

HOUSE No. 1468

The Commonwealth of Massachusetts

In the Year Two Thousand 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:

1 Section 1. Definitions

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

4 "Adult" means an individual who is 18 years of age or older.

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

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

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

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

18 (6) "Health care provider" means a person licensed, certified or otherwise authorized or
19 permitted by the law of this state to administer health care or dispense medication in the ordinary
20 course of business or practice of a profession, and includes a health care facility.

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

24 (a) His or her medical diagnosis; (b) His or her prognosis; (c) The potential risks
25 associated with taking the medication to be prescribed;

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

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

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

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

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

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

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

39 Section 2. Who may initiate a written request for medication.

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

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

46 Section 3. Form of the written request.

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

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

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

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

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

57 (3) The patient's attending physician at the time the request is signed shall not be a
58 witness.(4) If the patient is a patient in a long term care facility at the time the written request is
59 made, one of the witnesses shall be an individual designated by the facility.

60 Section 3. Attending physician responsibilities.

61 The attending physician shall:

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

64 (b) Request that the patient demonstrate Massachusetts residency; (c) To ensure that the
65 patient is making an informed decision, inform the patient of: (A) His or her medical
66 diagnosis; (B) His or her prognosis; (C) The potential risks associated
67 with taking the medication to be prescribed; (D) The probable result of taking the
68 medication to be prescribed; and (E) The feasible alternatives, including, but not
69 limited to, comfort care, hospice care and pain control; (d) Refer the patient to a consulting
70 physician for medical confirmation of the diagnosis, and for a determination that the patient is
71 capable and acting voluntarily; (e) Refer the patient for counseling if appropriate pursuant
72 to Section 3B; (f) Recommend that the patient notify next of kin; (g) Counsel the patient about
73 the importance of having another person present when the patient takes the medication
74 prescribed pursuant to this act and of not taking the medication in a public place; (h) Inform the
75 patient that he or she has an opportunity to rescind the request at any time and in any manner,
76 and offer the patient an opportunity to rescind at the end of the 15 day waiting period pursuant to

77 Section 3E; (i) Verify, immediately prior to writing the prescription for medication under this
78 act, that the patient is making an informed decision; (j) Fulfill the medical record documentation
79 requirements of Section 3H;(k) Ensure that all appropriate steps are carried out in accordance
80 with this act prior to writing a prescription for medication to enable a qualified patient to end his
81 or her life in a humane and dignified manner; and

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

86 (B) With the patient's written consent: (i) Contact a pharmacist and
87 inform the pharmacist of the prescription; and (ii) Deliver the written
88 prescription personally or by mail to the pharmacist, who will dispense the medications to either
89 the patient, the attending physician or an expressly identified agent of the patient.(2)

90 Notwithstanding any other provision of law, the attending physician may sign the patient's death
91 certificate. Section 3A. Consulting physician confirmation.

92 Before a patient is qualified under this act, a consulting physician shall examine the
93 patient and his or her relevant medical records and confirm, in writing, the attending physician's
94 diagnosis that the patient is suffering from a terminal disease, and verify that the patient is
95 capable, is acting voluntarily and has made an informed decision. Section 3B. Counseling
96 referral.

97 If in the opinion of the attending physician or the consulting physician a patient may be
98 suffering from a psychiatric or psychological disorder or depression causing impaired judgment,

99 either physician shall refer the patient for counseling. No medication to end a patient's life in a
100 humane and dignified manner shall be prescribed until the person performing the counseling
101 determines that the patient is not suffering from a psychiatric or psychological disorder or
102 depression causing impaired judgment.

103 Section 3C. Informed decision.

104 No person shall receive a prescription for medication to end his or her life in a humane
105 and dignified manner unless he or she has made an informed decision as defined in Section 1 (7).
106 Immediately prior to writing a prescription for medication under this act, the attending physician
107 shall verify that the patient is making an informed decision. Section 3D. Family notification.

