

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka, William C. Galvin (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Death with Dignity.

PETITION OF:

NAME:

Mr. Albert E. Lipkind

DISTRICT/ADDRESS:

35 Lorraine Avenue
Stoughton, MA 02072

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO DEATH WITH DIGNITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Definitions

As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or

25 practice of a profession, and includes a health care facility.

26

27 (7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to
28 end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts
29 and after being fully informed by the attending physician of:

30

31 (a) His or her medical diagnosis;

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33 (b) His or her prognosis;

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35 (c) The potential risks associated with taking the medication to be prescribed;

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37 (d) The probable result of taking the medication to be prescribed; and

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39 (e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain
40 control.

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42 (8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a
43 consulting physician who has examined the patient and the patient's relevant medical records.

44

45 (9) "Patient" means a person who is under the care of a physician.

46

47 (10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of
48 Medical Examiners for the Commonwealth of Massachusetts.

49

50 (11) "Qualified patient" means a capable adult who is a resident of Massachusetts.

51

52 (12) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed
53 and will, within reasonable medical judgment, produce death within six months.

54

55 **Section 2. Who may initiate a written request for medication.**

56

57 (1) An adult who is capable, is a resident of Massachusetts, and has been determined by the attending
58 physician and consulting physician to be suffering from a terminal disease, and who has voluntarily
59 expressed his or her wish to die, may make a written request for medication for the purpose of ending his
60 or her life in a humane and dignified manner.

61

62 (2) No person shall qualify under the provisions of this act solely because of age or disability.

63

64 **Section 3. Form of the written request.**

65

66 (1) A valid request for medication under this act shall be in substantially the form described in Section 6,
67 signed and dated by the patient and witnessed by at least two individuals who, in the presence of the
68 patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and
69 is not being coerced to sign the request.

70

71 (2) One of the witnesses shall be a person who is not:

72

73 (a) A relative of the patient by blood, marriage or adoption;

74

75 (b) A person who at the time the request is signed would be entitled to any portion of the estate of
76 the qualified patient upon death under any will or by operation of law; or

77

78 (c) An owner, operator or employee of a health care facility where the qualified patient is
79 receiving medical treatment or is a resident.

80

81 (3) The patient's attending physician at the time the request is signed shall not be a witness.

82

83 (4) If the patient is a patient in a long term care facility at the time the written request is made, one of the
84 witnesses shall be an individual designated by the facility.

85

86 **Section 3. Attending physician responsibilities.**

87

88 (1) The attending physician shall:

89

90 (a) Make the initial determination of whether a patient has a terminal disease, is capable, and has
91 made the request voluntarily;

92

93 (b) Request that the patient demonstrate Massachusetts residency;

94

95 (c) To ensure that the patient is making an informed decision, inform the patient of:

96

97 (A) His or her medical diagnosis;

98

99 (B) His or her prognosis;

100

101 (C) The potential risks associated with taking the medication to be prescribed;

102

103 (D) The probable result of taking the medication to be prescribed; and

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105 (E) The feasible alternatives, including, but not limited to, comfort care, hospice care and
106 pain control;

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(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;

(e) Refer the patient for counseling if appropriate pursuant to Section 3B;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to this act and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day waiting period pursuant to Section 3E;

(i) Verify, immediately prior to writing the prescription for medication under this act, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of Section 3H;

(k) Ensure that all appropriate steps are carried out in accordance with this act prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l)(A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided the attending physician is registered as a dispensing physician with the Board of Medical Examiners, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule; or

(B) With the patient's written consent:

(i) Contact a pharmacist and inform the pharmacist of the prescription; and

(ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient.

(2) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate.

Section 3A. Consulting physician confirmation.

150 Before a patient is qualified under this act, a consulting physician shall examine the patient and his or her
151 relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is
152 suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made
153 an informed decision.

