

# MARIN HEALTHCARE DISTRICT

100-B Drake's Landing Road, Suite 250, Greenbrae, CA 94904

Telephone: 415-464-2090

Fax: 415-464-2094

Website: [www.marinhealthcare.org](http://www.marinhealthcare.org)

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## BOARD OF DIRECTORS SPECIAL STUDY SESSION OF THE FULL BOARD AND LEASE & BUILDING COMMITTEE

**WEDNESDAY, MAY 31, 2017 AT 5:30 P.M.**

### Committee:

**Chair:** Jennifer Rienks, PhD

**Member:** Harris Simmonds, MD

**Staff:** Jon Friedenberg, Chief Operating Officer

**Community Member:** Brian Su, MD

**Support:** Louis Weiner, Executive Assistant

### Location:

Marin Healthcare District

100-B Drake's Landing Road, #250

Greenbrae, CA 94904

### AGENDA

### ATTACHMENT

- |    |   |        |    |
|----|---|--------|----|
| 1. | <b>Call to Order / Approval of the Agenda</b>   | Rienks |    |
| 2. | <b>Approval of the Minutes of the MHD Lease &amp; Building Committee Meeting of May 3, 2017 (action)</b>  | Rienks | #1 |
| 3. | <b>Public Comment</b><br><i>Any member of the audience may make statements regarding any item NOT on the agenda. Statements are limited to a maximum of three (3) minutes. Please state and spell your name if you wish it to be recorded in the minutes.</i> | Rienks |    |
| 4. | <b>Review Draft of MHD Policy on the California End of Life Act</b><br>Matthew Katics, DO, MGH Medical Director of Palliative Care<br>Jan Sams, MGH Director of Risk  | Rienks | #2 |
| 5. | <b>Adjournment</b>  | Rienks |    |

*The next meeting of the Lease & Building Committee is Weds. June 28, 2017*

A copy of the agenda for the Meeting will be posted and distributed  
at least seventy-two (72) hours prior to the meeting.

In compliance with the Americans with Disabilities Act, if you require accommodations to participate in a District meeting please contact the District office at 415-464-2090 at least 48 hours prior to the meeting.

**Tab 1**

# MARIN HEALTHCARE DISTRICT

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## Board of Directors Lease and Building Committee Meeting Wednesday, May 3, 2017

### MINUTES

#### 1. **Call to Order**

Chair Jennifer Rienks called the meeting to order at 5:30 p.m.

#### 2. **Roll Call / Approval of Agenda / Approval of Minutes**

*Committee Members Present:* Chair Jennifer Rienks; Harris Simmonds, MD

*Staff Members Present:* Jon Friedenber, CAO; Louis Weiner, Executive Assistant

*Community Member Present:* Brian Su, MD

*Guests Present:* Matthew Katics, DO, MGH Medical Director of Palliative Care; Jan Sams, MGH Director of Risk Management

It was moved, seconded and carried to approve the agenda as presented.

It was moved, seconded and carried to approve the minutes of the Lease and Building Committee meeting of March 29, 2017.

#### 3. **Public Comment**

There was no public comment.

#### 4. **Marin Healthcare District Policy: California End of Life Act (EOLA)**

Jon Friedenber presented. He welcomed Jan Sams, MGH Director of Risk Management, and Dr. Matthew Katics, MGH Medical Director of Palliative Care. He explained the appropriateness of the Marin Healthcare District adopting a policy on EOLA as applied by the medical clinics of the District. This Committee, after discussing and drafting a policy, may then forward the draft policy for review and approval by the full MHD Board of Directors.

Dr. Katics gave an overview of the California End of Life Act. The Act is designed as an outpatient process. There is no specific language for inpatient use; therefore, hospitals are not allowing ingestion on-site. The Act does allow for a hospital or healthcare organization to opt-in or opt-out, i.e. they may allow or disallow their physicians to participate in any aspect of the process within the facility or organization. A physician may not administer the lethal drug, but the patient must self-administer. He referenced the flow chart illustration provided, which adheres legally to the Act.

Marin General Hospital, through its Policy & Procedure process (flowing through Medical Executive Committee, Quality Committee, and Board) is now adopting a policy for outpatient cases.

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## **Board of Directors Lease and Building Committee Meeting Wednesday, May 3, 2017**

### **MINUTES**

Lonny Shavelson, MD, has established a clinic for end-of-life options in Berkeley.

Dr. Katics recommended that MHD adopt a policy whereby physicians would “opt in”. They would be welcomed to participate and the District would offer support. This would respect physicians’ desires, respect the community, and be fully compliant with the Act. This also respects any physician who chooses not to participate. Dr. Katics and Ms. Sams will draft the policy and present it to this Committee at the next meeting on May 31; this Committee may recommend it for approval by the MHD Board at a future regular meeting.

Further discussion ensued regarding advisory and oversight by outside legal counsel, physician referral, clinic interaction, pharmacy interaction, as well as communication/education tools and programs for physicians, staff, and community. Such details would be refined and finalized after the policy’s approval.

#### **5. Adjournment**

The next meeting of this Committee will be Weds. May 31 at 5:30 pm. Chair Rienks adjourned the meeting at 6:22 p.m.

## **Tab 2**

**MARIN HEALTHCARE DISTRICT**  
**CALIFORNIA END OF LIFE ACT POLICY**  
**(DRAFT 05-31-2017)**

**POLICY:**

California has become the fifth state in the nation to legalize aid-in-dying through a law called the End of Life Option Act. This law permits a competent, terminally-ill patient to request a prescription for a drug that can be used to end his or her life. Participation in the law is entirely voluntary for physicians, patients, pharmacists and others. Patients and physicians who choose to participate must carefully follow the steps outlined in the law in order for their actions to be considered lawful and appropriate.

**PURPOSE:**

This is a new California law that will allow a terminally ill patient to request a drug from his or her physician that will end the patient's life. Patients who choose to end their lives this way, and who carefully follow the steps in the law, will not be considered to have committed suicide. Physicians who help their patients with this process, and who carefully follow the steps in the law, will be providing a new, legal form of end of life care and will not be subject to legal liability or professional sanction for doing so.

**PROCESS:**

**Who Can Make the Request?**

An adult with a Terminal Disease (defined below) with the capacity to make medical decisions may make a request to receive a prescription for an aid-in-dying drug under the following circumstances:

1. The individual's Attending Physician (defined below) diagnosed the individual with a Terminal Disease.
2. The individual voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.
3. The individual is a resident of California and is able to establish residency through one of the following:
  - Possession of a California driver's license or other identification issued by the State of California.
  - Registration to vote in California.
  - Evidence that the person owns or leases property in California.
  - Filing of a California tax return for the most recent tax year.

4. The individual documents the request on a required form entitled *Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner* (See Attachment A).
5. The individual has the physical and mental ability to self-administer the aid-in-dying drug without assistance.

### **Who Cannot Make the Request?**

The request cannot be made on behalf of a patient through:

1. An agent under a power of attorney.
2. An advance health care directive.
3. A conservator.
4. A health care agent.
5. A surrogate.
6. A legally recognized health care decision maker.
7. A parent for his or her child.
8. A spouse for the other spouse.
9. Or any other person, regardless of relationship to the patient.

### **Patient Procedures for Requests**

An individual seeking to obtain a prescription for an aid-in-dying drug must make *two* oral requests, a minimum of 15 days apart, and *one* written request on the required form entitled *Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner* (See Attachment A) directly to his or her Attending Physician. The request must be signed and dated, in the presence of two adult witnesses, by the individual seeking the aid-in-dying drug. The two adult witnesses also sign the form, attesting that:

1. The individual is personally known to them or has provided proof of identity.
2. The individual voluntarily signed the request in their presence.
3. The individual is of sound mind and not under duress, fraud or undue influence.
4. The witnesses are not the individual's Attending Physician, Consulting Physician (defined below) or Mental Health Specialist (defined below).

Only one witness of the two witnesses may be related to the requesting individual by blood, marriage, registered domestic partnership or adoption or be entitled to a portion of the individual's estate upon death.

Only one witness of the two witnesses may own, operate or be employed at the health care facility where the requesting individual is receiving medical treatment or resides.

The patient's written request must be in the same language as any conversations, consultations or interpreted conversations or consultations between the patient and his or her Attending or Consulting Physicians. Otherwise, *the Request for an Aid-In-Dying-Interpreter Declaration* (See Attachment B) must be completed and attached to the request.

## Physician Response to Request

### Step 1: Make an Initial Determination of the Following

1. Confirm that the requesting individual has *capacity* to make medical decisions. If there are indications of a mental disorder, the requesting individual shall be referred to Mental Health Specialist for assessment and no aid-in-dying drugs shall be prescribed until the Mental Health Specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.
2. Confirm that the patient has a Terminal Disease.
3. Confirm that the patient has voluntarily made the request for an aid-in-dying drug including the completion of *Attachment A*.
4. Confirm that the patient is a Qualified Individual.

### Step 2: Inform the Patient

1. Inform the patient of: (1) his or her medical diagnosis and prognosis; (2) the potential risks associated with ingesting the aid-in-dying drug; (3) the probable result of ingesting the drug; (4) the possibility that the patient may choose to obtain the drug but not take it; and (5) the feasible alternatives or additional treatment options, including, but not limited to, comfort care, hospice care, palliative care and pain control.
2. Inform the patient that he or she may withdraw or rescind the request for the aid-in-dying drug at any time and in any manner and offer the individual an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug. *This offer must be made at the time of the patient's second oral request and must be documented in the patient's medical record as having been done at that time.*

### Step 3: Referral to Consulting Physician

Refer the patient to a Consulting Physician. The Consulting Physician must examine the patient and his or her relevant medical records and confirm in writing the diagnosis and prognosis and that the patient has the capacity to make informed medical decisions and is acting voluntarily. If there are indications of a mental disorder, the Consulting Physician must also refer the individual for a Mental Health Specialist assessment. The Consulting Physician must document these findings and submit them, along with a *Consulting Physician Compliance Form (See Attachment C)* to the Attending Physician.



