

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

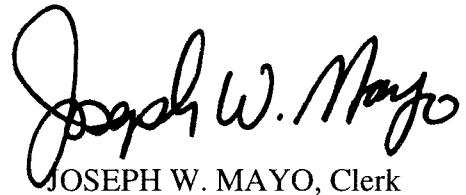
No. 2348

I.B. 3

House of Representatives, January 5, 2000

An Act to Enact the Maine Death with Dignity Act.

Transmitted to the Clerk of the 119th Maine Legislature by the Secretary of State on November 23, 1999 and ordered printed.


JOSEPH W. MAYO, Clerk

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 18-A MRSA art. V, Part 9** is enacted to read:

6 **PART 9**

8 **MAINE DEATH WITH DIGNITY ACT**

10 **§5-901. Short title**

12 This Part may be known and cited as the "Maine Death with Dignity Act."

14 **§5-902. Definitions**

16 As used in this Act, unless the context otherwise indicates,
18 the following terms have the following meanings.

20 (a) "Adult" means a person who is 18 years of age or older.

22 (b) "Attending physician" means a physician who has primary
responsibility for the care of a patient and treatment of that
24 patient's terminal disease.

26 (c) "Capable" means not incapable.

28 (d) "Consulting physician" means a physician who is
qualified by specialty or experience to make a professional
diagnosis and prognosis regarding the patient's disease. The
30 consulting physician may not be a partner or similar business
associate of the attending physician and may not have an office
32 in the same building as the attending physician.

34 (e) "Counseling" means a consultation between a counselor
and a patient to carry out the purposes set forth in section
36 5-907.

38 (f) "Counselor" means a psychiatrist licensed under Title
32, chapter 48 or a psychologist licensed under Title 32, chapter
40 56.

42 (g) "Health care provider" means a person licensed,
certified or otherwise authorized or permitted by the laws of
44 this State, to administer health care in the ordinary course of
business or the practice of a profession and includes a health
46 care facility.

48 (h) "Incapable" means that, in the opinion of the patient's
attending physician or consulting physician, a patient lacks the

2 ability to make and communicate health care decisions to health
3 care providers.

4 (i) "Informed decision" means a decision that is made by a
5 qualified patient to request and obtain a prescription to end
6 that patient's life in a humane and dignified manner and that is
7 based on the patient's appreciation of the relevant facts after
8 being fully informed by the attending physician of:

10 (1) The patient's medical diagnosis;

12 (2) The patient's prognosis;

14 (3) The potential risks associated with taking the
15 medication that is prescribed;

16 (4) The probable results of taking the prescribed
17 medication; and

18 (5) The feasible alternatives, including, but not limited
19 to, comfort care, hospice care and pain control.

20 (j) "Medically confirmed" means that the medical opinion of
21 the attending physician is confirmed by a consulting physician
22 who has examined the patient and the patient's relevant medical
23 records.

24 (k) "Next of kin" includes a family member or an adult who
25 has exhibited special concern for the patient and who is familiar
26 with the patient's personal values.

27 (l) "Palliative care specialist" means a person who is
28 recognized to have expertise in palliative care. A palliative
29 care specialist may be, but is not limited to, a hospice worker,
30 nurse, nurse practitioner or physician.

31 (m) "Patient" means a person who is under the care of a
32 physician.

33 (n) "Personally communicated request" means a request that
34 the patient makes directly in a face-to-face meeting with the
35 attending physician. A "personally communicated request" may be
36 made orally, by sign language or by some other method of
37 communication, including a method using an interpreter, that
38 clearly and unambiguously communicates the patient's intentions.

39 (o) "Physician" means a doctor of medicine or osteopathy
40 licensed to practice medicine by the Board of Licensure in
41 Medicine or the Board of Osteopathic Licensure.

2 (p) "Qualified patient" means a capable adult who is a
3 resident of this State and who has satisfied the requirements of
4 this Act in order to obtain a prescription for medication to end
5 that person's life in a humane and dignified manner.

6 (q) "Terminal disease" means an incurable and irreversible
7 disease that has been medically confirmed and will, within
8 reasonable medical judgment, produce death within 6 months.

10 **§5-903. Written request for medication**

12 (a) A patient who is an adult, is capable, is a resident of
13 this State and is determined by the attending physician and the
14 consulting physician to be suffering from a terminal disease and
15 who has voluntarily expressed the wish to die may make a written
16 request for medication for the purpose of ending that patient's
17 life in a humane and dignified manner in accordance with this Act.

18 (b) A valid request for medication under this Act must be
19 in the form described in section 5-921, signed and dated by the
20 patient and witnessed by at least 2 individuals who, in the
21 presence of the patient, attest that to the best of their
22 knowledge and belief the patient is capable, is acting
23 voluntarily and is not coerced to sign the request.

