

# ***The Oregon Death with Dignity Act: A Guidebook for Health Care Professionals***

## ***Developed by***

The Task Force to Improve the Care of Terminally-Ill Oregonians

## ***Convened by***

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## **CURRENT STATUS of the Oregon Death with Dignity Act**

On November 6, 2001, U.S. Attorney General John Ashcroft issued an opinion that, if allowed to take effect, would prohibit the use of controlled substances under the Oregon Death with Dignity Act. Attorney General Ashcroft's opinion interprets the Controlled Substances Act to the effect that controlled substances may not be used with the intent of hastening death. This ruling may have unintended consequences resulting in the under-treatment of pain.

In a statewide survey, some Oregon physicians reported that physicians often under-prescribe pain control medication for those who are dying. One of the reasons reported for this under-prescribing is fear of investigation by the Drug Enforcement Administration (DEA). Under the current Federal position, the DEA may investigate physicians who use controlled substances to deliberately hasten death.

The Task Force to Improve the Care of Terminally-Ill Oregonians remains neutral on the Oregon Death with Dignity Act, neither supporting nor opposing the option. The Task Force is united in its efforts to gather data about changes in end-of-life care in Oregon and to promote education and policy that facilitate comfort in life's final months.

The Task Force is concerned about the continued under-treatment of pain in some dying patients and about perceived threats of investigation that may increase physician fears. The Task Force encourages physicians to guard against any reduction of medication in their treatment of the suffering of those who are dying. The Task Force recommends that physicians carefully document their intent when prescribing pain control medications. When controlled substances are being prescribed for comfort, the physician's progress notes should clearly document the symptom being treated and that the intent of the medications is to relieve suffering.

On April 17, 2002, U.S. District Judge Robert Jones issued a permanent injunction against Attorney General Ashcroft's order, leaving physician-assisted suicide (with controlled substances) in place. The U.S. Department of Justice immediately appealed from Judge Jones' order to the Ninth Circuit Court of Appeals.

On May 26, 2004, the Ninth Circuit Court of Appeals upheld the injunction granted by the District court. The Ninth Circuit held that the Attorney General's interpretation of the Controlled Substances Act of 1970 (CSA) impermissibly interfered with the state regulation of medical practice, contradicted the plain language of the CSA, and exceeded the authority granted to the Attorney General. Significantly, the Ninth Circuit held that the Attorney General's interpretation of the CSA was not entitled to deference for the reason that it conflicted with patent Congressional intent. The Ninth Circuit denied the Attorney General's request for rehearing on August 11, 2004.

The U.S. Supreme Court accepted review of the Ninth Circuit's decision on February 22, 2005, and heard oral argument on October 5, 2005. On January 17, 2006, the Court affirmed the Ninth Circuit's decision, concluding that the Attorney General had exceeded his authority in interpreting the federal Controlled Substances Act. By a 6 to 3 majority (Chief Justice Roberts and Justices Scalia and Thomas dissenting), the Court held that the Attorney General's interpretive authority did not extend to the criminalization of conduct authorized by state law. The Court further held that the Attorney General's interpretation of the statutory phrases "legitimate medical purpose" and "public interest" was not entitled to deference by the Court given the Attorney General's limited role under the Controlled Substances Act.

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