S T A T E O F N E W Y O R K

5814--A

2015-2016 Regular Sessions

I N S E N A T E

June 4, 2015

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to patient self-determination at end of life

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "patient self-determination act".

S 2. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F
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SECTION 2899-D. DEFINITIONS.
2899-E. WRITTEN REQUEST FOR MEDICATION.
2899-F. WRITTEN REQUEST SIGNED AND WITNESSED.
2899-G. ATTENDING PHYSICIAN RESPONSIBILITIES.
2899-H. COUNSELING REFERRAL.
2899-I. MEDICAL RECORD DOCUMENTATION REQUIREMENTS.
2899-J. RESIDENCY REQUIREMENT.
2899-K. PROTECTION OF HEALTH CARE PROVIDERS AND FACILITIES.
2899-L. RELATION TO OTHER LAWS AND CONTRACTS.
2899-M. SAFE DISPOSAL OF UNUSED MEDICATIONS.
2899-N. DEATH CERTIFICATE.
2899-O. REPORTING.
2899-P. SEVERABILITY.

S 2899-D. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "ADULT" MEANS AN INDIVIDUAL WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMARY RESPONSIBILITY FOR THE CARE OF THE PATIENT AND TREATMENT OF THE PATIENT'S TERMINAL DISEASE.

3. "CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE AND CONSEQUENCES OF HEALTH CARE DECISIONS, INCLUDING THE BENEFITS AND RISKS OF AND ALTERNATIVES TO ANY PROPOSED HEALTH CARE, AND TO REACH AN INFORMED DECISION AND TO COMMUNICATE HEALTH CARE DECISIONS TO A PHYSICIAN, INCLUDING COMMUNICATION THROUGH PERSONS FAMILIAR WITH THE PATIENT'S MANNER OF COMMUNICATING IF THOSE PERSONS ARE AVAILABLE.

4. "COUNSELING" MEANS ONE OR MORE CONSULTATIONS AS NECESSARY BETWEEN A STATE LICENSED PSYCHIATRIST OR PSYCHOLOGIST AND A PATIENT FOR THE PURPOSE OF DETERMINING THAT THE PATIENT HAS CAPACITY AND IS NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.

5. "HEALTH CARE FACILITY" MEANS A GENERAL HOSPITAL, NURSING HOME, OR RESIDENTIAL HEALTH CARE FACILITY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

6. "HEALTH CARE PROVIDER" MEANS A PERSON OR ENTITY LICENSED, CERTIFIED, OR AUTHORIZED BY LAW TO ADMINISTER HEALTH CARE OR DISPENSE MEDICATION IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION.

7. "IMPAIRED JUDGMENT" MEANS THAT A PERSON LACKS THE ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE AND CONSEQUENCES OF HEALTH CARE DECISIONS, INCLUDING THE BENEFITS AND RISKS OF AND ALTERNATIVES TO ANY PROPOSED HEALTH CARE, AND TO REACH AN INFORMED DECISION.

8. "MEDICATION" MEANS MEDICATION CAPABLE OF ENDING AND TO BE USED WITH THE INTENT OF ENDING THE PATIENT'S LIFE, INCLUDING ANY ANCILLARY MEDICATION INTENDED TO MINIMIZE THE PATIENT'S DISCOMFORT.

9. "PALLIATIVE CARE" MEANS HEALTH CARE TREATMENT, INCLUDING INTERDISCIPLINARY END-OF-LIFE CARE, AND CONSULTATION WITH PATIENTS AND FAMILY MEMBERS, TO PREVENT OR RELIEVE PAIN AND SUFFERING AND TO ENHANCE THE PATIENT'S QUALITY OF LIFE, INCLUDING HOSPICE CARE UNDER ARTICLE FORTY OF THIS CHAPTER.

10. "PATIENT" MEANS A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER, A RESIDENT OF NEW YORK STATE, AND UNDER THE CARE OF A PHYSICIAN.

11. "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED TO PRACTICE MEDICINE IN NEW YORK STATE.

12. "TERMINAL ILLNESS OR CONDITION" MEANS AN ILLNESS OR CONDITION WHICH CAN REASONABLY BE EXPECTED TO CAUSE DEATH WITHIN SIX MONTHS, WHETHER OR NOT TREATMENT IS PROVIDED.