24 (1) A witness may not be a person who is:

25 (i) A relative of the patient by blood, marriage or
26 adoption;

27 (ii) At the time the request is signed, entitled to
28 any portion of the estate of the qualified patient upon
29 that patient's death, under a will or by operation of
30 law; or

31 (iii) An owner, operator or employee of a health care
32 facility where the qualified patient is receiving
33 medical treatment or is a resident.

34 (2) The patient's attending physician at the time the
35 request is signed may not be a witness.

36 (3) If the patient is a resident in a long-term care
37 facility at the time the written request is made, one of the
38 witnesses must be an individual designated by the facility
39 and must have the qualifications specified by the Department
40 of Human Services by a routine technical rule, as defined in
41 Title 5, chapter 375, subchapter II-A.

2 (4) If the patient is physically unable to make a written
3 request, the attending physician shall enter that fact in
4 the patient's medical record. The patient may then comply
5 with the requirement of a written request by making a
6 separate personally communicated request:

7 (i) To the attending physician;

8 (ii) Before 2 witnesses qualified to witness a written
9 request; and

10 (iii) That is recorded verbatim and transcribed into
11 written form and entered in the patient's medical
12 record.

13 **§5-904. Attending physician's responsibilities**

14 The attending physician shall:

15 (a) Make the initial determination of whether a patient has
16 a terminal disease, is capable and has voluntarily requested
17 medication under section 5-903;

18 (b) Inform the patient of:

19 (1) The patient's medical diagnosis;

20 (2) The patient's prognosis;

21 (3) The potential risks associated with taking the
22 medication prescribed;

23 (4) The probable result of taking the medication
24 prescribed; and

25 (5) The feasible alternatives, including, but not limited
26 to, comfort care, hospice care and pain control;

27 (c) Refer the patient to a consulting physician for medical
28 confirmation of the diagnosis and for a determination that the
29 patient is capable and acting voluntarily;

30 (d) Refer the patient to a palliative care specialist
31 pursuant to section 5-906;

32 (e) Refer the patient for counseling pursuant to section
33 5-907;

34 (f) Request that the patient notify the next of kin. If
35 requested by the patient, the physician shall provide assistance

2 in arranging notification of or contact with the patient's next
of kin;

4 (g) Inform the patient of the opportunity to revoke the
request for a prescription for medication under this Act at any
6 time and in any manner and offer the patient an opportunity to
revoke the request at the end of the 15-day waiting period
8 pursuant to section 5-912;

10 (h) Verify, immediately before writing the prescription for
medication under this Act, that the patient is making an informed
12 decision;

14 (i) Fulfill the medical record documentation requirements
of section 5-913; and

16 (j) Ensure that all appropriate steps are carried out in
18 accordance with this Act before writing a prescription for
medication to enable a qualified patient to end that patient's
20 life in a humane and dignified manner.

22 **§5-905. Consulting physician confirmation**

24 A patient is qualified under this Act if a consulting
physician examines the patient and the patient's relevant medical
26 records and confirms, in writing, the attending physician's
diagnosis that the patient is suffering from a terminal disease
28 and verifies that the patient is capable, is acting voluntarily
and has made an informed decision. The consulting physician
30 shall inquire whether the patient wishes to notify the next of
kin if the patient has not already done so. If requested by the
32 patient, the consulting physician shall provide assistance in
arranging notification of or contact with the patient's next of
34 kin.

36 **§5-906. Palliative care specialist's responsibilities**

38 The palliative care specialist shall determine whether
high-quality palliative care has been made available to the
40 patient. The palliative care specialist shall further make all
appropriate recommendations and referrals necessary to overcome
42 any deficiencies in the current level of palliative care provided
to the patient. Nothing in this section may be construed to
44 limit or restrict in any way a capable patient's right to refuse
palliative care or any other type of medical care.

46 **§5-907. Counseling referral**

48 The attending physician and the consulting physician shall
50 refer the patient for counseling. The counselor shall determine

2 whether the patient is suffering from a psychiatric or
3 psychological disorder or depression that causes impaired
4 judgment. Counseling must also include discussion about choosing
5 to die.

6 Medication to end a patient's life in a humane and dignified
7 manner may not be prescribed until the counselor determines that
8 the patient is not suffering from a psychiatric or psychological
9 disorder or depression that causes impaired judgment.

10 The counselor shall inquire whether the patient wishes to
11 notify the next of kin if the patient has not already done so.
12 If requested by the patient, the counselor shall provide
13 assistance in arranging notification of or contact with the
14 patient's next of kin.

