

Legal Update on MAID, VSED & PSU in the United States

Thaddeus Mason Pope
Harvard Medical School
Annual Bioethics Conference
April 11, 2019

1

Nothing to disclose

2

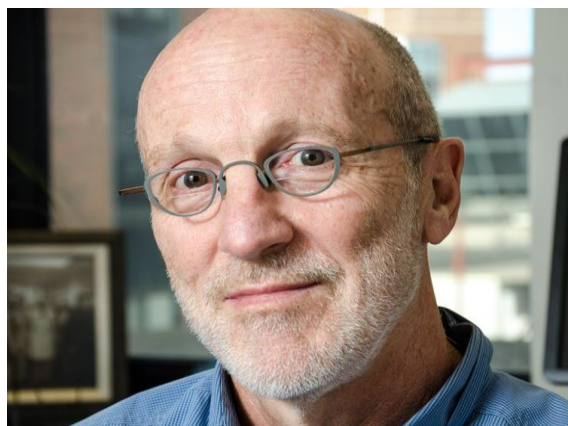
Defining death
Controlling death



3



4



5

6 Last resort options

6

High dose opioids
 Stopping life-sustaining therapy
 Voluntarily stopping eating & drinking
 Palliative sedation to unconsciousness
 Medical aid in dying
 Voluntary active euthanasia

7

Most accepted



Least accepted

8

High dose opioids
 Stop life-sustaining therapy
 Voluntarily stopping eating & drinking
 Palliative sedation to unconsciousness
 Medical aid in dying
 Voluntary active euthanasia

9



10

UNPAID MEMBER'S DECLARATION OF FAITH TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Physician Orders for Life-Sustaining Treatment (POLST)

Print, follow these orders, then contact physician. This is a Physician Order. These orders are not to be altered. Any changes are subject to physician approval. An authorized health care professional must be present at all times. (Print name) _____ Date: _____

A. CARDIOPULMONARY RESUSCITATION (CPR) Person has no pulse and is not breathing. (Circle B or Full Treatment) **Attempt Resuscitation/CPR** **Do Not Attempt Resuscitation/DNR** (After National Do Not Resuscitate Order)

When not in cardiopulmonary arrest, follow orders in **B** and **C**.

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

Comfort Measures Only: Only interventions to relieve suffering. Interventions to prolong life, such as intubation and mechanical ventilation, are not to be used. (After National Do Not Resuscitate Order)

Limited Additional Interventions: Includes care described above. Use medical treatment, including intubation, to keep the patient comfortable. Do not use mechanical ventilation or pressor support. Generally avoid intravenous care.

Full Treatment: Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and other life-sustaining care as indicated. Treatable if indicated. Includes intravenous care.

Additional Orders: _____

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

Artificial Nutrition by Tube: **Do Not Administer** or artificial nutrition by tube.

Additional Orders: _____

D. SIGNATURES AND SUMMARY OF MEDICAL CONDITION:

Patient Health Care Representative Proxy of Patient Court Appointed Conservator Other _____

As representative whose authority is the basis of my knowledge that these orders are consistent with the patient's medical condition and preferences.

Signature of Physician _____ Date: _____

Physician Signature Required _____ Hospital/Clinic ID: _____

Signature of Patient, Decedent/Next of Kin or Conservator _____

By signing this form, the signer recognizes and understands and acknowledges that the medical orders regarding resuscitation measures in sections A and B, and the decision regarding artificial nutrition in section C, are consistent with the patient's wishes as expressed in this signed form.

Number of Medical Orders: _____

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED



11

High dose opioids
 Stop life-sustaining therapy
 Voluntarily stopping eating & drinking
 Palliative sedation to unconsciousness
 Medical aid in dying
 Voluntary active euthanasia

12



(but see CA NL)