#### **Step 4: Patient Counseling**

After the patient visits the Consulting Physician, he or she must return to the Attending Physician for counseling. The Attending Physician must confirm that the patient's request does not arise from coercion or undue influence by another person by discussing with the patient, outside of the presence of any other persons except for an interpreter as necessary, whether or not the patient is feeling pressured by another person.

The Attending Physician must counsel the patient about the importance of all of the following:

1. Having another person present when he or she ingests the aid-in-dying drug prescribed pursuant to this part.
2. Not ingesting the aid-in-dying drug in a public place.
3. Notifying the next of kin of his or her request for an aid-in-dying drug. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.
4. Participating in a hospice program.
5. Maintaining the aid-in-dying drug in a safe and secure location until the time that the patient self-administers the drug.
6. [Optional] The Attending Physician may also want to counsel the patient to update their Advance Health Care Directive and POLST form to include an indication of the patient's intention to ingest an aid-in-dying drug to end their life and to update statements of their wishes for medical interventions accordingly.

#### **Step 5: Final Attestation, Checklist and Compliance Form**

Before writing a prescription for an aid-in-dying drug, the Attending Physician must actively confirm that all requirements of the Act are met and that all appropriate steps have been carried out in accordance with the Act. To this end, the Attending Physician must:

1. Verify immediately before writing the prescription that the patient is making an informed decision.
2. Provide the patient with the *Final Attestation for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner* (See Attachment D) with the instruction that the form be filled out and executed by the patient within 48 hours prior to the patient taking the aid-in-dying drug.

3. Complete the *Attending Physician Checklist & Compliance Form* (See Attachment F).

**Step 6: Obtaining the Aid-In-Dying Drug**

**TBD**

**California Department of Public Health Submission Requirements**

Within 30 calendar days of writing a prescription for an aid-in-dying drug, the Attending Physician must submit to the State Department of Public Health a copy of:

1. The patient's written request (*Attachment A*).
2. Consulting Physician's Compliance form (*Attachment C*).
3. Attending Physician's Checklist and Compliance form (*Attachment F*)

Forms shall be sent to CDPH at the following address:

California Department of Public Health  
Public Health Policy and Research Branch  
Attention: Endo of Life Option Act  
MS 5205  
P.O. Box 997377  
Sacramento, CA 95899-7377

The Forms can also be faxed to: (916) 440-5209

Within 30 calendar days following the patient's death from ingesting the aid-in-dying drug or any other cause, the Attending Physician must submit to CDPH the *Attending Physician Follow-Up Form* (*Attachment E*).

Forms shall be sent to CDPH at the following address:

California Department of Public Health  
Public Health Policy and Research Branch  
Attention: Endo of Life Option Act  
MS 5205  
P.O. Box 997377  
Sacramento, CA 95899-7377

The Forms can also be faxed to: (916) 440-5209

## **Documentation Requirements**

The patient's medical record must contain the following documentation:

1. All oral and written requests for aid-in-dying drugs.
2. The Attending Physician's diagnosis and prognosis and the determination that the patient has the capacity to make medical decisions, is acting voluntarily and has made an informed decision, or that the Attending Physician has determined that the patient is not qualified.
3. The Consulting Physician's diagnosis and prognosis and verification that the patient has the capacity to make medical decisions, is acting voluntarily and has made an informed decision, or that the Consulting Physician has determined that the patient is not qualified.
4. A report of the outcome and determinations made during a Mental Health Specialist's assessment, if performed.
5. The Attending Physician's offer to the patient to withdraw or rescind his or her request at the time of the patient's second oral request.
6. A note by the Attending Physician indicating that all requirements listed here for both the Attending Physician and Consulting Physician have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.
7. Final Attestation for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner
8. Attending Physician Follow-Up Form
9. Attending Physician Checklist & Compliance Form

### **DEFINITIONS:**

"Act" means the End of Life Option Act found in California Health & Safety Code Section 443 *et seq.*

"Attending Physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease.

"Consulting physician" means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease.

"Mental Health Specialist" means a psychiatrist or a licensed psychologist.

"Qualified individual" means an adult who has the capacity to make medical decisions, is a resident of California, and has satisfied the requirements of the law in order to obtain a prescription for a drug to end his or her life. An individual cannot be deemed "qualified" based solely on age or disability.

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

### **FORMS:**

Attachment A – Request for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner

Attachment B -- Request for an Aid-In-Dying- Interpreter Declaration

Attachment C -- Consulting Physician Compliance Form

Attachment D -- Final Attestation for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner

Attachment E -- Attending Physician Follow-Up Form

Attachment F -- Attending Physician Checklist & Compliance Form

**Forms may not be substituted, modified or altered.**

**REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER**

I, \_\_\_\_\_,  
am an adult of sound mind and a resident of the State of California.

I am suffering from \_\_\_\_\_,  
which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe an aid-in-dying drug that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

**INITIAL ONE:**

\_\_\_\_\_ I have informed one or more members of my family of my decision and taken their opinions into consideration.

\_\_\_\_\_ I have decided not to inform my family of my decision.

\_\_\_\_\_ I have no family to inform of my decision.

I understand that I have the right to withdraw or rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this request voluntarily, without reservation, and without being coerced.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

**DECLARATION OF WITNESSES**

We declare that the person signing this request:

- (a) is personally known to us or has provided proof of identity;
- (b) voluntarily signed this request in our presence;
- (c) is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and
- (d) is not an individual for whom either of us is the attending physician, consulting physician, or mental health specialist.

Witness 1: \_\_\_\_\_ Date: \_\_\_\_\_

Witness 2: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE:** Only one of the two witnesses may be a relative (by blood, marriage, registered domestic partnership, or adoption) of the person signing this request or be entitled to a portion of the person's estate upon death. Only one of the two witnesses may own, operate, or be employed at a health care facility where the person is a patient or resident.

ATTACHMENT B

REQUEST FOR AN AID-IN-DYING - INTERPRETER DECLARATION

I, \_\_\_\_\_, am fluent in English and \_\_\_\_\_.  
NAME OF INTERPRETER TARGET LANGUAGE

On \_\_\_\_\_ at approximately \_\_\_\_\_,  
DATE TIME

I read the "Request for an Aid-In-Dying Drug to End My Life" to

\_\_\_\_\_ in \_\_\_\_\_.  
NAME OF PATIENT/QUALIFIED INDIVIDUAL TARGET LANGUAGE

Mr./Ms. \_\_\_\_\_  
NAME OF PATIENT/QUALIFIED INDIVIDUAL

affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form under his/her own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

I declare that I am fluent in English and \_\_\_\_\_.  
TARGET LANGUAGE

and further declare under penalty of perjury that the foregoing is true and correct.

Executed at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
CITY COUNTY STATE

on this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.  
DAY OF MONTH MONTH YEAR

\_\_\_\_\_  
INTERPRETER SIGNATURE

\_\_\_\_\_  
INTERPRETER PRINTED NAME

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
INTERPRETER STREET ADDRESS CITY STATE ZIP CODE

# ATTACHMENT C

## CONSULTING PHYSICIAN COMPLIANCE FORM

A PATIENT INFORMATION	
PATIENT'S NAME (LAST, FIRST, M.I.)	DATE OF BIRTH

B ATTENDING PHYSICIAN	
ATTENDING PHYSICIAN'S NAME (LAST, FIRST, M.I.)	TELEPHONE NUMBER ( )

C CONSULTING PHYSICIAN'S REPORT	
TERMINAL DISEASE	DATE OF EXAMINATION(S)
<p>Check boxes for compliance (Both the attending and consulting physicians must make these determinations.)</p> <p><input type="checkbox"/> 1. Determination that the patient has a terminal disease.</p> <p><input type="checkbox"/> 2. Determination that patient has the mental capacity to make medical decisions. **</p> <p><input type="checkbox"/> 3. Determination that patient is acting voluntarily.</p> <p><input type="checkbox"/> 4. Determination that patient has made his/her decision after being fully informed of:</p> <p><input type="checkbox"/> a) His or her medical diagnosis; and</p> <p><input type="checkbox"/> b) His or her prognosis; and</p> <p><input type="checkbox"/> c) The potential risks associated with taking the drug to be prescribed; and</p> <p><input type="checkbox"/> d) The potential result of taking the drug to be prescribed; and</p> <p><input type="checkbox"/> e) The feasible alternatives, including, but not limited to, comfort care, hospice care, palliative care and pain control.</p>	

D PATIENT'S MENTAL STATUS		
<p>Check one of the following (required):</p> <p><input type="checkbox"/> I have determined that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.</p> <p><input type="checkbox"/> I have referred the patient to the mental health specialist****listed below for one or more consultations to determine that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.</p> <p><input type="checkbox"/> If a referral was made to a mental health specialist, the mental health specialist has determined that the patient is not suffering from impaired judgment due to a mental disorder</p>		
MENTAL HEALTH SPECIALIST'S NAME	TELEPHONE NUMBER ( )	DATE

E CONSULTANT'S INFORMATION	
PHYSICIAN'S SIGNATURE	DATE
NAME (PLEASE PRINT)	
MAILING ADDRESS	
CITY, STATE, AND ZIP CODE	TELEPHONE NUMBER ( )

\*\*Capacity to make medical decisions means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make

\*\*\*\* Mental Health Specialist means a psychiatrist or a licensed psychologist.