108 The attending physician shall recommend that the patient notify the next of kin of his or
109 her request for medication pursuant to this act. A patient who declines or is unable to notify next
110 of kin shall not have his or her request denied for that reason. Section 3E. Written and oral
111 requests.

112 In order to receive a prescription for medication to end his or her life in a humane and
113 dignified manner, a qualified patient shall have made an oral request and a written request, and
114 reiterate the oral request to his or her attending physician no less than fifteen (15) days after
115 making the initial oral request. At the time the qualified patient makes his or her second oral
116 request, the attending physician shall offer the patient an opportunity to rescind the
117 request. Section 3F. Right to rescind request.

118 A patient may rescind his or her request at any time and in any manner without regard to
119 his or her mental state. No prescription for medication under this act may be written without the

120 attending physician offering the qualified patient an opportunity to rescind the request. Section
121 3G. Waiting periods.

122 No less than fifteen (15) days shall elapse between the patient's initial oral request and the
123 writing of a prescription under this act. No less than 48 hours shall elapse between the patient's
124 written request and the writing of a prescription under this act. Section 3H. Medical record
125 documentation requirements.

126 The following shall be documented or filed in the patient's medical record: (1) All oral
127 requests by a patient for medication to end his or her life in a humane and dignified manner; (2)
128 All written requests by a patient for medication to end his or her life in a humane and dignified
129 manner; (3) The attending physician's diagnosis and prognosis, determination that the patient is
130 capable, acting voluntarily and has made an informed decision; (4) The consulting physician's
131 diagnosis and prognosis, and verification that the patient is capable, acting voluntarily and has
132 made an informed decision; (5) A report of the outcome and determinations made during
133 counseling, if performed; (6) The attending physician's offer to the patient to rescind his or her
134 request at the time of the patient's second oral request pursuant to Section 3E; and (7) A note by
135 the attending physician indicating that all requirements under this act have been met and
136 indicating the steps taken to carry out the request, including a notation of the medication
137 prescribed. Section 3I. Residency requirement.

138 Only requests made by Massachusetts residents under this act shall be granted. Factors
139 demonstrating Massachusetts residency include but are not limited to: (1) Possession of a
140 Massachusetts driver license; (2) Registration to vote in Massachusetts; (3) Evidence that the

141 person owns or leases property in Massachusetts; or(4) Filing of an Massachusetts tax return for
142 the most recent tax year.Section 3J. Reporting requirements.

143 (1)(a) The Department of Public Health shall annually review a sample of records
144 maintained pursuant to this act. (b) The department shall require any health care provider
145 upon dispensing medication pursuant to this act to file a copy of the dispensing record with the
146 division.(2) The department shall make rules to facilitate the collection of information regarding
147 compliance with this act. Except as otherwise required by law, the information collected shall not
148 be a public record and may not be made available for inspection by the public.(3) The
149 department shall generate and make available to the public an annual statistical report of
150 information collected under subsection (2) of this section.Section 3K. Effect on construction of
151 wills, contracts and statutes.

152 (1) No provision in a contract, will or other agreement, whether written or oral, to the
153 extent the provision would affect whether a person may make or rescind a request for medication
154 to end his or her life in a humane and dignified manner, shall be valid.(2) No obligation owing
155 under any currently existing contract shall be conditioned or affected by the making or
156 rescinding of a request, by a person, for medication to end his or her life in a humane and
157 dignified manner.Section 3L. Insurance or annuity policies.

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

162 life in a humane and dignified manner have an effect upon a life, health, or accident insurance or
163 annuity policy. Section 3M. Construction of Act.

164 Nothing in this act shall be construed to authorize a physician or any other person to end
165 a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance
166 with this act shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or
167 homicide, under the law. Section 4. Immunities; basis for prohibiting health care provider from
168 participation; notification; permissible sanctions.

