

**CENTER FOR BIOETHICS**  
**ETHICS GRAND ROUNDS:**  
**Thank you for attending!**  
**Ethics Grand Rounds will return in February 2020.**  
 VISIT: [BIOETHICS.UMN.EDU](http://BIOETHICS.UMN.EDU)  
 FOR MORE DETAILS

The Center for Bioethics is part of the:  
 OFFICE OF ACADEMIC CLINICAL AFFAIRS  
 UNIVERSITY OF MINNESOTA  
 "Divine to Discover"

1

**Minnesota Is Ready for End of Life Options Act**  
**Evolving Status of Medical Aid in Dying**

Thaddeus Mason Pope  
 University of Minnesota  
 November 22, 2019

2

**Disclosures**

3

**No COI**

4

**op-eds**

5

Thaddeus Mason Pope is the director of the Health Law Institute at Marquette University, and a frequent legal commentator and blogger on end-of-life medical issues.

UPSTAR/REUTERS OCTOBER 7, 2014, 12:38 PM

6

**VIEWPOINT** **The Changing Legal Climate for Physician Aid in Dying**

David Greenblatt, MD, JD  
 Hill Center for Law and Health, Indiana University School of Law, Bloomington

Thaddeus Mason Pope, PhD  
 Health Law Institute, Marquette University School of Law, St. Paul, Minnesota

Rita A. Mah, MD, PhD  
 School of Medicine, University of California Davis School of Medicine, Sacramento

While once widely rejected as a health care option, physician aid in dying is receiving increased recognition as a response to the suffering of patients at the end of life. With aid in dying, a physician writes a prescription for life-ending medication for an eligible patient. Following the recommendation of the American Public Health Association, the term aid in dying rather than "assisted suicide" is used to describe the practice.<sup>1</sup> In this Viewpoint, we describe the changing legal climate for physician aid in dying occurring in several states (Table).

Legislation in Oregon and Washington have legalized aid in dying by public referendum, legislation in Vermont have done so by statutory enactment, and courts in Montana and New Mexico have done so by judicial rulings. Support for aid in dying is increasing, and it would not be surprising to see voters, legislators, or courts in

an advance directive statute in California,<sup>2</sup> court decisions concluded that patients may reject it against treatment recommendations even when it is necessary to prolong life.

Recognition of the right to refuse life-sustaining treatment reflected societal consensus that people should be able to decline treatment when they are suffering from irreversible and severe disease, to avoid burdens of continued treatment may nullify benefits, and people should not be forced to prolong and undignified dying process.<sup>3</sup> With call about the right to the desire to protect so people from intolerable suffering.

How is it possible to decide when some relief is serious enough that treatment can be discontinued? The Quinlan case concluded that the right to refuse sustaining treatment should exist when the

7

**CPG**

8

**JOURNAL OF PALLIATIVE MEDICINE**

VOLUME 16, NUMBER 2 MARCH 2012 ISSN 1525-7528

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**SYMPOSIUM**

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**Henry A. Likierik, Inc. Publishers**  
[www.henryalike.com](http://www.henryalike.com)

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Testimony

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11

Academic  
Balanced  
Circumspect

12

Opening

13

2,800,000  
total deaths

14

41,000  
MN deaths / year

15

Control timing &  
manner of death

16



17

6 last resort  
options

18



19

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

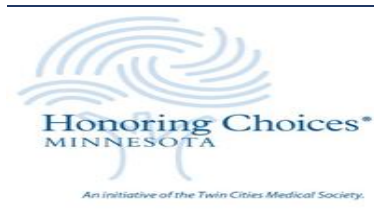
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1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

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23

MINNESOTA  
**Provider Orders for Life-Sustaining Treatment (POLST)**

Follow these orders until orders change. These medical orders are based on the patient's current medical condition and preferences. With significant change of condition new orders may need to be written. Patients should always be treated with dignity and respect.

