

Legal Update 2022

Top 10 Legal
Developments
in Bioethics

1



@ThaddeusPope

Thaddeus Mason Pope, JD, PhD, HEC-C
ASBH Annual Meeting
Portland, Oregon
October 27, 2022

2

nothing
to disclose

3



4

5 updates

5

psilocybin
supported DM
brain death
UMT
medical futility

6

psilocybin

7



8

stick around
after ASBH

9



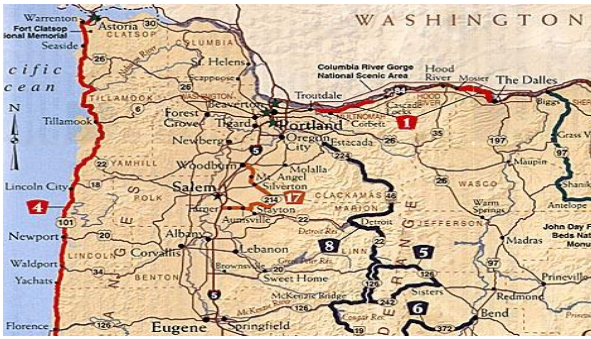
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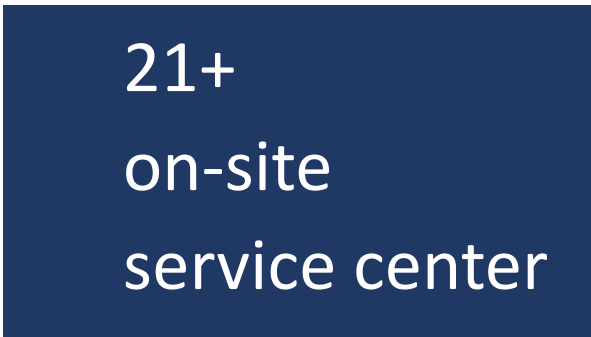
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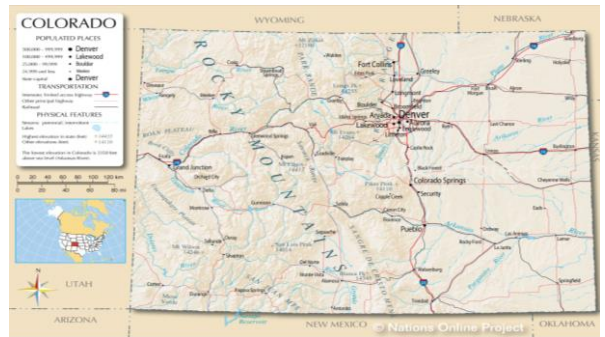
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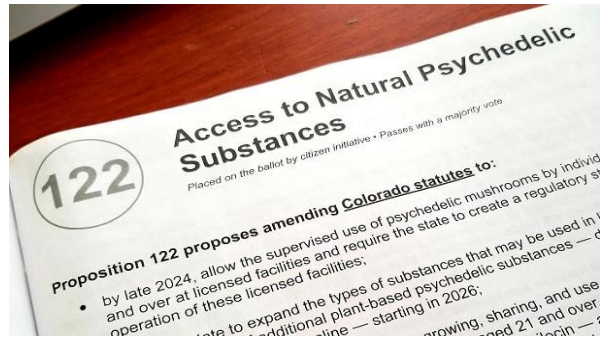
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decriminalize
regulate

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22

more
states

23



24



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benefits

26

depression
PTSD
end-of-life anxiety

27

but

28



Global bioethical challenges of medicalising
psychedelics

RICCARDO MICELI MCMILLAN^{1,2*}

Journal of Psychedelic
Studies

5 (2021) 2, 57-64

DOI:
10.1556/2054.2021.00188

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Published online: September 15, 2021

29

reduce
demand for MAID

30



31

that's
 psilocybin

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supported
 decision making

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under-recognized
 in bioethics

34

decision
 making
 capacity

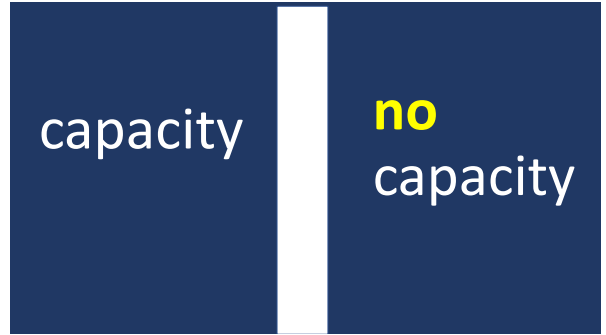
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but

36



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capacity →
patient makes
own HC decision

39

no capacity →
surrogate DM
makes HC decision

40

but

41

3rd

42

supported
decision
making

43

patient **cannot**
make health care
decision

44

sometimes,
the problem
is **fixable**

45

patient **can** make
her own decision
with help

46

supporter

47

gather information
understand information
review options
make decisions
communicate those decisions

48

“supporters” do **not**
“make” decisions
supporters **only help**
the patient

49

least
restrictive
alternative

50

patient participate
maximum extent
possible

51

2022

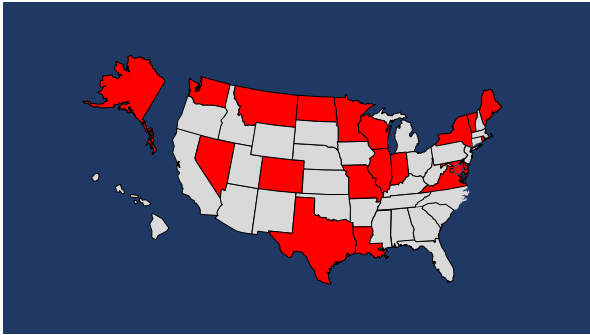
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5 more

53

21

54



55

SO...