S 2899-E. WRITTEN REQUEST FOR MEDICATION. 1. AN ADULT WHO HAS CAPACITY, IS A RESIDENT OF THIS STATE, AND HAS BEEN DETERMINED BY THE ATTENDING PHYSICIAN AND, IF APPLICABLE, CONSULTING PHYSICIAN TO BE SUFFERING FROM A TERMINAL ILLNESS OR CONDITION, MAY MAKE A WRITTEN REQUEST FOR AND CONSENT TO SELF-ADMINISTER MEDICATION FOR THE PURPOSE OF ENDING HIS OR HER LIFE IN ACCORDANCE WITH THIS ARTICLE.

2. NO PERSON SHALL QUALIFY UNDER THIS ARTICLE SOLELY BECAUSE OF AGE OR DISABILITY.

S 2899-F. WRITTEN REQUEST SIGNED AND WITNESSED. 1. A REQUEST FOR MEDICATION UNDER THIS ARTICLE SHALL BE SIGNED AND DATED BY THE PATIENT AND WITNESSED BY AT LEAST TWO INDIVIDUALS WHO, IN THE PRESENCE OF THE PATIENT, ATTEST THAT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF THE PATIENT HAS CAPACITY, IS ACTING VOLUNTARILY, AND IS NOT BEING COERCED TO SIGN THE REQUEST. THE DEPARTMENT MAY DEVELOP A SUGGESTED FORM FOR A REQUEST UNDER THIS ARTICLE.

2. ONE OF THE WITNESSES SHALL BE A PERSON WHO IS NOT:

(A) A RELATIVE OF THE PATIENT BY BLOOD, MARRIAGE OR ADOPTION;

(B) A PERSON WHO AT THE TIME THE REQUEST IS SIGNED WOULD BE ENTITLED TO ANY PORTION OF THE ESTATE OF THE PATIENT UPON DEATH UNDER ANY WILL OR BY OPERATION OF LAW; OR

(C) AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE PATIENT IS RECEIVING TREATMENT OR IS A RESIDENT.

3. THE PATIENT'S ATTENDING PHYSICIAN OR, IF APPLICABLE, CONSULTING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED SHALL NOT BE A WITNESS.

S 2899-G. ATTENDING PHYSICIAN RESPONSIBILITIES. 1. THE ATTENDING PHYSICIAN SHALL:

(A) MAKE THE DETERMINATION OF WHETHER A PATIENT HAS A TERMINAL ILLNESS OR CONDITION, HAS CAPACITY, AND HAS MADE THE REQUEST VOLUNTARILY;

(B) REQUEST THAT THE PATIENT DEMONSTRATE NEW YORK STATE RESIDENCY;

(C) REFER THE PATIENT FOR COUNSELING, IF APPROPRIATE, UNDER SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-H OF THIS ARTICLE;

(D) PROVIDE INFORMATION AND COUNSELING UNDER SECTION TWENTY-NINE HUNDRED NINETY-SEVEN-C OF THIS CHAPTER; AND

(E) FULFILL THE MEDICAL RECORD DOCUMENTATION REQUIREMENTS OF SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-I OF THIS ARTICLE.

2. SUBJECT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-H OF THIS ARTICLE, THE ATTENDING PHYSICIAN WHO MAKES THE DETERMINATION THAT THE PATIENT HAS A TERMINAL ILLNESS OR CONDITION, HAS CAPACITY AND HAS MADE A REQUEST FOR MEDICATION AS PROVIDED IN SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-E OF THIS ARTICLE, MAY PERSONALLY, OR BY DIRECTION TO ANOTHER PHYSICIAN, PRESCRIBE, DISPENSE OR ORDER APPROPRIATE MEDICATION IN ACCORDANCE WITH THE PATIENT'S REQUEST UNDER THIS ARTICLE, AND AT THE PATIENT'S REQUEST, FACILITATE THE FILLING OF THE PRESCRIPTION AND DELIVERY OF THE MEDICATION TO THE PATIENT.

3. IN ACCORDANCE WITH THE DIRECTION OF THE PRESCRIBING, DISPENSING OR ORDERING PHYSICIAN AND THE CONSENT OF THE PATIENT, THE PATIENT MAY ADMINISTER THE MEDICATION TO HIMSELF OR HERSELF. A HEALTH CARE PROFESSIONAL SHALL NOT ADMINISTER THE MEDICATION TO THE PATIENT BUT, ACTING WITHIN THE SCOPE OF HIS OR HER LAWFUL PRACTICE, MAY FACILITATE THE PATIENT IN SELF-ADMINISTERING THE MEDICATION.