PRESET LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_ MEDICAL ID# \_\_\_\_\_  
 DATE OF BIRTH (MM/DD/YYYY) \_\_\_\_\_

PRIMARY MEDICAL CARE PROVIDER NAME \_\_\_\_\_ PRIMARY MEDICAL CARE PROVIDER PHONE (WITH AREA CODE) \_\_\_\_\_

**A PATIENT'S POLST FORM MAY BE DISCUSSED IN A MEDICAL EMERGENCY WITH ANY HEALTH CARE PROVIDER**


24

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

25



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POSITION STATEMENT 

**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

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28

JOURNAL OF PALLIATIVE MEDICINE  
 Volume 20, Number 1, 2017  
 Mary Ann Liebert, Inc.  
 DOI: 10.1089/jpm.2016.0280

Position Statement

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

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1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

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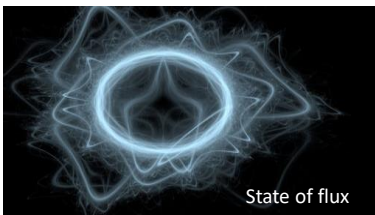
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Will **not** discuss  
 Accepted  
 Not accepted

32

1. Stop life-sustaining therapy
2. High dose opioids
3. Palliative sedation to unconsciousness
4. Voluntarily stop eating & drinking
5. Medical aid in dying
6. Voluntary active euthanasia

33



34



35



36

**6** parts

37

**What** is  
MAID?

38

**Why** need  
to legalize?

39

**History** of  
legalization

40

**How** has MAID  
been used?

41

**2** debates

42

Too  
permissive

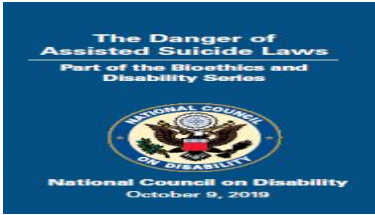
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Too  
restrictive

44

**Not**

45



46



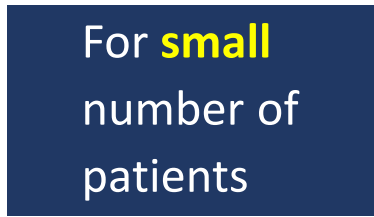
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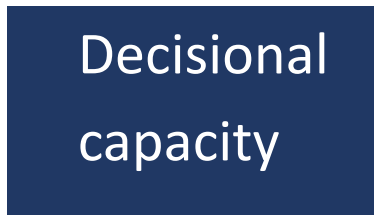
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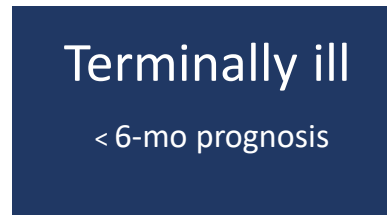
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52



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54

What

55

Ask & receive prescription **drug**

56

**Self**-administer to hasten death

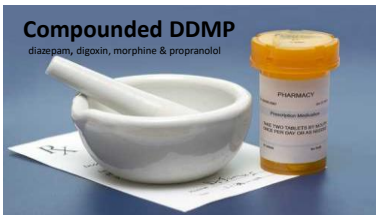
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58



59



60

The New York Times

61

Aid in Dying Soon Will be Available to More Americans  
July 8, 2019

62



63




64

Why need  
a statute

65

Across USA, since 1800s,  
help someone commit  
suicide is a **crime**

66



“assisted suicide prohibitions are **deeply rooted** in our nation’s legal history”

67



68

Chapter 609  
Criminal Code

69

Minn. Stat.  
**609.215**

70

“Whoever ... **assists** another in taking the other’s life may be **sentenced ...**”

