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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DR. SANG-HOON AHN, DR. LAURENCE BOGGELN, DR. GEORGE DELGADO, DR. PHILIP DREISBACH, DR. VINCENT FORTANASCE, DR. VINCENT NGUYEN, AND AMERICAN ACADEMY OF MEDICAL ETHICS, D/B/A OF CHRISTIAN MEDICAL AND DENTAL SOCIETY,

Plaintiffs,

v.

MICHAEL HESTRIN, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF RIVERSIDE COUNTY, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA D. HARRIS, AND THE STATE OF CALIFORNIA BY AND THROUGH CALIFORNIA DEPARTMENT OF PUBLIC HEALTH,

Defendants.

Case No. RIC 1607135

DEFENDANTS/INTERVENORS' OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

Date: April 11, 2018
Time: 8:30 a.m.
Dept: 4
Judge: The Honorable Daniel A. Ottolia

Action Filed: June 8, 2016

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INTRODUCTION

The End of Life Option Act (the Act) – in effect for almost two years – authorizes a mentally competent adult, determined by his or her attending physician to be suffering from a terminal, irreversible disease that will result in death within six months, to discuss with his or her physician, and to make a request for, an aid-in-dying drug. The Act sets forth strict procedures to protect against abuse, which, if followed, preclude criminal prosecution, civil liability, and disciplinary action against physicians who prescribe such aid-in-dying medication in compliance with the Act. Significantly, participation in the End of Life Option Act is completely voluntary for both patients and health-care providers (physicians, nurses, pharmacists, *etc.*).

On October 5, 2015, Governor Jerry Brown signed the End of Life Option Act. In doing so, Governor Brown took the unusual step of releasing a signing message:

> To the Members of the California State Assembly:
>
> ABx2 15 is not an ordinary bill because it deals with life and death. The crux of the matter is whether the State of California should continue to make it a crime for a dying person to end his life, no matter how great his pain or suffering.
>
> I have carefully read the thoughtful opposition materials presented by a number of doctors, religious leaders and those who champion disability rights. I have considered the theological and religious perspectives that any deliberate shortening of one's life is sinful.
>
> I have also read the letters of those who support the bill, including heartfelt pleas from Brittany Maynard's family and Archbishop Desmond Tutu. In addition, I have discussed this matter with a Catholic Bishop, two of my own doctors and former classmates and friends who take varied, contradictory and nuanced positions.
>
> In the end, I was left to reflect on what I would want in the face of my own death.
>
> I do not know what I would do if I were dying in prolonged and excruciating pain. I am certain, however, that it would be a comfort to be able to consider the options afforded by this bill. And I wouldn't deny that right to others.

(Governor Brown's October 5, 2015 Signing Message, attached to Request for Judicial Notice (RJN) as Exhibit 1.)

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Shortly after the Act was passed, the Fourth District Court of Appeal considered the Act's provisions in connection with a constitutional challenge, and found that the Act insulates a prescribing physician from liability, and sets forth "rigorous procedures and safeguards to protect against abuse." (*Donorovich-Odonnell v. Harris* (2015) 241 Cal.App.4th 1118, 1124.) In rejecting the constitutional arguments of the plaintiffs in that case, the court concluded that "physician aid-in-dying, and attendant procedures and safeguards against abuse, are matters for the Legislature." (*Id.* at pp. 1124-1125.)

In this case, Plaintiffs seek declaratory and injunctive relief prohibiting the continuing implementation of the Act that has now been operational since June 9, 2016. Relevant to Plaintiffs' instant motion for judgment on the pleadings, their Complaint alleges that the Act was improperly enacted during the special legislative session called by the Governor for health care related issues. The motion should be denied for the following reasons.

First, Plaintiffs failed to meet and confer for the purpose of determining if an agreement can be reached that resolves the claims to be raised in their motion for judgment on the pleadings before filing their motion, and have failed to file a declaration to this effect, as required by Code of Civil Procedure section 439. This meet-and-confer requirement for a motion for judgment on the pleadings is not optional. On this basis alone the motion should be denied.

