

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

ICEL2 (Halifax NS), Sept. 15, 2017

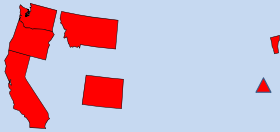
Thaddeus Mason Pope, JD, PhD  
Mitchell Hamline Health Law Institute

More & more jurisdictions  
**expanding**  
EOL liberty

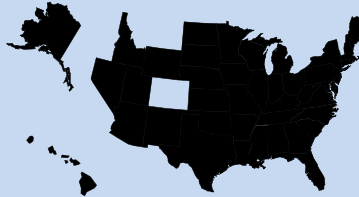
Most VISIBLE exit option

Medical  
aid in dying

MAID legal in 7 US states



MAID illegal in 49



**BUT**

**Other** exit  
options

**VSED**

**V**oluntarily  
**S**topping  
**E**ating &  
**D**rinking

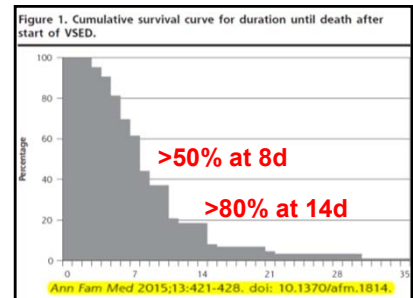
**Define  
VSED**

**3**

Physiologically  
**able** to take food  
& fluid by mouth

Voluntary,  
**deliberate**  
decision to stop

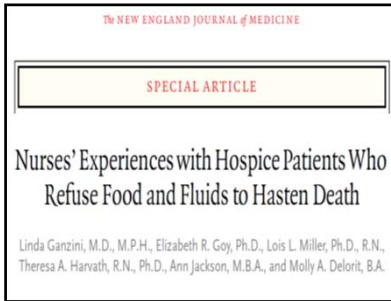
**Intent:** death  
from dehydration



**Bad  
rap**



**Peaceful  
Comfortable**

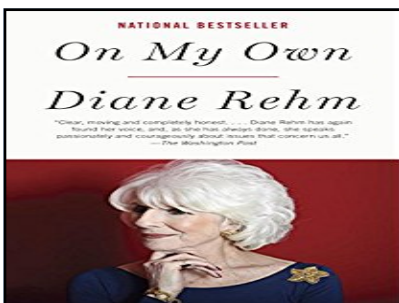


>100 Oregon nurses cared for VSED patient

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

**Good option**

POSITION STATEMENT 

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**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

JOURNAL OF PALLIATIVE MEDICINE Position Statement  
 Volume 21, Number 1, 2017  
 Mary Ann Liebert, Inc.  
 DOI: 10.1099/jpm.2016.0290

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

**Legal concerns**



**Uncertainty & reluctance**

|   |            |
|---|------------|
|  | Prohibited |
|  | Unsure     |
|  | Permitted  |



No U.S. jurisdiction expressly prohibits VSED

**BUT**  
Absence of a red light **not** good enough



No **statutory** permission

No **judicial** precedent

No red lights  
No green lights  
**Lack** of clarity & guidance



Providers ask

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

2

Advance directive for VSED **later**  
(when Pt lacks capacity)

VSED now, patient with capacity

Extremely **low** risk

of sanctions – criminal, civil, regulatory

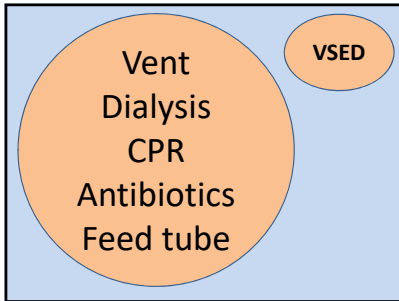
4 Arguments

1 Right to refuse medical measures

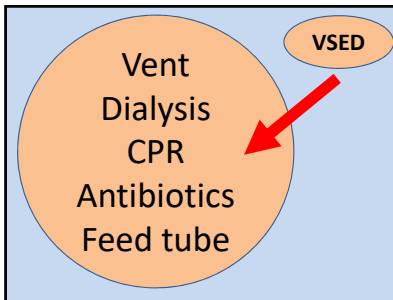
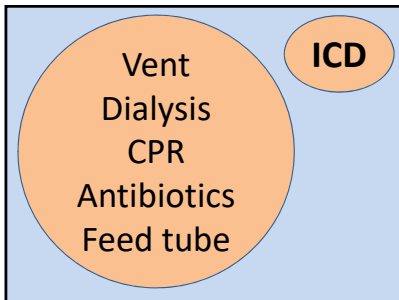
Well established  
> 4 decades