154

155 **Section 3B. Counseling referral.**

156

157 If in the opinion of the attending physician or the consulting physician a patient may be suffering from a
158 psychiatric or psychological disorder or depression causing impaired judgment, either physician shall
159 refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner
160 shall be prescribed until the person performing the counseling determines that the patient is not suffering
161 from a psychiatric or psychological disorder or depression causing impaired judgment.

162

163 **Section 3C. Informed decision.**

164

165 No person shall receive a prescription for medication to end his or her life in a humane and dignified
166 manner unless he or she has made an informed decision as defined in Section 1 (7). Immediately prior to
167 writing a prescription for medication under this act, the attending physician shall verify that the patient is
168 making an informed decision.

169

170 **Section 3D. Family notification.**

171

172 The attending physician shall recommend that the patient notify the next of kin of his or her request for
173 medication pursuant to this act. A patient who declines or is unable to notify next of kin shall not have his
174 or her request denied for that reason.

175

176 **Section 3E. Written and oral requests.**

177

178 In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a
179 qualified patient shall have made an oral request and a written request, and reiterate the oral request to his
180 or her attending physician no less than fifteen (15) days after making the initial oral request. At the time
181 the qualified patient makes his or her second oral request, the attending physician shall offer the patient an
182 opportunity to rescind the request.

183

184 **Section 3F. Right to rescind request.**

185

186 A patient may rescind his or her request at any time and in any manner without regard to his or her mental
187 state. No prescription for medication under this act may be written without the attending physician
188 offering the qualified patient an opportunity to rescind the request.

189

190 **Section 3G. Waiting periods.**

191

192 No less than fifteen (15) days shall elapse between the patient's initial oral request and the writing of a
193 prescription under this act. No less than 48 hours shall elapse between the patient's written request and the
194 writing of a prescription under this act.

195

196 **Section 3H. Medical record documentation requirements.**

197

198 The following shall be documented or filed in the patient's medical record:

199

200 (1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

201

202 (2) All written requests by a patient for medication to end his or her life in a humane and dignified
203 manner;

204

205 (3) The attending physician's diagnosis and prognosis, determination that the patient is capable, acting
206 voluntarily and has made an informed decision;

207

208 (4) The consulting physician's diagnosis and prognosis, and verification that the patient is capable, acting
209 voluntarily and has made an informed decision;

210

211 (5) A report of the outcome and determinations made during counseling, if performed;

212

213 (6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's
214 second oral request pursuant to Section 3E; and

215

216 (7) A note by the attending physician indicating that all requirements under this act have been met and
217 indicating the steps taken to carry out the request, including a notation of the medication prescribed.

218

219 **Section 3I. Residency requirement.**

220

221 Only requests made by Massachusetts residents under this act shall be granted. Factors demonstrating
222 Massachusetts residency include but are not limited to:

223

224 (1) Possession of a Massachusetts driver license;

225

- 226 (2) Registration to vote in Massachusetts;
227
228 (3) Evidence that the person owns or leases property in Massachusetts; or
229
230 (4) Filing of an Massachusetts tax return for the most recent tax year.
231

232 **Section 3J. Reporting requirements.**

233
234 (1)(a) The Department of Public Health shall annually review a sample of records maintained pursuant to
235 this act.

236
237 (b) The department shall require any health care provider upon dispensing medication pursuant to
238 this act to file a copy of the dispensing record with the division.

239
240 (2) The department shall make rules to facilitate the collection of information regarding compliance with
241 this act. Except as otherwise required by law, the information collected shall not be a public record and
242 may not be made available for inspection by the public.

243
244 (3) The department shall generate and make available to the public an annual statistical report of
245 information collected under subsection (2) of this section.
246

247 **Section 3K. Effect on construction of wills, contracts and statutes.**

248
249 (1) No provision in a contract, will or other agreement, whether written or oral, to the extent the provision
250 would affect whether a person may make or rescind a request for medication to end his or her life in a
251 humane and dignified manner, shall be valid.

252
253 (2) No obligation owing under any currently existing contract shall be conditioned or affected by the
254 making or rescinding of a request, by a person, for medication to end his or her life in a humane and
255 dignified manner.

