SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SARA MYERS, STEVE GOLDENBERG, ERIC A. SEIFF, HOWARD GROSSMAN, M.D., SAMUEL C. KLAGSBRUN, M.D., TIMOTHY E. QUILL, M.D., JUDITH K. SCHWARZ, Ph.D., CHARLES A. THORNTON, M.D., and END OF LIFE CHOICES NEW YORK,

Plaintiffs,

-against-

ERIC SCHNEIDERMAN, in his official capacity as ATTORNEY-GENERAL OF THE STATE OF NEW YORK, JANET DIFIORE, in her official capacity as DISTRICT ATTORNEY OF WESTCHESTER COUNTY, SANDRA DOORLEY, in her official capacity as DISTRICT ATTORNEY OF MONROE COUNTY, KAREN HEGGEN, in her official capacity as DISTRICT ATTORNEY OF SARATOGA COUNTY, ROBERT JOHNSON, in his official capacity as DISTRICT ATTORNEY OF BRONX COUNTY and CYRUS R. VANCE, JR., in his official capacity as DISTRICT ATTORNEY OF NEW YORK COUNTY,

Defendants.

- X

Index No. 151162/15

NYSCEF CASE

Motion Sequence No. 002

AFFIDAVIT OF DR. KATHERINE MORRIS IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

STATE OF NEW MEXICO)
)ss:
COUNTY OF BERNALILLO)

Katherine Morris, M.D., being duly sworn, deposes and says:

1. I am a medical doctor. I received my medical degree in 1996 from Oregon Health Sciences University School of Medicine ("OHSU") in Portland, Oregon. My undergraduate education was at the University of Washington, in Seattle, Washington, where I was recipient of a Presidential Scholarship and earned a BS in Mathematics, with Honors, in1992.

2. After finishing medical school, I served as an intern and then resident and chief resident in General Surgery at OHSU. I also served as research fellow at OHSU between 1996 and 2003. Between 2003 and 2005, I served a two year fellowship in Surgical Oncology at Memorial Sloan Kettering Cancer Center ("MSK"), in New York City.

3. In 2005, after completing my fellowship in New York at MSK, I returned to Portland, Oregon to practice medicine. Between 2005 and 2010, I served as Medical Director of Cancer Research and of the Hepatobiliary Program at Legacy Health System. I also served as a Surgical Oncologist at both Northwest Surgical Oncology and at Oregon Surgical Consultants.

4. I moved to Albuquerque in 2010, where I now practice at the University of New Mexico Health Sciences Center, in the Division of Surgical Oncology in the Department of Surgery.

5. I am Board Certified by the American Board of Surgery. I am currently licensed to practice medicine in New Mexico, and have also been licensed to practice in Oregon and New York during the time I lived and practiced in those states. I also teach medical students and residents: since 2010 I have served as an assistant professor in the Division of Surgical Oncology in the Department of Surgery of The University of New Mexico.

6. I have received various professional honors and awards, including induction into the medical honor society Alpha Omega Alpha. I am a member of a number of the National Medical Societies, including the American Medical Women's Association, the American College of Surgeons, the American Association for Cancer Research, the American Hepato-Pancreato-Biliary Association, the Society of Surgical Oncology, the American Society of Clinical Oncology, and the Association for Academic Surgery. I am a reviewer for the Journal of Cancer Research & Therapy, the Journal of Surgical Oncology, the Annals of Internal Medicine, and

HPB: the Official Journal of the Americas Hepato-Pancreato-Biliary Association. I am the lead author on sixteen peer-reviewed medical journal publications, senior author on three publications and a co-author on a number of other medical journal publications.

7. I care for patients with cancer. Some of them have cancer that cannot be cured. Some of these patients will face very difficult burdens associated with the terminal phase of cancer. Sometimes patients will confront suffering so extreme that they want to find a way to take control over their dying process and achieve a peaceful death.

8. When I was practicing medicine in Oregon, I had patients who asked me to provide aid-in-dying, a medical practice permitted in Oregon under the Oregon Death with Dignity Act ("OR DWDA"). Under that law, if an adult patient has less than six months to live and is mentally-competent, the patient can ask for a prescription for medication which the patient would be able to ingest to bring about a peaceful death.

9. When I was first asked for a prescription for aid-in-dying, I struggled with whether I was willing to provide that option to my patients. I ultimately decided that it was a compassionate medical treatment option, and I believed that it was ethical to empower my patients with this choice. There are good tools to determine that the patient's prognosis is six months and if the patient is fully capable of making their medical decisions. As a physician, I routinely and capably make such assessments in my practice.

10. One patient of mine who chose aid-in-dying was Cody Curtis. I can reveal her identity without violating confidentiality because Cody chose to be very public about her decision, and allowed herself to be filmed throughout the final stage of her illness for a documentary called "How to Die in Oregon."

