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.

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JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs 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 (collectively, "Plaintiffs"), by their attorneys, Disability Rights Legal Center and Debevoise & Plimpton LLP, for their Complaint against Defendants Eric Schneiderman, Attorney-General of the State of New York, Janet DiFiore, District Attorney of Westchester County, Sandra Doorley, District Attorney of Monroe County, Karen Heggen, District Attorney of Saratoga County, Robert Johnson, District attorney of Bronx County, and Cyrus R. Vance, Jr., District Attorney of New York County, in their official capacities (collectively, "Defendants") allege as follows:

Preliminary Statement

1. Terminally-ill, mentally-competent New Yorkers may lawfully exercise a measure of control over the timing and manner of their deaths by deciding to seek certain treatment or to have it withheld or withdrawn. For example, a terminally-ill patient suffering from overwhelming physical pain that does not respond to treatment may choose "terminal" or "palliative" sedation – the administration of drugs to keep the patient continuously in deep sedation, with food and fluid withheld until death arrives. Similarly, a patient may direct the withdrawal of a life-prolonging intervention such as a ventilator. Any such decisions will be highly individualized and may be informed by a wide range of considerations. Yet, it is unclear under New York law whether terminally-ill, mentally-competent New Yorkers who wish to exercise control, avoid a perceived loss of dignity and reduce suffering they find unbearable as they approach death due to

terminal illness may obtain a prescription from their physicians for medication they could ingest to achieve a peaceful death – a practice known as aid-in-dying.

2. This action is brought by mentally-competent and terminally-ill New York citizens and by medical professionals who regularly care for or counsel terminally-ill patients. Plaintiffs seek to clarify whether a physician providing aid-in-dying is exposed to criminal liability under existing New York penal law; if so, plaintiffs seek to declare unconstitutional the application of New York penal law under these circumstances.

3. New York Penal Code Sections 120.30 and 125.15 (the "Assisted Suicide Statute") provide respectively that "promoting a suicide attempt" by "intentionally caus[ing] or aid[ing] another person to attempt suicide" is a Class E felony, while "intentionally caus[ing] or aid[ing] another person to commit suicide" constitutes manslaughter in the second degree, a Class C felony. Plaintiffs seek a declaration that the Assisted Suicide Statute does not encompass the conduct of a New York licensed physician who provides aid-in-dying to a mentally-competent, terminally-ill individual who has requested such aid under the circumstances described herein because (1) aid-in-dying does not constitute "intentionally caus[ing] or aid[ing] another person" to attempt or to commit suicide, and (2) if it did, the application of the Assisted Suicide Statute to the facts alleged herein would violate the Equal Protection and Due Process provisions of New York's Constitution.

4. The Plaintiffs seek a declaration that a physician who provides aid-in-dying to a mentally-competent, terminally-ill patient who has requested such aid is not criminally liable under New York's Assisted Suicide Statute and injunctive relief

prohibiting Defendants from prosecuting physicians who aid a mentally-competent, terminally-ill patient in dying under the conditions described herein.

The Parties

5. Sara Myers is a mentally-competent, terminally-ill adult who resides in New York County.

6. Steve Goldenberg is a mentally-competent, terminally-ill adult who resides in New York County.

7. Eric A. Seiff is a mentally-competent adult who resides in Bronx County, New York and has been diagnosed with a potentially terminal illness.

8. Howard Grossman, M.D., is a physician licensed in the State of New York who practices internal medicine in New York, New York. Dr. Grossman sues on his own behalf and on behalf of his mentally-competent, terminally-ill patients.

9. Samuel C. Klagsbrun, M.D., is a physician licensed in the State of New York who practices clinical psychiatry in Katonah, New York City, and Saratoga Springs, New York. Dr. Klagsbrun sues on his own behalf and on behalf of his mentally-competent, terminally-ill patients.

10. Timothy E. Quill, M.D., is a physician licensed in the State of New York who practices palliative medicine in Rochester, New York. Dr. Quill sues on his own behalf and on behalf of his mentally-competent, terminally-ill patients.

11. Judith K. Schwarz, Ph.D., a nurse who was formerly registered in New York State, is a consultant for informed choice in end-of-life decision-making who resides in New York City. Dr. Schwarz sues on her own behalf and on behalf of her mentally-competent, terminally-ill clients.

