

CENTER FOR BIOETHICS Ethics Grand Rounds

The Minnesota End-of-Life Option Act: Medical Aid in Dying is a Compassionate Option for Terminally Ill Patients

Speakers: Thaddeus Mason Pope, JD, PhD, HEC-C, Professor, Mitchell Hamline School of Law; David Grube, MD, National Medical Director (Retired), Compassion & Choices; Donna Nelson, Patient Advocate, Compassion & Choices; Rep. Mike Freiberg (DFL) District: 45B

Part One of a Two-Part Series Representing Both Sides of the Issue

January 28, 2022 • 12:00 - 1:30 P.M. CST • Zoom • Free • Open to the Public

These events are intended to help inform people in MN about the issues associated with this proposed legislation & promote thoughtful, balanced public discussion as it is considered by the Legislature.

Co-sponsored by: MEDICAL SCHOOL UNIVERSITY OF MINNESOTA; MINNESOTA LAW UNIVERSITY OF MINNESOTA; SCHOOL OF NURSING UNIVERSITY OF MINNESOTA

1

Minnesota End-of-Life Option Act: Medical Aid in Dying Is a Compassionate Option for Terminally Ill Patients

Thaddeus Mason Pope, JD, PhD, HEC-C
University of Minnesota • Jan. 28, 2022

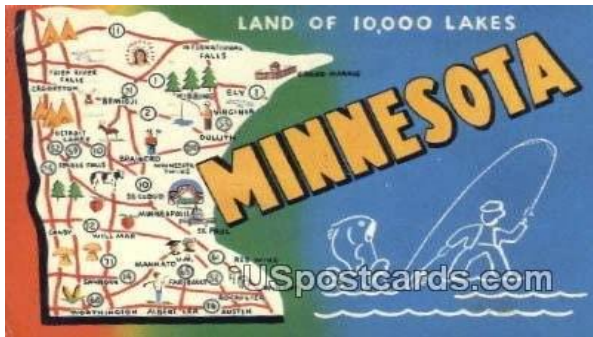
2

Respond to objections

3

Objections made to **MN legislature**

4



5

8 MAID bills since 2015

6

2 hearings

7

1 Senate
1 House

8

2016

9

02/17/15 REVISOR SGS/NB 15-2790 as introduced

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1880

(SENATE AUTHORS: EATON, Pappas, Dibble, Marty and Goodwin)

DATE	D-PG	OFFICIAL STATUS
03/18/2015	972	Introduction and first reading
03/25/2015	1358	Referred to Health, Human Services and Housing Author added Goodwin

10



11

2019

12

02/04/19 REVISOR SGS/EH 19-2064

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES
NINETY-FIRST SESSION
H. F. No. 2152

03/07/2019 Authored by Freiberg, Loeffler, Edelson, Cantrell, Mann and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

13



14

Pulled these objections

15

Oral & written testimony

16

Summarize objection

17

respond

18

Roadmap

19

5 objections

20

1 Driven by bias & prejudice

21

2 Driven by money

22

3 Fail assure capacity

23

4 Fail assure terminal illness

24

5 Abuse vulnerable

25

Bias & prejudice

26



27



28



29

Patients with dementia or mental disabilities get MAID b/c **bias, bigotry, prejudice**

30



31



32

Ineligible
3 reasons

33

Person electing
MAID must have
decision making
capacity

34

Person electing
MAID must
request **herself**

35

Nobody can
choose MAID
for another

36

Person electing
MAID must be
terminally ill

37



38

Nobody can say he should
have MAID because his life is
not worth living

Only **he** is entitled make that
judgment about his **own** life

39

Plus

40

He cannot make
that judgment
either because he
lacks capacity

41

He's **not**
terminally ill

42

Zero evidence

Anyone with dementia
or mentally disabled
ever got MAID

43



44

>80 years
of combined
experience

45

OR	24	CO	5
WA	13	DC	5
MT	12	HI	4
VT	8	NJ	2
CA	6	ME	2
		NM	1

46

Stereotypes Prejudice Unfair
Research Behavior Beliefs
IMPLICIT BIAS Subtle
Disrespect Unconscious
Psychologists Reaction Train
Corporations Decisions Race
People Social Subconscious
Judgement Hidden Ethnicity
Cognition Preferences Gender