256
257 **Section 3L. Insurance or annuity policies.**

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259 The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate
260 charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request,
261 by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a
262 qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner
263 have an effect upon a life, health, or accident insurance or annuity policy.

264
265 **Section 3M. Construction of Act.**

266

267 Nothing in this act shall be construed to authorize a physician or any other person to end a patient's life by
268 lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this act shall not, for
269 any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law.

270

271 **Section 4. Immunities; basis for prohibiting health care provider from participation; notification;**
272 **permissible sanctions.**

273

274 Except as provided in Section 4B:

275

276 (1) No person shall be subject to civil or criminal liability or professional disciplinary action for
277 participating in good faith compliance with this act. This includes being present when a qualified patient
278 takes the prescribed medication to end his or her life in a humane and dignified manner.

279

280 (2) No professional organization or association, or health care provider, may subject a person to censure,
281 discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for
282 participating or refusing to participate in good faith compliance with this act.

283

284 (3) No request by a patient for or provision by an attending physician of medication in good faith
285 compliance with the provisions of this act shall constitute neglect for any purpose of law or provide the
286 sole basis for the appointment of a guardian or conservator.

287

288 (4) No health care provider shall be under any duty, whether by contract, by statute or by any other legal
289 requirement to participate in the provision to a qualified patient of medication to end his or her life in a
290 humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's
291 request under this act, and the patient transfers his or her care to a new health care provider, the prior
292 health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the
293 new health care provider.

294

295 (5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another health care
296 provider from participating in this act on the premises of the prohibiting provider if the prohibiting
297 provider has notified the health care provider of the prohibiting provider's policy regarding participating
298 in this act. Nothing in this paragraph prevents a health care provider from providing health care services
299 to a patient that do not constitute participation in this act.

300

301 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider
302 may subject another health care provider to the sanctions stated in this paragraph if the sanctioning health
303 care provider has notified the sanctioned provider prior to participation in this act that it prohibits
304 participation in this act:

305

306 (A) Loss of privileges, loss of membership or other sanction provided pursuant to the
307 medical staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned

308 provider is a member of the sanctioning provider's medical staff and participates in this act while on the
309 health care facility premises, as defined in M.G.L. Ch. 111, S.25B, of the sanctioning health care
310 provider, but not including the private medical office of a physician or other provider;

311

312 (B) Termination of lease or other property contract or other nonmonetary remedies
313 provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a
314 provider panel, if the sanctioned provider participates in this act while on the premises of the sanctioning
315 health care provider or on property that is owned by or under the direct control of the sanctioning health
316 care provider; or

317

318 (C) Termination of contract or other nonmonetary remedies provided by contract if the
319 sanctioned provider participates in this act while acting in the course and scope of the sanctioned
320 provider's capacity as an employee or independent contractor of the sanctioning health care provider.
321 Nothing in this subparagraph shall be construed to prevent:

322

323 (i) A health care provider from participating in this act while acting outside the
324 course and scope of the provider's capacity as an employee or independent contractor; or

325

326 (ii) A patient from contracting with his or her attending physician and consulting
327 physician to act outside the course and scope of the provider's capacity as an employee or independent
328 contractor of the sanctioning health care provider.

329

330 (c) A health care provider that imposes sanctions pursuant to paragraph (b) of this subsection
331 must follow all due process and other procedures the sanctioning health care provider may have that are
332 related to the imposition of sanctions on another health care provider.

333

334 (d) For purposes of this subsection:

335

336 (A) "Notify" means a separate statement in writing to the health care provider specifically
337 informing the health care provider prior to the provider's participation in this act of the sanctioning health
338 care provider's policy about participation in activities covered by this act.