169 Except as provided in Section 4B:(1) No person shall be subject to civil or criminal
170 liability or professional disciplinary action for participating in good faith compliance with this
171 act. This includes being present when a qualified patient takes the prescribed medication to end
172 his or her life in a humane and dignified manner.(2) No professional organization or association,
173 or health care provider, may subject a person to censure, discipline, suspension, loss of license,
174 loss of privileges, loss of membership or other penalty for participating or refusing to participate
175 in good faith compliance with this act.(3) No request by a patient for or provision by an attending
176 physician of medication in good faith compliance with the provisions of this act shall constitute
177 neglect for any purpose of law or provide the sole basis for the appointment of a guardian or
178 conservator.(4) No health care provider shall be under any duty, whether by contract, by statute
179 or by any other legal requirement to participate in the provision to a qualified patient of
180 medication to end his or her life in a humane and dignified manner. If a health care provider is
181 unable or unwilling to carry out a patient's request under this act, and the patient transfers his or
182 her care to a new health care provider, the prior health care provider shall transfer, upon request,
183 a copy of the patient's relevant medical records to the new health care provider.(5)(a)
184 Notwithstanding any other provision of law, a health care provider may prohibit another health

185 care provider from participating in this act on the premises of the prohibiting provider if the
186 prohibiting provider has notified the health care provider of the prohibiting provider's policy
187 regarding participating in this act. Nothing in this paragraph prevents a health care provider from
188 providing health care services to a patient that do not constitute participation in this act. (b)
189 Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider
190 may subject another health care provider to the sanctions stated in this paragraph if the
191 sanctioning health care provider has notified the sanctioned provider prior to participation in this
192 act that it prohibits participation in this act: (A) Loss of privileges, loss of membership
193 or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the
194 sanctioning health care provider if the sanctioned provider is a member of the sanctioning
195 provider's medical staff and participates in this act while on the health care facility premises, as
196 defined in M.G.L. Ch. 111, S.25B, of the sanctioning health care provider, but not including the
197 private medical office of a physician or other provider; (B) Termination of lease or
198 other property contract or other nonmonetary remedies provided by lease contract, not including
199 loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned
200 provider participates in this act while on the premises of the sanctioning health care provider or
201 on property that is owned by or under the direct control of the sanctioning health care provider;
202 or (C) Termination of contract or other nonmonetary remedies provided by contract
203 if the sanctioned provider participates in this act while acting in the course and scope of the
204 sanctioned provider's capacity as an employee or independent contractor of the sanctioning
205 health care provider. Nothing in this subparagraph shall be construed to prevent:
206 (i) A health care provider from participating in this act while acting outside the course
207 and scope of the provider's capacity as an employee or independent contractor; or

208 (ii) A patient from contracting with his or her attending physician and consulting
209 physician to act outside the course and scope of the provider's capacity as an employee or
210 independent contractor of the sanctioning health care provider. (c) A health care provider
211 that imposes sanctions pursuant to paragraph (b) of this subsection must follow all due process
212 and other procedures the sanctioning health care provider may have that are related to the
213 imposition of sanctions on another health care provider. (d) For purposes of this subsection:
214 (A) "Notify" means a separate statement in writing to the health care provider specifically
215 informing the health care provider prior to the provider's participation in this act of the
216 sanctioning health care provider's policy about participation in activities covered by this act.
217 (B) "Participate in this act" means to perform the duties of an attending physician
218 pursuant to Section 3, the consulting physician function pursuant to Section 3A or the counseling
219 function pursuant to Section 3B. "Participate in this act " does not include: (i)
220 Making an initial determination that a patient has a terminal disease and informing the patient of
221 the medical prognosis; (ii) Providing information about the Massachusetts
222 Death with Dignity Act to a patient upon the request of the patient; (iii) Providing
223 a patient, upon the request of the patient, with a referral to another physician; or
224 (iv) A patient contracting with his or her attending physician and consulting physician to
225 act outside of the course and scope of the provider's capacity as an employee or independent
226 contractor of the sanctioning health care provider.(6) Action taken pursuant to Sections 3, 3A,
227 3B, and 3C shall not be the sole basis for a report of unprofessional or dishonorable conduct
228 under M.G.L. Ch. 112, S. 5.(7) No provision of this act shall be construed to allow a lower
229 standard of care for patients in the community where the patient is treated or a similar
230 community.Section 4B. Liabilities.