47



48

Driven by
money

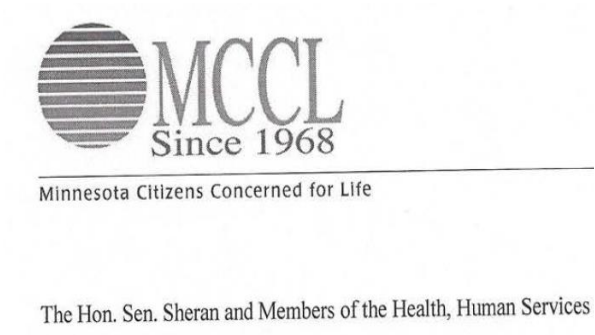
49



50

“Movement
to **cheapest**
treatment”

51



52

“financial
incentive to
steer” to MAID

53



54

No evidence
pushing or driving

55



56

Plus

57

Premise **false**

58

MAID does **not**
save money

59

MAID patients
are **already**
on hospice

60



61



62



63



64



65



66



67



68

**Fail assure
capacity**

69

MAID available only
**decision-making
capacity**

70

Capacity assessed
attending MD
and
consulting MD

71

2 assessments

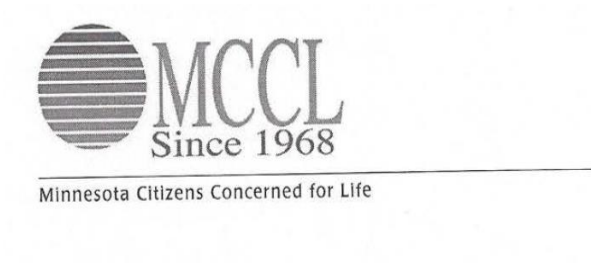
72

sometimes **3**

73

Must refer mental health specialist if **unsure**

74



The Hon. Sen. Sheran and Members of the Health, Human Services

75



MINNESOTANS AGAINST ASSISTED SUICIDE | www.mnaas.org
 4249 Nicollet Ave., Minneapolis MN 55409 | 612.825.6831 | kris@mnaas.org

76

Referral rate **too low**

77

2020

» Oregon Death with Dignity Act
 2020 Data Summary

78

1998-2020

1905 patients died MAID	69 referred "psychiatric evaluation"
--------------------------------------	---