12. Charles A. Thornton, M.D., is a physician licensed in the State of New York who practices neurology in Rochester, New York. Dr. Thornton sues on his own behalf and on behalf of his mentally-competent, terminally-ill patients.

13. End of Life Choices New York is a New York not-for-profit organization that provides information and counseling on informed choices in end-of-life decision-making to its clients and engages in policy advocacy and public education activities. End of Life Choices New York sues on its own behalf and on behalf of its mentally-competent, terminally-ill clients.

14. Defendant Eric Schneiderman, the Attorney General of New York State, is the chief law enforcement officer of the State of New York and acts under color of the law in enforcing the New York Penal Law. He is sued in his official capacity.

15. Defendant Janet DiFiore is the District Attorney of Westchester County and has authority to prosecute violations of New York's Assisted Suicide Statute in Westchester County. She is sued in her official capacity.

16. Defendant Sandra Doorley is the District Attorney of Monroe County and has authority to prosecute violations of New York's Assisted Suicide Statute in Monroe County. She is sued in her official capacity.

17. Defendant Karen Heggen is the District Attorney of Saratoga County and has authority to prosecute violations of New York's Assisted Suicide Statute in Saratoga County. She is sued in her official capacity.

18. Defendant Robert Johnson is the District Attorney of Bronx County and has authority to prosecute violations of New York's Assisted Suicide Statute in Bronx County. He is sued in his official capacity.

19. Defendant Cyrus R. Vance is the District Attorney of New York County and has authority to prosecute violations of New York's Assisted Suicide Statute in New York County. He is sued in his official capacity.

Jurisdiction and Venue

20. This Court has personal jurisdiction over Defendants.

21. Venue in New York County is proper under CPLR § 505 because Defendants Schneiderman and Vance maintain principal offices in this county.

Factual Allegations

Plaintiffs

22. Sara Myers is a 60-year-old, terminally-ill, mentally-competent adult who resides in New York County. Sara was diagnosed in December 2010 with amyotrophic lateral sclerosis ("ALS"), also known as Lou Gehrig's disease, a terminal neurodegenerative condition that causes paralysis and has no cure. Before being diagnosed with ALS, Sara enjoyed a full life filled with family and friends, travel, theater, and volunteer work. ALS brought to a halt her professional practice as a Board Certified Structural Integrator. In addition, Sara spent over 25 years as an active and devoted member of P.E.O., an international philanthropic educational organization devoted to providing support to women pursuing higher education.

23. Like most patients dying of ALS, Sara endures progressive and inexorable loss of bodily function and integrity. She is functionally paralyzed. She has lost the ability to walk and is confined to a wheelchair or bed. She has lost the use of her arms and relies entirely upon others for all activities of daily living, including bathing, toileting, dressing, and feeding. Her ability to communicate verbally – a lifeline in

human relationships – is failing. In short, she faces being locked into her own paralyzed body, while retaining her full intellectual and emotional capacity.

24. The muscles that control Sara's ability to breathe are greatly and irreparably diminished. Her breathing capacity is dangerously weak and continues to decline. She has lost the ability to do nearly all activities that have given her joy in life. Her disease causes her constant pain that can be only partially controlled with powerful medication. Sara feels trapped in a torture chamber of her own deteriorating body. Sara is fully aware of the ravages the disease wreaks and knows that her illness will impose further progressive loss of bodily function and integrity and increasing pain and suffering. Sara wishes not to have to endure a horrible, slow death that would, in her considered judgment, deprive her of the integrity and dignity she has left. Sara Myers seeks necessary medical assistance in the form of medications prescribed by her doctor which she could ingest to achieve a peaceful death.

25. Steve Goldenberg is a 55-year old, terminally-ill, mentally-competent adult who resides in New York County. Steve has been a New Yorker since 1986, when he moved to the City from Miami Beach to care for his elderly grandmother. He has worked for FedEx for 25 years (although he has been on disability leave for a number of years as a result of his medical condition). Steve has been with his partner, David, for nearly 25 years, and he is close with his last remaining relative, his sister, who lives in California. Steve and David built a fulfilling life together before Steve's life was compromised by his illnesses. They loved to travel, to cook, and to entertain friends in the City and at their home on the Jersey Shore during the Summer. Steve was also an

avid camper and sailor and enjoyed working on model boats, trains and cars, and riding and rebuilding his motorbike.