Second, Plaintiffs fail to meet their preliminary burden to establish that the Act injured them. Unless and until a party suffers a concrete injury of sufficient magnitude, the party lacks standing. Defendants/Intervenors' Complaint-in-Intervention alleges that Plaintiffs lack standing, and these allegations are supported by the fact that Plaintiffs' Complaint fails to adequately allege that they have been personally injured by the Act. And there are no allegations in the Complaint to support third-party standing, nor could there be: constitutional rights are personal, and third-party standing is only available in very narrow circumstances that do not exist here. But even if Plaintiffs did adequately allege that they or their patients have been harmed by the Act, the motion would still fail. This is because a plaintiff's motion for judgment on the pleadings must be denied if the defendant's pleadings raise a material issue or assert a relevant affirmative defense. For purposes of ruling on the motion, the trial court must treat all of the defendant's

allegations as being true, and disregard the controverted allegations of the complaint. This well-settled procedural rule is fatal to the instant motion, because the Complaint-in-Intervention alleges that Plaintiffs lack standing, and denies every allegation in the Complaint concerning the alleged defects of the Act.

Finally, the Complaint-in-Intervention alleges that the Act was properly enacted during the special legislative session called by the Governor for health care issues. Courts must presume that laws enacted during a special session are within the scope of the call for that session, and uphold them if they arguably bear a reasonable relation to, or are incidental to, the subject of the session. The Governor's Proclamation called for the Legislature to consider efforts to "improve the . . . efficacy of the health care system . . . and improve the health of Californians." As the Governor discussed in his signing message, the Act deals with life, death, pain, suffering, and the comfort of being able to consider the options afforded by the Act. These subjects are reasonably related, or at least incidental to, the efficacy of the health care system and the health of Californians. Thus, the Act is embraced by this proclamation and was a proper subject for the special legislative session.

In bringing the instant motion, Plaintiffs rely heavily on the fact that Defendants/Intervenors' motion for judgment on the pleading was denied. But at the hearing, Plaintiffs' primary argument was that the allegations in their Complaint were sufficient to survive the motion for judgment on the pleadings, given the early stage of the proceedings. Specifically, Plaintiffs argued that "we're just at the pleading stage. We will have to prove our case. [] There is no reason to have this case thrown out here at the pleading stage." (June 16, 2017, Hearing Transcript, p. 21:9-14, attached to RJN as Exhibit 2.) But now, the "shoe is on the other foot." Because the allegations contained in Defendant/Intervenors' Complaint-in-Intervention contain denials and affirmative defenses contrary to Plaintiffs' claims, Plaintiffs' motion for judgment on the pleadings should be denied.

RELEVANT PLEADINGS

I. RELEVANT PORTIONS OF PLAINTIFFS' COMPLAINT

Plaintiffs are physicians who bring this action on behalf of their patients, not themselves.

They claim to "treat patients meeting the Act's definition of having a terminal disease" and "bring this action to protect the rights of their patients to be protected by law, as are the rest of the population, from being assisted and abetted in committing suicide, from receiving substandard care, and from having depression and mental conditions leading to suicide left untreated." (Comp. ¶ 4.) The organizational plaintiff, American Academy of Medical Ethics (AAME), brings this action on behalf of its members. AAME is an organization that claims to represent physicians and health-care professionals nationwide to promote ethical standards in the medical profession. AAME claims that its membership includes California physicians "whose patients meet the Act's definition of having a terminal disease." (Comp. ¶ 3.) But the Complaint contains two fatal flaws:

- The Complaint contains no allegations that any of the plaintiff-physicians actually care for a terminally ill patient (as defined by the Act) who also seeks to presently exercise his or her rights under the Act.

- Nor are there any allegations in the Complaint that any of the plaintiff-physicians are being compelled to prescribe aid-in-dying drugs to their patients.

The Complaint seeks declaratory relief and alleges that the Act was improperly enacted during a special legislative session for health care funding in violation of Article IV, Section 3, subdivision (b) of the California Constitution. (Comp., ¶ 9, Prayer, ¶ 3.)

