Medical Aid in Dying (MAID): Medical, Legal & Ethical Issues

CMDA

Alan C. Horowitz, Esq., RN

December 5, 2023

Speaker Disclosures

Alan C. Horowitz, Esq., RN has no relevant financial relationship(s) to disclose.

The purpose of this presentation is educational only. No position for or against MAID is propounded, recognizing each physician's right to support, or not to support MAID.

Quick Review of Bioethical Principles

- **Autonomy**: Protecting individual rights, self-determination and choice [big among Baby Boomers]
- **Beneficence**: The course of action that will give the greatest benefit—“doing good”
- **Non-malefeasance**: The course of action that will cause the least harm—“primum non nocere”
- **Justice**: Fairness to the patient with consideration of the needs and rights of others, also equity/access

Opposition to MAID

- ✓Unnecessary with good palliative care
- ✓Recognize nonmaleficence—lethal Rx can be interpreted as doing harm
- ✓Sanctity of life
- ✓Physician's job is not to assist in ending a patient's life—undermines relationship
- ✓Hippocratic Oath
- ✓Inconsistent with physician's role as healer
- ✓Potential for abuse, "slippery slope"
- ✓Passive vs. active distinction
- ✓Many medical societies still oppose
  - ✓Including AMDA & AMA

Support for MAID

- ✓An act of compassion that recognizes patient autonomy
- ✓Individual rights vs. State interest
- ✓Our job is to walk the path with our patients, wherever it takes them
- ✓Alleviates unnecessary suffering (beneficence)
- ✓It has always been done, just not always identified as such (high doses of opioids, palliative sedation, etc.)
- ✓Honesty, transparency

AMDA Position Statement P97 on Care at the End-of-Life (February 1997)

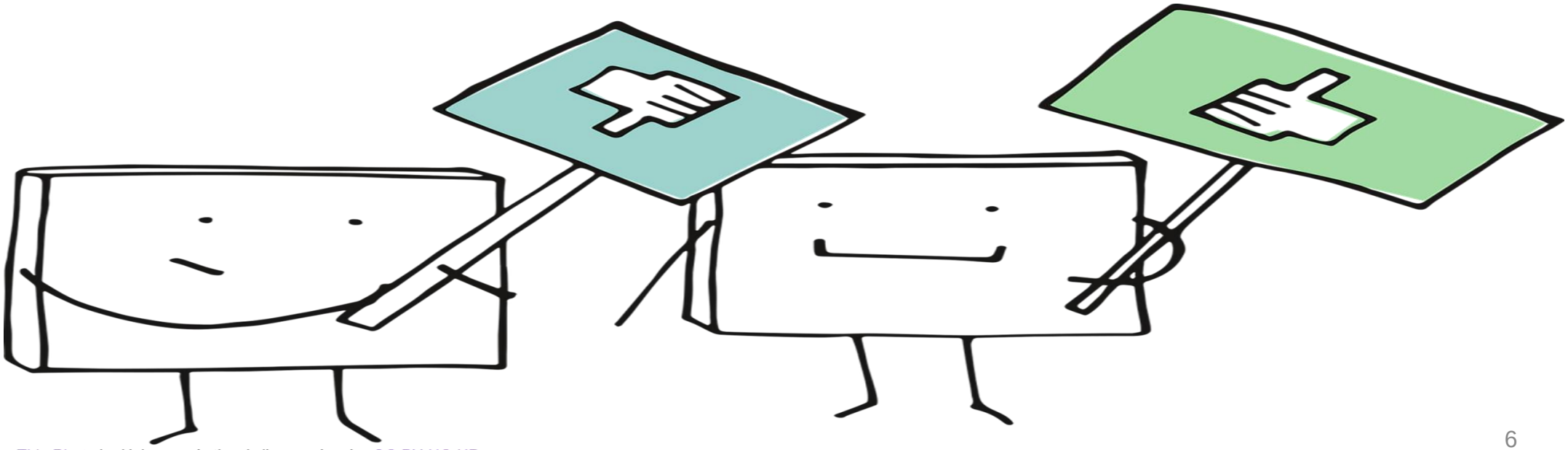
"AMDA opposes any physician involvement in assisted suicide or active euthanasia of any person regardless of age. AMDA members recognize that we are entrusted with the care of people who are vulnerable in terms of physical frailty and cognitive impairment. Our position recognizes that physician involvement in assisted suicide or active euthanasia would erode the trust vital to the doctor/patient relationship."