339

340 (B) "Participate in this act" means to perform the duties of an attending physician
341 pursuant to Section 3, the consulting physician function pursuant to Section 3A or the counseling function
342 pursuant to Section 3B. "Participate in this act " does not include:

343

344 (i) Making an initial determination that a patient has a terminal disease and
345 informing the patient of the medical prognosis;

346

347 (ii) Providing information about the Massachusetts Death with Dignity Act to a
348 patient upon the request of the patient;

349

350 (iii) Providing a patient, upon the request of the patient, with a referral to another
351 physician; or

352
353 (iv) A patient contracting with his or her attending physician and consulting
354 physician to act outside of the course and scope of the provider's capacity as an employee or independent
355 contractor of the sanctioning health care provider.

356
357 (6) Action taken pursuant to Sections 3, 3A, 3B, and 3C shall not be the sole basis for a report of
358 unprofessional or dishonorable conduct under M.G.L. Ch. 112, S. 5.

359
360 (7) No provision of this act shall be construed to allow a lower standard of care for patients in the
361 community where the patient is treated or a similar community.

362
363 **Section 4B. Liabilities.**

364
365 (1) A person who without authorization of the patient willfully alters or forges a request for medication or
366 conceals or destroys a rescission of that request with the intent or effect of causing the patient's death
367 shall be guilty of a felony.

368
369 (2) A person who coerces or exerts undue influence on a patient to request medication for the purpose of
370 ending the patient's life, or to destroy a rescission of such a request, shall be guilty of a felony.

371
372 (3) Nothing in this act limits further liability for civil damages resulting from other negligent conduct or
373 intentional misconduct by any person.

374
375 (4) The penalties in this act do not preclude criminal penalties applicable under other law for conduct
376 which is inconsistent with the provisions of this act.

377
378 **Section 4C. Claims by governmental entity for costs incurred.**

379
380 Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to
381 the provisions of this act in a public place shall have a claim against the estate of the person to recover
382 such costs and reasonable attorney fees related to enforcing the claim.

383
384 **Section 5. Severability.**

385
386 Any section of this act being held invalid as to any person or circumstance shall not affect the application
387 of any other section of this act which can be given full effect without the invalid section or application.

388
389 **Section 6. Form of the request.**

390

391 A request for a medication as authorized by this act shall be in substantially the following form:

392 REQUEST FOR MEDICATION
393 TO END MY LIFE IN A HUMANE
394 AND DIGNIFIED MANNER

395
396 I, _____, am an adult of sound mind.

397
398
399 I am suffering from _____, which my attending physician has determined is a terminal disease and
400 which has been medically confirmed by a consulting physician.

401
402
403 I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and
404 potential associated risks, the expected result, and the feasible alternatives, including comfort care,
405 hospice care and pain control.

406
407
408 I request that my attending physician prescribe medication that will end my life in a humane and dignified
409 manner.

410
411
412 INITIAL ONE:

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414
415 _____ I have informed my family of my decision and taken their opinions into consideration.

416
417
418 _____ I have decided not to inform my family of my decision.

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420
421 _____ I have no family to inform of my decision.

422
423
424 I understand that I have the right to rescind this request at any time.

425
426
427 I understand the full import of this request and I expect to die when I take the medication to be prescribed.
428 I further understand that although most deaths occur within three hours, my death may take longer and my
429 physician has counseled me about this possibility.

430
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432 I make this request voluntarily and without reservation, and I accept full moral responsibility for my
433 actions.

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436 Signed: _____

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439 Dated: _____

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DECLARATION OF WITNESSES

We declare that the person signing this request:

(a) Is personally known to us or has provided proof of identity;

(b) Signed this request in our presence;

(c) Appears to be of sound mind and not under duress, fraud or undue influence;

(d) Is not a patient for whom either of us is attending physician.

_____ Witness 1/Date

_____ Witness 2/Date

NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Section 7. Penalties.

(1) It shall be considered a felony for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting the principal's desires and interests, with the intent and effect of causing

473 a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and
474 hydration which hastens the death of the principal.

475

476 (2) Except as provided in subsection (1) of this section, it shall be considered misdemeanor for a person
477 without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the
478 reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's
479 desires and interests with the intent or effect of affecting a health care decision.

480