Hofstra Law Review

Volume 51 | Issue 4 Article 6

6-1-2023

The Time Has Come: A Proposal for New York to Legalize Physician-Assisted Death

Samantha Knice
Maurice A. Deane School of Law at Hofstra University

NOTE
THE TIME HAS COME: A PROPOSAL FOR NEW YORK TO LEGALIZE PHYSICIAN-ASSISTED DEATH

I. INTRODUCTION

Charlie and Francie Emerick met and began dating during their freshman year of college in 1947.[1] They were so in love that they wished to wed before graduation, but they listened to their parents' advice and waited until after graduation to do so,[2] tying the knot in April of 1951.[3] They were ultimately married for sixty-six years and lived a fulfilling life together, during which they had three daughters and spent years as medical missionaries in India.[4] In 2004, the pair settled down in a retirement community in Portland, Oregon.[5]

By 2017, Charlie and Francie were deemed terminally ill by their physicians.[6] Charlie was diagnosed with Parkinson's disease, and Francie with heart disease.[7] As longtime believers of physician-assisted death ("PAD"), the couple had a strong desire to die together, in this way.[8] After meeting with doctors and gaining approval to use Oregon's Death with Dignity Act, the couple devised their ideal death.[9] On April 20,

1. Satori Seven Prods., LLC, *Living & Dying: A Love Story*, SHARE WISDOM NETWORK (2017), https://sharewisdom.com/living-dying-love-story-documentary-3 [https://perma.cc/TPZ6-ZFDP]; Jaleesa Baulkman, *Emotional Moment Terminally Ill Couple Married for 66 Years Held Hands as They Died on the Same Day After Taking Legal Euthanasia Drugs*, DAILY MAIL (Mar. 8, 2018), https://www.dailymail.co.uk/health/article-5478153/Terminally-ill-couple-married-66-years-die-day.html [https://perma.cc/4BXG-SB4A].

2. Satori Seven Prods., LLC, *supra* note 1.

3. JoNel Aleccia, *Oregon Couple's Final Days Captured in Intimate Aid-in-Dying Video*, WASH. POST (Mar. 7, 2018, 5:15 AM), https://www.washingtonpost.com/national/health-science/oregon-couples-final-days-captured-in-intimate-aid-in-dying-video/2018/03/07/727e7412-21f0-11e8-946c-9420060cb7bd_story.html [https://perma.cc/7UGW-Z5CV].

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Satori Seven Prods., LLC, *supra* note 1; Aleccia, *supra* note 3 ("The pair, early members of the 1980s-era Hemlock Society, had supported the choice for years, and, when their illnesses worsened, they were grateful to have the option for themselves . . . .").

9. Satori Seven Prods., LLC, *supra* note 1.

2017, Charlie and Francie swallowed lethal medication prescribed by their physicians, got into bed together, held hands, and took their last breaths.[10] They did not gasp for air, lose control of their bladders, or anything like that; they simply laid down, shut their eyes, waited for the drugs to work, and passed away peacefully.[11] They spent seventy years doing everything together, and this was no different.[12] Their daughters expressed their gratitude for having had the time to prepare for their parents' death.[13]

Despite how serene and dignified Charlie and Francie's deaths were, their choice to die was a highly controversial one—in fact, they did not tell many people about their choice for this reason.[14] For those they felt would not understand or agree with their decision, or who they simply did not wish to tell, they concocted a fake account of their death.[15] However, Charlie and Francie gave their family permission to tell their true story after enough time had passed, hoping that doing so could help people change how they think about dying, reducing the stigma surrounding PAD.[16]

Regardless of the extensive developments constantly being made in the fields of healthcare and technology, sometimes, even with "physicians' best efforts, some patients . . . continue to suffer or . . . remain in a comatose state for a long time" before dying.[17] The concept of PAD came into being for this reason,[18] as some individuals in these conditions sought instant death on their own terms, rather than being forced to endure a gruesome, long-lasting, and unavoidable death.[19] Why should individuals facing such imminent death not have the *option* to die peacefully, rather than painfully?[20]

---

10. *See* Aleccia, *supra* note 3.

11. *See id.* Francie passed away within fifteen minutes, which was "a testament to the state of her badly weakened heart," and Charlie passed away within the hour. *Id.*

12. *See* Satori Seven Prods., *supra* note 1.

13. *Id.*

14. *Id.*

15. *Id.* Francie and her daughters prepared a letter for the daughters to send out after the couple passed away, which said, "as you know, [Francie] and [Charlie] struggled for a long time, he with Parkinson's and she with heart disease . . . they died peacefully in their sleep," omitting all physician-assisted death details. *Id.*

16. Aleccia, *supra* note 3.

17. Eryn R. Ace, Krischer v. McIver*: Avoiding the Dangers of Assisted Suicide*, 32 AKRON L. REV. 723, 726 (1999).

18. *Id.*

19. *See* Anne Marie Su, *Physician Assisted Suicide: Debunking the Myths Surrounding the Elderly, Poor, and Disabled*, 10 HASTINGS RACE & POVERTY L.J. 145, 146 (2013) (explaining that in states where PAD is not legal, individuals "must wait for a slow and painful death").

20. *See* Scott FitzGibbon & Kwan Kew Lai, *The Model Physician-Assisted Suicide Act and the Jurisprudence of Death*, 20 HARV. J.L. & PUB. POL'Y 127, 131 (1996) (explaining that "whether

PAD "occurs when a physician facilitates a [terminally ill] patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act."[21] In the United States, there is no uniform federal law that supports PAD.[22] Therefore, the states must individually enact laws in support of PAD if they so desire, and the laws in the states where it has been enacted are distinct.[23] Several jurisdictions in the United States have implemented PAD laws, which are known under various names, including, but not limited to, death with dignity, physician-assisted dying, aid-in-dying, and right-to-die laws.[24]

Although several states in the United States have enacted PAD laws, most states have yet to do so.[25] New York is among the states that have yet to enact such a law, despite New York legislators proposing bills supporting its legalization on numerous occasions throughout the years, dating as recently as January 2023.[26] This Note advances the notion that the time has come for New York to follow suit and pass a law legalizing PAD.[27]

---

one's suffering is sufficiently unbearable to make death preferable to continued life is an inherently subjective determination on which people differ").

21. *Physician-Assisted Suicide*, AM. MED. ASS'N, https://www.ama-assn.org/delivering-care/ethics/physician-assisted-suicide [https://perma.cc/4S8G-YJH4] (last visited Aug. 12, 2023). This Note will be referring to physician-assisted suicide as PAD to avoid the negative connotations that the word "suicide" carries because there are many distinctions between PAD and suicide. *See* Jill Hamilton, *The Difference Between Physician Aid in Dying vs. Suicide*, KIM FOUND. (Dec. 27, 2017), https://www.thekimfoundation.org/blog/the-difference-between-physician-aid-in-dying-vs-suicide [https://perma.cc/R3NX-2KFR]. For one, with PAD, many individuals do not necessarily wish to die; they just have a terminal disease and are facing imminent death. *Id.* However, with suicide, individuals are often suffering from "severe psychological pain where [they] cannot enjoy life or see that things may be better in the future." *Id.* Overall, physician-assisted suicide "is an inaccurate, inappropriate, and biased phrase opponents often use to scare people about [PAD] laws." *Terminology of Assisted Dying*, DEATH WITH DIGNITY, https://deathwithdignity.org/learn/terminology [https://perma.cc/CLF8-HEPY] (last visited Aug. 12, 2023).

22. Larry I. Palmer, *The Legal and Political Future of Physician-Assisted Suicide*, 289 J. AM. MED. ASS'N 2283, 2283 (2003) (citing Washington v. Glucksberg, 521 U.S. 702 (1997)).

23. *See* Gonzales v. Oregon, 546 U.S. 243, 298 (2006) (Scalia, J., dissenting) ("The prohibition or deterrence of assisted suicide is certainly not among the enumerated powers conferred on the United States by the Constitution, and it is within the realm of public morality . . . traditionally addressed by the so-called police power of the [s]tates.").

24. Practical Law Health Care, *Right to Die Statutes*, THOMSON REUTERS, https://perma.cc/CT7A-F9QV (last visited Aug. 12, 2023).

25. *See In Your State*, DEATH WITH DIGNITY, https://deathwithdignity.org/states [https://perma.cc/6ETG-VQGH] (Mar. 30, 2023) (listing the states where PAD is legal, the states that are considering its enactment, and the states with no activity on this front); *see also Glucksberg*, 521 U.S. at 735 ("Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of [PAD].").

26. *See New York*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/new-york [https://perma.cc/6G33-FJ6Y] (last visited Aug. 12, 2023).

27. *See infra* Part III.C.

Part II of this Note briefly explains the history of PAD laws throughout the world, beginning with the pioneer behind PAD laws in the United States: the State of Oregon.[28] Further, Part II discusses the recent trend towards the legalization of PAD both within the United States and in other countries, to emphasize the increasing desire for these laws.[29] Part II ends with an analysis of PAD laws of other states and countries, comparing them to Oregon's law by pinpointing noteworthy differences and similarities.[30] Part III shifts the focus to New York, discussing its history of resisting the passage of a PAD law by analyzing both the numerous legislative PAD proposals that have been unsuccessful in New York, and seminal New York cases in which the concept of PAD has been rejected.[31] Further, common objections to PAD laws are mentioned and refuted.[32] Part III concludes with a discussion of the importance of allowing PAD laws and the benefits that come with allowing an individual to die on their own terms.[33]

Offering a solution, Part IV explains what New York should and should not include in its own PAD proposal, incorporating only the best components from PAD laws in both the United States and other countries.[34] This proposal also takes into account New York's history of resisting the passage of such a law and common objections opponents in the State have to the law.[35] With these considerations in mind, this proposal has considerable potential to successfully be passed in New York, to finally put an end to New York's lengthy battle surrounding this topic.[36]

II. PHYSICIAN-ASSISTED DEATH LAWS THROUGHOUT THE WORLD: A BRIEF HISTORY

Part II of this Note begins with a focus on Oregon's PAD law, which kickstarted the PAD movement in the United States.[37] This Part then discusses the rise of PAD laws in the United States and in other

28. *See infra* Part II.A.
29. *See infra* Part II.B.
30. *See infra* Part II.C–D.
31. *See infra* Part III.A.
32. *See infra* Part III.B.
33. *See infra* Part III.C.
34. *See infra* Part IV.
35. *See infra* Part IV.
36. *See infra* Part IV.
37. *See infra* Part II.A.

countries.[38] Lastly, this Part analyzes various PAD laws in connection with one another, highlighting noteworthy distinctions and similarities.[39]

A. The Pioneer of Physician-Assisted Death in the United States: Oregon

Oregon's PAD statute, the first in the United States, took effect in 1997 and served as the sole PAD statute in the nation until 2009, when Washington's PAD enactment took effect.[40] Oregon's PAD law has encountered many challenges throughout the years, namely when its validity was questioned and reached the United States Supreme Court in *Gonzales v. Oregon*.[41] However, *Gonzales* upheld Oregon's PAD law and ultimately found that the federal government lacked the authority to prohibit a state from legalizing PAD.[42]

1. An Analysis of Oregon's Death with Dignity Act

Oregon became the first state in the United States to enact a PAD law in 1994, entitled the Death with Dignity Act ("DWDA").[43] The DWDA allows a capable[44] adult[45] who is a resident of Oregon[46] "and has been determined by the attending physician[47] and consulting physician[48]

38. *See infra* Part II.B.

39. *See infra* Part II.C–D.

40. *See Oregon*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/oregon [https://perma.cc/L4SZ-ZN6H] (last visited Aug. 12, 2023); *Washington*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/washington [https://perma.cc/32S6-LP3G] (last visited Aug. 12, 2023). While Oregon's voters approved of the Oregon Death with Dignity Act in 1994, the law immediately "became embroiled in legal challenges and legislative attempts to repeal it." *20 Years of the Oregon Death with Dignity Act*, DEATH WITH DIGNITY (Sept. 7, 2017), https://deathwithdignity.org/news/2017/09/20-years-oregon-death-with-dignity-act [https://perma.cc/9GE8-UYKY]. However, "[t]hese efforts culminated in 1997, with courts allowing the [DWDA] to go into effect . . . ." *Id.*

41. *See infra* Part II.A.2.

