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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN RADCLIFFE,
CHARLES MILLER, M.D., and
COMPASSION & CHOICES

Plaintiffs,

vs.

STATE OF HAWAII;
DOUGLAS CHIN, Attorney General; and
KEITH M. KANESHIRO, Prosecuting
Attorney for the City and County of Honolulu,

Defendants.

Civil No. 17-1-0053-01 KTN.

**COMPLAINT; EXHIBITS 1 AND 2;
SUMMONS**

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COMPLAINT

Plaintiffs John Radcliffe, Charles Miller, M.D., and Compassion & Choices, for their Complaint against the State of Hawai'i; Douglas Chin, Attorney General; and Keith M. Kaneshiro, Prosecuting Attorney for the City and County of Honolulu, allege as follows:

Preliminary Statement

1. This action is brought by mentally-competent patient John Radcliffe and medical professional Charles Miller, M.D. to establish the constitutional right of individuals to request and receive a prescription to end their unnecessary suffering at the end of life pursuant to the practice of medical aid in dying. Medical aid in dying is provided when a mentally-competent, terminally-ill adult patient seeks and obtains a prescription for medication from an attending physician, which the patient may choose to self-administer to avoid intolerable pain and suffering associated with a medical condition that makes death inevitable. Plaintiffs seek a declaratory judgment and injunctive relief to clarify and prevent the application of Hawai'i criminal homicide and manslaughter statutes against physicians who, through medical aid in dying, wish to honor their patients' desire to have the means to achieve a peaceful and humane death. Plaintiffs' claims are based upon the patients' fundamental rights of privacy; individual dignity; due process; equal protection of the law; and the right to seek happiness in all lawful ways, as guaranteed by the Hawai'i Constitution and the Hawai'i Revised Statutes.

The Parties

2. John Radcliffe is a resident of Honolulu, Hawai'i. He is a mentally-competent adult. Mr. Radcliffe learned in June 2014 that he had incurable colon cancer that has metastasized to his liver. He has been fortunate to successfully beat back the cancer for the last

few years, but recent tests indicate the cancer lesions have grown and he must continue chemotherapy. When originally diagnosed Mr. Radcliffe had a six to twenty-four month prognosis. As his disease progresses he wants to obtain a prescription pursuant to the practice known as medical aid in dying so that he may have an option of self-administering medication if and when his suffering at the end of his life becomes unbearable. He is barred from obtaining such a prescription because he is unable to find a doctor in Hawai'i who is willing to provide such a prescription for fear of criminal prosecution.

3. Dr. Charles Miller is a physician who is licensed to practice medicine in Hawai'i. He is an oncologist and is board certified in internal medicine, medical oncology, and hematology. Although Dr. Miller no longer keeps office hours he regularly advises patients who are suffering from cancer. If medical aid in dying were not subject to criminal prosecution he would be willing to write Mr. Radcliffe a prescription for medication pursuant to the medical standard of care for medical aid in dying.

4. Compassion & Choices is a national non-profit organization dedicated to improving care and expanding choice at the end of life. Compassion & Choices is the oldest and largest non-profit dedicated to such advocacy and has more than 4,850 active volunteers throughout the United States, including Hawai'i. It is the national leader in advocating for the rights of terminally ill patients and provides free information and education to the public through its End-of-Life Information Center and End-of-Life Consultation Service.

5. Douglas Chin is the Attorney General for the State of Hawai'i and the chief law enforcement officer of the State. *Amemiya v. Sapienza*, 63 Haw. 424, 427, 629 P.2d 1126, 1129 (1981). As such, he is responsible for exercising supervision over county attorneys throughout the State and has the power to order and direct the prosecutors in all matters

Mr. Radcliffe ultimately chooses to not self-administer the medication, having the prescription and knowing that he will not have to suffer needlessly at the end of life will give him great comfort in his last days.

