THE PAST PRESENT AND FUTURE: NEW YORK STATE LAW AND BEYOND

by

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AID IN DYING: A TERMINALLY ILL PATIENT'S RIGHT TO CHOSE AND WHAT PRACTITIONERS NEED TO KNOW

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It often takes a dramatic case to illuminate the legal and ethical debates of today. The Right to Aid In Dying; the right of a mentally competent, terminally ill patient to obtain prescribed medicines to achieve a peaceful death is currently at the forefront of legal and ethical analysis, religious and political debate in New York, the Nation and internationally.[1]

If one looks back in time, the Schloendorff case decided in 1914, in which Justice Cardozo held : "Every human of adult years and sound mind has a right to decide what shall be done with his own body….." serves as the first case in the nation as forerunner to this debate. [2]

In 1975 a family in New Jersey fought and won the right to remove the respirator from 19 year old Karen Ann Quinlan under a right to privacy.[3] Five years after the Quinlin case was decided, two cases, one involving a 52 year old mentally retarded man receiving blood transfusions for bladder cancer (Storer) whose mother asked that the blood transfusion be discontinued and that of an 83 year old retired clergyman, Brother Fox (Eichner)left in a persistent vegetative state, who friends argued had indicated in the past that he would never want to be kept alive under those circumstances, were decided in New York's Court of Appeals That Court held that patients have a common-law right to decide the course of their treatment, including life sustaining treatment (with no hope of recovery), provided there was" clear and convincing" proof that the patient was competent at the time the patient made his wishes known The Court distinguished the Eichner case from Storer. Storer never was competent to make decisions on his own behalf, therefore his mother could not substitute her judgment for her son's and stop his life sustaining treatment. Brother Fox (Eichner) had made his wishes known while competent clearly not wanting to be kept alive with life sustaining treatment if in a persistent vegetative state.[4]

[1] How one uses terms to describe Aid in Dying is important. Terms that include Euthanasia and Assisted Suicide, although often used, have a chilling effect and are not considered appropriate or accurate descriptions by doctors or their patients who seek assistance in dying. Also See footnote 30

[2] Schloendorff v Society of New York Hospital 211 NY 125, 105NE 92 (1914)

[3] In The Matter of Karen Ann Quinlan, An Alleged Incompetent [No Number in Original] Supreme Court of New Jersey 70 N.J. 10; 355 A.2d 647; 1976 N.J. LEXIS 181; 79 A.L.R.3d 205 Argued January 26, 1976, Decided March 31, 1976. Following removal of the respirator, Karen Ann Quinlan remained in a persistent vegetative state until her death almost 10 years later.

[4] In the Matter of John Storar. Charles S. Soper, as Director of Newark Developmental Center, et al., Appellants; Dorothy Storar, Respondent.In the Matter of Philip K. Eichner, On Behalf of Joseph C. Fox,

In 1987 Julianna Delio [5]won the right to have all treatment (including artificial nutrition and hydration) discontinued for her husband, then in his 30's. She went on to fight for a law that would permit a person with capacity to designate someone who would make decisions on his/her behalf when the person no longer had capacity. Her effort and those of others resulted in the passage on July 22, 1990 of the New York State Health Care Proxy Law (PHL Article 29- C). This was followed twenty years later by the Family Health Care Decisions Act in 2010 (PHL29-CC Section 2994A-U. The Health Care Decisions Act for Persons with Mental Retardation (NYSCP 1750B) was passed in 2003, included both general authority to make medical care decision and specifically provided for end of life decision for persons falling within that law. The case of Cruzan v Director, Missouri Department of Health also a seminal case went before the U.S. Supreme Court which ruled that a state may require "clear and convincing evidence' of a patient's wishes prior to the removal of life support.[6] The Cruzan and the Delio case continued to highlight the problems of proving clear and convincing evidence of a patient's wishes and impacted efforts to legalize " Advanced Directives" such as "Living Wills "and the " Health Care Proxy''.

The hospice and palliative care movement is critical in understanding the evolution in establishing the rights of terminally and chronically ill patients. The Hospice, and flowing from that, the palliative care movement began in 1948 with Dame Cicely Saunders' work with the terminally ill in London. In 1967 she created Saint Christopher's Hospice. In 1969 Dr Elizabeth Kubler-Ross wrote a seminal book, "On Death And Dying" identifying the five stages of grief patients go through when they learn they are terminally ill. [7] She spoke of the importance of patients determining their care at the end of life and that such care might best be provided outside of the hospital. With this the hospice movement was born in the United States. [8] As the movement in hospice care was growing, so eventually was the realization that physicians and other health care providers were not adequately trained in palliative or pain management. [9] Patients were

Respondent, v. Denis Dillon, as District Attorney of Nassau County, Appellant.Dorothy Storar, Respondent. Court of Appeals of New York 52 N.Y.2d 363; 420 N.E.2d 64; 438 N.Y.S.2d 26 (1981); cert. denied, 454 U.S. 858, 102 S.Ct. 309 (1981)

[5] (In the Matter of Julianne Delio on Behalf of Daniel Delio, Petitioner v Westchester County Medical Center et al. 129 A.D. 2nd 1, (1987)

[6] Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)

[7] Elizabeth Kubler-Ross, On Death and Dying, Scribner Press 1969 The five stages of grief found by Dr. Kubler Ross are: Denial and Isolation; Anger; Bargaining; Depression and finally, Acceptance

[8] "History of Hospice Care, National Hospice and Palliative Organization. http://www.nhpco.org/history - hospice-care. The document is a fairly comprehensive compendium of Federal and other provisions historical events.