42. *See infra* Part II.A.2.

43. *See Oregon*, *supra* note 40; OR. REV. STAT. §§ 127.800–.995 (2019).

44. § 127.800(3) (defining a "capable" patient as one who "has the ability to make and communicate health care decisions to health care providers" in the opinion of the court or the patient's attending or consulting physician, psychiatrist, or psychologist).

45. *Id.* § 127.800(1) (defining "adult" as an individual eighteen years or older).

46. *Id.* § 127.860 ("Factors demonstrating Oregon residency include but are not limited to: (1) Possession of an Oregon driver license; (2) Registration to vote in Oregon; (3) Evidence that the person owns or leases property in Oregon; or (4) Filing of an Oregon tax return for the most recent tax year.").

47. *Id.* § 127.800(2) (defining "attending physician" as the physician who has the primary responsibility of caring for and treating the patient's disease).

48. *Id.* § 127.800(4) (defining "consulting physician" as "a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease").

to be suffering from a terminal disease, and who has voluntarily expressed [their] wish to die . . . [to] make a written request for medication for the purpose of ending [their] life in a humane and dignified manner . . . ."[49] The DWDA defines a "terminal disease" as "an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months."[50] The DWDA requires multiple physicians to find that the patient has a terminal disease, as a safeguard to ensure that the DWDA is not being abused.[51] Before committing to the DWDA process, physicians must inform DWDA patients of their diagnoses, prognoses, the potential risks and probable death that will come with ingesting the medication prescribed, and all feasible alternatives, such as hospice care and pain control, to ensure patients are making informed decisions.[52] It is important to note that no Oregon health care provider is under any duty to participate in the DWDA; they simply have the choice to participate.[53]

After it becomes certain that a patient has a terminal disease and the patient has been adequately examined by at least two physicians, in order to invoke the DWDA, the patient must make an oral request to do so to their physician, and the patient must sign Oregon's form to make a written request for medication in the presence of at least two witnesses[54] who attest that, as far as they know, the patient is capable of voluntarily making this decision.[55] No sooner than fifteen days following the patient's first oral request (and the written request), the patient must make a second oral request to their attending physician, reiterating their desire to die in this manner.[56] The DWDA emphasizes that "[n]o less than [fifteen] days shall elapse between the patient's initial oral request and the writing of a prescription" for lethal medication, to ensure that the patient

49. *Id.* § 127.805(1).

50. *Id.* § 127.800(12).

51. *Id.* § 127.815(1)(d); *see also id.* § 127.825 (stating that if either physician finds that the patient "may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment," the physician must refer the patient for counseling, as "[n]o medication to end a patient's life in a humane and dignified manner shall be prescribed until" it becomes clear that the patient is not operating under these conditions).

52. *Id.* § 127.815.

53. *Id.* § 127.885(4). In fact, one health care provider may prohibit another health care provider from participating in the DWDA on its premises, so long as the prohibiting provider has notified the other provider of its policy against DWDA participation. *Id.* § 127.885(5)(a).

54. *See id.* §§ 127.810(1), 127.840, 127.897. At least one of the witnesses cannot be: "(a) A relative of the patient by blood, marriage or adoption; (b) A person who . . . would be entitled to any portion of the" patient's estate upon death; or "(c) An owner, operator or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident." *Id.* § 127.810(2). Also, the attending physician can never be a witness. *Id* § 127.810(3).

55. *Id.* § 127.810(1).

56. *Id.* § 127.840(1).

has had enough time to think through this decision.[57] The medicine is ultimately to be self-administered by the patient,[58] who retains the right to rescind their decision to die in this way at any time.[59]

The DWDA requires Oregon's Health Services to collect information about patients and health care providers who employ this law each year, and they use this information to publish an annual statistical report.[60] In February 2022, the Oregon Health Authority released its annual statistical report for 2021.[61] This report contains information about the characteristics of the individuals who used the law in 2021, including, but not limited to: their gender, age, race, ethnicity, marital status, and education level; where in Oregon they resided; the end-of-life care they received; the underlying illness they suffered from; whether they informed their family of their decision;[62] the lethal medication they ingested; and any complications they suffered after ingestion.[63] The report also included the overall number of patients who used the law in 2021 (and in previous years);[64] the primary locations of practice for physicians who prescribed medication under the DWDA;[65] and the average duration between ingestion and death.[66] A report, like this one, is an important safeguard for any PAD law because it helps to show that the statute is not being abused.[67] In fact, all of the aforementioned safeguards of the DWDA—"(1) restricted eligibility; (2) voluntariness; (3) patient capaci-

57. *See id.* § 127.850(1).

58. PUB. HEALTH DIV., OR. HEALTH AUTH., OREGON DEATH WITH DIGNITY ACT 2021 DATA SUMMARY 4 (Feb. 28, 2022), [hereinafter OREGON REPORT], https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year24.pdf [https://perma.cc/P3MP-2Z4S]; *see* Cyndi Bollman, *A Dignified Death? Don't Forget About the Physically Disabled and Those Not Terminally Ill: An Analysis of Physician-Assisted Suicide Laws*, 34 S. ILL. U. L.J. 395, 396 (2010) ("[A] person who suffers from a physically debilitating ailment is unable to be assisted by her physician in committing suicide because she does not have the capacity to ingest the lethal prescription herself.").

59. § 127.845.

60. *Id.* § 127.865.

61. OREGON REPORT, *supra* note 58, at 2.

62. *Id.* at 10-12; *see* § 127.835 ("The attending physician shall recommend that the patient notify the next of kin of his or her request for medication," but "[a] patient who declines or is unable to notify next of kin shall not have his or her request [to use the DWDA] denied for that reason.").

63. OREGON REPORT, *supra* note 58, at 12-13.

64. *Id.* at 15. In 2021, 383 individuals received prescriptions from their physicians under Oregon's DWDA, with only 238 individuals ingesting the medication and passing away. *Id.* For comparison, in 2020, 373 individuals received prescriptions from their physicians under Oregon's DWDA, with only 259 individuals ingesting the medication and passing away. *Id.*

65. *Id.* at 16.

66. *Id.* at 17.

67. *See, e.g.*, *id.* at 15 (showing that, since 1998, only 2,159 individuals have died using the DWDA).

ty or competence; (4) informed decision-making; (5) waiting periods; (6) second medical opinions; and (7) witnesses"—are necessary to ensure no person commits PAD wrongfully or involuntarily.[68]

2. The United States Supreme Court Rules in Favor of Oregon's Death with Dignity Act: *Gonzales v. Oregon*

In November of 2001, four years following Oregon's enactment of the DWDA, United States Attorney General John Ashcroft declared the DWDA invalid because it conflicted with the Controlled Substances Act[69] that Congress passed in 1970.[70] The Controlled Substances Act "was designed to combat drug abuse and control the legitimate and illegitimate traffic in controlled substances"[71] by criminalizing the unauthorized distribution and dispensation of the substances it classifies as needing control in any of its five schedules.[72] Drugs in Schedule II of the Controlled Substances Act require a prescription from a physician to be dispensed to a patient,[73] and the United States Attorney General is required to ensure that all prescriptions be written for a legitimate medical purpose.[74] In response to the DWDA, the Attorney General issued his interpretive rule, which declared "that using controlled substances to assist suicide is not a legitimate medical practice and that dispensing or prescribing them for this purpose" was unlawful under the Controlled Substances Act.[75]

Ultimately, in *Gonzales v. Oregon*, the United States Supreme Court decided that the Controlled Substances Act's prescription requirement did not allow the Attorney General to prohibit dispensing substances for PAD when a state medical regime permits such conduct, as doing so is a legitimate medical practice.[76] The Court held that the federal government did not have the authority to prohibit Oregon, or any state for that matter, from legalizing PAD.[77] This decision is crucial be-

68. Carol A. Pratt, *Efforts to Legalize Physician-Assisted Suicide in New York, Washington and Oregon: A Contrast Between Judicial and Initiative Approaches—Who Should Decide?*, 77 OR. L. REV. 1027, 1083 (1998).

69. 21 U.S.C. §§ 801–904.

70. Ken Levy, Gonzales v. Oregon *and Physician-Assisted Suicide: Ethical and Policy Issues*, 42 TULSA L. REV. 699, 710 (2007).

71. *Id.*

72. 21 U.S.C. § 812.

73. *Id.* § 829(a).

74. 21 C.F.R. § 1306.04 (2020).

75. Gonzales v. Oregon, 546 U.S. 243, 249 (2006).

76. *Id.* at 274-75.

77. *See id.* at 298 (Scalia, J., dissenting).

cause it allows states to enact PAD laws without fear of being overruled by the federal government.[78]

B. The Trend Towards the Legalization of Physician-Assisted Death

Since Oregon's PAD enactment, ten jurisdictions within the United States have followed suit, mostly within the last ten years.[79] Other countries have also enacted PAD laws during this time.[80] These findings indicate that there is an ongoing trend towards legalizing PAD across the world.[81]

1. The Rise of Physician-Assisted Death in the United States

Since Oregon enacted the DWDA, PAD has become legal in ten other jurisdictions throughout the United States: California, Colorado, the District of Columbia, Hawaii, Maine, Montana, New Jersey, New Mexico, Vermont, and Washington.[82] Nine of these jurisdictions have enacted their own PAD laws, with the State of Montana being the exception.[83] PAD became legal in Montana not because the Montana legislature formally passed a law of this nature, but because the Montana Supreme Court ruled that it is not prohibited by Montana law.[84] As such, it is not actually necessary for a state to enact a PAD law for it to become legalized there; a state's supreme court can render a decision in which it decides PAD is legal.[85] Excluding Oregon, eight of the nine jurisdictions that have enacted PAD laws have done so within the last ten years.[86] This statistic indicates the recent, ongoing trend towards the legalization of PAD throughout the United States.[87]

---

78. *Id.* ("The Court's decision today is perhaps driven by a feeling that the subject of assisted suicide is none of the Federal Government's business.").

79. *See infra* Part II.B.1.

80. *See infra* Part II.B.2.

81. *See infra* Part II.B.1–2.

82. *See In Your State*, *supra* note 25.

83. *See Montana*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/montana [https://perma.cc/BWN2-2BAU] (last visited Aug. 12, 2023) (showing that Montana is the only state where PAD became legal by a court decision, rather than by enacting a statute).

84. Baxter v. State, 224 P.3d 1211, 1222 (Mont. 2009).

85. *See, e.g.*, *id.*

86. *See Chronology of Assisted Dying in the U.S.*, DEATH WITH DIGNITY, https://web.archive.org/web/20211119134357/https://deathwithdignity.org/learn/assisted-dying-chronology [https://perma.cc/YD3R-3M48] (last visited Aug. 12, 2023).

87. *See generally id.* (showing the evolution of state PAD laws, beginning before any such laws were enacted (pre-1950), and ending with ten states having enacted such laws (as of 2023)).

2. The Rise of Physician-Assisted Death Laws in Other Countries

Recently, there has been a trend toward legalizing PAD in countries around the world, including Austria, Belgium, Canada, Finland, Germany, Italy, Luxembourg, the Netherlands, New Zealand, Spain, and Switzerland.[88] All of these countries, with the exception of Switzerland,[89] successfully legalized PAD within the last twenty-five years.[90] This information highlights the notion that the trend towards the legalization of PAD is not only an American one, but is present worldwide.[91]

C. Analyzing State Physician-Assisted Death Laws

As aforementioned, PAD is legal in eleven jurisdictions throughout the United States.[92] Therefore, there are ten different PAD laws in the United States that could offer New York relevant insight on what to avoid and what to require in its own enactment.[93] It is important to note that, as the pioneer of PAD laws in the United States, Oregon's DWDA has frequently been used as a model in PAD enactments in other states, with several states attempting to pass virtual duplications of the DWDA.[94]

The District of Columbia's Death with Dignity Act took effect on February 18, 2017.[95] Although closely following Oregon's DWDA in language, the District of Columbia's Act offers some noteworthy additions.[96] For one, although both Oregon and the District of Columbia require a pharmacist to dispense the lethal medication directly to the patient, an expressly identified agent of the patient, or the attending physician who wrote the prescription,[97] the District of Columbia's Act

88. *See Euthanasia & Medical Aid in Dying (MAID) Around the World*, PROCON.ORG, https://euthanasia.procon.org/euthanasia-physician-assisted-suicide-pas-around-the-world [https://perma.cc/VZP5-FCJS] (July 7, 2022).

