

History of Medical Aid in Dying - USA

Thaddeus Mason Pope, JD, PhD, HEC-C
Completed Life Initiative
November 9, 2021

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2



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Roadmap

4

3

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Why we must
affirmatively
legalize MAID

6

Paths to MAID
legalization

7

Current efforts to
expand access

8

**Criminal laws
assisted suicide**

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Across USA, since 1800s,
helping someone commit
suicide is a **crime**

11



“assisted suicide
prohibitions are
deeply rooted in
our nation’s
legal history”

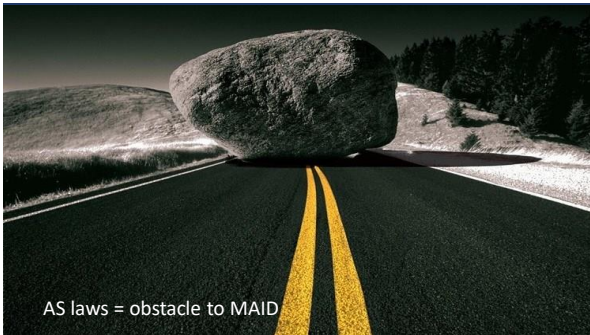
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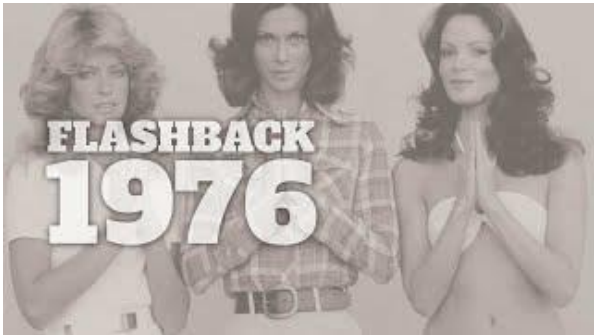
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“Assisting suicide ... **aiding** another in the taking of his own life ... fourth degree **felony.**”
NMSA § 30-2-4

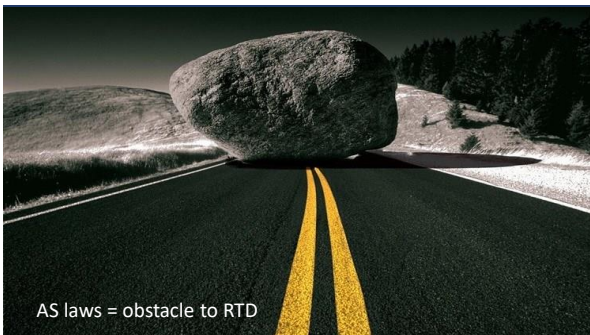
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1950s & 1960s
Mechanical ventilators
Dialysis
Feeding tubes

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Right
to die

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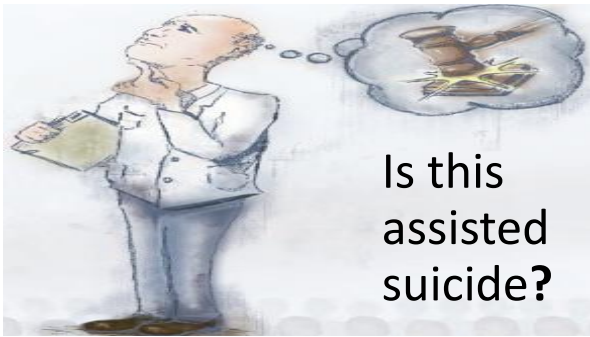
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>100
appellate
cases

23

Right to refuse
treatment - **even**
life-sustaining

24



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Chill from assisted suicide law

26

So..