71



72



# Medical Practice Act

73

# Minn. Stat. 147.091(1)(w)

74

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

75



76



77



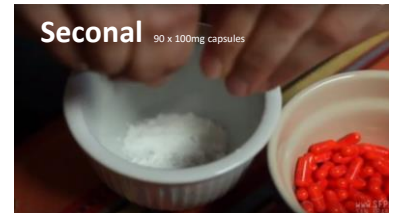
78

# No MAID in Minnesota

79

# MAID = AS

80



81

MAID = AS  
AS = felony  

---

MAID = felony

82

9 MAID  
statutes

83

CA HI OR  
CO ME VT  
DC NJ WA

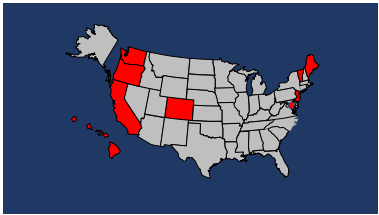
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MAID ≠ AS

85

MAID  
Criminal  
prohibition

86



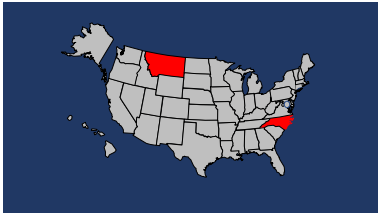
87

MAID is  
legislatively  
authorized

88

BUT

89



90



91

No MAID statute

92

BUT

93

Considered legal

94



95

"consent of the victim. . . is a defense"

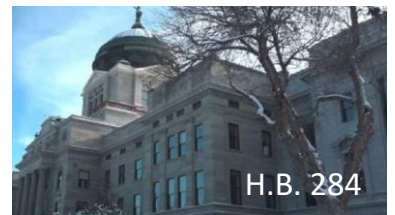
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97

Patient consent  
↓  
Not prohibited

98



99



100

No MAID prohibition

101

Therefore,

102

No need explicit authorization

103



NCMJ  
N.C. Med J.  
80(2):128  
2019

104



105



106

MT exceptions  
NC

107

MAID must be legislatively authorized

108

# History of Legalization

109

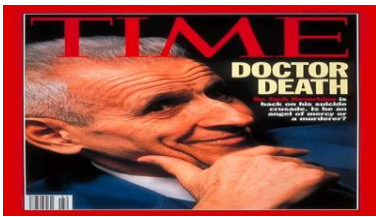
# 3 paths

110

# Path 1

Litigation  
US Constitution

111



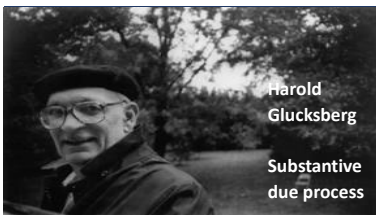
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# 1994

113



114



115



116



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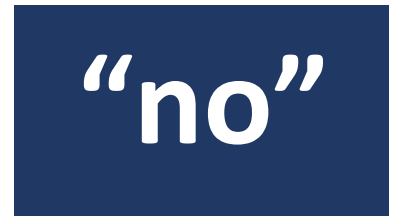
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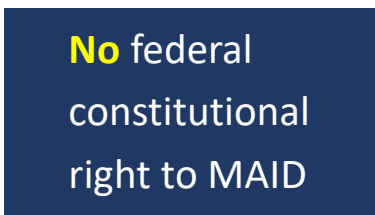
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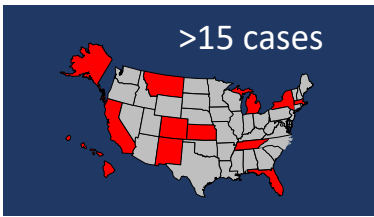
127

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

128

**Path 2**  
Litigation  
**state** constitutions

129



130

All 15  
**failed**

131

**Active  
case**

132



133

**Recap**

134

No right under  
**US** constitution

135

No right under  
**state** constitutions

136

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

137

#### Early efforts

1988	California
1991	Washington
1992	California
1994	Michigan

138

**BUT**

139

Legalize **both**  
euthanasia  
**and** MAID

140

#### MAID

**Self** ingestion  
**Patient** takes the  
final overt act

141

#### Euthanasia

**Clinician** makes  
the final overt act

142

46/54

143

All U.S. bills  
focus on  
MAID **only**

144



1994  
(1997)

