

**PERSPECTIVES OF AN ESTATE PLANNING AND PROBATE LAWYER**  
**ON PROPOSED PHYSICIAN-ASSISTED SUICIDE**

As a practicing lawyer for 37 years who has specialized in estate planning, probate, protective proceedings and elder law over the last 13 years, I have considerable experience with people and families to whom the so-called Death with Dignity Act applies. The Act, as false in its titling as it is in its text, gives me grave concerns based upon experience about its potential for abuse, and in particular the lack of any meaningful safeguards that would prevent it from becoming a simple warrant for the extermination of society's unvalued. This is because while they might look good on paper, the "safeguards" would not in any way prevent physician-assisted suicide from becoming in practice euthanasia. And that euthanasia would be visited in the vast majority of cases on Colorado's elders, disabled, impaired, and emotionally vulnerable. Three examples from my own experience serve to illustrate:

1. John and Amy had been married for 57 years. When John passed away, Amy was devastated. Her best friend, her lover, her bridge partner, her husband, the father of her children was gone, leaving an emotional vacuum which was soon filled with despair, depression, and hopelessness. She openly expressed that she did not want to continue to live without him. Into that vacuum walked her step-daughter, whom we'll call "Maleficent," who began surreptitiously taking valuables from the house and insinuated herself back into the life of somebody she'd ignored for decades.

John's death, as is often the case, prompted a gradual, but steepening cognitive decline for Amy. She began to see herself as friendless and loveless, and her isolation from any form of emotional support contributed to a feeling of purposelessness. She stopped eating. Her son, who lived out of state, could not visit her very often and so in her ever more-constricted world, Amy began increasingly to rely upon her step-daughter, who when she visited always left Amy more depressed than when she arrived.

I can't tell you how many times Amy expressed a desire to end her life. If she had, and this bill were law, Maleficent and her boyfriend would have been the witnesses. The undue influencer would be the first to declare Amy free from undue influence. Amy would be dead today. Instead, what doctors thought to be an irreversible decline has reversed itself. Gradually, Amy rebuilt family, friends, relationships, and developed new interests (she fancies herself a painter). She looks forward to each day. She loves her life in a way that just one year ago she would not have thought possible.

2. Burt, 79, was diagnosed with cirrhosis of the liver, his doctor saying "he could go tomorrow." He had just one child, a daughter whom he loved, but who had become estranged over the years. With the diagnosis, on numerous occasions he told us he had

a gun, and was going to kill himself. He wasn't kidding. One day care providers going to his home discovered he had a gun hidden behind his back; they refused further care. Eventually, his friends were able to confiscate the gun without his knowledge. Although he grumbled about losing his "independence", Burt lived another 18 months, during which time he was able to repair his relationship with his daughter, resume playing cards with his friends, continue to live in the home he loved, and died peacefully knowing, for the first time, that he was loved and appreciated. Had this law been in place, there is no question but that he would not have had those last 18 months. I mark his recovery from the time that his friends expressed enough concern about him to take his gun.

3. Chuck suffers from dementia. An outdoorsman all of his life, after his wife passed away it became apparent that she had been compensating for his dementia, seeing to it that he ate well, that the bills were paid, that he made his doctors' appointments, that he took his medicines. It became clear though, that he would need a guardianship and conservatorship, roles his son took on. Burt continues to live at home, but his at-home care, which now must be full time, is costing close to \$8,000 a month. Because he's a retired officer, his retired pay accounts for a good portion of it, but he is having to spend into his savings.

His son never fails to remind him how expensive his care has become, how much money could be saved if he just went into assisted living or nursing home care, and implicitly what a heavy burden he has imposed on him as his guardian and conservator. Chuck's son, too, could be a witness to a physician-assisted suicide decision he implicitly encourages.