II. DEFENDANTS' COMPLAINT-IN-INTERVENTION

The Attorney General for the State of California and the California Department of Public Health have intervened in the action as defendants. (Complaint-in-Intervention, attached to RJN as Exhibit 3.) The Complaint-in-Intervention alleges that the Act was properly passed in the special session. (Comp.-in-Intervention, ¶ 29.) Additionally, the Complaint-in-Intervention alleges that Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action, and that Plaintiffs lack standing to bring their claims. (Comp.-in-Intervention, First, Fourth, and Fifth Aff. Defs.) Finally, the Complaint-in-Intervention denies every allegation in the Complaint that could possibly be relevant to any injuries Plaintiffs or Plaintiffs' patients could have suffered. (Comp.-in-Intervention, ¶¶ 20-44.)

RELEVANT PORTIONS OF THE END OF LIFE OPTION ACT

On September 11, 2015, the Legislature enacted the Act during an extraordinary session convened by the Governor to address issues related to health care. (2nd Ex. Sess., 2015-2016; Health & Saf. Code, §§ 443-443.22.[1]) The Act authorizes a mentally competent adult who has been determined by his or her attending physician to be suffering from a terminal, irreversible disease that will result in death within six months, to make a request for an aid-in-dying drug. (§ 443.2.) The Act specifies rigorous procedures to ensure that qualifying terminally-ill patients are competent, fully aware, and informed of their rights and protections under the Act. The Act also contains safeguards to ensure that terminally ill patients are free from coercion in making these difficult end-of-life decisions.

In addition to the above patient protections and provider requirements, health care providers remain free to decline to prescribe aid-in-dying drugs or to otherwise be involved with a patient's decision to exercise his or her end-of-life choices under the Act: "a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of an individual's decision under this part." (§ 443.14, subd. (e)(1).)

The Act also ensures that physicians who prescribe aid-in-dying drugs and individuals who participate in the end-of-life decisions of others in accordance with the Act are in no way civilly or criminally liable due to the prescription or the patient's consumption of the prescribed aid-in-dying drugs. "A person who is present may, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug so long as the person does not assist the qualified person in ingesting the aid-in-dying drug." (§ 443.14, subd. (a).)

Further, participating health care providers shall not be subject to discipline, liability, or otherwise sanctioned for their voluntary participation in prescribing an aid-in-dying drug or participating in the end-of-life decision making process of a patient. (§§ 443.14, subds. (b)-(e), 443.16.) And a health care provider or professional organization or association shall not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of

[1] Unless otherwise stated all further references will be to the Health and Safety Code.

membership, or other penalty for participating in good faith compliance with the Act. (§ 443.14, subds. (b), (c).)

However, these statutory immunities only apply if the aid-in-dying drugs are prescribed pursuant to the very specific requirements of the Act. If physicians and others do not comply with the strict requirements of the Act, they may be subject to civil and criminal sanctions and prosecution. (§§ 443.16, subd. (c), 443.17.)

THE ELEVATED STANDARDS FOR MOTIONS FOR JUDGMENT ON THE PLEADINGS BROUGHT BY A PLAINTIFF

Plaintiffs face a difficult challenge in bringing a motion for judgment on the pleadings: not only must they establish that their Complaint states facts sufficient to constitute a cause of action against the defendant, they must also establish that Defendants/Intervenor's Complaint-in-Intervention "does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc., § 438, subd. (c).) "The motion should be denied if the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*Allstate Ins. Co. v. Kim W.* (1984) 160 Cal.App.3d 326, 331.) Further, the trial court must "disregard the controverted allegations of the complaint." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1380.)

Because of this challenging standard, "[m]otions for judgment on the pleadings are usually made by defendants," while motions by a plaintiff for judgment on the pleadings "are less common." (*Id.* at 1379–1380.) Indeed, as a practical matter, a plaintiff's motion for judgment on the pleadings should only be granted where the defendant has made a fatal admission of fact in his or her pleading, or has failed to assert a relevant affirmative defense.[2] (*See, e.g., Allstate Ins. Co. v. Kim W., supra*, 160 Cal.App.3d at 333 [plaintiff's motion for judgment on the pleadings granted where defendant's pleading admitted wrongful conduct and failed to raise a material issue or assert an affirmative defense]; *Carlson v. Lindauer* (1953) 119 Cal.App.2d 292, 309 [plaintiff's

[2] Essentially, the defendant's pleading must truly be defective for a plaintiff's motion for judgment on the pleadings to be granted.

motion for summary judgment granted where defendants' own answer and cross-complaint alleged facts fatal to their defense, and their answer failed to assert a necessary affirmative defense].)

