

# Medical Aid in Dying

Minnesota State Bar Association  
Elder Law Section – Sept. 27, 2018

Thaddeus M. Pope, JD, PhD  
Mitchell Hamline School of Law

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# Roadmap

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# 2

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**Legal status**  
of MAID  
in USA

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How **MN**  
patients can  
access MAID

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**MAID**

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End-of-life  
option

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For **small**  
number of  
patients

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Who

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# Adults

> 18 years old

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# Decisional capacity

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# Terminally ill

6-mo prognosis

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# What

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Ask & receive  
prescription  
**drug**

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**Self**-administer  
To hasten death

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# History of Legalization

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**4** paths

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## Path 1

Litigation

US Constitution

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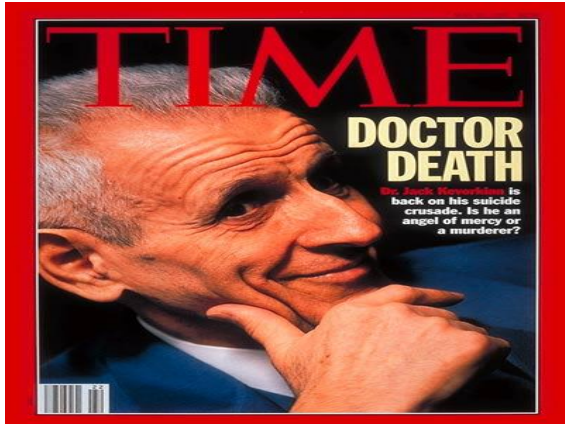
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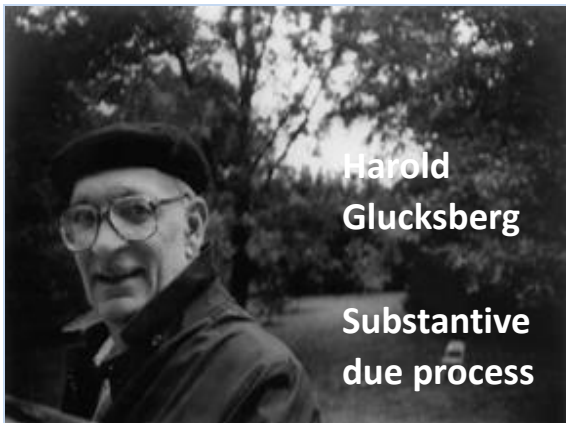
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**BUT**

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1997

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“no”

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**No** federal  
constitutional  
right to MAID

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**So...**

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Focus on  
rights at  
**state** level

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“entrusted to  
the **laboratory**  
**of the states**”

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## Path 2

Litigation

state constitution

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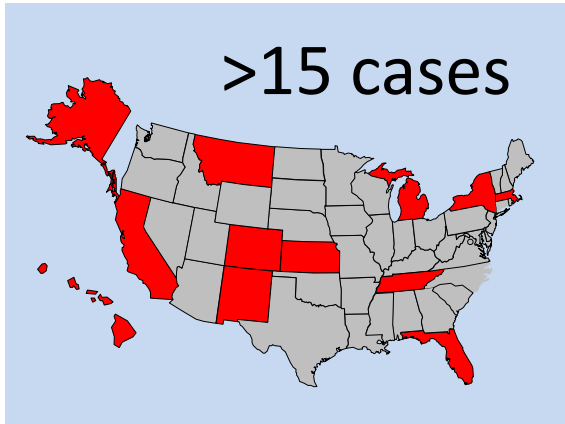
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All 15  
**failed**

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**Active  
case**

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Roger  
Kligler  
MA

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# Recap

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No right under  
**US** constitution

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No right under  
**state** constitutions

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**Path 3**  
**State**  
**statutes**

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**2**

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# 1994

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Injunction  
1994 - 1997

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1998

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Numerous  
safeguards

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**Multiple** requests

**Multiple** counseling

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# Patient safety record

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2016

## >> Oregon Death with Dignity Act

Data summary 2016

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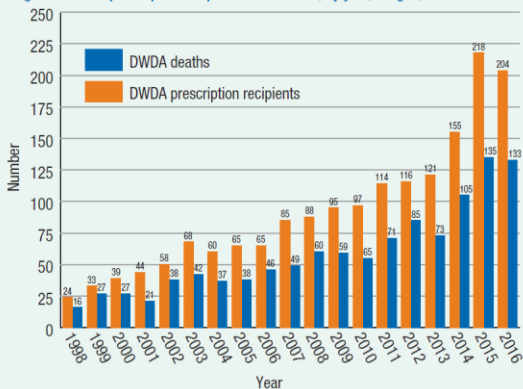
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Figure 1: DWDA prescription recipients and deaths\*, by year, Oregon, 1998–2016



