

Aid in Dying: An End of Life Option in Hawaii



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Aid in Dying

Physician prescribes medication to a mentally competent terminally ill patient, which the patient may ingest to bring about a peaceful death.

- **Opponents use inaccurate, incendiary term: “assisted suicide”**
- **Term rejected by APHA, AAHPM, AMWA, AMSA, ACLM**



Support for Aid in Dying



- **70% of Americans support**
- **75% of Hawaii residents support***

***QMark Research**

http://hawaiidwdsociety.org/polls/2004_Qmark_poll.pdf

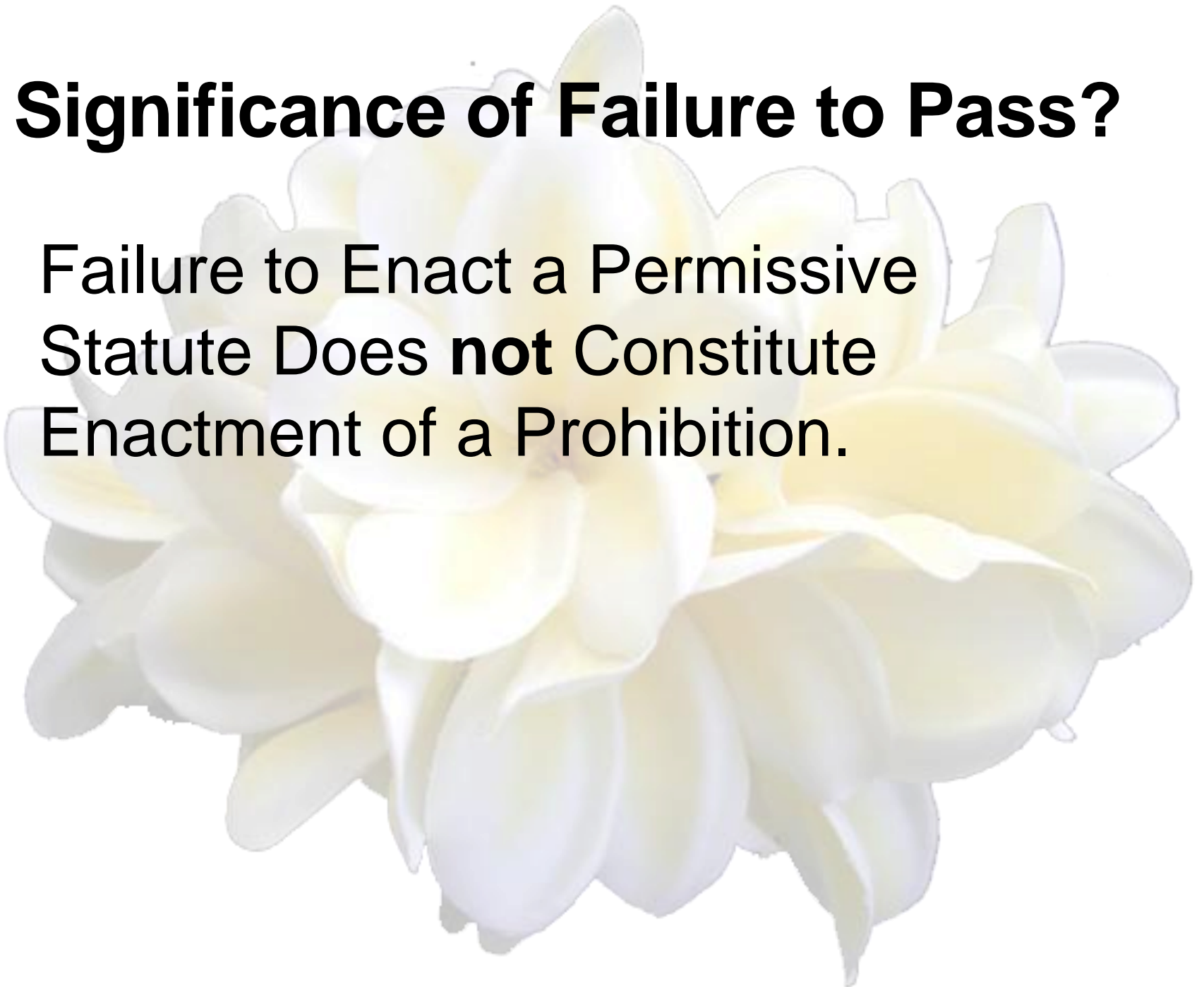
Hawaii History re AID

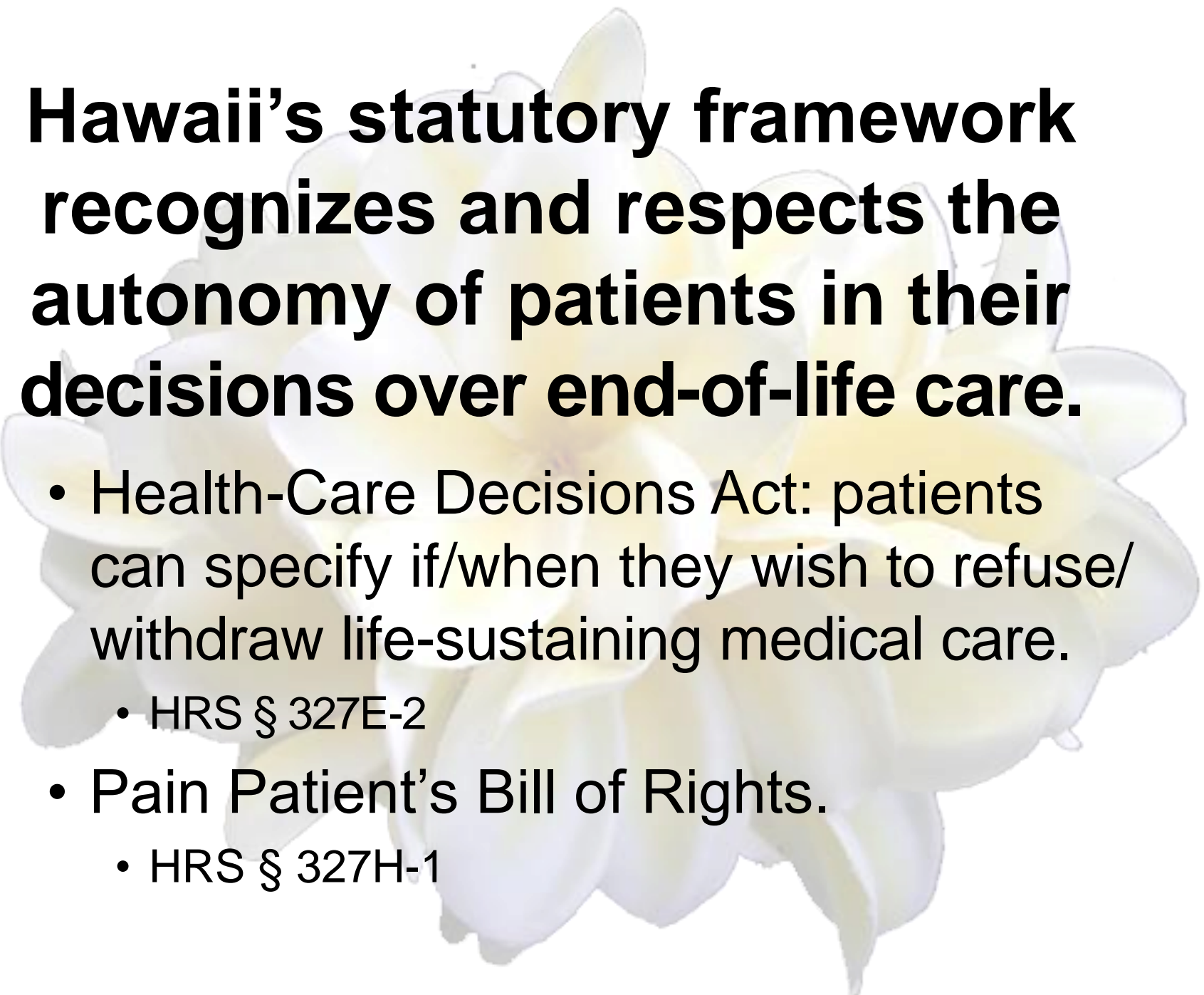


- 1997: Blue Ribbon Panel: majority recommended enacting legislation to create an affirmative right to AID.
- 2002 H.R. 2487, 21st Leg, Reg. Sess.: Not enacted
- 2011 Senate Bill 803, Death with Dignity, 26th Leg., Reg. Sess.: Not enacted.

Significance of Failure to Pass?

Failure to Enact a Permissive Statute Does **not** Constitute Enactment of a Prohibition.





Hawaii's statutory framework recognizes and respects the autonomy of patients in their decisions over end-of-life care.

- Health-Care Decisions Act: patients can specify if/when they wish to refuse/withdraw life-sustaining medical care.
 - HRS § 327E-2
- Pain Patient's Bill of Rights.
 - HRS § 327H-1



Physicians May Provide “Any Remedial Agent”

When a physician pronounces a person beyond recovery ...”nothing herein shall forbid any person from giving or furnishing any remedial agent or measure when so requested by or on behalf of the affected person.”

HRS § 453-1 (2011).

Is There A Prohibition?

- Statute does not authorize “suicide, euthanasia, or mercy killing.”
 - Lack of authorization does not = ban
 - Choice of a competent terminally ill patient for a peaceful death is not “suicide” .
 - *Baxter v. Montana*, patient’s decision to ingest medication to bring about a peaceful death is neither a mercy killing nor euthanasia

Manslaughter?

- An individual commits the offense of manslaughter if, “[t]he person intentionally **causes** another person to **commit suicide**.” HRS § 707-702(1)(b) (2011).
 - NOTE: HI does not have a criminal prohibition on “assisting suicide”, as many states do.
 - Neither cause nor intent could be shown.

