Session 4

Physician Assistance in Dying: A Review of the Ethics of Policies and Practices

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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

All 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 1st and 2nd 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

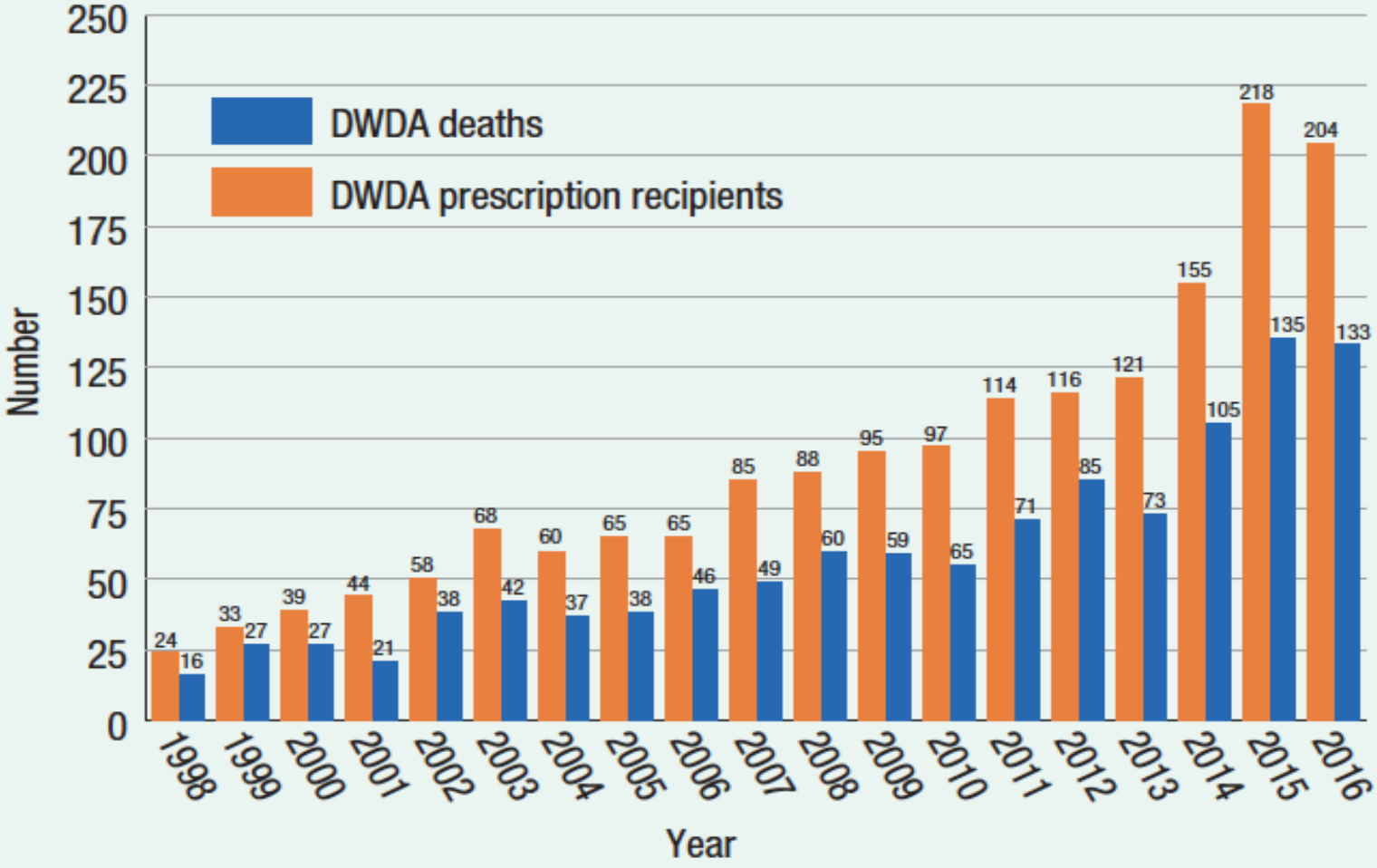
Use of PAS, Oregon

- 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

Other States

- Washington, 2009
- Vermont 2009
- California, 2016
- Colorado, 2016
- District of Columbia, 2016
- Hawaii, 2018

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/against have failed.

Canada, 2016

- As well as "assisted suicide" in the strict sense of the term - in which patients administer the medicine that kills them directly by themselves - Canada's law is more permissive in this area 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
- 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, 3,714 persons have died with physician assistance
- Accounts for 1% of all death

The U.K., 2017-2018

- Lots of surveys, and discussion. BMA is officially opposed, polls indicate that more than 50%, of both physicians and citizens, favor a law permitting PAS.

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 in 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 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 of discussion: 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