Medical Aid in Dying
Minnesota State Bar Association
Elder Law Section – Sept. 27, 2018
Thaddeus M. Pope, JD, PhD
Mitchell Hamline School of Law

Roadmap

2
Legal status of MAID in USA

How MN patients can access MAID

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
History of Legalization

4 paths

Path 1
Litigation
US Constitution
Harold Glucksberg
Substantive due process

Won 9th Cir. en banc
Tim Quill
Equal protection

Won 2d Cir.

BUT
1997

“no”
No federal constitutional right to MAID

So...

Focus on rights at state level
“entrusted to the laboratory of the states”
Recap

No right under **US constitution**
No right under **state** constitutions

Path 3

**State statutes**

2
Ballot initiatives

Legislation

Ballot initiatives

STATES THAT ALLOW THE INITIATIVE PROCESS
1994

Injunction
1994 - 1997
1998

Numerous safeguards

Multiple requests

Multiple counseling
Prescribing MD
Consulting MD
Mental health MD

Voluntary
Informed
Enduring
Patient safety record
<table>
<thead>
<tr>
<th>Characteristics</th>
<th>2016</th>
<th>1998–2015</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(N=133)</td>
<td>(N=994)</td>
<td>(N=1,127)</td>
</tr>
<tr>
<td>Lethal medication</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secobarbital (%)</td>
<td>86 (64.7)</td>
<td>582 (58.6)</td>
<td>668 (58.3)</td>
</tr>
<tr>
<td>Pentobarbital (%)</td>
<td>0 (0.0)</td>
<td>486 (48.8)</td>
<td>486 (44.3)</td>
</tr>
<tr>
<td>Phenobarbital (%)</td>
<td>39 (29.3)</td>
<td>17 (1.7)</td>
<td>56 (5.0)</td>
</tr>
<tr>
<td>Other (combination of above and/or morphine) (%)</td>
<td>8 (6.0)</td>
<td>9 (0.9)</td>
<td>17 (1.5)</td>
</tr>
<tr>
<td>End of life concerns*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Losing autonomy (%)</td>
<td>119 (89.5)</td>
<td>906 (91.6)</td>
<td>1,025 (91.4)</td>
</tr>
<tr>
<td>Less able to engage in activities making life enjoyable (%)</td>
<td>119 (89.5)</td>
<td>888 (89.7)</td>
<td>1,007 (99.7)</td>
</tr>
<tr>
<td>Loss of dignity (%)</td>
<td>87 (65.4)</td>
<td>680 (71.8)</td>
<td>767 (77.1)</td>
</tr>
<tr>
<td>Losing control of bodily functions (%)</td>
<td>49 (36.0)</td>
<td>475 (48.1)</td>
<td>524 (46.8)</td>
</tr>
<tr>
<td>Burden on family, friends/caregivers (%)</td>
<td>65 (48.9)</td>
<td>410 (41.3)</td>
<td>475 (42.2)</td>
</tr>
<tr>
<td>Inadequate pain control or concern about it (%)</td>
<td>47 (35.3)</td>
<td>249 (25.2)</td>
<td>296 (26.4)</td>
</tr>
</tbody>
</table>
More ballot initiatives

WA 2008

CO 2016
Close call ballots

- 2000: 49/51
- 2012: 49/51

Failed - Nov. 2017

2019

South Dakota

Maine
Recap

3 successful ballot initiatives

OR  WA  CO

Legislation
April 2018

Riverside, CA
Constitutional challenge

Oct. 9
Recap

Enacted

3 initiatives

4 bills
7 statutes
~20% population

~50 years
of combined experience

Ongoing
Path 4
Litigation
State statute
MAID

Criminal prohibition

> 4 cases

All failed

... except
MAID

not prohibited

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

Mont. Code Ann. 45-2-211
“Whoever . . . assists another in taking the other’s life may be sentenced to . . . 15 years . . . $30,000”

Medical Practice Act

Minn. Stat. 147.091(1)(w)
“aiding suicide . . .
is prohibited and
is grounds for
disciplinary action”

MAID = AS
AS = felony
MAID = felony
Minnesota v. Melchert Dinkel

Minnesota v. Houck

No MAID in Minnesota
Medical tourism

May your client travel to get MAID?
Probably

Residency
“Qualified individual” means an adult who . . . is a resident of California

Cal. H&S Code 443.1(o)

Confirmed by attending physician
Possession of a California driver license or other identification issued by the State of California.

Registration to vote in California.

Evidence that the person owns or leases property in California.

Filing of a California tax return for the most recent tax year.

Even easier
Legal Risk
Minnesota

“Whoever . . . assists another in taking the other’s life may be sentenced to . . . 15 years . . . $30,000”
Advise on how to qualify in CA, OR

609.215 covers *even* mere speech

---

Material “assistance”

Buy tickets
Rent apartment
Drive to airport
Thaddeus Mason Pope, JD, PhD
Director, Health Law Institute
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