

**Perpetual Legal Calibration:
Balancing Risks of Unwanted
Life and Unwanted Death**

28th Annual Health Law Symposium
Saint Louis University • April 1, 2016

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Death is
not always
bad

Life is
not always
good



For many, the alternative to death is **worse**





Goal

Avoid
unwanted
death

Avoid
unwanted
life

Saint Louis University School of Law Center for Health Law Studies
and the Saint Louis University Journal of Health Law & Policy
present the 28th Annual Health Law Symposium:

***Dying Fast and Slow:
Improving Quality of
Dying and Preventing
Untimely Deaths***



Patient safety

Patient rights

Risks to
avoid

Dying
too fast

Dying
too slow

Determined by
patient **herself**

Preference
sensitive
Value laden



Legal safeguards
to reduce risks of
TOO FAST
increase risks of
TOO SLOW.

Legal safeguards
to reduce risks of
TOO SLOW
increase risks of
TOO FAST.



Roadmap

1. Too slow
2. Too fast

Too Slow

Example 1

Missing or ineffective ACP

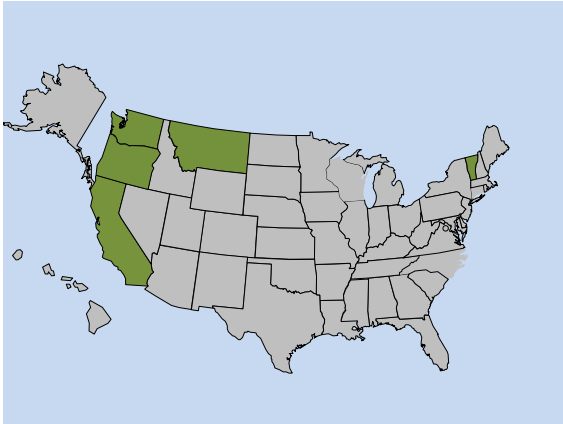
Examples 2 & 3

MAID

Clinician
overtreatment

MAID

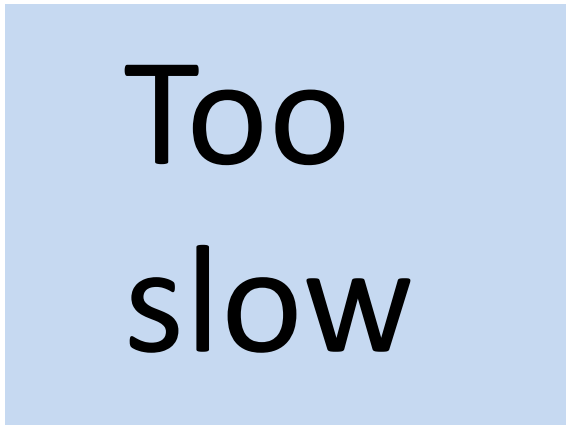
Physician prescribing medication to a **capacitated, terminally ill** patient, which the patient may ingest to bring about death



