

Death with Dignity

Evolving Legal Status of Medical Aid in Dying

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University of Kentucky HealthCare
Clinical Ethics Grand Rounds
Tuesday, October 8, 2019

1



2

Nothing
to disclose

3

except ...

4



5

September 2019

*Informed
Consent 101*



6



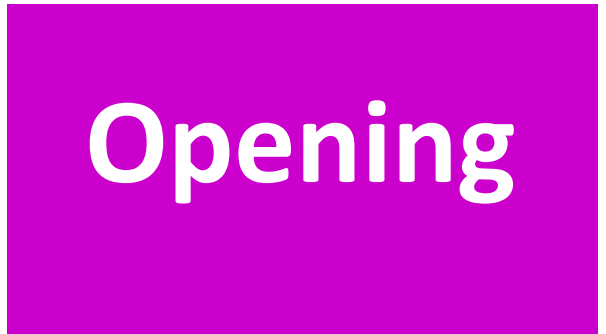
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8



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10



11



12

600,000

13

cancer

14

Control timing &
manner of death

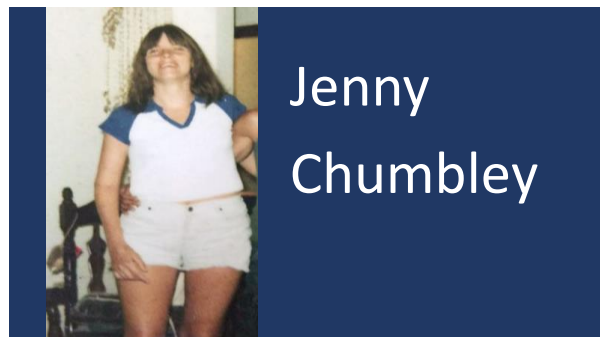
15

Case 1

16



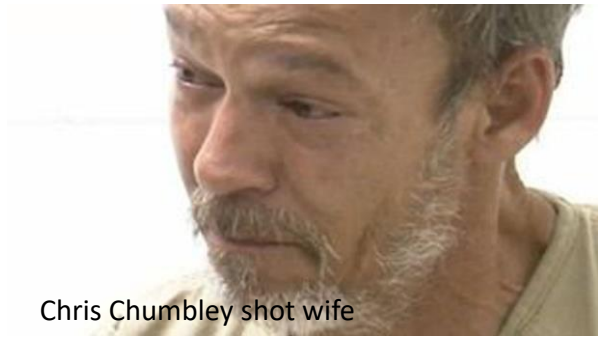
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19



Chris Chumbley shot wife

20



21



22



23



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6 last resort options

25



26

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

27

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

28



29



30



Medical Order for Scope of Treatment



31

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

32



33

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

34



35

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

36

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

37



38

Will **not** discuss

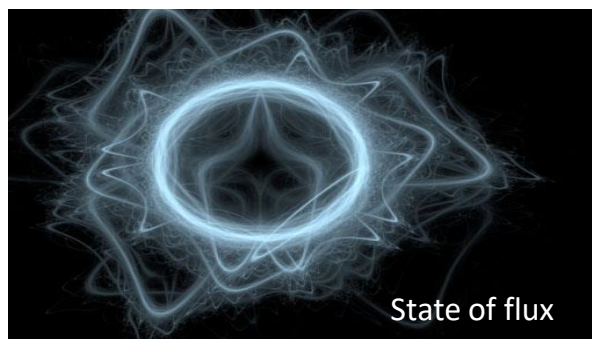
Accepted

Not accepted

39

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

40



41



42

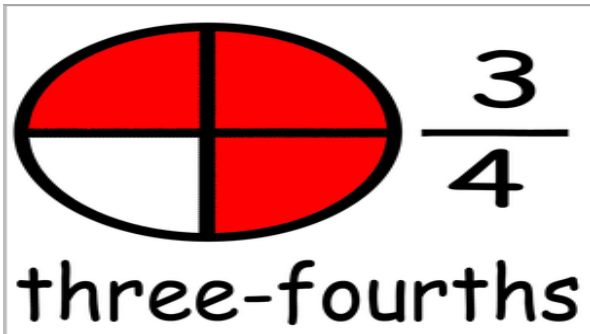
Cancer

43

22%

total deaths

44



45

Roadmap

46

6 parts

47

What is MAID?

48

Why need
to legalize?

49

History of
legalization

50

How has MAID
been used?

51

2 debates

52

Too
permissive

53

Too
restrictive

54

What is
MAID?