ATTACHMENT D

**FINAL ATTESTATION FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER**

I, \_\_\_\_\_,  
am an adult of sound mind and a resident of the State of California.

I am suffering from \_\_\_\_\_,  
which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.

I have received the aid-in-dying drug and am fully aware that this aid-in-dying drug will end my life in a humane and dignified manner.

**INITIAL ONE:**

\_\_\_\_\_ I have informed one or more members of my family of my decision and taken their opinions into consideration.

\_\_\_\_\_ I have decided not to inform my family of my decision.

\_\_\_\_\_ I have no family to inform of my decision.

My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this decision to ingest the aid-in-dying drug to end my life in a humane and dignified manner. I understand I still may choose not to ingest the drug and by signing this form I am under no obligation to ingest the drug. I understand I may rescind this request at any time.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Time: \_\_\_\_\_



## ATTACHMENT E

### ATTENDING PHYSICIAN FOLLOW-UP FORM

The End of Life Option Act requires physicians who write a prescription for an aid-in-dying drug to complete his follow-up form within **30 calendar** days of a patient's death, whether from ingestion of the aid-in-dying drug obtained under the Act or from any other cause.

**For the State Department of Public Health to accept this form, it must be signed by the attending physician, whether or not he or she was present at the patient's time of death.**

This form should be mailed or sent electronically to the State Department of Public Health. All information is kept strictly confidential.

**Date:** \_\_\_\_\_

**Patient Name:** \_\_\_\_\_

**Attending physician name:** \_\_\_\_\_

Did the patient die from ingesting the aid-in-dying drug, from their underlying illness, or from another

☐ **Aid-in-dying drug** (lethal dose) → Please sign below and go to page 2.

Attending physician signature: \_\_\_\_\_

**Underlying illness** → There is no need to complete the rest of the form.

Attending physician signature: \_\_\_\_\_

**Other** → There is no need to complete the rest of the form. Please specify the circumstances surrounding the patient's death and sign

Please specify:

\_\_\_\_\_

Attending physician signature: \_\_\_\_\_

**PART A and PART B should only be completed if the patient died from ingesting the lethal dose of the aid-in-dying drug.**

Please read carefully the following to determine which situation applies. Check the box that indicates the scenario and complete the remainder of the form accordingly.

☐ The attending physician was present at the time of death.

➤ The attending physician must complete this form in its entirety and sign Part A and Part B.

☐ The attending physician was not present at the time of death, but another licensed health care provider was present.

➤ The licensed health care provider must complete and sign Part A of this form. The attending physician must complete and sign Part B of the form.

☐ Neither the attending physician nor another licensed health care provider was present at the time of death.

➤ Part A may be left blank. The attending physician must complete and sign Part B of the form.

ATTENDING PHYSICIAN FOLLOW-UP FORM

**PART A: To be completed and signed by the attending physician or another licensed health care provider present at death:**

1. Was the attending physician at the patient's bedside when the patient took the aid-in-dying drug?
- ☐ Yes
- ☐ No

If no, was another physician or trained health care provider present when the patient ingested the aid-in-dying drug?

- ☐ Yes, another physician
- ☐ Yes, a trained health-care provider/volunteer
- ☐ No
- ☐ Unknown

2. Was the attending physician at the patient's bedside at the time of death?

- ☐ Yes
- ☐ No

If no, was another physician or a licensed health care provider present at the patient's time of death?

- ☐ Yes, another physician or licensed health care provider
- ☐ No
- ☐ Unknown

3. On what day did the patient consume the lethal dose of the aid-in-dying?

\_\_\_/\_\_\_/\_\_\_ (month/day/year) ☐ Unknown

4. On what day did the patient die after consuming the lethal dose of the aid-in-dying drug?

\_\_\_/\_\_\_/\_\_\_ (month/day/year) ☐ Unknown

5. Where did the patient ingest the lethal dose of the aid-in-dying drug?

- ☐ Private home
- ☐ Assisted-living residence
- ☐ Nursing home
- ☐ Acute care hospital in-patient
- ☐ In-patient hospice resident
- ☐ Other (specify) \_\_\_\_\_
- ☐ Unknown

6. What was the time between the ingestion of the lethal dose of aid-in-dying drug and unconsciousness?

Minutes \_\_\_\_\_ and/or Hours \_\_\_\_\_ ☐ Unknown

7. What was the time between lethal medication ingestion and death?

Minutes \_\_\_\_\_ and/or Hours \_\_\_\_\_ ☐ Unknown

ATTENDING PHYSICIAN FOLLOW-UP FORM

8. Were there any complications that occurred after the patient took the lethal dose of the aid-in-dying drug?

☐ Yes- vomiting, emesis

☐ Yes-regained consciousness

☐ No Complications

☐ Other- Please describe: \_\_\_\_\_

☐ Unknown

9. Was the Emergency Medical System activated for any reason after ingesting the lethal dose of the aid-in-dying drug?

☐ Yes- Please describe: \_\_\_\_\_

☐ No

☐ Unknown

10. At the time of ingesting the lethal dose of the aid-in-dying drug, was the patient receiving hospice care?

☐ Yes

☐ No, refused care

☐ No, other (specify): \_\_\_\_\_

Signature of attending physician present at time of death: \_\_\_\_\_

Name of Licensed Health Care Provider present

At time of death if not attending physician: \_\_\_\_\_

Signature of Licensed Health Care Provider: \_\_\_\_\_

ATTENDING PHYSICIAN FOLLOW-UP FORM

**PART B: To be completed and signed by the attending physician**

12. On what date was the prescription written for the aid-in-dying drug?  
\_\_\_\_/\_\_\_\_/\_\_\_\_ (month/day/year)
13. When the patient initially requested a prescription for the aid-in-dying drug, was the patient receiving hospice care?
- ☐ Yes
- ☐ No, refused care
- ☐ No other (specify) \_\_\_\_\_
14. What type of health-care coverage did the patient have for their underlying illness?(Check all that apply.)
- ☐ Medicare
- ☐ Medi-Cal
- ☐ Covered California
- ☐ VA
- ☐ Private Insurance
- ☐ No insurance
- ☐ Had insurance, don't know type
15. Possible concerns that may have contributed to the patient's decision to request a prescription for aid-in-dying drug Please check "yes," "no," or "Don't know," depending on whether or not you believe that concern contributed to their request (Please check as many boxes as you think may apply)
- A concern about . . .
- **His or her terminal condition representing a steady loss of autonomy**

☐ Yes

☐ No

☐ Don't Know
  - **The decreasing ability to participate in activities that made life enjoyable**

☐ Yes

☐ No

☐ Don't Know
  - **The loss of control of bodily functions**

☐ Yes

☐ No

☐ Don't Know
  - **Persistent and uncontrollable pain and suffering**

☐ Yes

☐ No

☐ Don't Know
  - **A loss of Dignity**

☐ Yes

☐ No

☐ Don't Know
  - **Other concerns (specify):** \_\_\_\_\_

Signature of attending physician: \_\_\_\_\_

# ATTACHMENT F

## ATTENDING PHYSICIAN CHECKLIST & COMPLIANCE FORM

<b>A</b>	<b>PATIENT INFORMATION</b>	
PATIENT'S NAME (LAST, FIRST, M.I.)		DATE OF BIRTH
PATIENT RESIDENTIAL ADDRESS (STREET, CITY, ZIP CODE)		

<b>B</b>	<b>ATTENDING PHYSICIAN INFORMATION</b>	
PHYSICIAN'S NAME (LAST, FIRST, M.I.)		TELEPHONE NUMBER (    )
MAILING ADDRESS (STREET, CITY, ZIP CODE)		
PHYSICIAN'S LICENSE NUMBER		

<b>C</b>	<b>CONSULTING PHYSICIAN INFORMATION</b>	
PHYSICIAN'S NAME (LAST, FIRST, M.I.)		TELEPHONE NUMBER (    )
MAILING ADDRESS (STREET, CITY, ZIP CODE)		
PHYSICIAN'S LICENSE NUMBER		

<b>D</b>	<b>ELIGIBILITY DETERMINATION</b>
<b>TERMINAL DISEASE</b>  Check boxes for compliance (Both the attending and consulting physicians must make these determinations.) <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Determination that the patient has a terminal disease.</li> <li><input type="checkbox"/> 2. Determination that patient has the mental capacity to make medical decisions. **</li> <li><input type="checkbox"/> 3. Determination that patient is acting voluntarily.</li> <li><input type="checkbox"/> 4. Determination that patient has made his/her decision after being fully informed of:             <ul style="list-style-type: none"> <li><input type="checkbox"/> a) His or her medical diagnosis; and</li> <li><input type="checkbox"/> b) His or her prognosis; and</li> <li><input type="checkbox"/> c) The potential risks associated with ingesting the aid-in-dying drug;</li> <li><input type="checkbox"/> d) The probable result of ingesting the aid-in-dying drug</li> <li><input type="checkbox"/> e) The possibility that he or she may choose to obtain the aid-in-dying drug but not take it</li> </ul> </li> </ul>	

