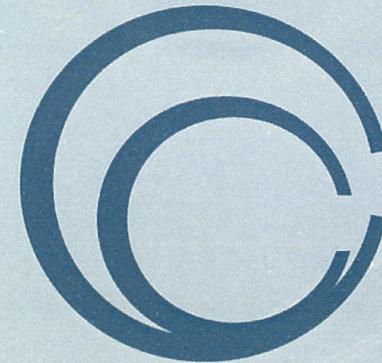


Compassion & Choices

LHHS Briefing 11/08/2013

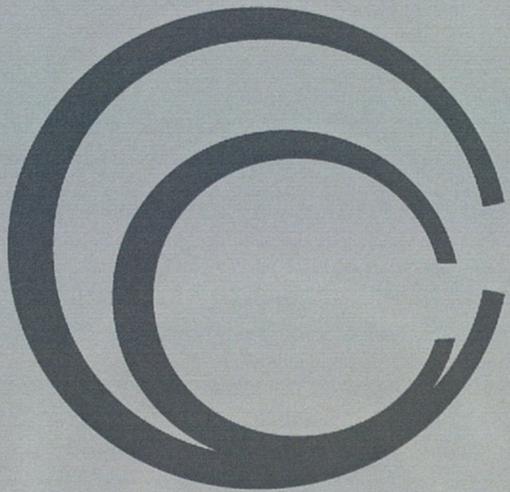
- Compassion and Choices Overview
- Introductions
- End of Life Choices
- The Oregon Experience
- Morris v. New Mexico
- Q&A



Compassion & Choices
Support • Educate • Advocate

www.compassionandchoices.org

Compassion & Choices is the nation's oldest and largest nonprofit organization working to improve care and expand choice at the end of life. We support, educate and advocate.



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C & C Provides:

- Public education including end-of-life planning
- Assistance in preparing advance directives
- End-of-Life Consultation
 - Support for families during entire process
- Defense of physicians who aggressively treat pain and symptoms
- Advise re accountability for failing to respect patient wishes or provide adequate care
- Legislation and litigation to improve care and expand choice

Introductions

Barak Wolff and Revathi Davidson
Co-Chairs Executive Council NM

Erin Marshall
Campaign Director NM

Others in Attendance

Kathryn L. Tucker, JD

C&C Dir. of Advocacy and Legal Affairs

- Graduate Georgetown Univ. Law Center
- Adjunct Professor of Law, Loyola Law School
- Campaign Counsel to Washington Citizens for Death with Dignity in 1991.
- Lead counsel in *Glucksberg, Quill, Baxter*; Co-Counsel in *Morris v. New Mexico*
- 2 decades of experience in advocacy to improve EOL care and protect and expand choice

Dying in America in Modern Times

For all but our most recent history, dying was typically a brief process ... These days, swift catastrophic illness is the exception; for most people, death comes only after long medical struggle with an incurable condition.

-A. Gwande, *The New Yorker Magazine*, *Annals of Medicine*, "Letting Go: What should medicine do when it can't save your life?" (August 2, 2010)

Choice at the End of Life

Why it Matters

We live our whole lives in the shadow of death, we die in the shadow of our whole lives. ... we worry about the effect of life's last stage on the character of life as a whole, as we might worry about the effect of a play's last scene or a poem's last stanza on the entire creative work.

- Ronald Dworkin, *Life's Dominion*

Choices

Voluntarily Stopping Eating and Drinking (VSED)

- Recognized in law and medicine, all states.
- Requires medical or hospice oversight/
continuous care-giving and/or family support
throughout the fasting process.
- Sometimes obstructed: Rudolph...
 - Obstruction may be grounds for disciplinary action

Choices

Refusing or Discontinuing a Life-Prolonging Treatment

- Recognized in law and medicine, all states
- Cardiac devices, feeding tubes, ventilators, resuscitation, medication.
- Palliative care to ensure that discomfort is minimized.
- Failure to respect or provide supportive care may be grounds for disciplinary action

Choices

Aggressive Pain/Symptom Management

- Attentive pain and symptom management for terminally ill patients = standard of care
- Routine assessment and charting= SOC
- Responsive care = SOC
- Failure to meet SOC in this domain= grounds for discipline.

Choices

- **Palliative Sedation(terminal sedation)**
 - Recognized in law and medicine, all states.
 - Medication administered to induce unconsciousness so patient with refractory pain/symptoms no longer aware. Nutrition and hydration withheld until death arrives.
 - Multiple CPGs govern practice, e.g. AMA, AAHPM, HPNA, NHPCO, VA.
 - Failure to inform, respect or provide may be grounds for disciplinary action

Choices

Aid in Dying (AID)

- Physician rx to a mentally competent, terminally ill adult, who may ingest medication to achieve peaceful death if suffering unbearable.
- 70% of Americans support.

Evolution Law/Policy re: EOL Choice

- *Glucksberg/Quill*: SCOTUS declined to find federal constitutional right, reserving possibility it might in future, inviting 'experimentation in laboratory of states'; recognizing right to palliative sedation.
- OR 'lab': pursuant to statute permitting aid in dying(enacted '94; effective 1998-present).
- OR experience: rich body of data, carefully scrutinized, extensive analysis/ commentary.

Aid in Dying

- Permitted by statute in OR (1994), Washington (2008), Vermont (2013)
- Recognized by high court in MT(2009)
- Practiced subject to best practices:
Hawaii, ??
- Prohibited by statute in Arkansas, Idaho, Georgia, Minnesota and...??