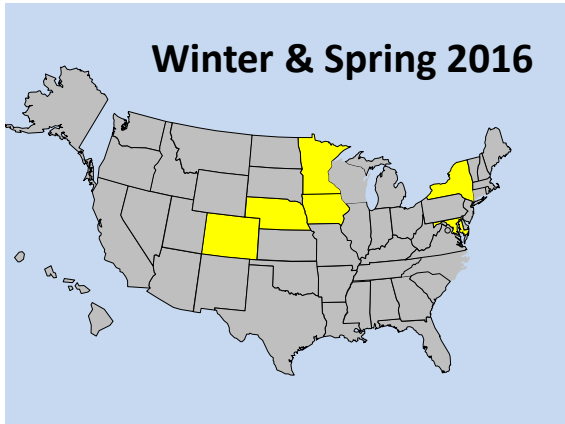


0.4%
deaths

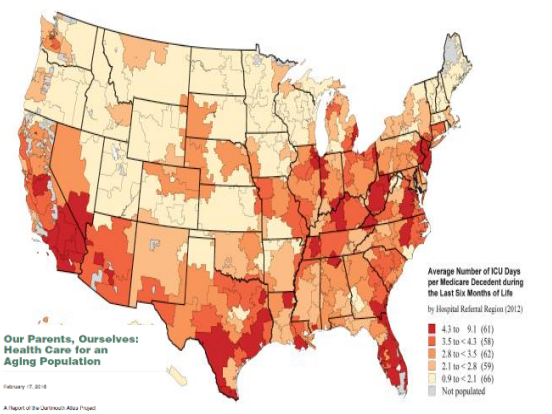


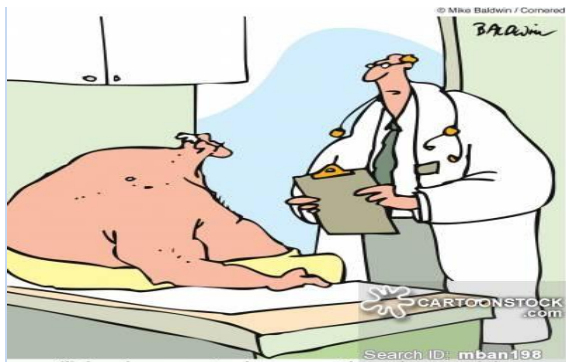




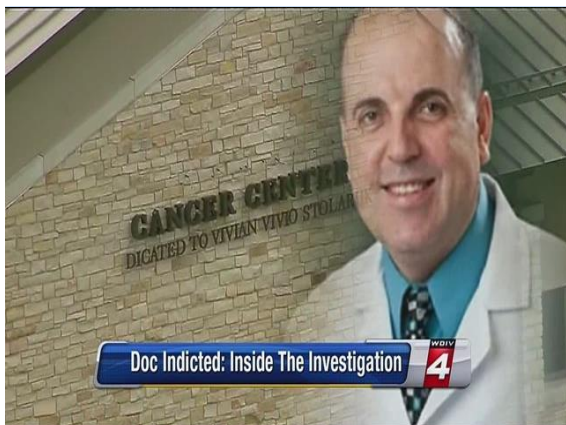


Clinician overtreatment





“You’ve got six months, but with aggressive treatment we can help make that seem much longer.”



Most over-treatment is **not** physiologically futile

possible

Clinical
diagnosis
okay

PATIENTS' PREFERENCES MATTER
Stop the silent misdiagnosis
Al Mulley, Chris Trimble, Glyn Elwyn

**“preference
misdiagnosis”**

PDA



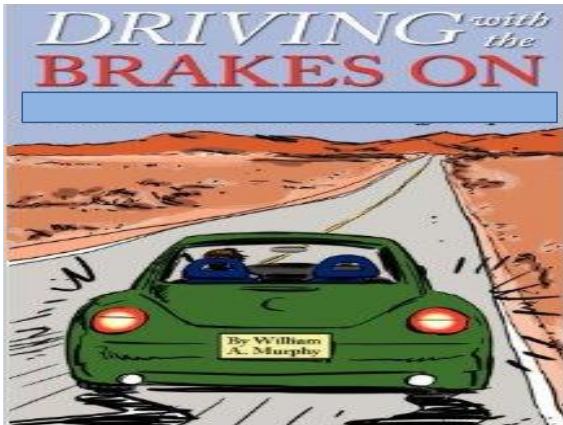
Accurate
Complete
Understandable

**ACA
3506**



**Too
Fast**

Smaller risk





Cruzan (Mo. 1988)

“we err on the side of preserving life”

MAID

**Surrogate
overtreatment**

61

MAID

62



SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

ROBERT BRODY, M.D.; MARC CONANT, M.D.;
DONALD ABRAMS, M.D.; ROBERT LINER,
M.D.; DANIEL M. SWANGARD, M.D.; CHRISTIE
WHITE; and ANGELICA BLOOMQUIST,

Plaintiffs,

vs.