# ATTENDING PHYSICIAN CHECKLIST & COMPLIANCE FORM

<b>E</b>	<b>ADDITIONAL COMPLIANCE REQUIREMENTS</b>
<input type="checkbox"/> 1. Counseled patient about the importance of all of the following: <input type="checkbox"/> a) Maintaining the aid-in-dying drug in a safe and secure location until the time the qualified individual will ingest it; <input type="checkbox"/> b) Having another person present when he or she ingests the aid-in-dying drug; <input type="checkbox"/> c) Not ingesting the aid-in-dying drug in a public place; <input type="checkbox"/> d) Notifying the next of kin of his or her request for an aid-in-dying drug. (an individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason); and <input type="checkbox"/> e) Participating in a hospice program or palliative care program. <input type="checkbox"/> 2. Informed patient of right to rescind request (1 <sup>st</sup> time) <input type="checkbox"/> 3. Discussed the feasible alternatives, including, but not limited to, comfort care, hospice care, palliative care and pain control. <input type="checkbox"/> 4. Met with patient one-on-one, except in the presence of an interpreter, to confirm the request is not coming from coercion <input type="checkbox"/> 5. First oral request for aid-in-dying: ____/____/____      Attending physician initials: _____ <input type="checkbox"/> 6. Second oral request for aid-in-dying: ____/____/____      Attending physician initials: _____ <input type="checkbox"/> 7. Written request submitted: ____/____/____      Attending physician initials: _____ <input type="checkbox"/> 8. Offered patient right to rescind (2 <sup>nd</sup> time)	

<b>F</b>	<b>PATIENT'S MENTAL STATUS</b>
Check one of the following <b>(required)</b> : <input type="checkbox"/> I have determined that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder. <input type="checkbox"/> I have referred the patient to the mental health specialist****listed below for one or more consultations to determine that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder. <input type="checkbox"/> If a referral was made to a mental health specialist, the mental health specialist has determined that the patient is not suffering from impaired judgment due to a mental disorder Mental health specialist's information, if applicable: MENTAL HEALTH SPECIALIST'S NAME MENTAL HEALTH SPECIALIST TITLE & LICENSE NUMBER MENTAL HEALTH SPECIALIST ADDRESS (STREET, CITY, ZIP)	

# ATTENDING PHYSICIAN CHECKLIST & COMPLIANCE FORM

<b>G</b>	<b>MEDICATION PRESCRIBED</b>	
PHARMACIST NAME		TELEPHONE NUMBER (    )
1.	Aid-in-dying medication prescribed: <input type="checkbox"/> a. Name: <input type="checkbox"/> b. Dosage:	
2.	Antiemetic medication prescribed: <input type="checkbox"/> a. Name: <input type="checkbox"/> b. Dosage:	
3.	Method prescription was delivered: <input type="checkbox"/> a. In person <input type="checkbox"/> b. By mail <input type="checkbox"/> c. Electronically	
4.	Date medication was prescribed: ____/____/____ (month/day/year)	

<b>X</b>	PHYSICIAN'S SIGNATURE	DATE
	NAME (PLEASE PRINT)	

\*\*Capacity to make medical decisions means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make

\*\*\*\* Mental Health Specialist means a psychiatrist or a licensed psychologist.



Document #3459

## The California End of Life Option Act

CMA Legal Counsel, December 2016

On October 5, 2015, California became the fifth state in the nation to allow physicians to prescribe terminally ill patients medication to end their lives. A.B.X2-15, the “End of Life Option Act,” permits terminally ill adult patients with capacity to make medical decisions to be prescribed an aid-in-dying medication if certain conditions are met. (A.B.X2-15, Stats. 2015, Ch.1; Health & Safety Code §§443 *et seq.*) This document discusses the requirements of the End of Life Option Act.

### EFFECTIVE DATE

#### 1. When Did The End of Life Option Act Become Effective?

A.B.X2-15 was enacted during a special session of the California Legislature and became effective on June 9, 2016 (Effective Date), the 91st day after the special session ended on March 10, 2016.

Opponents of the Act filed a referendum with the California Secretary of State to repeal the End of Life Option Act (California State Initiative 15-0080). However, backers failed to gather enough valid signatures to put the referendum on the ballot.

The Act will remain law until January 1, 2026, at which time it will be repealed by its own terms, unless further extended by the Legislature. (Health & Safety Code §443.215.)

### REQUIREMENTS UNDER THE ACT

#### Form of Requests

#### 2. Who Can Make An Aid-in-Dying Request Under The Act?

As set forth in Health & Safety Code §443.2(a), any adult (an individual eighteen (18) years of age or older (Health & Safety Code §443.1(a)) with the capacity to make medical decisions and with a terminal disease may make a request to receive a prescription for an aid-in-dying drug if all of the following conditions are satisfied:

- The individual's attending physician has diagnosed the individual with a terminal disease.
- The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.
- The individual is a resident of California and is able to establish residency through one of the following:
  - ♦ Possession of a California driver license or other identification issued by the State of California.

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- ♦ Registration to vote in California.
- ♦ Evidence that the person owns or leases property in California.
- ♦ Filing of a California tax return for the most recent tax year.
- The individual documents his or her request by submitting a Request form that is signed, dated, and witnessed pursuant to the Act's requirements.
- The individual has the physical and mental ability to self-administer the aid-in-dying drug.

A request for a prescription for an aid-in-dying drug cannot be made on behalf of patient through an agent under a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, a legally recognized health care decisionmaker or any other person, regardless of relationship to the patient. Such a request must be made solely and directly by the individual diagnosed with the terminal disease. (Health & Safety Code §443.2(c).) Accordingly, a parent cannot request an aid-in-dying drug for his or her child and a spouse cannot request it for the other spouse. As discussed below, special rules apply if the person requesting an aid-in-dying drug is a resident in a developmental center or state operated facility.

### **3. How Does a Patient Make an Aid-in-Dying Request?**

To make a request for a prescription for an aid-in-dying drug, an individual must submit to his or her attending physician two oral requests, made at least fifteen (15) days apart, and one written request in the statutory form. The Act does not specify *when* in the process the written request must be made although the Interpreter Declaration form has the interpreter declare that the patient affirmed they signed the written Request form *after* consultations with an attending and consulting physician. All three requests must be received directly by the attending physician, not a physician designee. (Health & Safety Code §443.3(a).) As explained below, requests can be made through the use of an interpreter if certain requirements are met. (Health & Safety Code §443.11(b)(2).)

### **4. Are There Documentation and Witness Requirements For Oral and Written Requests?**

Yes. An attending physician who receives an oral or written request for an aid-in-dying drug must

document each such request in the patient's medical record. (Health & Safety Code §§443.8(a); 443.8(b).) The law does not specify particular language for oral requests or for documenting oral or written requests in the medical record. (Health & Safety Code §443.8.) However, a valid written request for an aid-in-dying drug must meet all of the following conditions:

- The written request must be made on the form "Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner."
- The written request form must be signed and dated, in the presence of two witnesses, by the individual seeking the aid-in-dying drug.
- The written request must be witnessed by at least two other adults who, in the presence of the requesting individual, attest that to the best of their knowledge and belief the requesting individual is:
  - ♦ An individual who is personally known to them or has provided proof of identity;
  - ♦ An individual who voluntarily signed this request in their presence;
  - ♦ An individual whom they believe to be of sound mind and not under duress, fraud, or undue influence; and
  - ♦ Not an individual for whom either witness is the attending physician, consulting physician, or mental health specialist.

(Health & Safety Code §§443.3(b); 443.3(d); 443.11(a).) Also, only one witness may be related to the requesting individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the requesting individual's estate upon death, or own, operate, or be employed at a health care facility where the patient is receiving medical treatment or resides. (Health & Safety Code §443.3(c).)

## **Required Documentation and Forms**

### **5. Are There Additional Documentation Requirements?**

Yes. Under this law, in addition to documenting all oral and all written requests for an aid-in-dying drug as described above, all of the following must also be

documented in the requesting patient's medical record:

- The attending physician's diagnosis and prognosis, and the determination that a qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the attending physician has determined that the individual is not a qualified individual.
- The consulting physician's diagnosis and prognosis, and confirmation that the qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified individual.
- A report of the outcome and determinations made during a mental health specialist's assessment, if performed.
- The attending physician's offer to the qualified individual to withdraw or rescind his or her request at the time of the individual's second oral request.
- A note by the attending physician indicating that all requirements of the attending physician and of the consulting physician have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.
- All documentation required to be submitted to the California Department of Public Health (CDPH), as more fully described below, including a copy of the qualifying patient's written request, the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician follow up form.

(Health & Safety Code §§443.9; 443.9(a); 443.9(b); Health & Safety Code §443.19.)

## **6. Are Particular Forms Required by the Act?**

Yes. As mentioned above, the End of Life Option Act requires five new forms to be used with patients electing the aid-in-dying drug option made available by this law. The forms include:

1. "Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner" (Health & Safety Code §443.11(a));
2. "Final Attestation For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner" (Health & Safety Code §443.11(c));
3. "Attending Physician Checklist & Compliance Form" (Health & Safety Code §443.22(b));
4. "Consulting Physician Compliance Form" (Health & Safety Code §443.22(b)); and
5. "Attending Physician Follow-Up Form" (Health & Safety Code §443.22(b)).

The exact language of these forms is set forth in statute and must be utilized word for word. The law expressly states that the Medical Board of California (MBC) is permitted to update three of the five forms ("Attending Physician Checklist & Compliance Form," "Consulting Physician Compliance Form," and "Attending Physician Follow-Up Form") and that any such updates be published on the CDPH website (Health & Safety Code §443.22(a).) These three forms, as well as the other forms required by the Act ("Request For An Aid-In-Dying Drug to End My Life In A Humane And Dignified Manner," "Final Attestation For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner," and "Interpreter's Declaration" are accessible on the CDPH website at <http://www.cdph.ca.gov/Pages/EndofLifeOptionAct.aspx>. Physicians should use the CDPH forms and should not create their own.

