Minnesota Is Ready for End of Life Options Act
Evolving Status of Medical Aid in Dying

Thaddeus Mason Pope
University of Minnesota
November 22, 2019

Disclosures

No COI

op-eds

The Changing Legal Climate for Physician Aid in Dying

CPG

The New York Times
The Opinion Pages
ROOM FOR DEBATE
Oregon Shows That Assisted Suicide Can Work Sensibly and Fairly

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op-eds
Testimony

Academic
Balanced
Circumspect

Opening

Control timing & manner of death

2,800,000 total deaths

41,000 MN deaths / year

6 last resort options
Most accepted

Least accepted

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
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Well-settled for decades

• Pick KY AD
• Pick KY MOST

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

• Cruzan case
• POPS
• Other med assoc

1. Stop life-sustaining therapy
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Position Statement

Nutrition and Hydration at the End of Life

Effective Date: 2017
Status: Final Position Statement
Written by: ANA Center for Ethics and Human Rights
Adopted by: ANA Board of Directors
1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

Will not discuss
Accepted
Not accepted
6 parts

What is MAID?

Why need to legalize?

History of legalization

How has MAID been used?

2 debates

Too permissive

Too restrictive

Not
What is 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

Seconal 90 x 100mg capsules

Compounded DDMP

diazepam, digoxin, morphine & propranolol

Aid in Dying Soon
Will be Available to More Americans

The New York Times

July 8, 2019
Across USA, since 1800s, help someone commit suicide is a crime.

"assisted suicide prohibitions are deeply rooted in our nation’s legal history."

Minn. Stat. 609.215

"Whoever ... assists another in taking the other’s life may be sentenced ...”

15 years
Medical Practice Act

Minn. Stat. 147.091(1)(w)

“aiding suicide . . . is prohibited and is grounds for disciplinary action”

No MAID in Minnesota

MAID = AS

Seconal 50 x 1mg capsules
MAID = AS
AS = felony
MAID = felony

9 MAID statutes

CA HI OR
CO ME VT
DC NJ WA

MAID ≠ AS

MAID / Criminal prohibition

MAID is legislatively authorized

BUT
No MAID statute

Considered legal

"consent of the victim... is a defense"

Patient consent Not prohibited

H.B. 284
No MAID prohibition

Therefore,

No need explicit authorization

N.C. Med J. 80(2):128 2019

New law would permit aid in dying; experts say it's already legal in NC

MAID must be legislatively authorized

MT NC exceptions
History of Legalization

Path 1
Litigation
US Constitution

1994

Harold Glucksberg
Substantive due process

Won 9th Cir. en banc
No federal constitutional right to MAID

So...

Focus on rights at state level

1997

“no”
“entrusted to ... laboratory of the states”

Path 2
Litigation
state constitutions

>15 cases

All 15 failed

Active case

Roger Kligler MA

Recap
No right under US constitution
No right under state constitutions

Path 3
State statutes

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

Euthanasia
Clinician makes the final overt act

46/54

All U.S. bills focus on MAID only
1994 (1997)

Numerous safeguards

Multiple requests
Multiple screenings

Prescribing MD
Consulting MD
Mental health MD

Voluntary
Informed
Enduring

Model followed
11/22/2019

As of >60 years of combined experience

2017

2018

2019

OR 22
WA 11
MT 10
VT 6
CA 4
CO 3
DC 3
HI 1

PROVEN TRACK RECORD
in **2019**

**WELCOME TO NewJersey**

10 US jurisdictions

"1 in 5 Americans"

**November 2019**

looks like it rained a bit last night.

71m / 327m
BUT

Residency

“resident of ___”

Confirmed by attending physician

- Driver license
- Voter registration
- Own or lease property
- Tax return

Even easier

Minnesotans welcomes you
No legal barrier

Practical barrier

Enough on legalization

Usage

60 years

190

191

192

193

194

195

196

197

198

1997 – 2019

How many

1459 MAID deaths
750,000 total deaths

0.2%

OR 4.1m per year
MN 5.6m

249 Rx
168 die

340 Rx
229 die
Who

1459 deaths
2217 prescriptions

3 different populations benefit

Use Have Know

90% hospice
95% insured

76% cancer

Figure 1. CDOSA prescription recipients and deaths, by year, Oregon, 1996-2016
Like almost all US bills, closely modeled on ODWDA.
Better political prospects

Follow AMA

“Physicians must not ... participate in assisted suicide.”
MMA Board of Trustees
Physician-aid-in-dying
Task Force
Report and Recommendations

May
2017

MMA will not oppose aid-in-dying legislation

“unless fails to adequately safeguard . . . patients or physicians.”

