

New Jersey Medical Aid in Dying Act for the Terminally Ill - *Women Lawyers in Bergen*

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By: Naomi Becker Collier, Pashman Stein Walder Hayden

After nearly a decade long debate among opponents and proponents of legislation addressing end of life decisions of terminally ill patients, on April 12, 2019 Governor Phil Murphy signed into law the Medical Aid in Dying for the Terminally Ill Act, N.J.S.A. 26:16-1 et seq. (“Medical Aid in Dying”), making New Jersey the eighth state to allow qualified terminally ill patients to request that their physicians allow them to end their lives at their discretion, with dignity. Medical Aid in Dying became law in New Jersey on August 1, 2019, and, despite an almost immediate challenge, remains effective today.

Medical Aid in Dying is commonly referred to as “death with dignity,” which is different than an individual’s “right to die.” The latter is more accurately used in the context of directing your medical care, such as refusing or requesting the withdrawal of life-sustaining treatment. It is important to note that you can (and should) provide written direction as it relates to how your medical decisions should be made on your behalf, through a legally drafted and executed health care directive (commonly referred to as a living will), and that you can (and should) legally appoint an agent to act on your behalf to help you with medical decisions (if you cannot speak for yourself). However, you cannot direct an agent to request the medication for you under Medical Aid in Dying pursuant to the law, but an agent can communicate the patient’s health care decisions to a health care provider if the patient so requests. N.J.S.A. 26:16-16.

Medical Aid in Dying does not permit mercy killings, euthanasia, or assisted suicide. In fact, the law specifically states that choosing to hasten death under Medical Aid in Dying is not suicide. The qualifying terminally ill patient must be able to ingest the medication orally without assistance. There are additional procedures and safeguards built into the law, which are discussed further below, that must also be followed before the self-administered medication will be dispensed to the qualifying terminally ill patient.

Under Medical Aid in Dying, if you are a New Jersey resident at least eighteen years old and two physicians have determined that you are unlikely to live longer than six months, and you have the requisite capacity to make and communicate health care decisions, and are making the decision of your own free will, then you can request a prescription for life-ending medication. The request must be in writing and must be voluntary. In order for the written request to be valid, it must be “. . . substantially the form set forth in section 20 of P.L.2019, c. 59 (C.26:16-20), signed and dated by the patient and witnessed by at least two individuals who, in the patient’s presence, attest that, to the best of their knowledge and belief, the patient is capable and is acting voluntarily to sign the request.” N.J.S.A. 26:16-5. At least one of the witnesses to this written request cannot be a relative of the patient, stand to financially gain from the patient’s death, or be an employee of the patient’s doctor or nursing home. Furthermore, the patient’s physician attending at the time of the request is not allowed to serve as a witness. Id.

Once the prescription request is made by a patient, “[t]he attending physician shall ensure that all appropriate steps are carried out in accordance with the provisions of P.L.2019, c. 59 (C.26:16-1 et al.) before writing a prescription for medication that a qualified terminally ill patient may choose to self-administer pursuant to P.L.2019, c. 59 (C.26:16-1 et al.)” such as making the initial determination that the patient is terminally ill, capable, and has made the request of his or her own free will and volition. N.J.S.A. 26:16-6.a(1). Pursuant to the Medical Aid in Dying, “[a] patient shall not be considered a qualified terminally ill patient until a consulting physician has: a. examined that patient and the patient’s relevant medical records; b. confirmed, in writing, the attending physician’s diagnosis that the patient is terminally ill; and c. verified that the patient is capable, is acting voluntarily, and has made an informed decision to request medication that, if prescribed, the patient may choose to self-administer pursuant to P.L.2019, c. 59 (C.26:16-1 et al.)” N.J.S.A. 26:16-7.

It is also during this time that the treating physician is required to “. . . inform the patient of: the patient’s medical diagnosis and prognosis; the potential risks associated with taking the medication to be prescribed; the probable result of taking the medication to be prescribed; and the feasible alternatives to taking the medication, including, but not limited to, concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control” N.J.S.A. 26:16-6.a(3). In addition, the attending physician must refer the patient to a physician to confirm the diagnosis and prognosis, and to confirm that the patient is capable and making the decision to request the medication voluntarily, and to discuss other treatment and care opportunities. N.J.S.A. 26:16-6.a(4)-(6). Finally, the treating physician is directed to “. . . advise the patient about the importance of having another person present if and when the patient chooses to self-administer medication prescribed under P.L.2019, c. 59 (C.26:16-1 et al.) and of not taking the

medication in a public place; inform the patient of the patient's opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind the request at the time the patient makes a second oral request as provided in section 10 of P.L.2019, c. 59 (C.26:16-10); and fulfill the medical record documentation requirements of P. L.2019, c. 59 (C.26:16-1 et al.)." N.J.S.A. 26:16-6.a(7)-(9).

The attending physician may either dispense the medication directly to the patient or transmit the prescription to a pharmacist "who shall dispense the medication directly to either the patient, the attending physician, or an expressly identified agent of the patient." N.J.S.A. 26:16-6.b. The medication cannot be dispensed and delivered via mail or another form of delivery. *Id.* Before the patient can receive the medication, the attending physician has to recommend that he or she notify the patient's next of kin of the patient's request for the medication. N.J.S.A. 26:16-9. However, if the patient does not follow the treating physician's recommendation regarding notification of next of kin, or if he or she is unable to notify his or her next of kin, these are not basis upon which the request for medication can be denied. *Id.*

On August 14, 2019, Presiding Judge Paul Innes, sitting in the General Equity Division of the New Jersey State Superior Court in Mercer County, granted a temporary restraining order ("TRO") in response to a lawsuit filed by Dr. Yosef Glassman, a physician from Bergenfield, who opposes the law for religious and professional reasons. That TRO was almost immediately appealed by the New Jersey Attorney General's Office. By Order dated August 27, 2019, the Appellate Division vacated the TRO and remanded the matter for further proceeding. The Supreme Court denied an emergent application to stay the Appellate Division's order that same day.