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

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Nothing to disclose

Defining death
Controlling death

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

Most accepted
Least accepted

Well-settled for decades

Voluntary active euthanasia
Will **not** discuss
Definitely accepted
Definitely not accepted

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

**Roadmap**

**MAID**
**VSED**
**PSU**
MAID

End-of-life option

For small number of patients
Who: Adults > 18 years old
Decisional capacity: Terminally ill 6-mo prognosis

What: Ask & receive prescription drug
Self-administer to hasten death

Early efforts
- 1988 California
- 1991 Washington
- 1992 California
- 1994 Michigan

BUT

Legalize both euthanasia and MAID

MAID
- Self ingestion
- Patient takes the final overt act

1994 (1997)
Numerous safeguards

Multiple requests
Multiple screenings

Prescribing MD
Consulting MD
Mental health MD

Voluntary
Informed
Enduring
PROVEN TRACK RECORD

Model followed

2008

2013

Vermont
2018

2019

8 statutes
~22% population
>50 years of combined experience

Ongoing

>20 bills (2019)

BUT

Criticism Oregon Model

CA  NJ
CO  OR
DC  VT
HI  WA
Nearly identical

Successful

No evidence of abuse

BUT

Too protective

Unduly restrict access

Eligibility criteria
Process requirements
Eligibility criteria

Adult
Terminally ill
Capacity

1

Adult

18+

73
74
76
77
78
Assure voluntary & informed

Allow minors to make other healthcare decisions
Terminal illness

“death within six months”

Matches hospice eligibility

BUT

Temporally strict

unbearable suffering
Reasonably predictable

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

Terminal → no capacity

Capacity → not terminal

Advance requests
Push to expand eligibility

Push to reduce procedures

15 day waiting period between requests

Assure request enduring

20 days
BUT

Undue burden

Cannot wait that long

Self ingest

Physician only prescribes

Patient administers
Helps assure voluntary

BUT

Lose ability

Complications

8%

Oregon Death with Dignity Act
2018 Data Summary
Avoid with clinician administration

Attending + consulting clinician MD or DO

BUT Access problems
Extend to NP

Eligibility criteria
Process requirements

OR model statutes limit access
Why need a statute

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

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

Chapter 609 Criminal Code

“Whoever . . . assists another in taking the other’s life may be sentenced to . . . 15 years . . . $30,000”
MAID = AS
AS = felony
MAID = felony

BUT

MAID
Criminal prohibition

Welcome to MONTANA
No MAID statute

BUT

Considered legal

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

Mont. Code Ann. 45-2-211
Patient consent

Not prohibited

H.B. 284

No MAID prohibition

No need explicit authorization

N.C. Med J.
2019
80(2):128
We need another EOL exit option.
Even in MAID jurisdictions, it cannot satisfy eligibility conditions. What is Voluntarily Stopping Eating & Drinking (VSED)?
Physiologically able to take food & fluid by mouth

Voluntary, deliberate decision to stop

Intent death from dehydration

Patient experience

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

>50% at 8d
>80% at 14d

VSED is not starvation

Dehydration is complete & controlled

VSED peaceful

1st person narratives

Books
Gramp
A man ages and dies.
The extraordinary record of one family's encounter with the reality of dying.
Mark Jury and Dan Jury

CHOOSING TO DIE
A Personal Story
Elective Death by Voluntarily Stopping Eating and Drinking (VSED) in the Face of Degenerative Disease
Phyllis Shacter
Foreword by Timothy E. Quill MD, FACP, FAAHPM

Taking Control of your Death by Stopping Eating and Drinking
Boudewijn Chabot MD PhD

A Different Ending
Reflections on Living and Dying
by Judith Landau

Films
Films - Dying Wish
Phyllis Schacter

Not only 1st person narratives

Objective evidence
100 Oregon nurses cared for VSED patients

Most deaths “peaceful, with little suffering”

Professional society endorsements

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

National Hospice and Palliative Care Organization

AMWA The Vision and Voice of Women in Medicine since 1915

American Medical Women’s Association
Position Statement

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

March 9

Clinical guidance

Voluntarily Stopping Eating and Drinking Among Patients With Serious Advanced Illness—Clinical, Ethical, and Legal Aspects

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

No statutes
Little caselaw

BUT

No need for direct, explicit authority
Already legal
under existing rules

Right to refuse treatment

Well established
4 decades

Vent
Dialysis
CPR
Antibiotics
Feed tube

Right to refuse treatment

Not DIY

VSED
Part of broader treatment plan

Supervised by licensed healthcare professionals

Recognized as healthcare by medical profession

More position statements

More clinical guidelines

PA VSED
Palliated & Assisted Voluntarily Stopping Eating and Drinking
Recap

Oral N&H = “treatment”

Right to refuse VSED treatment

BUT

Oral N&H ≠ “treatment”

“Basic” care
That’s okay

Does not matter whether food & fluid is “medical treatment”

Right to refuse any intervention (medical or not)

Right to refuse any unwanted contact

Chief Justice Rehnquist

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

In sum

You can refuse this

Can you also refuse this?

Consensus is “yes”
BUT

Advance VSED

Advance directive now for VSED later

Complete AD, today

Direct VSED in future
At a **point**

you specify

Lose capacity **before** life intolerable

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

Avoid Premature dying

Is a VSED directive enforceable?

Generally, yes

Right to refuse treatment

Seemingly bad precedent
Facility refuses to honor
Family loses

DIRECT THAT I BE ALLOWED TO DIE AND NOT BE KEPT ALIVE BY ARTIFICIAL MEANS OR "HEROIC MEASURES".

B. NO NOURISHMENT OR LIQUIDS.

Probably meant this

Nora Harris
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, 81 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:

Rule 2. 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:

BUT

Family **unable** to enforce VSED directive

**Fixable** problems

Be clear on the “what”

If you mean hand feeding, **say** “hand feeding”
“If I am suffering from advanced dementia . . .
I do NOT want to be fed by hand”

Bigger problem

Incapacitated veto

No hand feeding even if “appear to cooperate in being fed by opening my mouth”
Whose wishes do we respect?

Prior self

or

Current self

VSED Ulysses clauses are unwelcome

Duties to current self are primary

Vote Mar. 9
Margot - stage 7 Alzheimer's

Terminal sedation
Continuous deep sedation
Palliative sedation
Controlled sedation
**Degree**

Mild → **Deep**

Unconscious

**Duration**

Temp → **Perm**

Respite
Intermittent

Continuous

**PSU makes Pt depend on CANH**

**Pt usually refuses CANH**

Suffering
Intolerable
Refractory
Last resort only
Legal status

No statutes
Little caselaw

BUT

Double effect doctrine

Intent ≠ death
Intent = relieve suffering

Means ≠ death
Means = unconscious
“patient . . . suffering from a terminal illness and . . . experiencing great pain has no legal barriers . . .

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

Hargett v. Vitas
(Alameda Sup. Ct. 2014)

Typically

1-10 days

Physical suffering
>10 days

Existential suffering

MAID
VSED
PSU

Materials discussed in this presentation are available at

http://thaddeus pope.com
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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