No Intent to “Cause Suicide”

- More than 1/3 of OR patients who obtain a prescription for AID do not ingest it, and die of their underlying disease:
 - Physicians intend to comfort and empower their patients, not “cause suicide.”

Cause?

- If writing prescription for AID could constitute “causing suicide” sufficient for manslaughter prosecution, so too would other EOL care be exposed:
e.g.
 - Palliative Sedation,
 - supportive care for VSED,
 - deactivating heart devices,
 - removing vent or feeding tube, etc.

AID is not “suicide”

Mental health professionals recognize a clear difference between the act of “suicide” and the choice of a terminally ill patient to bring about a peaceful death.

AID is not “Suicide”

“It is important to remember that the reasoning on which a terminally ill person (whose judgments are not impaired by mental disorders) bases a decision to end his or her life is **fundamentally different** from the reasoning a clinically depressed person uses to justify suicide.”

American Psychological Association

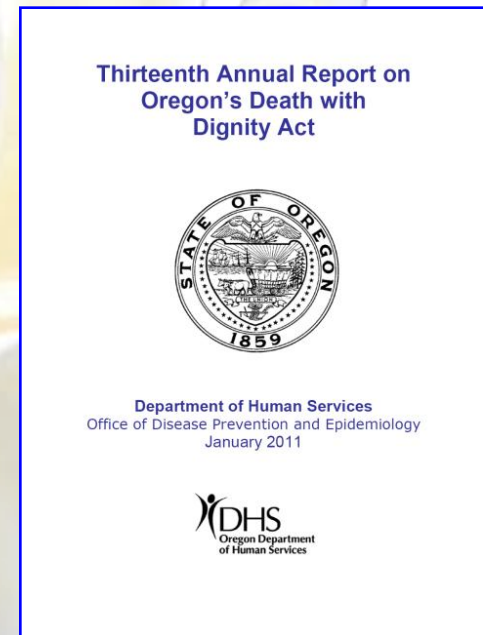
Significance of *Baxter* in Hawaii?

Pain Patient's Bill of Rights, Health-Care Decisions Act, and 1909 statute collectively reflect that the policy of the State of Hawaii is to support autonomy in medical decision making; this reasonably extends to the choice for AID.

13 Years Experience w/AID in Oregon

Use is limited: 525 in 13 years

- **98% white**
- **68% college educated**
- **88% enrolled in hospice**
- **81% dying of cancer; 8% ALS**
- **98% had insurance**



Oregon Department of Human Services January 2011



AID: Impact on Care

- **Rather than posing a risk to patients or the medical profession, availability of AID has galvanized improvements in EOL care**
 - **Increased physician enrollment in CME courses on pain/symptom management**
 - **Increased physician enrollment in CME courses on recognizing depression and other psychiatric disorders**
 - **Increase in referrals of patients to hospice programs**



No Harm to “Vulnerable”

The option of AID has not been unwillingly forced upon disabled, poor, uneducated, uninsured or otherwise disadvantaged

No evidence of harm to “vulnerable populations”

Battin/Ganzini, Legal Physician-Assisted Dying in Oregon and the Netherlands: Evidence Concerning the Impact on Patients in “Vulnerable Groups” (2007)



NO Harm to PWD



- Some disability activists/groups have opposed AID on speculation of harm to PWD.
- APHA carefully examined these concerns, found **no evidence of harm**, adopted policy supportive of AID
 - proviso for moratorium if any evidence of harm: **NO MORATORIUM**

No negative effect on surviving family members

- **Family members better prepared for/accepting patient's death**
- **diminished denial**
- **grief more resolved**
- **more likely to believe that patient's choices were honored**
- **less likely to have regrets about death**

Ganzini, Prigerson, et al, J Pain and Symptom Management (Sept. 2009)



Social Change Regarding AID Accelerates

- **2008:** WA adopts permissive statute, begins implementation
- **2009:** MT Supreme Court (*Baxter*): AID w/in public policy of State, not subject to criminal prosecution.
 - **2011:** Efforts to ban or regulate fail; Practice governed by bounds of court decision and best practice/SOC.





Broad Support for AID Emerges Among Medical and Health Policy Organizations

- American Public Health Association
- American Medical Women's Association
- American Medical Students Association
- American College of Legal Medical

AID Governed by Best Practices/Standard of Care

Absent controlling statute*, the practice can/should be governed by best practices/standard of care.

- Most medical practice so governed
- Few medical practices subject of court ruling or statute

*NOTE: a prohibitory statute could be enacted, as in ID; alternatively a regulatory/permissive statute could be enacted(as attempted in MT, which considered both a ban and reg statute)



Legislation Not Necessary

- **To Ban:** should be opposed/defeated: AID is an EOL option that harms no one, offers a peaceful death for the relatively small # who choose, offers comfort to all, raises floor for good EOL care for all.
- **To Regulate:** Not necessary; approp for best practices/SOC
 - Regulatory measure: if considered, learn from OR and WA:
 - Drs don't want/need burdensome reporting
 - Data from OR/WA served 'laboratory' purpose