Given the nature of the information requested on the forms, physicians should review the required forms at the time a patient makes an oral request and prior to the time any aid-in-dying drug is prescribed. Doing so will help the physician have in mind the many requirements of the Act and will allow the physician to elicit from the patient, rather than speculate on, the subjective patient information asked for on the forms. That subjective patient information includes, for example, the concerns that contributed to the patient's decision to request a prescription for an aid-in-dying drug.

## **7. Can An Interpreter Be Used?**

Yes. If an interpreter is used, the written Request form signed by the requesting patient must be written in the same language as any conversations, consultations, or interpreted conversations or consultations

between a patient and his or her attending or consulting physicians. (Health & Safety Code §443.11(b)(1).) However, even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English, the written Request form may be prepared in English if the English language form includes an attached interpreter's declaration that is signed under penalty of perjury. (Health & Safety Code §443.11(b)(2).) The interpreter's declaration must be substantially similar to language set forth in the statute. (Health & Safety Code §443.11(b)(2).) An Interpreter's Declaration form is accessible on the CDPH website at: <http://www.cdph.ca.gov/Pages/EndofLifeOptionAct.aspx>.

If a request or communication or consultation related to a request for an aid-in-dying drug is made with the use of an interpreter, the interpreter must not be related to the patient by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the patient's estate upon death. (Health & Safety Code §443.11(b)(3).) The interpreter must also meet the standards promulgated by the California Healthcare Interpreting Association (<http://chiaonline.org/CHIA-Standards>) or the National Council on Interpreting in Health Care ([www.ncihc.org/ethics-and-standards-of-practice](http://www.ncihc.org/ethics-and-standards-of-practice)) or other standards deemed acceptable by CDPH for health care providers in California. (Health & Safety Code §443.11(b)(3).)

## Health Care Provider Defined

### 8. Who Is A "Health Care Provider" Under The End Of Life Option Act?

For purposes of this law, "health care provider" or "provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code (physicians, nurses, psychologists, physician assistants, pharmacists, and other professionals); any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code (emergency medical technicians and paramedics); and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code (general acute care hospitals, acute psychiatric

hospitals, special hospitals, skilled nursing facilities, intermediate care facilities, and other facilities). (Health & Safety Code §443.1(h).)

## Requests for Aid-in-Dying Drug

### 9. Can Any Physician Fulfill A Request For An Aid-In-Dying Drug?

No. Only a patient's "attending physician" may fulfill a request for an aid-in-dying drug if all requirements of the law are met. Under the law, a patient's "attending physician" is specifically defined as the physician who has primary responsibility for the health care of a requesting patient *and* treatment of the patient's terminal disease. (Health & Safety Code §443.1(c).) The attending physician may not serve as a witness to a written Request (Health & Safety Code §443.11(a), cannot be related to the requesting patient by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the patient's estate upon death. (Health & Safety Code §443.17(d).)

### 10. What Are The Obligations Of The Attending Physician Who Receives A Request?

Before prescribing an aid-in-dying drug, the attending physician must satisfy numerous requirements. Specifically, the attending physician must:

- Make the initial determination of whether the patient is "qualified" to receive an aid-in-dying drug under the End of Life Option Act;
- Confirm that the patient is making an informed decision;
- Refer the patient to a consulting physician;
- Confirm that the patient's request does not arise from coercion or undue influence;
- Counsel the patient;
- Inform the patient that he or she may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner;
- Offer the patient an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the drug;
- Verify, immediately before writing the prescription for an aid-in-dying drug, that the patient is making an informed decision;

- Confirm that all requirements are met and all appropriate steps are carried out in accordance with the law before writing a prescription for an aid-in-dying drug;
- Fulfill all documentation requirements;
- Complete the “Attending Physician Checklist & Compliance Form,” place it and the “Consulting Physician Compliance Form” in the patient’s medical record, then submit both forms to CDPH; and
- Give the requesting patient the Final Attestation Form and instruct the patient about completing it.

(Health & Safety Code §443.5(a).) Each of these steps is described more fully below.

### **11. What Is Required For An Initial Determination That A Patient Is “Qualified” To Request An Aid-In-Dying Drug?**

In order to make an initial determination that a patient is “qualified” under the Act to receive an aid-in-dying drug, the attending physician must determine all of the following:

- Whether the patient has the capacity to make medical decisions, meaning the patient has the ability to:
  - ♦ Understand the nature and consequences of a health care decision;
  - ♦ Understand its significant benefits, risks, and alternatives; and
  - ♦ Make and communicate an informed decision to health care providers. (Health & Safety Code §§443.1(e); 443.5(a)(1)(A)(i).)
- Whether the patient has a terminal disease, defined as an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six (6) months. (Health & Safety Code §§443.5(a)(1)(B); 443.1(q).)
  - ♦ Only a patient with a terminal disease may be prescribed an aid-in-dying drug. (Health & Safety Code §443.2(a)(1).)
  - ♦ “Medically confirmed” means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual

and the individual’s relevant medical records. (Health & Safety Code §443.1(j).)

- Whether the patient has voluntarily made the request for an aid-in-dying drug in a manner that satisfies the requirements of the Act, including witness attestations that the patient is of sound mind and not under fraud, duress or undue influence. (Health & Safety Code §§443.5(a)(1)(C); 443.2(a)(2); 443.3(b)(3)(B); (b)(3)(C).)
- Whether the patient is a “qualified” individual, defined as an adult who has the capacity to make medical decisions, is a resident of California, and has satisfied the requirements of the Act in order to obtain a prescription for a drug to end his or her life. (Health & Safety Code §§443.5(a)(1)(D); 443.1(o).)

An individual cannot be deemed “qualified” based solely on age or disability. (Health & Safety Code §443.2(b).)

### **12. Can A Terminally Ill Patient With A Mental Disorder Be “Qualified” To Request An Aid-In-Dying Drug?**

Yes, but only under specific circumstances. If the attending physician determines that the patient has indications of a mental disorder, the attending physician must refer the patient for an assessment by a mental health specialist. When a referral for a mental health specialist assessment is made, no aid-in-dying drugs may be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder. (Health & Safety Code §§443.5(a)(1)(A)(ii); 443.5(a)(1)(A)(iii).)

### **13. Can An Individual Residing In A Developmental Center Be “Qualified” Under The Act?**

Yes, if the individual meets all of the requirements specified in the Act. However, even if a resident in a developmental center or a state-operated facility under the jurisdiction of the Department of Developmental Services (DDS) is qualified and wants to exercise his or her rights under the Act, DDS employees and others acting on behalf of DDS are precluded from providing aid-in-dying drugs on DDS premises. When a terminally ill individual residing in a developmental center or state-operated

facility under DDS jurisdiction makes a request to exercise his or her rights under the Act, specific procedures must be followed for transferring that individual to an appropriate community setting. When no community setting option is available, an appeal process must be provided. More information on the regulations that apply to requests for aid-in-dying drugs by residents in developmental centers and state-operated facilities under DDS jurisdiction can be found at <http://www.oal.ca.gov/res/docs/pdf/emergencies/recent%20action.%20moved%20emergencies/2016-0713-02ER.pdf>. (17 C.C.R. §§51000–51002.)

**14. Does A Patient’s Request For An Aid-In-Dying Drug Mean The Patient Needs Someone Else To Make Decisions For Them?**

No. A request by a qualified individual to an attending physician for an aid-in-dying drug in good faith compliance with the provisions of the Act does not, by itself, indicate that the patient cannot make informed decisions for themselves. In fact, the Act specifically states that such a request cannot provide the sole basis for the appointment of a guardian or conservator of the person. (Health & Safety Code §443.14(d)(1).)

**15. Are There Specific Requirements To Ensure That The Patient Is Making An Informed Decision?**

Yes. The attending physician is required to confirm that the patient is making an informed decision by discussing with him or her all of the following:

- His or her medical diagnosis and prognosis.
- The potential risks associated with ingesting the requested aid-in-dying drug.
- The probable result of ingesting the aid-in-dying drug.
- The possibility that he or she may choose to obtain the aid-in-dying drug but not take it.
- The feasible alternatives or additional treatment options, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

Then, after all other requirements are met and immediately before writing the prescription for an aid-in-dying drug, the attending physician must again verify that the patient is making an informed decision.

(Health & Safety Code §§443.5(a)(2); 443.5(a)(8); 443.10.)

**16. Is A Referral To A Consulting Physician Required For Every Patient?**

Yes. The attending physician must refer a patient who requests an aid-in-dying drug to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the requirements of the Act. (Health & Safety Code §443.5(a)(3).)

**17. Does The Act Contain Safeguards Against Coercion And Undue Influence?**

Yes. The attending physician must confirm that the patient’s request does not arise from coercion or undue influence by another person by discussing with the patient, outside of the presence of any other persons, except an interpreter, whether or not the patient is feeling coerced or unduly influenced by another person. (Health & Safety Code §443.5(a)(4).)

**18. Will The Patient Be Counseled About Taking An Aid-In-Dying Drug?**

Yes. The attending physician must counsel the patient about the importance of all of the following:

- Having another person present when he or she ingests the aid-in-dying drug.
- Not ingesting the aid-in-dying drug in a public place, defined as any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access.
- Notifying the next of kin of his or her request for an aid-in-dying drug. A request for an aid-in-dying drug cannot be denied because a patient declines or is unable to notify next of kin.
- Participating in a hospice program.
- Maintaining the aid-in-dying drug in a safe and secure location until the patient self-administers the drug.

