

## Washington's Death with Dignity Act: A Guide for Physicians

This guide concisely explains the steps physicians should take to ensure compliance with Washington's Death with Dignity Act (DWDA). We periodically update this document to reflect medical advancements and legal changes. A copy of the law is available from Compassion & Choices of Washington (C&C) upon request. You may contact C&C by calling 206.256.1636 or 1.877.222.2816 toll-free, or by emailing [info@compassionwa.org](mailto:info@compassionwa.org).

### Definitions

"Attending Physician" is the physician who will write the prescription for the medication for DWDA. The Attending Physician takes primary responsibility for counseling the patient and ensuring compliance with the requirements of Washington's DWDA.

The "Consulting Physician" examines the patient and makes a written confirmation of the patient's diagnosis, prognosis, ability to make an informed decision and voluntary decision-making.

### Who is Eligible?

The law requires the patient to:

- Be an adult – 18 years of age or older.
- Be capable of making and communicating an informed health-care decision.
- Be a Washington resident.
- Have a terminal illness – an incurable and irreversible disease that will, within reasonable medical judgment, result in death within 6 months or less.
- Make a voluntary request for life-ending medication that the patient may self-administer to end his or her life.

### The Patient's Request

Since there are many reasons a patient might make this request, you should explore the physical, psychological and spiritual issues and discuss other available options. Ask about financial and social issues including coercion. During your discussion you may discover symptoms or other conditions that need to be addressed. If the patient is not in hospice, we strongly advise you suggest this option for optimal comfort care.

Though not legally required, you may want to ask about the existence of advanced directives (living will and durable power of attorney for health care) and a Physician Orders for Life Sustaining Treatment (POLST) form. If your patient does not have a POLST, discuss with your patient the potential benefits a POLST might offer in their circumstances. (Note: C&C provides free POLST forms and advance directive packets to patients and physicians. To request forms, see the contact information provided at the end of this document.)

Medical chart documentation. The Attending Physician must document the elements of an informed decision in the patient's chart as follows:

- Diagnosis and Prognosis.
- Potential risks associated with taking the medication (vomiting and death, and the potential that the medication may very rarely fail to cause death).
- Result of taking the medication (death).
- Feasible alternatives, which include but are not limited to comfort care, hospice, and pain control.

- Right to rescind: Document all reminders to the patient of his or her "right to rescind" (the law provides that the patient may change his or her mind about the request for life-ending medication at any time).

Discussion with relatives/loved ones: Recommend that your patient discuss his/her intentions with close relatives (even though the law does not require the patient to tell anyone). You must also recommend and that he or she take the medication with another person present and not take the medication in a public place. C&C client support volunteers can help facilitate family meetings about DWDA.

Consultation with another physician: Obtain a consultation from a Consulting Physician (see below) to confirm the diagnosis and prognosis.

Evaluate impaired judgment: If either the Attending Physician or the Consulting Physician believes the patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, refer the patient to a psychiatrist or psychologist (must be licensed by the state) for counseling. The attending physician may not write the prescription for life-ending medication until the psychiatrist or psychologist determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. For more information on this evaluation, please contact C&C.

### **Legal Requirements of the Consulting Physician**

The Consulting Physician must examine the patient and relevant medical records and explore the issues that form the basis for the patient's request. The Consulting Physician must document that the patient has a terminal illness, is competent to make medical decisions, is acting voluntarily and has made an informed decision. The Consulting Physician should request a referral to a psychiatrist or psychologist if there is a question about the patient's competence or judgment. The Consulting Physician must document these findings on the Washington State Department of Health (DOH) Consulting Physician's Compliance Form and deliver the form to the Attending Physician.

### **Timing and Safeguards of the Act**

The patient should first make an oral request for life-ending medication, which should be documented in the patient's medical chart. At this time the physician should counsel the patient about the diagnosis, prognosis, potential risks associated with taking the medication, result of taking the medication (death), and the feasible alternatives, including comfort care, hospice and pain control. The physician should also confirm the patient is a Washington resident by examining a driver's license, voter registration card, evidence the patient leases or owns property in the state, or other appropriate documentation.

The Attending and Consulting Physicians must evaluate and come to agreement that:

- The diagnosis is terminal (incurable and irreversible), and
- The patient has six months or less to live.

The patient must be informed of both physicians' findings before signing the *Written Request for Medication To End My Life In A Humane And Dignified Manner* form.

The patient must wait at least fifteen days after the first oral request before making the second oral request. The Attending Physician must also document the discussion offering the patient the right to rescind before transmitting the prescription to the pharmacy.

The Attending Physician cannot write a prescription for life-ending medication until fifteen (15) calendar days after the patient's first oral request and forty-eight (48) hours after the patient has signed the

*Written Request for Medication form\**, and the patient has made a second oral request and refused to rescind. The earliest a physician may write a prescription is 15 days after the first oral request. The first request may be made to any physician who documents the request in a medical record.

\*The 48 hour waiting period after the written request can be concurrent with the 15 day waiting period. *Physician Aid-In-Dying Medication Protocol* is available to physicians upon request from C&C.