[9] According to the NY State Health Department's website: : "Palliative care, as defined by the Public Health Law, is "health care treatment, including interdisciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice care " Palliative care is for patients who may be dying but also for patients who are experiencing long term chronic pain is noted. According to the World Health Organization's definition: "Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual" WHO. WHO Definition of Palliative Care [Internet]. [cited 2010 Dec

dying with or experiencing years of agonizing pain without effective relief. [10] Inadequate training in pain management may also be attributed to the fear that doctors would be prosecuted for abusing the narcotic laws. Some doctors and even terminally ill patients and their families feared that they would become addicted to pain medications. It was not until August 2010 that the Palliative Care Information Act became law in New York. See the provisions governing Palliative Care Information Act (PHL 2997-C) the Palliative Care Access Act (PHL§2997-D) and The Palliative Care Education and Training Act (PHL§2809-N)[11]

While the hospice and palliative care movement were critical in helping patients who either were terminally ill or faced with a chronic devastating painful illness, doctors were noting that some of their patients who were terminally ill wanted to control the time and manner of their death. Their concerns were that they be allowed to die with dignity at home or outside the hospital, and to do so before they might suffer intractable pain only relieved by high doses of "pain killers" which would render them incapacitated.[12] It was because of patients' concerns and no legal way for the doctors to assist these patients without suffering criminal penalties based on the laws making assisted suicide illegal that two cases came before the U.S. Supreme Court. The first Washington v Glucksberg brought by five doctors and three patients challenging Washington's ban on assisted suicide as applied to doctors arguing that it violated the fourteenth amendment's due process clause as it denied patients their liberty interest to determine the time of their death. The U.S. Supreme Court held in a unanimous decision there was no Due Process liberty interest in permitting a doctor to assist a patient in dying and Washington had a rational basis in protecting medical ethics, shielding the lives of disabled and terminally ill patients from abuse and preserving human life.[13] The second case argued before the U.S. Supreme Court, Vacco v Quill held that New York's ban on assisted suicide did not violate the Equal Protection Clause by allowing patients with capacity to withdraw or remove life sustaining treatment but did not allow doctors to prescribe lethal drugs for

22];Available from: http://www.who.int/cancer/palliative/definition/en/

[10] Some have suggested that patients were admitted initially into hospice with an expected 3 months to live and in some cases expanded to 6months. Many patients however did not meet those criteria and therefore were expected to live longer. Many of these patients did not have the pain relief or palliative care experts available to them outside of the hospice environment. This also impacted the palliative care movement who would ultimately include patients who were terminally ill as well as those with chronic diseases. Chapter 59 of the Laws of 2011 added on April 1, 2011 which added The Palliative Care Access ACT (PCAA)Section 2997-d to the Public Health Law, now commonly known as the Palliative Care Access Act ("PCAA").

[11] Also see Non-Hospital Orders Not to Resuscitate NYS PHL 29CCC

[12] Doctors caring for dying patients treat patients by various means not considered as Aid in Dying. These include: 1. Withholding/withdrawing life sustaining treatments of a patient with capacity to make that decision. (See New York Health laws cited above), 2. Known as the "double or duel effect" administering pain medication designed to alleviate pain and suffering but in doing so may hasten death usually by depressing respiration. and 3. Palliative Sedation when a patient suffering intractable pain not relieved by traditional medicines is sedated to the degree the patient loses consciousness.

[13] Washington v Glucksberg 521 US 702 (June 1997)

patients which would allow them to take at a time and place of their own choosing. The Court also held the ban was rationally related to a legitimate state interest. [14]

The cases before the Supreme Court where undoubtedly the impetus for patients and doctors to look for other ways to have Aid In Dying legalized. While the movement was slow to evolve, four States, Oregon in 1994[15] (however Oregon's law did not go into effect until 11/4/ 1997) Washington[16] in 2008 both by ballot initiative, and Vermont[17] in 2013 and California[18] in 2015 by legislation have defined the conditions under which a physician may prescribe a lethal dose of medicine to a terminally ill patient, with capacity, allowing that patient to take the medicine at a time and place of his/her own choosing. [19] Notably, three courts have also dealt with Aid in Dying. The court in Montana [20] has ruled on behalf of patients (and their physicians) who choose to die with dignity. While a lower court in New Mexico held aid in dying to be a constitutionally held right under that State's Constitution. That decision was recently reversed 2 to 1 by the states Appellate Court and is now under appeal to the State's Supreme Court. [21] New York is now the third state as noted below.

In January 2014 a young woman, Brittany Maynard a 29 year old, dying of a brain tumor, moved to Oregon in order to die with dignity under Oregon's law. In doing so she and her family went public about her decision, the reasons and the importance of being able to have the right to decide to end her life when the pain and suffering she was enduring and was expected to endure would become too much to bear.[22]

The Maynard case has again sparked the Nation's attention, as have previous cases, about the right to aid in dying and the movement which would protect a patient's right under the law. In 2015 twenty-five states and the District of Columbia [e] introduced aid in dying (AID) proposals.[23]

New York is now addressing the legal issues associated with Aid in Dying on two fronts. In February 2015, nine plaintiffs filed suit in Supreme Court, New York County

[14] Vacco v Quill, 521 U.S. 793 (June 1997)
[15] Oregon Death with Dignity Act of 1994 ORS 127-800-897 passed on a ballot initiative)
[16] Washington Death with Dignity Act, Initiative 1000, codified as RCW 70.245, passed on November 4, 2008 and went into effect on March 5, 2009.)
[17] Vermont's law passed in 2013 "An Act Relating to Patient Choice and Control at the end of Life" (39 Sec 118 VSA Chapter 113)
[18] California, SB 128 End of Option Life Act 2015
[19] Appendix A in your material for a summary of the provisions enacted into law by Vermont, Oregon, Washington and California
[20] Montana/ B*axter v. Montana* 224- P.3d 1211: 354 Mont234. (2009)
[21] New Mexico (State Of New Mexico County Of Bernalillo 2nd Judicial District Court Katherine Morris M.D., et al, Plaintiffs, vs. No. D-202-CV 2012-02909 Kari Brandenburg, et al January 2014. In The Court of Appeals of the State of New Mexico, No 33,630 Filed August 11, 2015: K Morris, MD, A. Mangalik, MD and A. Riggs plaintiffs-Appellees; v. K Brandenburg Defendant-Appellants
[22] "Brittany Maynard Dies Using Oregon's Assisted Suicide Law", Victoria Cavaliere, November 2, 2014 Chicago Tribune. (www.chicagotribune.com)
[23] 25 States have introduced Death with Dignity bills Source: Death with Dignity Around the US See Appendix B (US:http/www.deathwithdignity.org/advocates/national October,5 2015)