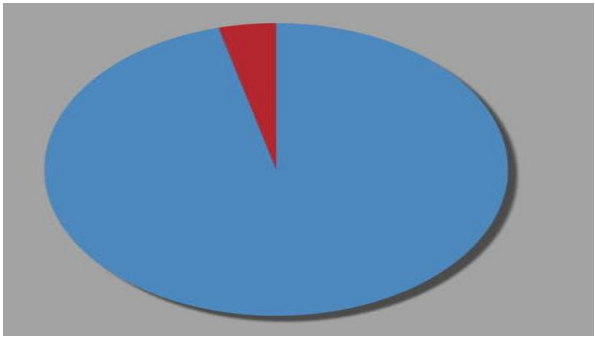
79

3.6%

80



81



82

BUT

83

Not **too** low

84



85

2 MD confirm capacity
 Refer **only** if unsure

86



87

No evidence
 patient with impaired
 judgment got MAID

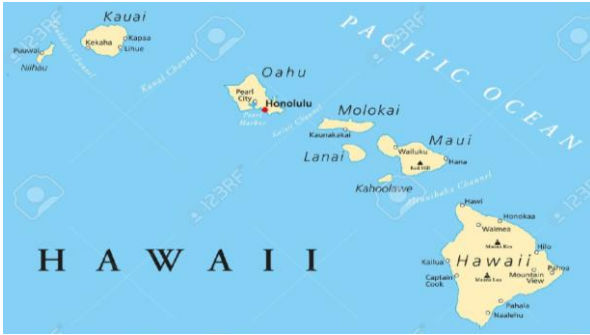
88

>78 years
 of combined
 experience

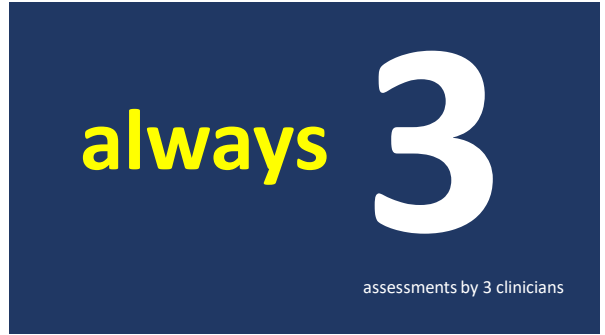
89

OR	24	CO	5
WA	13	DC	5
MT	12	NJ	2
VT	8	ME	2
CA	6	NM	1

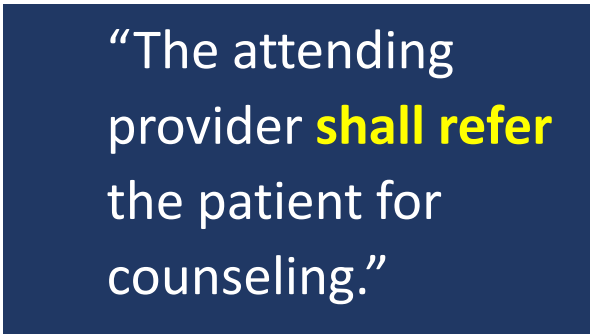
90



91



92



93



94



95



96

BUT

97

No evidence
making 3rd assessment
automatic adds safety

98

why

99

Physicians
qualified &
experienced

100

MINNESOTA STATUTES 2021

CHAPTER 145C

HEALTH CARE DIRECTIVES

EFFECTIVE.

- 145C.10 PRESUMPTIONS.
- 145C.11 IMMUNITIES.
- 145C.12 PROHIBITED PRACTICES.

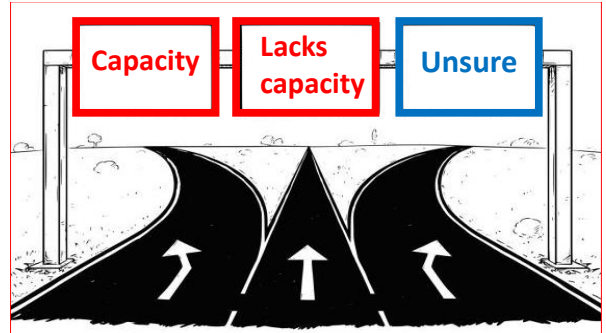
101

physician
or APRN
Minn. Stat. 145C.06

102

Determine
capacity
every day

103



104

Fail assure
terminal illness

105

MAID available
only patients with
terminal illness

106

“incurable and
irreversible disease
... produce death
within **six months**”

107

< 6-month
prognosis

108



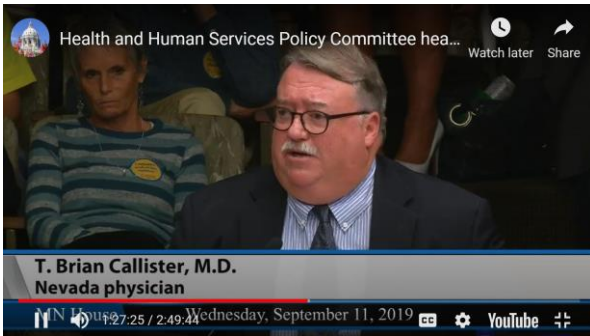
Minnesota Citizens Concerned for Life

The Hon. Sen. Sheran and Members of the Health, Human Services

109

“inexact”
“often mistaken”

110



111

Ability prognosticate
“sorely **lacking**”
“outlive ... diagnosis”

112



113

3 responses

114

1 vetted
1 tested

115

56008 Federal Register / Vol. 48, No. 243 / Friday, December 16, 1983

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 408, 409, 418, 420, 421, and 489

Medicare Program; Hospice Care

intervention is required to control pain or palliate symptoms, or when the family needs a rest from the tedium and stress involved in caring for the individual (respite care).

