

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 25, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:30 a.m. on the above date in Room 415 of the State Capitol Building.

ROLL CALL:

All members were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Senator Goodover - District 22
Senator Thiessen - District 27
Sharon Finney - Great Falls
Gerald Neely - Montana Medical Association
Chad Smith - Montana Hospital Association
Mike Foley - Helena
Senator Dover - District 24
Dr. McCarthy DeMere - Memphis, Tenn.
John Frankino - Montana Catholic Conference

CONSIDERATION OF SENATE BILL 75:

At this time, Senator Turnage, Chairman, allowed the proponents of the bill 40 minutes and the opponents the last 40 minutes of the meeting.

Senators Goodover and Thiessen are co-sponsors of S.B. 75. Senator Thiessen said that this bill came about because he wanted it for himself. He then told the committee that the state of California now has a living will statute. However, he also said that he is not in favor of mercy killings or euthanasia. He then said that a few lawyers believe this bill may be unconstitutional, and that the key words in the bill are "natural survival".

Senator Goodover then explained that they had amendments to propose to S.B. 75, and he went over them section by section. He gave a copy of the proposed amendments to the committee. (See Exhibit 1)

Sharon Finney of Great Falls, a proponent of Senate Bill 75, appearing for herself as a private citizen, said she felt very strongly about this bill as she had seen three of her family suffer needlessly while dying. (See Exhibit 2)

Gerald Neely, representing the Montana Medical Association, said that they were neither for nor against Senate Bill 75. However, they do feel that the bill needs amending.

Chad Smith, representing the Montana Hospital Association, said that they were neither for nor against S.B. 75, but that they felt it needed clarification in the provisions on liability.

Senator Thiessen then addressed the committee again stating that the living will is specifically against suicide or mercy killings. He read a statement from an R.N. who was definitely for this bill because of situations she had witnessed as a nurse in hospitals.

Senator Goodover left supporting material with the committee. (See Exhibit 3)

At this time the opponents to Senate Bill 75 were heard by the committee.

Mike Foley, Helena, was the first opponent to speak, saying that he is getting up in years now and that 15 years ago some of the medical profession told him that he had only a short time to live, and that he still is alive and happy. He said he fears this bill is a monster and soon doctors will be able to kill the elderly. Further, he said that he will go when "the good Lord calls me", but he does not trust or want others to say when he is going to die.

Senator Harold Dover of Lewistown then spoke against S.B. 75, telling the committee that this bill must not be taken lightly, and that doctors and others do not feel we need this legislation. He further said that doctors now talk to the family or the patient and solve these problems of a dignified or natural death. Senator Dover said he believes the bill is too ambiguous in that it leaves the way open to later on allow people to get help to determine when some are going to die. He presented a statement to the committee against S.B. 75. (See Exhibit 4) He also gave the committee a copy of a letter he had received from a constituent against S.B. 75. (See Exhibit 5)

At this time, Senator Dover introduced Dr. McCarthy DeMere of Memphis Tennessee, and passed to the committee members a leaflet about Dr. DeMere. (See Exhibit 6) Dr. DeMere further introduced himself to the committee stating that he is presently a plastic surgeon in Memphis and that he has been also a licensed attorney for the past 16 years. He testified against Senate Bill 75 saying that the living will, the right-to-die, and death with dignity are all the same thing, and that nobody from the Right-to-Die Society will deny this. He said that Senate Bill 75 was hiding behind a severability clause. He further told the committee that, from a medical standpoint, there is no need for a bill of this type, and that there is no place in the Bible which says there is a "right-to-die". Dr. DeMere said that if Montana would adopt Senate Bill 75 it would be a "nightmare", and that what it is doing is breaking up the family. He gave the committee copies of "My Final Wishes" and "That Others May Know", pamphlets which give people hope, and stated that now we must go back to trust and integrity also.

