

## Session 4

# Physician Assistance in Dying (PAS): A Review of the Ethics of Policies and Practices

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# Follow-Up on Henry Bush case

- Daughter Sarah felt some guilt over her father's injury, and this might have influenced her objections to stopping fluids and nutrition. . .
- As a "child development specialist," Sarah had some experiences with childhood brain traumas and transferred that set of expectations to her father. . .
- Henry Bush was discharged from the hospital after 3 weeks in the ICU and placed in a long-term care facility that could continue the fluids and nutrition. . .
- Was this a good outcome?

# Works Recommended by Participants

- *Walking Each Other Home: Conversations on Loving and Dying*, Ram Dass and Mirabai Bush, 2018
- *My Father's Wake: How the Irish Teach Us to Live, Love and Die*, Kevin Toolis, 2014
- *The Grief Recovery Handbook: Action Program for Moving beyond Death, Divorce and Other Losses*, John James & Russell Friedman, 1998
- ***Being Mortal*, Atul Gawandi, 2014**

# Some Pathways to Death

- Removing or not starting futile/non-beneficial life support, with palliative measures
- Voluntarily stopping eating and drinking
- Sedation to unconsciousness
- **Physician-assistance in suicide**
- Euthanasia

Most involve some degree of professional expertise and usually family support

# Brittany Maynard, 2014

"Goodbye to all my dear friends and family that I love. Today is the day I have chosen to pass away with dignity in the face of my terminal illness, this terrible brain cancer that has taken so much from me ... but would have taken so much more."



# Washington v. Glucksberg, 1997

## U. S. Supreme Court Ruling

- No constitutional right for assistance in committing suicide; not “one of the fundamental rights and liberties”
- Court decision left a lot unsaid but implied that the states were free to legalize physician-assisted suicide if they so choose

# Oregon Death with Dignity Act, 1997

- Patient request: 2 oral, 1 in writing
- Waiting Period: 15 days between 1<sup>st</sup> and 2<sup>nd</sup> request; 48 hrs between written request and prescription for lethal drugs
- Witnesses: 2 required; one cannot be relative, beneficiary or employee of institution/doctor
- Capacity: must be referred to counseling if psychiatric/psychological disorder suspected

# Oregon Death with Dignity Act

- Diagnosis: 2 physicians must agree that death is likely within 6 months
- Opt Out: physician may refuse to participate