13

Will **not** discuss

Definitely accepted

Definitely not accepted

14

High dose opioids

Stop life-sustaining therapy

Voluntarily stopping eating & drinking

Palliative sedation to unconsciousness

Medical aid in dying

Voluntary active euthanasia

15

Roadmap

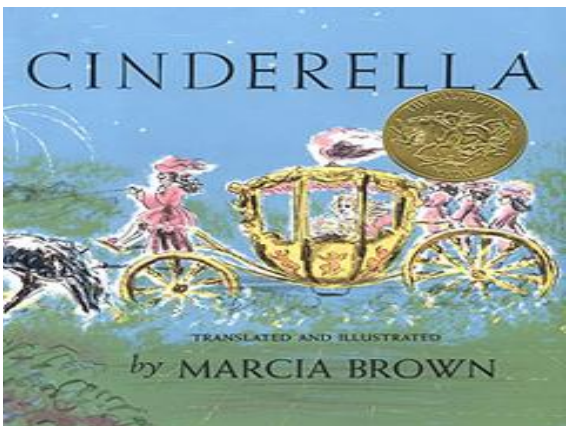
16

MAID

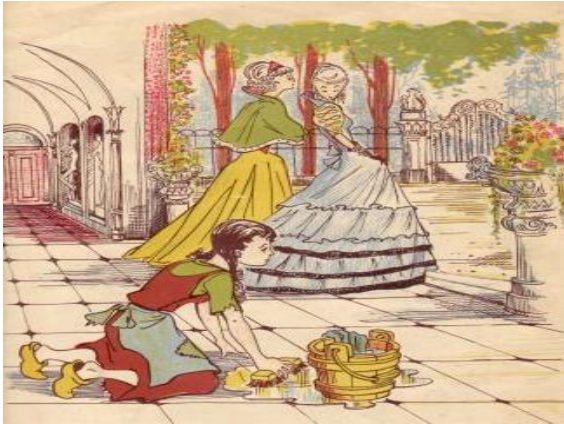
VSED

PSU

17



18



19



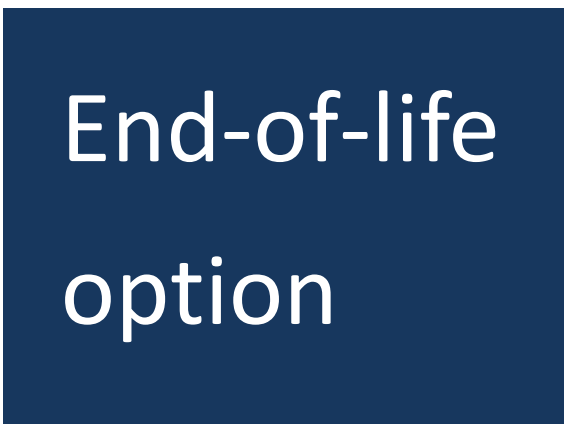
20



21



22



23



24

Who

25

Adults

> 18 years old

26

Decisional
capacity

27

Terminally ill

6-mo prognosis

28

What

29

Ask & receive
prescription

drug

30

Self-administer
to hasten death

31

Early efforts

1988 California
1991 Washington
1992 California
1994 Michigan

32

BUT

33

Legalize **both**
euthanasia
and MAID

34

MAID

Self ingestion

Patient takes the
final overt act

35

1994 (1997)

36



37

Numerous safeguards

38

Multiple requests
Multiple screenings

39

Prescribing MD
Consulting MD
Mental health MD

40



41

Voluntary
Informed
Enduring

42



PROVEN TRACK
RECORD

43



Model followed

44



45



46



47



48



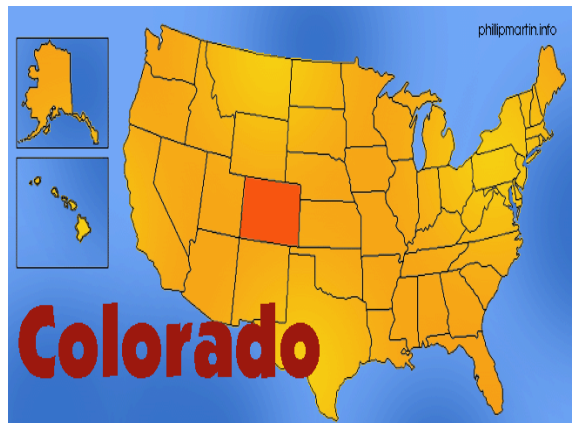
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50



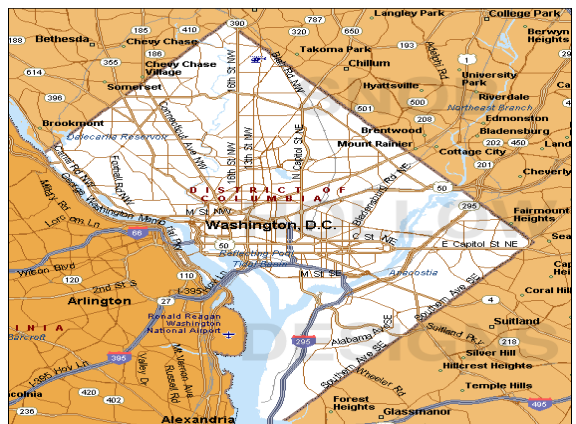
51



52



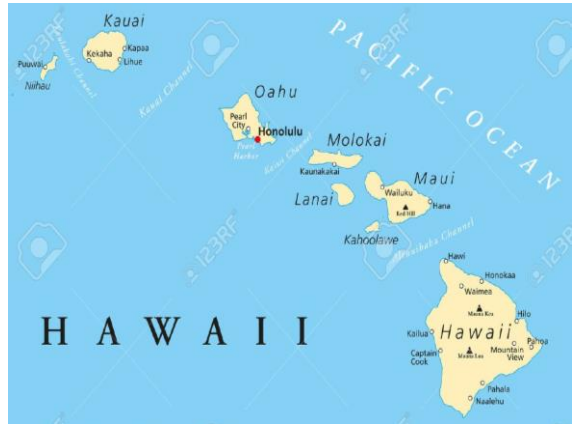
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54

2018

55



56

2019

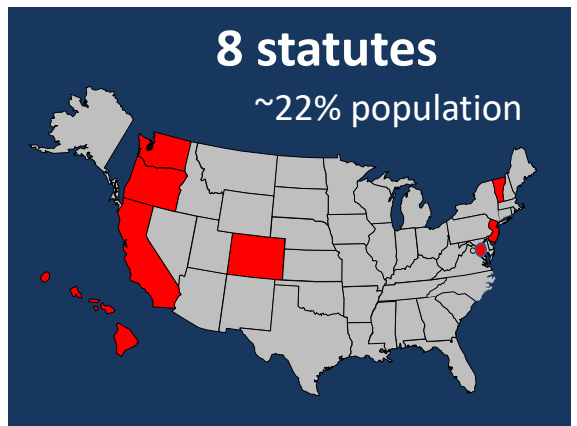
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58



59



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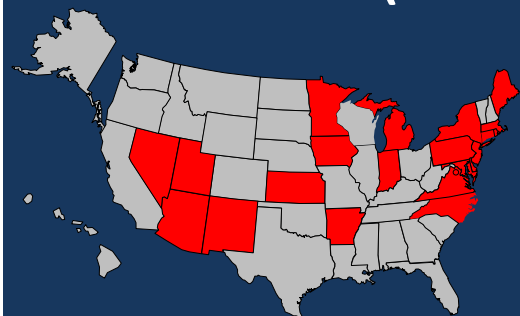
>50 years
of combined
experience

61

Ongoing

62

>20 bills (2019)