Right to refuse medical

Vent  
Dialysis  
CPR  
Antibiotics  
Feed tube



Unclear



Not DIY



Contrast  
VSED



Part of a broader **treatment** plan  
**Supervised** by licensed healthcare professionals



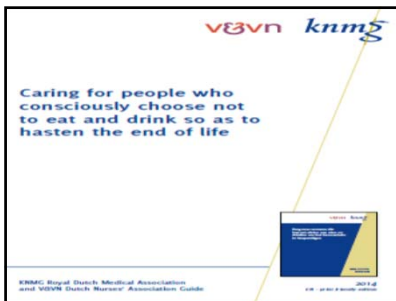
**PAVSED**  
**Palliated & Assisted**  
Voluntarily Stopping  
Eating and Drinking

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

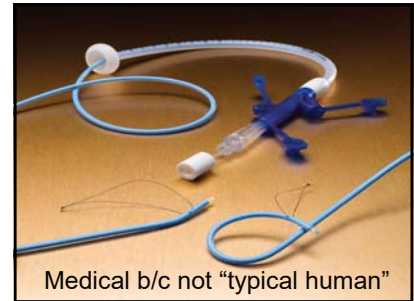
**Recognized** as healthcare by medical profession

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

**More** clinical practice guidelines



**BUT**



ONH =  
"treatment"

Right to  
refuse **VSED**  
medical

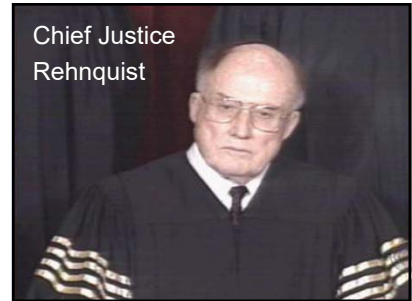
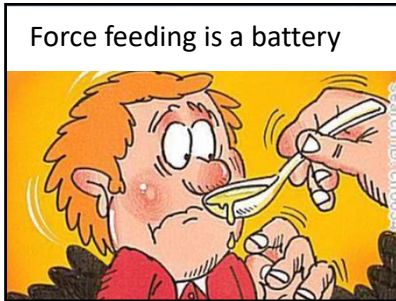
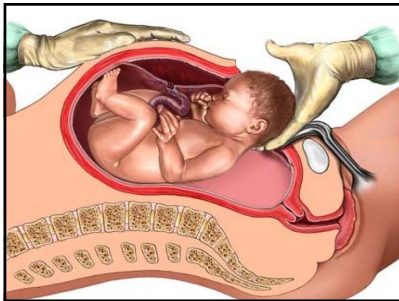
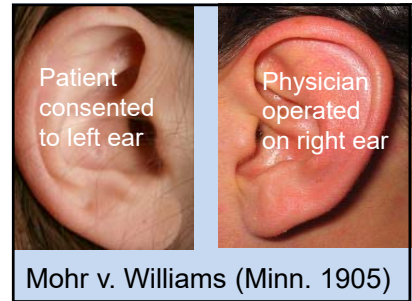
**2** Right to  
refuse  
unwanted  
measures

Does **not** matter  
whether food &  
fluid is "medical  
treatment"

Right to refuse  
any intervention  
(medical **or not**)

Unwanted contact  
**Even if** clinically  
beneficial

# Battery



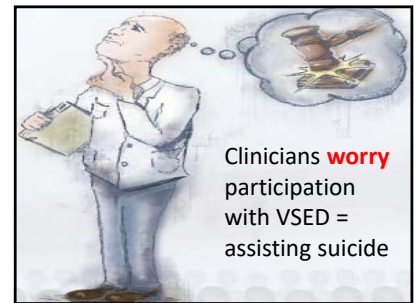
“bodily integrity is violated . . . by sticking a **spoon in your mouth** . . . sticking a needle in your arm”

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

Respond to 2 main legal concerns

**3** VSED is not assisted suicide

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



JOURNAL OF PALLIATIVE MEDICINE  
 Volume 15, Number 3, 2012  
 © Mary Ann Liebert, Inc.  
 DOI: 10.1089/jpm.2011.0234