(Health & Safety Code §§443.5(a)(5); 443.1(n).)



The attending physician may also want to counsel the patient to update their Advance Health Care Directive and POLST form to include an indication of the patient's intention to ingest an aid-in-dying drug to end their life and to update statements of their wishes for medical interventions accordingly. This will help prevent confusion and unwanted interventions or attempts at resuscitation in various situations including those when emergency responders are called. For more information on Advance Health Care Directive and POLST, *see* [CMA ON-CALL document #3451](#), "Decisions Regarding Life-Sustaining Treatment: Advance Directives and POLST."

## **19. What Are The Final Steps Before An Aid-In-Dying Drug Can Be Prescribed?**

Before writing a prescription for an aid-in-dying drug, the attending physician must actively confirm that all requirements of the Act are met and that all appropriate steps have been carried out in accordance with the Act. The attending physician must also complete all documentation requirements, including completion of the Attending Physician Checklist and Compliance form. Finally, the attending physician must give the patient the "Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" form with the instruction that the form be filled out and executed by the patient within 48 hours prior to self-administering the aid-in-dying drug. (Health & Safety Code §§443.5(a)(9); 443.5(a)(10); 443.5(a)(11); 443.5(a)(12).)

## **Obtaining Aid-in-Dying Drug**

### **20. How Does A Qualified Patient Obtain The Aid-In-Dying Drug?**

If the attending physician has fulfilled the requirements of the Act, the attending physician may provide the aid-in-dying drug in any of the following ways:

- **Dispensing Directly To The Patient:** If the attending physician is authorized to dispense medicine under California law, has a current United States Drug Enforcement Administration (USDEA) certificate and complies with any applicable administrative rule or regulation, he or she may dispense the aid-in-dying drug directly to the patient, including any ancillary

medication intended to minimize the patient's discomfort.

- **Delivering Prescription To The Pharmacist:** With the patient's written consent, the attending physician may contact a pharmacist, inform the pharmacist of the prescriptions, and deliver the written prescriptions personally, by mail, or electronically to the pharmacist. The pharmacist may then dispense the drug to the patient, the attending physician, or a person expressly designated by the patient if the designation is delivered to the pharmacist either verbally or in writing. The Act does not specifically state who must deliver the verbal or written designation to the pharmacist although it is best to have the patient do so. Delivery of the dispensed drug to the patient, the attending physician, or a person expressly designated by the patient may be made by personal delivery, or, with a signature required on delivery, by United Parcel Service, United States Postal Service, Federal Express, or by messenger service.

Handing the patient a written script to take to the pharmacy is not an authorized method of delivering an aid-in-dying prescription and therefore, is not permitted. (Health & Safety Code §§443.5(b)(1); 443.5(b)(2); 443.5(c).)

## **Consulting Physician**

### **21. Who Can Be A Consulting Physician And What Are Their Responsibilities?**

Before a patient obtains an aid-in-dying drug from his or her attending physician, the patient must be seen by a "consulting physician," defined as a physician who is "independent" from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's terminal disease. The law does not define "independent." (Health & Safety Code §443.1(f).)

The consulting physician may not be a witness to the patient's written request for an aid-in-dying drug and may not be related to the patient by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the patient's estate upon death. (Health & Safety Code §§443.3(b)(3)(D); 443.17(d).)

Under the End of Life Option Act, a consulting physician must do all of the following:

- Examine the referred patient and his or her relevant medical records.
- Confirm in writing the attending physician's diagnosis and prognosis.
- Determine that the individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision.
- If there are indications of a mental disorder, the consulting physician must refer the patient to a mental health specialist for an assessment.
  - ♦ Although the Act does not explicitly so state, it is feasible that a patient who has indications of a mental disorder would be referred twice to a mental health specialist for an assessment because that referral is an affirmative obligation of both the attending and consulting physician.
- Fulfill the record documentation required by the Act.
- Complete and submit the "Consulting Physician Compliance Form" to the attending physician.

(Health & Safety Code §§443.5(a)(3); 443.6.)

### **Mental Health Specialist Assessment**

#### **22. Is a Mental Health Specialist Assessment Required For Every Patient Who Requests An Aid-In-Dying Drug?**

No. A mental health specialist assessment is only required if a patient's attending or consulting physician determines that the patient has indications of a mental disorder. In such a case, a prescription for an aid-in-dying drug cannot be provided unless and until the attending or consulting physician refers the patient to a mental health specialist for an assessment and that specialist fulfills his or her requirements under the Act. (Health & Safety Code §§443.5(a)(1)(A)(ii); 443.5(a)(1)(A) (iii); 443.6(d).)

The mental health specialist assessment shall consist of one or more consultations between the referred patient and the mental health specialist for the purpose of determining that the patient has the capacity to make medical decisions and is not suf-

fering from impaired judgment due to a mental disorder. (Health & Safety Code §443.1(k).)

#### **23. Who Can Serve As A Mental Health Specialist Under The Act And What Are Their Responsibilities?**

Under the Act, a "mental health specialist" is defined as a psychiatrist or a licensed psychologist. The mental health specialist may not be a witness to the requesting patient's written request for an aid-in-dying drug and cannot be related to the patient by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the patient's estate upon death. (Health & Safety Code §§443.1(l); 443.3(b)(3)(D); 443.3(d); 443.17(d).)

A psychiatrist or psychologist who sees a patient for a mental health specialist assessment pursuant to the Act must do all of the following:

- Examine the patient and his or her relevant medical records.
- Determine that the patient has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.
- Determine that the individual is not suffering from impaired judgment due to a mental disorder.
- Fulfill the documentation requirements of the Act.

(Health & Safety Code §443.7.)

### **Patient Right to Withdraw or Rescind Request**

#### **24. Can A Patient Change His Or Her Mind To Use An Aid-In-Dying Drug?**

Yes. At any time and without regard to the patient's mental state, a patient may withdraw or rescind his or her request and may decide not to ingest an aid-in-dying drug. In fact, the attending physician has an affirmative obligation to inform the patient that he or she can withdraw or rescind his or her request for an aid-in-dying drug at any time and in any manner. The attending physician also has an affirmative, non-delegable obligation to offer the patient the opportunity to withdraw or rescind the request before a

prescription for an aid-in-dying drug is written. (Health & Safety Code §§443.4(a); 443.4(b); 443.5(a)(6); 443.5(a)(7).) According to the documentation requirement of the Act, that “offer” must be made at the time of the patient’s second oral request and must be documented in the patient’s medical record. (Health & Safety Code §443.8(f).)

## Final Attestation Form

### **25. Does The Patient Have Any Additional Obligations Once The Aid-In-Dying Prescription Is Written?**

Yes. Within forty-eight (48) hours prior to the patient self-administering the aid-in-dying drug, the patient is required to complete the “Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner” form that the attending physician is required to provide to the patient and instruct the patient about completing. If the aid-in-dying drug prescribed is not later returned or relinquished upon the patient’s death as required by the law, the completed Final Attestation Form must be delivered by the individual’s health care provider, family member, or other representative to the attending physician who must include it in the patient’s medical record. (Health & Safety Code §§443.5(a)(12); 443.11(c)(1); 443.11(c)(2).)

It is unclear what the attending physician’s obligations are, if any, if the Final Attestation Form is not received. Under the law, unused aid-in-dying drugs must be relinquished after the requesting patient’s death to qualified facilities that properly dispose of controlled substances. (Health & Safety Code §443.20.) Thus, the attending physician may not know if such unused drugs are turned in and if a Final Attestation Form should be forthcoming, if the requesting patient died a natural death without ingesting the aid-in-dying drug or decided not to take it. Presumably, the attending physician does not have any affirmative obligation to seek out completion or collection of the Final Attestation Form beyond providing it to the requesting patient and instructing them on its completion and submission.

## Aid-In-Dying Drug

### **26. Does The Act Specify What Aid-In-Dying Drug Can Be Prescribed?**

No. While the law defines an aid-in-dying drug as a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal disease (Health & Safety Code §443.1(b)), the law is silent as to which medication(s) can be used as the aid-in-dying drug prescribed.

## Death Certificate

### **27. What Should Be Stated As The Official Cause Of Death On The Death Certificate?**

The Act is silent as to the cause of death that should be identified on the death certificate of a patient who died as a direct result of self-administering an aid-in-dying drug prescribed by an attending physician. However, the Act does state that death caused by the self-administration of an aid-in-dying drug shall not constitute suicide. (Health & Safety Code §443.18.) Thus, physicians should not list suicide as the cause of death of the patient. California law governing vital records requires the physician last in attendance on a deceased person (or the coroner where applicable) to state on the certificate of death “the disease or condition directly leading to death, antecedent causes, other significant conditions contributing to death and any other medical and health section data as may be required on the certificate,” among other information, including specifically indicating the existence of any cancer known to the physician. (Additional provisions apply to nursing home residents.) (Health & Safety Code §102825; see also §§102860, 103885(e), (h).) The California Department of Public Health (CDPH) opines that these provisions of law make it inappropriate to state, “pursuant to End of Life Option Act” or similar phrases as a cause of death. (June 9, 2016 Karen L. Smith, MD, MPH, Director of CDPH and State Public Health Office, Letter Regarding “Reporting Causes of Death For End Of Life Option Act,” to Local Registrars of Births and Deaths, Chief Deputy Registrars of Births and Deaths, County Coroners and Medical Examiners, Funeral Directors, County Recorders). “Instead, CDPH recommends that



certifiers report the underlying terminal disease ... because it advances the data collection and data analysis for which death certificates are used.” CDPH has not opined on other options, such as identifying both the underlying terminal disease and the medication ingested which brought about the death. CMA believes that such an entry on the death certificate could be appropriate under the category of “antecedent,” “direct” or “significant” causes. Other than not listing “suicide,” physicians can list the cause(s) of death that they feel is the most accurate. The Medical Board of California has not opined on this issue. For more information on death certificates, *see* **CMA ON-CALL document #3402, “Determination and Pronouncement of Death and Death Certificates.”**

## Reporting and Data Collection Requirements

### 28. What Are The Attending Physician’s Reporting Requirements?

Within thirty (30) calendar days of writing a prescription for an aid-in-dying drug, the attending physician must submit to CDPH:

- A copy of the qualifying patient’s written “Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner”;
- The “Attending Physician Checklist And Compliance Form”; and
- The “Consulting Physician Compliance Form.”

