

VSED Legal Issues

Thaddeus Mason Pope, JD, PhD, HEC-C
End of Life Choices New York • Sept. 30, 2021

1

October 2016

2



3



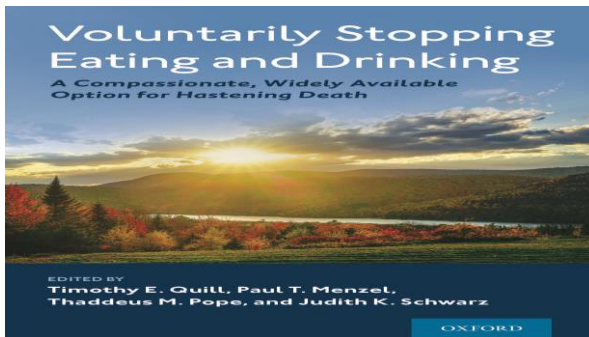
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No statutes Little caselaw

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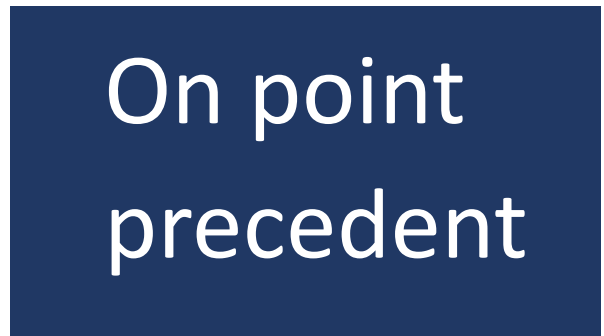
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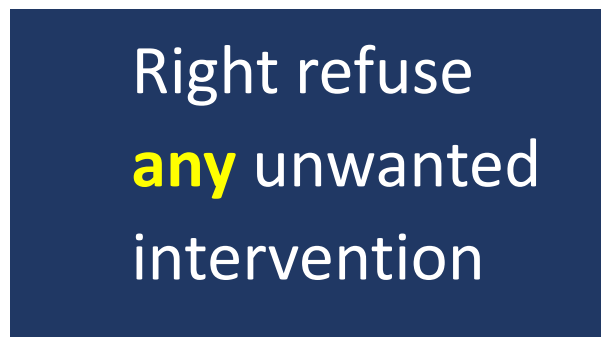
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Accepted by
medical
profession

13

No sanctions
imposed

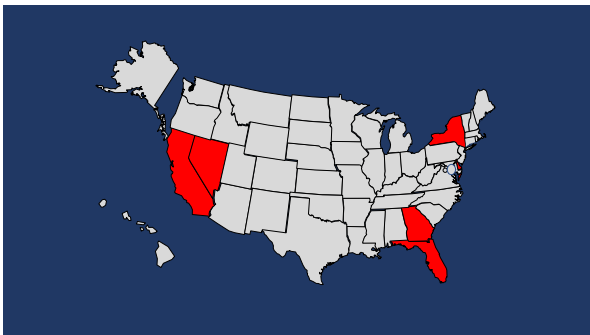
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**On-point
precedent**

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Multiple
appellate
court decisions

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G. Ross Henninger

Former college
president

in Syracuse
nursing home

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The New York Times N.Y. / Region

WORLD	U.S.	N.Y. / REGION	BUSINESS	TECHNOLOGY	SCIENCE	HEALTH	SPORTS	OPINION
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JUDGE SAYS AILING MAN, 85, MAY FAST TO DEATH

By DAVID MARGOLICK
Published: February 3, 1984

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A.B. v. C.
124 Misc.2d 672, 477 N.Y.S.2d 281
N.Y. Sup. 1984.
72477 N.Y.S.2d 281
A. B., Plaintiff,
v.
C. et al., Defendants
Supreme Court, Schenectady County

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Same in other
common law
countries

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SUPREME COURT OF SOUTH AUSTRALIA

(Applications Under Various Acts or Rules: Application)

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment. The onus remains on any person using material in the judgment to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court in which it was generated.