15 **§5-908. Informed decision**

16
17 A person may not receive a prescription for medication to
18 end that person's life in a humane and dignified manner unless
19 that person has made an informed decision as defined in section
20 5-902, subsection (i). Before prescribing medication under this
21 Act, the attending physician shall verify that the patient is
22 making an informed decision.
23

24 **§5-909. Family notification**

25 The attending physician, consulting physician and counselor
26 shall ask the patient to notify the next of kin of the patient's
27 request for medication pursuant to this Act. If requested by the
28 patient, the attending physician, consulting physician or
29 counselor shall provide assistance in arranging notification of
30 or contact with the patient's next of kin. A patient who
31 declines or is unable to notify the next of kin may not be denied
32 the request for medication for that reason.
33

34 **§5-910. Requests**

35 To receive a prescription for medication to end the
36 patient's life in a humane and dignified manner, a qualified
37 patient must personally communicate a request and repeat the
38 personally communicated request to the attending physician no
39 sooner than 15 days after the initial request. Before the 2nd
40 personally communicated request is made, the patient must make
41 the request in writing as described in section 5-903. When the
42 qualified patient makes the 2nd personally communicated request,
43 the attending physician shall offer the patient an opportunity to
44 revoke the request.
45

46 **§5-911. Right to revoke request**

2 A patient may revoke a request for medication under this Act
4 at any time and in any manner without regard to the patient's
6 mental state. A prescription for medication under this Act may
8 not be written without the attending physician offering the
10 qualified patient an opportunity to revoke the request.

8 **§5-912. Waiting period**

10 No fewer than 15 days may elapse between the patient's
12 initial personally communicated request and the writing of a
14 prescription under this Act. No fewer than 48 hours may elapse
16 between the patient's written request and the writing of a
18 prescription under this Act.

16 **§5-913. Medical record filing requirements**

18 The following information must be filed or noted on a chart
20 in the patient's medical record:

20 (a) All personally communicated requests by a patient for
22 medication to end the patient's life in a humane and dignified
24 manner;

24 (b) All written requests by a patient for medication to end
26 the patient's life in a humane and dignified manner;

28 (c) The attending physician's diagnosis and prognosis and
30 that physician's determination that the patient is capable, is
32 acting voluntarily and is making an informed decision;

32 (d) The consulting physician's diagnosis and prognosis and
34 that physician's determination that the patient is capable, is
36 acting voluntarily and is making an informed decision;

36 (e) A report of the determinations made during counseling;

38 (f) The attending physician's offer to the patient to
40 revoke the request at the time of the patient's 2nd personally
42 communicated request pursuant to section 5-910; and

42 (g) A note by the attending physician stating that
44 requirements under this Act have been met and indicating the
46 steps taken to carry out the request and the medication
48 prescribed.

46 **§5-914. Residency requirement**

48 Only persons who have been residents of this State for at
50 least 6 months immediately preceding the request may make and be
52 granted requests under this Act.

2 **§5-915. Reporting requirements**

4 (a) The Department of Human Services, Bureau of Health
6 shall annually review records maintained pursuant to this Act.

8 (b) The Department of Human Services, Bureau of Health
10 shall adopt rules to facilitate the collection of information in
12 compliance with this Act. The information is not a public record
14 and is not available to the public.

16 (c) The Department of Human Services, Bureau of Health
18 shall make available to the public an annual statistical report
20 of information collected under subsection (b).

22 **§5-916. Effect on construction of wills, contracts and laws**

24 (a) A provision in a contract, will or other agreement,
26 whether written or oral, to the extent the provision affects the
28 decision of a person to make or revoke a request for medication
30 to end the person's life in a humane and dignified manner, is not
32 valid.

34 (b) An obligation owing under any existing contract is not
36 conditional to or affected by the making or revoking of a request
38 for medication under this Act to end the person's life in a
40 humane and dignified manner.

42 **§5-917. Insurance or annuity policies**

44 Benefits payable under a life, health or accident insurance
46 or annuity policy are not affected by making or revoking a
48 request under this Act for medication to end the patient's life
50 in a humane and dignified manner. A qualified patient's act of
 ingesting medication to end that patient's life in a humane and
 dignified manner may not have an effect upon benefits payable
 under a life, health or accident insurance or annuity policy.

§5-918. Construction

(a) This Act may not 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 this Act do not, for any purpose, constitute suicide,
 assisted suicide, mercy killing or homicide.

(b) This Act may not be construed to authorize any person
 to assist in the administration of medication prescribed under
 the provisions of this Act.