145



146

Numerous safeguards

147

Multiple requests  
Multiple screenings

148

Prescribing MD  
Consulting MD  
Mental health MD

149



150

Voluntary  
Informed  
Enduring

151



152



153



154



155



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157



158



159



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161



162



163



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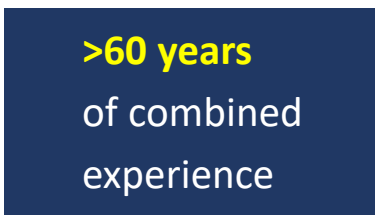
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167



168



169

OR	22	CA	4
WA	11	CO	3
MT	10	DC	3
VT	6	HI	1

170



171

in  
**2019**

172



173



174

**NOVEMBER 2019**

Mon	Tue	Wed	Thu	Fri	Sat	Sun
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

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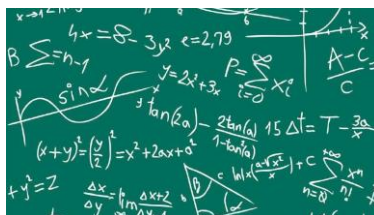
176

“1 in 5  
Americans”

177



178



179

71m  
327m

180

BUT

181

Residency

182



183

“resident of \_\_\_\_”

184



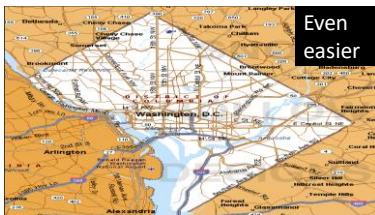
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Confirmed by attending physician

186

- Driver license
- Voter registration
- Own or **lease property**
- Tax return

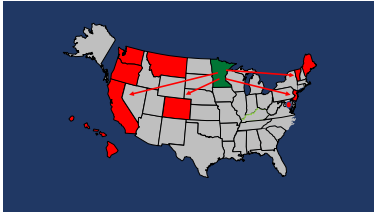
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188



189



190

No legal barrier  
**Practical** barrier

191

**Enough** on  
legalization

192

**Usage**

193

**60 years**

194



195

**1997 – 2019**

196

**How  
many**

197

**1459**  
MAID deaths

198

750,000  
total deaths

199

0.2%

200



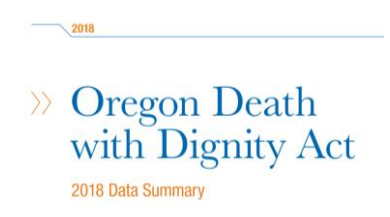
201

OR 4.1m  
MN 5.6m

202

per year

203



204

249 Rx  
168 die

205



206

340 Rx  
229 die

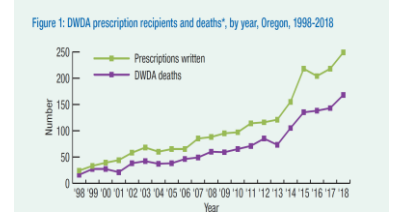
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Who

208

1459 deaths  
2217 prescriptions

209



210

3 different populations benefit

211

Use  
Have  
Know

212

76% cancer

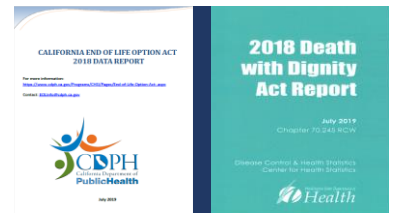
213

90% hospice

214

95% insured

215



216



# Minnesota legalization

217

# 2016

218

02/17/15 REVISOR SG6/NB 15-2700 as introduced

**SENATE**  
STATE OF MINNESOTA  
EIGHTY-NINTH SESSION **S.F. No. 1880**

(SENATE AUTHORS: EATON, Poggen, Dobbie, Marty and Goodwin)

DATE	D-PG	OFFICIAL STATUS
03/10/2015	972	Introduction and first reading
09/23/2015	1318	Referred to Health, Human Services and Housing Author added Goodwin