27

“Death resulting from ... withholding or withdrawal ... **does not ... constitute a suicide**”

NMSA § 24-7A-13(B)(1)

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MAID = AS

AS = felony

MAID = felony

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Must **exclude**
MAID from AS

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**Assisted
suicide**

**Aid in
Dying**

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Pathway 1

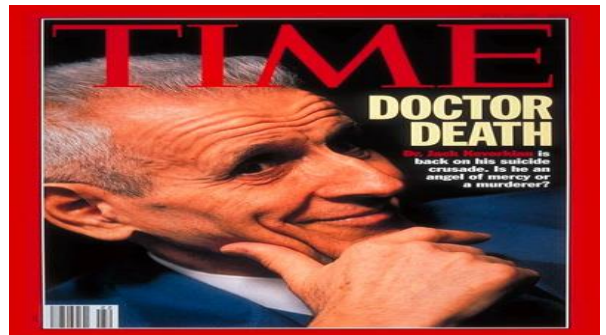
Litigation

US Constitution

34

Due process
Equal protection
1st Amendment

35



36



37



38



39



40

>15
appellate judges
agreed

41

BUT

42



43



44

No federal constitutional right

Focus to **states**

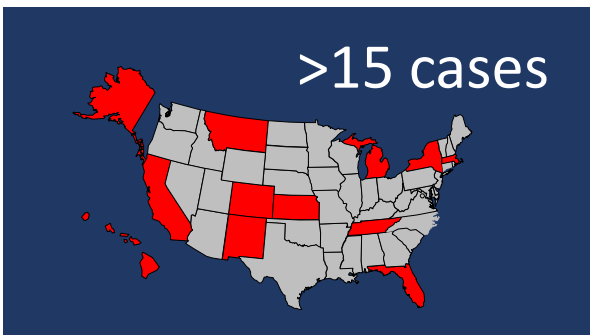
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Pathway 2

Litigation

state constitution

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No “lasting” success

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Trial court win
Appellate loss

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McIver
wins FL DCT

Reversed
FL SCT

52



Baxter
wins MT
DCT

Not
reached
MT SCT

53

Trial court loss
Appellate loss

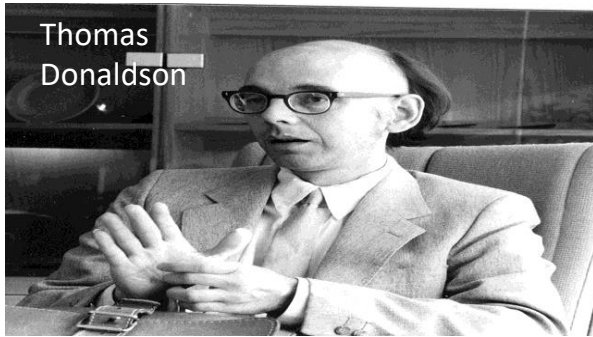
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1992

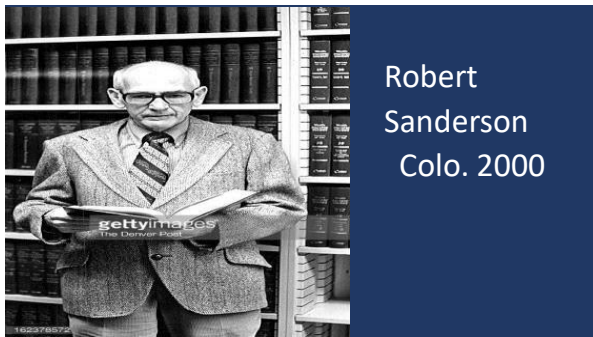
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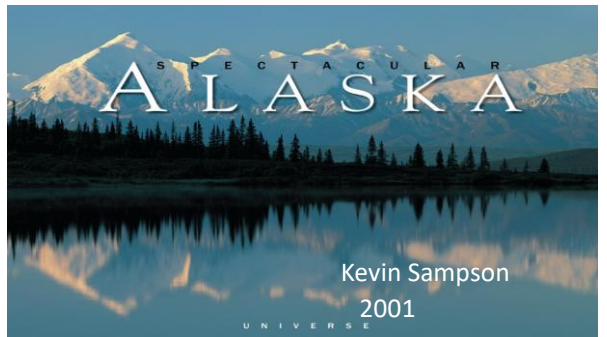