26. In 1989, Steve was diagnosed HIV-positive, which progressed to AIDS around fifteen years ago. For the first 14 years following his diagnosis, Steve was relatively healthy, although he suffered from shingles and other opportunistic infections associated with HIV and AIDS, and was required to undertake various medication regimes – first, zidoduvine (more commonly known as "AZT") and then the "triple cocktail" of anti-retrovirals that would become standard in treating HIV-positive patients. This regime continues today.

27. In 2003, Steve suffered a heart attack as a result of coronary artery disease. Since then, his health has declined markedly. He has suffered from hypertension, diabetes mellitus, macular degeneration, chronic pain, arthritis, vascular disease – which necessitated amputation of part of his foot and a bypass in his leg – chronic obstructive pulmonary disease and chronic bronchitis, hyperlipidemia, hypothyroidism and recurring candida esophagitis. In 2012, Steve was diagnosed with laryngeal carcinoma, *i.e.*, cancer in his vocal cords. He endured extensive radiation (in terms of both the level of radiation to which he was exposed and the duration of the treatment) and chemotherapy. The radiation caused Steve's throat to close, obstructing his breathing, and forcing him to submit to a tracheotomy, a surgical procedure to create a hole in his throat (which he has to this day). Additionally, he depends upon a supplemental oxygen supply and is tethered to it for most of the day. Also as a result of the cancer and the radiation, Steve developed an inability to swallow solid food and submitted to the surgical insertion of a gastric feeding tube last year. His weight has

declined dramatically. Steve has also suffered multiple bouts of pneumonia, and he "bleeds out" as a result of the tracheotomy on a regular basis, which sometimes requires an emergency trip to the hospital to stem the bleeding. Steve must take more than 24 medications, which he self-administers through his feeding tube or through injections, including morphine to manage severe chronic pain.

28. Steve has fought long and hard to stay alive in the face of progressive and debilitating illness. He is now dying, and the inexorable progression of his multiple medical conditions impose a great burden of suffering and have robbed him of the ability to engage in activities he has found meaningful in life. He requires morphine for pain management. He sleeps around 19 hours a day and spends the remaining five hours in his apartment, taking care of his numerous daily medications and injections, and cleaning and maintaining his feeding and oxygen tubes. He is unable to eat except through his feeding tube, and thus is deprived of any pleasure of the taste of food. He has progressively lost the use of his hands as a result of severe arthritis. The tracheotomy makes it difficult to talk. In sum, he has lost the ability to do nearly all of the activities that have given him joy in life. Steve has been advised and understands that his illness is terminal and that there is no possibility of recovery, and he believes that the quality of what remains of his life has been fundamentally compromised. Steve wishes not to have to choose between continuing the painful, lingering decline to death, and the relatively quicker route of starving or dehydrating himself to death. Those options, in his considered judgment, deprive him of the integrity and dignity he has left. Steve Goldenberg wishes to have the comfort of knowing that, if and when his suffering

becomes unbearable, he can ingest medications prescribed by his doctor to achieve a peaceful death.

29. Eric A. Seiff is an 81-year-old, mentally-competent adult who resides in the Bronx. He is the founding partner of the firm of Scoppetta Seiff Kretz & Abercrombie and has had a distinguished legal career spanning 57 years. He has an extensive record of public service, including as an Assistant District Attorney in New York County, as General Counsel of the New York State Division of Criminal Justice Services, as Chief Assistant of the Criminal Division of the New York Legal Aid Society, as Chairman of the New York Commission of Investigation, and as Chairman of the New York State Lawyers' Fund for Client Protection. He is former Chair of the Criminal Courts Committee of the New York City Bar Association, former Chair at a New York City Bar Project for the Homeless, and past president of the New York Criminal Bar Association, as well as a former member of the Board of Directors of the Legal Aid Society. Eric is a dedicated runner and was the national champion of his age group (75-79) in a five-mile cross country race and for his age group (80-84) in a five-kilometer road race.