S 2899-H. COUNSELING REFERRAL. IF IN THE OPINION OF THE ATTENDING PHYSICIAN A PATIENT MAY BE SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT, SUCH PHYSICIAN SHALL REFER THE PATIENT FOR COUNSELING. NO MEDICATION TO END A PATIENT'S LIFE SHALL BE PRESCRIBED, DISPENSED OR ORDERED UNTIL THE PERSON PERFORMING THE COUNSELING DETERMINES THAT THE PATIENT IS NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT AND HAS CAPACITY.

S 2899-I. MEDICAL RECORD DOCUMENTATION REQUIREMENTS. THE FOLLOWING SHALL BE DOCUMENTED OR FILED IN THE PATIENT'S MEDICAL RECORD:

1. ALL ORAL REQUESTS BY A PATIENT FOR MEDICATION TO END HIS OR HER LIFE;

2. ALL WRITTEN REQUESTS BY A PATIENT FOR MEDICATION TO END HIS OR HER LIFE;

3. THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, AND DETERMINATION WHETHER THE PATIENT HAS CAPACITY AND IS ACTING VOLUNTARILY;

4. A REPORT OF THE OUTCOME AND DETERMINATIONS MADE DURING COUNSELING, IF PERFORMED; AND

5. A NOTE BY THE ATTENDING PHYSICIAN INDICATING WHETHER ALL REQUIREMENTS UNDER THIS ARTICLE HAVE BEEN MET AND INDICATING THE STEPS TAKEN TO CARRY OUT THE REQUEST, INCLUDING A NOTATION OF THE MEDICATION PRESCRIBED, DISPENSED OR ORDERED.

S 2899-J. RESIDENCY REQUIREMENT. ONLY REQUESTS MADE BY NEW YORK STATE RESIDENTS UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE GRANTED. FACTORS DEMONSTRATING NEW YORK STATE RESIDENCY SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

1. POSSESSION OF A NEW YORK STATE DRIVER'S LICENSE;

2. REGISTRATION TO VOTE IN NEW YORK STATE;

3. EVIDENCE THAT THE PERSON OWNS OR LEASES PROPERTY IN NEW YORK STATE; OR

4. FILING OF A NEW YORK STATE TAX RETURN FOR THE MOST RECENT TAX YEAR.

S 2899-K. PROTECTION OF HEALTH CARE PROVIDERS AND FACILITIES. 1. A PHYSICIAN, PHARMACIST, OTHER HEALTH CARE PROFESSIONAL OR OTHER PERSON SHALL NOT BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL DISCIPLINARY ACTION, AND SHALL NOT BE SUBJECT TO DISCIPLINE, SUSPENSION, LOSS OF LICENSE, LOSS OF PRIVILEGES, OR OTHER PENALTY BY ANY HEALTH CARE FACILITY OR HEALTH CARE PROVIDER, FOR TAKING ANY REASONABLE GOOD-FAITH ACTION OR REFUSING TO ACT UNDER THIS ARTICLE, INCLUDING: (A) ENGAGING IN DISCUSSIONS WITH A PATIENT RELATING TO THE RISKS AND BENEFITS OF END-OF-LIFE OPTIONS IN THE CIRCUMSTANCES DESCRIBED IN THIS ARTICLE, (B) BEING PRESENT WHEN A PATIENT SELF-ADMINISTERS MEDICATION, (C) REFRAINING FROM ACTING TO PREVENT THE PATIENT FROM SELF-ADMINISTERING SUCH MEDICATION, OR (D) REFRAINING FROM ACTING TO RESUSCITATE OR RESCUE THE PATIENT AFTER HE OR SHE SELF-ADMINISTERS SUCH MEDICATION. HOWEVER, PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION SHALL NOT APPLY WHERE THERE ARE REASONABLE GROUNDS TO BELIEVE, UNDER THE CIRCUMSTANCES, THAT THE PATIENT HAS RESCINDED HIS OR HER REQUEST OR CONSENT TO SELF-ADMINISTER MEDICATION UNDER THIS ARTICLE OR COMMUNICATES A DESIRE THAT THE LETHAL ACTION OF THE MEDICATION BE REVERSED.

2. A PHYSICIAN, NURSE, PHARMACIST, OR OTHER PERSON SHALL NOT BE UNDER ANY DUTY, BY LAW OR CONTRACT, TO PARTICIPATE IN THE PROVISION OF MEDICATION TO A PATIENT UNDER THIS ARTICLE.