Included in MN bills

Track record even longer

>60 years of combined experience
More public support: 73% (Gallup, June 2017)

More physician support: 57% (Medscape, Dec. 2016)

More professional associations: 253 (Medscape ETHICS REPORT 2016: Life, Death, and Pain)
Today's debates

ongoing

>20 bills (2019)

CA HI OR
CO ME VT
DC NJ WA

Successful
No evidence of abuse

nearly identical

BUT
Criticism

Oregon model

Too permissive
Too restrictive

Capacity

At prescription
At ingestion

Ineligible for MAID
“impaired judgment . . . mental disorder”

voluntary

BUT

Mental health specialist only if attending or consulting refers

rare

4.5% (and dropping)

same
Many think that rate is **too low**

Are we **failing to** screen out impaired judgment?

No proof but ... needs study

Response

UCSF Health

That's capacity at the time of **prescription**
Response

2 ways MAID laws are too permissive

No capacity assessment at ingestion
Too protective

Unduly restrict access

Eligibility criteria

Safeguards

Eligibility criteria

Adult

Terminally ill Capacity

1 too restrictive

Adult

18+

too restrictive
Assure voluntary & informed

BUT

Allow minors to make other healthcare decisions

Mature minor rule

Response

Netherlands, Belgium, Luxembourg

Canada

36
too restrictive
Terminal illness
death within 6 months

Matches hospice

BUT

Temporally strict

unbearable suffering

opposed to MAID
Arbitrary discrimination

12 months neurodegenerative illness (ALS)

Response

6 → 12

Drop time altogether
Reasonably predictable

Capacity

“solely & directly by ... individual”

BUT

not advance directive
Terminal $\rightarrow$ no capacity
Capacity $\rightarrow$ not terminal

Response
Advance requests

Doctor acquitted of murder in landmark Netherlands euthanasia case

Recap
Push to expand eligibility

adults → minors
6 mo. → longer or 0 capacity → advance

Also

Push to streamline procedures

1

15 day wait period

Assure request enduring

BUT

20 days
**Undue burden**

**During the process**
- Lost capacity: 35%
- Died: 19%

**Response**

- Waive wait period

"death is likely to occur before ... expiry of the time period"
Self ingest

Physician prescribes

Patient administers

Helps assure voluntary

BUT

2 problems

Lose ability
Complications

Oregon Death with Dignity Act

2018 Data Summary

7%

Response

Physician administration is allowed

 Normally, self-administered like USA

“physically incapable self-administration”
Avoid with clinician administration

Dec. 2015 - October 2018
6749
6 self-administered

Attending + consulting clinician
MD or DO

BUT
Access problems
Response
Extend to NPs

Legal barriers

Eligibility criteria
Process requirements

Recap

Canada
Practical barriers

Clinicians & hospitals may opt out

Table: Hospital Participation in the E0LDA

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Permits E0LDA, No. (%)(n = 106)</th>
<th>Does Not Permit E0LDA, No. (%)(n = 164)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religious affiliation</td>
<td>2 (2)</td>
<td>70 (43)</td>
</tr>
<tr>
<td>Teaching hospital</td>
<td>22 (21)</td>
<td>6 (4)</td>
</tr>
</tbody>
</table>

OFF DUTY

Centura Health

FIND A DOCTOR
Conclusion

Minnesota deaths this year

>99%

MAID not relevant

Most also make a deliberate decision to hasten death

Those dependent on dialysis, vents, CANH can & do hasten their deaths

Equal protection
Persons similarly situated should be treated *alike*

*Every day,* terminally ill patients in Minnesota hasten their deaths by withholding or withdrawing treatment

*Every 30 minutes*

But some patients have *no treatment* to turn off or refuse

MAID gives these terminally ill, competent, adults the *same freedom*

*Control* timing & manner of death

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**References**

Materials discussed in this presentation are available at

[http://thaddeuspope.com](http://thaddeuspope.com)