Section 122 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97-248, enacted on September 5, 1982) expanded the scope

116

since
1983

117

~40 years

118

>1,000,000 / year
qualify for hospice based
on the 6-month prognosis

119

Hospice election
consequential

120

Waive Medicare coverage for terminal illness

121

95%

MAID patients already on hospice

122

2 prognosis accurate

123

2020

>> Oregon Death with Dignity Act

2020 Data Summary

124

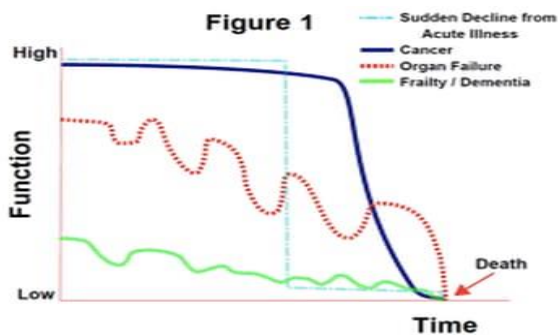
underlying illness

125

Ca & ALS

85%

126



127

2020

>> Oregon Death with Dignity Act

2020 Data Summary

128

1998-2020

4% outlived
6mo

129

3 Imprecision
irrelevant

130

TI is **only** an
eligibility
requirement

131

Qualify →
prescription

132



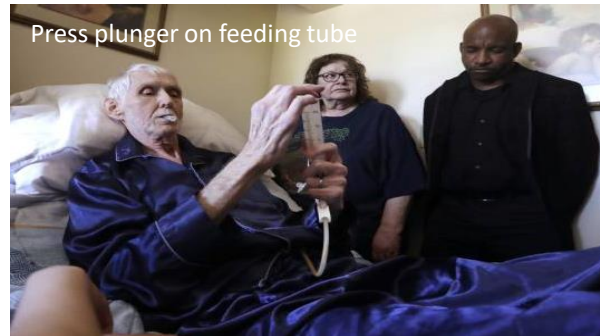
133



134



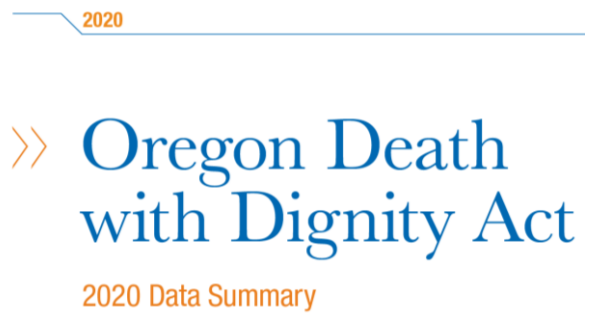
135



136

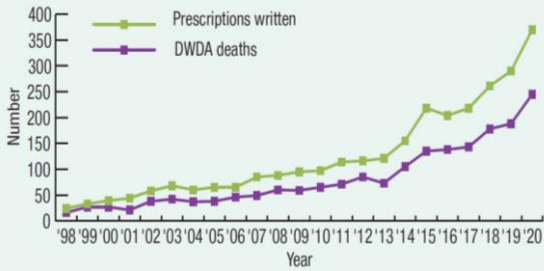


137



138

Figure 1: DWDA prescription recipients and deaths*, by year, Oregon, 1998-2020



139

1998-2020

2900
Rx

1900
deaths

140

>1/3 never ingest

141

Nobody ingests b/c 6-mo

142

Ingest when burdens TI too much

143



144

Abuse of vulnerable

145



Minnesota Citizens Concerned for Life

The Hon. Sen. Sheran and Members of the Health, Human Services

146

vulnerable
disadvantaged
pressured

147



148

Worries **not**
manifested

149

95%
Graduated HS

150

73%

College, grad school

151

99%

insured

152

96%

white

153

Not vulnerable
& disadvantaged

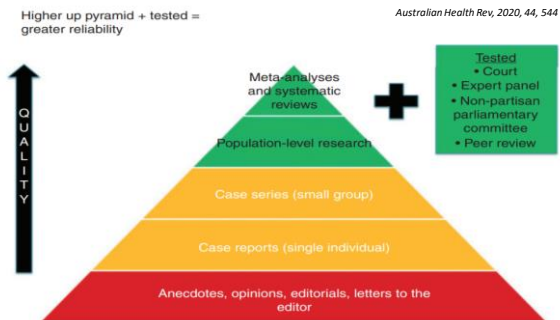
154

Conclusion

155

Base policy on
reliable evidence

156



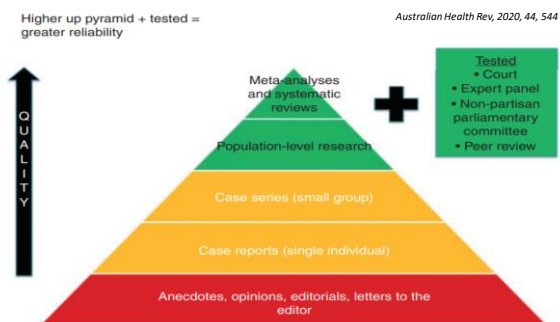
157

CENTER FOR BIOETHICS

Ethics Grand Rounds

February 11, 2022 | 3 - 4:30 P.M. CST
Zoom | Free | Open to the Public

158



159

Thank you

@ThaddeusPope

160

References

161

Materials discussed in this presentation are available at

<http://thaddeuspope.com>

162