3. A PRIVATE HEALTH CARE FACILITY MAY PROHIBIT THE SELF-ADMINISTERING OF MEDICATION UNDER THE ARTICLE WHILE THE PATIENT IS BEING TREATED OR RESIDING IN THE HEALTH CARE FACILITY IF:

(A) SUCH PRESCRIBING, DISPENSING, ORDERING OR SELF-ADMINISTERING IS CONTRARY TO A FORMALLY ADOPTED POLICY OF SUCH FACILITY THAT IS EXPRESSLY BASED ON SINCERELY HELD RELIGIOUS BELIEFS OR SINCERELY HELD MORAL CONVICTIONS CENTRAL TO THE FACILITY'S OPERATING PRINCIPLES;

(B) SUCH FACILITY HAS INFORMED THE PATIENT OF SUCH POLICY PRIOR TO OR UPON ADMISSION, IF REASONABLY POSSIBLE; AND

(C) IF THE PATIENT REQUESTS, THE PATIENT IS TRANSFERRED PROMPTLY TO ANOTHER HEALTH CARE FACILITY THAT IS REASONABLY ACCESSIBLE UNDER THE CIRCUMSTANCES AND WILLING TO PERMIT THE PRESCRIBING, DISPENSING, ORDERING AND SELF-ADMINISTERING OF MEDICATION UNDER THIS ARTICLE WITH RESPECT TO THE PATIENT.

4. A HEALTH CARE FACILITY THAT PROHIBITS THE SELF-ADMINISTERING OF MEDICATION UNDER THIS ARTICLE WHILE THE PATIENT IS BEING TREATED OR RESIDING IN THE HEALTH CARE FACILITY UNDER THIS SECTION MAY PROHIBIT A PHYSICIAN FROM PRESCRIBING, DISPENSING OR ORDERING MEDICATION FOR SELF-ADMINISTERING WHILE THE PATIENT IS BEING TREATED OR RESIDING IN THE HEALTH CARE FACILITY, PROVIDED THE HEALTH CARE FACILITY HAS NOTIFIED THE PHYSICIAN IN WRITING OF ITS POLICY TO PROHIBIT SUCH ACTIONS. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, ANY PERSON WHO VIOLATES A POLICY ESTABLISHED BY A HEALTH CARE FACILITY UNDER THIS SECTION MAY BE SUBJECT TO SANCTIONS OTHERWISE ALLOWABLE UNDER LAW, CONTRACT AND FACILITY POLICY.

S 2899-L. RELATION TO OTHER LAWS AND CONTRACTS. 1. (A) A PATIENT WHO SELF-ADMINISTERS MEDICATION UNDER THIS ARTICLE SHALL NOT BE CONSIDERED TO BE A PERSON WHO IS SUICIDAL, AND SELF-ADMINISTERING MEDICATION UNDER THIS ARTICLE SHALL NOT BE DEEMED TO BE SUICIDE, FOR ANY PURPOSE.

(B) ACTION TAKEN IN ACCORDANCE WITH THIS ARTICLE SHALL NOT BE CONSTRUED FOR ANY PURPOSE TO CONSTITUTE SUICIDE, ASSISTED SUICIDE, ATTEMPTED SUICIDE, PROMOTING A SUICIDE ATTEMPT, MERCY KILLING, OR HOMICIDE UNDER THE LAW, INCLUDING AS AN ACCOMPLICE OR ACCESSORY OR OTHERWISE.

2. A REQUEST BY A PATIENT TO HIS OR HER ATTENDING PHYSICIAN TO PROVIDE MEDICATION UNDER THIS ARTICLE SHALL NOT, BY ITSELF, PROVIDE THE BASIS FOR THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR.

3. (A) NO PROVISION IN A CONTRACT, WILL OR OTHER AGREEMENT, WHETHER WRITTEN OR ORAL, TO THE EXTENT THE PROVISION WOULD AFFECT WHETHER A PERSON MAY MAKE OR RESCIND A REQUEST FOR MEDICATION OR TAKE ANY OTHER ACTION UNDER THIS ARTICLE, SHALL BE VALID.

(B) NO OBLIGATION OWING UNDER ANY CONTRACT SHALL BE CONDITIONED OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST BY A PERSON FOR MEDICATION OR TAKING ANY OTHER ACTION UNDER THIS ARTICLE.

4. A PERSON AND HIS OR HER BENEFICIARIES SHALL NOT BE DENIED BENEFITS UNDER A LIFE INSURANCE POLICY FOR ACTIONS TAKEN IN ACCORDANCE WITH THIS ARTICLE.