30. In 2013, Eric was diagnosed with bladder cancer. He submitted to surgery to remove his bladder following four months of accepted chemotherapy treatment. He was recently diagnosed with a recurrence of cancer and is now entering a clinical drug trial. Although he currently feels healthy and hopes that his medical treatment is successful, Eric wants to be sure that if the cancer progresses to a terminal stage, and finds himself in a dying process he determines to be unbearable, he has available to him the option of aid-in-dying. Eric watched his mother endure a protracted and excruciating

dying process from terminal illness at an early age. He is concerned about the devastating emotional consequences for him and his family from a needlessly protracted death. Eric believes it critical to his sense of dignity, autonomy and personal integrity that the option of aid-in-dying be an available end of life option.

31. Dr. Howard A. Grossman is an internist specializing in primary care, particularly Lesbian, Gay, Bisexual and Transgender ("LGBT") health and HIV care. His private practice in Manhattan and New Jersey is dedicated to LGBT health and HIV care, and he is nationally recognized as an educator on HIV issues and as an advocate for gay and lesbian civil rights and the rights of people with HIV (including through his previous role as Executive Director of the American Academy of HIV Medicine). Dr. Grossman is currently a Senior Attending Physician at St. Luke's-Roosevelt Hospital Center in Manhattan and an Attending Physician at Overlook Medical Center in New Jersey. He is also a Clinical Assistant Professor of Medicine at NYU-Langone Medical Center and Columbia University College of Physicians and Surgeons. Dr. Grossman believes it would be consistent with the highest standards of medical practice to assist mentally-competent, terminally-ill patients such as Sara Myers and Steve Goldenberg (who is currently Dr. Grossman's patient) in their decision to seek a peaceful death through aid-in-dying. Without such medical assistance, these patients cannot achieve a peaceful death in a certain and humane manner. They are forced to suffer through a final phase of dying which they, in their considered judgment, find unbearable. Uncertainty about the application of New York's Assisted Suicide Statute to aid-in-dying deters Dr. Grossman from exercising his best professional judgment to provide aid-in-dying.

32. Dr. Samuel C. Klagsbrun is the Executive Medical Director and Owner of Four Winds Hospitals in Katonah and Saratoga Springs, New York. He is currently a Clinical Professor of Psychiatry at the Albert Einstein College of Medicine, a faculty member in Psychiatry at the Columbia University College of Physicians and Surgeons, and a member of the Advisory Council at the Yale University School of Medicine Department of Psychiatry. Dr. Klagsbrun is internationally renowned for his work on the psychological issues faced by cancer patients, victims of domestic violence, hospice care, and issues related to medical ethics. Dr. Klagsbrun believes it would be consistent with the highest standards of medical practice to assist and counsel mentally-competent, terminally-ill patients such as Sara Myers and Steve Goldenberg in their decision to seek a peaceful death through aid-in-dying. Without such medical assistance, these patients cannot achieve a peaceful death in a certain and humane manner. They are forced to suffer through a final phase of dying which they, in their considered judgment, find unbearable. Uncertainty about the application of New York's Assisted Suicide Statute to aid-in-dying deters Dr. Klagsbrun from exercising his best professional judgment to provide aid-in-dying.

33. Dr. Timothy E. Quill is a nationally renowned palliative care specialist and former President of the American Academy of Hospice and Palliative Medicine. Dr. Quill has spent most of 35 years treating terminally-ill patients. He is currently the Gosnell Distinguished Professor of Medicine, Psychiatry, Medical Humanities and Nursing, and Chief of the Palliative Care Division at the University of Rochester Medical Center. He has written and lectured extensively on palliative care and end-of-life decision-making. While modern medicine through skillfully applied palliative treatment

is able to alleviate a great deal of their symptoms and suffering, a small percentage of patients still experience untreatable pain and agony at the end of the dying process. A small percentage of these mentally-competent, terminally-ill patients have requested that Dr. Quill help them die peacefully and with dignity. In states where aid-in-dying is openly available, for example Oregon, one in six patients considers this option, and one in fifty discusses it with their family. Only one in 500 exercises the choice of aid-in-dying in that legal environment. Dr. Quill believes it would be consistent with the highest standards of medical practice to assist mentally-competent, terminally-ill such as Sara Myers and Steve Goldenberg in their decision to seek a peaceful death through aid-in-dying. Without such medical assistance, these patients cannot achieve a peaceful death in a certain and humane manner. They are forced to suffer through a final phase of dying which they, in their considered judgment, find unbearable. Uncertainty about the application of New York's Assisted Suicide Statute to aid-in-dying deters Dr. Quill from exercising his best professional judgment to provide aid-in-dying.

