

Voluntary Stopping Eating and Drinking: Its Special Place in Our American Culture, Ethics, and Law

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

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Disclosures

I have **no conflicts** of interest or relevant financial interests.

More states **expanding** EOL liberty

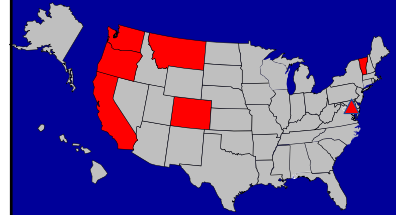
Most VISIBLE exit option

Medical aid in dying

Doctor prescribes lethal dose

Patient self ingests

Now legal in 7 states



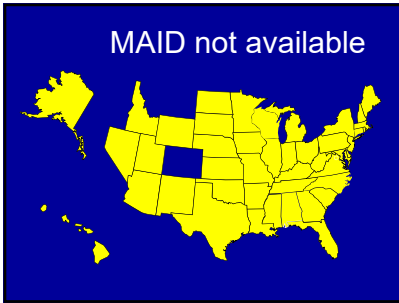
Slow

16 years for 1st 4

- 1997 Oregon
- 2008 Washington
- 2009 Montana
- 2013 Vermont

Sped up last few years

- 2015 California
- 2016 Colorado
- 2017 Wash, DC



At this rate (1 per year) -
49 years

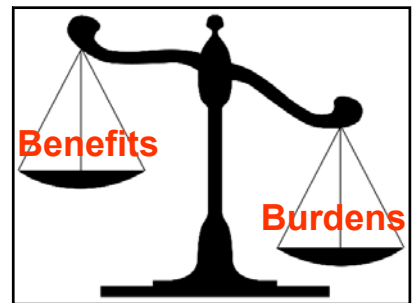
BUT

Other exit options

Roadmap

Why hasten death
Other options
VSED

Why?



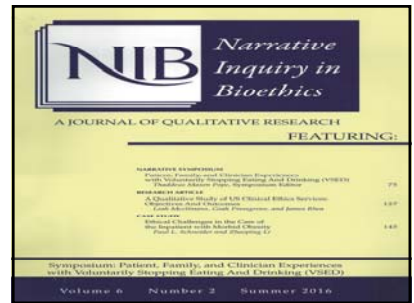
Physical or
existential
suffering

**Physical
suffering**

Pain
Nausea
Dyspnea
Paralysis
Foul-smelling wounds

**Existential
suffering**

Psychic pain
Loss of control
Anxiety
Delirium
Hopelessness



**Self-defined
quality of life**

Pt **own** assessment
Pt **own** values
Pt **own** preferences



GENERAL ASSEMBLY OF NORTH CAROLINA	
SESSION 2015	
H	I
HOUSE BILL 611	
Short Title:	Enact Death With Dignity Act (Public)
Sponsors:	Representatives Harrison and Fisher (Primary Sponsors). <i>For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.</i>
Referred to:	Judiciary I, if favorable, Health.
April 13, 2015	

Other options

Stop LSMT
Accelerate opioids
VSED
Palliative sedation
~~PAD / MAID~~

Stop LSMT

> 40 years

1977
NC Right to Natural Death Act

Legislature did not “create” the right, just “recognized” it

“the patient generally possesses the **right not to consent**, that is, to refuse treatment.”

Cruzan v. Missouri DOH (1990)

“Turning off”

Ventilator
CANH
Antibiotics

Nothing to “turn off”

Stop LSMT → **legal** option
But not **practical**

VSED

Voluntarily
Stopping
Eating &
Drinking

VRFF

Voluntary refusal
of food & fluid

VTD

Voluntary
terminal
dehydration

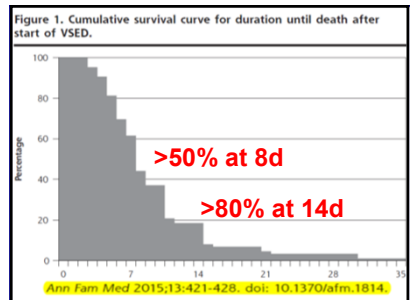
Definition
VSED

3

Physiologically
able to take food
& fluid by mouth

Voluntary,
deliberate
decision to stop

Intent: death
from dehydration



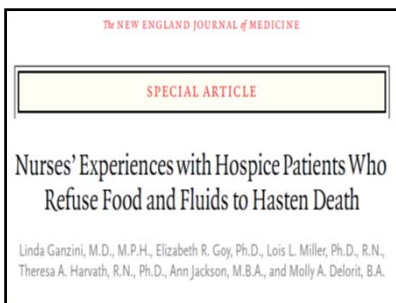
Bad
rap





Not voluntary
Not complete
Not controlled

Peaceful
Comfortable

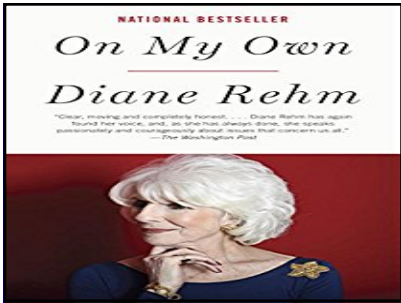


One third of 300
responding OR
nurses cared for
VSED patient

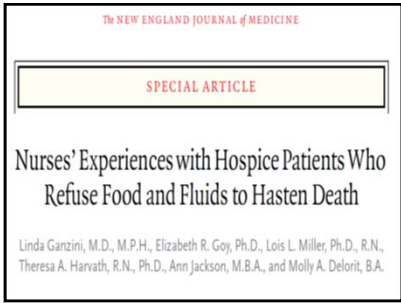
Most deaths:
“peaceful, with
little suffering”

