



## Protection of Conscience Project

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# New Jersey assisted suicide law and freedom of conscience

## Lack of clarity on referral is unsatisfactory

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Protection of Conscience Project

### Overview

New Jersey's *Medical Aid in Dying for the Terminally Ill Act*<sup>1</sup> came into effect on 1 August, 2019.<sup>2</sup>

The *Act* permits physician assisted suicide for any resident of New Jersey who is 18 years of age or over, who can make and communicate informed health care decisions, who has been diagnosed with a terminal illness and who is likely to die within six months. Physicians assist by providing a prescription for lethal medication. The patient must make two oral requests for the medication 15 days apart, and a written request. Two physicians must agree that the patient is decisionally competent and meets the medical criteria. Additional consultation is required if there is concern about psychological or psychiatric conditions that may impair a patient's judgement.

Only physicians can prescribe lethal medication for qualified patients. A physician who writes such a prescription must deliver it directly to a pharmacist, who will dispense it to the physician, the patient or the patient's agent. Physicians need not be present when the patient takes the medication.

See the text of the *Act* for more details about the eligibility criteria and process.<sup>1</sup>

### Protective provisions

The law provides protection for objecting health care professionals, but not for health care facilities or institutions.

Section C26:16-17(a)1 states that health care professionals who refuse "to take any action in furtherance of, or to otherwise participate in" providing lethal medication for suicide are immune from civil and criminal liability and professional discipline, unless their actions or omissions constitute "gross negligence, recklessness, or willful misconduct."

### Conflict re: participation and referral

However, there is a conflict between this and the definition of "participate" provided in Section C26:16-3, which explicitly excludes referring a patient "to another health care provider" - presumably one who will act on the patient's request.

Objecting physicians may be unwilling to refer patients because they believe

that doing so would make them complicit in what they consider to be a gravely immoral act. It is possible that they would be protected by the passage in Section C26:16-17(a)1 offering immunity to those who refuse to "take any action in furtherance" of suicide, even if Section 3 denies them the immunity offered in Section 17 for refusing to "otherwise participate in" the process.

However, Section C26:16-17.c complicates interpretation of the law because it states that any act by which a health care professional "participates" in assisted suicide must be voluntary. Since referral doesn't count as participation (Section 3) this suggests that physicians can be compelled to involuntarily refer patients to facilitate suicide.

The lack of clarity in Section C26:16-17 and conflict between Sections C26:16-17 and C26:16-3 are most unsatisfactory because referral is a particularly contentious subject, and forcing referral upon unwilling physicians is a violation of freedom of conscience.

### **Transfer of records**

Finally, the law requires health care professionals who are "unable or unwilling to carry out a patient's request" to transfer relevant medical records to another professional identified by the patient, if asked to do so by the patient. This is the norm in most jurisdictions where assisted suicide or euthanasia are legal, but it is being challenged by a New Jersey physician as a violation of freedom of religion.<sup>3</sup>

### **Notes:**

1. New Jersey State Legislature. An Act concerning medical aid in dying for the terminally ill, supplementing Titles 45 and 26 of the Revised Statutes, and amending P.L.1991, c.270 and N.J.S.2C:11-6 [Internet]. (2019) Available from: <<https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A1504>>. (Cited 2019-09-20).
2. Catalini M. New Jersey Law on Assisted Suicide Goes Into Effect [Internet]. NBC Universal. 2019 Aug 01. Available from: <<https://www.nbcnewyork.com/news/local/New-Jersey-Law-on-Assisted-Suicide-Goes-Into-Effect-513481431.html>>. (Cited 2019 Sep 20).
3. Schwartz B. Bergenfield Doctor's Lawsuit Halts NJ Physician-Assisted Suicide Act [Internet]. Jewish Link. 2019 Aug 21.