63

BUT

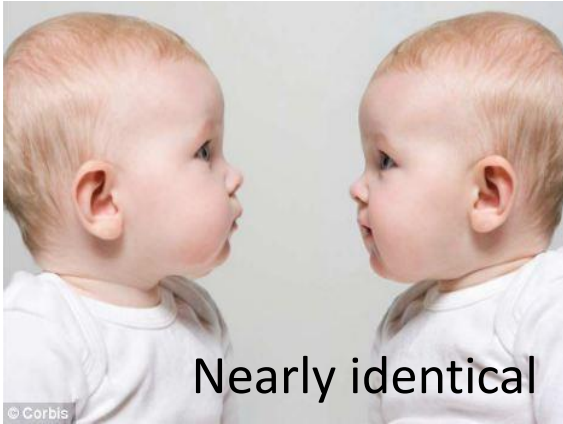
64

Criticism
Oregon
Model

65

CA	NJ
CO	OR
DC	VT
HI	WA

66



67

Successful
No evidence
of abuse

68

BUT

69

Too
protective

70

Unduly
restrict
access

71

Eligibility
criteria

Process
requirements

72

Eligibility
criteria

73

Adult
Terminally ill
Capacity

74

1

75

Adult

76

18+

77



78



79



80



81



82



83



84

Terminal
illness

85

“death within
six months”

86

Matches
hospice
eligibility

87

BUT

88

Temporally
strict

89

unbearable
suffering

90



HB 2232

91

Reasonably
predictable

92



93

3

94

Capacity

95

“solely and directly
by the individual . . .
**not . . . advance
directive”**

96

BUT

97



98

Terminal →
no capacity

99

Capacity →
not terminal

100

Advance
requests

101



102

Push to
expand
eligibility

103

Push to
reduce
procedures

104

1

105

15 day
waiting
period

between requests

106



107

Assure
request
enduring

108

BUT

109

Undue burden

Cannot wait that long

110



111

2

112

Self ingest

113

Physician only prescribes
Patient administers

114

Helps
assure
voluntary

115

BUT

116

Lose
ability

117

Complications

118

2018

» Oregon Death
with Dignity Act

2018 Data Summary

119

Complications ^a	(N=1,459)
Difficulty ingesting/regurgitated	28
Seizures	2
Other	11
None	650
Unknown	768
Other outcomes	
Regained consciousness after ingesting DWDA medications	8

120



121



122



123



124



125



126

Extend to
NPs

127

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

Physician Orders for Life-Sustaining Treatment (POLST)

First follow these orders, then contact physician. This is a Physician Order Sheet limited to the person's current medical condition and wishes. Any condition not completely treated at time of this document, everyone shall be treated with dignity and respect.

Last Name: _____
First Middle Name: _____
Date of Birth: _____ Date Form Prepared: _____

A **CARDIOPULMONARY RESUSCITATION (CPR):** *Person has no pulse and is not breathing.*
 Attempt Resuscitation/CPR Do Not Attempt Resuscitation/DNR (Allow Natural Death)
 When not in cardiopulmonary arrest, follow orders in B and C.

B **MEDICAL INTERVENTIONS:** *Person has pulse and/or is breathing.*
 Comfort Measures Only: Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Antibiotics only to promote comfort. **Transfer if comfort needs cannot be met at current location.**
 Limited Additional Interventions: Includes care described above. Use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. **Do Not Transfer to hospital for medical interventions. Transfer if comfort needs cannot be met at current location.**
 Full Treatment: Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.**
 Additional Orders: _____

C **ARTIFICIALLY ADMINISTERED NUTRITION:** *Offer food by mouth if feasible and desired.*
 No artificial nutrition by tube. Defined trial period of artificial nutrition by tube.
 Long-term artificial nutrition by tube.

D **SIGNATURES AND SUMMARY OF MEDICAL CONDITION:**
 Disposed with: Patient Health Care Decisionmaker Parent of Minor Court Appointed Conservator Other:
Signature of Physician: My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences.
 Print Physician Name: _____ Physician Phone Number: _____ Date: _____
 Physician Signature (required): _____ Physician License #: _____
Signature of Patient, Decisionmaker, Parent of Minor or Conservator: By signing this form, the health care provider acknowledges that this request regarding resuscitative measures is consistent with the person's desire (if, and with the best interest of, the individual who is the subject of the form).
 Signature (required): _____ Name (given): _____ Relationship (write self if patient): _____
 Summary of Medical Condition: _____ Office Use Only

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED

128



129



130

Eligibility
criteria

Process
requirements

131

OR model
statutes

limit access

132

Why need a statute

133

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

134



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

135

Minnesota

136

Chapter 609 Criminal Code

137

“Whoever . . . **assists**
another in taking the
other’s life may be
sentenced to . . . 15
years . . . \$30,000”