(Myers et al vs. Schneiderman, et al) seeking interpretation of the "Assisted Suicide Statute" (Penal Law Sections 120-30 and 125-15) that the penal code as cited does not "encompass the conduct of a New York licensed physician who provides aid in dying to a mentally competent, terminally ill individual ….." or that, if it does encompass such conduct, that patients have a right to aid in dying under the due process and equal protection clauses (lack of equal protection and denial of due process (privacy) under the Constitution. [24] However, on October 16, 2015 Justice Kenny granted the State's Attorney General's motion to dismiss. In her decision, Justice Kenny acknowledged that plaintiffs in the case have "more than just a passing interest in the outcome of the case"[25]Nevertheless, the court relying heavily on the case of Vacco [26] rejected the constitutional arguments offered by the plaintiffs in Myers et al v Schneiderman[27] That decision is now on appeal to the Appellate Division, First Department.

At the same time, a number of bills were introduced in the New York State's Assembly and Senate. AO 5261 sponsored by Assemblywoman Paulin et al to amend Article 28 to add 28F The Patient Self Determination: Identical to S. 5814 sponsored by Sen. Bonacic. S. 3685 sponsored by Senators Savino and Hoylman by adding a new provision Article 29-CCCC New York End of Life Options Act; identical to, AO2129 sponsored by Assemblywoman Rosenthal's, "A Death with Dignity Act also creating a new Article 28 F.

It is important to understand some of the ethical issues raised by proponents and opponents of Aid in Dying.

Proponents for Aid in Dying argue that under ethical principles it embraces:

>Respect for Autonomy
>Fairness or justice
>Compassion
>The importance of honoring the interest of the patient versus that of the State
>Encouraging better communication between doctor and patient non-malfeasance

Opponents Argue:

>The sanctity of life, all life is precious and must be preserved
>There is a difference between passive versus active means which have the effect of hastening a patient's death

[24] Myers, S, Goldenberg: S, Seiff,: E, Grossman, H, MD: S. Klagsbrun, MD: T.Quill, MD:, J.Schwarz, PhD: C.Thornton, MD: and End of Life Choices, New York, Plaintiffs against E.Schneiderman, Attorney General State of New York,: J.Difiore, (District Attorney of Westchester County: S. Doorley, , District attorney of Monroe County: K Heggen, District Attorney of Saratoga County: R.Johnson, District Attorney Bronx County: C Vance, JR, District Attorney of New York County

[25] See Index #151162/15 Supreme Court of New York County of New York Part 8

[26] Vacco v. Quill, 521 U.S. 793 (1997) The US Supreme Court held (in part) in a 9-0 decision that New York's ban on the right to die (or its prohibition on assisting suicide does not violate the Equal Protection Clause. Pp. 799-809.)

[27] According to David Leven, Executive Director, End of Life Choices New York, an appeal of that decision was filed on October 26, 2015, plaintiff's briefs will be submitted by November 23, The A.G.'s brief filed by January 6th 2016 and a rely by January 15th 2016. See material included in packet.

>The need to uphold professional integrity often citing to the Hippocratic Oath, "to do no harm". While some still quote the provision in the Oath "I will not administer poison to anyone where asked", that portion of the oath since been omitted in many modern versions recited by medical students.

>The potential for abuse by the profession, by a patient's family or society

> The potential for errors or the fallibility in diagnosis or prognosis

>Patients who are disabled or poor will be disproportionately subject to aid in dying

>This is the beginning of the slippery slope slide…from voluntary to involuntary "euthanasia"[28]

It should be noted that there is no evidence from the data on Aid in Dying that there has been abuse by the profession, or that it effects the disabled or the poor. In addition, researchers have found that patients who seek Aid in Dying do so for fear of loss of autonomy; loss of dignity; inability to enjoy life. Down on that list is inadequate pain control and financial concerns.[29]

Time limitations may not allow us to discuss how countries outside of the United States are addressing Aid In Dying. However, it is important to note that, unlike the United States, the criteria under which patients qualify for Aid in Dying differ in other countries e.g. as to condition, age and residency requirements.[30] See Appendix C.

[28] Stark, H. et al "Physician Aid- In- Dying" Ethics in Medicine University of Washington School of Medicine et al (1998) pg 2 https://depts.washington.edu/bioethx/topics/pad.html

[29] Lee, B "Oregon's experience with Aid in Dying: findings from the death with dignity laboratory" Ann. N,Y. Acad. Sci July 2014 1-7 (ISSN 0077 8923)

[30] Assistance in Dying is a topic long discussed in Europe and North America. Switzerland's ban in 1947 covers aiding a person from killing himself for selfish reasons. Aiding a person for unselfish reasons is not a crime. Thus, such aids in dying can be assisted by people, other than doctors, who request help, regardless of their medical condition. There is no requirement that the person be a citizen of Switzerland. However, the person must be able to take the medicine without assistance. (Dignitas Correspondence 2011)

The Netherlands allows children over 12 to request Aid in Dying with a parent's consent. Proof of a terminal Illness is not required. The critical criteria are establishing that there is unbearable suffering. (A Look at Right-Die laws around the world/Who has the right to die? http://globalnews.ca/news/1815431/a-look-at -right -to die-laws-around the world/). In addition, the Netherlands has guidelines for assisting a patient in a case where there is no physical ailment, but the patient suffers from a condition which is unacceptable, incurable, voluntary and considered over time. Schoevers, R. et al. "Physician Assisted Suicide in Psychiatry: Developments In the Netherlands Psychiatric Services Vol 49 No 1 November 01, 1998.