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Robert Sanderson
Colo. 2000

59



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64



65

State constitutional right	
Trial courts	3
App. courts	0

66

Active case

67



68



Roger Kligler

69



Feb. 2022

70

No state constitutional right



Statutory interpretation

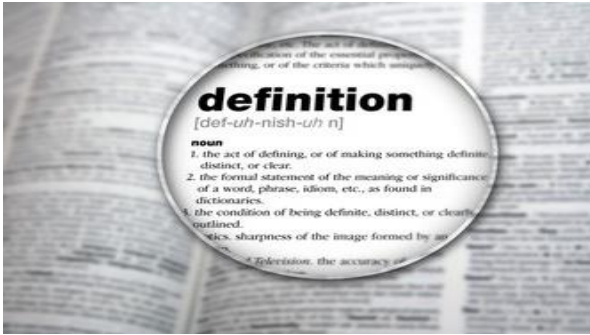
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Pathway 3

Litigation

state statute

72



73



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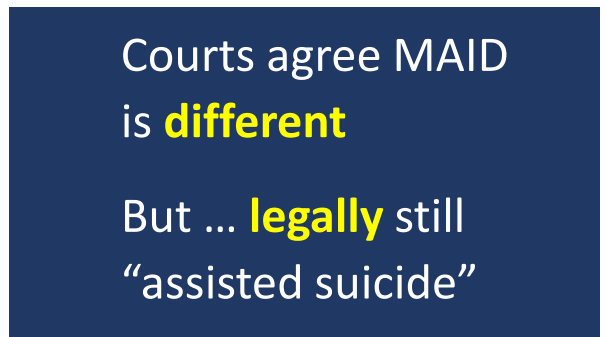
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“**consent** of
the victim ...
is a **defense**”

Mont. Code Ann. 45-2-211

80

AS statute not apply

Trial court 0

Appellate 1

81

Pathway 4

Limit prosecutor
discretion

82

Not decriminalized

But **guidance** on MAID
without penalty

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84



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86



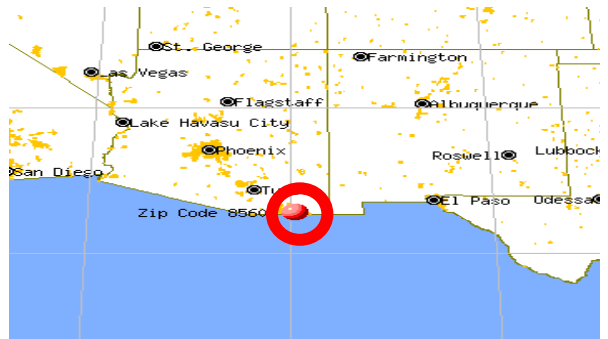
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factors influence whether someone is prosecuted

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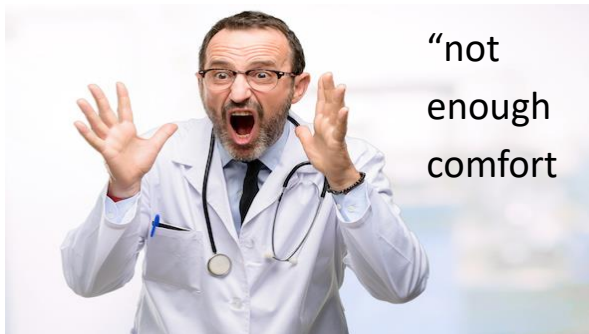
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“urges **prosecutorial discretion** ... **de-prioritizing** cases . . . imminent death . . . intolerable suffering.”