609.215

138

MAID = AS

AS = felony

MAID = felony

139

CA

NJ

CO

OR

DC

VT

HI

WA

140

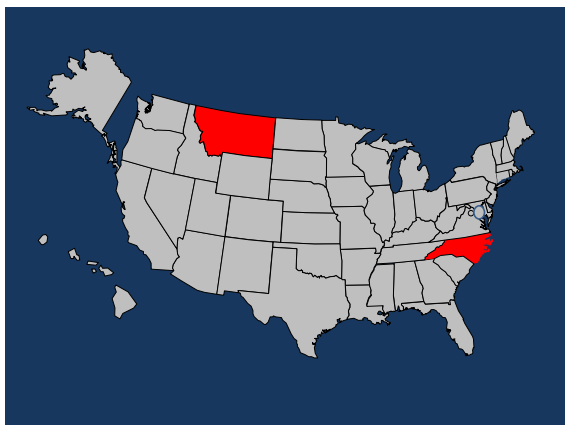
BUT

141

MAID

**Criminal
prohibition**

142



143



144

No MAID
statute

145

BUT

146

Considered
legal

147

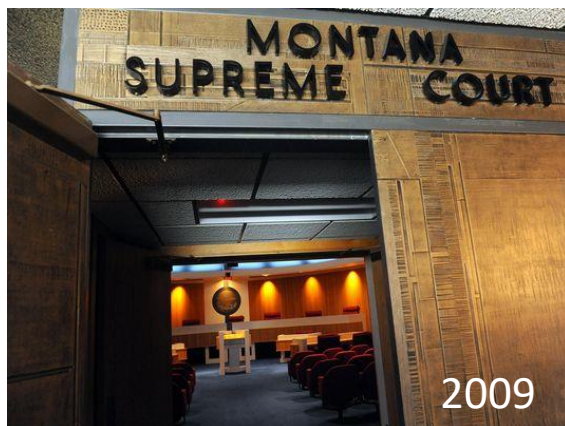


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“**consent** of
the victim. . .
is a **defense**”

Mont. Code Ann. 45-2-211

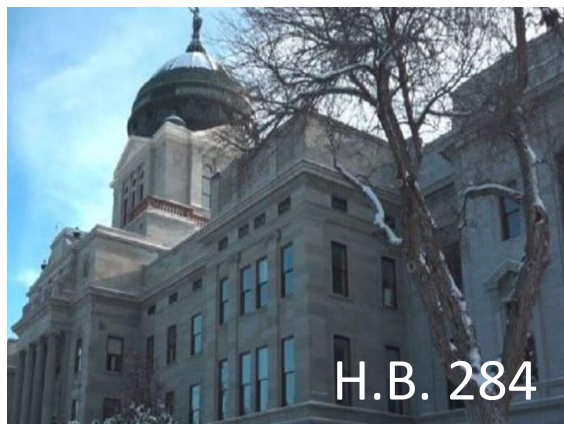
149



150

Patient consent
↓
Not prohibited

151



152




153

No MAID
prohibition

154

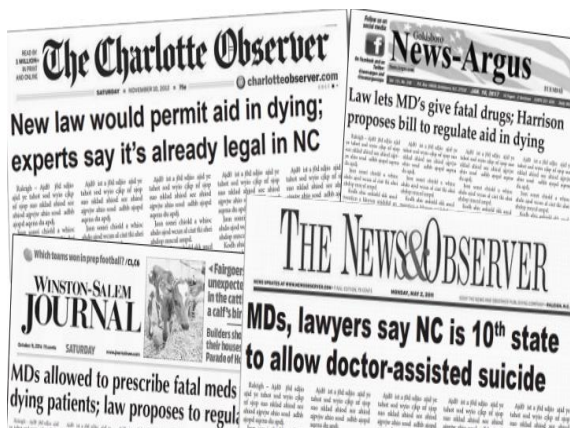
No need
explicit
authorization

155



N.C. Med J.
2019
80(2):128

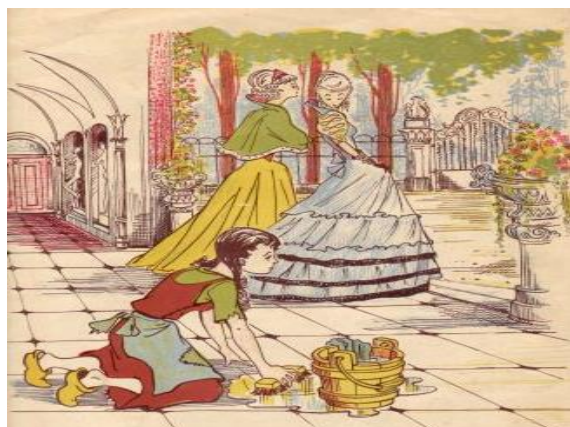
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157



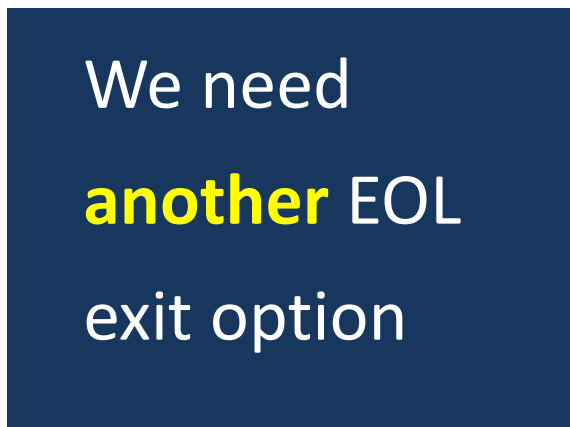
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159