219



220

Like almost all  
US bills, **closely**  
modeled on  
ODWDA

221



222



223

# 2017

224

02/09/17 REVISOR SG6/SCC 17-1700 as introduced

**SENATE**  
STATE OF MINNESOTA  
NINETEENTH SESSION **S.F. No. 1572**

(SENATE AUTHORS: EATON, Klein, Marty, Dobbie and Lutz)

DATE	D-PG	OFFICIAL STATUS
02/27/2017	806	Introduction and first reading Referred to Health and Human Services, Finance and Policy

225



Sen. Chris Eaton

226



Matt Klein

Scott Dibble

John Marty

Ron Latz

227

02/09/17 REVISOR SGSCC 17-170

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State of Minnesota  
**HOUSE OF REPRESENTATIVES**  
 NINETEENTH SESSION  
**H. F. No. 1885**

03/01/2017 Authored by Freiberg, Lieblich, Lesch, Sundin and others  
 The bill was read for the first time and referred to the Committee on Health and Human Services Reform

228



Rep. Mike Freiberg

229



230



231



232

03/06/19 REVISOR SGSTM 19-4427 as introduced

**SENATE**  
 STATE OF MINNESOTA  
 NINETY-FIRST SESSION  
**S.F. No. 2487**

(SENATE AUTHORS: LAINE and Coudenhove) OFFICIAL STATUS  
 DATE D-FC  
 03/14/2019 127 Introduction and first reading  
 Referred to Health and Human Services, Finance and Policy

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02/04/19 REVISOR SGSEH 19-2064

This Document can be made available in alternative formats upon request

State of Minnesota  
**HOUSE OF REPRESENTATIVES**  
 NINETY-FIRST SESSION  
**H. F. No. 2152**

03/07/2019 Authored by Freiberg, Loeffler, Edelson, Cottrell, Mann and others  
 The bill was read for the first time and referred to the Committee on Health and Human Services Policy

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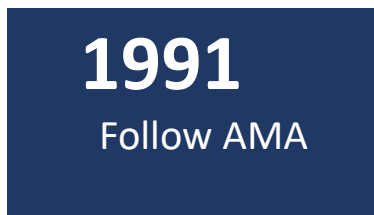
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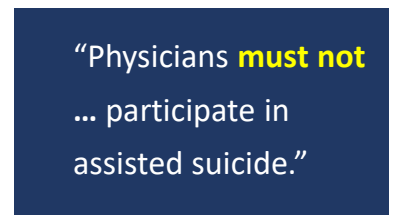
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241



242



243

June 2016  
to  
April 2017



**MMA BOARD OF TRUSTEES  
PHYSICIAN-AID-IN-DYING  
TASK FORCE  
REPORT AND RECOMMENDATIONS**

244

May  
2017

245

MMA will **not**  
oppose aid-in-dying  
legislation

246

“**unless** fails to  
adequately safeguard  
. . . patients or  
physicians.”

247

- Must not compel physicians or patients to participate . . . against their will
- Must require patient self-administration
- Must not permit patients lacking decisional capacity to utilize . . .
- Must require mental health referral of patients with a suspected psychological or psychiatric condition
- Must provide sufficient legal protection for physicians who choose to participate.

248

**Included**  
in MN bills

249

2

250

Track record  
even **longer**

251

**>60 years**  
of combined  
experience

252

3

253

More  
public  
support

254

73%

Gallup (June 2017)

255

4

256

More  
physician  
support

257



258

57%

Medscape (Dec. 2016)

259

5

260

More  
professional  
associations

261



262



263

Today's debates

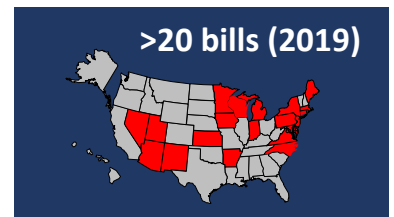
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CA HI OR  
CO ME VT  
DC NJ WA