55

End-of-life
option

56

For **small**
number of
patients

57

Who

58

Adults
> 18 years old

59

Decisional
capacity

60

Terminally ill
< 6-mo prognosis

61

What

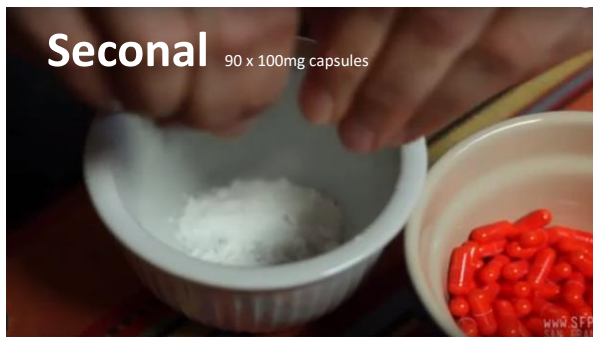
62

Ask & receive
prescription
drug

63

Self-administer
to hasten death

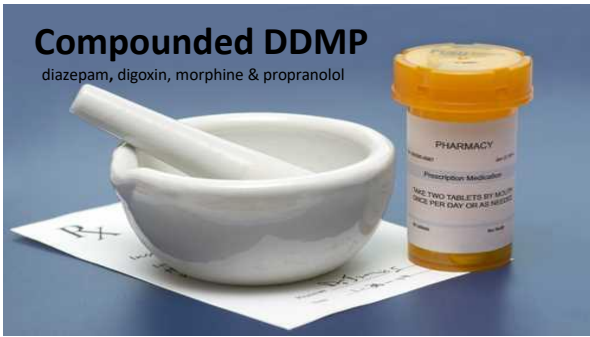
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65



66



67

The New York Times

68

Aid in Dying Soon
Will be Available
to More Americans

July 8, 2019

69



70



71

Why need
a statute

72

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

73



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

74



75

Ky. Stat.
216.302

76

“**Class D felony** ... provide
the physical means by
which another person
commits ... suicide”

77

MAID = AS

78



79

MAID = AS
AS = felony

MAID = felony

80

Penalties

81

2

82

Ky. Stat.
532.020

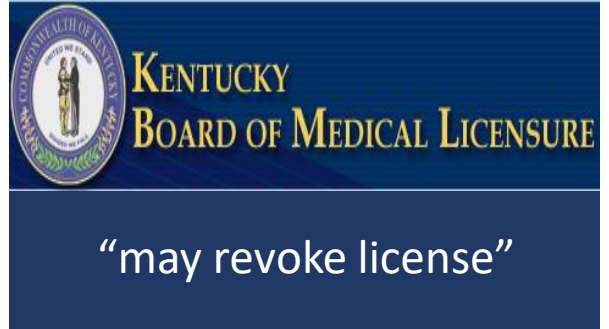
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84