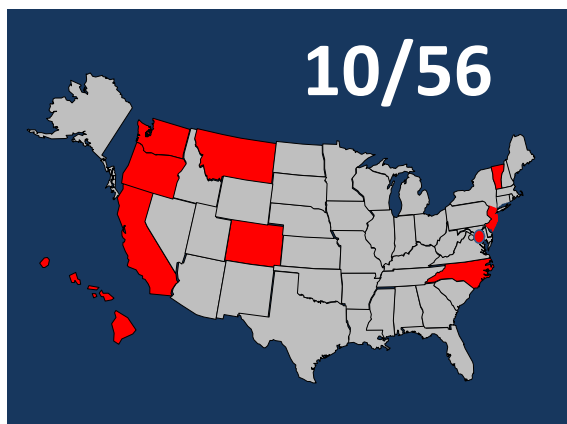
160



161



162



163

Even in
MAID
jurisdictions

164

Cannot satisfy
eligibility
conditions

165

What is
VSED

166

Voluntarily
Stopping
Eating &
Drinking

167

3

168

Physiologically
able to take food
& fluid by mouth

169

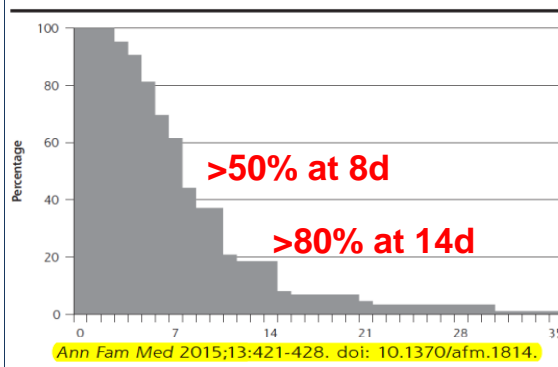
Voluntary,
deliberate
decision to stop

170

Intent
death from
dehydration

171

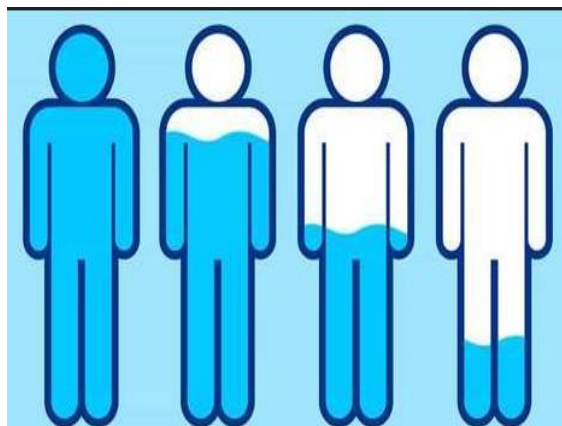
Figure 1. Cumulative survival curve for duration until death after start of VSED.



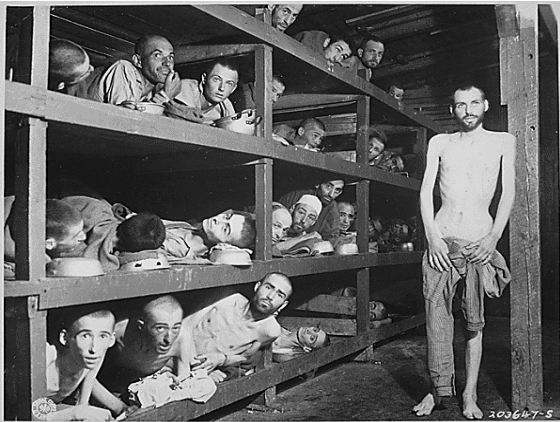
172

Patient
experience

173



174



175

VSED is **not**
starvation

176

Dehydration
is complete
& controlled

177

VSED
peaceful

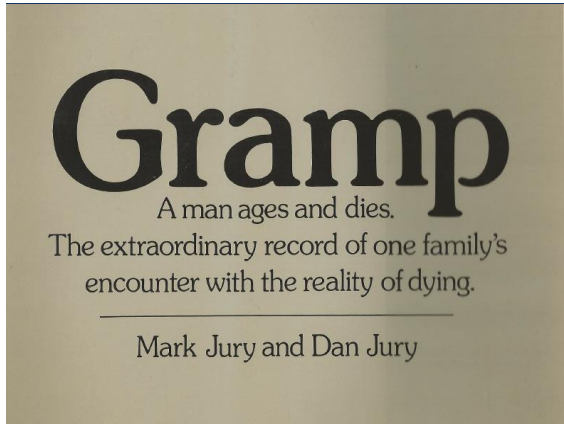
178

1st person
narratives

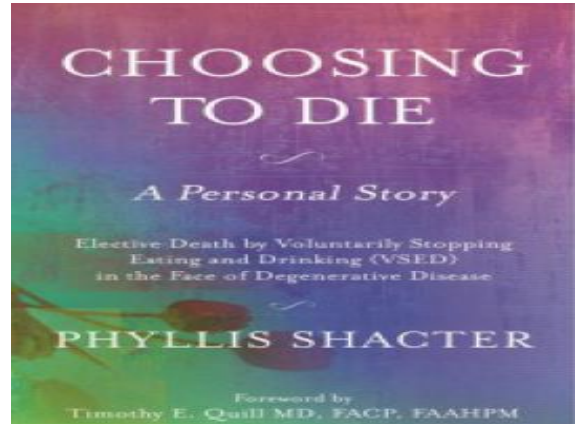
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Books

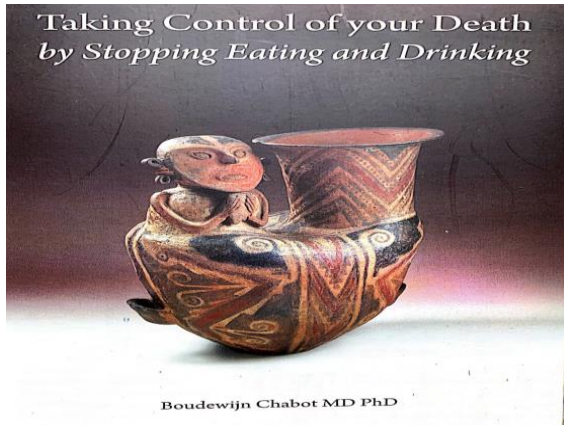
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183



184



185



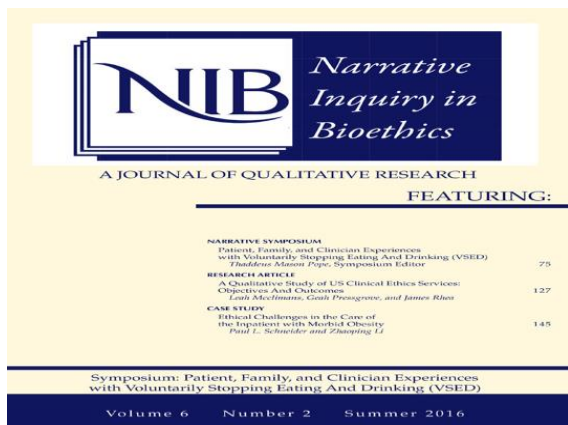
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187