265

ongoing

266



267



268

Successful  
No evidence  
of abuse

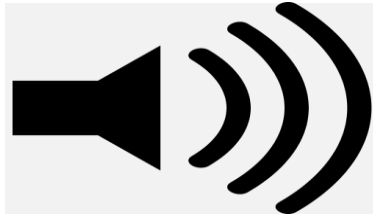
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BUT

270

**Criticism**  
Oregon model

271



272

**2**

273

Too permissive  
Too restrictive

274

**Too**  
permissive

275

**Capacity**

276

**At** prescription  
and  
**At** ingestion

277



278

**Ineligible**  
for MAID

279

“impaired judgment . . . mental disorder”

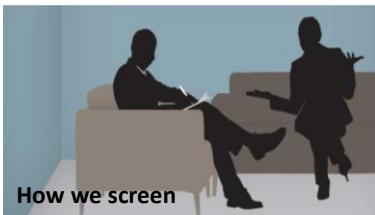
280

voluntary

281

BUT

282



How we screen

283

Mental health specialist **only if** attending or consulting **refers**

284

rare

285



286

4.5%  
(and dropping)

287



288



Many think that rate is **too low**

289

Are we **failing** to screen out impaired judgment?

290

**No** proof but ... needs study

291

**Response**

292



293



294



295



296



297



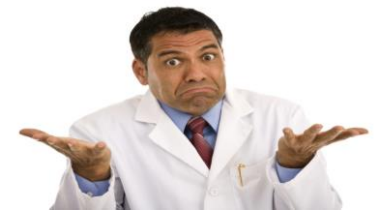
298



299

No capacity assessment at ingestion

300



301

Response

302



303



304



305

2 ways MAID laws are too permissive

306

**Too**  
protective

307

Unduly restrict  
**access**

308

Eligibility  
criteria | Safeguards

309

Eligibility  
criteria

310

Adult  
Terminally ill  
Capacity

311

**1** too restrictive

312

**Adult**

313

**18+**

314



315

**NOTICE**  
**NO PERSONS**  
**UNDER 21**  
**ALLOWED**

316

Assure  
voluntary  
& informed

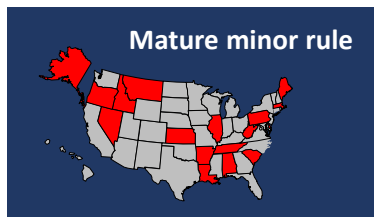
317

**BUT**

318

**Allow** minors  
to make **other**  
healthcare decisions

319



320

**Response**

321



322



323



324

2 too restrictive

325

Terminal illness

326

death within 6 months

327

Matches hospice

328

BUT

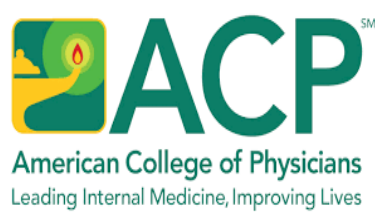
329

Temporally strict

330

unbearable suffering

331



332

POSITION PAPER Annals of Internal Medicine Ethics and the Legalization of Physician-Assisted Suicide: An American College of Physicians Position Paper opposed to MAID



333

Arbitrary  
discrimination

334



335

 Daniel Andrews   
@DanielAndrewsMP

11/21/17

Let's remember what we are debating here **the most conservative** voluntary assisted dying model that has ever been proposed – let alone implemented – anywhere in **the world**.

336

**12** months  
neurodegenerative  
illness (ALS)

337

Response

338

2

339

6 → 12

340



341

Drop time  
altogether

342



343



344

Reasonably  
predictable

345



346

3 too restrictive

347

Capacity

348

"solely & directly by ... individual"  
**not** advance  
directive

349

**BUT**

350



351



352

Terminal →  
no capacity

353

Capacity →  
not terminal

354

Response

355

Advance  
requests

356



357



358



359

Recap

360



Push to  
**expand**  
eligibility

361

adults → minors  
6 mo. → longer or 0  
capacity → advance

362

**Also**

363

Push to  
**streamline**  
procedures

364

**1**

365

**15 day**  
wait period

between requests

366



367

Assure  
request  
**enduring**

368

**BUT**

369

Undue burden  
cannot wait that long

370

**During** the process  
Lost capacity 35%  
Died 19%

371

To cite: Selby L, Proulx MA, Travers V. JAMA. 2019;321(10):1111.