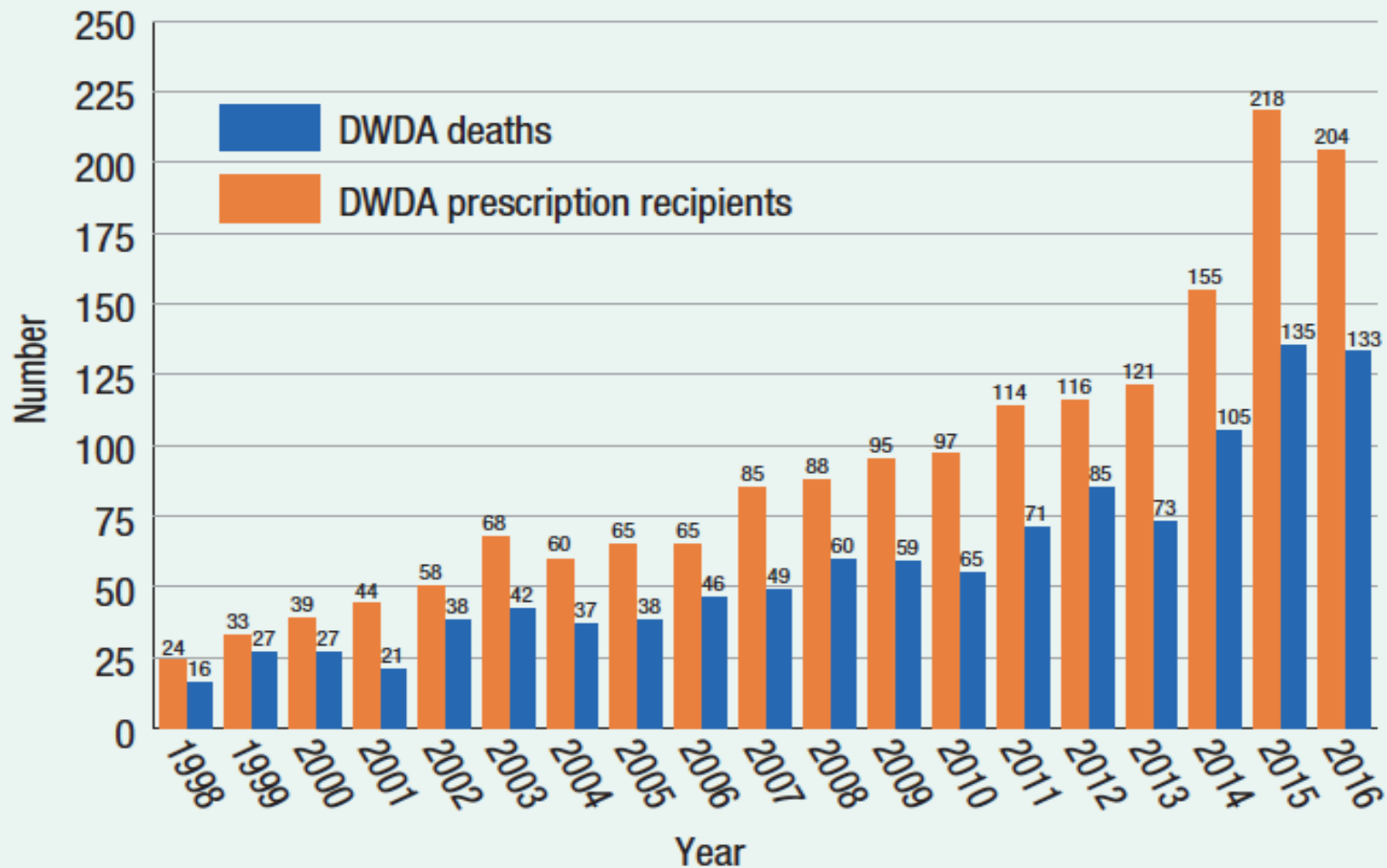


# Use of PAS, Oregon

- Since 1998, of those who received a script for lethal drugs (1,545), roughly 2/3 used the drugs (991)
- Demographics: those who request are typically well-educated males, insured, enrolled in hospice care

# Use of PAS, Oregon

Figure 1: DWDA prescription recipients and deaths\*, by year, Oregon, 1998–2016



\*As of January 23, 2017

# Use of PAS in Oregon 2021

- Roughly 375 scripts written for lethal drugs
- Roughly 225 used the drugs to take their lives
- Shows a steadily increasing use of the PAS provision, and continuing pattern in the numbers of those who did not use the drugs, but died from other causes. . .

# Other States

- Washington, 2009
- Vermont 2009
- California, 2016
- Colorado, 2016
- District of Columbia, 2016
- Hawaii, 2018
- New Jersey, 2019
- New Mexico, 2021
- Maine, 2021

# Montana, 2009

The Montana Supreme Court ruled 5-2, in *Baxter v. Montana* that nothing in the state law prohibited a physician from honoring a terminally ill, mentally competent patient's request by prescribing medication to hasten the patient's death.

*State Legislative efforts both for and against have failed.*

# Canada, MAID (medical aid in dying) 2016

- As well as "assisted suicide" in the strict sense of the term - in which patients administer the medicine that kills them by themselves - Canada's law is more permissive as it allows practitioners to euthanize patients who want to die but who are physically unable to kill themselves.

# Canada, 2016

- Canada also does not allow assisted suicide or euthanasia for those diagnosed with mental illness, a practice allowed in the Netherlands, Belgium, and Switzerland.
- Must be 18, and a Canadian citizen
- Two requests, 10 days apart, 2 witnesses

# Canada, 2016

- Canadian law is vague about what counts as “reasonably foreseeable,” leaving this to the judgment of physicians. Most U.S. state statutes stipulate a 6-month or less prognosis. Canadian law allows physician-assisted death for patients whose conditions are “grievous and irremediable.”



# Canada 2016

- Since passage, over 31,000 persons have died with physician assistance, through 2021.
- MAID deaths accounted for 3.3% of all deaths in Canada in 2021, an increase from 2.5% in 2020 and 2.0% in 2019.

# The U.K.

- Lots of surveys, and discussion. British Medical Assoc. is officially opposed;
- Polls indicate that more than 50%, of both physicians and citizens, favor a law permitting PAS.

# The U.K.

- There were 174 cases of assisted suicide referred by the police for prosecution in England and Wales between 2009- 2022. All but 26 of these were eventually withdrawn by the police or dropped by the CPS (Crown Prosecution Service.)
- As of March 2022, there were 8 ongoing cases in England and Wales. The last known prosecution in Scotland was in 2006.

# Other Countries

PAS & Euthanasia legal in

- The Netherlands
- Belgium
- Luxembourg

PAS only

- Switzerland
- Finland
- Germany
- Victoria, Australia

# The Ethics of Suicide

1. Is it ever ethical to commit suicide? Is there such a thing as a rational suicide? Tendency to think predominately in psychiatric categories.
2. Is it ethical to get assistance for one's suicide from a physician?

# Tradition of a Noble Death

- Epictetus, Marcus Aurelius, Seneca, Cicero

“the good man should not live as long as it pleases him, but as long as he ought.”