Where a plaintiff moves for judgment on the pleadings, and it appears that a defect in the defendant's pleadings can be obviated by amendment, it is within the court's discretion to deny plaintiff's motion and permit defendant to amend. (*Bergerow v. Parker* (1906) 4 Cal.App. 169.)

ARGUMENT

I. PLAINTIFFS' MOTION SHOULD BE DENIED BECAUSE THEY FAILED TO COMPLY WITH THE MANDATORY MEET-AND-CONFER REQUIREMENT FOR MOTIONS FOR JUDGMENT ON THE PLEADINGS

Code of Civil Procedure § 439 requires a moving party on a motion for judgment on the pleadings to meet and confer in a specified manner with the non-moving party on the subject matter of the motion before filing the motion. Further, the moving party is required to file a declaration with the motion confirming that the parties met and conferred, or that the non-moving party refused to meet and confer in good faith. Plaintiffs failed to do either of these. The requirement is statutory, not a Rule of Court or local rule. Accordingly, these failures are fatal to their motion.

Code of Civil Procedure § 439 states, in pertinent part, that:

"(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. []

(1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. []

(2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. []

(3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following:

(A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings.

(B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith."

(Code Civ. Proc., § 439, subd. (c) [emphasis added].)

Plaintiffs, the moving parties on this motion, failed to initiate or otherwise meet and confer in the manner specified by Code of Civil Procedure section 439 before filing their motion on February 9, 2018. Additionally, Plaintiffs did not file and serve the required meet-and-confer declaration. These requirements are jurisdictional. Because these requirements were not met, the motion should be denied.

II. PLAINTIFFS CANNOT ESTABLISH AS A MATTER OF LAW THAT THEY HAVE STANDING

A. The Plaintiff-Physicians Do Not Adequately Allege Injury as a Result of the Act

As a preliminary matter, Plaintiffs must establish that the Act injured them in order to have standing to bring their action. A person who invokes the judicial process lacks standing if he or she "does not have a real interest in the ultimate adjudication because [he or she] has neither suffered nor is about to suffer any injury of sufficient magnitude . . . ." (*Schmier v. Supreme Court* (2000) 78 Cal.App.4th 703, 707; *Blumhorst v. Jewish Family Servs. of Los Angeles* (2005) 126 Cal.App.4th 993, 1000-1001.) "[U]nless and until such time as there is an identified person who is deprived of an identified right," the case is without merit. (*In re San Diego Commerce* (1995) 40 Cal.App.4th 1229, 1236.)

In the instant case, the Complaint is devoid of any allegation that the plaintiff-physicians are treating a terminally ill patient who (1) seeks an end-of-life option under the Act, (2) meets the specific requirements of the Act, and (3) has requested aid-in-dying drugs under the provisions of the Act. Nor is there any evidence that the safeguards in the Act will not protect against the alleged harms that Plaintiffs fear. And no physician is obligated to participate in a terminally-ill patient's decision to seek aid-in-dying drugs under the Act. There is no allegation

that the Act has caused Plaintiffs to personally suffer a concrete injury-in-fact of sufficient magnitude to confer standing.

Because there are no allegations in the Complaint that establish that Plaintiffs have suffered injury as a result of the Act, Plaintiffs lack standing to bring their claims. For this reason, the motion for judgment on the pleadings should be denied.

B. Plaintiffs Cannot Assert Standing on Behalf of Others

Plaintiffs do not have the right to assert third-party standing on behalf of their patients. "In general, a plaintiff may assert a claim on behalf of a third party only when (1) the plaintiff has suffered an injury in fact; (2) the plaintiff has a relationship with the third party so that it can, and will, effectively present the third party's rights; and (3) obstacles exist preventing the third party from asserting his own rights." (*Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th 1284, 1297.) Here, none of these three elements exist. As discussed above, the plaintiff-physicians will not suffer any personal injury under the Act, as they are free, as matter of law, to not participate in end-of-life activities of their patients. Additionally, Plaintiffs have not alleged that their alleged patients cannot sue on their own behalf.