Broad Support for Aid in Dying Emerges Among Medical and Health Policy Organizations

- American Public Health Association
- American Medical Women's Association
- American Medical Students Association
- American College of Legal Medicine

The Oregon Experience

- 15 years of data.
- Patients are not put at risk (no coercion).
- Patients choosing aid-in-dying are educated, insured, and enrolled in hospice care.
- During 15 years only 673 patients chose it; more than one-third did not consume it.
- Improved end-of-life medical care, including increased hospice referrals and knowledge of pain management.

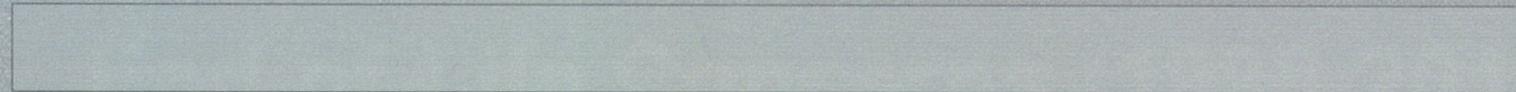
Aid in Dying in Oregon

Use is limited: 673 in 15 years

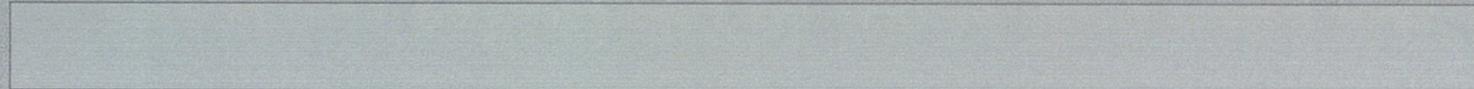
- 98% white
- 71% college educated
- 90% enrolled in hospice
- 80% dying of cancer
7% dying of ALS
- 98% had insurance

End-of-Life Concerns (1998-2012)

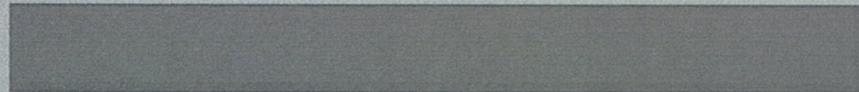
(Reasons expressed by those who used law - %)



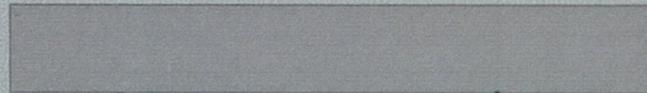
Losing Autonomy - 91.2%



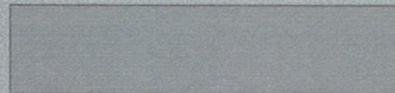
Less Able to Engage in Activities that Make Life Enjoyable - 88.8%



Losing Control of Bodily Functions - 51.6%



Burden on Friends/Family/Caregivers - 38.6%



Pain or Concerns About Pain - 23.5%



Financial Concerns - 2.7%

Social Change regarding Aid in Dying Accelerates

- '08: WA adopts statutory permission.
- '09: MT Sup Ct/Baxter: AID w/in public policy of State, not subject to criminal prosecution.
- '11& '13: Efforts to ban defeated in MT.
- '13: VT 'next generation' statutory permission: OR model/3 yrs; best practices w/immunities after.

Morris v New Mexico



Morris is brought by 2 physicians who treat cancer patients and a cancer patient, asking the court to recognize that physicians who provide a prescription for aid in dying to patients who request it are not subject to criminal prosecution.

Morris v New Mexico:

Scope of “Assisted Suicide” Statute

- Do state laws criminalizing “assisting suicide” have anything to do with AID?
 - Choice of competent, terminally ill patient for a peaceful death is not suicide.

Aid in Dying is not “Suicide”

Mental health professionals recognize a clear difference between the act of “suicide” and the choice of a terminally ill patient to bring about a peaceful death.

Aid in Dying is not “Suicide”

“It is important to remember that the reasoning on which a terminally ill person (whose judgments are not impaired by mental disorders) bases a decision to end his or her life is **fundamentally different** from the reasoning a clinically depressed person uses to justify suicide.”

American Psychological Association

Morris v. New Mexico

- Timeline:
 - March 2012, complaint filed with Second Judicial Court in Bernalillo County.
 - May 2012, patient plaintiff, Aja Riggs, joins law suit.
 - Aug 2013, defendants file motion to dismiss.
 - Nov 2013, hearing on motion to dismiss.
 - Dec 9, 2013, trial scheduled to begin.

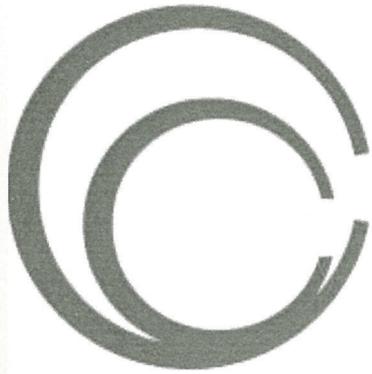
Morris v New Mexico

If court finds prohibition does not reach AID:

- Defend against a specific prohibition.
- Support reasonable statutory boundaries/protections.
 - w/o burdens of OR/WA scheme.

Predictions

- Choices available to terminally ill patients will expand.
- Aid in dying will become increasingly widely available.
- Clinical practice guidelines will be promulgated for aid in dying, leading to normalization of the practice w/in EOL care.



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new mexico

Support. Educate. Advocate. Choice & Care at the End of Life.

Compassion & Choices

www.CompassionAndChoices.org

1-800-247-7421

New Mexico Campaign Manager

Erin Marshall

505-980-5355

emarshall@compassionandchoices.org