89. *See Switzerland*, CAMPAIGN FOR DIGNITY IN DYING, https://www.dignityindying.org.uk/assisted-dying/international-examples/switzerland [https://perma.cc/4P3G-AZXW] (last visited Aug. 12, 2023) ("Since 1942, Switzerland has allowed [PAD] as long as the motives are not selfish.").

90. *See Euthanasia & Medical Aid in Dying (MAID) Around the World*, *supra* note 88.

91. *See id.*

92. *See In Your State*, *supra* note 25.

93. *See id.*

94. Pratt, *supra* note 68, at 1082. As such, analysis of state PAD laws will be formatted in a way that compares them to Oregon's DWDA, pointing out noteworthy differences that New York should either consider employing or staying away from in developing its own PAD law. *See infra* Part II.C.

95. *District of Columbia*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/district-of-columbia [https://perma.cc/4LBR-GRE4] (last visited Aug. 12, 2023).

96. *See* D.C. CODE §§ 7-661.01–7-661.16 (2023).

97. OR. REV. STAT. § 127.815(1)(L)(B)(ii) (2019).

goes one step further by requiring the pharmacist to "immediately notify the attending physician that the covered medication was dispensed."[98] This is an important safeguard, as it allows the attending physician to follow up with the patient to ensure they received the prescription and it did not fall into the wrong hands, perhaps through interference by someone who knows of the patient's plan to die by ingesting the medication and does not agree with or understand this decision.[99]

Furthermore, the District of Columbia's Act requires that, within thirty days of a patient's ingestion of the lethal medication, the health care provider must notify the Department of Health of the patient's death.[100] It also specifies that the cause of death on the patient's death certificate shall "identify the qualified patient's underlying medical condition . . . without reference to the fact that the qualified patient ingested a covered medication."[101] It goes on to state that the Office of the Chief Medical Examiner shall review all deaths involving individuals who passed away via PAD, and may conduct an investigation if necessary.[102] Employment of these safeguards is important, as requiring such a close examination of a physician's actions in a PAD matter is likely to enhance the public's comfort level with such a law, providing assurance that it is not being abused and is properly exercised.[103]

Hawaii's PAD law, the Our Care, Our Choice Act, took effect on January 1, 2019.[104] One key difference between Hawaii's Act and Oregon's DWDA is that Hawaii adds something not present in Oregon's informed decision definition.[105] Hawaii requires an attending physician to inform the patient of "[t]he possibility that [they] may choose not to obtain the medication or may obtain the medication and may decide not to use it" after its prescription.[106] Although Oregon's DWDA does mention

98. § 7-661.05(d).

99. *See id.*

100. *Id.* § 7-661.05(f).

101. *Id.* § 7-661.05(h).

102. *Id.* § 7-661.05(i)(1).

103. *See generally* Thaddeus Mason Pope, *Oregon Shows That Assisted Suicide Can Work Sensibly and Fairly*, N.Y. TIMES (Oct. 7, 2014, 12:39 PM), https://www.nytimes.com/roomfordebate/2014/10/06/expanding-the-right-to-die/oregon-shows-that-assisted-suicide-can-work-sensibly-and-fairly [https://perma.cc/T7BH-PPLK] (explaining, through an analysis of Oregon's DWDA, that PAD safeguards work and have contributed to the increased recognition PAD has received).

104. *Hawaii*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/hawaii [https://perma.cc/VN36-8AB8] (last visited Aug. 12, 2023).

105. *Compare* OR. REV. STAT. § 127.815(1)(c) (2019), *with* HAW. REV. STAT. ANN. § 327L-1 (West 2023).

106. § 327L-1(5); *see also* CAL. HEALTH & SAFETY CODE § 443.1(j)(4) (2016) (showing that this prong of the informed decision test is also present in California's End of Life Option Act).

a patient's right to rescind their request to die via PAD at any time,[107] and does ultimately require the physician to inform the patient of this right to rescind at some point,[108] it is ideal for a physician to be required to notify a patient of this right up front, before deciding to use PAD and getting started with the process, to ensure that the patient does not feel pressure from the physician to go through with the ingestion if they have a change of heart.[109]

Although Hawaii, like Oregon, requires a patient seeking to use PAD to make two oral requests and one written request to their attending physician to successfully initiate a request for medication,[110] Hawaii's Our Care, Our Choice Act has a key difference—Hawaii's Act requires a minimum of twenty days between a patient's two oral requests for medication,[111] whereas the DWDA requires a minimum of fifteen days.[112] Although five days is a seemingly harmless addition, when dealing with terminally ill patients, this can make a world of difference.[113] The patient could certainly die in a painful manner within that five-day window, rather than in a quick and peaceful way, as they had hoped.[114] As PAD laws come into existence to give patients the ability to avoid an unnecessarily prolonged life of suffering,[115] legislatures should seek to distribute the medication sooner rather than later, so a patient can actually die in this way.[116]

New Jersey's Medical Aid in Dying for the Terminally Ill Act took effect on August 1, 2019.[117] Like Oregon's DWDA, New Jersey's Act requires a physician to recommend that the patient notify their next of

---

107. § 127.845.

108. *Id.* § 127.815(1)(h) (requiring an attending physician to offer the patient the opportunity to rescind at the end of the fifteen-day waiting period between their oral requests for medication).

109. *See* § 327L-1.

110. § 127.840(1); § 327L-2.

111. § 327L-2.

112. § 127.840(1).

113. *See* Oregonian/OregonLive Politics Team, *New Law Shortens 'Death with Dignity' Waiting Period for Some Patients*, OR. LIVE (July 24, 2019, 6:03 PM), https://www.oregonlive.com/politics/2019/07/new-law-shortens-death-with-dignity-waiting-period-for-some-patients.html [https://perma.cc/8SNJ-NZME] (explaining that Oregon recently amended the DWDA to allow Oregonians expected to die within fifteen days of their first oral request for medicine to bypass this waiting period, which is an "improvement [that] will result in fewer Oregonians suffering needlessly at the end of their lives . . .").

114. *But see* Su, *supra* note 19, at 161 (arguing that PAD is not really a quick and easy way to die, as it is often perceived to be).

115. *See* Ace, *supra* note 17, at 726.

116. *But see* Su, *supra* note 19, at 161-62 (admiring Oregon's fifteen-day waiting period between oral requests for medication because it highlights the fact that the DWDA is more formal and extensive than it is often accredited for).

117. *New Jersey*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/new-jersey [https://perma.cc/62FP-UXRG] (last visited Aug. 12, 2023).

kin of their request for medication.[118] However, the language of the New Jersey Act is stricter than the DWDA, stating that a patient "shall not receive a prescription for medication that the patient may choose to self-administer . . . unless the attending physician has recommended that the patient notify the patient's next of kin of the patient's request for medication . . . [,]"[119] something the DWDA fails to explicitly provide.[120] While it is often important for a patient to be informed to notify someone of their decision to engage in PAD, this is a personal choice. If a doctor gets the impression that the individual is uncomfortable sharing this decision with others, or that all the people they were closest to have passed on, there may be grounds for the doctor to avoid making such a statement, such that this safeguard is not truly necessary.[121]

In the beginning of New Jersey's Medical Aid in Dying for the Terminally Ill Act, the State carved out a section dedicated solely to assuring the public that it employed numerous safeguards to ensure this law is used appropriately and successfully.[122] The State explained that the safeguards put in place were sure to "(1) guide health care providers and patient advocates who provide support to dying patients; (2) assist capable, terminally ill patients who request compassionate medical aid in dying; (3) protect vulnerable adults from abuse; and (4) ensure that the process is entirely voluntary on the part of all participants . . . ."[123] A section like this, showing citizens that their state put ample thought behind its decision to enact a controversial law like PAD, is an important and easy step legislators can take in drafting such a law.[124]

Maine's Death with Dignity Act is, again, almost identical to Oregon's DWDA, but there is a noteworthy distinction.[125] Maine lists significantly more factors that may be offered in determining if a person is a resident of the state and therefore entitled to use its PAD law.[126] On top

118. OR. REV. STAT. § 127.835 (2019); N.J. STAT. ANN. § 26:16-9 (West 2023).

119. N.J. STAT. ANN. § 26:16-9 (West 2023).

120. *See* OR. REV. STAT. § 127.835 (2019).

121. *But see* END OF LIFE WASH., TALKING TO YOUR FAMILY ABOUT DYING 1, https://endoflifewa.org/wp-content/uploads/2012/09/Talking.to_.Your_.Family.About_.Dying_.10.2015.pdf [https://perma.cc/AF4B-JVHF] (last visited Aug. 12, 2023) (stating that "[e]ven with the best medical care, [the patient] probably [will not] be able to make all [their] medical decisions at the end [of their life], and [the patient] will want people [they] trust to make sure [their] wishes are followed").

122. § 26:16-2(c).

123. *Id.*

124. *See id.* § 26:16-2(d).

125. *Compare* OR. REV. STAT. §§ 127.800–.995 (2019), *with* ME. REV. STAT. tit. 22, § 2140 (2022).

126. ME. REV. STAT. tit. 22, § 2140(15) (2022).

of the residency requirements listed in Oregon's DWDA,[127] Maine allows an individual to satisfy its residency requirement by offering proof of the location of any dwelling they currently occupy; the place where their motor vehicle is registered; the residence address at which the person receives their mail; the residence address "shown on any current resident hunting or fishing licenses held by the person[,]" as well as the residence address listed on any driver's license held by the person; "[t]he receipt of any public benefit conditioned upon residency"; and "[a]ny other objective facts tending to indicate a person's place of residence."[128] Although at first glance it may seem commendable that Maine enables more people to utilize its PAD law because there are so many ways in which a person can prove that they live in Maine, there is more room for someone to lie about their residency and get away with it.[129] For example, if someone has a hunting license from Maine and receives mail in Maine, but does not actually reside there, they could still be deemed a resident and use Maine's PAD law.[130] It is bad policy to extend Maine's PAD law to residents of other states because it could lead to severe abuse of the law which could, in turn, cause Mainers to seek its reversal due to abnormally high death rates.[131] In order to remain legitimate practice, PAD laws must be restrictive enough to ensure that they are not exploited because this could cause individuals to lose faith in the sufficiency of these laws.[132]

It is worth mentioning that, although Washington's Death with Dignity Act is strikingly similar to Oregon's DWDA—which makes sense because of the geographic proximity of these states and because

127. OR. REV. STAT. § 127.860 (2019).

128. ME. REV. STAT. tit. 22, § 2140(15) (2022).

129. *See id.*

130. *See Hunting License Information*, ME. DEP'T OF INLAND FISHERIES & WILDLIFE, https://www.maine.gov/ifw/hunting-trapping/hunting/licenses-permits.html [https://perma.cc/Q8ME-LARK] (last visited Aug. 12, 2023) (explaining that one does not need to live in Maine to have a hunting license there).

131. *See* Fedor Zarkhin, *Oregon Lawmakers Appear Poised to Extend Right to Medically Assisted Suicide to Out-of-State Residents*, OR. LIVE (Apr. 20, 2023, 4:17 PM), https://www.oregonlive.com/politics/2023/04/oregon-lawmakers-appear-poised-to-extend-right-to-medically-assisted-suicide-to-out-of-state-residents.html [https://perma.cc/92BZ-KR9G] (stating that opponents to PAD have warned lawmakers "that expanding access to medically assisted suicide would have unintended consequences, including making Oregon a destination for 'death tourism'"). *But see id.* (explaining that there is a chance that Oregon lifts its requirement that an individual must be an Oregon resident to use the DWDA, and that the State is not worried about becoming a PAD hotspot because to use the law, an individual "would have to be [in Oregon] for an extended period of time to go through the process . . .").

132. *See* Pope, *supra* note 103 (stating that PAD safeguards work and have proven themselves to be important restrictions to protect vulnerable populations).