91

BUT

92



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Pathway 5

Jury nullification

94

Not decriminalized
But *de facto* immunity

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96



97

BUT

98



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**Pathways 6 & 7
State
statutes**

100

2 approaches

101

**Ballot
initiatives**

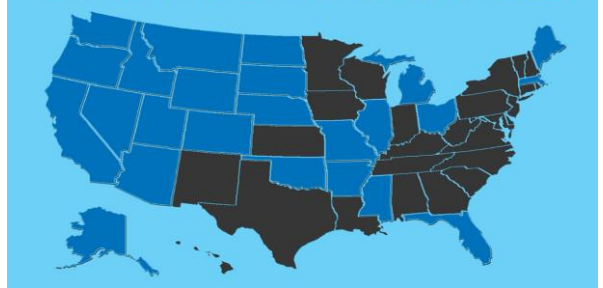
Legislation

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Ballot initiatives

103

STATES THAT ALLOW THE INITIATIVE PROCESS



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Early failures

- 1988 California
- 1991 Washington
- 1992 California
- 1994 Michigan

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Problem

Legalize **both**
 euthanasia **and**
 medical aid in dying

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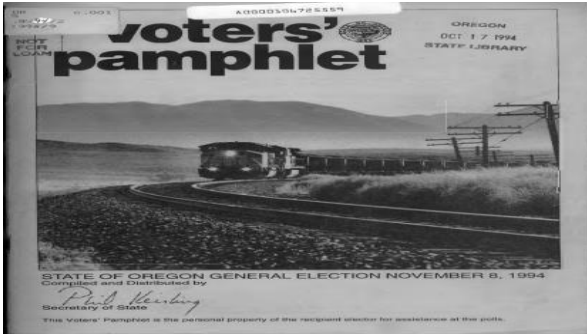
MAID

Self ingestion
Patient takes the
 final overt act

107

1994

108



109



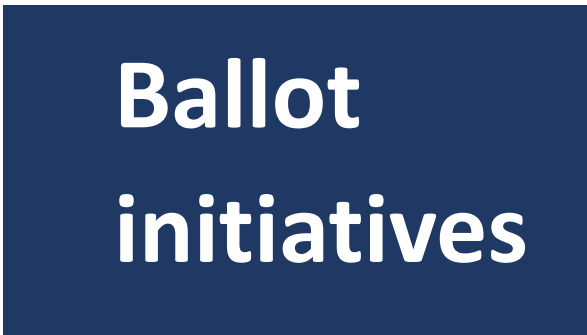
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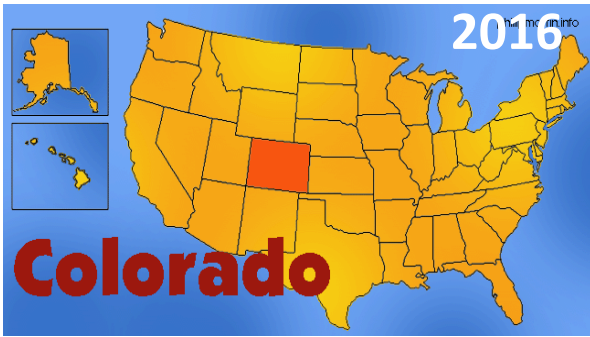
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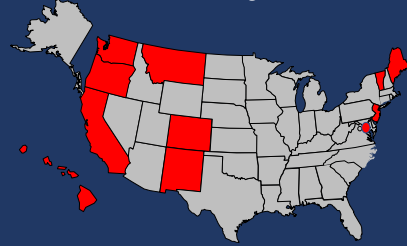


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127

11 US jurisdictions



128

“1 in 5
Americans”

129



130

ongoing

131

More than ½
remaining states
considering bills

132

BUT

133

New bills are
different

134

This is not
your father's
Oldsmobile.



135

This is **not**
your father's
MAID bill

136

1994 - 2019

137

STATE OF OREGON



1859

138



139



140



141



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Can patients
get it?