5. AN INSURER SHALL NOT PROVIDE ANY INFORMATION IN COMMUNICATIONS MADE TO A PERSON ABOUT THE AVAILABILITY OF MEDICATION UNDER THIS ARTICLE ABSENT A REQUEST BY SUCH PERSON OR BY HIS OR HER ATTENDING PHYSICIAN UPON THE REQUEST OF SUCH PERSON. ANY COMMUNICATION SHALL NOT INCLUDE BOTH THE DENIAL OF TREATMENT AND INFORMATION AS TO THE AVAILABILITY OF MEDICATION UNDER THIS ARTICLE.

6. THE SALE, PROCUREMENT, OR ISSUE OF ANY PROFESSIONAL MALPRACTICE INSURANCE POLICY OR THE RATE CHARGED FOR THE POLICY SHALL NOT BE CONDITIONED UPON OR AFFECTED BY WHETHER THE INSURED DOES OR DOES NOT TAKE OR PARTICIPATE IN ANY ACTION UNDER THIS ARTICLE.

S 2899-M. SAFE DISPOSAL OF UNUSED MEDICATIONS. THE DEPARTMENT SHALL MAKE REGULATIONS PROVIDING FOR THE SAFE DISPOSAL OF UNUSED MEDICATIONS PRESCRIBED, DISPENSED OR ORDERED UNDER THIS ARTICLE.

S 2899-N. DEATH CERTIFICATE. IN THE EVENT THAT A PATIENT DIES AS A RESULT OF MEDICATION SELF-ADMINISTERED UNDER THIS ARTICLE, THE DEATH CERTIFICATE SHALL INDICATE THAT THE CAUSE OF DEATH WAS THE UNDERLYING TERMINAL ILLNESS OR CONDITION OF THE PATIENT. HOWEVER, WHERE THERE ARE REASONABLE GROUNDS TO BELIEVE, UNDER THE CIRCUMSTANCES, THAT THE PATIENT RESCINDED HIS OR HER REQUEST OR CONSENT TO SELF-ADMINISTER MEDICATION UNDER THIS ARTICLE OR COMMUNICATED A DESIRE THAT THE LETHAL ACTION OF THE MEDICATION BE REVERSED, AND THE PATIENT NEVERTHELESS DIED FROM THE SELF-ADMINISTRATION OF THE MEDICATION, THE SELF-ADMINISTRATION OF THE MEDICATION MAY BE LISTED AS THE CAUSE OF DEATH.

S 2899-O. REPORTING. 1. THE COMMISSIONER SHALL ANNUALLY REVIEW A SAMPLE OF THE RECORDS MAINTAINED UNDER SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-I OF THIS ARTICLE. THE DEPARTMENT MAY ADOPT REGULATIONS ESTABLISHING REPORTING REQUIREMENTS FOR PHYSICIANS TAKING ACTION UNDER THIS ARTICLE TO DETERMINE UTILIZATION AND COMPLIANCE WITH THIS ARTICLE. THE INFORMATION COLLECTED UNDER THIS SECTION SHALL BE CONFIDENTIAL AND SHALL BE COLLECTED IN A MANNER THAT PROTECTS THE PRIVACY OF THE PATIENT, HIS OR HER FAMILY, AND ANY HEALTH CARE PROVIDER ACTING IN CONNECTION WITH SUCH PATIENT UNDER THIS ARTICLE.

2. THE DEPARTMENT SHALL PREPARE A REPORT ANNUALLY CONTAINING RELEVANT DATA REGARDING UTILIZATION AND COMPLIANCE WITH THIS ARTICLE AND SHALL POST SUCH REPORT ON ITS WEBSITE.

S 2899-P. SEVERABILITY. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF ANY PROVISION OF THIS ARTICLE, IS HELD TO BE INVALID, OR TO VIOLATE OR BE INCONSISTENT WITH ANY FEDERAL LAW OR REGULATION, THAT SHALL NOT AFFECT THE VALIDITY OR EFFECTIVENESS OF ANY OTHER PROVISION OF THIS ARTICLE, OR OF ANY OTHER APPLICATION OF ANY PROVISION OF THIS ARTICLE, WHICH CAN BE GIVEN EFFECT WITHOUT THAT PROVISION OR APPLICATION; AND TO THAT END, THE PROVISIONS AND APPLICATIONS OF THIS ARTICLE ARE SEVERABLE.

S 3. This act shall take effect immediately.