Washington was the second state to enact a PAD law,[133] so it likely sought to mimic Oregon's law, knowing of its success—there is an interesting addition to Washington's law not seen in Oregon's DWDA.[134] Washington's law requires any lethal medications distributed under its PAD law but ultimately not used to be disposed of by lawful means.[135] This seems obvious, but it is important to note because, although it is an unlikely scenario, an individual who undergoes a change of heart and decides not to utilize a PAD law could leave the medication in the medicine cabinet in their home, and an individual they live with could mistake it for typical over-the-counter medication and suffer serious consequences.[136]

D. Analyzing Physician-Assisted Death Laws in Other Countries

PAD laws outside of the United States also provide helpful insight in composing the best possible PAD law for New York to enact.[137] As foreign PAD laws did not simply replicate Oregon's DWDA, as most states in the United States that have succeeded in passing PAD laws have done, these foreign laws contain unique language that cannot be found in PAD laws throughout the United States.[138] However, it is important to keep in mind that different cultures have different values, assumptions, and beliefs that could render some of the language used in foreign PAD laws incompatible with the beliefs of individuals living in the United States.[139]

---

133. *See Oregon*, *supra* note 40 (showing that, in 1994, Oregon was the first state to enact a PAD law); *Washington*, *supra* note 40 (showing that, in 2009, Washington became the second state to enact a PAD law). *Compare* OR. REV. STAT. §§ 127.800–.995 (2019), *with* WASH. REV. CODE §§ 70.245.010–.903 (2023).

134. *See* §§ 70.245.010–.903.

135. *Id.* § 70.245.140.

136. *See* Rachel Rettner, *A Growing Number of People Make Mistakes When They Take Their Medication*, WASH. POST (July 16, 2017, 9:53 AM), https://www.washingtonpost.com/national/health-science/a-growing-number-of-people-make-mistakes-when-they-take-their-medication/2017/07/14/a0196a28-6740-11e7-9928-22d00a47778f_story.html [https://perma.cc/G9L4-FZ7H] ("A rising number of Americans are getting sick from making medication mistakes at home[,]" either taking "the wrong dose of medication or the wrong drug, a new study finds. About 400 people died of such errors during the [thirteen]-year study.").

137. *See infra* Part II.D.

138. *See infra* Part II.D.

139. *See* Felicity Menzies, *Nine Cultural Value Differences You Need to Know*, CULTURE PLUS CONSULTING, https://cultureplusconsulting.com/2015/06/23/nine-cultural-value-differences-you-need-to-know [https://perma.cc/B2L6-DPLG] (last visited Aug. 12, 2023). *See generally* Lissa Poirot & Brittany Alexandra Sulc, *60 Weird Laws Around the World*, FAR & WIDE (Feb. 7, 2023),

Particularly, the Netherlands' PAD law, The Termination of Life on Request and Assisted Suicide Act ("Dutch Act"), bears great importance and is critical to analyze, as the Netherlands was the first country to legalize PAD on April 1, 2002, and has maintained its legal status for over twenty years.[140] The Dutch Act not only legalizes PAD, but it also legalizes euthanasia, meaning that if the patient cannot self-administer the lethal medication, the doctor may administer it for them.[141] Euthanasia is not legal in Oregon's DWDA or any of the other American PAD laws mentioned above.[142]

To use the Dutch Act, the physician must believe "that the patient's request is voluntary and well considered" and that the patient's pain is lasting and unbearable, "with no prospect of improvement."[143] The physician must also have informed the patient about their diagnosis and prognosis.[144] Both the physician and the patient must believe "that there is no reasonable alternative in the light of the patient's situation."[145] Lastly, the physician must "have consulted at least one other, independent physician" who has seen the patient and has given their written opinion that the patient meets the requirements of the Dutch Act.[146]

After the death, physicians are required to notify a municipal pathologist.[147] The physician is required to provide the pathologist with a detailed report, the patient's medical records, and any other important documents, which "[t]he municipal pathologist must send . . . to the appropriate regional review committee," which then reviews the reports and Dutch Act procedures.[148] The regional committees[149] review Dutch

---

https://www.farandwide.com/s/weird-laws-world-4961c1ede8d749bf [https://perma.cc/2D32-TEB6] (explaining that laws in other countries may "point to important cultural values that might be different than your own").

140. *See* Kelly Green, Note, *Physician-Assisted Suicide and Euthanasia: Safeguarding Against the "Slippery Slope"—The Netherlands Versus the United States*, 13 IND. INT'L & COMPAR. L. REV. 639, 639-40 (2003); *Euthanasia & Medical Aid in Dying (MAID) Around the World*, *supra* note 88 (showing that the Netherlands was the first country to legalize PAD).

141. *See Euthanasia & Medical Aid in Dying (MAID) Around the World*, *supra* note 88; EUTHANASIA CODE 2018: REVIEW PROCEDURES IN PRACTICE, REG'L EUTHANASIA REV. COMMS. 57 (Oct. 1, 2019), https://english.euthanasiecommissie.nl/the-committees/documents/publications/euthanasia-code/euthanasia-code-2018/euthanasia-code-2018 [https://perma.cc/EQ4L-AJB6].

142. *See Euthanasia & Medical Aid in Dying (MAID) Around the World*, *supra* note 88.

143. EUTHANASIA CODE 2018, *supra* note 141, at 58.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 10.

148. *Id.*; *see Euthanasia & Medical Aid in Dying (MAID) Around the World*, *supra* note 88 (explaining that so long as physicians perform the procedures according to this statute, they will be exempt from criminal liability).

Act cases within six weeks of receiving them and determine "whether a physician, in terminating life on request or in assisting with suicide, acted in accordance with" the requirements laid out in the previous paragraph.[150] This quick turnaround time is paramount, as it has the potential to inhibit improper uses of the Dutch Act because there is a decent likelihood that the committee will inform a physician that they violated the law before they have the chance to wrongly use it again.[151] This is especially true because, in instances where the committee is leaning towards finding that the physician did not act according to the Dutch Act, they "will always be invited for an interview before the decision is made, giving [them] the opportunity to explain [their] actions."[152]

One considerable difference between the Dutch Act and other PAD laws is that an individual need not be eighteen or older to be qualified.[153] An individual can be as young as age twelve, so long as they are "deemed to be capable of making a reasonable appraisal of [their] own interests," and their parents or guardians "agree to the termination of life or to assisted suicide . . . ."[154] To many Americans, twelve years old probably seems far too young to undergo PAD, which again connects back to the statement that different cultures have different beliefs.[155] Unlike in the United States where physicians are expected to be their patients' healers,[156] in the Netherlands, a physician's role is best understood "as the healer of personal life wishes."[157]

Canada is another country that has successfully enacted a PAD law, entitled Medical Assistance in Dying ("MAID").[158] There are five requirements Canadians must meet to be eligible to receive MAID: (1)

149. EUTHANASIA CODE 2018, *supra* note 141, at 59 ("A committee consists of an odd number of members, including in any event one legal expert who also chairs the committee, one physician and one expert on ethical or moral issues.").

150. *Id.* at 60; *see id.* at 11 ("The committees distinguish between two categories of notification: straightforward notifications (which account for some [eighty percent] of cases) and notifications that raise questions (around [twenty percent] of cases)."). When dealing with a straightforward notification, committee members review it digitally and "can consult with one another via a secure digital system," if necessary; however, if any questions arise during the review process, this is a non-straightforward notification, and it must be reviewed at their monthly meeting. *Id.*

151. *See id.* at 60 (emphasizing the quick six-week turnaround time, which may only "be extended once for a maximum of six weeks").

152. *Id.* at 13.

153. *Id.* at 58.

154. *Id.*

155. *See* Menzies, *supra* note 139.

156. *See* Vacco v. Quill, 521 U.S. 793, 808 (1997).

157. Alison C. Hall, Note, *To Die with Dignity: Comparing Physician Assisted Suicide in the United States, Japan and the Netherlands*, 74 WASH. U. L.Q. 803, 826 (1996).

158. *Canada's Medical Assistance in Dying (MAID (Medical Assistance in Dying)) Law*, GOV. OF CAN., https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html [https://perma.cc/S35H-25JK] (May 26, 2023).

they must be eligible or "but for any applicable minimum period of residence or waiting period, would be eligible" for health services funded by the Canadian government; (2) they must be at least eighteen years old and be "capable of making decisions with respect to their health;" (3) they must have a "grievous and irremediable medical condition;" (4) their request for MAID must have been voluntary and not "a result of external pressure;" and (5) they must be informed of alternative methods available to relieve their suffering, and then give their informed consent for MAID.[159] At first glance, this seems similar to PAD laws in the United States; however, its "grievous and irremediable medical condition" requirement is where MAID drastically diverges from PAD laws in the United States and elsewhere.[160]

An individual satisfies the "grievous and irremediable medical condition" requirement if they have a "serious and incurable illness, disease or disability[,]" and are "in an advanced state of irreversible decline in capability" that is causing them intolerable "physical or psychological suffering . . . that cannot be relieved . . . ."[161] Upon reading this definition, it becomes clear that MAID does not require individuals to receive a terminal diagnosis for eligibility purposes.[162] In fact, as of March 17, 2021, MAID was amended and "no longer requires a person's natural death to be reasonably foreseeable as an eligibility criterion for MAID . . . ."[163] Essentially, this means that an individual without a terminal illness may still be eligible for MAID, as it is offered to persons whose natural death is not reasonably foreseeable.[164] Even further, beginning on March 17, 2024, Canadians will be able to die via MAID if their only symptom is mental illness.[165] As such, MAID differs tremendously from PAD laws in the United States, as it does not require a terminal diagnosis of at most six months, or even a terminal diagnosis at all.[166] Canada has received appreciable backlash for this amendment,

159. Canada Criminal Code, R.S.C. 1985, c C-46, s. 241.2(1).

160. *See infra* Part II.D.

161. R.S.C. 1985, c C-46, s. 241.2(2).

162. *See id.*

163. *Canada's Medical Assistance in Dying (MAID (Medical Assistance in Dying)) Law*, *supra* note 158.

164. *See id.*

165. *Id.* (explaining that, for Canadians whose only medical condition is a mental illness to meet the MAID eligibility criteria, their mental illness must be "primarily within the domain of psychiatry, such as depression and personality disorders[,]" but that "[i]t does not include neurocognitive and neurodevelopmental disorders, or other conditions that may affect cognitive abilities").

166. *Compare* R.S.C. 1985, c C-46, s. 241.2(1) (allowing a non-terminally ill individual to die via MAID), *with* OR. REV. STAT. § 127.815(1) (2019) (requiring an individual to have a prognosis of six months or less to utilize the DWDA).

mostly being scolded for making PAD drastically more accessible.[167] This is a valid argument, as the purpose of PAD laws is to allow those guaranteed to die in the imminent future to pass away peacefully, not to allow those without such a prognosis to die.[168] This MAID amendment blurs the line between PAD and suicide.[169]

There are a few other major distinctions between MAID and PAD laws in the United States.[170] First, MAID requires a medical or nurse practitioner to make the diagnosis, and another medical or nurse practitioner to confirm it,[171] as opposed to requiring both an attending and consulting physician to make the diagnosis.[172] Second, MAID only requires one witness[173] to sign the request, as opposed to two.[174] Third, MAID only requires an individual to make one written request,[175] rather than one written request and two oral requests.[176] Although MAID offers less of a shield in this regard, it actually makes sense to do away with requiring so many requests in order to gain access to PAD because of how time-consuming that can become.[177] Lastly, MAID, like the Dutch Act, has a provision that allows a physician to administer the lethal medication in the event that the individual is incapable of administering it independently.[178] Overall, MAID employs significantly fewer safeguards

167. *See* Mark S. Komrad, *Oh, Canada! Your New Law Will Provide, Not Prevent, Suicide for Some Psychiatric Patients*, PSYCHIATRIC TIMES (June 1, 2021), https://www.psychiatrictimes.com/view/canada-law-provide-not-prevent-suicide [https://perma.cc/EWC3-QEDL] (explaining that many people in the disability advocacy community "are concerned that allowing non-terminal, disabled individuals" to utilize MAID "implies that their lives may not be worth living"); Richard Karel, *Updated Physician-Aid-in-Dying Law Sparks Controversy in Canada*, PSYCHIATRIC NEWS (May 27, 2021), https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2021.6.31 [https://perma.cc/G66N-UHTW] (relaying the words of a Canadian psychiatrist, who explained that his patients are asking why they should try to recover when MAID will soon become accessible to them).

