Voluntary Stopping Eating and Drinking: Its Special Place in Our American Culture, Ethics, and Law

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Disclosures
I have no conflicts of interest or relevant financial interests.

More states expanding EOL liberty

Medical aid in dying
Doctor prescribes lethal dose
Patient self ingests

Now legal in 7 states

Slow

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
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<tbody>
<tr>
<td>1997</td>
<td>Oregon</td>
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<tr>
<td>2008</td>
<td>Washington</td>
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<td>2009</td>
<td>Montana</td>
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<tr>
<td>2013</td>
<td>Vermont</td>
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<tr>
<td>2015</td>
<td>California</td>
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<td>2016</td>
<td>Colorado</td>
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<tr>
<td>2017</td>
<td>Wash, DC</td>
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MAID not available

At this rate (1 per year) - 49 years

BUT

Other exit options

Roadmap

Why hasten death

Other options

VSED

Why?

Benefits

Burdens
Physical or existential suffering

Physical suffering

- Pain
- Nausea
- Dyspnea
- Paralysis
- Foul-smelling wounds

Existential suffering

Psychic pain
- Loss of control
- Anxiety
- Delirium
- Hopelessness

Self-defined quality of life
Pt own assessment
Pt own values
Pt own preferences

Aid in dying

Other options
Stop LSMT
Accelerate opioids
VSED
Palliative sedation
PAD / MAID

Stop LSMT
> 40 years
1977
NC Right to Natural Death Act
Legislature did not “create” the right, just “recognized” it.

“The patient generally possesses the right not to consent, that is, to refuse treatment.”

Cruzan v. Missouri DOH (1990)

“Turning off”
Ventilator
CANH
Antibiotics

Nothing to “turn off”
Stop LSMT → legal option
But not practical

Voluntarily
Stopping
Eating & Drinking

VRFF
Voluntary refusal of food & fluid

VTD
Voluntary terminal dehydration
Definition
VSED

Physiologically able to take food & fluid by mouth

Voluntary, deliberate decision to stop

Intent: death from dehydration

Bad rap

>50% at 8d

>80% at 14d
Peaceful
Comfortable

Not voluntary
Not complete
Not controlled

One third of 300 responding OR nurses cared for VSED patient
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

Legal concerns

Legal analysis

Legal concerns
Uncertainty & reluctance among providers

Clinician involvement is important

Prohibited
Unsure
Permitted

Almost never: express prohibition

NCGSA specifically & expressly prohibits many things

Not VSED

BUT

Absence of a red light not good enough

Clinicians want express permission

No green light from Raleigh
Fasting in a Syracuse nursing home to hasten death.

Nursing home sought a declaration of its rights and responsibilities.


Unpublished

Trial court opinion

>30 years old

No red lights
No green lights

**Lack** of clarity & guidance

Neglected in academic & policy circles.

Providers still ask
Is VSED legal?  
Is VSED illegal?  
Wrong questions

Law is rarely binary  
Risk assessment  
Measure Mitigate

2 case types  
1  
VSED now with capacity
Ability to understand benefits, risks, alternatives

Ability to make & communicate decision

Case 1
82yr old patient who is entirely competent

Advance directive for VSED later (when lack capacity)

After lunch

Patient with capacity requests VSED now

Extremely low risk of sanctions – criminal, civil, regulatory
Right to refuse medical interventions

Right to refuse non-medical interventions

Not assisted suicide

Not elder neglect

Right to refuse medical interventions

Well established > 4 decades

Right to refuse medical interventions

Vent Dialysis CPR Antibiotics Feed tube

Vent Dialysis CPR Antibiotics Feed tube

VSED
Unclear

Vent Dialysis CPR Antibiotics Feed tube

Not DIY

Contrast VSED

Part of a broader treatment plan
Supervised by licensed healthcare professionals
"the number of cases will increase... produce a guide to support doctors."

Harvard CEC

PAVSED

"Palliated & Assisted Voluntarily Stopping Eating and Drinking"

PAVSED

Highlights medical role in palliating symptoms
Highlights the direct care staff role in providing assistance

BUT

Barely established ANH = medical treatment

Medical b/c not "typical human"
Right to refuse unwanted interventions

ONH = treatment

ONH = unwanted

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

Battery

Unwanted contact

Even if clinically beneficial

“Every human being of adult years and sound mind has a right to determine what shall be done with his own body . . . .”

Mohr v. Williams (Minn. 1905)
Force feeding is a battery

Chief Justice Rehnquist

“It seems odd that your bodily integrity is violated by sticking a needle in your arm but not by sticking a spoon in your mouth.”

Move now from legal bases, grounds for right

Respond to 2 main legal concerns

Assisted Suicide

Clinicians worry participation with VSED is assisting suicide

>600 palliative care physicians
No specific NC prohibition like >40 states

Some risk AS

Mary Carleton Peterson (72) convicted of helping sister kill herself via carbon monoxide

BUT

VSED ≠ AS
Active | Passive

Normally:
“Providing the physical means by which the other person commits . . . suicide”

Even if otherwise within scope

Even if otherwise within scope

Exception

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

>600 palliative care physicians

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

Tag 242

Over-treatment just as risky as under-treatment

Summary

Risk ~ 0
North Carolina clinician may support VSED

Conclusion
North Carolinian with capacity may VSED

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 over 2.5 million direct visits. Plus, it is redistributed through WestlawNext, Bioethics.net, and others.


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