231 (1) A person who without authorization of the patient willfully alters or forges a request
232 for medication or conceals or destroys a rescission of that request with the intent or effect of
233 causing the patient's death shall be guilty of a felony.(2) A person who coerces or exerts undue
234 influence on a patient to request medication for the purpose of ending the patient's life, or to
235 destroy a rescission of such a request, shall be guilty of a felony.(3) Nothing in this act limits
236 further liability for civil damages resulting from other negligent conduct or intentional
237 misconduct by any person.(4) The penalties in this act do not preclude criminal penalties
238 applicable under other law for conduct which is inconsistent with the provisions of this act.

239 Section 4C. Claims by governmental entity for costs incurred.

240 Any governmental entity that incurs costs resulting from a person terminating his or her
241 life pursuant to the provisions of this act in a public place shall have a claim against the estate of
242 the person to recover such costs and reasonable attorney fees related to enforcing the
243 claim.Section 5. Severability.

244 Any section of this act being held invalid as to any person or circumstance shall not affect
245 the application of any other section of this act which can be given full effect without the invalid
246 section or application.Section 6. Form of the request.

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

249 REQUEST FOR MEDICATION

250 TO END MY LIFE IN A HUMANE

251 AND DIGNIFIED MANNER

252 I, _____, am an adult of sound mind. I am suffering from _____, which
253 my attending physician has determined is a terminal disease and which has been medically
254 confirmed by a consulting physician. I have been fully informed of my diagnosis, prognosis, the
255 nature of medication to be prescribed and potential associated risks, the expected result, and the
256 feasible alternatives, including comfort care, hospice care and pain control. I request that my
257 attending physician prescribe medication that will end my life in a humane and dignified
258 manner. INITIAL ONE: _____ I have informed my family of my decision and taken their
259 opinions into consideration. _____ I have decided not to inform my family of my decision. _____
260 I have no family to inform of my decision. I understand that I have the right to rescind this
261 request at any time. I understand the full import of this request and I expect to die when I take the
262 medication to be prescribed. I further understand that although most deaths occur within three
263 hours, my death may take longer and my physician has counseled me about this possibility. I
264 make this request voluntarily and without reservation, and I accept full moral responsibility for
265 my actions. Signed: _____ Dated: _____

266 DECLARATION OF WITNESSES

267 We declare that the person signing this request: (a) Is personally known to us or has
268 provided proof of identity; (b) Signed this request in our presence; (c) Appears to be of sound
269 mind and not under duress, fraud or undue influence; (d) Is not a patient for whom either of us is
270 attending physician. _____ Witness 1/Date _____ Witness 2/Date NOTE: One witness
271 shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall
272 not be entitled to any portion of the person's estate upon death and shall not own, operate or be
273 employed at a health care facility where the person is a patient or resident. If the patient is an

274 inpatient at a health care facility, one of the witnesses shall be an individual designated by the
275 facility. Section 7. Penalties.

276 (1) It shall be considered a felony for a person without authorization of the principal to
277 willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an
278 instrument or any other evidence or document reflecting the principal's desires and interests, with
279 the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of
280 artificially administered nutrition and hydration which hastens the death of the principal. (2)
281 Except as provided in subsection (1) of this section, it shall be considered misdemeanor for a
282 person without authorization of the principal to willfully alter, forge, conceal or destroy an
283 instrument, the reinstatement or revocation of an instrument, or any other evidence or document
284 reflecting the principal's desires and interests with the intent or effect of affecting a health care
285 decision.