Overview of Massachusetts Ballot Question 2

On November 6, 2012, Massachusetts voters will be asked to approve or disapprove Question 2, a law proposed by initiative petition, "Prescribing Medication to End Life."

This proposed law would allow a physician licensed in Massachusetts to prescribe medicine, at a terminally ill patient's request, to end that patient's life.

The Massachusetts Medical Society is OPPOSED to Question 2

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MASSACHUSETTS
MEDICAL SOCIETY

Every physician matters,
each patient counts.

Summary of the Proposed Law

(Prepared by the Massachusetts Attorney General)

Law Proposed by Initiative Petition

Question 2: Prescribing Medication to End Life

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 1, 2012?

SUMMARY

This proposed law would allow a physician licensed in Massachusetts to prescribe medication, at a terminally ill patient's request, to end that patient's life. To qualify, a patient would have to be an adult resident who (1) is medically determined to be mentally capable of making and communicating health care decisions; (2) has been diagnosed by attending and consulting physicians as having an incurable, irreversible disease that will, within reasonable medical judgment, cause death within six months; and (3) voluntarily expresses a wish to die and has made an informed decision. The proposed law states that the patient would ingest the medicine in order to cause death in a humane and dignified manner.

The proposed law would require the patient, directly or through a person familiar with the patient's manner of communicating, to orally communicate to a physician on 2 occasions, 15 days apart, the patient's request for the medication. At the time of the second request, the physician would have to offer the patient an opportunity to rescind the request. The patient would also have to sign a standard form, in the presence of two witnesses, one of whom is not a relative, a beneficiary of the patient's estate, or an owner, operator, or employee of a health care facility where the patient receives treatment or lives.

The proposed law would require the attending physician to: (1) determine if the patient is qualified; (2) inform the patient of his or her medical diagnosis and prognosis, the potential risks and probable result of ingesting the medication, and the feasible alternatives, including comfort care, hospice care, and pain control; (3) refer the patient to a consulting physician for a diagnosis and prognosis regarding the patient's disease, and confirmation in writing that the patient is capable, acting voluntarily, and making an informed decision; (4) refer the patient for psychiatric or psychological consultation if the physician believes the patient may have a disorder causing impaired judgment; (5) recommend that the patient notify next of kin of the patient's intention; (6) recommend that the patient have another person present when the patient ingests the medicine and to not take it in a public place; (7) inform the patient that he or she may rescind the request at any time; (8) write the prescription when the requirements of the law are met, including verifying that the patient is making an informed decision; and (9) arrange for the medicine to be dispensed directly to the patient, or the patient's agent, but not by mail or courier.

The proposed law would make it punishable by imprisonment and/or fines, for anyone to (1) coerce a patient to request medication, (2) forge a request, or (3) conceal a rescission of a request. The proposed law would not authorize ending a patient's life by lethal injection, active euthanasia, or mercy killing. The death certificate would list the underlying terminal disease as the cause of death.

Participation under the proposed law would be voluntary. An unwilling health care provider could prohibit or sanction another health care provider for participating while on the premises of, or while acting as an employee of or contractor for, the unwilling provider.

The proposed law states that no person would be civilly or criminally liable or subject to professional discipline for actions that comply with the law, including actions taken in good faith that substantially comply. It also states that it should not be interpreted to lower the applicable standard of care for any health care provider.

A person's decision to make or rescind a request could not be restricted by will or contract made on or after January 1, 2013, and could not be considered in issuing, or setting the rates for, insurance policies or annuities. Also, the proposed law would require the attending physician to report each case in which life-ending medication is dispensed to the state Department of Public Health. The department would provide public access to statistical data compiled from the reports.

The proposed law states that if any of its parts was held invalid, the other parts would stay in effect.

A YES VOTE would enact the proposed law allowing a physician licensed in Massachusetts to prescribe medication, at the request of a terminally ill patient meeting certain conditions, to end that person's life.

A NO VOTE would make no change in existing laws.

Commonwealth of Massachusetts, Office of the Secretary of State:
http://www.sec.state.ma.us/ele/ele12/ballot_questions_12/quest_2.htm

Massachusetts Medical Society Policy

The Massachusetts Medical Society is opposed to Question 2.

In December 2011, the chief policymaking body of the Massachusetts Medical Society voted to oppose physician-assisted suicide. (This vote reaffirmed a policy established in 1999.) The policy also reaffirmed the Society's support for patient dignity and the alleviation of pain and suffering at the end of life:

> "The Massachusetts Medical Society will provide physicians treating terminally ill patients with the ethical, medical, social, and legal education, training, and resources to enable them to contribute to the comfort and dignity of the patient and patient's family." [1]

Lynda Young, MD, MMS past president, testified about the MMS policy at a hearing of the House Judiciary Committee on March 6, 2012:

> "As the AMA's Code of Medical Ethics states, 'It is understandable although tragic, that some patients in extreme duress… may come to decide that death is preferable to life. However, allowing physicians to participate in assisted suicide would cause more harm than good. Physician assisted suicide is fundamentally incompatible with the physician's role as healer. Instead of participating in assisted suicide, physicians must aggressively respond to the needs of patients at the end of life … Patients must continue to receive emotional support, comfort care, adequate pain control, respect for patient autonomy, and good communication.'
>
> "What is very clear to all is that there needs to be great compassion for our patients who suffer from terminal and debilitating diseases. The Society is committed to providing physicians treating terminally ill patients with the ethical, medical, social, and legal education, training, and resources to enable them to contribute to the comfort and dignity of our patients and their families." [2]

In an effort to educate and provide perspectives on both sides of the issue, the MMS has highlighted arguments put forth by others, with references for further reading.