Belgium has extended their so called Euthanasia laws in rare cases of "unbearable and irreversible suffering" to allow "a child of any age to be helped to die, provided the child is terminally ill, close to death and deemed to be suffering beyond any medical help." The child must be able to request euthanasia and demonstrate an understanding of that request. The decision must be made with the parents. TIME http://time.com/7565/belgium-euthanasia-law-children-assisted suicide/

On February 15, 2015 Canada legalized physician assisted suicide See Carter v. Canada (attorney general) 2015 SCC5. Struggling over whether extubating a patient in a persistent vegetative state was a homicidal act of commission vs. ceasing to feed the patient via his nasogastric tube was a humane act of omission and

thus leaving the patient intubated but starved made a moral difference…the judge ruling for extubation noted this to be "A charge of hypocrisy because it can be asked why, if the doctor, by discontinuing treatment is entitled ….to let his patient die, it should not be lawful to put him out of his misery straight away in a more humane manner by lethal injection rather than let him linger on in pain until he dies'. Amir Attaran, "Unanimity on Death with Dignity-Legalizing Physician Assisted Dying in Canada. N. Engl. J Med 372;22 May 28, 2015 pgs 2080-2082

The term "Euthanasia" is often used outside the United States as well as the term "assisted Suicide. The word Euthanasia is derived from the Greek -- "eu", goodly or well + "thanatos", death = the good death. It can also be further defined as Voluntary Active where the patient is actively helped by another to hasten their death; Voluntary, Inactive for instance where forms of life saving treatment is discontinued at the patient's request; Voluntary Inactive: Involuntary Active, the intentional killing of a person without their consent as in Nazi Germany, Involuntary Inactive where treatment is stopped without the consent of the patient. However, because the use of those terms engender fear of a time when Euthanasia was used to kill innocent people and suicide suggests an illegal act under penal codes where it too is used for illegal or immoral reasons, these terms have been replaced by terminology as Aid in Dying that reflects the right of a patient to make a choice on the manner and timing of his/her death.
Critics arguing against AID have also pointed to the Hippocratic Oath provision:, "I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan…", however, that part of the oath is generally omitted today. In addition, some have argued that that provision was placed into the oath, not as a prohibition against AID, but to protect the medical profession from providing lethal drugs to persons who might use them on people not dying, but for other purposes. Thomas A. Preston, MD, former Chief of Cardiology at Pacific Medical Center and Professor of Medicine at University of Washington, has argued that:"...In the time of Hippocrates, physicians had no drugs of therapeutic efficacy by present standards, but they did have poisons which were sometimes used on non-dying patients for mischievous purposes. In this context, the Hippocratic injunction against the use of deadly drugs was good public relations for the medical guild, and had nothing to do with terminally-ill patients. "Thomas A. Preston, *Physician Involvement in Life-Ending Practices*, 18 SEATTLE U. L. REV. 531 (1995) at page 532.

Appendix A: AID IN DYING BILLS
COMPARISON OF FOUR STATE LAWS

Category[i]	Vermont	Oregon	Washington	California
Section of law created:	**The Patient Choice and Control at The End of Life Act Chapter 113 39 18 VSA**	**The Oregon Death with Dignity Act ORS§127.800 to 127.890 and § 127.895 and § 127.897**	**The Washington Death With Dignity Act RCW Chapter 70.245**	**An Act to Add Part 1.85 section 443 et al to Division 1 of the Health and Safety Code relating to " End of Life Option Act" (approved by the Governor October 5, 2015)**
Patient must have capacity	Yes§5281 (a)(2)	Yes § 127.800.§ 1.01(3)	Yes §70.245.010 (3)	Yes §443.1 (e)
"Bona fide" doctor-patient relationship required	Yes § 5281(a)(1)	Has primary responsibility for care and treatment of patient's terminal condition §127.800 §1.01 (2)	Not as to issue of a 'bona fide" relationship.	Under § 443.1(c) …."the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease"
"Health care facility" defined	Yes §5281(a)(3)	No	No	See health care provider, below §443.1(h)
"Health care provider" defined	Yes§5281(a)(4)	Yes §127.800§1.01(6)	Yes §70.245.010 (6)	Yes §443.1(h)
Defines "aid-in-dying medication?"	No.	No.	No	Under §443.1(b) a drug determined by a Physician …for qualified individual to choose to self administer to bring about his death
"Impaired judgment" defined	Yes. " Person does not sufficiently understand or appreciate the relevant facts necessary to make	Not directly: A capable patient: a determination that a patient is "capable" by a court, or by a	Not directly: Defines Competent as to patient: Sec §70.245.010 (3)	Under §443.1(e) Must be shown that the individual has ability to understand the nature and

	and informed decision" §5281. (a)(5)	physician, psychiatrist or psychologist to make a communicated health care decisions….." §127.800.1.01(3)		consequences of a health care decision, the ability to understand it significant benefits, risks and alternatives, and the ability to make and communicate an informed decision…"
"Interested person" defined	Yes §5281(a)(6) (A)-(D)	Not defined as such	Not defined as such	Not defined
"Palliative care" defined	Yes§ 5281(a)(7)	No.	No.	Not defined
"Patient" defined/AGE	Yes; "A person who is **18 years of age or older**, a resident of Vermont and under the care of a physician. §5281(a) (8)	"a person who is under the care of a physician" §127.800 S1.01(9): Under §127.800 §1.01(1) An Adult must be 18 years or older	Same as Oregon §70.245.010 (9)] **Age of Patient 18** under definition of an Adult §70.245.010 **(1)**	Not defined as Patient: Under §443.1(a**).** An adult means an individual 18 years of age or older
"Physician" defined	Yes: "an individual licensed to practice medicine under 26V.S.A. chapter 23 or 33" § 5281(a)(9)	Yes. A Dr of medicine or osteopathy licensed medicine by the Oregon Board of Medical Examiners §127.800 §1.01(10)	Yes, . "A doctor of medicine or osteopathy licensed to practice medicine in state of Washington" §70.245.010 (10)	"A doctor of medicine or osteopathy currently licensed to practice in the State'§443.1(m)
"Consulting MD" defined	No. Not defined	Yes: §127.800§1.01 (4)	.Yes §70.245.010 (4)	Yes §443.1(f)
"Medically confirmed" defined	No not defined per se but requires a second physician to confirm diagnosis/prognosis §5283 (a)(7)	Yes, .."medical opinion of the attending has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records" §127.800 § 1.01(8)	Yes Similar to Oregon §70.245.010 (8).	Yes §443.1(j)