### **Obtaining the Medication**

Call C&C for the name of a cooperating pharmacist. The physician may carry or mail the prescription to the pharmacist. Most pharmacies do not keep barbiturates in stock. The Attending Physician must call the pharmacist to advise that the prescription is coming. Remind the pharmacist there is a *Pharmacy Dispensing Record* form he or she must fill out and send to the DOH. C&C can help you with this. Please urge the pharmacist to file the dispensing record with the DOH as quickly as possible after filling the prescription—this will help the DOH ensure death records are written in compliance with the law.

### **Circumstances That May Inhibit a Patient from Using DWDA**

Patients who are unable to ingest the entire medication mixture in approximately two (2) minutes or who have poor absorption, gastrointestinal obstruction, or uncontrolled vomiting generally are not candidates for using oral medication to hasten death. Patients may ingest the medication via their feeding tube. Alternatives to Death With Dignity include voluntary refusal of food and fluids and palliative (total) sedation therapy (see enclosed document "Alternatives to DWDA.")

### **Should the Attending or Consulting Physicians be Present?**

The purpose of the DWDA is to restore control of end-of-life decisions to patients. Your patient may wish to have you present when she or he ingests the medication for reassurance. The DWDA provides legal immunity from prosecution, civil liability and professional discipline for physicians acting in good faith, including physicians present at a patient's death.

C&C also offers experienced client support volunteers to be present to comfort your patient, assure family members and to provide information about complying with the law. Having C&C's volunteers present at the time of death is strongly recommended. The volunteer can collect the data that the Attending Physician needs for the *After Death Reporting Form*. If your patient is not already a client of C&C, we strongly encourage you to refer them to C&C.

Even if you are not present for your patient's death, please speak with your patient about the importance of keeping you informed about their plan to take the medication. If no physician claims the patient within 48 hours of death, the case may be referred to the coroner or medical examiner for an investigation. An investigation might jeopardize the patient's confidentiality and cause distress to his or her loved ones.

### **Data on DWDA Deaths**

According to the Oregon Department of Human Services 11th Annual Report, since January 1998, 401 patients successfully hastened their deaths by ingesting a barbiturate in accordance with Oregon's DWDA. Patients slipped into comas within 1 to 38 minutes (median 5 min.) and died within 1 minute to 48 hours (median 25 min.) after ingesting the lethal quantity of barbiturate. One patient regained consciousness 65 hours after taking the medication and died from his underlying illness fourteen days later. (Data from 2009).

### **After the Patient Dies**

Family and or friends should notify hospice. If the patient is not in hospice, we recommend notifying the Attending Physician. To assure patient and physician confidentiality, the physician must fill out the

Death Certificate as follows: Under "Immediate Cause of Death," insert the patient's underlying terminal illness (item 34 on the Death Certificate). The "manner of death" is natural (item 38 on the Death Certificate). If you report Death With Dignity Act, barbiturate overdose, name the medications prescribed or describe the death as a "suicide," the form will be returned to be completed properly.

The Attending Physician has 30 days after the patient dies (naturally or otherwise) to complete the *After Death Reporting* form and send it to the DOH.

### Reporting Requirements

The DWDA requires the Attending and Consulting Physicians to report information to the DOH about patients who exercise the option to use the DWDA. The DOH forms are available online at <http://www.doh.wa.gov/dwda/> or from C&C.

Within 30 days after writing the DWDA prescription copies of the following forms are mandatory and must be mailed to the DOH:

1. The *Attending Physician Compliance* form; DOH 422-064.
2. The *Consulting Physician's Compliance* form; DOH 422-065.
3. The patient's completed *Written Request for Medication To End My Life In A Humane And Dignified Manner* form, which must be witnessed by 2 individuals (see paragraph at the bottom of the *Written Request* form).
4. If a psychiatric or psychological evaluation was performed, the *Psychiatric/Psychological Consultant's Compliance* form, DOH 422-066.

Within 30 days of dispensing the medication, the pharmacist must submit the *Pharmacy Dispensing Record* form, DOH 422-067. The DOH encourages pharmacists to submit this form to the DOH as quickly as possible.

The Attending Physician must complete the *Attending Physician's After Death Reporting* form, DOH 422-068, within 30 days of the patient's death (natural or otherwise).

### Send forms to: State Registrar, Center for Health Statistics

P. O. Box 47856, Olympia, WA 98504-7856.

Information that parties provide to the DOH regarding identity of patients, physicians, and pharmacists is kept strictly confidential.

**Protection from liability:** The DWDA protects physicians and other health care providers who participate in good faith from criminal and civil liability and from professional disciplinary action. There are additional protections for participating providers described in the law.

**For more information:** Compassion & Choices of Washington: [www.compassionwa.org](http://www.compassionwa.org), [info@compassionwa.org](mailto:info@compassionwa.org), 206.256.1636 or 1.877.222.2816 toll-free.

Washington Department of Health resources on Death With Dignity: [www.doh.wa.gov/dwda/](http://www.doh.wa.gov/dwda/).