145

MAID 2.0
MAID 3.0

146

MAID 2.0

147

1. Qualified clinicians
2. Waiting periods

148

Qualified
clinicians

149

Traditional
rule

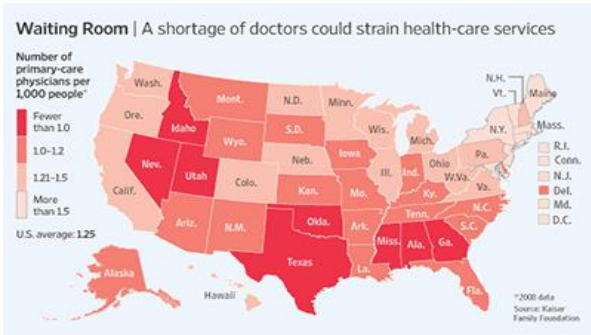
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Eligibility confirmed by **both** attending **and** consulting physician

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Attending + consulting clinician
MD or DO

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153

Extend to **NP PA**

154

IPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Physician Orders for Life-Sustaining Treatment (POLST)

A CARDIOPULMONARY RESUSCITATION (CPR): *Person has no pulse and is not breathing.*

Attempt Resuscitation/CPR (Action B: Full Treatment Requested) Do Not Attempt Resuscitation/DNR (Allow Natural Death)

B MEDICAL INTERVENTIONS: *Person has pulse and/or is breathing.*

Comfort Measures Only Use medication for any route, positioning, comfort care and other measures to relieve pain and suffering. Use no oxygen, fluids and artificial ventilation or delivery of heat unless requested by patient or authorized surrogate decision maker.

Limited Additional Interventions Includes care described above. Use medical treatment, medications, and IV fluids as requested. Do not intubate. May use non-invasive positive airway pressure. Do not attempt artificial nutrition.

Full Treatment Includes care described above. Use medication, artificial airway interventions, mechanical ventilation, and dialysis/continuous care as indicated. *Transfer to hospital if indicated.* Do Not Transfer to Hospital for medical interventions. Transfer if comfort needs cannot be met in current location. Artificially Administered Nutrition. Offer food by mouth if feasible and desired.

C ARTIFICIALLY ADMINISTERED NUTRITION: *Offer food by mouth if feasible and desired.*

An artificial nutrition by tube. Long-term artificial nutrition by tube. Do not use artificial nutrition by tube.

D SIGNATURES AND SUMMARY OF MEDICAL CONDITION:

Signature of Physician: Physician Name, Physician License #, Physician Phone Number, Date

Signature of Patient, Health Care Decisionmaker, Parent of Minor, Court Appointed Conservator, or Other: Name, Address, Relationship to Patient

Summary of Medical Condition: Name (print), Address (street only)

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED

155

ENACTED BILLS

NM **HI** **VA**
WA **IN**
DE

156

Waiting period

157

Traditional rule

158

15 day wait period

between requests

159



160

Assure request enduring

161

BUT

162

Undue burden

cannot wait that long

163

During the process

Lost capacity 35%

Died 19%

To cite: Sellar L, Boutillier M-E, Fraser V. *J Med Ethics* 2019;**45**:106–111.

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Response

165

Waive or
shorten
wait period

166

ENACTED

OR CA
NM

BILLS

HI WA
NC PA
AZ VT

167

That's
MAID **2.0**

168

MAID 3.0

169

1. Residency
2. Self-administration

170

Residency

171

Traditional rule

172

“resident
of _____”

173

BUT

174



175



176

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON
 PORTLAND DIVISION

NICHOLAS GIDEONSE, M.D.,

Plaintiff, Case No. 3:21-cv-1568

v.

KATE BROWN, in her official capacity as
 Governor of Oregon; ELLEN ROSENBLUM,
 in her official capacity as Attorney General of
 Oregon; PATRICK ALLEN, in his official

COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF

Pursuant to 42 U.S.C. § 1983

177

Oregon cannot
 limit MAID to
 Oregonians

178



179

“the citizens of each
 state shall be entitled to
 all privileges and
 immunities of citizens in
 the several states.”