"Terminal illness or condition" defined	Yes: "..an incurable and irreversible disease which would within reasonable medical judgment, result in the death of the patient within six months" §5281(a) (10)	Yes: "an incurable and irreversible disease that has been medically confirmed and will, with reasonable judgment, produce death within six months" §127,800 S 1.01(12)	Yes see wording in Oregon and Vermont§ 70.245.010 (13)	Yes § 443.1(q) "incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment result in death within six months"
Patient eligibility barred solely due to age or disability?	Not noted	Yes. §127.805 § 2.01 (2)	Yes. See§ 70.245.020(2)	No §443.2(a)5(b)
Attending physician responsibilities specified?	Yes: §5283: 5(a)-(I)	Yes: See §127.815 §3.01	Yes, See §70.245.040	Yes § 443.5 (See entire section)
Confirmation by consulting physician?	Yes. §5283(7)	Yes; §127.820 § 302	Yes See §70.245.050	Yes §443.5(E)(3)
Informed decision required?	Yes §5282	Yes § 127.800§1.01(7) .	Yes, §70.245.070 .	Yes §443.5.(8) §443.1(I) Note request must be made by patient §443.2(c)
Standard of care.	Not addressed as such but see	See§127.885 §401 (7)	See §70.245.180 (2)	Not addressed.
Family notification required?	Not noted	Recommended See §127.835 §3.05.	Recommended not required See §70.245.080	Not required but part of the process unless declines to or unable to § 443.5(5)(C)
Provides written request for AID form?	Not in body of law	Yes. § 127. 897 §6.01	Yes § 70.245.220	Yes § 443.11(a) Note also provides for interpreter in sections (b) (1)-(3)
Right to rescind decision?	Yes. §5283(a)(3) and (10)	Yes; See §127.845. § 3.07	Yes §70.245.090	Yes. §443.4(a)
Medical	Yes§ 5283(a)(14)	Yes §127.855 § 3.09	Yes §70.245.120	Yes: §443.8

records documentation specified?				
Reporting requirements?	Yes **§** 5283(a)(15)	Yes **§**127.865 **§** 3.11	Yes **§**70.245.150	**§**443.19(a)-(c) Note there is also a section on the public's Right of Access **SEC 2** See also **§** 443.9(a)(b)
Physician immunity	Yes "civil or criminal" if follows the legislation as provided **§**5290	Yes, **§**127.885 **§** 4.01	Yes **§**70.245.190	Yes **§** 443.14 (a)-(c) Also see **§**443.16 (a)-(c)
Terminal patient rights	See Right to information under **§**5282 and right to rescind **§**5283.12. (c)	See right to rescind **§**127.845 **§** 307 and right to informed consent **§**127.830**§** 3.04	. See informed consent **§** 70.245.070 and Right to rescind **§**70.245.100	**§** 443.4 To withdraw or rescind; **§**443.2(a) request an aid in dying prescription
Terminal patient friends & family protections	N/S however under **§** 5284Not subject to civil or criminal liability for being present, or for failing to prevent the act	Not specifically addressed However see **§**127.885 **§** 40.1 no liability if present at the time patient takes medicine	Not specifically addressed but see**§** 70.245.190(1)	Not specified per se but under **§**443.14 no civil liability by mere presence when qualified individual self-administers drug
Health care providers and administration of lethal dose	No duty to participate. **§**5285(a)	No duty to participate**§**127.855**§**3.09(4)	No duty to participate **§**70.245.190 (1)(d)	Patient must self administer **§**443.1(i)
Health care provider protections	Protected from sanctions by their employer for acts taken, or refusal to act, per this article. **§**5285(b)	See **§**127.885**§** 4.01	See section **§**70.245.190	**§**443.14(b)(c)(d) Action law not reportable as unprofessional conduct etc **§**443.15(a)(g) also see**§** 443.16
Health care provider liability for negligent conduct/intentional misconduct	Remain liable, except as provided **§**5285 (c**) See §** 5283(b)	Remain liable. **§**127.890**§4.02 (1)-(4)** also see **§**127.995 (if not authorized)	Yes see **§**70.245.200 Willful alteration/forgery coercion etc.	**§**443.17

Health care facility conscience clause	Can prohibit a physician from prescribing a lethal medication for a patient in their residence; written notice of such policy required. §5286	Similar to Vermont §127.855§3.09(4)	. See §70.245.190	§443.14(e)(1)(2)
Referral obligation and records transfer if you deny AID?	Not noted However under §5283(14)(E) attestation pat enrolled in hospice care	Yes §127.855 § 3.09(4)	Yes §70.245.190 (1)(d))	§443.14 (e)(3)
Insurance	Benefits under Life Insurance policy cannot be denied §5287(a)	Cannot be denied benefits; nor can sale or procurement of a health, life, or accident policy be conditioned on AID. § 127.875 § 3.13	Yes §70.245.170 Cannot affect the sale, procurement or issuance of any life, health, accident or annuity policy	§443.13(a)(1) Not affect life, health, or annuity policy, health care service plan contract or health benefit plan or the rate charged for a policy or plan contract" and (2(b)) noted to be a natural death from the underlying disease
Wills, statutes and contracts can't be linked to AID decisions?	Not addressed.	Yes. See §128.870. § 3.12	Yes See §70.245.160	§443,12(a) and (b)
Malpractice insurance	Access to it can't be restricted, and rates cannot be adjusted, §5287(b)	Not noted	Not Addressed. But see §70.245.190 (b)	Not noted
Palliative sedation	No impact on its use. §5288	Not addressed.	Not addressed.	Not noted
Death certificate	Not addressed.	Dr may sign death certificate §127.815§3.01.(2)	Yes §70.245.040(1)(B)(2) result of underlying illness as the cause of death	Not noted
Disposal of unused	§5291	Not addressed.	Yes: Sec, 70.245.140	§ 443.20

