



End of Life Consultation does not Break the Law

California Penal Code Section 401 makes it a felony to “assist a suicide.” The statute is antiquated, having been passed in 1873 and last amended in 1905. Its drafters did not contemplate modern medical realities. The Compassion & Choices End-of-Life Consultation Service does not violate this statute for the following reasons:

1. Mentally competent, terminally ill individuals who seek information about peaceful dying are not “suicidal.” If they take medication to effect a peaceful, humane death, they are not “committing suicide.” Section 401 is irrelevant.

Substantial and growing medical and legal authority supports this assertion. Clear statements from the American Academy of Hospice and Palliative Medicine, the American Public Health Association, American Psychology Association, American College of Legal Medicine and others affirm that the mental state and behavior of a dying person to choose a peaceful death is fundamentally and qualitatively different from the “suicidal” actions the statute was intended to address. The term “aid in dying” accurately describes the choice of a terminally ill person to die peacefully. In Oregon, where aid in dying is decriminalized and regulated, state officials do not refer to it as “suicide” or “assisted suicide.”

2. “Assisting” means “aiding and abetting” or “encouraging.” Compassion & Choices End of Life Consultation does not encourage aid in dying, but does share accurate, nonjudgmental information. The consultation helps clients find the best, most effective treatment for pain and other symptoms and ensure death is peaceful, humane, and without undue trauma to loved ones. Usually the combination of hospice care, frank and specific information, and careful decision-making meets this goal. Over 90% of Consultation clients never need aid-in-dying, the option of last resort.
3. “Assisting” a death could also mean providing the means for aid in dying, or administering medication. The Consultation does not provide medication or other means, nor do we administer them. Clients who choose aid in dying receive guidance on obtaining the means for peaceful dying, which they self-administer if and when their suffering becomes unbearable.
4. California District Attorneys have no authority to prosecute felony cases absent clear legislative language criminalizing the conduct at issue. There is no clear legislative language or evidence of intent to criminalize the rational, enduring decision of a dying person to choose aid in dying to escape unbearable suffering.
5. The End of Life Consultation Service shares information in a forthright and candid manner, and provides emotional support for dying patients making difficult, complex and thoughtful decisions. These conversations occur over time (average duration of a case is 180 days) and usually include the patient’s family, physician, spiritual advisor and caregivers. Speech enjoys constitutional protection and a supportive presence is not actionable.