168. *See* Practical Law Health Care, *supra* note 24 (explaining that "several [United States] jurisdictions have implemented processes allowing [only] individuals with certain terminal illnesses, diseases, and conditions to obtain medication that they can use to end or hasten the end of their life").

169. *See* Komrad, *supra* note 167.

170. *See infra* Part II.D.

171. R.S.C. 1985, c C-46, s. 241.2(3)(e).

172. OR. REV. STAT. § 127.805(1) (2019).

173. R.S.C. 1985, c C-46, s. 241.2(3)(c).

174. § 127.810(1).

175. R.S.C. 1985, c C-46, s. 241.2(3)(b).

176. *See* § 127.840.

177. *See supra* note 113 and accompanying text.

178. R.S.C. 1985, c C-46, s. 241.2(3.2); *see* EUTHANASIA CODE 2018, *supra* note 141, at 57.

than the traditional American PAD law, and it is, consequently, not the prime example of a PAD law.[179]

III. NEW YORK'S FAILURE TO ADOPT A PHYSICIAN-ASSISTED DEATH LAW

Part III of this Note delves into New York's history of rejecting the concept of PAD.[180] This Part gives particular focus to objections that individuals commonly have to the passage of a PAD law and refutes them.[181] Part III concludes with a discussion about the importance of changing the minds of New Yorkers not on board with a PAD enactment, and ultimately allowing PAD in the State.[182]

A. New York's History of Resisting the Passage of a Physician-Assisted Death Law

Despite the recent trend towards legalizing PAD throughout the world, the State of New York has not followed suit by enacting a PAD statute of its own.[183] In fact, New York has done the exact opposite: the State has passed a law that prohibits PAD and declares promoting a suicide attempt a class E felony.[184] As such, a physician in New York who engages in PAD could be sentenced to four years imprisonment under current law.[185]

1. Legislative Attempts to Enact a Physician-Assisted Death Law in New York

Most states that have legalized PAD have done so through their legislatures.[186] Since 1995, New York legislators have been unsuccessful in

179. *See* Komrad, *supra* note 167 ("The Canadian Catholic Bishops, who always oppose euthanasia, are particularly aghast at allowing MAID for the disabled and mentally ill," as this is more extreme than traditional PAD laws.).

180. *See infra* Part III.A.

181. *See infra* Part III.B.

182. *See infra* Part III.C.

183. *See In Your State*, *supra* note 25 (showing that New York does not have a PAD law at this time, although it is currently considering such legislation).

184. N.Y. PENAL LAW § 120.30 (Consol. 2014) (stating that "[a] person is guilty of promoting a suicide attempt when he intentionally causes or aids another person to attempt suicide"). New York also has another statute which states that a person who intentionally causes or aids another person to commit suicide is guilty of second-degree manslaughter. *Id.* § 125.15.

185. *See id.* § 70.00(2)(e) (explaining that the term for class E felonies shall not exceed four years).

186. *See In Your State*, *supra* note 25 (placing emphasis on PAD legalization via legislation, not through any other means).

getting a PAD law enacted.[187] Although New York's history of resistance to PAD is lengthy, PAD supporters in other states have endured similar battles and won, so hope is not lost.[188]

Shortly after the passage of Oregon's DWDA, the New York legislature considered a PAD bill.[189] New York would again consider such a bill in 1999, 2001, and 2012, with none of these bills being heavily regarded.[190] In 2015, four doctor-prescribed bills were introduced, and despite having support from physicians, whose support is integral for PAD laws to work, none of the bills were successful.[191] The latest doctor-prescribed bill titled the Medical Aid in Dying Act, bill number A10059, was introduced in 2016, but failed to pass, namely because it did "not require that a person be a resident of New York to qualify for" PAD, such that, "if passed, New York could easily become a national suicide destination."[192] This would remain a key fear with later PAD bills proposed in New York, as the bills were not broad enough, and no state wishes to be nicknamed "the suicide capital of the United States."[193] Most recently, in January 2023, another bill named the Medical Aid in Dying Act, bill number A995, was introduced.[194] It is currently being considered and it is too soon to tell what the outcome of this bill will be, but if history is any indication, it is unlikely to pass.[195]

2. New York's Attempts to Legalize Physician-Assisted Death via the Judiciary

PAD supporters have challenged New York's courts to legalize PAD, as the Montana Supreme Court did.[196] Seminal cases on this matter include *Vacco v. Quill*[197] and *Myers v. Schneiderman*.[198] In these cas-

187. *See New York*, DEATH WITH DIGNITY, https://web.archive.org/web/20211113225650/https://deathwithdignity.org/states/new-york [https://perma.cc/F9WS-2KB9] (last visited Aug. 12, 2023) [hereinafter *New York Archive*].

188. *See, e.g.*, *New Jersey*, *supra* note 117 ("New Jersey's Medical Aid in Dying for the Terminally Ill Act was signed into law April 12, 2019 . . . ."). This was years after the first bill was introduced in the state in 2012. *New Jersey Campaign History*, COMPASSION & CHOICES, https://www.compassionandchoices.org/in-your-state/new-jersey [https://perma.cc/A344-JDMF] (last visited Aug. 12, 2023).

189. *See New York Archive*, *supra* note 187.

190. *See id.*

191. *See New York*, PATIENT'S RTS. COUNCIL, https://www.patientsrightscouncil.org/site/new-york [https://perma.cc/BR6G-D5SL] (last visited Aug. 12, 2023).

192. *Id.* There were other attempts at passing PAD laws in New York in 2016 and 2017, but none were particularly noteworthy. *See id.*

193. *See id.*

194. *New York*, *supra* note 26.

195. *See, e.g.*, *id.*

196. *See* Baxter v. State, 224 P.3d 1211, 1222 (Mont. 2009).

197. 521 U.S. 793 (1997).

es, patients and physicians challenged the constitutionality of New York's statutes that make it a crime to aid a person in committing suicide.[199]

In *Vacco v. Quill*, three practicing physicians in the State of New York asserted that they could not prescribe lethal medication to their mentally competent, terminally ill patients "who [were] suffering great pain and desire[d] a doctor's help in taking their own lives" because of New York's ban on assisting suicide.[200] These doctors, and three terminally ill patients who passed away before the case was resolved, sued the New York State Attorney General, arguing that because New York allows a competent adult to reject life-sustaining medical treatment,[201] which "is essentially the same thing" as PAD, New York State's PAD ban violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.[202] The United States Supreme Court rejected this argument, concluding that the distinction between PAD and withdrawal of life-sustaining treatment is both important and rational.[203]

The Court considered causation to be a primary distinction between PAD and withdrawal of life-sustaining treatment because when an individual refuses life-sustaining medical treatment, they die from their terminal illness, but when a patient ingests lethal medication, they die from said medication.[204] The Court also honed in on the difference between the physician's intent in these two scenarios: when a physician honors a patient's refusal of life-sustaining treatment, the physician intends to respect the patient's wishes, but when a physician prescribes life-ending medication, they "intend primarily that the patient be made dead."[205] Ultimately, the Equal Protection Clause was not violated here because every competent adult is entitled to refuse life-sustaining medical treatment, and nobody is permitted to engage in assisted suicide, such that the laws

198. 85 N.E.3d 57 (N.Y. 2017).

199. *See, e.g.*, *Vacco*, 521 U.S. at 796-98; *Myers*, 85 N.E.3d at 60.

200. *Vacco*, 521 U.S. at 797.

201. *Id.* at 797-98; *see* N.Y.C. BAR, REPORT ON LEGISLATION BY THE COMMITTEE ON HEALTH LAW AND THE COMMITTEE ON BIOETHICAL ISSUES 2 (Jan. 2010), https://www.nycbar.org/pdf/report/FHCDA_Pos_Paper_032006.pdf [https://perma.cc/XN5P-J6U4] (stating that there is a "body of strong [New York] case law [that] has clearly established the right of competent adult patients to make all decisions regarding their medical treatment, even when death will result from the refusal of treatment").

202. *Vacco*, 521 U.S. at 798; U.S. CONST. amend. XIV, § 1 (stating, among other things, that no state shall "deny to any person within its jurisdiction the equal protection of the laws").

203. *Vacco*, 521 U.S. at 800-01.

204. *Id.* at 801.

205. *Id.* at 801-02 (citing *Assisted Suicide in the United States: Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 104th Cong. 367-68 (1996) (statement of Leon R. Kass, M.D., Professor, University of Chicago)).

apply equally to everybody.[206] New York's reasons for maintaining this distinction, "including prohibiting intentional killing and preserving life; preventing suicide; maintaining [the] physicians' role as their patients' healers; protecting vulnerable people from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards euthanasia," also compelled the Court to allow the distinction.[207]

Similarly, in *Myers v. Schneiderman*, plaintiffs[208] asked the State of New York to declare PAD a constitutional right.[209] They argued that New York's anti-PAD statutes[210] should be interpreted to exclude physicians who engage in PAD, because applying them to PAD would violate plaintiffs' rights under the New York State Equal Protection and Due Process Clauses.[211] The New York Supreme Court granted the New York Attorney General's motion to dismiss plaintiffs' complaint on the grounds that they failed to state a sufficient cause of action and to present a justiciable controversy.[212] The Appellate Division affirmed this decision, declaring that New York's anti-PAD statutes allow for prosecution of physicians who engage in PAD.[213] Plaintiffs appealed to the Court of Appeals of New York.[214]

The Court of Appeals affirmed the lower court's decision, declaring that "[c]ourts may not reject a literal construction [of a statute] unless it is evident that a literal construction does not correctly reflect the legislative intent."[215] New York's anti-PAD statutes are written to apply to anyone who assists a suicide, such that physicians cannot be exempt.[216] The Court of Appeals rejected plaintiffs' assertion that extending the statutes to physicians violated New York's Equal Protection Clause by simply reiterating the United States Supreme Court's argument from

206. *Id.* at 808.

207. *Id.* at 808-09. However, Justice Stevens explained that this holding "does not foreclose the possibility that some applications" of New York's PAD ban "may impose an intolerable intrusion on the patient's freedom[,]" such that hope is not lost for all who challenge it. *Id.* at 809 n.13 ("[A] particular plaintiff hoping to show that New York's assisted-suicide ban was unconstitutional in his particular case would need to present different and considerably stronger arguments than those advanced by respondents [in *Vacco v. Quill*].").

208. Myers v. Schneiderman, 85 N.E.3d 57, 60 (N.Y. 2017) (including three mentally competent patients, two of whom were terminally ill and died before this decision was rendered, and one of whom was being treated for cancer and was undergoing remission at the time of this case).

209. *Id.* at 62.

210. *See* N.Y. PENAL LAW §§ 120.30, 125.15 (Consol. 2014).

211. *Myers*, 85 N.E.3d at 62.

212. *Id.* at 60.

213. *Id.* at 60-61.

214. *Id.* at 61.

215. *Id.* (citing *In re* Schinasi's Will, 14 N.E.2d 58, 60 (N.Y. 1938)).

216. *Id.* at 62.