H LTD v J & ANOR

[2010] SASC 176

Judgment of The Honourable Justice Kourakis

15 June 2010

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bentley v. Maplewood Seniors Care Society*,
2014 BCSC 165

Date: 20140203
Docket: S135854
Registry: Vancouver

Between:

**Margaret Anne Bentley,
by her Litigation Guardian Katherine Hammond,
John Bentley and Katherine Hammod**

Petitioners

24



25

already
legal

26

Right to refuse
medical
treatment

27

No need for
direct, explicit
authority

28

already legal
existing rules

29

Right to
refuse
treatment

30

Well established
> 100 years

31



Mary Schloendorff

32

Patient Bill of Rights

10 NYCRR 405.7

33

Ventilator
Dialysis
CPR
Antibiotics
Feed tube

34

Right to
refuse **VSED**
treatment

35

Not DIY

36

Part of a broader
treatment plan

37

Supervised by
licensed healthcare
professionals

38

Recognized as
healthcare by
medical profession

39

More position
statements

40

More clinical
practice
guidelines

41

PAVSED

Palliated & Assisted
Voluntarily Stopping
Eating and Drinking

highlights medical role

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Recap

43

Right to
refuse
treatment

VSED

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Oral N&H =
“treatment”

45

BUT

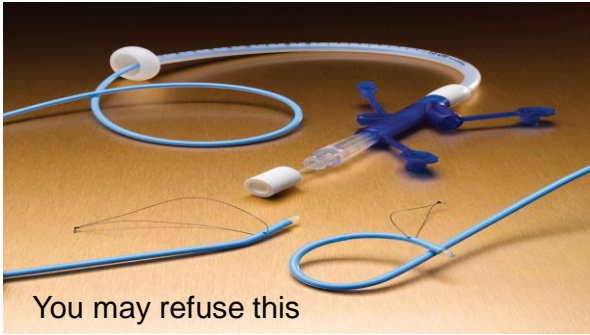
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Oral N&H \neq
“treatment”

47

Basic
care

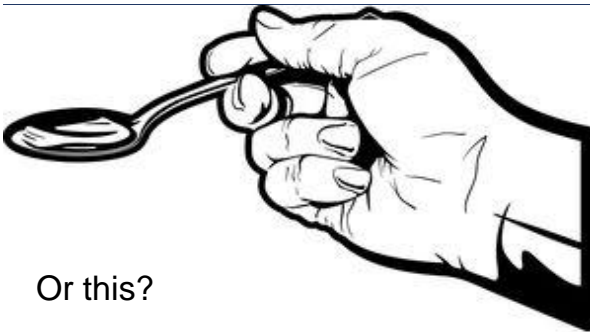
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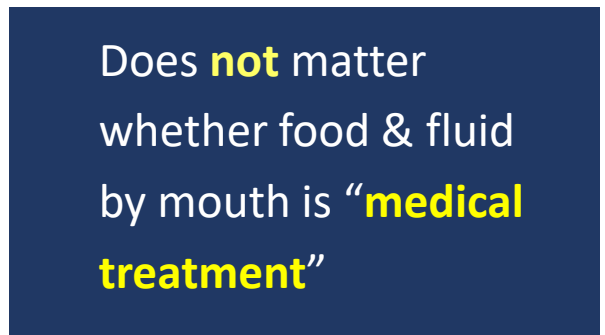
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Right to refuse
any intervention
(medical **or not**)

55

Right to refuse
any
unwanted contact

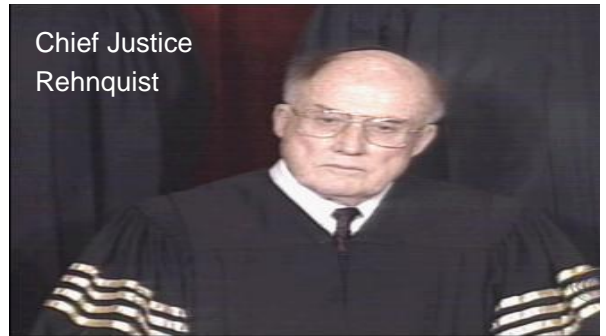
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Force feeding is a battery



57

Chief Justice
Rehnquist



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“bodily integrity is
violated . . . by sticking
a **spoon in your mouth** .
. . . sticking a needle in
your arm”