11. Cody was a beautiful, vibrant, active 54-year-old woman who was married with two grown children. It was a very close and caring family. When Cody suffered an acute stomach-ache, an ultrasound revealed that she had a grapefruit-size tumor growing on her liver. I was her surgical oncologist. I operated to remove the tumor, but several months later the cancer reappeared. There were no curative treatment options. Cody was clear that she wanted aid-in-dying if and when her suffering became unbearable. Cody's husband and children supported her in this decision. I agreed to provide a prescription to her so she could achieve a peaceful death. She had some good months, but then she began a rapid decline: liters of fluid would build up in her body, compressing her organs, causing a great deal of pain and making breathing difficult. During this steep decline, Cody chose a day on which she would take her medication to avoid further suffering, and asked me to be present at the time she ingested the medications. I agreed to be there and I was. Her whole family gathered at her bedside, at her home, on a Monday night. One of the last things Cody said was "thank you, Dr. Kate." After she drank the medication, she quickly fell into a deep sleep and soon after she stopped breathing. Her death was very peaceful.

12. I did not consider Cody's death to be any sort of "suicide." She was fully mentally-competent. Her choice for aid-in-dying allowed her to avoid the last bit of horrific suffering, and to die at home, surrounded by loved ones, in a way that she felt preserved the coherence of her life. When I reported the cause of her death, I reported it as cancer. Common sense, standard medical practice, and the OR DWDA require that this be reported as the cause.

13. In my experience, family members who are survivors of patients who choose aid-in-dying suffer none of the adverse mental health impacts suffered by those who commit suicide. They express gratitude that their loved one could choose a peaceful death. They are glad to be

able to support their family member in this final choice and be present at their death. This was the case in the Curtis family. This is consistent with research finding that the family and friends of patients who choose aid-in-dying suffer none of the adverse mental health impacts suffered by those who commit suicide.[1]

* * *

14. In 2010 I began caring for patients in New Mexico. When I started practicing in New Mexico, aid-in-dying was not openly available in that state. During that time, I had a few patients that would have liked to be able to choose a peaceful death through aid-in-dying, but I did not provide that medical treatment because I was uncertain of whether I could do so due to the lack of clarity regarding the reach of the "assisted suicide" law.

15. Once open access to aid-in-dying was established after the district court decision in *Morris v. New Mexico*, I was able to have this discussion with my patients, when they so chose, in an open manner. In my opinion, the decision has made end-of-life decisions less fraught with hints and unspoken questions.

16. Doctors providing aid-in-dying in Oregon must follow the statute's requirements. As there is no statute governing this medical treatment in New Mexico, physicians practice as they normally do, by learning what the professional practice standards are for a particular practice and following them. Most areas of medicine are governed in this way. We look to what practices are in states with statutes, like Oregon, Washington and Vermont, but also to Montana, where there is no statute and physicians practice under a court decision recognizing the right of patients there to choose aid-in-dying, as well as best practices. Best practices are informed by

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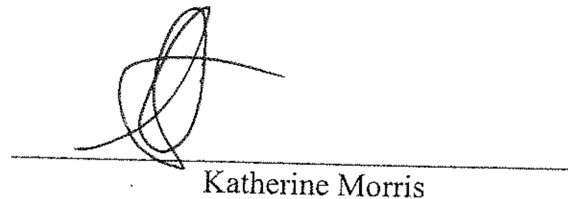
[1] Linda Ganzini et al. Mental Health Outcomes of Family Members of Oregonians Who Request Physician Aid in Dying, 38 Journal of Pain and Symptom Management 807 (2009) (attached hereto as Exhibit 1).

authoritative literature, including Clinical Practice Guidelines. The American Medical Women's Association, of which I am a member, has endorsed a set of such guidelines for aid-in-dying.

17. Physicians can and do provide terminally-ill patients with treatments that will precipitate death, such as removal of life sustaining treatments (feeding tube, ventilator, cardiac device, medication, etc.) and palliative sedation—which involves the physician sedating the patient to an unconscious state and keeping him or her there, withdrawing nutrition and hydration until death arrives. Sometimes patients die as a result of the sedatives administered. All of these choices are accepted in medicine. In my practice, I have done all of these things. None are considered "suicide." None are regulated by statute. Rather, they are governed by best practices, which can also be referred to as standard of care. There is no reason why aid-in-dying should not follow this same practice.

Dated: Albuquerque, NM

April 24, 2015



Katherine Morris

Sworn to before me this
24th day of April, 2015

Notary Public

OFFICIAL SEAL
Nancy J. Huffstutler
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires 2/3/19