Vacco v. Quill, finding no reason to hold otherwise since the Supreme Court has not retreated from this conclusion.[217]

As for the plaintiffs' assertion that these statutes violated New York's Due Process Clause, the Court of Appeals of New York rejected this argument, finding that there is no fundamental right to PAD in New York, and that the anti-PAD statutes are related to a legitimate governmental interest.[218] There is no fundamental right to PAD in New York because its courts "have never defined one's right to choose among medical treatments, or to refuse lifesaving medical treatments, to include any broader 'right to die' or still broader right to obtain assistance from another to end one's life," but rather they continue to adopt the distinction between PAD and refusing life-sustaining treatment.[219] Likewise, the Court of Appeals found that New York's anti-PAD statutes should be extended to physicians because of the legitimate government interest in preserving life and preventing suicide.[220]

B. Refuting Common Objections to Physician-Assisted Death Laws

PAD laws are so easily rejected because of the abundance of moral and social arguments that can be made against them.[221] This Subpart acknowledges and explains some of the common objections individuals have to passing PAD laws.[222] This Subpart then presents counterarguments, ultimately refuting said objections.[223]

1. Physician-Assisted Death Should Not Be Forbidden for Offending Some Religious Beliefs

PAD counteracts the fundamental beliefs of most religions.[224] However, the United States prides itself on religious freedom, such that the views of some do not reflect the views of all.[225] This Subsection refutes the argument that PAD should not be legalized because of religious objections, explaining that, even if a religious body is against PAD, its

217. *Myers*, 85 N.E.3d at 62; Vacco v. Quill, 521 U.S. 793, 800 (1997).

218. *Myers*, 85 N.E.3d at 64.

219. *Id.* at 63.

220. *Id.* at 64.

221. *See* David A. Pratt, *Too Many Physicians: Physician-Assisted Suicide After* Glucksberg/Quill, 9 ALB. L.J. SCI. & TECH. 161, 199-209 (1999).

222. *See infra* Part III.B.

223. *See infra* Part III.B.

224. *See* Elizabeth Aguilera, *Major Religions Oppose Assisted Suicide*, LAIST (May 14, 2015, 5:00 AM), https://archive.kpcc.org/news/2015/05/14/51609/major-religions-oppose-assisted-suicide [https://perma.cc/AY3N-Q87M].

225. *See* U.S. CONST. amend. I.

beliefs cannot be among the reasons that any state fails to enact a PAD law, as a courtesy to those who believe otherwise.[226]

Most religions, including Buddhism, Catholicism, the Church of Jesus Christ of Latter-day Saints, Islam, and Judaism, oppose PAD for varying reasons.[227] For one, "Buddhism teaches that it is morally wrong to destroy human life, including one's own . . . even if the intention is to end suffering."[228] Similarly, Catholicism "teaches that life should not be prematurely shortened because it is a gift from God," and God is the only one with the authority to determine when a life ends.[229] Even though "all major religions say helping a terminally ill patient hasten death with medication would violate their basic tenets,"[230] it is insufficient to reject PAD for such reasons.[231]

As previously mentioned, citizens of the United States are welcome to engage in the practice of any religion.[232] Therefore, despite the fact that PAD violates most religious practices, it must be remembered that religious freedom encompasses the right to practice any religion, including religions that do not oppose PAD,[233] as well as the right to refrain from practicing religion altogether.[234] To account for these differing views, and to truly be a bastion of religious freedom, the United States cannot allow states to abstain from legalizing PAD on a religious basis.[235] All beliefs deserve to be thought of as legitimate, and to reject

---

226. *See infra* Part III.B.1.

227. *See Religious Groups' Views on End-of-Life Issues*, PEW RSCH. CTR. (Nov. 21, 2013), https://www.pewforum.org/2013/11/21/religious-groups-views-on-end-of-life-issues [https://perma.cc/HV6D-HZGH] (explaining the views of sixteen religious groups that are either opposed to or accepting of PAD).

228. *Id.*

229. *Id.*

230. Aguilera, *supra* note 224.

231. *See infra* Part III.B.1.

232. *See* U.S. CONST. amend. I; *see also* Espinoza v. Mont. Dep't of Revenue, 140 S. Ct. 2246, 2262-63 (2020) (holding that it is unconstitutional for Montana to prohibit scholarship recipients from using their scholarships at religious schools); Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012, 2023-25 (2017) (holding that excepting churches, solely because of their religious character, from a grant program that provides public funds to resurface playgrounds violates the freedom of religion). *But see* Reynolds v. United States, 98 U.S. 145, 166-67 (1879) (finding that a federal law prohibiting polygamy did not violate the First Amendment, such that the freedom of religion is not absolute).

233. *See Is Atheism Protected Under the First Amendment?*, AM. ATHEISTS, https://www.atheists.org/legal/faq/first-amendment [https://perma.cc/3EHM-4YA6] (last visited Aug. 12, 2023). For example, although lesser-known religions, both the United Church of Christ and the Unitarian Universalist Association are among the few religions that support PAD. *Religious Groups' Views on End-of-Life Issues*, *supra* note 227.

234. *See Is Atheism Protected Under the First Amendment?*, *supra* note 233.

235. *See* Sosamma Samuel-Burnett, *Religious Freedom as a Foundational Right and Its Implications for International Relations and Global Justice*, 22 TRINITY L. REV., Spring 2017, at 9 ("The

PAD due to the views of some religions has the effect of minimizing beliefs that do not fall into that category.[236] As an aside, legalizing PAD has no effect on those whose faith prohibits PAD, as they can simply avoid using it.[237]

2. Physicians Are Not Betraying Duties by Engaging in Physician-Assisted Death

Physicians are trained to be their patients' healers, and engaging in PAD does not equate to a violation of this duty, nor does it violate their Hippocratic Oath.[238] This Subsection considers the argument that physicians are supposed to be saving lives, not ending them.[239] This Subsection concludes with a counterargument, explaining that physicians are still aiding their patients' wishes by prescribing them life-ending medication when they are suffering from a terminal illness, such that participating in PAD does not breach a physician's duty to their patients.[240]

Historically, PAD has been considered "a violation of long-established traditional principles of medical ethics."[241] This is primarily because physicians take the Hippocratic Oath when they enter the profession, promising that they "will not give a lethal drug to anyone if [they are] asked, nor will [they] advise such a plan."[242] Many people feel that allowing physicians to perform PAD is "fundamentally inconsistent" with the Hippocratic Oath, "which is grounded in the patient's trust that the physician is working wholeheartedly for the patient's health

---

purpose of religious freedom [in the United States] is [to give citizens] . . . freedom to believe and practice [their] chosen faith.").

236. *See Religious Freedom: What's at Stake If We Lose It*, HERITAGE FOUND., https://www.heritage.org/religious-liberty/heritage-explains/religious-freedom-whats-stake-if-we-lose-it [https://perma.cc/CF33-WDCT] (last visited Aug. 12, 2023) (explaining that religious freedom covers everyone equally, and is meant to cultivate an environment where "people of different faiths, worldviews, and beliefs can peacefully live together without fear of punishment from the government").

237. *See* Ben Colburn, *The Option of Assisted Dying Is Good for You Even If You Don't Want to Die*, J. MED. ETHICS (Nov. 13, 2019), https://blogs.bmj.com/medical-ethics/2019/11/13/the-option-of-assisted-dying-is-good-for-you-even-if-you-dont-want-to-die [https://perma.cc/8RAP-SZ48] ("This ability to speak to the interests of all citizens, including those who are certain that they [do not] want to take the option of [PAD], is an under-used resource for those seeking to build a wider constituency of support for legal reform.").

238. *See infra* Part III.B.2.

239. *See infra* Part III.B.2.

240. *See infra* Part III.B.2.

241. Lynn D. Wardle, *A Death in the Family: How Assisted Suicide Harms Families and Society*, 15 AVE MARIA L. REV. 43, 49 (2017).

242. *Id.* at 49-50.

and welfare."[243] The theory behind the Hippocratic Oath is that "patients are incredibly vulnerable to the physician."[244] "Every time a doctor writes a prescription[,] most patients do not know what it contains or how appropriate it is for" their health, and "[e]very time an operation is recommended, most patients have not checked out the operating room or all the individuals who work there" because "they rely upon their trust for their physician."[245] Ultimately, opponents to PAD find that, because of this blind trust, patients will take their physician's advice about choosing PAD and run with it.[246] They feel that physicians "should respond to the needs of [their] patients," rather than telling them "[t]ake these two tablets and [do not] call me in the morning," because they will have died.[247]

While it is true that patients are vulnerable to their physicians, as the average patient lacks a medical degree, patients are still encouraged to make informed decisions before taking medical advice.[248] Physicians often give patients a few options for medical treatment,[249] and it is common for patients to get second and third opinions from other physicians before choosing which course of action to take.[250] Therefore, despite patient vulnerability, they are encouraged to make informed decisions, especially when it comes to something as serious as PAD.[251] The typical PAD law actually *requires* such informed consent, so there is no need to fear that patients will blindly follow their physician's recommendation for PAD, especially when PAD is an idea that patients usually present to their physicians, not vice versa.[252]

---

243. Lonnie Bristow, *Physician's Role as Healer: American Medical Association's Opposition to Physician-Assisted Suicide*, 12 ST. JOHN'S J. LEGAL COMMENT. 653, 653-54 (1997).

244. *Id.* at 654.

245. *Id.* at 656.

246. *See id.*

247. *Id.* at 658.

248. *See Informed Consent*, AM. MED. ASS'N, https://www.ama-assn.org/delivering-care/ethics/informed-consent [https://perma.cc/5DP8-3JUK] (last visited Aug. 12, 2023) ("Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care. Successful communication in the patient-physician relationship fosters trust and supports shared decision making.").

249. *Id.* (explaining that physicians should give patients information about "[t]he burdens, risks, and expected benefits of all options, including forgoing treatment").

250. *See* Danielle Ofri, *A Doctor's Guide to a Good Appointment*, N.Y. TIMES, https://www.nytimes.com/guides/well/make-the-most-of-your-doctor-appointment [https://perma.cc/E966-AFME] (last visited Aug. 12, 2023) ("If you are about to undertake a major medical treatment . . . [it is] perfectly reasonable—even expected—that you get a second opinion.").

251. *See Informed Consent*, *supra* note 248.

252. *See, e.g.*, OR. REV. STAT. § 127.815(1)(c) (2019) (explaining the steps a physician must take to ensure the patient is making an informed decision); *The Difference Between Physician Aid in Dying vs. Suicide*, *supra* note 21 (discussing that PAD is in accordance with the patient's wishes).

As aforementioned, the Hippocratic Oath is meant to ensure that physicians abide by their patient's best interests.[253] So long as the proper protocol for the PAD law is followed, acting in accordance with a patient's wishes by providing them the medication they asked for is equivalent to giving them the best care.[254] Although the Hippocratic Oath specifically mentions not prescribing lethal drugs to anyone if asked, it also goes on to say "*I will not give to a woman a pessary to produce abortion*";[255] yet abortions are legal medical practice in many states throughout the country.[256] If one section of the Hippocratic Oath is so widely violated, what is the problem with violating another section?[257] It is important to mention that not all medical schools even ask their graduates to abide by the Hippocratic Oath anymore,[258] recognizing that it was written in the fifth century BC and is one of the oldest documents in history.[259] "The medical community has changed the [Hippocratic Oath] to accommodate shifts in medicine and society over centuries,"[260] as is indicated by the abortion reference above; therefore, it is not an absurd thought to modify it to fit in with the trend towards legalizing PAD in modern times.[261]

3. Physician-Assisted Death Does Not Threaten Improvement of Palliative Care

Palliative care is defined as "specialized medical care for people living with a serious illness."[262] One argument against PAD is that its

253. *See* Bristow, *supra* note 243, at 653-54.

254. *But see id.* at 653 ("[PAD] is fundamentally inconsistent with the pledge that physicians make to devote themselves to healing and to life.").

255. Eds. of Encyc. Britannica, *Hippocratic Oath*, BRITANNICA (Feb. 19, 2023), https://www.britannica.com/topic/Hippocratic-oath [https://perma.cc/K98Z-84BH].

256. *See After* Roe *Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS., https://reproductiverights.org/maps/abortion-laws-by-state [https://perma.cc/RAK4-TA8Q] (last visited Aug. 12, 2023). *But see* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2279 (2022) ("We therefore hold that the Constitution does not confer a right to abortion.") (overruling Roe v. Wade, 410 U.S. 113, 166 (1973)).

257. *See Modern Hippocratic Oath Holds the Underlying Values of Medicine in a Digital World*, UCLA DAVID GEFFEN SCH. OF MED. (July 13, 2018), https://medschool.ucla.edu/blog-post/modern-hippocratic-oath-holds-the-underlying-values-of [https://perma.cc/NX4T-XWF8].