59

**Professional
societies**


60

Law **delegates & defers** to healthcare professionals

61

When medical profession says it is appropriate → law often **follows**

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POSITION STATEMENT 

Nutrition and Hydration at the End of Life

Effective Date: 2017
 Status: Revised Position Statement
 Written by: ANA Center for Ethics and Human Rights
 Adopted by: ANA Board of Directors

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American Medical Women's Association

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THE SOCIETY FOR POST-ACUTE AND LONG-TERM CARE MEDICINE

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Position Paper 

Ethical Aspects of Artificially Administered Nutrition and Hydration: An ASPEN Position Paper

Denise Baird Schwartz, MS, RD¹ ; Albert Barrocas, MD² 

Nutrition in Clinical Practice
 Volume 0 Number 0
 January 2021 1-14
 © 2021 American Society for Parenteral and Enteral Nutrition
 DOI: 10.1002/ncp.10635
 wileyonlinelibrary.com

WILEY

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e-SPEN guideline

ESPEN guideline on ethical aspects of artificial nutrition and hydration

Christiane Druml^{a,*}, Peter E. Ballmer^b, Wilfred Druml^c, Frank Oehmichen^d

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Wien Med Wochenschr
<https://doi.org/10.1007/s10354-018-0629-z>



Freiwilliger Verzicht auf Nahrung und Flüssigkeit um das Sterben zu beschleunigen

Eine Stellungnahme der österreichischen Palliativgesellschaft (OPG)

Angelika Feichtner · Dietmar Welker · Alois Birklbauer

Eingegangen: 6. September 2017 / Angenommen: 7. Februar 2018
 © Springer-Verlag GmbH Austria, ein Teil von Springer Nature 2018

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JOURNAL OF PALLIATIVE MEDICINE
 Volume 20, Number 1, 2017
 Mary Ann Liebert, Inc.
 DOI: 10.1089/jpm.2016.0290

Position Statement

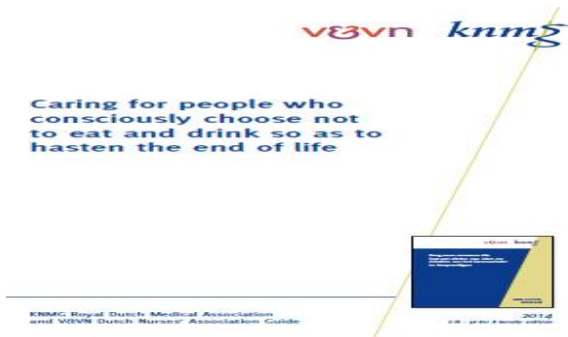
International Association for Hospice
 and Palliative Care Position Statement:
 Euthanasia and Physician-Assisted Suicide

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**More clinical
 guidance**

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JAMA Internal Medicine | Special Communication | HEALTH CARE POLICY AND LAW
**Voluntarily Stopping Eating and Drinking
 Among Patients With Serious Advanced Illness—
 Clinical, Ethical, and Legal Aspects**

Timothy E. Quill, MD; Linda Ganzini, MD, MPH; Robert D. Truog, MD; Thaddeus Mason Pope, JD, PhD

JAMA Internal Medicine January 2018 Volume 178, Number 1 123

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Journal of the
American Geriatrics Society



SPECIAL ARTICLE:
PALLIATIVE PRACTICE POINTERS

Voluntary Stopping Eating and Drinking

John W. Wax, MD, Amy W. An, MD, Nicole Kosier, MD, and Timothy E. Quill, MD

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No
sanctions

74

266 APPENDICES

Appendix E Personal Narratives

Earlier in this book, we presented nine original, never-before-published cases. We included four VSED cases in Chapter 1 and one more in Chapter 2. We included four SED by AD cases in Chapter 7. But we are not alone. Many individuals have written about their experience or their family member's experience with either VSED or SED by AD. This Appendix includes citations and links to these personal narratives. These are grouped into four sections: (1) books, (2) articles, (3) video and audio recordings, and (4) collections of cases.

I. Books

Brewer, Colin O. 2019. *Let Me Not Get Alzheimer's, Sweet Heaven: Why Many People*

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Used &
reported

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No liability
No HC licensing
board discipline

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Thank you

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www.thaddeuspope.com

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