Response

372



373

**Waive**  
wait period

374

“death is likely to occur **before** ... expiry of the time period”

375



376

HB 2232



377

2

378

Self  
ingest

379

Physician prescribes  
**Patient** administers

380

Helps  
assure  
**voluntary**

381

**BUT**

382

**2** problems

383

Lose  
ability

384



385



386



387

# Complications

388

2018

>> Oregon Death with Dignity Act

2018 Data Summary

389

Complications <sup>a</sup>	(N=1,459)
Difficulty ingesting/regurgitated	28
Seizures	2
Other	11
None	650
Unknown	768
<b>Other outcomes</b>	
Regained consciousness after ingesting DWDA medications	8

390

# Response

391



392

Normally, self-administered like USA

393

Physician administration is allowed

394

“physically incapable self-administration”

395



396



397



398

Dec. 2015 - October 2018

**6749**

**6** self-administered

399



400

**3**

401

Attending + consulting clinician

**MD or DO**

402

**BUT**

403

**Access**  
problems

404

**Response**

405

Extend to  
**NPs**

406

Physician Orders for Life-Sustaining Treatment (POLST)	
<b>A</b>	<b>COMPREHENSIVE RESUSCITATION (CPR)</b> (Does not affect the availability of resuscitation and other life-sustaining treatment)
<b>B</b>	<b>DO NOT RESUSCITATE (DNR)</b> (Does not affect the availability of resuscitation and other life-sustaining treatment)
<b>C</b>	<b>ADDITIONAL ASSESSMENT/RESTRICTIONS</b> (Does not affect the availability of resuscitation and other life-sustaining treatment)
<b>D</b>	<b>ADDITIONAL INSTRUCTIONS</b> (Does not affect the availability of resuscitation and other life-sustaining treatment)

407



408



409



410

**Recap**

411

**Legal**  
barriers

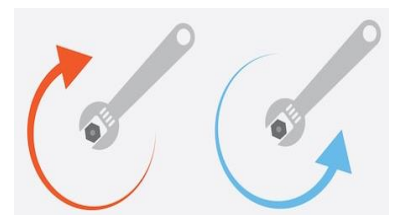
412

Eligibility  
criteria

---

Process  
requirements

413



414

**Practical**  
barriers

415



416



417

**CBO**

418

Clinicians & hospitals may  
**opt out**

419

Table. Hospital Participation in the EOLOA WatershedNet | 10/2019 | WatershedNet | 95

Characteristic	Permits EOLOA, No. (%) (n = 106)	Does Not Permit EOLOA, No. (%) (n = 164)
Religious affiliation	2 (2)	70 (43)
Teaching hospital	22 (21)	6 (4)

420



421



422



423



424

Conclusion

425



426

41,000  
Minnesota deaths this year

427

>99%  
MAID not relevant

428

41,000  
200  

---

40,800

429

Most **also** make a deliberate decision to hasten death

430

Those dependent on dialysis, vents, CANH **can & do** hasten their deaths

431

Equal protection

432



Persons similarly  
situated should  
be treated **alike**

433

**Every day**, terminally ill  
patients in Minnesota hasten  
their deaths by withholding  
or withdrawing treatment

434

**Every 30  
minutes**

435

But some patients  
have **no treatment**  
to turn off or refuse

436

MAID gives these  
terminally ill,  
competent, adults  
the **same freedom**

437

**Control** timing &  
manner of death

438

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## References

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Materials discussed in this  
presentation are available at  
<http://thaddeuspope.com>

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## 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 **over 4 million** direct visits. Plus, it is redistributed through WestlawNext, Bioethics.net, and others.

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