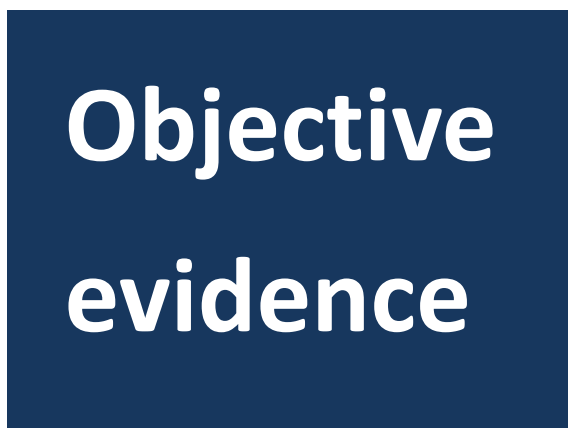
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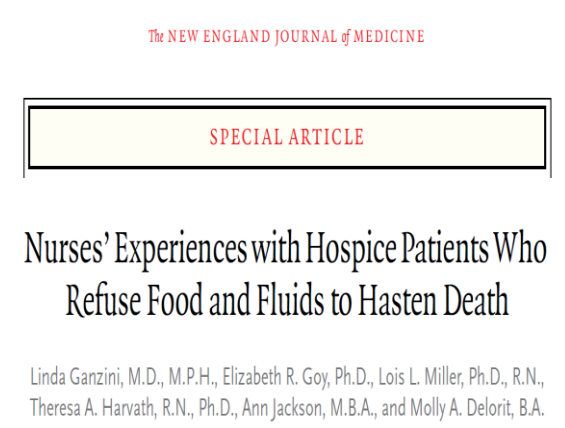
189



190



191



192

100 Oregon
nurses cared for
VSED patients


193

Most deaths
“**peaceful**, with
little suffering”

194



195

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

196



197



198

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

Position Statement

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

199

Austrian Palliative Society (OPG)

themenschwerpunkt

Wien Med Wochenschr
<https://doi.org/10.1007/s10354-016-0629-z>



Freiwilliger Verzicht auf Nahrung und Flüssigkeit um das Sterben zu beschleunigen

Eine Stellungnahme der österreichischen Palliativgesellschaft (OPG)

Angelika Felchtner · Dietmar Webxler · Alois Birklbauer

Eingegangen: 6. September 2017 / Angenommen: 7. Februar 2018
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March 9

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

201



Clinical guidance

202

v8vvn knmg

Caring for people who
consciously choose not
to eat and drink so as to
hasten the end of life



KNMG Royal Dutch Medical Association
and V8VVN Dutch Nurses' Association Guide

203

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. Truong, 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

205

Legal status

206

No statutes
Little caselaw

207



208

BUT

209

No need for
direct, explicit
authority

210

Already legal
under
existing rules

211

**Right to
refuse
treatment**

212

Well established
4 decades

213

Vent
Dialysis
CPR
Antibiotics
Feed tube

214

**Right to
refuse** **VSED**
treatment

215

Not DIY

216

Part of
broader
treatment
plan

217

Supervised
by licensed
healthcare
professionals

218

Recognized as
healthcare by
medical
profession

219

More position
statements

220

More clinical
guidelines

221

PAVSED

Palliated & Assisted
Voluntarily Stopping
Eating and Drinking

highlights medical role

222

Recap

223

Oral N&H =
“treatment”

224

Right to
refuse 
treatment

225

BUT

226

Oral N&H \neq
“treatment”

227

“Basic”
care

228

That's
okay

229

Does **not** matter
whether food &
fluid is "**medical
treatment**"

230

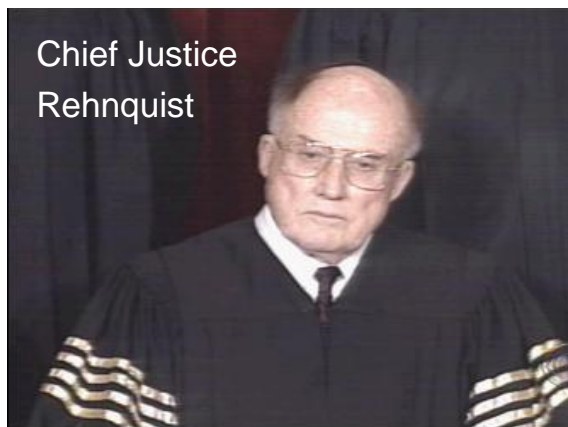
Right to refuse
any intervention
(medical **or not**)

231

Right to refuse
any
unwanted contact

232

Chief Justice
Rehnquist



233

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

234

Force feeding is a battery



235

In sum

236



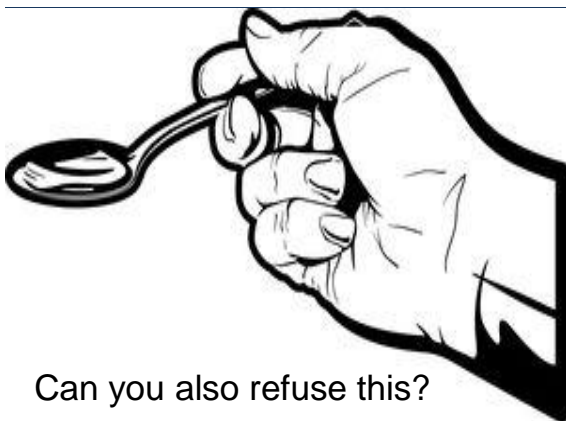
You can refuse this

237

Can you also refuse this?