John Frankino, Director of the Montana Catholic Conference, said they have carefully reviewed Senate Bill 75 and that their study paper had been presented earlier. That paper objects to

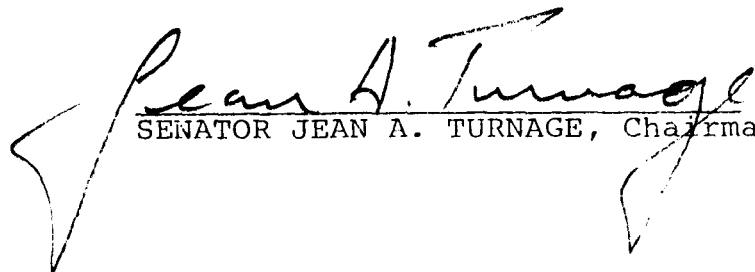
Senate Bill 75 because it could lead to euthanasia. He said that S.B. 75 was not desirable or necessary.

Mrs. Joan Zormin of Lewistown was present for the meeting but did not testify. However, she presented the committee with the attached statement. (See Exhibit 7) In her statement she said that she believed a bill such as S.B. 75 will open the door to direct euthanasia or mercy killing.

Chairman Turnage then thanked those attending the hearing and allowed the committee members to ask questions of Dr. DeMere who was leaving shortly to return to Memphis.

Dr. DeMere told the committee that the American Bar Association had made a "Definition of Death" which goes beyond the definition now used in Montana which is presently only "heartbeat and respiration". He said that their definition contains only 27 words and makes it very clear when death actually occurs. He presented the committee with a pamphlet on the current definition of "Death" as approved by the House of Delegates of the American Bar Association on February 24, 1975.

There being no further time for discussion, the committee adjourned at 11:35 a.m. to reconvene at 9:30 a.m. on Wednesday, January 26, 1977, in Room 442, the Judiciary committee room.


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1/25/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

Each day attach to minutes.

7-24-77 S.B. - 75 - MONTANA NATURE DEATH ACT

9³⁰ AM - JUDICIARY COMMITTEE

(Exhibit #1)

1. SEN. CORNIE THIESSEN - INTRODUCTORY COMMENTS

2. SEN. PAT AL. GOODOVER - READ THE BILL +
EXPLAIN AMENDMENTS -

THESE ARE AMENDMENTS NOW BEING SUBMITTED
TO AMEND THE CALIFORNIA LAW - AND ALSO BEING ADOPTED
IN BILLS BEFORE THE MARYLAND LEGISLATURE, NEW YORK
NEW JERSEY, AND IN A TOTAL OF 17 STATES BESIDE
MONTANA -

Now, Mr. Chairman - Sen. Thiesen has some supporting
information to present. (Letter from R.N.)

Sen. Goodover - Rec. of Statement

Sen. Thiesen - Letter to Sen. Hagellaker - (distribute
copies to Committee members)

Ask for added preferences from audience -

Thank you very much of good faith

Mr. Chairman - and members of the Committee - we
have added exhibits to support the Bill before you -
but rather than take more time here, we will submit
the same to be included in the minutes of the hearing -
and request the privilege of closing after hearing the
opponents -

^{Mr. Foley}
The Gentleman who spoke first feels this bill is mandatory — It is not!! — If you don't care to sign the Living Will — you are not forced to — no one can tell you you have to refuse the life support systems — And ~~so~~ likewise, you should not preclude the right of someone else to choose to put the Living Will into effect — there is a need — there ^{is} no requirement.

Sen. Dore — The bill is in 17 States now — And will be considered in more of them next year. The same arguments against this bill were argued in California — and passed.

Dr. DeMeier — Memphis, Tenn.

None of you must execute a last will to distribute your property & other assets — Most lawyers urge you to do so — What asset is more important to you than your own body. Should you not

have the right to say how you want
it handled when the time comes?