- NO automatic sunset on policy—Ethics Committee will be reexamining

Available at: https://paltc.org/amda-white-papers-and-resolution-position-statements/position-statement-care-end-life

No Clear Consensus in Medical Community Regarding MAID

The list of state and national medical organizations that either support, are neutral on, or oppose MAID is too lengthy to note. Many medical organizations, including the American Academy of Hospice & Palliative Medicine (AAHPM), have taken a position of “studied neutrality.”



Where MAID is Legal in the U.S.

- ✓ California (End of Life Option Act; 2016)
- ✓Colorado (End of Life Options Act; 2016)
- ✓District of Columbia (Death with Dignity Act; 2017)
- ✓Hawaii (Our Care; Our Choice Act; 2019)
- ✓Maine (Maine Death With Dignity Act; 2019)
- ✓Montana (Supreme Court decision, not statute)
- ✓New Jersey (Medical Aid in Dying for the Terminally Ill; 2019)
- ✓New Mexico (Elizabeth Whitefield End-0f-Life Options Act; 2021)
- ✓Oregon (Oregon Death with Dignity Act; **1997**)
- ✓Vermont (Patient Choice and Control at the End-of-Life Act; 2013)
- ✓Washington (Washington Death with Dignity Act; 2008)

States Where MAID Legislation Has Been Introduced

- ✓ Arizona
- ✓ Connecticut
- ✓ Indiana
- ✓ Iowa
- ✓ Kansas
- ✓ Kentucky
- ✓ Minnesota
- ✓ Pennsylvania
- ✓ Nevada
- ✓ New York
- ✓ North Dakota
- ✓ Massachusetts
- ✓ Rhode Island
- ✓ Virginia

Dale v. University of California Board of Regents; UCSF Health; UCSF Medical Center; Chloe Atreya, MD; and Does 1-100.

Background

- Judith Dale diagnosed with inoperable Stage IV colorectal cancer, with metastases to liver and lungs. Ms. Dale enters hospice in May 2016.
- California “End of Life Option Act” became effective June 9, 2016 “allows patient with terminal disease (with life expectancy of six months or less) to request life-ending drug prescription from their doctor.”
- Ms. Dale met all legal requirements for MAID

Dale v. UCSF, et al.

- Ms. Dale was told or led to believe that she would be provided the lethal prescription for MAID.
- Medical record documents conversations with MDs, SWs, staff.
- After D/C, readmitted on June 28, 2016 - August 6, 2016.
- Palliative care team note, “very motivated to pursue EOLA options.” (August 3, 2016)
- August 18, 2016, Ms. Dale learns from MD at UCSF that MAID would not be available through them, in spite of numerous conversations with staff as inpatient and outpatient indicating that they would.

MAID Protections

- Patients can change their mind at any time before ingestion
- Any attempt to pressure or coerce a patient is a felony
- No evidence MAID adversely impacts vulnerable populations (on the contrary, traditionally vulnerable populations much less likely to receive it)
- More than 90% of pts (Oregon) who received MAID were in hospice
- Death certificate reflects immediate cause of death to be underlying terminal illness; manner of death natural (not suicide)

Dr. Neil Wenger, Director, UCLA Health Ethics Center, noted that California's MAID law "really has created a new standard for how we ought to be helping people at the end of life."*

- *There's an Unforeseen Benefit to California's Physician-Assisted Death Law*. Los Angeles Times, (2017). Available from: https://www.latimes.com/health/la-me-end-of-life-care-20170821-htmlstory.html.

Dale v. UCSF, et al.

- UCSF Symptom Management Services Team promise (in website marketing material):

- “Your social worker will assist you in finding a doctor who has agreed to participate in the act [EOLOA].” Not true, per Complaint.

- When Ms. Dale was informed that UCSF would not assist, it was “too late in her terminal illness for her to transfer care to a new provider… fulfill requirements of EOLOA and obtain the medications in time to use them.”

Dale v. UCSF, et al.

Significant allegations:

- After Dx, Ms. Dale “clearly and repeatedly requested aid in dying under EOLA, and told DEFENDANTS she would not start treatment with them unless they would respect and help facilitate her right to achieve a more peaceful death via aid in dying.”

- “DEFENDANTS’ staff repeatedly agreed to respect and assist with her request for aid in dying.” Documentation evidences multiple conversations with UCSF physicians, social workers, other staff.

Dale v. UCSF, et al.

- Ms. Dale's "wish for a peaceful death through aid in dying was denied by the decision of the DEFENDANTS not to participate in EOLA … with knowledge of the serious harm this would cause her…Judy's final weeks were brutal…She did not want to die in a diaper, bleeding from her rectum and urinary tract, in pain unless sedated to the point she was too confused to say goodbye to her family. But this horrific death was forced upon her by DEFENDANTS' actions." (Verbatim from Complaint.)