15. During his practice, Dr. Miller frequently encountered terminally-ill patients who have no chance of recovery, to whom medicine cannot offer any hope other than a degree of symptomatic relief. In some cases, however, even symptomatic relief is impossible to achieve without the use of terminal sedation, a pharmacological technique that renders the patient unconscious during the period leading to his or her death. The only choice available to these patients, therefore, is prolonged and unrelieved anguish, on the one hand, or unconsciousness and total loss of control on the other. Faced with such a choice, some patients ask for the doctor's help by providing prescriptions for medication that the patients may take in quantities sufficient to bring a peaceful end to an intolerable dying process. In these types of situations, where mentally-competent adult patients have requested help to die, the doctor's professional judgment may often be that providing such a prescription is medically appropriate.

16. It is, or in light of the rights guaranteed by the Hawai'i Constitution should be declared to be, the public policy of the State of Hawai'i to allow physicians to provide medical aid in dying to their mentally-competent, terminally-ill adult patients who are experiencing severe suffering at the end of life and request such assistance.

17. Hawai'i has embraced a public policy of promoting the rights of privacy and autonomy in end-of-life care decisions, which is reflected in Hawaii's Uniform Health-Care Decisions Act (Modified), at HRS Chapter 327E. Under the Uniform Health-Care Decisions Act (Modified) a patient has the right to set forth advance health-care directives with individual instructions; "may execute a power of attorney for health care, which may authorize the agent to

make any health-care decision the principal could have made while having capacity,” even when doing so will cause death; and may designate an individual to act as a surrogate who “may make health-care decisions for the patient that the patient could make on the patient’s own behalf,” even when doing so will cause death. HRS §§ 327E-3 and 327E-5.

18. Under the reasoning of Hawaii’s Uniform Health-Care Decisions Act (Modified), there is no rational or meaningful basis to distinguish between withdrawal or refusal of treatment for a terminally ill person and a physician’s provision of medical aid in dying. Both treatment options provide a terminally-ill, mentally-competent adult with the option of a peaceful and pain-free death in the face of a protracted and agonizing alternative. Both options involve affirmative medical assistance in carrying out the person’s end-of-life medical care. And both options provide patients with the ability to decide for themselves whether the inevitable debilitating pain that they are suffering is worth enduring when death is imminent.

19. Hawai`i has also enshrined in its statutory definition of the “practice of medicine” citizens’ rights to receive, and healthcare providers’ rights to furnish, “any remedial agent or measure,” provided that a duly licensed physician or osteopathic physician has pronounced that the “person [is] affected with any disease hopeless and beyond recovery.” HRS § 453-1. Medical aid in dying—which involves a licensed physician providing a prescription for medication, which the patient may choose to self-administer to avoid intolerable pain and suffering associated with a medical condition that makes death inevitable—falls within the letter and spirit of Hawai`i Revised Statutes Section 453-1.

20. There is no statute that specifically prohibits medical aid in dying. However, the Attorney General has opined that medical aid in dying could be prosecuted under state criminal statutes. A person who intentionally or knowingly causes the death of another

human being in Hawai`i commits the offense of Murder in the Second Degree. HRS § 707-701.5. A person who does so “under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation” is guilty of Manslaughter. HRS § 707-702(2). A person is also guilty of Manslaughter if they intentionally cause another person to commit suicide. HRS § 707-702(1)(b). Murder in the Second Degree is a felony punishable by a sentence of life imprisonment with the possibility of parole. HRS §§ 707-701.5 and 706-656. Manslaughter is a class A felony punishable by “an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation.” HRS § 706-659. Past and current Attorney Generals of Hawai`i have opined that these statutes bar medical aid in dying.

21. In 2011, then Attorney General David Louie approved a letter opinion that suggested that criminal prosecutions may be brought against physicians who provide medical aid in dying. *See* Exhibit 1.

22. In 2015, Defendant Chin approved another letter opinion that also suggests that criminal prosecutions may be brought against physicians who provide medical aid in dying. *See* Exhibit 2.