medicine				
Statutory construction/AID Not suicide, mercy killing/or homicide	§5292**…** "Actions taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing or homicide under the law"	§127.880**,** § 3.14 …"Actions taken in accordance with ORS…shall not, for any purpose, constitute suicide, assisted suicide mercy killing or homicide under the law"	§70.245.180(1)	§ 443.18. Nothing…construed to constitute suicide, assisted suicide, homicide or <u>elder abuse</u> under the law"
Criminal penalties.	Does not limit civil or criminal liability for gross negligence, recklessness or intentional misconduct§5283(15)(b)	1. Altering or forging a request for medications, or concealing or destroying a rescission of same which leads to a patient's death, is guilty of a Class A felony. 2. Coercing a patient to seek AID, or destroying a rescission, is a Class A felony. 3. Nothing in this article hinders further civil liability. 4. These criminal penalties do not preclude others in law. §127.890 §4.02 Also see §127.995(1)-(2)	See §70.245.200 Similar to Oregon	Yes, See §443.17(a)-(e)
Waiting Period/oral/written requirement	See § 5283(a) (1) requires an **oral** request to a physician: (2) within 15 days or more a 2nd **oral** request: a **written request** signed and witnessed (3)	§127.850§3.08. 15 or more days must elapse between initial oral request and the writing of a prescription. §127.800 to1§27.897 and no less	Under §70.245.090 Requires an oral request, a written request and reiteration of the oral request. Under §70.245.110(1) At least 15	Yes §443.3 (a) Has to "submit two oral requests, a minimum of 15 days apart, and a written request to his her attending physician The Attending

	can rescind (4) a further 48 hour wait for the physician to dispense the medicine or submit to pharmacy (12)(a)(b) (13)	than 48hours between written request and writing of the prescription	days elapse between initial oral request and writing; and (2) 48 hr. elapse between signing of written request and writing of Rx	physician shall directly, and not through a designee, receive all three requests…." If all provisions are complied with, including a physician check list, and the oral requests and a written request obtained, the physician must still provide the "qualified individual" a "final attestation form, which must be filled out within "48 hours prior to the qualified individual choosing to self-administer the aid-in-dying drug" § §443.5(E)(11)(12) (there are as in the other states other requirements the doctor must meet)
Residency Required	Yes §5281(a)(8)	Yes§ 127.860§ 310 (1)-(4)	Yes§70.245.130	Yes§443.2(a)(3)
Consent form	Not included as part of statute	Yes: § 127.897§ 6.01	Yes § 70.245.220	
Severability clause?	No.	Yes. §127.895§5.01	Yes. §70.245.902	Yes § SEC 3
Effective date	Noted See Sec 3 Some on passage, some in July 2016 Act signed into law May 20, 2013	March 5, 2009	Yes §70245.903	2016

[i] Please note that some categories may be very detailed, such as informed consent requirements, physician obligations etc. Therefore, for a more in-depth analysis, one should review the entire statute.

Appendix B: Current State by State citations of proposed AID Analysis:*

States with Introduced Bills 2012	Bill Number/Intro	Title
Alaska	HB 99	An Act relating to the voluntary termination of life by terminally ill individuals
Colorado	HB15-1135 1/27/15	Colorado Death with Dignity Act
Connecticut	SB668 HB 7015/1/23/2015	An Act Providing A Medical Option of Compassionate Aid in Dying for Terminally Ill Adults
Delaware	HB150 1/14/2015	An Act to Amend Title 16 of the Delaware Code Relating to Death With Dignity
District of Columbia	B21-0038 1/14/15	Death with Dignity Act of 2015
Iowa	HF65 1/21/15	Iowa Death with Dignity Act
Kansas	HB 2150 1/28/15	Kansas Death with Dignity Act
Maine	SP452 4/7/2015	An Act Regarding Patient Directed Care At the End of Life
Maryland	SB 0676/HB1021 2/6-13/15	Death with Dignity Act
Massachusetts	HD 1674 1/15/15	Massachusetts Compassionate Care for Terminally Ill Act
Minnesota	SF1880/HF2095 S: 3/18/2015 H 3/23/2015	Minnesota Compassionate Care Act 2015
Missouri	HB 307 1/7/15	Missouri Death With Dignity Act
Montana	SB 202 1/21/15	Montana Death with Dignity Act
Nevada	SB336 1/16/2015	Patient Self Determination Act
New Hampshire	HB 151 1/8/2015	Establishing Committee to study end of life decisions
New Jersey	AB 2270/S382 1/14/2014/11/13/2014	Aid in Dying for the Terminally Ill
New York	A02129/05261/SB3685-2015 /SB5814-215Senate	New York Death with Dignity Act, (A): Patient Self-Determination Act (A): New York End of Life Options Act (S)/Patient Self Determination at End of Life Act (Senate)

North Carolina	HB611 4/9/2015	Death with Dignity Act
Oklahoma	HB1673 1/30/15	Oklahoma Death with Dignity Act
Rhode Island	HB 5507 House/SB598 2/12/15	Lila Mansfield Sapinsley Compassionate Care Act
Tennessee	HB 1040/SB/1362 3/30/2015	TBD
Utah	HB 391 2/24/15	Utah Death with Dignity Act
Wisconsin	AB67(A) SB28Sen 3/30/2025A/2/11/2015S	N/A
Wyoming	HB 119 Date TBD	Death with Dignity Act

*__Note: This material was obtained directly from "Death with dignity National Center http://www. deathwithdignity.org/advocates/national updated March 9, 2015__ The following States have been noted to be planning introduction of similar bills: Hawaii; New Mexico; Pennsylvania. However Hawaii does not prohibit A.I.D. **Note the website has been updated for current information go to http://www.deathwithdignity.org /take-action**

The Georgia Supreme Court in Final Exit Network Inc. vs Georgia 2012 WL 360523 (Ga Feb 6, 2012) concluded that the statute prohibiting advertising or offering to assist in the commission of a suicide was an unconstitutional restriction on free speech under the state and Federal Constitution.