The points behind these three real life examples are these:

1. The actual people affected by the law are not 29 year-old married women like Brittany Maynard with a very rare affliction. In, Belgium, the Netherlands, Washington, and Oregon they are typically elderly people, usually widowed, nearly all suffering from some form of depression or feeling of loss, most infirm, some with mild cognitive impairment. They are, in short, Colorado's most vulnerable citizens. Citizens that until now the State felt a responsibility to protect. After all, our code provides that somebody who expresses a desire to kill herself can placed into 72 hour involuntary commitment to prevent her from doing just that. Our criminal code exempts people from assault and battery laws where they physically intervene to prevent a suicide.
2. The "protections" built into the law are, I can state unequivocally, illusory, if not outright deceptive. In all three of the above cases, they would have qualified for physician-assisted suicide, and in at least two of them, I've little doubt but that they

would have followed through. Let me underscore that: **These people are alive today, or lived well past their six months, only because Colorado does not have physician-assisted suicide.** Let me be specific:

- a. The requirement to witness the written request permits a person who benefits financially to be a witness. Nothing prevents the second witness from being a close friend or relative. This obvious conflict of interest is not permitted by our current law governing advance medical directives.
- b. There is no requirement for the witnesses to have any objective, independent knowledge of the state of mind, history, or background of the patient. Anybody can be brought in from the street. How does a person “look” who’s been reminded constantly of how expensive his care has become, and how he’s draining his estate? Undue influence is a nice legal concept, but as the courts have observed, it is seldom done publicly, and in practice very hard to prove in court. With this set-up undue influence *can never be proved*. Many of the seniors I know are subtly made to feel guilty for the burden they are to their family. This is especially the case where at home care or nursing home care provides a steady drain on what are often limited resources.
- c. If this law passes, the written request will, in short order, be made into a Colorado form that will be used and marketed as “Colorado DWD Act Compliance” form. Law firms may well position themselves to specialize in such things, and to advertise their assistance in facilitating the patient’s suicide. I can assure you that they will use their administrative staff to witness the documents, just as they often do for wills, medical powers of attorney, and advance medical directives. The bottom line is this: The requirement for witnesses does *nothing* to actually prevent a rogue physician or an overreaching family member, or both from pressuring the senior into a decision.
- d. The attending physician, like witnesses, may also have a built-in conflict of interest. Although the physician is barred from being a witness, the decision that a person qualifies for physician-assisted suicide is very nearly wholly in the physician’s hands. A lethal drug overdose is always going to be less expensive, and from a strictly utilitarian point of view, it is the complete, one-size-fits-all answer to intractable patients and intractable conditions. The six month determination, as my friends in hospice will tell you, is anything but certain. And of course, with this bill, it becomes unreviewable.

- e. There is no effective control of the lethal drugs once dispensed. The ingestion is not supervised, and a coroner need not investigate the death. What, in this legislation, prevents Maleficent from giving mom some deadly-spiked juice once she brings it home? The answer is, nothing.
- f. Proponents of this law are at pains to remind us that this is not euthanasia. The claim rests entirely upon the so-called safeguards, safeguards which I know, and the proponents know, are in practice purely illusory.

Seniors, the disabled, the victims of traumatic brain injury, the bereaved, these are the people who will be swept up in this law, because this law communicates to them that their lives are in some fashion less valuable, that Colorado is no longer interested in protecting them. For 140 years, Colorado has stood for the belief that all human life is precious, valued, and to be protected. Just last year, the Assembly enacted legislation that made elder abuse mandatory reporting with criminal sanctions on hand for failure. This law, which falsely flies under the banner of choice and patient autonomy, subtly inserts the State in creating a new sliding scale of the value of life—one which limits, not enlarges, the patient's choice. The ultimate elder abuse is the hastening of death based upon false ideas about the economic value of the individual and the commoditization of human life.

What confounds me most about this initiative is that I hear nothing from my clients that cry out for physician-assisted suicide. Our seniors, our disabled, our emotionally crippled people cry out for Colorado's help, for our understanding. They are not asking for Colorado's help to hasten their death.

When my mother passed away in 1997, my father, suffering from arteriosclerotic heart disease and COPD, knelt at her side and pled, "Take me with you." I am grateful beyond words that the so-called Death with Dignity Act was not in effect then. I would not have wanted my father taken from me and his grandchildren one moment before his time arrived.

When we tell our most vulnerable citizens that their life is less worthwhile, less valuable to us, we don't give them autonomy, we impose upon them the implicit message that we do not value their lives, see their existence only as that of an entry on a balance sheet, and that, all things considered, we are well rid of them. That is not the Colorado I love.

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