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# More

ballot  
initiatives

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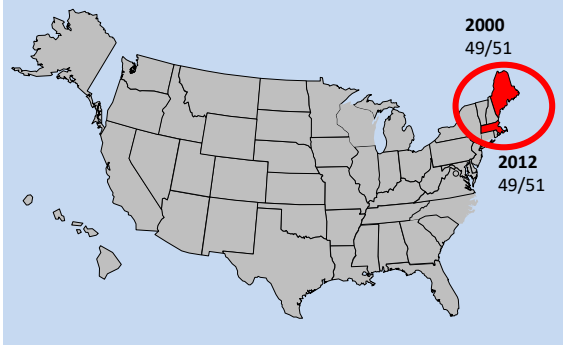
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# Close call ballots



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# Recap

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**3** successful  
ballot initiatives  
**OR WA CO**

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# Legislation

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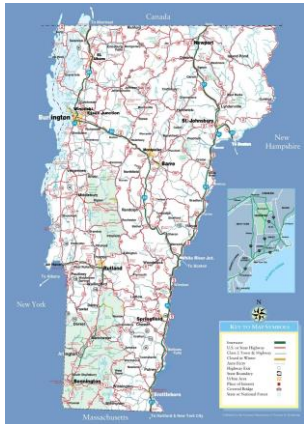
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**May  
2013**

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**Oct.  
2015**

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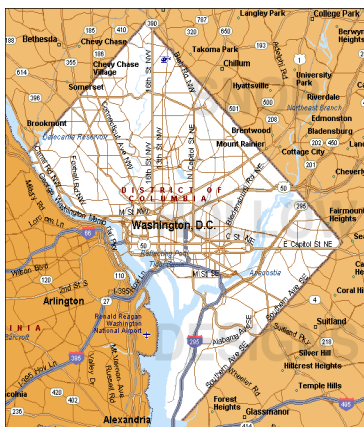
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**Feb.  
2017**

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 Presiding Justice Manuel A. Ramirez	 Associate Justice Art W. McKinster	 Associate Justice Douglas P. Miller	 Associate Justice Carol D. Codrington
 Associate Justice Marsha G. Slough	 Associate Justice Richard T. Fields	<b>Oct. 9</b>	

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CONSIDERING PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE ex rel. XAVIER  
BECERRA, as Attorney General etc.,

Petitioners,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

SANG-HOON AHN et al.,

Real Parties in Interest.

E070545

(Super.Ct.No. RIC1607135)

TENTATIVE OPINION

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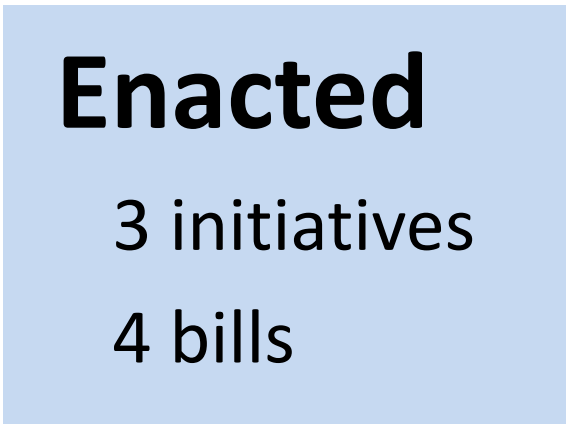
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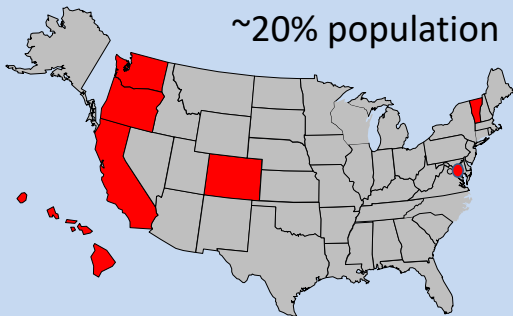
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**7 statutes**