“opportunity for
reflection, family
interaction, and
mourning”

Not for
everyone



Preferred
by many



Even though
MAID available,
“almost twice”
chose VSED

Legal concerns
Legal analysis

Legal
concerns

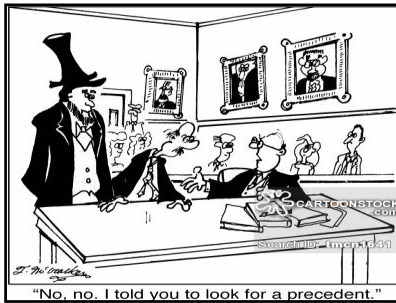
Uncertainty
& reluctance
among providers



NCGSA specifically
& expressly prohibits
many things
Not VSED

BUT
Absence of a red light
not good enough





Fasting in a Syracuse nursing home to hasten death.

Nursing home sought a declaration of its rights and responsibilities.

Plaza Health and Rehabilitation Center v. Henninger (N.Y. Sup. Ct., Syracuse Feb. 2, 1984).

Unpublished

Trial court opinion

>30 years old

No red lights

No green lights

Lack of clarity & guidance



Providers still ask

Is VSED
legal?

Is VSED
illegal?

Wrong
questions



Law is rarely binary

Risk
assessment

Measure
Mitigate

2 case
types

1

VSED **now**
with capacity

Ability to **understand** benefits, risks, alternatives

Ability to **make & communicate** decision

Case 1

82yr old patient who is entirely competent

2

Advance directive for VSED **later**
(when lack capacity)

After lunch

Patient with capacity requests VSED now

Extremely **low** risk

of sanctions – criminal, civil, regulatory

4

Right to refuse
medical
interventions

Right to refuse
non-medical
interventions

Not assisted
suicide

Not elder
neglect

Right to refuse
medical
interventions

Well established
> 4 decades

Right to
refuse
medical

Vent
Dialysis
CPR
Antibiotics
Feed tube

Vent
Dialysis
CPR
Antibiotics
Feed tube

VSED

Unclear



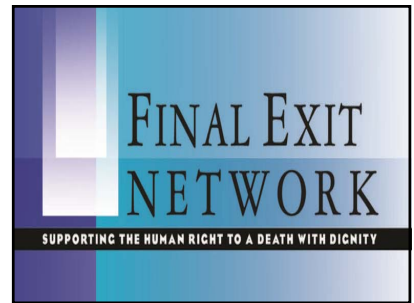
Vent
Dialysis
CPR
Antibiotics
Feed tube

ICD

Vent
Dialysis
CPR
Antibiotics
Feed tube

VSED

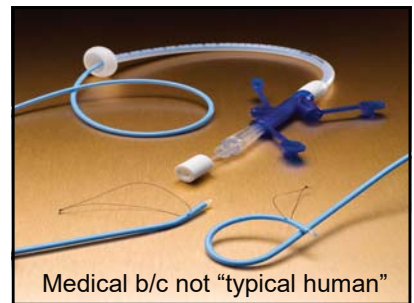
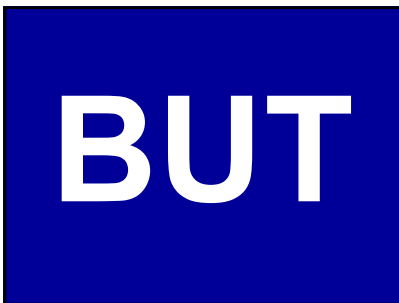
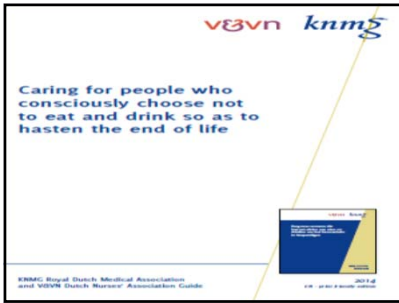
Not DIY



Contrast
VSED

Part of a broader
treatment plan

Supervised by
licensed healthcare
professionals



Right to refuse
unwanted
interventions

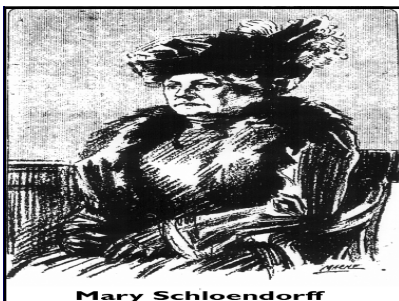
ONH =
treatment

ONH =
unwanted

Does **not** matter
whether food &
fluid is “medical
treatment”