23. The Attorney General’s interpretation, and the potential application by the Attorney General and Prosecuting Attorney of the criminal homicide and manslaughter statutes deter Dr. Miller and others similarly situated from providing medical aid in dying to their qualifying patients, thereby preventing doctors from offering medical care that, in their professional judgment, would otherwise be appropriate under the circumstances. The homicide and manslaughter statutes are also likely to deter, in the same manner, the physicians who will treat Mr. Radcliffe during the period immediately preceding his death.

24. By stating that physicians may be prosecuted criminally if they provide medical aid in dying to competent adults and interfering in the patient-physician relationship, the criminal homicide and manslaughter statutes, as interpreted by Defendant Chin and his predecessor Attorney General, deny patients the right to make medical judgments affecting their bodily integrity and health in partnership with a chosen healthcare provider, and their ability to remain free from government interference in the process. The Attorney General's interpretation of the statutes also denies terminally-ill patients the right to the integrity of and personal autonomy over their own bodies; the right to decide for themselves the most fundamental questions about the meaning and value of their lives and the intrinsic value of life in general; the right to liberty, of which they may not be deprived without due process of law; the equal right to form and follow their own values in profoundly spiritual matters; and the inalienable right to seek safety, health, and happiness in all lawful ways.

Claims for Relief

25. The application of the criminal homicide and manslaughter statutes in the context of medical aid in dying violate the fundamental rights of Mr. Radcliffe and the fundamental rights of other mentally-competent and terminally-ill patients treated by Dr. Miller and others similarly situated, as guaranteed by the following provisions of the Hawai'i Constitution:

- a. Article I, Section 6; the right of privacy;
- b. Article I, Section 5; the right to due process of law;
- c. Article I, Section 5; the right to equal protection of the laws; and
- d. Article I, Section 2; the right to enjoy life, liberty, and the pursuit of happiness.

26. The potential application of the criminal homicide and manslaughter statutes to physicians who, in accordance with the medical standard of care, provide requested medical aid in dying to mentally-competent adults with terminal medical conditions who are confronting intractable pain and suffering near the inevitable end of life also violates the doctors' own fundamental rights of individual privacy and due process of law, as guaranteed by the provisions of the Hawai'i Constitution cited above.

27. The application of the criminal homicide and manslaughter statutes in the context of medical aid in dying violate the fundamental rights of Mr. Radcliffe and the fundamental rights of other mentally-competent, terminally-ill patients treated by Dr. Miller and others similarly situated, as guaranteed by Hawai'i Revised Statutes Section 453-1.

28. The potential application of the criminal homicide and manslaughter statutes to physicians who, in accordance with the medical standard of care, provide requested medical aid in dying to mentally-competent adults with terminal medical conditions who are confronting intractable pain and suffering near the inevitable end of life also violates Hawai'i Revised Statutes Section 453-1.

Prayer for Relief

WHEREFORE, Plaintiffs pray for relief as follows:

1. For declaratory judgment determining that HRS §§ 707-701.5 and 707-702 are unconstitutional as applied to the acts of a physician who provides medical aid in dying to a mentally-competent, terminally-ill adult patient facing a dying process that the patient finds intolerable.

2. For declaratory judgment determining that HRS § 453-1 permits medical aid in dying.

3. For declaratory judgment determining that no Hawai'i statute bars the acts of a physician who provides medical aid in dying to a mentally-competent, terminally-ill adult patient facing a dying process that the patient finds intolerable.

4. For an order permanently enjoining defendants and all who act in concert with them or under their direction and control from charging, threatening to charge, or otherwise seeking to enforce HRS §§ 707-701.5 and 707-702 against physicians in Hawai'i who provide medical aid in dying to mentally-competent, terminally-ill patients who request such assistance.

5. For an award of Plaintiffs' reasonable attorneys' fees and costs incurred herein, pursuant to HRS § 632-3 and the private attorney general doctrine.

6. For such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, January 11, 2017.



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