Ky. Stat.
216.308

85



86

9 MAID
statutes

87

CA	HI	OR
CO	ME	VT
DC	NJ	WA

88

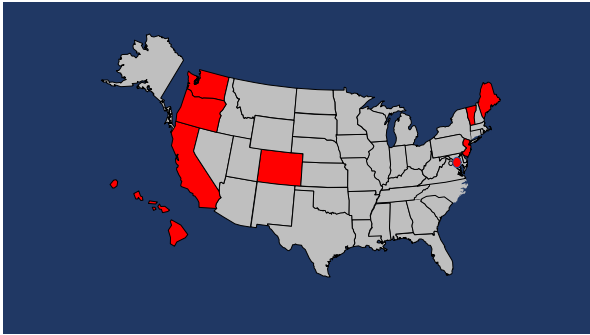
MAID \neq AS

89

MAID

**Criminal
prohibition**

90



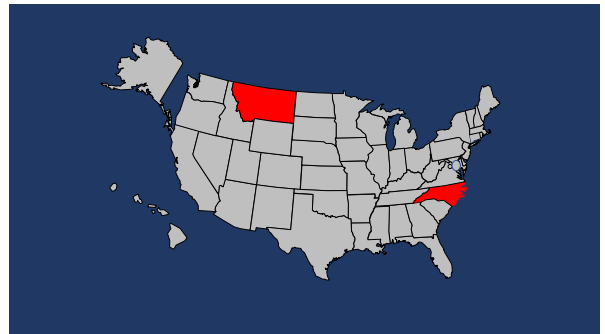
91

MAID is
legislatively
authorized

92

BUT

93



94



95

No MAID
statute

96

BUT

97

Considered legal

98



99

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

Mont. Code Ann. 45-2-211

100



101

Patient consent

↓

Not prohibited

102



103



104

No MAID
prohibition


105

Therefore,

106

No need
explicit
authorization

107

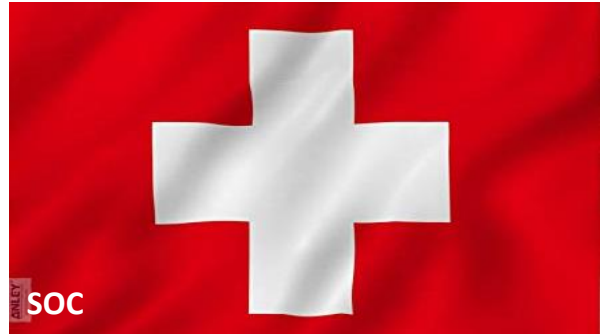


N.C. Med J.
80(2):128
2019

108



109



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111



112



113



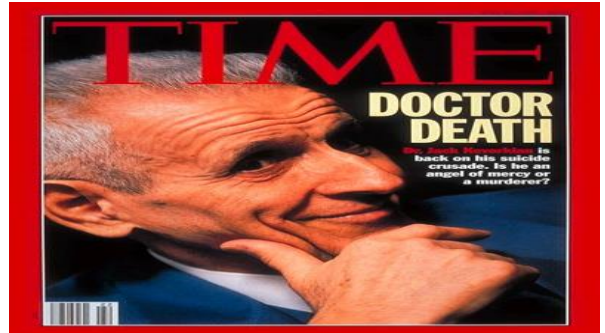
114

Path 1

Litigation

US Constitution

115



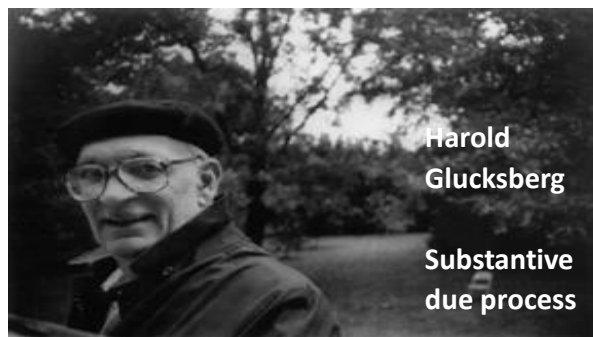
116

1994

117



118



119



120



121



122



123



124



125



126

“no”

127

No federal
constitutional
right to MAID

128

So...

129

Focus on rights
at **state** level

130



131

“entrusted to ...
**laboratory of
the states”**

132

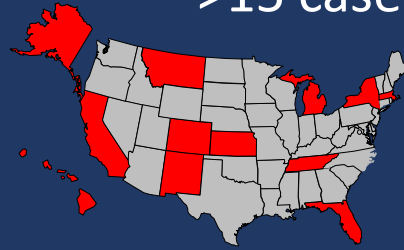
Path 2

Litigation

state constitutions

133

>15 cases



134

All 15
failed

135

Active
case

136



Roger
Kligler
MA

137

Recap

138

No right under
US constitution

139

No right under
state constitutions

140

Path 3
State statutes

141

Early efforts

1988	California
1991	Washington
1992	California
1994	Michigan

142

BUT

143

Legalize **both**
euthanasia
and MAID

144

MAID

Self ingestion

Patient takes the
final overt act

145

Euthanasia

Clinician makes
the final overt act

146

46/54

147

All U.S. bills
focus on
MAID **only**

148

1994

(1997)