The severability clause is standard in all or
most Statutes in Montana

Public Hearing of the Subcommittee on Health Care

The Assembly, State of New York

The Policy of the State of New York Towards Death

November 9, 1976

STATEMENT OF SIDNEY D. ROSOFF, PRESIDENT OF
THE SOCIETY FOR THE RIGHT TO DIE, NEW YORK, N. Y.

The Society for the Right to Die is the legislative arm of a growing Death with Dignity movement in the United States. Although legislative attempts to ease the dying process go back to 1906 when a bill was introduced in the State of Ohio, it was not until this year that a bill was enacted in the United States. On September 30, 1976, Governor Edmund G. Brown, Jr. of the State of California, signed Assembly Bill 3060, Chapter 1439, Laws 1976, the "Natural Death Act".

Californians are not the only concerned citizens to address themselves to the problem of the futile, unnatural, prolongation of the dying process. In the single calendar year of 1976 death with dignity bills have been considered

in sixteen states thus far.

A Legislative Manual, published by the Society for the Right to Die, an exhibit to this statement, sets forth the Death with Dignity bills introduced in previous years in ten states. A new manual containing an analysis of these recent bills is being published and will be sent to each of you.

Why has there been so much interest in the subject of Death with Dignity in recent years? Why do so many people wish to execute Living Wills? (Almost two million have been distributed).

One reason is a very real fear of becoming inanimately maintained objects as a result of advanced medical technology. As a concomitant of extending the period of living, we also find that zealous application of medical technology frequently lengthens the dying process without benefiting the patient. In fact, a competent physician can now keep a patient dying for quite an extended period of time.

Physicians and hospitals have been slow to face up to this problem. When two major hospitals, both teaching arms of Harvard Medical School, announced that they had begun to specifically define procedures for treatment of

the terminally ill, an editorial in the New England Journal of Medicine applauded the beginning of the end of secrecy in the treatment of the dying patient saying "hospitals are coming out of the closet".

The training and the inclination of the physician is to regard death as the enemy to be defeated at all costs and to forget that death can be a friend. His training and what he may regard as his professional duty may not be in the interests of the dying patient. In this the physician needs guidance. What are the wishes of the patient and can he observe them with impunity?

It is in response to this vacuum that the Living Will was devised by the Euthanasia Educational Council. It is a simple statement by the individual -- an expression of how he wishes to be treated by his physician.

While every individual does possess the right to refuse treatment (see the Patient's Bill of Rights approved by the American Hospital Association, as an exhibit hereto), that right is often muted by circumstances. The patient may be incompetent as death approaches and the family may be unwilling or unable to support the patient's wishes.

Even if he has signed a Living Will, it is only advisory. Consider the letter written from a distinguished hospital in Texas to an individual who had mailed the hospital his "Living Will" with the request that the hospital keep it in an accessible place in the event that it was necessary to use it. The hospital stated in a letter, "After consultation with our legal counsel, it is necessary that I advise you that (we) will not be able to honor such a will. In view of pending litigation and recent court decisions, it is the opinion of our counsel that such a document does not constitute a valid commitment on the part of the hospital. Therefore, in the event you are hospitalized as a patient here, every measure will be taken to see that your life is sustained to the best ability of our staff. Every effort will be taken to restore your health to an acceptable level. I felt it was necessary to advise you of this decision in order that you would not be under the misconception that the 'Living Will' would be honored in the event you were hospitalized."

Legislation is needed to define the rights of patients and to protect the physician who acts in accordance with

those rights. It is for this reason that the Society for the Right to Die has proposed a Model Bill and that the State of California has enacted a variation of that bill.

In your consideration of the Model Bill please keep in mind the following three points:

(1) An individual can only define the limits of his own care and treatment and therefore can execute a document only on his own behalf.

(2) The Bill does not provide nor permit active steps to terminate life. It simply provides for the termination of treatment which extends the dying period.

(3) It should be welcomed by the medical profession. It provides guidelines so the physician, the hospital, the nurses, and others involved in the patient's care can obey the wishes of their patients without fear of liability.