--Seneca

- Choosing death is the ultimate mark of freedom
- Death preferable to slavery, loss of honor, degradation of self

# Abimelech at Thebaz circa 1200 BCE



# Augustine, Origins of Christian Orthodoxy

Donatists -- (later a Christian heresy),

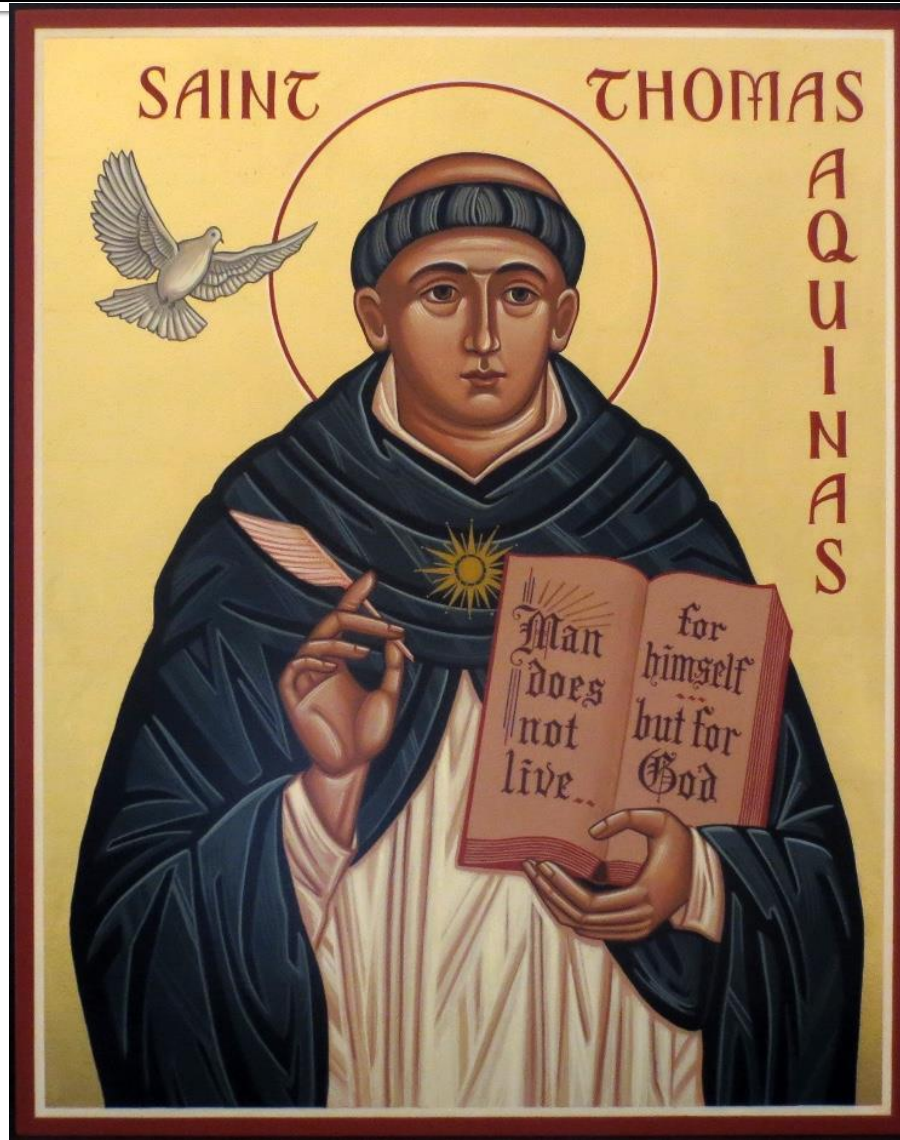
- departing this life to enjoy sooner the glories of the next.....running off cliffs
- thought of themselves as martyrs...

Augustine: Suicide is not martyrdom, but a sin

- Unwillingness to endure suffering
- Grounded in despair, rather than faith
- Affront to God's providential wisdom



# Thomas Aquinas, 1225-1274



# Arguments against Suicide, 1

Thomas Aquinas

1. Duties of Love to Self: everything naturally loves itself, the result being that everything naturally keeps itself in being, and resists corruptions so far as it can. Wherefore suicide is contrary to the inclination of nature, and to charity whereby every man should love himself. Hence suicide is always a mortal sin, as being contrary to the natural law and to charity.

# Arguments against Suicide, 2

Thomas Aquinas

- 2. Injury to the Common Good: Every part, as such, belongs to the whole. Now every man is part of the community, and so, as such, he belongs to the community. Hence by killing himself he injures the community, as the Philosopher declares.

# Arguments against Suicide, 3

Thomas Aquinas

3. Divine Prerogatives: Because life is God's gift to man, and is subject to His power, Who kills and makes to live. Hence whoever takes his own life, sins against God, even as he who kills another's slave, sins against that slave's master, and as he who usurps to himself judgment of a matter not entrusted to him. For it belongs to God alone to pronounce sentence of death.