149



150

Numerous safeguards

151

Multiple requests
Multiple screenings

152

Prescribing MD
Consulting MD
Mental health MD

153



154

Voluntary
Informed
Enduring

155



156



157



158



159



160



161



162



163



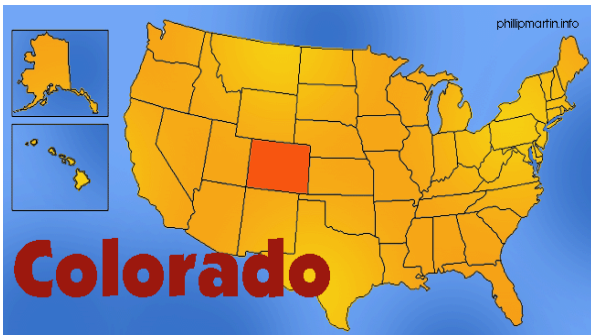
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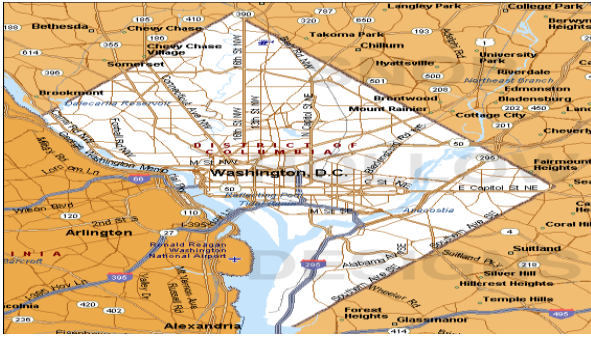
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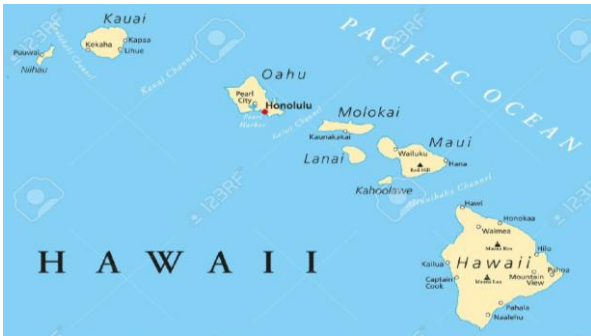
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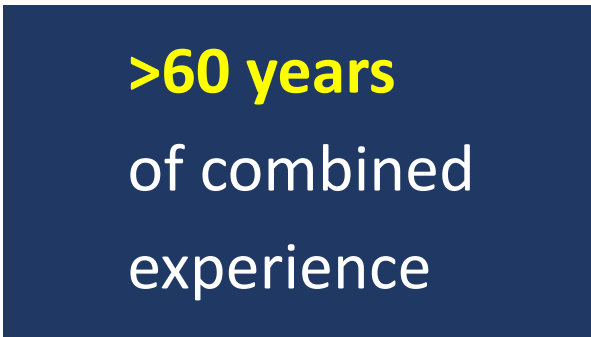
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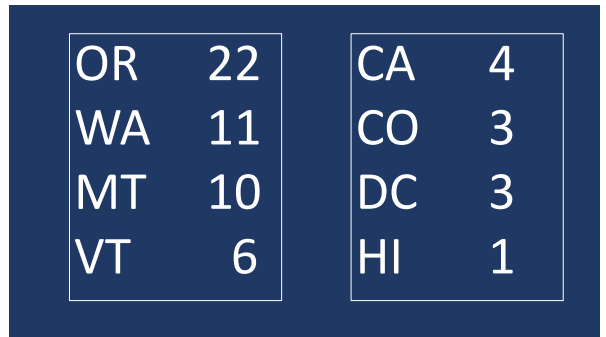
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172



173



174

OR	22	CA	4
WA	11	CO	3
MT	10	DC	3
VT	6	HI	1



175



176



177



178

October 2019						
M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

179



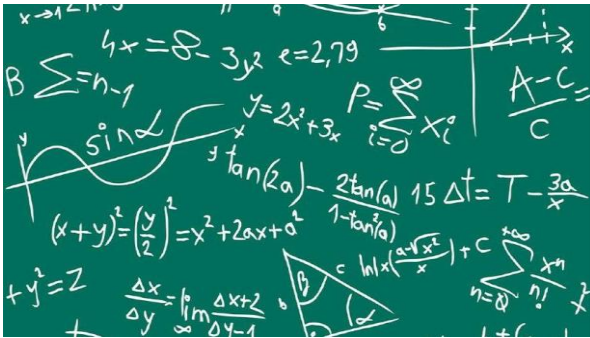
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“1 in 5
Americans”

181



182



183

71m
327m

184

BUT

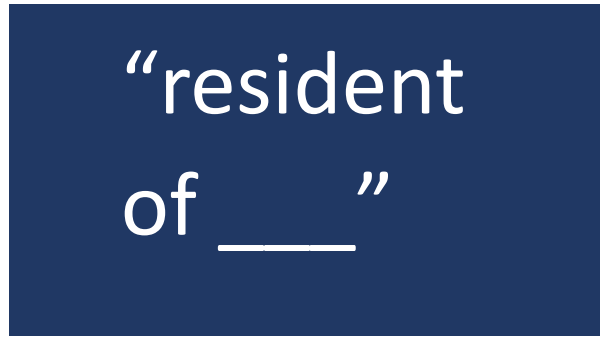
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Residency

186



187



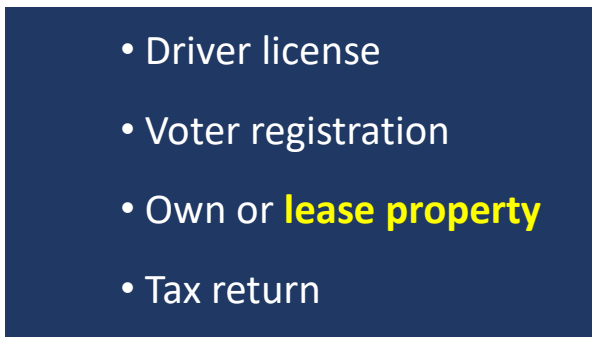
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189