34. Dr. Judith K. Schwarz is a nurse who holds a Ph.D. from New York University; her dissertation was entitled, "Assistance in Dying: The Nurse's Experience." Dr. Schwarz is a consultant on end-of-life decision-making and care and nursing ethics. In that capacity, she has provided information and support to suffering New Yorkers and their families about legal end-of-life options that would allow them to retain control of their own end-of-life process, and to make treatment choices that reflect their long-held values and wishes. In her counseling role, she has been asked by mentally-competent, terminally-ill clients about end-of-life options that were not legally available to them because they reside in New York State. Many of these clients were bitterly disappointed

to learn that they could not receive a physician-provided prescription for lethal medication, and on occasion, she has had to expend substantial effort to dissuade clients from taking violent means to end their suffering. She was for over a decade the Clinical Coordinator for patient support for Compassion & Choices of New York (now End of Life Choices New York), and has recently become the volunteer Clinical Coordinator for End of Life Choices New York, where she is also a Board Member. Dr. Schwarz has published in academic journals and lectured extensively on issues associated with end-of-life decision-making. She believes it would be consistent with the highest standards of medical practice to assist and counsel mentally-competent, terminally-ill clients such as Sara Myers and Steve Goldenberg in their decision to seek a peaceful death through aid-in-dying. Without such medical assistance and counsel, these clients cannot achieve a peaceful death in a certain and humane manner. They are forced to suffer through a final phase of dying which they, in their considered judgment, find unbearable. Uncertainty about the application of New York's Assisted Suicide Statute to aid-in-dying deters Dr. Schwarz from exercising her best professional judgment when counseling mentally-competent, terminally-ill clients on end-of-life choices, including aid-in-dying.

35. Dr. Charles A. Thornton is an Attending Neurologist, Co-Director of the Muscular Dystrophy Cooperative Research Center and Director of the ALS Center at the University of Rochester Medical Center. He specializes in neuromuscular diseases, such as ALS, and experimental therapeutics. Dr. Thornton holds the Saunders Family Distinguished Professorship in Neuromuscular Research at the University of Rochester. He has taught, written and lectured extensively, including on end-of-life options and issues. Dr. Thornton believes it would be consistent with the highest standards of

medical practice to assist and counsel mentally-competent, terminally-ill patients such as Sara Myers and Steve Goldenberg in their decision to seek a peaceful death through aid-in-dying. Without such medical assistance, these patients cannot achieve a peaceful death in a certain and humane manner. They are forced to suffer through a final phase of dying which they, in their considered judgment, find unbearable. Uncertainty about the application of New York's Assisted Suicide Statute to aid-in-dying deters Dr. Thornton from exercising his best professional judgment to provide aid-in-dying.

36. End of Life Choices New York ("EOLCNY") is a New York not-for-profit organization that provides information, counseling, and emotional support to terminally-ill, mentally-competent adults considering how best to achieve a death consistent with their values, beliefs, and wishes. Some of its mentally-competent, terminally-ill clients who are approaching death express the desire to obtain medication they could ingest to achieve a peaceful death and avoid further suffering. The ability of EOLCNY to counsel such clients is impaired by the challenged statute. EOLCNY has been unable to refer clients in these circumstances to physicians who might provide aid-in-dying if it were clear that physicians could do so without exposing themselves to possible prosecution under the challenged statute. EOLCNY is deterred from providing services to clients in a manner that it and its clients would choose, resulting in continuing suffering for some of its clients. EOLCNY believes it would be consistent with the highest standards of medical practice to assist and counsel mentally-competent, terminally-ill clients such as Sara Myers and Steve Goldenberg in their decision to seek a peaceful death through aid-in-dying. Without such assistance and counsel, these clients cannot achieve a peaceful death in a certain and humane manner. They are forced to

suffer through a final phase of dying which they, in their considered judgment, find unbearable. Uncertainty about the application of New York's Assisted Suicide Statute to aid-in-dying deters EOLCNY from exercising its best professional judgment when counseling mentally-competent, terminally-ill clients on end-of-life choices, including aid-in-dying.