The following statutes prohibit /or deal with physician assisted suicide: Arkansas Ark Code Ann §5-10-106 (2007) (expressly prohibiting physician assisted suicide); Georgia. Ga.Code Ann § 16-5(b),(d)(2012) (requires notification licensing board if convicted): ibid Idaho code Ann § 18-40175(a) (2011); North Dakota. N.D. Cent. Code Ann. § 12.1-16-04 (1991) (prohibiting the issuance of prescriptions for the purpose of assisted suicide) and Rhode Island R. I. Gen. Laws §11-60-3(prohibiting licensed healthcare practitioners from providing another the physical means to commit suicide) and potentially prohibited by other states under manslaughter statutes http://euthanasia.procon.org/view.resource.php/resourceID=000132&print=true

APPENDIX C:
COMPARISON OF SELECTED AID IN DYING PROVISIONS IN FIVE COUNTRIES

CATEGORY	CANADA [1] [2]	BELGIUM[3]	LUXEMBOURG [4]	NETHERLANDS[5]	SWITZERLAND[6]
Age: Adult	"full age" Ch. II 6	Age of majority Ch II Section 3§1	Yes see questions and answers re: law	Yes but see below No longer capable of expressing will but had made a written request for termination	Not specified per se but the literature indicates that "All adults can become members of Dignitas." It also requires capacity to understand the risks etc.
Age: 16 and over	Not noted see above	Age not specified, can be an emancipated minor: Ibid above See note below	According to the answer to question 15, neither a minor nor an adult under guardianship or trusteeship nor an incapable person may validly request euthanasia or assisted suicide. Parents can not decide on behalf of their minor child nor can guardians or trustees.(Euthanasia and Assisted Suicide Law of 16 March 2009 25 questions 25 answers.)	ChIIArt2 2 or if age 16-18 and has reasonable understanding of interest after parent nor parents/guardian involved in decision. Ibid 3	
Age: 12>16	Not noted see above	NOTE: under new legislation signed by King Phillipe March 2014 can be any age		With reasonable understanding of interests must have parent or parents/guardian authority /agreement	

CATEGORY	CANADA [1] [2]	BELGIUM[3]	LUXEMBOURG [4]	NETHERLANDS[5]	SWITZERLAND[6]
				(ibid4)	
Age: Under 12	Not noted see above	NOTE: under new legislation signed by King Phillipe March 2014 can be any age if terminally ill whose death is imminent and who suffer greatly (Belgium extends "Right to Die" to Terminally ill children Reuters Thu Feb 13, 2015 Robert-Jan Bartunek)	No		
Condition: Terminal	Not noted see below	Not noted but expected to die in the near future See §3 Ch II Sec 3	"Patient is in a terminal medical situation and shows constant and unbearable physical or mental suffering without prospects of improvement, resulting from an accidental or pathological disorder" Chapter II Art 2 -1 3)	Not required	Not Required, noted to be "medically diagnosed, hopeless or incurable illness, unbearable pain or unendurable disabilities" Dignitas to Live and die with Dignity publication.
Condition: Physical	Requires: "1. Able to give consent: 2 .Suffer from an incurable serious illness: 3. Suffer from constant and unbearable physical or psychological pain	Patient: "in a medically futile condition of constant and unbearable physical or mental suffering that can not be alleviated resulting from a	See above Yes	Suffering lasting and unbearable/no other solution	Note that all requests are reviewed by a physician based on medical records supplied by the patient. Requires two doctor

CATEGORY	CANADA [1] [2]	BELGIUM[3]	LUXEMBOURG [4]	NETHERLANDS[5]	SWITZERLAND[6]
	which cannot be relieved in a manner the person deems tolerable" Div II 26	serious and incurable disease caused by illness or accident" Ch II, Sec 3 §1 However, if the patient is not expected to die in the near future, patient must be in "constant and unbearable physical or mental suffering that cannot be alleviated" §3 (1) Ch.II Sec3 See also The Guardian, Fri 19, June 2015 Indicating the children must be in "a hopeless medical situation of constant and unbearable suffering that cannot be eased and which will cause death in the short term". Requires psychiatric or psychologist consent as well as parental approval			consultations 1.10.2.5.2.2
Condition: Psychiatric	See above	See above	See above	Yes[7]	See above
Resident	Not noted, assumed required	Not noted assumed required	Not required under law but in answer to the 25 questions and answers, the law does require a close	Not noted assumed required	Not required

CATEGORY	CANADA [1] [2]	BELGIUM[3]	LUXEMBOURG [4]	NETHERLANDS[5]	SWITZERLAND[6]
			relationship with the doctor and been under treatment in order for the condition of the patient to be known.		
Consult required	Yes	Yes Ibid §2 .3) Note if pt not expected to die, then a second consult must be by a psychiatrist or specialist in the order in question §3 (1) Ch.II Sec3	Yes, Ch. II Art 2-2 3)	Yes (ChapIIArt2(e)	Yes, see above 2 doctors must approve
Specific Waiting period	Not noted, but indirectly due to the provisions required to be completed by the doctor	Ch. II Sec 3 § 2 2) No, but MD must have had "several conversations with patient over a reasonable period of time" ibid above 2) Unless the patient falls under the section" where the patient is not expected to die in the near future, then at least one month between the patient's written request and the act of euthanasia"	Only in as much as there must be conversations with the patient, the consultation and the written requests.	Not noted, only as provided by the provisions the doctor must complete.	No specific waiting periods but according to Dignitas it takes about 3-4 months (of those who do request AID only about 14% opt to actually use it) It then takes about 3-4 weeks following the preliminary assessment. (Dignitas, How Dignitas Works www.dignitas.ch/3d edition/May 2014 at 1.2-1.6
Written Request	Yes Note the request must come from the patient but document can be signed by patient, or if	Yes see above §4 of Ch II, Sec 3 Can be through an advanced directive in writing and	Yes Chapter II Art 2 7)If the patient is unable to draft and sign the request, noted in writing by	See above	Yes, person becomes member of Dignitas, and then receives patient's instructions/advance