56

update
policies & procedures

57

old rule

58

patient cannot make
decision alone
→ get surrogate

59

new rule

60

patient cannot
make decision
by herself

61



62

can patient decide
with supporter

63

that's
supported
decision making

64

**brain
death**

65

2022

66

more conflict
more court cases

67



UNITED KINGDOM



68



69


clinicians BD
court BD
appellate **not** BD

70



71

4-month-old Baby A



Neutral Citation Number: [2022] EWCA Civ 1221

Case No: CA-2022-001707

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION**
The Hon Mr Justice Hayden
FD22F00036

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 September 2022

Before :

72

June 19 BD

multiple clinicians, including
some from another hospital

73

July 3 breathing
on own
retract BD

74



75

WTF

76

“raises real and
important **questions** as
to the **confidence** that
can be placed in
diagnosis ... death”

77



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81



82

cases **enjoined**
 withdrawal MV
 for months

83

but

84

no changes
to rules

85

not yet

86



87



88

SO...

89



90

UDDA →
RUDDA

91

5 issues

92

1. **Match** legal
criteria to medical
standards

93

2. Clarify **which**
medical standards
to use

94

3. Clarify **consent**
is not required
for BD testing

95

4. Clarify when to
offer a reasonable
accommodation

96

5. Change
“irreversible” to
“permanent”

97

2020
2021
2022

98



99



100

that's

brain death

101

UMT

102



103

advance directive
“comfort measures only”
“no intravenous fluids”
“no antibiotics”

104



105



compensable injury
med mal case may proceed

106

significant
since 2009, NY did not permit
damages for violating an AD

107



108

that's
UMT

109

**medical
futility**

110

few developments
on “traditional”
futility conflicts

111



MN TRO
preventing
hospital
from w/d
MV

Scott Quiner

112



113

“could not walk or
talk – and therefore
he was **not worth
treating**”

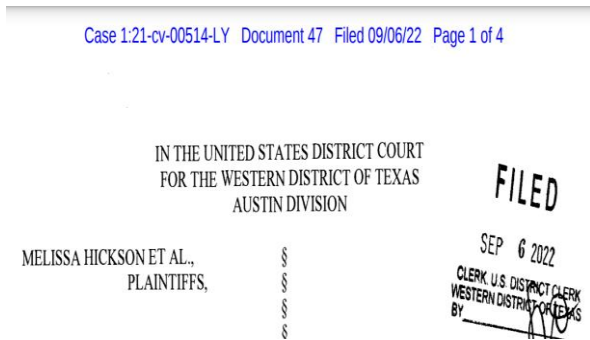
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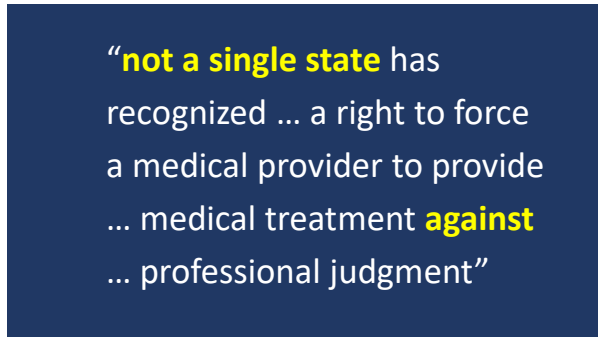
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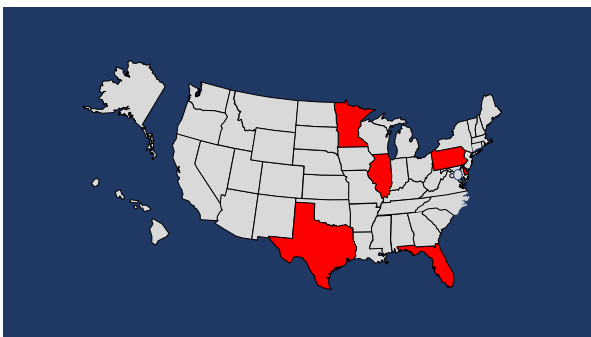
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“There is **no precedent** or applicable law ... that a patient has a legal right to **demand** a particular medical treatment against the advice of their treating physicians...”

128

“judges are **not** doctors”
 “and **cannot** practice medicine from the bench”

129

“The judiciary is called upon to serve in black robes, not white coats. And it must be vigilant to **stay in its lane**”

130



131

but

132

new jurisprudence
useful for “traditional”
futility conflicts

133

that’s

medical futility

134

5 updates

135

psilocybin
supported DM
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medical futility

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