[1]Massachusetts Medical Society News Release, Dec. 3, 2011. www.massmed.org/AM/Template.cfm?Section=MMS_News_Releases&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=65342

[2]Testimony before the Mass. House Judiciary Committee, March 6, 2012. www.massmed.org/AM/Template.cfm?Section=MMS_Testimony&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=69317

Overview of Key Arguments Against

The proposed safeguards against abuse are insufficient.

- "The law does not include enforcement provisions, investigation authority, oversight or data verification. The only foolproof safeguard is for the prescribing doctors. The law holds doctors only to a 'good faith' standard, which makes any safeguards unenforceable."[3]
- "One of the witnesses is allowed to be an heir who will benefit financially from the patient's death. The proposed act is a recipe for abuse in which an heir is allowed to help sign a patient up for the lethal dose and there is no oversight over administration."[4]

Assisted suicide is not necessary to improve the quality of life at the end of life.

- "Assisted suicide is unnecessary because current law gives every person the right to refuse lifesaving treatment, and to have adequate pain relief, including palliative sedation to die in your sleep."[5]
- Palliative care and hospice already can provide what terminally ill patients need, plus the assurance of sticking it out with the patient and family to the very end … Such end of life services have not been as widely recognized and utilized as they could be.[6]

Predicting the end of life within six months is difficult; sometimes the prediction is not inaccurate.

In some instances, a patient has been declared to be within months of death, and survived for many more months — even years — beyond the physician's prediction.

> "I have been humbled at times in my career by patients who seemed irretrievably at death's door, only to have them recover for reasons that are not always obvious. At the same time, I have seen patients suddenly die who were on the road to recovery and seemed to have turned the proverbial corner."[7]

In a study by Harvard University physician and sociologist Nicholas Christakis, 17 percent of hospice patients in the study outlived their prognosis.[8]

[3]Second Thoughts. www.second-thoughts.org

[4]Dore, Margaret. *The Massachusetts Assisted Suicide Initiative: A Recipe for Elder Abuse and More*. http://choiceisanillusion.files.wordpress.com/2011/12/mass_legal_entire_doc_001.pdf

[5]Ibid.

[6]Cist, Alexandra. Testimony before the Mass. House Judiciary Committee, March 6, 2012. http://doctorsagainstsuicide.com/?page_id=322

[7]Dorkin, Henry. Testimony before the Mass. House Judiciary Committee, March 6, 2012. http://doctorsagainstsuicide.com/?page_id=322

[8]Christakis, Nicholas A. "Death Foretold: Prophecy and Prognosis in Medical Care." University of Chicago Press, 2001. http://books.google.com/books?id=mgEUOpkh-y8C&pg=PA64&source=gbs_toc_r&cad=3#v=onepage&q&f=false

Overview of Key Arguments Against, continued

Doctors should not participate in assisted suicide.

American Medical Association: "Allowing physicians to participate in assisted suicide would cause more harm than good. Physician assisted suicide is fundamentally incompatible with the physician's role as a healer, would be difficult or impossible to control, and would pose serious societal risks."[9]

Lonnie Bristow, past president of the AMA: "Laws sanctioning physician assisted suicide serve to undermine the foundation of the physician-patient relationship, which is grounded in the patient's trust that the physician is working wholeheartedly for the patient's health and welfare."[10]

Overview of Key Arguments in Favor

The act would protect the right of individuals to make voluntary and informed decisions about end-of-life care.

- The act gives patients dignity, control, and peace of mind during their final days with family and loved ones.
- These most intimate, personal choices should remain in the hands of the patient, not the government.

The act contains strict safeguards to ensure that the patient is making a voluntary and informed decision.[11]

- Doctors are required to inform patients about all of their end-of-life care options, including palliative care, pain management, and hospice care.
- Two physicians must verify the mental competence of the terminally ill patient and the voluntary nature of the request.
- Patient must make 3 requests for the prescription — 2 oral and 1 written. There must be a 15-day waiting period between the first oral request and the writing of the prescription, and a 48-hour waiting period between the written request and the writing of the prescription.
- The terminally ill patient's written request must be independently witnessed by two people.
- Only the terminally ill patient may self-administer the medication.
- Only adult residents of Massachusetts may receive prescriptions under the act.
- The patient may change his or her mind at any time.

[9]American Medical Association. Code of Medical Ethics, Opinion 2.11 — Physician Assisted Suicide. Issued June 1994; updated June 1996. www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2211.page

[10]Testimony before the U.S. House Committee on Judiciary, April 29, 1996. http://judiciary.house.gov/legacy/2170.htm

[11]Dignity 2012. Key Facts About the Massachusetts Death With Dignity Act. www.dignity2012.org/?page_id=15

Overview of Key Arguments in Favor, continued

Oregon's history adequately addresses concerns about abuse.

Oregon enacted legislation in 1997 allowing a terminally ill patient to request a lethal prescription from a physician. Of the patients who requested such a prescription:

- 90 percent were enrolled in a hospice program
- 80 percent were diagnosed with cancer
- 94 percent informed their family of their decision
- There have been 935 prescriptions written for self-administered, lethal doses of medication. About one-third (339) never used the prescription. Of those who did not use the prescription, most died of their underlying illness.
- The most common reasons cited for requesting a prescription were:

  Loss of autonomy (90 percent)

  Less able to engage in activities making life enjoyable (88 percent)

  Loss of dignity (83 percent)[12]

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[12]Oregon Health Authority. Death With Dignity Act. http://public.health.oregon.gov/ProviderPartnerResources/Evaluationresearch/deathwithdignityact/Pages/index.aspx

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each patient counts.

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