Dale v. UCSF – Causes of Action

- Elder Abuse/Neglect
- Misrepresentation/Fraud
- Negligent Infliction of Emotional Distress
- Negligence
- Survivorship

Plaintiffs requested: general damages, special damages, costs of suit, attorneys' fees, and punitive damages.

There is no consensus in the legal community Courts reach divergent decisions

Kligler v. Healey

- Dr. Steinbach treats terminally ill patients and is willing to write prescriptions for a lethal dose of medication for competent terminally ill adult patients to self-administer. This would provide the option of a quick and peaceful death to such competent and terminal adult patients.
- However, Dr. Steinbach, named in the Kligler case above, is concerned that he might be criminally prosecuted if he writes a prescription for a lethal dose of medication.

Kligler et al. v. Healey, et al

- Issue: Whether a physician may be criminally prosecuted for manslaughter for prescribing medication used by a competent, terminally ill person to end their life.

- Decided 12/19/22, Court rejects MAID – no constitutional right to MAID, which is also prohibited by MA State law.

Kligler v. Healey, Supreme Judicial Court of Massachusetts, SJC-13194 (December 19, 2022)

- The Supreme Judicial Court of Massachusetts heard oral arguments in *Kligler v. Healey*, filed (in 2016) by retired physician Dr. Roger Kligler (who had stage 4 prostate cancer) and Dr. Alan Steinbach, against Massachusetts Attorney General Maura T. Healey. The doctors asserted that terminally ill adults have both a constitutional and common-law right to medical aid in dying, because there is no criminal statute barring the practice.

- Dr. Kligler is a legally competent physician with incurable Stage IV metastatic prostate cancer. He seeks a prescription for a lethal dose of medication to end his life peacefully. Dr. Steinbach is willing to prescribe the lethal dose but, does not want to be charged with manslaughter (or murder). They sought the court's recognition of their respective constitutional rights.

Kligler v. Healey – Dissent, in part

- "I agree with the court that there is no fundamental right to physician-assisted suicide…such a right finds no support in our history, in our evolving traditions and understandings of equality and fairness, or in our judicial precedent."

- "Physician-assisted suicide …is a quintessentially legislative matter." *Justice Dalila Wendlandt*

In 2016, Colorado voters approved Proposition 106, “Access to Medical Aid In Dying”, which amends Colorado statutes to include the Colorado End-of-life Options Act (hereinafter “Act”) at Article 48 of Title 25, C.R.S.

The Act:

- Allows a terminally ill individual with a prognosis of six months or less to live to request and self-administer medical aid-in-dying medication in order to voluntarily end his or her life;
- Authorizes a physician to prescribe medical aid-in-dying medication to a terminally ill individual under certain conditions;
- Creates criminal penalties for tampering with a person's request for medical aid-in-dying medication or knowingly coercing a person with a terminal illness to request the medication.

Colorado MAID Facts

If the “health care facility” is a hospital, an affiliated nursing home’s governing body would need to have its own opt-in policies re: MAID

NPs and PAs in Colorado are not permitted to provide MAID at this time. Other states allow NPs, PAs.

MAID cannot be provided based on POA, guardian or responsible party

Colorado Prerequisites for MAID

- Age 18 (or older)
- Decision-Making Capacity and legally competent (not suffering from a mental health condition that impairs their decision-making capacity for MAID)
- Terminally ill (irreversible disease with prognosis of 6 months or less)
- Attending and consulting physicians must agree on the above
- Residency (not required in Oregon, as of March 2022)
- Ability to self-administer MAID medications

Documentation Requirements - Colorado

(a) dates of all oral requests;
(b) a valid written request;
(c) the attending physician's diagnosis and prognosis, determination of mental capacity and that the individual is making a voluntary request and an informed decision;
(d) the consulting physician's confirmation of diagnosis and prognosis, mental capacity and that the individual is making an informed decision;
(e) if applicable, written confirmation of mental capacity from a licensed mental health professional;
(f) a notation of notification of the right to rescind a request made pursuant to this article; and
(g) a notation by the attending physician that all requirements under this article have been satisfied; indicating steps taken to carry out the request, including a notation of the medical aid-in-dying medications prescribed and when.