Neurologic Diseases and Medical Aid in Dying: Aid-in-Dying Laws Create an Underclass of Patients Based on Disability (with others).

THE RIGHT TO DIE: THE LAW OF END-OF-LIFE DECISIONMAKING (Wolters Kluwer Law & Business) (with Alan Meisel & Kathy L. Cerminara) (2022).

Medical Aid in Dying and Dementia Directives, 4(2) CANADIAN JOURNAL OF BIOETHICS 82-86 (2021).

163

Physician Assisted Dying. In: UpToDate, Post TW (Ed), UpToDate, Waltham, MA (2021) (with Tim Quill and Peggy Battin) (updated May 2021).

International Perspectives on Reforming End-of-Life Law, in INTERNATIONAL PERSPECTIVES ON END OF LIFE REFORM: POLITICS, PERSUASION, AND PERSISTENCE (Cambridge Univ Press 2021) (with others)

164

Medical Aid in Dying: Key Variations among U.S. State Laws, 14(1) JOURNAL OF HEALTH & LIFE SCIENCES LAW 25-59 (Oct. 2020).

Legal History of Medical Aid in Dying: Physician Assisted Death in U.S. Courts and Legislatures, 48(2) NEW MEXICO LAW REVIEW 267-301 (2018).

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

165

Safeguards, in PHYSICIAN-ASSISTED DEATH: SCANNING THE LANDSCAPE 5-2 to 5-4 (National Academies of Science Engineering & Medicine 2018).

Medical Aid in Dying: When Legal Safeguards Become Burdensome Obstacles, ASCO POST (Dec. 25, 2017).

Oregon Shows that Assisted Suicide Can Work Sensibly and Fairly, 15(2) FINAL EXIT NETWORK NEWSLETTER 7 (May 2016).

166

Clinical Criteria for Physician Aid-in-Dying, 19(3) JOURNAL OF PALLIATIVE MEDICINE 259-262 (2016) (with David Orentlicher & Ben Rich).

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).

167

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 and other outlets.

168

Thaddeus Mason Pope, JD, PhD, HEC-C

Mitchell Hamline School of Law

875 Summit Avenue

Saint Paul, Minnesota 55105

T 651-695-7661

C 310-270-3618

E Thaddeus.Pope@mitchellhamline.edu

W www.thaddeuspope.com

B medicalfutility.blogspot.com