More specific to our case, constitutional rights are "generally personal" and cannot be asserted on behalf of others except according to certain well-defined exceptions permitting third-party standing. (See *People v. Hazelton* (1996) 14 Cal.4th 101, 109.) While courts have permitted physicians to assert their patients' autonomy interests in making certain types of personal decisions involving, for example, contraception and reproduction, in such cases, the physicians' and patients' interests are aligned: the physician wishes to provide certain services or advice, the patients wish to receive those services or advice, and the challenged law directly interferes in this medical relationship. (*See People v. Belous* (1969) 71 Cal.2d 954, 959-960 [physician convicted of providing abortion services]; *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 322, fn. 8, 332 [abortion].)

Such concerns are not present here. The Complaint does not identify any situation where the law is interfering with plaintiff-physicians' ability to communicate with and assist their

terminally-ill patients in exercising those patients' own rights and interests. Nor are patients' and physicians' interests necessarily aligned when plaintiff-physicians seek to take away their patients' right to receive an aid-in-dying drug. Allowing Plaintiffs to assert their patients' constitutional rights in this circumstance is inappropriate. For this reason, the motion for judgment on the pleadings should be denied.

C. The Complaint-in-Intervention Controverts Plaintiffs' Allegations of Standing

Even if Plaintiffs had adequately alleged that they or their patients have been harmed by the Act, the motion would still fail. This is because a plaintiff's motion for judgment on the pleadings must be denied if the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*Allstate Ins. Co. v. Kim W., supra*, 160 Cal.App.3d at 331.) Additionally, the trial court must disregard any controverted allegations of the complaint. (*Sebago, Inc. v. City of Alameda, supra*, 211 Cal.App.3d at 1380.)

Here, the Complaint-in-Intervention alleges that Plaintiffs lack standing to bring their claims. (Comp.-in-Intervention, Fifth Aff. Def.) Moreover, the Complaint-in-Intervention alleges that Plaintiffs fail to state a cause of action. (Comp.-in-Intervention, First Aff. Def.) Finally, the Complaint-in-Intervention denies all allegations in the Complaint that could possibly be relevant to any injuries Plaintiffs or Plaintiffs' patients could have suffered.[3] (Comp.-in-Intervention, ¶¶ 20-44.)

Because the allegations contained in Defendant/Intervenors' Complaint-in-Intervention contain denials and affirmative defenses contrary to Plaintiffs' claims, Plaintiffs' motion for judgment on the pleadings should be denied.

III. THE ACT WAS PROPERLY ENACTED DURING THE EXTRAORDINARY LEGISLATIVE SESSION FOR HEALTH CARE

A. The Act Falls within the Scope of the Governor's Proclamation

Another reason why the motion for judgment on the pleadings should be denied is because

[3] The District Attorney's Answer contains substantially similar denials and affirmative defenses.

the Act is within the scope of the Governor's Proclamation. The Governor's Proclamation called for the Legislature to consider efforts to "improve the . . . efficacy of the health care system . . . and improve the health of Californians. (June 2015 Proclamation, attached to RJN as Exhibit 4.) The purpose of the Act is embraced by this proclamation and thus was a proper subject for the special legislative session.

Plaintiffs' Complaint alleges that the scope of the Governor's proclamation was limited to issues related to health care funding and that the Act goes beyond this call because the subject of aid-in-dying, and the related immunity from prosecution provisions for physicians who prescribe aid-in-dying drugs under the Act, were not specifically articulated in the proclamation. (Comp. ¶¶ 9, 49.) However, Article IV, section 3, subdivision (b), of the California Constitution allows for extraordinary legislative sessions to be called by the Governor's proclamation, and gives the Legislature both the "power to legislate only on subjects specified in the proclamation" and "other matters incidental to the session." The few cases that have addressed this constitutional provision support Defendants/Intervenors' arguments here.