238



Can you also refuse this?

239

Consensus
is "yes"

240

BUT

241



242

**Advance
VSED**

243

Advance
directive **now**
for VSED **later**

244



245

**Direct VSED
in future**

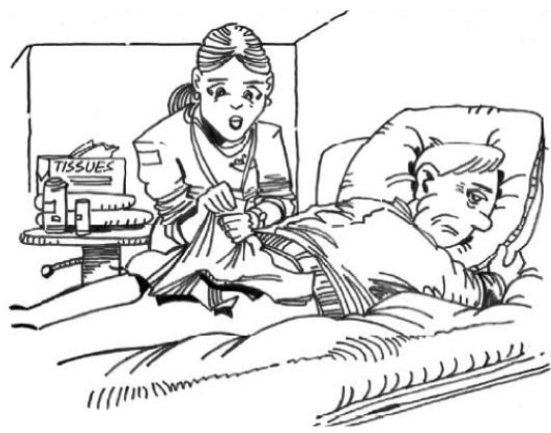
246

At a **point**
you specify

247



248



249



250

Lose capacity
before life
intolerable

251

Advantage

252

Death not
hastened **until**
point you find
life intolerable

253

Avoid

Premature
dying

254

Is a VSED
directive
enforceable?

255

Generally,
yes

256

**Right to
refuse **VSED**
treatment**

257

**Seemingly
bad
precedent**

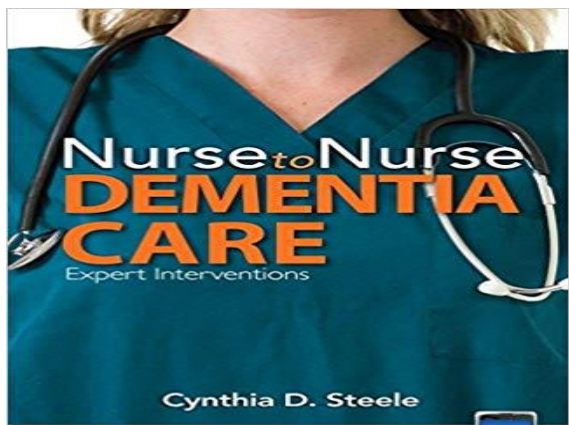
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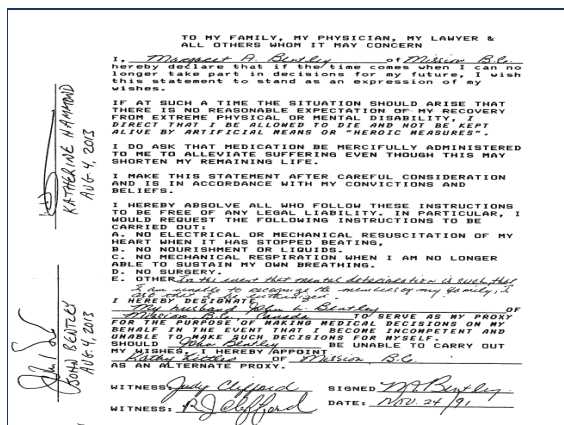
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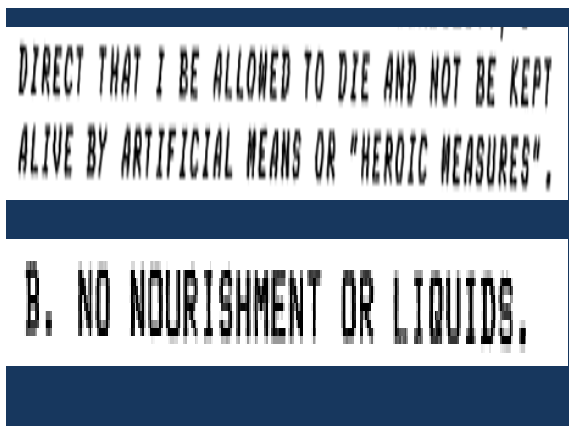
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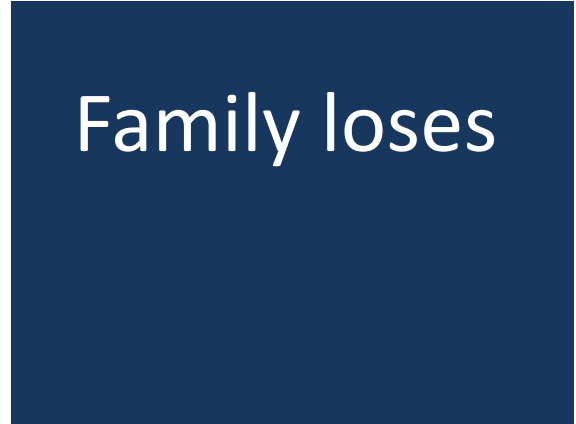
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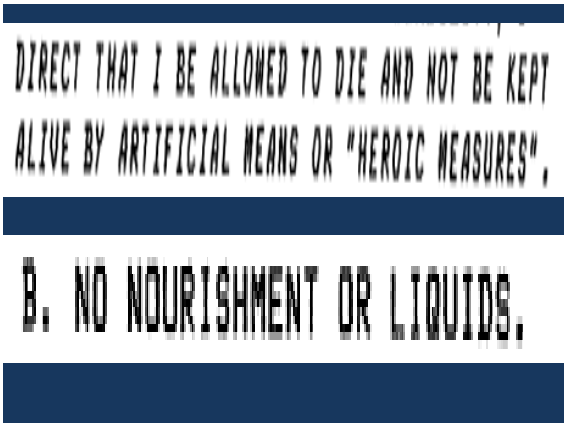
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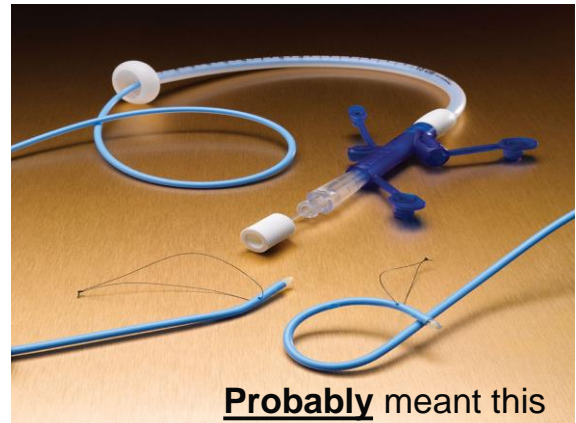
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266