190



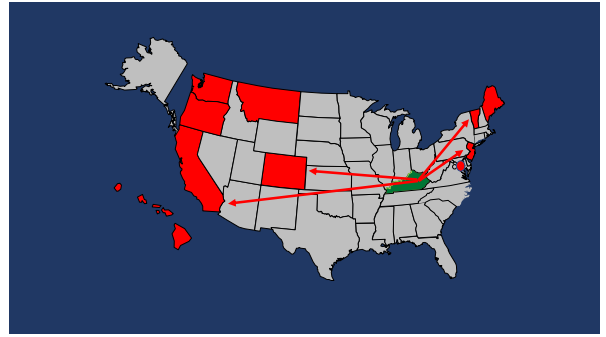
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192



193



194

No legal barrier
Practical barrier

195

Enough on
legalization

196

Usage

197

60 years

198



199

1997 – 2019

200

How
many

201

1459
MAID deaths

202

750,000
total deaths

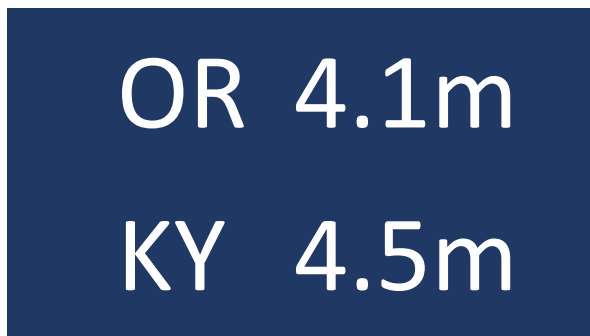
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0.2%

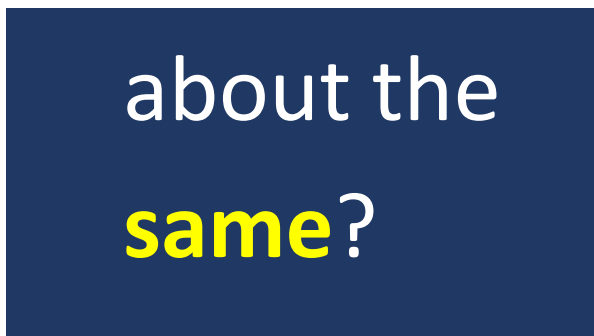
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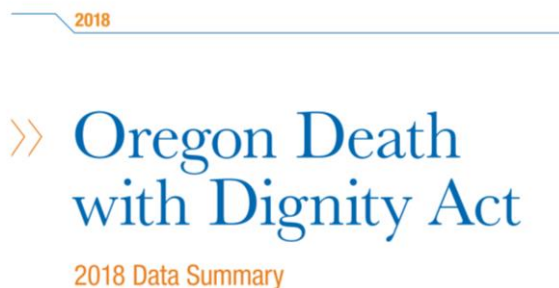
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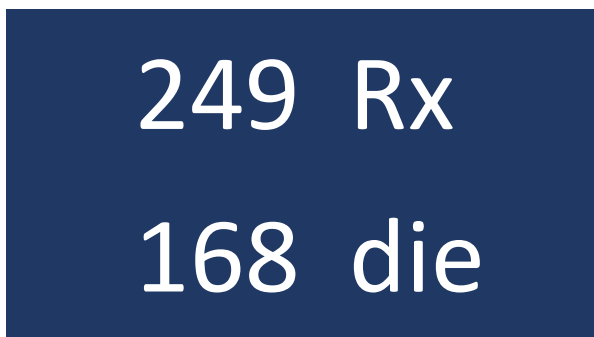
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207



208



209



210

350 Rx
235 die

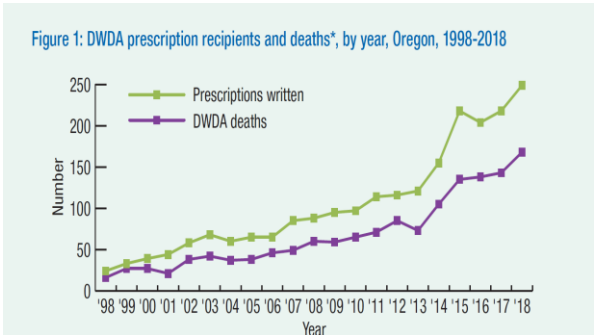
211

Who

212

1459 deaths
2217 prescriptions

213



214

3 different
populations
benefit

215

Use
Have
Know

216

76%
cancer

217

90%
hospice

218

95%
insured

219

CALIFORNIA END OF LIFE OPTION ACT
2018 DATA REPORT

For more information:
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/End-of-Life-Options-Act.aspx>
Contact: EDL@dfw.dhs.ca.gov