In *Martin v. Riley* (1942) 20 Cal.2d 28, the California Supreme Court upheld a law enacted in a special session where the Governor's proclamation called for the Legislature "[t]o consider and act upon legislation augmenting the appropriation for the operation, maintenance and organization of the State Guard . . . and amending [various sections] of the Military and Veterans Code, with respect to pay, privileges, allowances, and rights for the State Guard." The special session law at issue related, in large part, to reorganization of the State Guard. (*Id.* at 38.) The petitioner claimed that "the Legislature had no power to reorganize the State Guard because such reorganization was not within the subjects of the proclamation; that all the Legislature could do at said session was to increase the appropriation for the operation, maintenance and organization of the State Guard and amend the Military and Veterans Code in the respects noted in the call and in the Governor's message to the special session." (*Id.* at 38-39.)

In rejecting this argument, the Supreme Court refused to take such a narrow reading of the proclamation and reaffirmed the most basic of legislative presumptions: the presumption of "constitutionality of an act passed at regular session apply to acts passed at a special session."

(*Martin, supra,* 20 Cal.2d at 39.) The Court explained that when the Legislature, acting under a special call, undertakes "to consider subjects and pass laws in response thereto, and such laws receive the approval of the executive, courts are and should of right be reluctant to hold that such action is not embraced in such call, and will not so declare unless the subject manifestly and clearly is not embraced therein." (*Id.* at 39-40 [emphasis added].) The Court reasoned that the proclamation's call for "legislation augmenting the appropriation" "should not be considered in a narrow sense," and the "Legislature was not thereby necessarily restricted to enacting provisions for a direct increase of the previous appropriation." (*Id.* at p. 40.) The Court then articulated the pragmatic legal standard that special session legislation "will be held to be constitutional if by any reasonable construction of the language of the proclamation it can be said that the subject of the legislation is embraced therein." (*Ibid.*) Applying this standard, the Court held that the enactment was valid. (*Id.* at pp. 40-41.)

In the present case, the special session was convened to broadly address health care issues. (Proclamation, attached to RJN as Exhibit 4.) Among other things, the Proclamation commands the Legislature to consider and act upon legislation" that would "[i]mprove the efficiency and efficacy of the health care system; reduce the cost of providing health care services, and improve the health of Californians." (*Id.*, p. 2, subd. (c).) The Act falls squarely within this mandate.

The Act is part and parcel of the health care system and expands end-of-life choices for individuals who are terminally ill. The ability to care for terminally ill patients affects the overall mental and physical health of the patient and includes the right to consider, to discuss, to obtain, and if that patient so chooses, to use aid-in-dying drugs. By extension, this includes physician immunity for prescribing such aid-in-dying drugs.

And separate and apart from the above, the Constitution gives the Legislature the authority to address all "other matters incidental to the session." (Cal. Const. art. IV, § 3, subd. (b).) This language provides a broad, permissive standard for determining when the Legislature can enact legislation related to a special session. In *Martin*, the Court explained that once a subject has been submitted to the Legislature, "the designation of that subject opens for legislative consideration matters relating to, germane to and having a natural connection with the subject

proper." (*Martin, supra,* 20 Cal.2d 28 at p. 39.) This is akin to the "reasonably germane" standard used in determining whether legislation violates the single subject rule, which the Supreme Court has repeatedly said must be construed leniently. (*Californians for an Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764; *accord, Manduley v. Superior Court* (2002) 27 Cal.4th 537, 547.)

Here, there can be no genuine dispute that the Act, and its provisions that create new health care rights for all Californians, is reasonably germane to the health care subject matter of the extraordinary session. For this reason, the motion for judgment on the pleadings should be denied.

B. Plaintiffs' Definition of "Health" as used in the Proclamation is Unreasonably Narrow

In Plaintiffs' view, health care never encompasses the ending stages of one's life "because a law that enables suicide cannot "improve the health of Californians." (Plaintiffs' MJOP, p. 12:25-13: 22.) California courts do not take such a rigid view of health care and end-of-life discussions and decisions.