(Health & Safety Code §443.9(a).)

Within thirty (30) calendar days following the qualified individual’s death from ingesting the aid-in-dying drug, or any other cause, the attending physician must submit to CDPH the “Attending Physician Followup Form.” (Health & Safety Code §443.9(b).) This assumes that the attending physician will be notified of or otherwise be aware of the patient’s death. The law is silent as to what the attending physician’s obligation is when he or she is not notified or aware of the patient’s death.

### 29. How Does The Attending Physician Submit The Required Forms to CDPH?

A copy of the qualifying patient’s written “Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner,” the “Attending

Physician Checklist And Compliance Form,” the “Consulting Physician Compliance Form,” and the “Attending Physician Followup Form” must be submitted to CDPH either by postal mail in an envelope marked “confidential” or by facsimile as follows:

By mail to:

California Department of Public Health  
Public Health Policy and Research Branch  
Attention: End of Life Option Act  
MS 5205  
P.O. Box 997377  
Sacramento, CA 95899-7377

By facsimile to:

(916) 440-5209

Forms cannot be submitted electronically or by email. Because the law requires the attending physician to submit these documents to CDPH, such disclosure is allowed by HIPAA. (45 C.F.R. §165.512.) However, physicians must ensure that they submit the required information in compliance with the HIPAA Privacy and Security Rules.

### 30. What Are The Aid-In-Dying Data Collection And Publication Requirements?

Under the Act, CDPH is required to collect and review the information submitted by attending physicians. The information collected by CDPH is confidential and must be collected in a manner that protects the privacy of the patient, the patient’s family, and any medical provider or pharmacist involved with the patient under the Act. The information collected cannot be disclosed, is not discoverable, and cannot be compelled to be produced in any civil, criminal, administrative, or other proceeding. (Health & Safety Code §443.19(a).)

Beginning in 2017, and each year thereafter, based on the information collected in the previous year from the Attending Physician Followup Form and vital statistics, CDPH must post on its website on or before July 1 a report that includes the following:

- The number of people for whom an aid-in-dying prescription was written.
- The number of known individuals who died each year for whom aid-in-dying prescriptions were written, and the cause of death of those individuals.

- For the period commencing January 1, 2016, to and including the previous year, cumulatively, the total number of aid-in-dying prescriptions written, the number of people who died due to use of aid-in-dying drugs, and the number of those people who died who were enrolled in hospice or other palliative care programs at the time of death.
- The number of known deaths in California from using aid-in-dying drugs per 10,000 deaths in California.
- The number of physicians who wrote prescriptions for aid-in-dying drugs.
- Of people who died due to using an aid-in-dying drug, demographic percentages organized by the following characteristics:
  - ♦ Age at death;
  - ♦ Education level;
  - ♦ Race;
  - ♦ Sex;
  - ♦ Type of insurance, including whether or not they had insurance;
  - ♦ Underlying illness.

(Health & Safety Code §443.19(b).)

### Unused Aid-in-Dying Drugs

#### 31. What Happens To Unused Or Excess Aid-in-Dying Drugs?

Any person who has custody or control of any unused aid-in-dying drug prescribed under the Act after the death of the patient must personally deliver for disposal the unused or excess aid-in-dying drugs to the nearest qualified facility that properly disposes of controlled substances. If none is available, the person must dispose of the drugs by lawful means in accordance with guidelines promulgated by the California State Board of Pharmacy or a federal Drug Enforcement Administration approved take-back program. (Health & Safety Code §443.20.) Because many patients and their families may not know which facilities are qualified to dispose of controlled substances, the attending physician may wish to provide that information before or at the time that an aid-in-dying drug is prescribed.

## PARTICIPATION IN END OF LIFE OPTION ACT

#### 32. Are Physicians Required To Participate In The End Of Life Option Act?

No. The Act expressly states, “Participation in activities authorized [by this Act] shall be voluntary. (Health & Safety Code §443.14(e)(1).) Thus, physicians are free to choose whether to participate in the End of Life Option Act or not. California Health and Safety Code section 442.5 requires a health care provider who diagnoses a patient with a terminal illness to notify the patient of his or her right to comprehensive information and counseling regarding legal end-of-life options and, upon the request of the patient, to provide that comprehensive information and counseling. (Health & Safety Code §442.5(a)(1), (a)(2).) However, the End of Life Option Act contains an express exemption to those obligations. Specifically, the Act provides that, “Notwithstanding Sections 442 to 442.7, inclusive, a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities [authorized by this Act] is not required to take any action in support of an individual’s decision under this [law].” (emphasis added) (Health & Safety Code §443.14(e)(1).) In other words, any participation in the End of Life Option Act is completely voluntary despite other provisions of California law that require certain health care providers to notify certain patients of their legal end-of-life options. Thus, while receiving an aid-in-dying drug will be a legal end-of-life option for qualified terminally ill patients in California once the Act becomes effective, the Act’s specific conscience exemption means that physicians do not have to advise or counsel patients regarding or participate in any aid-in-dying activities if they are opposed thereto by reasons of conscience, morality or ethics.

#### 33. Are There Legal Protections If A Physician Chooses Not To Participate?

Yes, the Act contains express immunity for refusing to inform or participate and for refusing to refer to a provider who does participate. Specially, the Act states that a health care provider is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for refusing to participate in activities authorized under the Act, including, but

not limited to, refusing to inform a patient regarding his or her rights under the Act, and not referring an individual to a physician who participates in activities authorized under this law. (Health & Safety Code §443.14(e)(2).) This language is further assurance that a physician with a conscience, morality or ethical objection to physician aid-in-dying has no obligation to participate in the activities of the Act or even to notify a patient whom they diagnose with a terminal illness about aid-in-dying as an end-of-life option. However, if a physician is unable or unwilling to carry out a qualified patient's request for an aid-in-dying drug and the qualified patient transfers care to a new health care provider, the patient may request a copy of his or her medical records pursuant to law. (Health & Safety Code §443.14(e)(3).)

Similarly, a health care provider who refuses to participate in activities under the Act on the basis of conscience, morality or ethics cannot be subject to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty by a health care provider, professional association or organization. (Health & Safety Code §443.14(b).)

### **34. Can Medical Staff Members, Employees, And Others Be Prohibited From Participating?**

Yes. If certain steps are taken, an employer or health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under the Act while such persons are on premises owned or under the management or direct control of that prohibiting employer or health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting employer or health care provider. (Health & Safety Code §443.15(a).)

California regulations preclude DDS, developmental centers and state-operated facilities, their employees, independent contractors, or other persons from providing aid-in-dying drugs on the premises of any DDS facility or while acting within the course and scope of any employment by, or contract with, DDS. As described above, specific procedures apply when a resident in a DDS facility makes a request for aid-in-dying drugs. (17 C.C.R. §§51000-51002.)

### **35. What Is Considered “Participation” In Activities Authorized By The Act?**

As defined in the Act, participating, or entering into an agreement to participate, in activities under this law, means doing or entering into an agreement to do any one or more of the following:

- Performing the duties of an “attending physician” as defined in the Act.
- Performing the duties of a “consulting physician” as defined in the Act.
- Performing the duties of a “mental health specialist” as defined in the Act, when a referral to such a specialist is made.
- Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug.
- Being present when the qualified individual takes the aid-in-dying drug.

(Health & Safety Code §443.15(f)(2).) A prohibiting employer or health care provider cannot prohibit a health care provider from providing any health care services that are not specifically included in the definition of “participating, or entering into an agreement to participate, in activities under” the Act. (Health & Safety Code §443.15(h).) Further, the following activities are expressly excluded from that definition and thus, cannot constitute “participating, or entering into an agreement to participate, in activities under” this law:

- Diagnosing whether a patient has a terminal disease.
- Informing a patient of the medical prognosis.
- Determining whether a patient has the capacity to make decisions.
- Providing information to a patient about the End of Life Option Act.
- Providing a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating in the activities authorized by the Act.

(Health & Safety Code §443.15(f)(3).)

Given these exclusions, any health care provider can, without limitation, make the initial medical determinations for a patient who requests an aid-in-dying drug under the Act (diagnosis, prognosis, capacity)

and can provide information to a patient about or, upon request, refer a patient to another health care provider for services under the Act. This is true even if the employer or entity has a policy prohibiting health care providers from participating in activities under the Act. (Health & Safety Code §443.15(f)(3).)

Thus, while a health care provider may, on the basis of conscience, morality or ethics, decline to provide information to a patient about the Act or provide a patient with a referral to another health care provider for participation in activities under the Act, a prohibiting employer or health care provider may not prohibit willing employees, independent contractors, or other persons or entities, including other health care providers, from doing so. (Health & Safety Code §§443.14(e)(1); 443.14(e)(2); 443.15(f)(3).)

