

VSED Advance Directives

Southeast VSED End-of-Life Choice Conference • April 6, 2017

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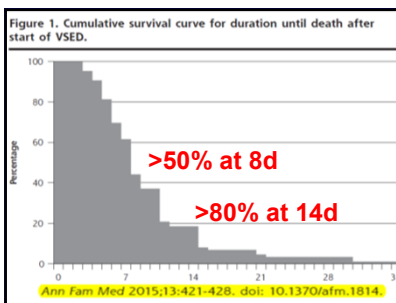
Cases 2 and 3

Case 2

76yr old patient . . . recently applied for **hospice and rejected** . . . not meet imminent-death criterion based on projection of **2-4 years**)

42 CFR § 418.20(b)
“to be eligible to elect hospice care under Medicare, an individual must be . . . certified as being **terminally ill**”

42 CFR § 418.22(b)(1)
“individual's prognosis is for a life expectancy of **6 months or less**”



14 days < 6 months

“clinical findings”
that support
prognosis can
cite VSED

But many
clinicians wait
until **day 3**

Case 3

“89yr old patient
. . . no longer
mentally
competent”

Now leave
contemporaneous
VSED

Advance
directive for
VSED **later**

Trickier & more
controversial



Roadmap

1. What is it
2. Why do it
3. Legality
4. Practical tips
5. Challenges

1 What is this

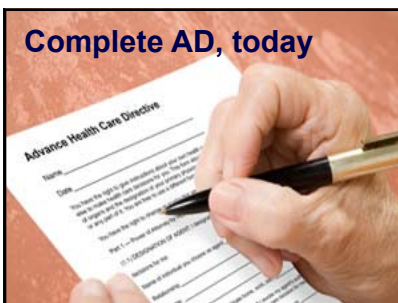
This morning:
both VSED & capacity at same time

Now, VSED when **lack** capacity

4 conditions

1

Complete AD, today



2

Direct VSED in **future**

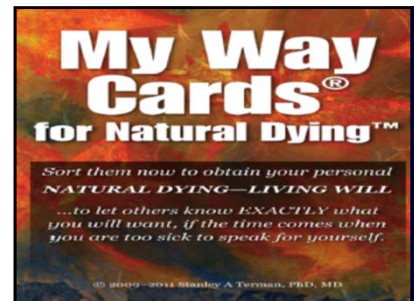
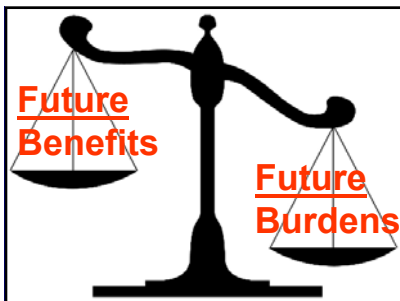
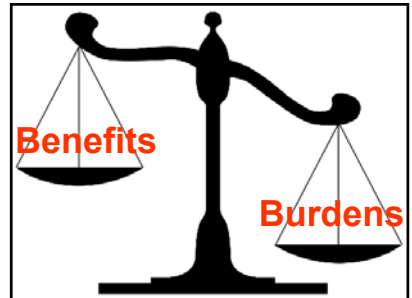
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When reach point you define as intolerable


4

You **lack** capacity at that time


2 Why do it




I cannot remember the important events of my life. If reminded, I don't know why they are important. [1.2]



I have severe pain. But I cannot say what bothers me. Doctors don't see my pain. They do not treat my pain. [2.6]



When I see people in my close family or see my best friends, I do not know who they are. [3.1]



Definitely acceptable

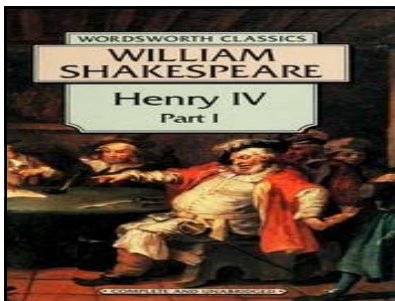
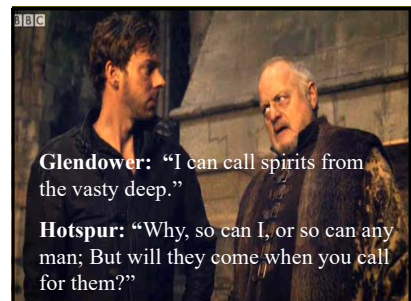
Definitely NOT acceptable

Unacceptable when combined with others

3 Legality

Can you leave VSED instructions in an AD?

Yes

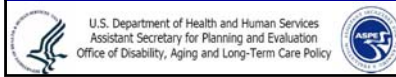



Glendower: "I can call spirits from the vasty deep."

Hotspur: "Why, so can I, or so can any man; But will they come when you call for them?"