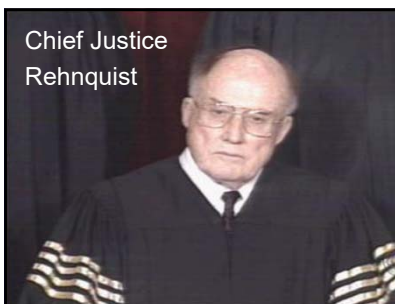
Battery

Unwanted contact
Even if clinically
beneficial

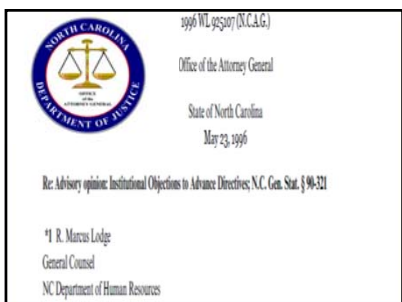


“Every human being of
adult years and sound
mind has a **right** to
determine what shall
be done with his own
body”





"It seems odd that your bodily integrity is violated by sticking a needle in your arm but not by sticking a **spoon in your mouth.**"

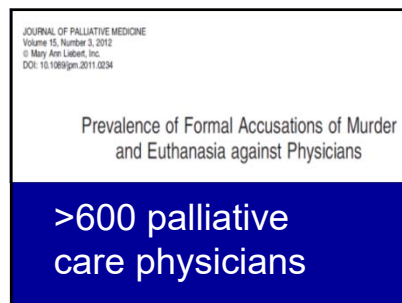


Move now from legal bases, grounds for right

Respond to 2 main legal concerns

Assisted Suicide

Clinicians worry participation with VSED is assisting suicide

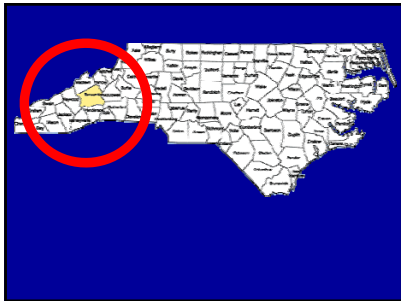


Action that might be misperceived	Mean rating of risk	SD	Actual number of physicians who were accused based on this action
Total sedation (the application of pharmacotherapy to induce a state of decreased or absent awareness [unconsciousness] in order to reduce the burden of otherwise intractable suffering)	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	3.5	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

No specific NC prohibition like >40 states

GENERAL ASSEMBLY OF NORTH CAROLINA	
SESSION 2003	
SENATE BILL 145	1
Short Title: Physician-Assisted Suicide. (Public)	
Sponsors: Senators Forrester, Purcell, Allran, Bingham, Blake, Carpenter, Garwood, Slubert, and Sloan.	
Referred to: Judiciary I.	
February 24, 2003	

Some risk AS



Mary Carleton Peterson (72) **convicted** of helping sister kill herself via carbon monoxide



BUT

VSED ≠ AS

Active | Passive



Normally:
 "Providing the **physical means** by which the other person commits . . . suicide"

Even if otherwise within scope
 Exception

"Nothing . . . prohibit or preclude . . . prescribing . . . administering, . . . purpose of diminishing . . . **pain or discomfort**"

>600 palliative care physicians

JOURNAL OF PALLIATIVE MEDICINE
 Volume 15 Number 3 2012
 © May Ann Lippincott, Inc.
 DOI: 10.1097/JPM.2011.0204

Prevalence of Formal Accusations of Murder and Euthanasia against Physicians

			2
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
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of physicians who were accused based on this activity

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

1377 results

1 2 3 4 5 6 7 8 9 ... 13 14 Next

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 "Dehydrat"
Sept 22, 2016	THE BROADMOOR AT CREEKSIDE PARK (REPORT)	Westlands	Tex.	2	1 - 1	0
April 28, 2015	BIRMGARFF HEALTH CENTER (REPORT)	Texas	Tex.	2	1 - 1	0
Aug 1, 2013	KINDRED TRANSITIONAL CARE AND REHABILITATION-INDOOR (REPORT)	Fort Worth	Tex.	4	1 - 1	0

BUT



Tag 242

DEPARTMENT OF HEALTH & HUMAN SERVICES
 Centers for Medicare & Medicaid Services
 7500 Security Boulevard, Mail Stop S3-12-25
 Baltimore, Maryland 21244-6500

CMS
 CENTERS FOR MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operations/Survey and Certification Group

Over-treatment
 just as risky as
 under-treatment

 **SUPREME COURT OF GEORGIA**

 **Bucilla Stephenson**

Summary

Risk ~ 0

~~Risk = 0~~



Conclusion

North Carolinian
with capacity
may VSED

North Carolina
clinician **may**
support VSED



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.

190

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195