CDPH
California Department of
Public Health
July 2019

2018 Death
with Dignity
Act Report

July 2019
Chapter 70.245 RCW

Disease Control & Health Statistics
Center for Health Statistics

Washington State Department of
Health

220

Today's
debates

221

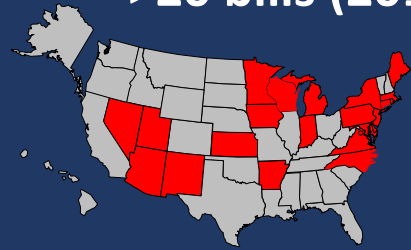
CA	HI	OR
CO	ME	VT
DC	NJ	WA

222

ongoing

223

>20 bills (2019)



224



225

Successful
No evidence
of abuse

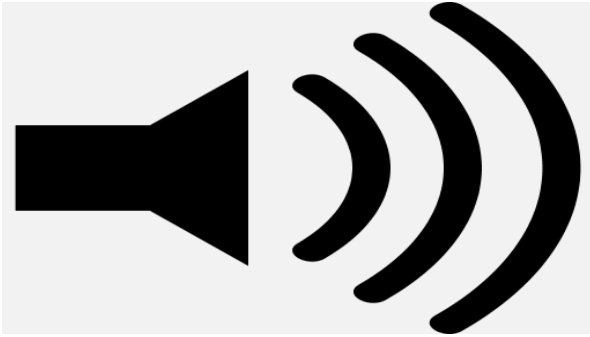
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BUT

227

Criticism
Oregon model

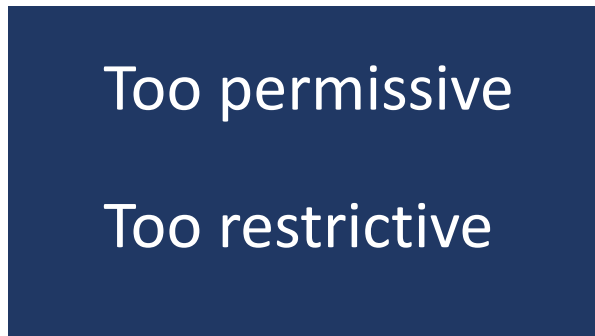
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229



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233



234



235

Ineligible
for MAID

236

“impaired
judgment . . .
mental disorder”

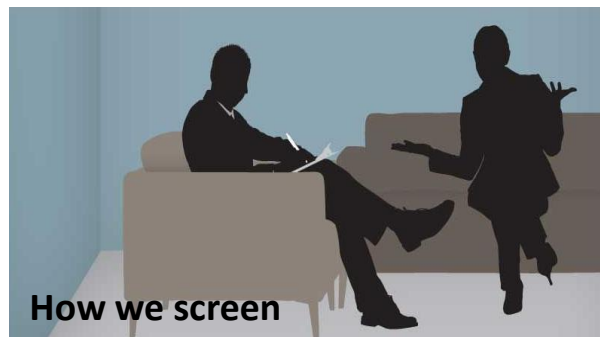
237

voluntary

238

BUT

239



240

Mental health specialist **only if** attending or consulting **refers**

241

rare

242

2018

» Oregon Death with Dignity Act
2018 Data Summary

243

4.5%
(and dropping)

244

Washington State
2016 Death With Dignity Act
Report
September 2017

Health
DOH 422-109 201

For more information contact:
Center for Health Statistics
deathwithdignity@doh.wa.gov
360-236-4324

same

245

Many think that rate is **too low**

246

Are we **failing** to screen out impaired judgment?