California has long recognized that "health" is not merely defined as being free from illness and injury, but also includes the right to consider and to refuse life-sustaining medical treatment for the purpose of maintaining autonomy and dignity pursuant to the Health Care Decisions Law. (Prob. Code, § 4600 *et seq.*) Similarly, the United States Supreme Court defines "health" in the broader sense. Beginning with *United States v. Vuitch* (1971) 402 U.S. 62, the Supreme Court has held that "health" should be understood, not in medical or strictly clinical terms, but in terms of "general usage and modern understanding" to include psychological as well as physical "soundness." (*Id.* at 72.) In *Doe v. Bolton* (1973) 410 U.S. 179, the Court expanded on this idea to hold that physical, emotional, psychological, and familial factors are all relevant to the well-being of the patient: "[a]ll these factors relate to health."[4] (*Id.* at 192.)

[4] Similarly, the World Health Organization defines "health" broadly as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. (Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, Jun. 19-22, 1946; signed on Jul. 22, 1946, by the representatives of 61 States [Official Records of the World Health Organization, no. 2, p. 100].)

Plaintiffs' narrow definition of "health" should be rejected: the psychological comfort that a person with a terminal disease may experience by virtue of having the option of administration of an aid-in-dying drug, along with other options, is reasonably related to "health." ([*See Donorovich-Odonnell v. Harris, supra*, 241 Cal.App.4th at 1125 ["Having a prescription for a lethal dose of drugs 'they could self-administer if their suffering became too great in the final days would provide great comfort to them and would alleviate some anxiety related to the dying process.'"]. As the Governor stated in his signing message: "I do not know what I would do if I were dying in prolonged and excruciating pain. I am certain, however, that it would be a comfort to be able to consider the options afforded by this bill." (Exhibit 1 to RJN; *see also Martin v. Riley, supra*, 20 Cal.2d at 42 (Carter, J., concurring) ["the [bill] contains provisions which can reasonably be said to cover subjects not embraced within the purview of the Governor's proclamation calling the special session, and had the Governor vetoed the measure, and the Legislature had passed it over his veto, I would be disposed to hold that the Legislature had violated the constitutional mandate contained in section 9 of article V of the Constitution. But since the Governor could have included such subjects in his proclamation, and he having approved the legislation by signing the bill embracing such subjects, I am forced to conclude that he considered his proclamation sufficiently broad to cover the subjects embraced in the bill"].) Certainly, the option of taking an aid-in-dying drug is no less related to "health" than the option to forgo any treatment, or to agree to palliative care but forego life-extending treatment. In all cases, the patient is seeking to manage the course of his or her life in the face of terminal disease.

The special session was convened to broadly address health care issues, which includes end-of-life options. The Act falls squarely within this mandate. For this reason, the motion for judgment on the pleadings should be denied.

C. This Court Never Reached the Merits of Whether the Act was Properly Enacted

Plaintiffs argue that the Court has already ruled that the Act "does not have a natural connection or is otherwise related to improving the health of Californians. (Plaintiffs' MJOP, p. 7:3-6.) This is not the case. Although the Court did find – for purposes of ruling on Defendants'

motion for judgment on the pleadings – that the Plaintiffs' Complaint had sufficiently alleged that the Act fell outside the scope of the Governor's proclamation, the Court never ruled that Plaintiffs had established their allegations as a matter of law: "Well, . . . just so you understand, the Court has not reached the merits of whether [the Act] falls within the legislative power. I'm simply looking at whether they've alleged sufficient information to actually get to a trial on the matter." (June 16, 2017 Transcript, p. 15:17-21.)

Indeed, in denying Plaintiffs' motion for a preliminary injunction, which required the Court to consider the merits of Plaintiffs' claim, the Court found that the Act was within the scope of the Governor's proclamation: "Even though improving the health of Californians might seem far removed from assisted suicide, it is sufficiently related to health care and the efficiency and efficacy of the healthcare system for the Court to consider the Act to be within the scope of the authorization for the session. Here, the Governor's proclamation concerning the health of Californians and the subject is sufficiently broad to include the legislation concerning assisted suicide. So the Court concludes that the Act was properly adopted." (August 26, 2016 Transcript, p. 15:18-27, attached to RJN as Exhibit 5.) The Court should reach a similar conclusion with respect to the instant motion.

CONCLUSION

For the reasons explained above, Plaintiffs' motion for judgment on the pleadings should be denied.

Dated: March 28, 2018

Respectfully Submitted,

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