You can **write** anything you want in an AD
But . . . will it be **honored**

65-76% of physicians whose patients **have** advance directives do not know they **exist**



Assume AD Completed Available



No specific permission for VSED



Sometimes, advance VSED is **prohibited**

Wis. Stat. 155.20
“A health care agent **may not consent** to the withholding or withdrawal of **orally** ingested nutrition or hydration . . .”

“Providing nutrition or hydration **orally** . . . is **not** health care”
NY Pub Health Code 2994-a

Autonomy

Autonomy
Prospective autonomy

No green (yet)
Some red



4 Legality in NC

Living will
HCPOA

Living will

STATE OF NORTH CAROLINA

ADVANCE DIRECTIVE FOR A
NATURAL DEATH ("LIVING WILL")

COUNTY OF _____

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, talk to your doctor or with medical professionals such as your doctor, pharmacist, and lawyer.

NOTE: YOU MAY INITIAL ANY OR ALL OF THESE CHOICES.

(initial)	I have an incurable or irreversible condition that will result in my death within a relatively short period of time.
(initial)	I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.
(initial)	I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initiated in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

(initial)	may withhold or withdraw life-prolonging measures.
(initial)	shall withhold or withdraw life-prolonging measures.

HCPOA

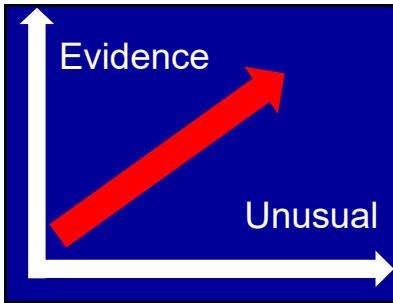
F. Giving consent for, withdrawing consent for or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

No legal obstacle to NC agent authorizing VSED

Still "soft" obstacles

5 Practical tips



Be very **specific** on the when

Be very **specific** on the what

Lessons from 2 recent cases

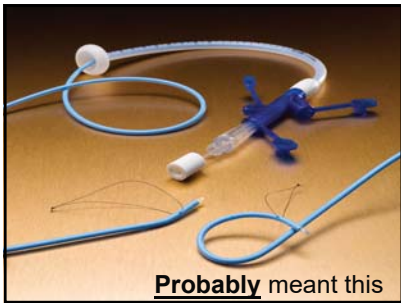
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Margot Bentley

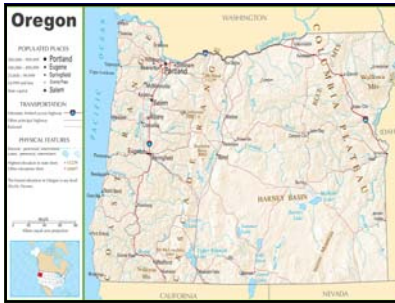


DIRECT THAT I BE ALLOWED TO DIE AND NOT BE KEPT ALIVE BY ARTIFICIAL MEANS OR "HEROIC MEASURES",
B. NO NOURISHMENT OR LIQUIDS.



Probably meant this

2



PART 1: POWER OF ATTORNEY FOR HEALTH CARE

I revoke all prior advance health care directives and durable powers of attorney for health care signed by me. This document shall not be affected by my subsequent incapacity. I am not a patient in a skilled nursing facility, and I am not a conservatee.

1.1 NAME AND ADDRESS OF PRINCIPAL. My name and address are:

 Nora R. Harris, 83 Arnold Drive, Novato, CA 94949

PART 2: INSTRUCTIONS FOR HEALTH CARE

2.1 END-OF-LIFE DECISIONS. I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

~~2.1.1~~ a. I Choose NOT To Prolong Life. If I initial this line, I do not want my life to be prolonged and I do not want life-sustaining treatment to be provided or continued if any of the following conditions apply:

6 Challenges

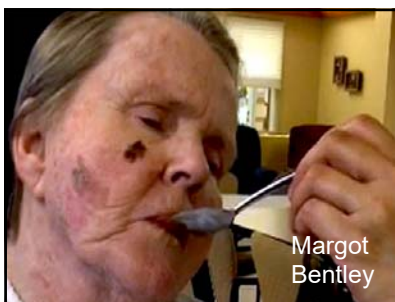
Do later requests for water **revoke** the AD?

Maybe

All patients **presumed** to have capacity
Until rebutted

Decision specific

Patient might have capacity to make **some** decisions but not others



Legal status of incapacitated objection?

Conclusion

NC may authorize **later** VSED when lack capacity

But may “unintentionally” revoke



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.

Voluntarily Stopping Eating and Drinking: Clinical, Psychiatric, Ethical and Legal Aspects (under submission) (2017) (with Timothy Quill, Linda Ganzini, Bob Truog).

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