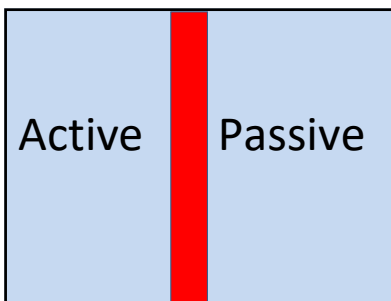
Prevalence of Formal Accusations of Murder and Euthanasia against Physicians

> 600 palliative care physicians

| Action that might be misperceived   | Mean rating of risk | SD  | Actual number of physicians who were accused based on this action |
|---|---------------------|-----|---|
| Total sedation (the application of pharmacotherapy to induce a state of decreased or absent awareness [unconsciousness] in order to reduce the burden of otherwise intractable suffering) | 4.1                 | 1.1 | 2   |
| Stopping artificially delivered nutrition/hydration   | 3.6                 | 1.1 | 0   |
| Stopping oral nutrition/hydration in a patient who can eat/drink when requested by the patient  | 3.3                 | 1.2 | 0   |
| Use of palliative and sedative medications in the process of discontinuing mechanical ventilation   | 3.2                 | 1.3 | 6   |
| Stopping dialysis   | 3.1                 | 1.2 | 0   |
| Use of barbiturates for symptom treatment   | 2.9                 | 1.1 | 2   |
| Use of opiates for symptom treatment  | 2.8                 | 1.2 | 13  |
| Use of benzodiazepines for symptom treatment  | 2.3                 | 1.0 | 1   |
| Other   | N/A                 | N/A | 6   |

**BUT**

VSED ~~=~~  
 AS



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

137 Deficiencies

The number and severity of deficiencies shown below relate only to the search terms, not necessarily all deficiencies against the home.

**Important:** If you searched for a city or home name, results for that home may be spread over several pages. To improve results, select a state and sort by city.

| Date           | Nursing Home   | City          | State | Def. | Severity Range | Deficiencies With "Hydration" |
|----------------|--|---------------|-------|------|----------------|-------------------------------|
| Sept. 21, 2016 | THE BRIGADOON AT CREEKSHIRE PARK (REPORT)                  | The Woodlands | Texas | 2    | 1-2            | 2                             |
| April 28, 2015 | BRIDGECRYST HEALTH CENTER (REPORT)                         | Tulsa         | Texas | 2    | 1-2            | 2                             |
| Aug. 7, 2015   | KINERED TRADITIONAL CARE AND REHABILITATION-RIDGM (REPORT) | Fort Worth    | Texas | 4    | 1-2            | 4                             |

BUT



**Tag 242**

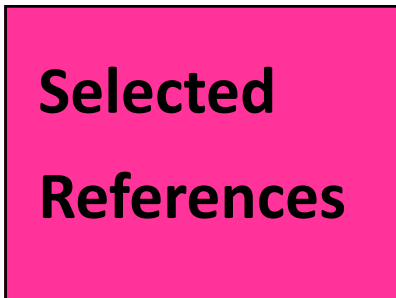
DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-12-25  
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations/Survey and Certification Group

Over-treatment just as risky as under-treatment

Conclusion

Risk ~ 0



**Medical Futility Blog**

Since 2007, I have been blogging, almost daily, to [medicalfutility.blogspot.com](http://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.

*Voluntarily Stopping Eating and Drinking: Clinical, Psychiatric, Ethical and Legal Aspects, JAMA INTERNAL MED. (forthcoming 2017) (with Timothy Quill, Linda Ganzini, Bob Truog, Thaddeus Pope).*

*TM Pope, Voluntary Stopping Eating and Drinking to Hasten Death: May Clinicians Legally Support Patients Who VSED? BMC MED. (forthcoming 2017).*

*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).*

TM Pope, *Prospective Autonomy and Dementia: Ulysses Contracts for VSED*, 12(3) JOURNAL OF BIOETHICAL INQUIRY 389-94 (2015).

TM Pope, *Legal Briefing: Voluntarily Stopping Eating and Drinking*, 25(1) JOURNAL OF CLINICAL ETHICS 68-80 (2014) (with Amanda West).

TM Pope, *Voluntarily Stopping Eating and Drinking: A Legal Treatment Option at the End of Life*, 17(2) WIDENER LAW REVIEW 363-428 (2011) (with Lindsey Anderson).

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138