The strongest advocates of "Death with Dignity" legislation are those who have had the traumatic experience of seeing a loved one maintained in an intensive care unit and wishing that the machines were not so efficient. One need only consider the case involving a Florida legislator,

who is also a physician, who actively fought against "death with dignity" legislation for eight years. This year he sponsored a state constitutional amendment to guarantee Floridians the right to die with dignity. He changed his mind after participating in a decision to disconnect a machine which was maintaining a close friend of his whose brain had been destroyed by a cerebral hemorrhage. He stated that something had to be done to give doctors public support "for making this terrible decision".

For these reasons we urge you to consider the introduction of the Model Bill of the Society for the Right to Die.

(Officer L)

NAME: SHARON FINNEY DATE: 25 JAN 77

ADDRESS: Box 269 RT. 4 GREAT FALLS

PHONE: 453-2783

REPRESENTING WHOM? PRIVATE INDIVIDUAL

APPEARING ON WHICH PROPOSAL: SB 75

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: ATTACHED

(Exhibit # 3)

Not wrong to allow death

BOSTON SUNDAY GLOBE JAN. 12, 1936

United Press International

HARTFORD--Connecticut's Roman Catholic Bishops say it is morally permissible to discontinue extraordinary means used to prolong life and allow terminally ill persons to die naturally.

"God's will is that we are mortal and according to mortal law, it is not necessary to prolong the time of death by every possible means for as long as possible," Archbishop John F. Whealon said in a statement Friday.

The bishops issued a pamphlet entitled, "On Death and Dying," to answer questions on medical care for the dying now that medical technology can prolong life beyond any point known in the past.

"Ordinary means" should be used to prolong life, but "extraordinary means" need not be used or continued in use, the bishops said.

"Ordinary means may be defined as all medicines, treatments and operations which offer a reasonable hope of success and which can be obtained and used without excessive pain, excessive expense or other excessive difficulties," the pamphlet said.

The bishops defined "extraordinary means" as "all

operations which cannot be obtained or used without excessive pain, excessive expense or other excessive difficulties, or which, if used, would not offer reasonable hope of success."

The bishops reaffirmed that euthanasia—the deliberate causing of the death of a human being who is termi-

nally ill or incapable of living a so-called meaningful life—is forbidden.

"It is clear that withholding extraordinary means is not euthanasia," they said.

Whealon said the decision to withhold extraordinary life support systems should be made primarily by the patient or by the family.

Whealon cautioned against signing a "Living Will" that does not clearly differentiate between ordinary and extraordinary means. "Like any document, read it carefully, read the fine print and see what it says and means," he said.

(Exhibit #4)

The natural death bill must not be taken lightly. We could be the second state in the union to pass such a bill and this may have a lot of bearing on how other states may look at this idea.

We must be sure it does not go beyond its original intent and I feel there is danger this bill will go beyond original intent. In talking with doctors in my home town and others, it seems to be their consensus that we do not need this legislation -- that how the final hours of terminal illness will be dealt with can be properly handled either by consultation with the patient or members of the family. I believe this bill is too ambiguous; it has too many loopholes and is irresponsible legislation which leaves the door open for adding amendments later on where we can get help to die.

How do you define a terminal illness? We are all terminal to a degree. We are all going to die in time. Will a terminal illness be two weeks? Two months? Six months? How can we define this? I would like to read a letter from one of my constituents which I feel explains this very well (READ LETTER).

It is very doubtful if a signed document, as is called for in this bill, would hold up in court. In fact, I believe we would have to change the criminal code to allow doctors to be able to carry out provisions of this bill. Notice, doctors cannot be held accountable for any of his acts. This is against the best interest of society. Furthermore, it states if he refuses to stop treatment, he can be held for unprofessional conduct.