258. Robert H. Shmerling, *First, Do No Harm*, HARV. HEALTH PUBL'G (June 22, 2020), https://www.health.harvard.edu/blog/first-do-no-harm-201510138421 [https://perma.cc/G6QV-BNGQ].

259. *Modern Hippocratic Oath Holds the Underlying Values of Medicine in a Digital World*, *supra* note 257.

260. *Id.*

261. *See id.*; *supra* note 256 and accompanying text.

262. *What Is Palliative Care?*, GET PALLIATIVE CARE, https://getpalliativecare.org/whatis [https://perma.cc/A6UW-TN7B] (last visited Aug. 12, 2023).

legalization poses a threat to improving such care.[263] This Subsection explores this argument, concluding that because there will always be people who do not wish to die via PAD, there is no reason to believe that alternative treatments will not continue to be improved as the PAD trend continues.[264]

Those in opposition to PAD argue that it is detrimental "for patient care on a large scale."[265] Essentially, the argument is that "[o]ptimum palliative care requires years of training and experience, as well as commitment to" patients, but the legalization of PAD eradicates "the need for this hard work and erodes" the commitment to improving palliative care.[266] As PAD "provides a 'quick and easy,' as well as cheap, answer to terminal illness[,]" there is no reason to bother "devot[ing] resources to more expensive medical progress" once PAD is legalized.[267] As an example, proponents of this argument suggest that, in states legalizing PAD, "use of hospice care has fallen below the national average."[268]

While PAD is an alternative to palliative care, there is no reason to believe that the legalization of PAD has deterred or will deter the growth of palliative care.[269] In fact, many healthcare professionals, regardless of their stance on the legalization of PAD, believe that the public debate over PAD actually boosts awareness and use of palliative care, and has led to the advancement of palliative and hospice care, rather than deterring them.[270] Although opponents of PAD suggest that where PAD is legal hospice care has fallen below average, that is not the case; in fact, many patients who exercise their PAD right are also hospice patients.[271] As such, hospices are still crucial establishments utilized nationwide, even in jurisdictions with PAD.[272] Ultimately, palliative care and PAD

263. *See infra* Part III.B.3.

264. *See infra* Part III.B.3.

265. *Killing the Pain, Not the Patient: Palliative Care vs. Assisted Suicide*, U.S. CONF. OF CATH. BISHOPS, https://www.usccb.org/prolife/killing-pain-not-patient-palliative-care-vs-assisted-suicide [https://perma.cc/4JWJ-PMEA] (last visited Aug. 12, 2023).

266. *Id.*

267. *Id.*

268. *Id.*

269. *See* Ahmed al-Awamer, *Physician-Assisted Suicide Is Not a Failure of Palliative Care*, COLL. OF FAM. PHYSICIANS OF CAN. (Dec. 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4677933 [https://perma.cc/SVA9-4NS5].

270. *See id. But see id.* ("I argue that debating palliative care in the context of [PAD] reinforced the idea that palliative care is only limited to the time around death[,]" so "many patients . . . resist early referral because they think that palliative care is limited to when [they] are close to death.").

271. *See id.*; Ann Jackson, *Observations on the First Year: A Commentary*, 6 PSYCH., PUB. POL'Y, & L. 322, 322 (2000).

272. *See* al-Awamer, *supra* note 269; Jackson, *supra* note 271.

are distinct, and should be treated as such[273]: "[I]f we propose that the failure of palliative care is a cause of [PAD], then we assume that good palliative care prevents [PAD] . . . [but] the existing reality does not support this suggestion."[274]

4. The Definition of "Terminal Illness" Is Not Dangerously Broad

Ordinarily, the primary requirement to invoke a PAD law is for an individual to be diagnosed with a terminal illness.[275] Some opponents of PAD argue that the definition of "terminal illness" in PAD laws is dangerously broad.[276] This Subsection will reject this argument, as it is sufficient to define a "terminal illness" as an illness that results in a prognosis of six months or less to live.[277]

The whole premise behind PAD laws is that they give individuals who are close to death the chance to die on their own terms, peacefully, and with their dignity still intact.[278] As such, there needs to be a window of time in which an individual is deemed close enough to death to utilize the law.[279] Most often, PAD laws limit eligibility to terminally ill patients who are expected to die within six months,[280] which is a definition that many people who object to PAD take issue with.[281] Such people believe that definitions of "terminal illness" should "distinguish between persons who will die within six months *with treatment* and those who will die within six months *without treatment*."[282] Therefore, they maintain that "patients with treatable diseases (like diabetes or chronic respiratory or cardiac disease) and patients with disabilities requiring ventilator support are all eligible for lethal drugs because they would die within six months without the treatment they would normally receive."[283]

While it is true that a diabetic who decides to no longer take their insulin (or other necessary medication) will die, such an individual does not coincide with the true purpose behind PAD laws, and as a result,

273. al-Awamer, *supra* note 269.

274. *Id.*

275. *See, e.g.*, OR. REV. STAT. §§ 127.800(12), .815(1)(a) (2019) (requiring individuals to have an incurable disease that will produce death within six months in order to use Oregon's PAD law).

276. *See infra* Part III.B.4.

277. *See infra* Part III.B.4.

278. *See supra* notes 18-19 and accompanying text.

279. *See* § 127.800(12).

280. *See id.*

281. *See Top Reasons to Oppose Assisted Suicide*, U.S. CONF. OF CATH. BISHOPS, https://www.usccb.org/committees/pro-life-activities/top-reasons-oppose-assisted-suicide [https://perma.cc/34WU-UREP] (last visited Aug. 12, 2023).

282. *Id.* (emphasis in original).

283. *Id.*

they are impliedly excluded from the "terminal" definition.[284] While there is "nothing in the [DWDA] to prevent someone with a treatable condition from refusing medical care in order to obtain a terminal diagnosis and lethal prescription[,]" and the DWDA "is 'silent on whether the patient' must exhaust 'all treatment options before the prognosis of less than six months to live is made[,]'"[285] the average doctor is sure to recognize the difference here.[286] Although diabetes is a lousy disease, it is a disease that is so common that there is successful medication for it, which enables diabetics to have a life expectancy comparable to that of the general population.[287] With curable diseases, or diseases like diabetes that require daily monitoring and care throughout the course of one's entire life, the typical physician will recognize that the individual's prognosis is not actually within six months, and will, therefore, be obligated to reject their request for lethal medication.[288]

However, if the individual has a disease that is temporarily treatable, rather than curable or easy to maintain, the story changes.[289] For example, if an individual has a terminal illness but can use medication to prolong their life for a few more months, their prognosis is still a terminal one, and rejecting the medication in this instance is now in line with the purpose behind PAD laws: this individual wishes to die peacefully, on their own terms, and does not wish to be subject to any more medica-

---

284. *See* Elizabeth Snouffer, *Insulin Insecurity and Death by DKA*, DIABETES VOICE (June 14, 2019), https://diabetesvoice.org/en/diabetes-views/insulin-insecurity [https://perma.cc/6M45-T3CP] ("Without insulin, people with type [one] diabetes suffer a condition called Diabetic Ketoacidosis (DKA). If left untreated, people die quickly and usually alone."); § 127.800(12).

285. Bradford Richardson, *Diabetics Eligible for Physician-Assisted Suicide in Oregon, State Officials Say*, WASH. TIMES (Jan. 11, 2018), https://www.washingtontimes.com/news/2018/jan/11/diabetics-eligible-physician-assisted-suicide-oreg [https://perma.cc/FQ7R-QHQW].

286. *But see id.* (suggesting that doctors authorized to use PAD are not inclined to use it on someone who is a diabetic and ceases their medication, but some are open to it—"you just have to find the right doctor").

287. *See* Snouffer, *supra* note 284 ("The tragic loss of life from DKA can be prevented [with insulin.]"); Konstantin Tachkov et al., *Life Expectancy and Survival Analysis of Patients with Diabetes Compared to the Non Diabetic Population in Bulgaria* 5 (May 11, 2020), https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0232815&type=printable [https://perma.cc/LHM9-U8XL] ("The combined diabetic life expectancy is 74.64 years—comparable to the life expectancy in the general population.").

288. *But see* Richardson, *supra* note 285.

289. *See* Jo Cavallo, *Balancing a Reverence for Life with a Belief That Patients Have a Right to a Dignified Death: A Conversation with Timothy E. Quill, MD*, ASCO POST (May 25, 2021), https://ascopost.com/issues/may-25-2021/balancing-a-reverence-for-life-with-a-belief-that-patients-have-a-right-to-a-dignified-death [https://perma.cc/SB23-WQ8X] (explaining that when an individual has an incurable disease, "doctors should be allowed by law to end the patient's life by some painless means if the patient . . . requests it . . .").

tion, knowing that there is no true cure for their illness.[290] It follows that this scenario is naturally included in the "terminal" definition in PAD laws, granted that without the life-prolonging medication, the individual is projected to die within six months.[291]

C. The Importance of Allowing Physician-Assisted Death

Despite these objections, and the countless others unmentioned, it is essential for New York to pass a PAD law because, without one, individuals are either left to suffer through the immense physical and emotional pain of living with a terminal illness, or are forced to take their lives on their own.[292] Every day without a PAD law is an unnecessary additional day of suffering for New Yorkers who would use the law if it existed.[293] It is vital to recognize and consider the reasons that so many advocates push for PAD laws throughout the country, and to use these reasons to persuade New York legislators to take action.[294]

One thing to remember is that the advancement of PAD is not meant to be politically divisive.[295] While people will always have differing opinions, the intention behind PAD is to accomplish peace and dignity at the end of life, which should not be overshadowed by differing politics.[296] Everyone should be given the chance to "die in a way [that is] consistent with their own faith, values, and beliefs[,]" and legalizing PAD enables those who support it to utilize it, should the time come, while also allowing those who reject it to simply *avoid* it.[297] Also, circling back to the story of Charlie and Francie Emerick,[298] PAD is so important because it brings families together to "celebrate a life well-lived as a loved one transitions on [their] own terms."[299] For example, no family should have "to watch their mother starve to death for [eleven] long and torturous days."[300]

290. *See* OR. REV. STAT. § 127.800(12) (2019); *supra* notes 18-19 and accompanying text.
291. *See* § 127.800(12).
292. *See infra* Part III.C.
293. *See 60 Reasons to Support New York's Medical Aid in Dying Act*, COMPASSION & CHOICES, https://compassionandchoices.org/60reasonsny2021 [https://perma.cc/9U5R-YL93] (last visited Aug. 12, 2023).
294. *See infra* Part III.C.
295. *See 60 Reasons to Support New York's Medical Aid in Dying Act*, *supra* note 293.
296. *See id.*
297. *Id.*
298. *See supra* Part I.
299. *60 Reasons to Support New York's Medical Aid in Dying Act*, *supra* note 293.
300. *Id.*

Potentially the most critical reason that PAD is necessary is "[s]o that no one's sister has to research the best way to take her own life."[301] Think about it: when someone is in unbearable pain, knows of their imminent death, and wishes to die, but PAD is not available to them, there is a chance that they will commit suicide.[302] Would we not prefer individuals in such a position go about dying in an orderly manner, with the help of a physician and with their family by their side, instead of leaving them on their own to figure out how to end their lives?[303]

IV. THE IDEAL NEW YORK PHYSICIAN-ASSISTED DEATH LAW

Oregon's DWDA has remained successful for twenty-eight years, and has been replicated time and time again by state legislatures when their states pass PAD laws.[304] Therefore, to finally achieve success, the structure of New York's PAD law should resemble Oregon's DWDA, but the law itself should not be a direct replica of Oregon's DWDA, because there is plenty of room for improvement.[305] Like Oregon's DWDA, New York's PAD law must be a voluntary law with eligibility restricted to people who are at least eighteen years old who are terminally ill, such that they have six months or less to live.[306] Most of the major definitions, such as what a "terminal illness" and "informed decision" are, should also align with Oregon's DWDA, as they are the definitions used by essentially all successful PAD laws.[307]

However, there are two definitions that New York would benefit from tweaking—the first being the definition of "resident."[308] To use a

---

301. *Id.*

302. *See* Ed O'Connor, *60 Reasons to Support New York's Medical Aid in Dying Act*, COMPASSION & CHOICES, https://www.compassionandchoices.org/docs/default-source/60-reasons-ny/cc_60reasons_onesheet_edoconnor_01.pdf?sfvrsn=d7083f85_1 [https://perma.cc/SGM6-FR6K] (last visited Aug. 12, 2023) (sharing the story of a brother who watched his sister, who had terminal ovarian cancer, avoid taking "the full course or dosage of medications prescribed to her so she could have a stockpile that she could use if she needed to take matters in[to] her own hands at the end").

