

Testimony of Sharon Toborg, Policy Analyst, Vermont Right to Life, on S.74

House Human Services Committee April 7, 2022

Good morning and thank you for the opportunity to testify. My name is Sharon Toborg, and I am Policy Analyst for the Vermont Right to Life Committee. Since our founding in 1974, Vermont Right to Life has been concerned for the terminally ill and elderly at risk of assisted suicide and euthanasia. VRLC was part of the coalition that worked for more than a decade to prevent passage of assisted suicide legislation - a coalition that included disability rights groups and Vermont health care professionals. VRLC opposed passage of Act 39 for several reasons, including the lack of a meaningful way to protect vulnerable people from being coerced or manipulated into “choosing” assisted suicide; the anticipated expansion of what would be classified as a “terminal condition;” as well as the inequity of providing some people with suicide prevention while others are given suicide help.

It is important to recognize that Act 39, as noted on the Vermont Department of Health website, “did not vest any government Agency with oversight of the Act.” Very limited information on assisted suicide is collected in Vermont, and it is impossible to know in every case that the decision is the true, informed choice of the patient. We know about the case of Kate Cheney from Oregon. According to several sources, Kate’s daughter went “doctor shopping” after Kate’s own doctor declined to write the prescription out of his concern for her competence due to dementia. He referred her to a psychiatrist, who also declined to write the prescription. Kate’s daughter told a reporter that she found the safeguards to be a “roadblock.” Eventually a physician was found to write the prescription and Kate Cheney died from the lethal dose.

S.74 would make it even harder to determine if a patient was feeling pressured or coerced, and make the “doctor-shopping” seen in the Cheney case easier. Under Act 39, not only is the prescribing physician required to do a physical examination of the patient, a second physician is required to conduct an evaluation of the patient. While it is not explicit in statute, the practice under Act 39 has been that this second opinion would also be the result of an in-person consultation.

But S.74 would allow a physician to prescribe the lethal dose of medication without ever meeting the patient, or conducting an evaluation of the patient, in person. While telemedicine is a useful tool in some cases, we all know from the past two years that online communication is not the same as in-person communication, especially when you are meeting someone for the first time. While it has been the practice under Act 39 that the second physician also conducts an in-person exam, the law does not explicitly require it. Under S.74, the patient would not have to be evaluated in person by either the prescribing or second physician, rendering the safeguard of a second opinion meaningless. The physician may have no relationship with or knowledge of the patient, other than reading a medical record. In addition, the medical records could be provided by the patient; they would not necessarily be sent by the physician who performed the exam. The patient would be able to limit the information sent, for instance by leaving out mental health records. The prescribing and secondary physicians would not know if they had received all relevant medical records.

The lack of a required in-person meeting between the physician and patient becomes even more concerning in light of Oregon’s 2021 Death with Dignity annual report, which lists anorexia as the underlying condition for which lethal drugs were prescribed. This is very significant as it marks the first time a mental illness has been included as an underlying condition.

As it is literally a matter of life or death, it should be required that the prescribing physician examine and evaluate the patient in-person.

When Act 39 was passed, the lethal drugs commonly prescribed were Secobarbital and Pentobarbital. However, those drugs are no longer readily available in the U.S. due to their connection to execution by lethal injection. In recent years, proponents of assisted suicide have been experimenting with a variety of lethal drug cocktails, trying to find a combination that kills most efficiently. Given the ongoing changes being made to the drug protocol, its experimental nature, and side effects such as regurgitation and prolonged dying, immunity should not be granted to pharmacists and health care providers. The pharmacist currently providing the drug combination to patients states that he requires an indemnity agreement be signed to protect himself. I would hope the agreement also makes patients aware that an expectation that the drug combination will result in a quick, peaceful death may not be what happens.

In 2013, supporters of Act 39 insisted that the safeguards included were wanted and necessary. Now, they have done a 180, asking for some to be stripped away. What will they be asking from this body next?

Instead of removing safeguards, this committee should consider strengthening protections for patients. Is this the opportunity to vest a government Agency with oversight of Act 39? Require full disclosure of the experimental nature and potential side effects of the lethal drugs being prescribed? Take action to make sure mental health conditions do not become the basis for assisted suicide in Vermont? Ensure that the physicians involved have a bona fide relationship with the patient?

More protections are needed, not less. I urge you to vote no on S.74