Under-examined End-of-Life Option: Hastening Death by Voluntarily Stopping Eating and Drinking (VSED)

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More & more jurisdictions expanding EOL liberty

Medical aid in dying

MAID legal in 7 US states

MAID illegal in 49

BUT

Other exit options

VSED

Voluntarily Stopping Eating & Drinking
Define VSED

Voluntary, deliberate decision to stop

Intent: death from dehydration

Physiologically able to take food & fluid by mouth

Bad rap

Peaceful Comfortable

>50% at 8d
>80% at 14d
Most deaths: “peaceful, with little suffering”

“opportunity for reflection, family interaction, and mourning”

Not for everyone

Preferred by many
Even though MAID available, “almost twice” chose VSED

Good option

Legal concerns

Uncertainty & reluctance

Prohibited

Unsure

Permitted
No U.S. jurisdiction expressly prohibits VSED

BUT

Absence of a red light not good enough

Clinicians want express permission

No statutory permission

No judicial precedent

No red lights
No green lights
Lack of clarity & guidance

Providers ask

neglected in academic & policy circles
Is VSED legal?  Is VSED illegal?  Wrong questions

Law is rarely binary
Risk assessment
Measure Mitigate

2 case types
1
VSED now by patient with capacity
Advance directive for VSED **later** (when Pt lacks capacity)

VSED now, patient with capacity

Extremely **low** risk

Arguments

1. Right to refuse medical measures

Well established

> 4 decades

Right to refuse medical

Vent
Dialysis
CPR
Antibiotics
Feed tube
Vent Dialysis CPR Antibiotics Feed tube

Unclear

Vent Dialysis CPR Antibiotics Feed tube

Not DIY

VSED

Contrast VSED
Part of a broader **treatment** plan

**Supervised** by licensed healthcare professionals

**PAVSED**

Palliated & Assisted Voluntarily Stopping Eating and Drinking

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**PAVSED**

Highlights **medical role** in palliating symptoms

Highlights the **direct care staff** role in providing assistance

**Recognized** as healthcare by medical profession

**More** position statements (e.g. ANA, IAHPC)

**More** clinical practice guidelines

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

Barely established
ANH = medical treatment

Medical b/c not “typical human”

ONH = “treatment”

Right to refuse medical

Implies ONH is not medical

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

Right to refuse any intervention (medical or not)

2 Right to refuse unwanted measures
Unwanted contact

**Even if** clinically beneficial

**Battery**

Mohr v. Williams (Minn. 1905)

Patient consented to left ear

Physician operated on right ear

Force feeding is a battery

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

**Move** from legal bases, grounds for right

Respond to 2 main legal concerns
VSED is not assisted suicide

49 US jurisdictions
“Every person . . . aids, or advises, or encourages another to commit suicide, is guilty of a felony.”

Clinicians worry participation with VSED = assisting suicide

> 600 palliative care physicians

Prevalence of Formal Accusations of Murder and Euthanasia against Physicians

VSED ≠ AS

Active Passive

AS statutes target active conduct
Normally:
“Providing the physical means by which the other person commits . . . suicide”

VSED entails only passive conduct

Plus

Even if otherwise within scope

Exception

“Nothing . . . prohibit or preclude . . . prescribing . . . administering, . . . purpose of diminishing . . . pain or discomfort”

Everything clinician does in VSED expressly exempted from AS statute

0 cases

4 VSED is not abuse / neglect
Alleged risk

“The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.”

42 C.F.R. 483.25(j)
Tag F0327

BUT

Over-treatment just as risky as under-treatment

Conclusion

Risk ~ 0
Risk = 0

Selected References

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 nearly 3 million direct visits. Plus, it is redistributed through WestlawNext, Bioethics.net, and others.


TM Pope, Narrative Symposium: Patient, Family, and Clinician Experiences with Voluntarily Stopping Eating and Drinking (VSED), 6(2) NARRATIVE INQUIRY IN BIOETHICS 75-126 (2016).


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