247

No proof but ... needs study

248

Response

249

UCSF Health

250



251



252



The Scottish Parliament
Pàrlamaid na h-Alba

253



That's capacity at the time of prescription

254



255



256

No capacity
assessment
at ingestion

257



258

Response

259



260



261



262

2 ways MAID laws are too **permissive**

263

Too protective

264

Unduly restrict
access

265

Eligibility
criteria

Safeguards

266

Eligibility
criteria

267

Adult
Terminally ill
Capacity

268

1

269

Adult

270

18+

271



272

NOTICE
**NO PERSONS
UNDER 21
ALLOWED**

273

Assure
voluntary
& informed

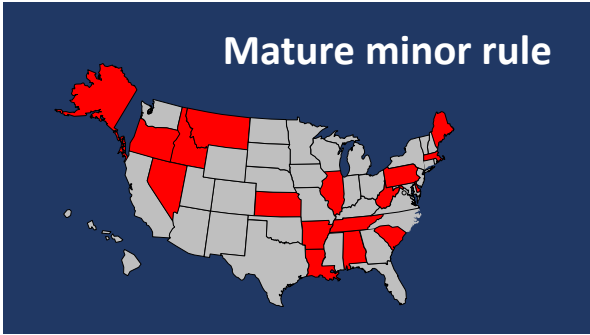
274

BUT

275

Allow minors
to make **other**
healthcare decisions

276



277



278



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280



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282

Terminal
illness

283

death within
6 months

284

Matches
hospice

285

BUT

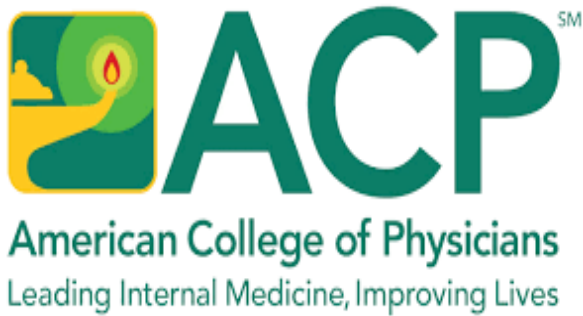
286

Temporally
strict

287

unbearable
suffering

288



289

POSITION PAPER

Annals of Internal Medicine

Ethics and the Legalization of Physician-Assisted Suicide: An American College of Physicians Position Paper

Opposed to MAID

290

Arbitrary
discrimination

291



292



Daniel Andrews
@DanielAndrewsMP

11/21/17

Let's remember what we are debating here **the most conservative** voluntary assisted dying model that has ever been proposed – let alone implemented – anywhere in **the world.**

293

12 months
neurodegenerative
illness (ALS)

294

Response

295

2

296

6 → 12

297



298

Drop time altogether

299



300



301

Reasonably
predictable

302



303

3

304

Capacity

305

“solely & directly by ... individual”
not advance
directive

306

BUT

307



308



309

Terminal →
no capacity

310

Capacity →
not terminal

311

Response

312

Advance requests

313



314



315



316

Recap

317

Push to
expand
eligibility

318

adults → minors
 6 mo. → longer or x
 capacity → advance

319

Also

320

Push to
streamline
 procedures

321

1

322

15 day
 wait period

between requests

323



324

Assure
request
enduring

325

BUT

326

Undue
burden

cannot wait that long

327

During the process

Lost capacity 35%

Died 19%

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

328

Response

329



330

Waive
wait period

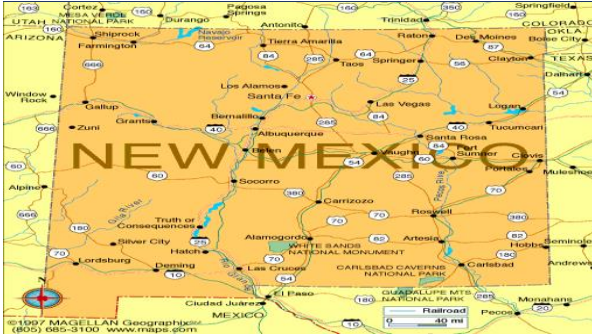
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“death is likely to occur **before** ...
expiry of the
time period”

332



333



334

2

335

**Self
ingest**

336

Physician prescribes
Patient administers

337

Helps
assure
voluntary

338

BUT

339

2 problems

340

Lose
ability

341



342



343



344

Complications

345

2018

» Oregon Death with Dignity Act

2018 Data Summary

346

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

7%

347

Response

348



349

Normally,
self-administered
like USA

350

Physician
administration
is allowed

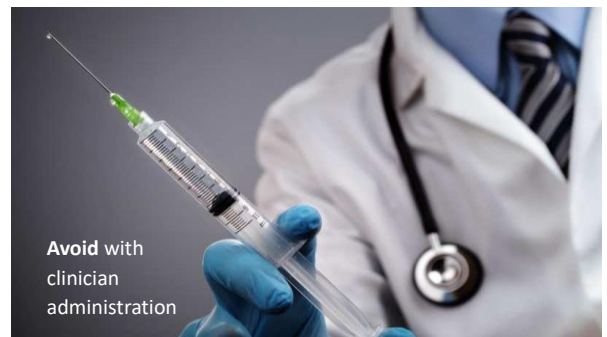
351

“physically **incapable**
self-administration”

352



353



Avoid with
clinician
administration

354



355

June 2016 - October 2018

5085

5 self-administered

356



357

3

358

Attending +
consulting
clinician

MD or DO

359

BUT

360

Access problems

361

Response

362

Extend to NPs

363

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

Physician Orders for Life-Sustaining Treatment (POLST)