267



268



269



270

PART 1: POWER OF ATTORNEY FOR HEALTH CARE

I revoke all prior advance health care directives and durable powers of attorney for health care signed by me. This document shall not be affected by my subsequent incapacity. I am not a patient in a skilled nursing facility, and I am not a conservatee.

1.1 NAME AND ADDRESS OF PRINCIPAL. My name and address are:

Nora R. Harris, 83 Arnold Drive, Novato, CA 94949

PART 2: INSTRUCTIONS FOR HEALTH CARE

2.1 END-OF-LIFE DECISIONS. I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

NRH a. I Choose NOT To Prolong Life. If I initial this line, I do not want my life to be prolonged and I do not want life-sustaining treatment to be provided or continued if any of the following conditions apply:

271

Family **unable**
to enforce
VSED directive

272

BUT

273

Fixable
problems

274

Be clear on
the “what”

275

If you mean
hand feeding,
say “hand
feeding”

276



**ABOUT THE ADVANCE DIRECTIVE FOR
RECEIVING ORAL FOOD AND FLUIDS IN DEMENTIA**

277

“If I am suffering
from advanced
dementia . . .

**I do NOT want
to be fed by hand”**

278

**Bigger
problem**

279

**Incapacitated
veto**

280



**ABOUT THE ADVANCE DIRECTIVE FOR
RECEIVING ORAL FOOD AND FLUIDS IN DEMENTIA**

281

No hand feeding
even if “appear to
cooperate in being
fed by opening
my mouth”

282



283

Whose
wishes do
we respect?

284

Prior self
or
Current self

285

VSED Ulysses
clauses are
unwelcome

286



287

Duties to
current self
are primary

288



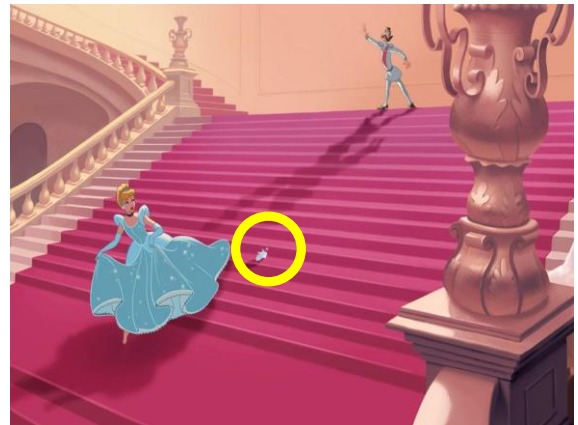
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290



291



292



293

Terminal sedation
Continuous deep sedation
Palliative sedation
Controlled sedation

294



295

Degree

Mild \longrightarrow Deep

Unconscious

296

Duration

Temp \longrightarrow Perm

Respite Intermittent Continuous

297

PSU makes
Pt depend
on **CANH**

298

Pt usually
refuses
CANH

299

Suffering
Intolerable
Refractory
Last resort only

300

Legal
status

301

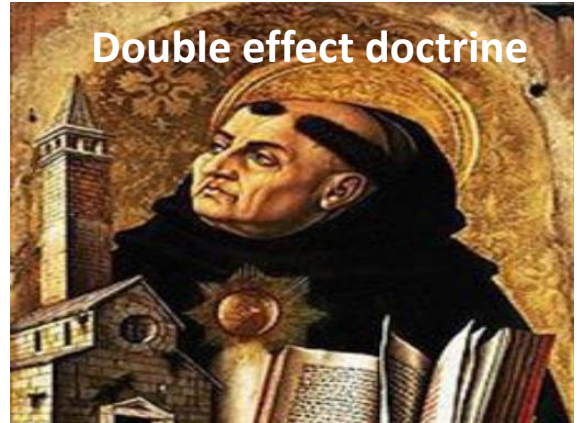
No statutes
Little caselaw

302

BUT

303

Double effect doctrine



304

Intent ≠ death
Intent = relieve
suffering

305

Means ≠ death
Means = unconscious

306



307

“patient . . . suffering from a terminal illness and . . . experiencing great pain has **no legal barriers** . . .

308

. . . to obtaining medication . . . to alleviate that suffering, **even to the point** of causing unconsciousness and **hastening death**”

309



**Hargett
v.
Vitas**

(Alameda Sup. Ct. 2014)

310

Typically
1-10 days
Physical suffering

311

AMA
AMERICAN MEDICAL ASSOCIATION

ACP
American College of Physicians
Leading Internal Medicine, Improving Lives

aahpm
AMERICAN ACADEMY OF HOSPICE AND PALLIATIVE MEDICINE

AAPM
HOSPICE & PALLIATIVE NURSES ASSOCIATION
American Academy of Pain Medicine

National Hospice and Palliative Care Organization

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313

>10 days

Existential suffering

314



315

MAID

VSED

PSU

316

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Materials discussed
in this presentation
are available at

<http://thaddeuspope.com>

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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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