Aid-in-dying and Other End-of-Life Choices Available to the Terminally-ill

37. New York's Assisted Suicide Statute prohibits "intentionally caus[ing] or aid[ing] another person to commit suicide" or to attempt to commit suicide. This statute does not reference a physician providing aid-in-dying to a terminally-ill and mentally-competent person. Indeed, neither the statute nor the legislative history makes any mention of a physician or a mentally-competent and terminally-ill patient.

38. "Aid-in-dying" is a recognized term of art for the medical practice of providing a mentally-competent, terminally-ill patient with a prescription for medication that the patient may choose to take in order to bring about a peaceful death if the patient finds his or her dying process unbearable. It is recognized that what is causing the death of a patient choosing aid-in-dying is the underlying terminal illness.

39. Terminal illness manifests in a variety of forms, and end-of-life treatment varies dramatically. For the illustrative purpose of this Complaint, Plaintiffs draw attention to three end-of-life scenarios.

40. *First*, Patient A, on a life-prolonging intervention, such as a ventilator or feeding tube, can direct withdrawal of the intervention; or, if Patient A is mentally incapacitated, others who have the legal authority under New York law to make decisions for the patient can direct the withdrawal of the intervention, thereby precipitating death.

(If a ventilator is withdrawn, death is usually relatively quick. If a feeding tube is removed, the death will usually be slow and protracted through dehydration and starvation.) Patient A or Patient A's authorized representative may also provide a Do Not Resuscitate direction so that attempts at Cardio Pulmonary Resuscitation are not administered.

41. *Second*, Patient B, with unmanageable pain, referred to in medical literature as "refractory" pain, can request a therapy called terminal or palliative sedation. His or her doctor would induce unconsciousness by intravenously delivering heavily-sedating drugs until the patient loses consciousness. Patient B will never again awaken. Nutrition and fluids are withheld until he or she dies. This process can take several weeks.

42. *Third*, Patient C, who is terminally-ill, does not have life-prolonging intervention to withdraw nor experiences refractory pain. His or her doctors may offer the option that he or she stops eating or drinking until death arrives (a practice known as Voluntary Stopping Eating and Drinking). The process of dehydrating to death may take several weeks. This patient may find the dying process unbearable, yet has no means to precipitate death via a less protracted, certain and humane means.

43. In the course of their current medical practices, each of the physician Plaintiffs regularly encounters mentally-competent, terminally-ill patients who have no chance of recovery and for whom medicine cannot offer any hope other than some degree of symptomatic relief. In some cases, even symptomatic relief is impossible to achieve without the use of terminal sedation. The only choice available to such patients, therefore, is prolonged and unrelieved anguish on the one hand, or unconsciousness and

total loss of control and perceived dignity on the other. At times, although death is imminent, terminal sedation is not an option because the patient does not meet the medical criteria of refractory pain or other distressing symptoms such as breathlessness, extreme nausea and/or vomiting.

44. Faced with this reality, some mentally-competent, terminally-ill patients would seek the choice of aid-in-dying. Public health, medical, and mental health professionals, including the physician Plaintiffs, recognize that the choice of a dying patient for a peaceful death through aid-in-dying is not suicide, just as withholding or withdrawal of treatment or the choice of terminal or palliative sedation is not suicide. Suicide precipitates a premature death of a life of otherwise indefinite duration, often motivated by treatable depression. In such cases, mental illness can impair the individual's judgment. Aid-in-dying, in stark contrast, allows mentally-competent, terminally-ill patients who face impending death due to the progression of terminal illness to make a rational, informed, autonomous choice. Rather than destroying himself or herself, this choice is a final autonomous act of a patient who chooses to avoid the final ravages of disease in the face of impending death, thereby preserving the coherence and integrity of the life the patient has lived.

45. In some cases, providing aid-in-dying is, in the professional judgment of a physician, a medically and ethically appropriate course of treatment.

46. In the course of their current medical practices, each of the physician Plaintiffs has treated mentally-competent, terminally-ill patients who desired the option of aid-in-dying. The professional judgment of each of the physician Plaintiffs was that

access to aid-in-dying would be a medically and ethically appropriate option for those patients.

