arguments in the case of *Gonzales v. State of Oregon*.

January 17, 2006: The U.S. Supreme Court files its opinion and upholds the 9th U.S. District Court of Appeals' decision. Oregon's law remains in effect.

Further information on *Gonzales v. Oregon*. can be found at the Department of Justice's Physician-Assisted Dying website

http://www.doj.state.or.us/hot_topics/11072001.shtml.

Q: Where can I find a copy of the statutes and administrative rules governing the Death with Dignity Act?

A: The statutes can be found at <http://egov.oregon.gov/DHS/ph/pas/ors.shtml> and the administrative rules are at <http://egov.oregon.gov/DHS/ph/pas/oars.shtml>.

Q: Where can I find the forms used for Death with Dignity?

A: <http://egov.oregon.gov/DHS/ph/pas/pasforms.shtml>.