MAID Facts

- More than 8000 prescriptions written since 1997
- 6378 people have died from ingestion of MAID drugs
- Majority of pts. had cancer or ALS
- 63% of prescriptions taken
- Average age: 74, male/female about 50/50
- 87% of pts. on hospice
- 90% die at home
- <1% of total deaths in each state were via MAID
- 56% of Colorado Medical Society members agree with MAID

Source: Compassion & Choices, Medical Aid-in-Dying Utilization Report, https://bit.ly/MAIDutilization2022

Reasons Why Patients Request MAID

- ***Fear of loss of independence***
- Fear of unrelieved pain or other physical symptoms
- Desire to avoid being a burden on family (physically or financially)
- Desire to avoid indignity
- Desire to avoid leaving tarnished memories
- Desire to avoid institutionalization (prefer to die at home)
- Desire to be in control of the dying process (autonomy)
- Fear of losing decisional capacity/memory

- Multiple reasons often coexist

What If You Don’t Want to Participate in MAID?

- No obligation for physicians to participate in any aspect of MAID (e.g., performing eligibility assessments, writing prescriptions).
  - Generally considered unethical to refuse to refer a patient, even if the physician opposes the notion of MAID
  - Not permissible to refuse to transfer patient’s medical record (with appropriate HIPAA disclosure authorization).

Resources

State-by-State Physician-Assisted Suicide Statistics, ProCon.org, available at: https://www.procon.org/state-by-state-physician-assisted-suicide-statistics/.

Sulmasy L, et al., *Ethics and the Legalization of Physician-Assisted Suicide: An American College of Physicians Position Paper*, Ann Intern Med (September 19, 2017), available at: https://www.acpjournals.org/doi/abs/10.7326/l18-0082.

Statement on Physician-Assisted Dying: American Academy of Hospice and Palliative Medicine, (June 24, 2016), available at: https://aahpm.org/positions/pad.

Position Statement on Care At the End of Life, Position Statement P97, AMDA (March 1, 1997), available at: https://paltc.org/amda-white-papers-and-resolution-position-statements/position-statement-care-end-life.

Al Rabadi L, LeBlanc M, Bucy T, et al. *Trends in medical aid in dying in Oregon and Washington*. JAMA
Network Open. 2019;2:1-7, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6692681/.

Resources

American Clinicians Academy on Medical Aid in Dying, www.acamaid.org

Compassion & Choices, https://compassionandchoices.org/

Caring Advocates (dementia directives requesting SED by AD), www.caringadvocates.org

Assisted Suicide Funding Restriction Act of 1997, https://www.congress.gov/bill/105th-congress/house-bill/1003

VSED Resources Northwest https://vsedresources.com/

Resources

- Orentlicher D, et al., *Clinical Criteria for Physician-Aid-in-Dying*, 19 J. Palliative Med. 259 (2016)
- Compassion & Choices, Medical Aid in Dying: A Policy to Improve Care and Expand Options at Life's End (2020),
- Meisel A, et al., The Right to Die: The Law of End-of-Life Decisionmaking, (3rd ed 2020)
- Weithorn L.A., *Psychological Distress, Mental Disorder, and Assessment of Decision Making Capacity Under U.S. Medical Aid in Dying Statutes*, 71 Hastings L.J. 637 (2020)
- Wardle L.D., *A Death in the Family: How Assisted Suicide Harms Families and Society*, 14 Ave Maria L. Rev. 43 (2016-2017)
- Kaufman P.S., *Death with Dignity: A Medical-Legal Perspective*, AHLA Long-Term Care and the Law Meeting (Feb.22, 2017)
- Bauer C., *Dignity in Choice: A Terminally Ill Patient's Right to Choose*, 44 Mitchell Hamline L. Rev. 1024 (2018)

Resources

American Psychological Association (2017). Resolution on Assisted Dying. Retrieved from http://www.apa.org/about/policy/assisted-dying-resolution

Chochinov, H. (2007). Dignity and the essence of med in dignity conserving care. BMJ (Clinical research ed.), 335(7612), 184–187. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1934489/pdf/bmj-335-7612-ac-00184.pdf

Gordon, J., Katz, R, and A. Ward. (2019). The Washington Death with Dignity Act. Washington State Psychological Association Guidelines for Psychological Evaluations, Revised 2019. https://www.wspapsych.org/docs/DWD_2019.pdf

Merz, C. (2019). Medical Aid in Dying: Knowledge, Attitudes, and Beliefs of Licensed Psychologists. Arts & Sciences Electronic Theses and Dissertations. 1930. https://openscholarship.wustl.edu/art_sci_etds/1930

Rapid Response Service (2017). Impact of MAID on family and friends. Toronto, Canada: Ontario HIV Treatment Network; June 2017. https://www.ohtn.on.ca/rapid-response-impact-of-medical-assistance-in-dying-on-family-and-friends/

Thompson GN, Chochinov HM. *Dignity-based approaches in the care of terminally ill patients.* Current Opinions in Supportive and Palliative Care. 2008 Mar;2(1):49-53. https://pubmed.ncbi.nlm.nih.gov/18685395/