KAMALA D. HARRIS, in her official capacity as
Attorney General of the State of California;
GEORGE GASCON, in his official capacity as
District Attorney for San Francisco County; and
JACKIE LACEY, in her official capacity as
District Attorney for Los Angeles County,

Defendants.

Case No. CGC-15-544086

PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO
DEFENDANTS' DEMURRERS

Date: January 28, 2016
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Ernest H. Goldsmith
Trial Date: None Set
Action Filed: February 11, 2015
Reserv. #: 06110128-08

Abortion clinics open now





**MEDICAL ASSISTANCE IN DYING:
A PATIENT-CENTRED APPROACH**

**Report of the Special Joint Committee
on Physician-Assisted Dying**

Hon. Kelvin Kenneth Ogilvie and Robert Oliphant
Joint Chairs

FEBRUARY 2016
42nd PARLIAMENT, 1st SESSION

Without relaxed
safeguards



too slow for some

67

But relaxed
safeguards



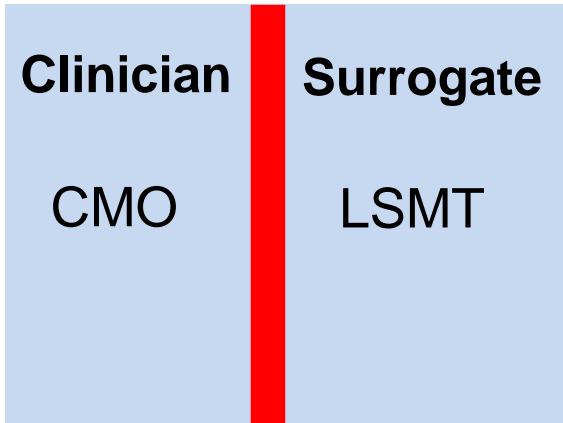
too FAST for others

68

**Surrogate
overtreatment**

69





> 16%
ethics consults

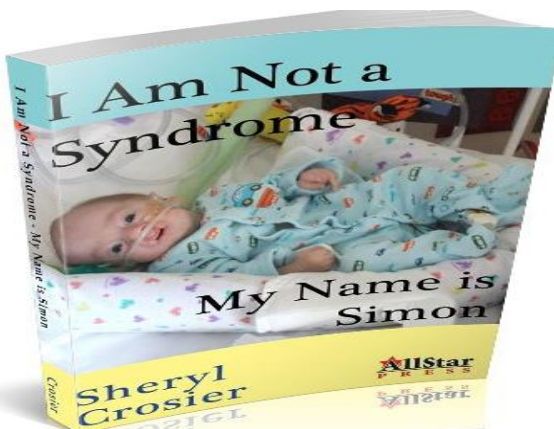
HEC Forum
DOI 10.1007/s10730-015-9293-5

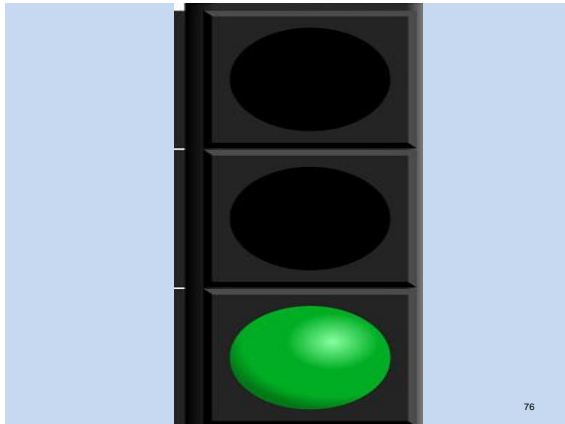
What Ethical Issues Really Arise in Practice at an Academic Medical Center? A Quantitative and Qualitative Analysis of Clinical Ethics Consultations from 2008 to 2013

Katherine Wasson^{1,3} · Emily Anderson¹ ·



Consent
always







M.D. may stop LSMT for
any reason
with immunity
if HEC agrees

Tex. H&S 166.046

2 objectives for DR mechanisms

Fair

Efficient

82

Fairness

Efficiency

TADA

83

Fairness

Efficiency

84

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