180

Self-
administration

181

Traditional
rule

182

Ask & receive
prescription
drug

183

Self-administer
to hasten death

184

D-DMAPh



Compound - Digoxin, diazepam, morphine,
Amitriptyline, phenobarbital

185

Patient alone
takes final overt act

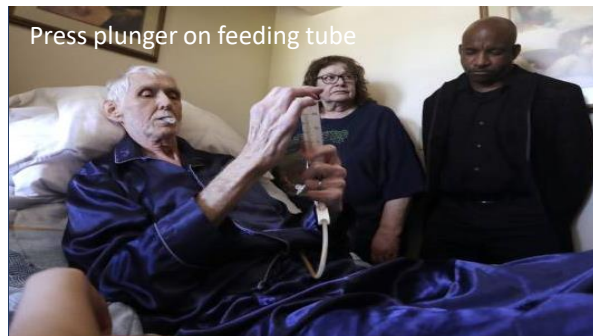
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Others may help
prepare meds

191

May not help
administer meds

192

BUT

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Early Stages of ALS

- ▶ Muscle weakness
- ▶ Muscle twitching (fasciculation)
- ▶ Muscle cramping
- ▶ Fatigue
- ▶ Poor balance
- ▶ Slurred speech

Middle Stages of ALS

- ▶ More severe muscle weakness
- ▶ Paralysis in some muscles
- ▶ Difficulty in swallowing
- ▶ Difficulty in eating/chewing
- ▶ Breathing issues
- ▶ Bouts of uncontrollable laughter or crying (pseudobulbar affect)

Late Stages of ALS

- ▶ Paralysis in most muscles
- ▶ Extremely limited mobility
- ▶ Inability to speak
- ▶ Inability to breath without assistance
- ▶ Inability to eat without assistance
- ▶ Inability to drink without assistance

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LONNY SHAVELSON, M.D., et al.,
Plaintiffs,
v.
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, et al.,
Defendants.

Case No. [21-cv-06654-VC](#)

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

Re: Dkt. No. 15

197

ELOA violates **Americans with Disabilities Act** because it discriminates against those physically unable to administer

198

That's
MAID **3.0**

199

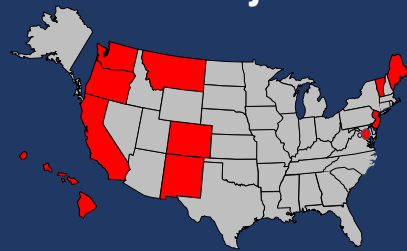
Conclusion

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2021

201

11 US jurisdictions



202

2022

203

Additional
jurisdictions

NY MA MD NH

204

More **accessible**

Eligibility Procedures

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W www.thaddeuspope.com

B medicalfutility.blogspot.com

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References

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Materials discussed in this
presentation are available at

<http://thaddeuspope.com>

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Laws Create an Underclass of Patients Based on Disability*
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INTERNATIONAL PERSPECTIVES ON END OF LIFE REFORM:
POLITICS, PERSUASION, AND PERSISTENCE (Cambridge
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THE RIGHT TO DIE: THE LAW OF END-OF-LIFE DECISIONMAKING (Wolters Kluwer Law & Business) (with Alan Meisel & Kathy L. Cerminara) (2020).

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The Changing Legal Climate for Physician Aid-in-Dying, 311(11) JAMA 1107-08 (2014) (with David Orentlicher and Ben A. Rich).

Oregon Shows that Assisted Suicide Can Work Sensibly and Fairly, NEW YORK TIMES - ROOM FOR DEBATE, Oct. 7, 2014.

Legal Briefing: Medical Futility and Assisted Suicide, 20(3) J. CLINICAL ETHICS 274-86 (2009).

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Medical Futility Blog

Since 2007, I have been blogging, almost daily, to medicalfutility.blogspot.com. This blog focuses on reporting and discussing legislative, judicial, regulatory, medical, and other developments concerning end-of-life medical treatment conflicts. The blog has received **over 4 million** direct visits. Plus, it is redistributed through WestlawNext, Bioethics.net, and others.

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