47. Each of the physician Plaintiffs has treated mentally-competent, terminally-ill adult patients who requested access to aid-in-dying. However, the physician Plaintiffs have been deterred from providing such treatment due to fear of potential prosecution under the Assisted Suicide Statute if the patient did ultimately self-administer life-ending medication. Each of the physician Plaintiffs reasonably expects to encounter such patients in the future course of their respective medical practices due to the nature of their medical practices.

48. The existence and potential application of New York's Assisted Suicide Statute deters the physician Plaintiffs from discussing and/or providing access to aid-in-dying and thereby prevents the Plaintiffs from offering medical care which, in their professional judgment, would otherwise be appropriate under the circumstances.

49. Plaintiffs Sara Myers and Steve Goldenberg understand that the trajectory of their illnesses will involve further progressive loss of bodily function and integrity, continuing and likely increasing agonizing pain, and other distressing burdens, and Plaintiff Eric Seiff understands that this is the potential trajectory of his illness. Each of these patient Plaintiffs wants the comfort of knowing that aid-in-dying is an available option should they determine that their suffering has become unbearable.

50. Over the past eighteen years, an increasing number of States and jurisdictions have legalized aid-in-dying through judicial decisions and legislation. Efforts to legalize the practice are currently pending in a number of States. A number of American medical bodies – including the American Public Health Association, the

American Medical Women's Association, and American College of Legal Medicine – have adopted policies in support of the practice. A 2013 Gallup poll found that 70% of Americans are in favor of allowing doctors to help terminally-ill patients end their life by painless means. A 2013 Pew Research Center report states that 62% of Americans believe that patients should be able to end their life if suffering great pain with no hope of improvement. In sum, evolving medical standards and public views support aid-in-dying.

51. The Constitution of New York requires the state to provide every person with the equal protection of the laws. Art. I, § 11. The New York Constitution, Article I, § 6, further mandates that "[n]o person shall be deprived of life, liberty or property without due process of law." These protections are independent of the limitations placed on the powers of states by the Fourteenth Amendment to the United States Constitution.

52. New York public policy is found in the Constitution, statutes, common law, court decisions and rules of the state. That public policy makes manifest that New Yorkers value privacy generally and autonomy in medical decision-making specifically.

Count One

(Statutory Construction)

53. Plaintiffs repeat and reallege the allegations set forth above.

54. New York's Assisted Suicide Statute does not provide a valid statutory basis to prosecute any licensed physician for providing aid-in-dying because the choice of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable does not constitute "suicide" within the meaning of N. Y. Penal Code §§ 120.30 and 125.15, when their physician concludes that their choice of a peaceful death is among the reasonable medical alternatives.

55. Because New York courts have not had occasion prior to now to construe the meaning of the word "suicide" as used in New York's Assisted Suicide Statute as applied to the facts alleged herein, there is substantial uncertainty over the legal rights and responsibilities of the Plaintiffs as they relate to a physician who chooses to provide access to aid-in-dying to a mentally-competent, terminally-ill individual when that treatment is otherwise medically appropriate.

56. The potential for prosecution under New York's Assisted Suicide Statute for providing aid-in-dying harms the physician Plaintiffs in that it impairs their ability to provide adequate and appropriate medical care to their mentally-competent, terminally-ill patients. It harms the patient Plaintiffs in that it impairs their access to an end-of-life option that would bring comfort and a means to avoid horrific suffering. It harms Dr. Schwarz and EOLCNY in that it impairs their ability to exercise their best professional judgment when counseling their mentally-competent, terminally-ill clients on end-of-life choices, including aid-in-dying.

57. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

Count Two

(Denial of the Right to Equal Protection)

58. Plaintiffs repeat and reallege the allegations set forth above.

59. If the term "suicide," as used in New York's Assisted Suicide Statute, is interpreted to include the choice of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable, and therefore interpreted to encompass the actions of a physician who provides aid-in-

dying, then the statute discriminates against the patient Plaintiffs, the physician Plaintiffs' mentally-competent, terminally-ill patients and Dr. Schwarz's and EOLCNY's mentally-competent, terminally-ill clients who cannot direct that their life-sustaining treatment be withdrawn to hasten death or are ineligible for or do not want terminal sedation, but seek aid-in-dying.