~20% population



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**~50 years**

of combined  
experience

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**Ongoing**

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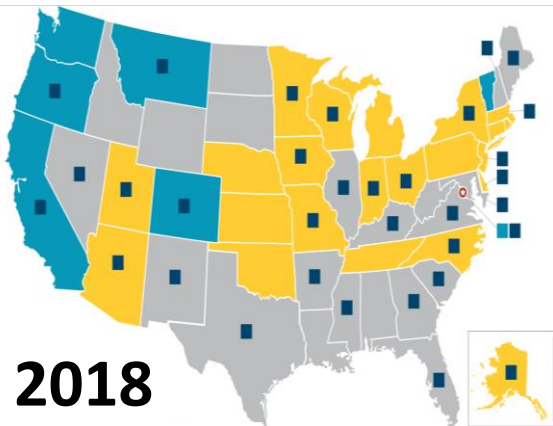
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**Path 4**  
**Litigation**  
**State statute**

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**MAID**

**Criminal  
prohibition**

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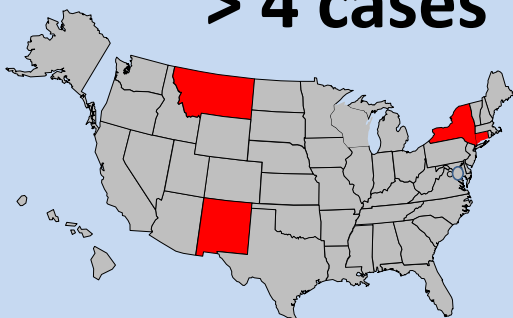
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**> 4 cases**



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**All failed**  
**... except**

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MAID

**not** prohibited

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

Mont. Code Ann. 45-2-211

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# Minnesota

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## Chapter 609 Criminal Code

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## Minn. Stat. **609.215**

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“Whoever . . . **assists** another in taking the other’s life may be **sentenced** to . . . 15 years . . . \$30,000”

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# Medical Practice Act

98

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Minn. Stat.  
147.091(1)(w)

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

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MAID = AS

AS = felony

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MAID = felony

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# Medical tourism

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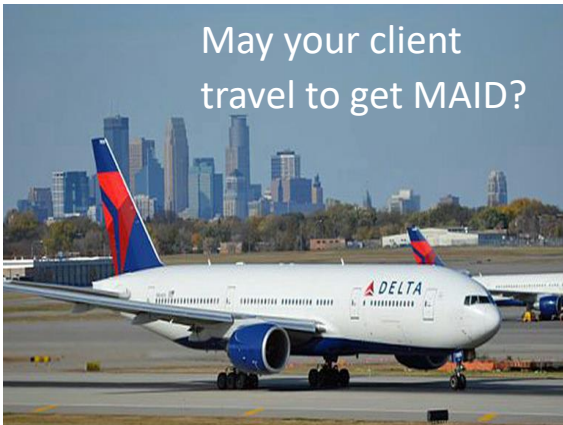
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May your client  
travel to get MAID?



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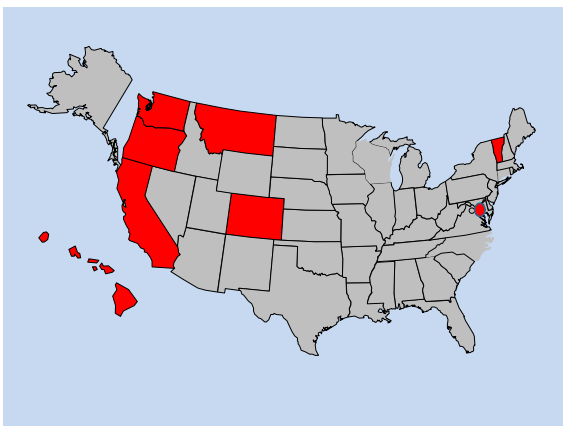
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# Probably

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# Residency

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

Cal. H&S Code 443.1(o)

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Confirmed by  
attending  
physician

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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.

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# Legal Risk Minnesota

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“Whoever . . . **assists** another in taking the other’s life may be **sentenced** to . . . 15 years . . . \$30,000”

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Advise on how to qualify in CA, OR

609.215 covers **even** mere speech

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FINAL EXIT NETWORK, INC., FRAN SCHINDLER, and JANET GROSSMAN,

Plaintiffs,

v.

LORI SWANSON, in her official capacity as the attorney general of Minnesota; JAMES C. BACKSTROM, in his official capacity as the Dakota County Attorney; and JOHN L. FOSSUM, in his official capacity as the Rice County Attorney,

Defendants.

Case No. 0:18-cv-01025-JNE/SER

AMENDED COMPLAINT

**Nov. 29, 2018**

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**Material “assistance”**

Buy tickets

Rent apartment

Drive to airport

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**W** www.thaddeuspope.com

**B** medicalfutility.blogspot.com

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