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

A CARDIORESPIRATORY 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 medications for any pain, positioning, assisted care and other measures to enhance care and comfort. Use oxygen, suction and oxygen treatment of airway obstruction as needed for comfort. Administer only as ordered. *Transfer if clinical needs cannot be met at current location.*
 Limited Additional Interventions Includes care described above. Use medical treatment, primarily aimed at relieving suffering. Do not include: May use non-invasive positive airway pressure. *Transfer if clinical needs cannot be met at current location.*
 Do Not Transfer or Transfer for medical interventions. *Transfer if clinical needs cannot be met at current location.*
 Full Treatment Includes care described above. Use intubation, advanced airway interventions, resuscitative measures, and dialysis/continuous renal replacement therapy as indicated. *Transfer if needed for medical care.*
 Additional Orders: _____

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

D SIGNATURES AND SUMMARY OF MEDICAL CONDITION:
 Patient Health Care Decisionmaker Patient of Minor Court Appointed Conservator Other
 My signature below indicates to the best of my knowledge that these orders are consistent with the person's medical condition and preferences.
 Physician Signature (required) _____ Physician Name _____ Date _____
 Signature of Patient, Decisionmaker, Parent of Minor or Conservator _____
 My signature here, when I am designated as the person, indicates that I am not signing resuscitative measures in the person's best interest, but rather as a representative of the person and my signature is not subject to the form's expiration date.
 Signature (required) _____ Name (print) _____ Relationship (only self if patient)
 Expiration of Medical Decision _____ (Please use only if patient)

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED

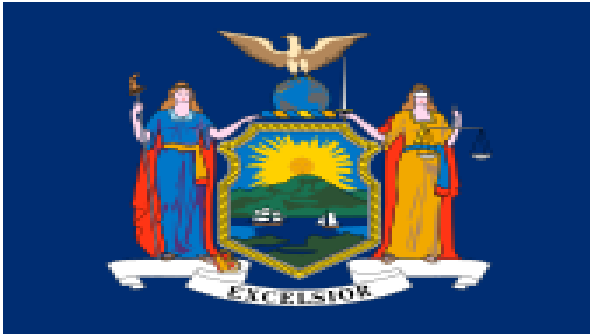
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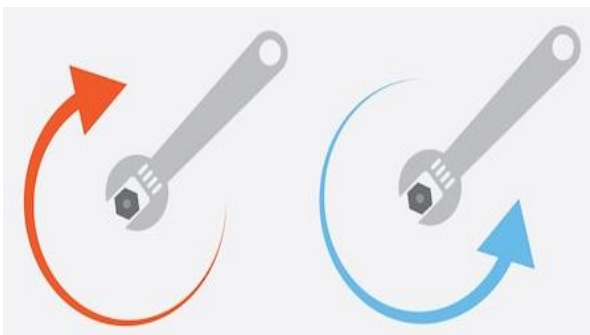
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371



372



373



374



375



376

Table. Hospital Participation in the EOLOA JAMA Internal Medicine. July 2018. Volume 178, Number 7. 985

Characteristic	Permits EOLOA, No. (%) (n = 106)	Does Not Permit EOLOA, No. (%) (n = 164)
Religious affiliation	2 (2)	70 (43)
Teaching hospital	22 (21)	6 (4)

377



378



379



380



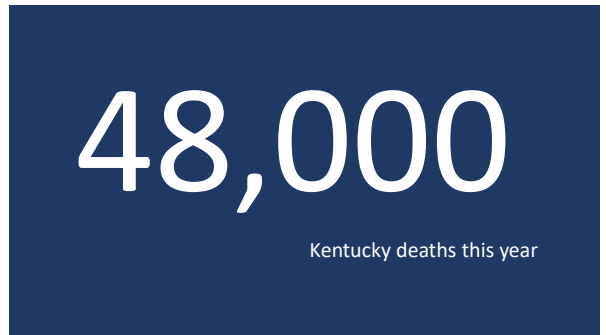
381



382



383



384

>99%

MAID not relevant

385

350 Rx 235 die

386

References

387

Materials discussed in this presentation are available at
<http://thaddeuspope.com>

388

THE RIGHT TO DIE: THE LAW OF END-OF-LIFE DECISIONMAKING (Wolters Kluwer Law & Business) (with Alan Meisel & Kathy L. Cerminara) (2020).

Medical Aid in Dying in Hawaii: Appropriate Safeguards or Unmanageable Obstacles? HEALTH AFFAIRS BLOG (August 2018) (with Mara Buchbinder).

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389

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391

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.

392

392

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393

393