60. Physician Plaintiffs have standing to assert a claim for denial of equal protection on behalf of their mentally-competent, terminally- ill patients.

61. Dr. Schwarz has standing to assert a claim for denial of equal protection on behalf of her mentally-competent, terminally-ill clients.

62. EOLCNY has standing to assert a claim for denial of equal protection on behalf of its mentally-competent, terminally-ill clients.

63. If the term "suicide," as used in New York's Assisted Suicide Statute, is interpreted to include the choices of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable, and therefore interpreted to encompass the actions of a physician who provides aid-in-dying, then the statute deprives the patient Plaintiffs and the physician Plaintiffs' mentally-competent, terminally-ill patients and Dr. Schwarz and EOLCNY's mentally-competent, terminally-ill clients who seek physician aid-in-dying equal protection in violation of the New York Constitution.

64. If the term "suicide" in New York's Assisted Suicide Statute , is interpreted to include the choices of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable, and therefore interpreted to encompass a doctor providing access to aid-in-dying, this

prohibition bears no rational relationship to any legitimate state interest, does not further any important state interest, nor is it the least restrictive means of advancing any compelling state interest.

65. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

Count Three

(Denial of Right to Due Process: Privacy)

66. Plaintiffs repeat and reallege the allegations set forth above.

67. If the term "suicide," as used in New York's Assisted Suicide Statute, is interpreted to include the choices of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable, and therefore interpreted to encompass the actions of a physician who provides aid-in-dying, then the statute violates the patient Plaintiffs' rights (and the rights of the physician Plaintiffs' mentally-competent, terminally-ill patients and Dr. Schwarz and EOLCNY's mentally-competent, terminally-ill clients) to privacy and other fundamental liberties without due process of law in violation of the Due Process Clause of the New York Constitution.

68. Plaintiff physicians have standing to assert a claim for denial of due process of law on behalf of their mentally-competent, terminally-ill patients.

69. Dr. Schwarz has standing to assert a claim for denial of due process of law on behalf of her mentally-competent, terminally-ill clients.

70. EOLCNY has standing to assert a claim for denial of due process of law on behalf of its mentally-competent, terminally-ill clients.

71. If the term "suicide" in New York's Assisted Suicide Statute is interpreted to include the choices of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable, and therefore interpreted to encompass a doctor providing access to aid-in-dying, this prohibition bears no rational relationship to any legitimate state interest, does not further any important state interest, nor is it the least restrictive means of advancing any compelling state interest.

72. If the term "suicide" in New York's Assisted Suicide Statute is interpreted to include the choices of a mentally-competent, terminally-ill individual for a peaceful death as an alternative to enduring a dying process the patient finds unbearable, and therefore interpreted to encompass a doctor providing access to aid-in-dying, the patient Plaintiffs and the physician Plaintiffs' mentally-competent, terminally-ill patients and Dr. Schwarz and EOLCNY's mentally-competent, terminally-ill clients who seek physician aid-in-dying have or will be deprived of their right to due process under the law.

73. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

REQUESTED RELIEF

1. Plaintiffs respectfully request the following relief:

a. A declaration that N. Y. Penal Code §§ 120.30 and 125.15 does not provide a valid statutory basis to prosecute Plaintiffs for seeking or providing aid-in-dying because the choice of a mentally-competent, terminally-ill individual for a peaceful death, as an alternative to enduring a dying process the patient finds

unbearable, does not constitute "suicide" within the meaning of N. Y. Penal Code §§ 120.30 and 125.15, and further declaring that any such prosecution is void as a matter of law; or, in the alternative,

A declaration that to the extent that N. Y. Penal Code §§ 120.30 and 125.15 prohibits a licensed physician from providing aid-in-dying, the application of that statute to such conduct violates the New York Constitution as alleged; and

b. An order permanently enjoining the Defendants, their agents, employees, representatives, and all those acting in concert with them, from prosecuting Plaintiffs for seeking or providing aid-in-dying to a mentally-competent, terminally-ill individual;

c. Costs of suit, including but not limited to attorneys' fees; and

d. Such further relief as the Court deems just and proper.

Dated: New York, New York
February 4, 2015

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By: _____

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Pro hac vice application pending