We are very fortunate to have with us today Dr. DeMere, who has made a special trip from Memphis, Tennessee just to be at this hearing because what we do in Montana with this bill will undoubtedly

have national impact. Dr. DeMere is immediate past president of a 1,000 member medical society. He is a member of the board of directors of the local bar association. He teaches law classes at night and practices plastic surgery in the day.

Dear Senator Dover,

Eight years ago today, my daughter died of an incurable, and therefore terminal, illness. It was 'terminal' all the 18 1/2 years of her life. She had keen empathy for others, and many moments of reflection where she felt her suffering not so much a burden to herself as to those who loved her. She was a happy and devout young woman in spite of this, and filled her last years with all the joys of life of any normal adolescent. She loved life. She fought for life, even as she prepared for death.

But I wonder today, with gentle and sensitive persons like her, what terrible additional pressures the Natural Death Act would add to the burden they already carry..... Would they feel obliged, out of love for their families, to refuse extraordinary means of life support — Might you or I, in the same situation? — And would that be an act of clear and competent free will.... or would it be enforced suicide?

There is no law now that says we must use extraordinary means to survive. In fact, you or I could be in need of some major surgery or treatment right now, but no armed officer is going to force us to enter a hospital, or even to see a doctor if we do not wish to do so.

Of course, with the Natural Death Act, no armed officer will make us sign the directive to stop treatments, either.... At least, not yet...

But the pressure of this law on kind and sensitive persons who love life, but who are also terminally ill, is a real form of cruel and inhuman punishment to already suffering (and innocent) people!

Maybe someday your own child, or parent, or spouse, will make that loving sacrifice for you, and have someone "pull the plug".... And maybe a week later, someone else will find a cure....

Let us not legislate compassion! Let us not put a law-number on love!

I beg you, in the name of my departed daughter, and in behalf of many loving and sensitive terminally ill who still love life:

Do not permit the Natural Death Act to become Montana law.

Sincerely,

Robert Stuckert

McCarthy DeMere

M.D., L.L.B.

Dr. DeMere is currently on the Executive Committee of the Memphis and Shelby County Bar Association, and also President of the Memphis and Shelby County Medical Society.

As chairman of the Medicine and Law Committee of the I.N.C.L. Section, A.B.A., he proposed the "Definition of Death," which was overwhelmingly adopted as policy by the A.B.A. House of Delegates, February 24, 1975.

With the many Medico-Legal problems facing the country today, he offers his help and experience in the two professions to the A.B.A.

Vote for

DR. DeMERE

in August.

(Exhibit #6)

CANDIDATE

ASSEMBLY DELEGATE

A.B.A.



Dr. McCarthy DeMere

ATTORNEY AND SURGEON

ANNUAL MEETING, A.B.A.

ATLANTA, GEORGIA

AUGUST, 1976

NAME:

Mr. Joan Zorn

DATE:

1/25/77

ADDRESS:

316 W. Montana St, Leimertown, Cal. 90031

PHONE:

538-5257

REPRESENTING WHOM?

Montana Right to Life, and self

APPEARING ON WHICH PROPOSAL:

SB 75

DO YOU:

SUPPORT? ☐

AMEND? ☐

OPPOSE? ☒

COMMENTS:

I believe that a bill such as SB 75
will open the door to direct abortion, and
killings.

NAME: CHAD SMITH DATE: 1-25-77

ADDRESS: Box 604

PHONE: 442-2980

REPRESENTING WHOM? Mont Hope Arm

APPEARING ON WHICH PROPOSAL: SB 75

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: _____

Clarification in provisions on liability is needed.



PEACE OF MIND PLANNING

My Final Wishes



DEATH --

a current definition.

Presented to and approved by the Council,
Insurance, Negligence and Compensation
Law Section, American Bar Association
at its Annual Meeting, Honolulu, Hawaii,
August 12, 1974

Law and Medicine Committee
McCarthy DeMere, M.D., LL.B.
Chairman

VOTED & APPROVED
HOUSE OF DELEGATES
ABA, FEB. 24, 1975