### **36. Does The Act Require Notice Of A Prohibiting Employer Or Health Care Provider's Policy Prohibiting Participation In Activities Under The Act?**

Yes. If an employer or health care provider is going to prohibit its employees, independent contractors, or other persons or entities from participating in activities under the Act, the employer or health care provider must first give notice of such policy to the individual or entity. Notice is defined as a separate statement in writing advising of the prohibiting employer or health care provider's policy with respect to participating in activities under the Act. (Health & Safety Code §443.15(f)(1).) An employer or health care provider that fails to provide such notice to an individual or entity cannot enforce such a policy against that individual or entity. (Health & Safety Code §443.15(b).)

### **37. Are There Limits On A Prohibiting Employer or Health Care Provider's Ability To Prohibit Participation In Activities Under The Act?**

Yes. A prohibiting employer or health care provider's ability to restrict participation is not without limits. The Act expressly states that a prohibiting employer or health care provider cannot:

- Prohibit any other health care provider, employee, independent contractor, or other person or entity from participating, or entering into an agreement to participate, in activities under the Act while on premises that are not

owned or under the management or direct control of the prohibiting employer or provider or while acting outside the course and scope of the participant's duties as an employee of, or an independent contractor for, the prohibiting employer or health care provider (Health & Safety Code §443.15(d)(1));

- Prohibit any other health care provider, employee, independent contractor, or other person or entity from participating, or entering into an agreement to participate, in activities under the Act as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the prohibiting employer or provider (Health & Safety Code §443.15(d)(2)); or
- Sanction an individual health care provider for contracting with a qualified patient to engage in activities authorized by the Act if the individual health care provider is acting outside of the course and scope of his or her capacity as an employee or independent contractor of the prohibiting employer or health care provider. (Health & Safety Code §443.16(b).) It is unclear whether this protection requires both the contract to be made and the services to be rendered at a time that the individual health care provider is acting outside the course and scope of his or her capacity as an employee or independent contractor of the prohibiting employer or health care provider or if only the services must be rendered at such time.

### **38. Can A Physician Be Disciplined For Violation Of A Prohibiting Employer or Health Care Provider's Policy Prohibiting Participation In The Act?**

Yes. A prohibiting employer or health care provider that provides appropriate notice, meaning a separate statement in writing advising the recipient of the prohibiting employer or health care provider's policy with respect to participating in activities under the Act (Health & Safety Code §443.15(f)(1).) may take action against any individual or entity that violates the policy. Permissible actions in the event of such a violation include, but are not limited to:

- Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff.

- Suspension, loss of employment, or other action authorized by the policies and practices of the prohibiting employer or health care provider.
- Termination of any lease or other contract between the prohibiting employer or provider and the individual or entity that violates the policy.
- Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting employer or provider and the individual or entity in violation of the policy.

However, regardless of the prohibiting employer or health care provider's policy, an individual health care provider shall not be sanctioned for any of the following:

- Making an initial determination pursuant to the standard of care that an individual has a terminal disease and informing him or her of the medical prognosis.
- Providing information about the End of Life Option Act to a patient upon the request of the individual.
- Providing an individual, upon request, with a referral to another physician.

(Health & Safety Code §443.16(a).) These activities are not by definition considered "participation in the activities authorized by the Act." (Health & Safety Code §443.15(f)(2), (f)(3).)

### **39. Can A Physician Be Reported To The Medical Board Solely For Participating Under the Act Or For Violation Of A Policy Prohibiting Participation Under The Act?**

No. The fact that a health care provider participates in activities under the Act cannot be the sole basis for a complaint or report by another health care provider of unprofessional or dishonorable conduct under Business and Professions Code Sections 800 to 809.9. (Health & Safety Code §443.15(g).) Similarly, if a prohibiting employer or health care provider takes any action for violation of a prohibiting employer or health care provider's policy prohibiting participation in activities under the Act, such action is not reportable under Business & Professions Code Sections 800 to 809.9. (Health & Safety Code §443.15(g).)

### **40. Are There Protections And Immunities For Physicians Who Choose To Participate?**

Yes. There are several protections and immunities for health care providers who choose to provide a qualified patient with services authorized by the Act.

First, a person is not subject to civil or criminal liability solely because the person was present when a qualified individual self-administers the prescribed aid-in-dying drug. A person who is present may, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug so long as the person does not assist the qualified person in ingesting the aid-in-dying drug. (Health & Safety Code §443.14(a).) Nothing in the law indicates that health care providers are excluded from these protections.

Second, a health care provider or professional organization or association cannot subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating in good faith compliance with the Act. (Health & Safety Code §443.14(b).)

Third, a health care provider is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for participating in activities pursuant to the Act, including, but not limited to, determining the diagnosis or prognosis of an individual, determining the capacity of an individual for purposes of qualifying under the Act, providing information to an individual regarding the Act, or providing a referral to a physician who participates in activities authorized by the Act. (Health & Safety Code §443.14(c).) Notably, for purposes of these immunity protections provided by the Act for health care providers who participate in activities pursuant to the Act and notwithstanding the more narrow definition of "participating" provided in section 443.15(f)(3) of the Act, "participating" includes determining the diagnosis or prognosis of an individual, determining the capacity of an individual for purposes of qualifying under the Act, providing information to an individual regarding the Act, or providing a referral to a physician who participates in activities authorized by the Act. (Health & Safety Code §§443.14(c); 443.15(f)(3).)

Fourth, the law specifically states that actions taken in accordance with the Act shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law. (Health & Safety Code §443.18.) However, neither the activities authorized under the Act nor the protections provided by the Act for participating therein may be construed to authorize or allow a physician or any other person to end an individual's life by lethal injection, mercy killing, or active euthanasia. (Health & Safety Code §443.18.)

Finally, the law expressly states that no actions taken in compliance with the provisions of the Act may constitute or provide the basis for any claim of neglect or elder abuse for any purpose of law. (Health & Safety Code §443.14(d)(2).)

The immunities and prohibitions on sanctions of a health care provider apply solely to actions of a health care provider taken pursuant to the End of Life Option Act. Health care providers may be sanctioned by their licensing board or agency for conduct and actions constituting unprofessional conduct, including failure to comply in good faith with the Act. (Health & Safety Code §§443.14(c); 443.16(c).)

## CRIMINAL PENALTIES

### 41. What Is Considered Criminal Conduct Under The Act?

The Act expressly states that it is a felony to knowingly:

- Alter or forge a request for an aid-in-dying drug to end an individual's life without his or her authorization if the act is done with the intent or effect of causing the individual's death.
- Conceal or destroy a withdrawal or rescission of a request for an aid-in-dying drug if the act is done with the intent or effect of causing the individual's death.
- Coerce or exert undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life.
- Destroy a withdrawal or rescission of a request for an aid-in-dying drug.
- Administer an aid-in-dying drug to an individual without his or her knowledge or consent.

(Health & Safety Code §443.17(a)-(c); Penal Code §7.) These criminal violations and resulting penalties are in addition to any civil liability and other criminal penalties. (Health & Safety Code §443.17(e), (f).)

## INSURANCE POLICIES AND CONTRACTS

### 42. How Does The Act Impact Insurance Policies and Contracts?

The Act specifically provides that death resulting from the self-administration of an aid-in-dying drug pursuant to the Act is not suicide. (Health & Safety Code §443.13(a)(2).) Broadly, the Act expressly states that the sale, procurement, or issuance of a life, health, or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for an aid-in-dying drug. (Health & Safety Code §443.13(a)(1).)

For qualified individuals who have policies of insurance, the Act expressly prohibits health and insurance coverage from being exempted on the basis of death brought about by self-administration of an aid-in-dying drug. (Health & Safety Code §443.13(a)(2).) Similarly, a qualified individual's act of self-administering an aid-in-dying drug cannot affect a life, health, or annuity policy other than by having the same impact as a natural death from the underlying disease. (Health & Safety Code §443.13(b).)

The Act forbids health insurance carriers and health care service plans from providing any information in communications made to an individual about the availability of an aid-in-dying drug unless there is a request by the individual or his or her attending physician at the behest of the individual. Further, no communication may include both the denial of treatment and information as to the availability of aid-in-dying drug coverage. (Health & Safety Code §443.13(c).)

Similar to the prohibitions on insurance policies, a provision in a contract, will, or other agreement executed on or after January 1, 2016, whether written or oral, to the extent that it would affect whether a person may make, withdraw, or rescind a request for

an aid-in-dying drug is not valid. (Health & Safety Code §443.12(a).) In other words, that portion of any agreement that purports to require or prohibit a person to request, withdraw or rescind a request for an aid-in-dying drug is not enforceable to the extent of that requirement although the remaining provisions of the agreement may be. Further, any obligation owing under any contract executed on or after January 1, 2016, cannot be conditioned upon or affected by a qualified individual making, withdrawing, or rescinding a request for an aid-in-dying drug. (Health & Safety Code §443.12(b).)

We hope this information is helpful to you. CMA is unable to provide specific legal advice to each of its more than 43,000 members. For a legal opinion con-

cerning a specific situation, consult your personal attorney.

For information on other legal issues, use CMA's online health law library, CMA ON-CALL, or refer to the *California Physician's Legal Handbook* (CPLH). CPLH is a comprehensive health law and medical practice resource containing legal information, including current laws, regulations and court decisions that affect the practice of medicine in California. Written and updated by CMA's Center for Legal Affairs, CPLH is available in an eight-volume, softbound print format or through an online subscription to [www.cplh.org](http://www.cplh.org). To order your copy, call (800) 882-1262 or visit CMA's website at [www.cmanet.org](http://www.cmanet.org).