2
3 **§5-919. Immunities**

4 Except as provided in section 5-920, the following
5 immunities apply.

6 (a) This Act may not be construed to repeal the State
7 prohibition against assisting a suicide except that a person or
8 entity may not be subject to civil or criminal liability or
9 professional disciplinary action for participating in good-faith
10 compliance with this Act. The requirement of good faith is an
11 additional requirement and not a substitute for the reasonable
12 standard of care otherwise imposed upon health care providers in
13 the exercise of their professions.

14 (b) A professional organization or association or health
15 care provider may not subject a person to censure, discipline,
16 suspension, loss of license, loss of privileges, loss of
17 membership or any other penalty for participating or refusing to
18 participate in good faith in any act under this Act.

19 (c) A request by a patient for medication or provision of
20 medication by an attending physician in accordance with the
21 provisions of this Act does not provide the sole basis for the
22 appointment of a guardian or conservator. The provision of
23 medication to a qualified patient does not constitute neglect on
24 the part of an attending physician.

25 (d) A health care provider is not under a duty, whether by
26 contract, by law or by any other legal requirement, to provide
27 medication to end the patient's life in a humane and dignified
28 manner. If a health care provider is unable or unwilling to
29 carry out a patient's request under this Act and the patient
30 transfers that patient's care to a new health care provider, the
31 prior health care provider shall transfer, upon request, a copy
32 of the patient's relevant medical records to the new health care
33 provider.

34 (e) A pharmacist is not under a duty, whether by contract,
35 by law or by any other legal requirement, to fill a prescription
36 written in accordance with this Act that the pharmacist knows or
37 has reason to know is intended to be ingested by a qualified
38 patient to end that patient's life in a humane and dignified
39 manner. If a pharmacist is unable or unwilling to fill a
40 prescription under this Act, the pharmacist shall make that
41 inability or refusal known to the patient, who may then seek
42 another pharmacist to fill the prescription.

43 **§5-920. Liabilities**

2 (a) A person who, without authorization of the patient,
3 willfully alters or forges a request for medication or conceals
4 or destroys a revocation of that request with the intent or
5 effect of causing the patient's death commits a Class A crime.

6 (b) A person who coerces or exerts undue influence on a
7 patient to request medication for the purpose of ending the
8 patient's life or to destroy a revocation of such a request
9 commits a Class A crime.

10 (c) This Act does not limit liability for civil damages
11 resulting from negligent conduct or intentional misconduct by any
12 person or entity.

13 (d) The penalties in this Act do not preclude criminal
14 penalties applicable under other law for conduct that is
15 inconsistent with the provisions of this Act.

16 **§5-921. Form of request**

17 A request for medication as authorized by this Act must be
18 substantially in the following form.

19 **REQUEST FOR MEDICATION**
20 **TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER**

21 I....., am an adult of sound mind.

22 I am suffering from....., which my
23 attending physician has determined is a terminal disease and
24 which has been medically confirmed by a consulting physician.

25 I have been fully informed of my diagnosis and prognosis,
26 the nature of the medication to be prescribed and its potential
27 associated risks, the expected result of taking the medication
28 and the feasible alternatives to ending my life in a humane and
29 dignified manner, including comfort care, hospice care and pain
30 control.

31 I request that my attending physician prescribe medication
32 that will end my life in a humane and dignified manner.

33 **INITIAL ONE:**

34 ... I have informed my family or next of kin of my decision
35 and have taken their opinions into consideration.

36 ... I have decided not to inform my family or next of kin
37 of my decision.

2 ... I have no family or next of kin to inform of my
 decision.

4 I understand that I have the right to revoke this request at
 any time. I understand the full importance of this request, and
6 I expect to die when I take the medication to be prescribed.

8 I make this request voluntarily and without reservation.

10 Signed:.....
12 Dated:.....

14 **DECLARATION OF WITNESSES**

16 We declare that the person signing this request:

18 (A) Is personally known to us or has provided proof of
 identity;

20 (B) Signed this request in our presence;

22 (C) Appears to be of sound mind and not to be under duress
24 or fraudulent or undue influence; and

26 (D) Is not a patient for whom either of us is the attending
 physician.

28 Witness 1.....Date

30 Witness 2.....Date

32 Note: Neither witness may be a relative by blood, marriage or
34 adoption of the person signing this request, may be entitled to
36 any portion of the person's estate upon death or may own, operate
38 or be employed at a health care facility where the person is a
 patient or resident. If the patient is an inpatient at a health
 care facility, one of the witnesses must be an individual
 designated by the facility.

42 **SUMMARY**

44 This initiated bill creates the Maine Death with Dignity
46 Act. It allows a mentally competent adult who is suffering from
 a terminal illness to request and obtain medication from a
48 physician to end that patient's own life in a humane and
 dignified manner, with safeguards to ensure that the patient's
 request is voluntary and based on an informed decision.

50