303. *See id.*

304. *See supra* notes 43, 94 and accompanying text.

305. *See supra* Part III.A.1 (demonstrating the number of times New York has failed to enact a PAD law, such that it is time to change up the text of the law being presented to legislators).

306. *See* OR. REV. STAT. § 127.805(1) (2019). The DWDA restricts eligibility to individuals older than eighteen who are within six months of dying. *Id.* § 127.800(1), (12). This is more practical, leaving less room for abuse, than the eligibility requirements of Canada's MAID law, which will soon allow individuals to use PAD even if they are not terminally ill. *Canada's Medical Assistance in Dying (MAID (Medical Assistance in Dying)) Law*, *supra* note 158. The DWDA eligibility requirements are also better than the Netherlands' PAD law, which allows minors to use it. EUTHANASIA CODE 2018, *supra* note 141, at 58.

307. *E.g.*, § 127.800(7), (12).

308. *See id.* § 127.860.

state's PAD law, one must be a resident of the State;[309] so, states should carefully define this term to avoid becoming a PAD hotspot.[310] Oregon's DWDA, as mimicked by most states, defines "resident" liberally, in the form of a non-exhaustive list.[311] New York should make this list an exclusive one, creating clear criteria to be followed for one to be deemed a New Yorker under this law.[312] Within this criteria should be those eligible to vote in the State—more specifically, those who have voted in a New York election within the last year; those who have had a New York State identification for at least six months; and those with real property in the State, which they reside in for a majority of the year.[313] If someone does not meet at least one of these three requirements, they shall not be entitled to use New York's PAD law.[314] New York should also consider changing the word "resident"[315] to "inhabitant," which "implies a more fixed and permanent abode than does 'resident;' and a resident may not be entitled to all the privileges or subject to all the duties of an inhabitant."[316]

Ultimately, New York's law should strive to only be applicable to those who truly call New York their home, and this proposed definition encourages that.[317] This definition does not allow someone to move to the State and use PAD right away, nor does it allow someone who only has a hunting license in the State to use the PAD law, which are circumstances enabled by current PAD laws throughout the country.[318]

The other definition that New York should tweak in its PAD enactment is who is eligible to be a witness.[319] In Oregon, at least two witnesses must attest to the fact that a patient is capable of making the vol-

309. *Id.*

310. *See supra* note 192 and accompanying text.

311. *See supra* note 46 and accompanying text.

312. *Contra* § 127.860.

313. *Contra id.*

314. *Contra id.*

315. *See Resident*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a "resident" as someone who either "lives permanently in a particular place" or "has a home in a particular place[,]" meaning that "a resident is not necessarily either a citizen or a domiciliary" of a state).

316. *Resident Definition & Legal Meaning*, LAW DICTIONARY, https://thelawdictionary.org/resident [https://perma.cc/9WBV-V9VT] (last visited Aug. 12, 2023).

317. *See supra* note 131 and accompanying text. Without a sufficient "resident" definition of this caliber, "New York could turn into a suicide destination, and death on request will be available to vulnerable people with no connection to [the] [S]tate or to the treating physician[,]" which is something that PAD opponents are strongly against. *Fatal Flaws in Assisted Suicide Legislation*, N.Y.S. CATH. CONF. (Aug. 27, 2019), https://www.nyscatholic.org/fatal-flaws [https://perma.cc/9TBR-X2EF].

318. *See, e.g.*, ME. REV. STAT. tit. 22, § 2140(15)(H) (2022).

319. *See, e.g.*, § 127.810(2) (showing Oregon's witness criteria, for reference).

untary decision to use the DWDA.[320] Oregon specifies that one of the witnesses cannot be a relative of the patient; someone who is entitled to any portion of the patient's estate upon death; or someone who owns, operates, or is employed by a health care facility where the patient is receiving medical treatment.[321] New York's PAD law should require two witnesses to sign off on the patient's capabilities, but *neither* of the two witnesses should be someone from one of those categories.[322] This is because it is possible that someone who will benefit from the patient's death (perhaps by inheritance) could coerce the other witness into incorrectly attesting to the patient's capacity.[323] Although this is an opportunity for refinement, the bigger and more important changes to the DWDA that New York should implement focus on the text of the law rather than on the basic definitions.[324]

As previously indicated, although the DWDA has worked well for decades, there is always room for improvement.[325] For one, New York should implement the District of Columbia's practice of requiring the physician who prescribed the medication to notify the Department of Health of the patient's death by PAD.[326] This practice forces physicians to closely monitor a patient's PAD journey, as they must know exactly when the medication is ingested, which is a beneficial addition to PAD, as it is desirable for physicians to play large roles throughout this process.[327] Such a notification system is also beneficial because, once notified, the Department of Health can investigate any uses of PAD that seem suspicious.[328] Additionally, New York should follow in New Jersey's footsteps and incorporate a section at the beginning of the law that specifically lists the goals of the law and assures the public that adequate safeguards are implemented to achieve said goals, to ease the minds of those skeptical of the law's passage.[329]

---

320. *Id.* § 127.810(1).

321. *Id.* § 127.810(2)(a)–(c).

322. *See Fatal Flaws in Assisted Suicide Legislation*, *supra* note 317 (expressing concerns with New York's Medical Aid in Dying Act proposal partially due to its weak witness requirements).

323. *See id.*

324. *See infra* Part IV.

325. *See, e.g.*, *Frequently Asked Questions*, OR. HEALTH AUTH., https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/faqs.aspx#exempt [https://perma.cc/GT6A-UEAG] (last visited Aug. 12, 2023) (explaining changes to the DWDA that took effect in January 2020, showing that even Oregon improves its law from time to time).

326. *See* D.C. CODE § 7-661.05(f) (2023).

327. *See id.*

328. *See id.* § 7-661.05(i)(1).

329. N.J. STAT. ANN. § 26:16-2(c) (West 2023).

New York should also include Washington's provision, which requires the careful disposal of any lethal medications allocated to patients who ultimately decided not to take them, so that they do not end up in the wrong hands to potentially be used illegally.[330] However, Washington's provision fails to clarify *who* should be discarding this medication, which is a gap in the law that New York should account for.[331] At first glance, it may appear that the obvious choice for who should be responsible for disposal of the medication is the patient who chooses not to take it, because it is in their possession.[332] After some thought, it becomes clear that the physician should be responsible for it, to remove the risk of a patient improperly discarding it, or forgetting to do so, and someone else in the patient's home—perhaps a child or a pet—finding it.[333] The physicians are the professionals, and if the law is written in such a way that they could lose their license if they do not get the medicine back, they will surely find a way to regain control over it, whether that be by having the patient bring it back to their facility, or having the physician arrange for someone from their office to go to the patient's home and retrieve it.[334]

One portion of Oregon's DWDA that New York should not adopt is the requirement to make one written request and two oral requests to a physician, with waiting periods in between, before a patient is eligible to receive lethal medications.[335] Although Oregon recently amended the law to do away with the fifteen-day waiting period if a patient's life expectancy is less than fifteen days, there is no reason to make individuals wait so long in the first place, especially when dealing with a small, six-month window of time.[336] Rather, New York should opt for the Canadian requirement of only mandating one written request to a physician, so that no patient is forced to spend their final days worrying about the number of requests they have made.[337]

New York should also avoid including the District of Columbia's provision requiring health care providers to lie on a patient's death cer-

330. WASH. REV. CODE. § 70.245.140 (2023).

331. *See id.*

332. *See id.*

333. *See supra* note 136 and accompanying text.

334. *But see Where and How to Dispose of Unused Medicines*, U.S. FOOD & DRUG ADMIN., https://www.fda.gov/consumers/consumer-updates/where-and-how-dispose-unused-medicines [https://perma.cc/7UZY-L7LH] (Apr. 21, 2021) (listing ways for non-professionals to safely dispose of medicines at home).

335. *See* OR. REV. STAT. §§ 127.840(1), 127.850(1) (2019).

336. *See* Oregonian/OregonLive Politics Team, *supra* note 113.

337. *See* Canada Criminal Code, R.S.C. 1985, c C-46, s. 241.2(3)(b)(i).

tificate (that is, avoiding stating that the death was because of PAD).[338] This is something that New York PAD opponents take issue with, especially because "[u]nder any other circumstance, a deliberate false statement on a death certificate would be a crime."[339] Opponents believe that "[t]he failure to identify suicide as the actual cause of death will hamper efforts to oversee the implementation of the law, since information on death certificates will not be reliable and there will be no way to determine if [PAD has] actually occurred."[340]

With these alterations, New York's PAD law will be in much better shape to withstand its resisters.[341] By tackling head-on the major issues that have prevented PAD's passage in New York for decades, and restructuring the law to fix these issues, the law will be tremendously more likely to pass in the State.[342]

V. CONCLUSION

With the current trend towards the legalization of PAD throughout the world, the time has come for New York to rise to the occasion and adopt a PAD law of its own,[343] and the State should use the blueprint laid out in Part IV when doing so.[344] New Yorkers often like to think of their State as the "national leader in progressive policies[.]"[345] This notion is met with skepticism from outsiders, who do not think New York has always been first to enact such policies, or who feel as though "[e]ven when New York is the first to pass progressive legislation, there [are not] always a lot of followers."[346] New York has the chance to prove just how progressive it is by putting a PAD law into motion.[347] While it will not be the first to do so, it certainly will not be the last—dozens of other states have yet to enact PAD laws, and New York's passage of the proposed PAD law is likely to persuade some of these states to act accordingly.[348] Despite the apparent importance of enacting a PAD

338. D.C. CODE § 7-661.05(h) (2023).

339. *Fatal Flaws in Assisted Suicide Legislation*, *supra* note 317.

340. *Id.*

341. *See id.* (addressing the major issues New Yorkers have against a PAD enactment).

342. *See id.*

343. *See New York*, *supra* note 26 ("People travel from all over the world to access New York's doctors and hospitals. New Yorkers [should not] have to leave the state to receive the care they need at the end of life.").

344. *See supra* Part IV.

345. Zach Williams, *Is New York Leader of the Pack?*, CITY & STATE N.Y. (Jan. 13, 2020), https://www.cityandstateny.com/politics/2020/01/is-new-york-leader-of-the-pack/176539 [https://perma.cc/2DFQ-UAGD].

346. *Id.*

347. *See supra* Part IV.

348. *See supra* Part II.B.1.

law in New York, the ultimate goal is for PAD to be passed in every state in the United States.[349]

*Samantha Knice**

349. *See* Peg Sandeen, *A Statement of Solidarity*, DEATH WITH DIGNITY (June 18, 2020), https://deathwithdignity.org/news/2020/06/statement-of-solidarity [https://perma.cc/2XWX-C4BG] ("[The Death with Dignity National Center] work[s] every day to realize a future in which all people have what should be a fundamental human right: the freedom to decide how they die.").

* J.D., *cum laude*, 2023, Maurice A. Deane School of Law at Hofstra University; B.A., *cum laude*, Digital Technology and Emerging Media with a minor in Computer Science, 2020, Fordham University. First and foremost, I am forever grateful to my family, Anna, William, and Julianna Knice. Mom and Dad, I would be nowhere near where I am today without your love and support. Jules, thanks for always pushing me to reach my full potential with your tough love. To my Uncle Bill Parkas, who inspired me to become a lawyer, thank you for your guidance throughout my law school journey. To Kevin Johns, I cannot thank you enough for being by my side during these last three years (and with a smile!); your support and encouragement means more to me than you will ever know. I would also like to thank my Notes Editor, Christopher Picciano, and my faculty advisor, Professor Richard Neumann, for your valuable feedback, mentorship, and time. Last but certainly not least, thank you to the Volume 51 and 52 Managing Boards, and the entire *Law Review* Board and Staff, for all your hard work.