CATEGORY	CANADA [1] [2]	BELGIUM[3]	LUXEMBOURG [4]	NETHERLANDS[5]	SWITZERLAND[6]
	incapable, by a third adult person or member of team caring for the patient DivII 26 Note can do that in an advance directive	witnessed if pt suffers from a serious illness and incurable disorder caused by illness or accident Ch III Sec 4 § 1 (there is a 5 year time limit prior to loss of the ability to patient unable to express him/herself	an adult of the person's choosing[8]		directives to complete etc. Request signed by interested person, or in rare circumstances if person can't sign a person designated to do so on the person's behalf. See above citation. At 1.6.1
Reporting requirement	Yes	Yes	Yes, Also see Chapter V establish the National Commission for Control and Assessment	Yes	Oversight by Secretary General
Aid in Dying drug administered by	The Physician Div II 29	Unclear if this only applies to a physician	If by the doctor, must determine whether the end of life provisions have been registered with the Commission for Control and Assessment	By a physician who has terminated a life or assisted in a suicide Ch II Art 2 1 (f)	May not be performed by a physician, the patient must be able to self administer[9]
Palliative Care Noted	Yes, proposed legislation includes Palliative care hospice ChI3 2)	Must inform re: palliative care options Ch II Sec 3 §2 1)	Yes, also includes a guide to Palliative Care	Not noted	Yes emphasized in Dignitas material

[1] In 2015 The Supreme Court of Canada in Carter (et al) *v.* Canada (Attorney General) (et al), 2015 SCC 5, [2015] 1 S.C.R. 331 held that: "the prohibition on physician-assisted dying is void insofar as it deprives a competent adult of such assistance where (1) the person affected clearly consents to the termination of life; and (2) the person has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition the prohibition against physician assisted suicide under its penal code is unconstitutional."

[2] The Quebec National Assembly enacted Bill 52 "An Act Respecting end-of-life care" The material noted is from that Act. The act specifies "end –of-life care" as "palliative are provided to persons at the end of their lives, including terminal sedation and medical aid in dying' Title II Chapter I 3(3) Act applies to

all institution as defined within the act. The act also provide that a nurse or physician may provide end of life care in a patient's if "in association with the local authority of the territory where the facility is situated" chap II 17. This material only applies to that act and therefore may not reflect the law of Canada.

[3] The Belgian Act on Euthanasia of May 28th, 2002

[4] On March 16, 2009 the Luxemburg legislators enacted two important laws: One relating to Palliative care, advance instructions and end of life accompaniment and the other the Law on euthanasia and assisted suicide. Ministere de la Sante "Euthanasia and assisted suicide, 25 questions, 25 answers.

[5] The Termination of Life on Request and Assisted Suicide Act (April 2002) Definition of Assisted Suicide: "Intentionally assisting un a suicide of another person or procuring for that other person the means (to commit suicide). Permitted where a doctor meets the criteria

[6] Switzerland does not have a statute regulating Assistance in dying. Article 114 of its penal code prohibits killing on request, however Article 115 of the Swiss Penal Code's prohibition against assisted suicide has a clause states : whoever from selfish motives, induces another person to commit suicide or aids him in it shall be confined to the penitentiary….." This has been interpreted to exclude persons who help someone under the law provided they are not acting out of self interest or gain. This is the basis for Aid in Dying in Switzerland. The information provided above is based on literature from Dignitas "To Live with Dignity to Die with Dignity" Switzerland is the only country to allow foreigners to avail themselves of their aid in dying assistance. Attempts to put tighter controls on this practice was rejected by the Swiss Parliament in 2012 , the rules in effect by organizations who provided this assistance, e.g. Exit and Dignitas worked and protected individual freedoms. Swiss Parliament Rejects tighter controls on Assisted Suicide, Reuters Wed Sept 26, 2012

[7] Also see mention of this under FAQ Euthanasia published by the Netherlands Ministry of Foreign affairs answer to question number 12

[8] Any adult and capable person may make end-of life provisions in writing (advance directive) and the circumstances/conditions for "euthanasia" where a doctor documents the patients severe and incurable condition, the patient is unconscious and the situation is irreversible (Ch III Art 4.-1) In addition the person may appoint an adult to speak on the patient's behalf if or when the condition above is present. The document must be in writing and witnessed where the person is physically unable to draft the document. Ch III Art 4-1 and 2. Note the document must be registered with the National Commission for Control and Assessment .

[9] If the patient is unable to swallow, e.g. has a stomach tube or a PEG, or a pre-existing intravenous drip, and if patent is able to press the plunger of a syringe (sans needle) unaided, the medication will be administered in that manner. If the person is unable to do so unaided, Dignitas can provide an "easy-to-handle remote control" which the person can activate with a minimal amount of movement to start the attached pump. If the person is breathing through an artificial device the patient must also activate the "Power Terminator" to shut down the artificial device. 1.11.4.2.

In a separate correspondence with Dignitas, the issue of the demented patient was raised. The response was with a patient with Alzheimer's the diagnosis implies that it is progressive and inevitable. Where the patient with dementia knows "who he is and what he wants" (legally lucid) AID is possible providing it can be shown the patient is in the "lucid phase" and would be subject to a "special medical report" by a neurologist/psychiatrist/specialist in geriatrics confirming the diagnosis and has sufficient capacity to make a legal and rational decision.