# David Hume, 1711-1776



# David Hume, *Of Suicide*, 1783

- “Injury to the Common Good”

Rebuttal: “A man who retires from life does no harm to society, he only ceases to do good...where my life is a positive burden to society my withdrawal from it is not only innocent but laudable.”

# David Hume, *Of Suicide*, 1783

- “Divine Prerogatives”

Rebuttal: “When I fall on my sword I receive my death from the hands of the Deity, as if it has proceeded from a lion, a precipice or a fever.”

“When pain and sorrow make me tired of life, I may conclude I am recalled from my station in the clearest and most express terms.”

# From Suicide to Assisted Suicide





# Arguments against PAS, 1

- Sanctity of life: There are strong religious and secular traditions against taking human life. Assisted suicide is morally wrong because it contradicts these beliefs.
- Passive vs. Active distinction: There is an important difference between passively "letting die" and actively "killing." It is argued that treatment refusal or withholding treatment equates to letting die (passive) and is justifiable, whereas PAS equates to killing (active) and is not justifiable.

# Arguments against PAS, 2

- Potential for abuse: Vulnerable people—elderly, poor, etc.-- lacking access to care and support, may be pushed into assisted death. Furthermore, assisted death may become a cost-containment strategy. Burdened family members and health care providers may encourage option of assisted death. To protect against these abuses, it is argued, PAS should remain illegal. (Slippery Slope)

# Arguments against PAS, 3

- Professional integrity: An appeal to the historical ethical traditions of medicine, strongly opposed to taking life. The Hippocratic Oath states, "I will not administer poison to anyone when asked," and "Be of benefit, or at least do no harm." Major professional groups (AMA, AGS) oppose assisted death. Linking PAS to the practice of medicine could harm the public's image of the profession.

# Arguments against PAS, 4

- Fallibility of the profession: Physicians will make mistakes. For instance there may be uncertainty in diagnosis and prognosis. There may be errors in diagnosis and treatment of depression, or inadequate treatment of pain. The state has an obligation to protect people from these kinds of mistakes.

# Arguments for PAS, 1

- Respect for autonomy: Decisions about time and circumstances of death are very personal. Competent persons should have right to choose.
- Justice: Justice requires that we "treat like cases alike." Competent, terminally ill patients are allowed to hasten death by treatment refusal. For some patients, treatment refusal will not suffice to hasten death; only option is suicide. Justice requires that we should allow assisted suicide for these patients.

# Arguments for PAS, 2

- Compassion: Suffering means more than pain; there are other physical and psychological burdens. It is not always possible to relieve suffering. Thus PAS may be a compassionate response to unbearable suffering.
- Individual liberty vs. diminishing state interest: Though society has strong interest in preserving life, that interest lessens when person is terminally ill and has strong desire to end life. A complete prohibition on assisted death excessively limits personal liberty. Therefore, PAS should be allowed in certain cases

# Arguments for PAS, 3

- Openness: Assisted death already occurs, albeit in secret. For example, morphine drips ostensibly used for pain relief may be a covert form of assisted death or euthanasia. That PAS is illegal prevents open discussion, in which patients and physicians could engage. Legalization of PAS would promote open discussion and less abuse.

# Arguments for PAS, 4

- The physician's highest duty is not to preserve life at all costs, but depends on the context and the patient's condition and his/her values. At times the highest duty may be to relieve or prevent unwanted suffering. Thus there is a place for PAS. Making PAS legal will not destroy trust in physicians but enhance it.





# A Dementia Advance Directive (including directions re: VSED)

- “If my dementia has produced inability or unwillingness to feed myself. . .my caregivers should refrain from hand feeding. If I appear receptive to handfeeding, agitated or upset by non-feeding, I authorize sedation to relieve that upset. . .
- Norman L. Cantor, “On Avoiding Deep Dementia,” *Hastings Center Report*, July-August, 2018

# Questions

- Are there any circumstances in which you would find assisted suicide morally acceptable?
- Are there any circumstances in which you would find euthanasia (actively taking a life) morally acceptable?
- Should PAS be legal everywhere in U.S.?

# Optional Exercise: For next week, *if you want*, choose one....

- 1. Write your obituary
- 2. Write about a dying episode or death scene that troubles you. It could be factual or fictitious.
- 3. Write a short paragraph that explains the following:



# Moses Teague, follow -up

- Moses Hearmon Teague was born in 1900 and died in 1937. He had 4 children -- one in 1922, one in 1926, one in 1930, and one in 1937. It is possible that Walter, born in 1922, could have fathered a child at age 15 -- and if this were twins who did not survive, they could have been buried with Moses. I had read that infants were sometimes buried with an adult.