



# End of Life Option Act

Carol H. Mack, PhD, JD, RN



Warning: Mature Content

**MA**

# Right to Die?



- Courts have upheld right to refuse life-saving and life-sustaining treatment
- Since 1990, the federal Patient Self-Determination Act

## *Bouvia v. Superior Court, 1986*



- Disabled with cerebral palsy, quadriplegia, severe degenerative arthritis
- Sought to starve herself to death
- Filed lawsuit to avoid force feeding



## *Cruzan v. Director, Missouri Department of Health, 1990*



- Persistent vegetative state following car accident
- Parents sought to remove feeding tube
- Court required “clear and convincing evidence” of her wishes

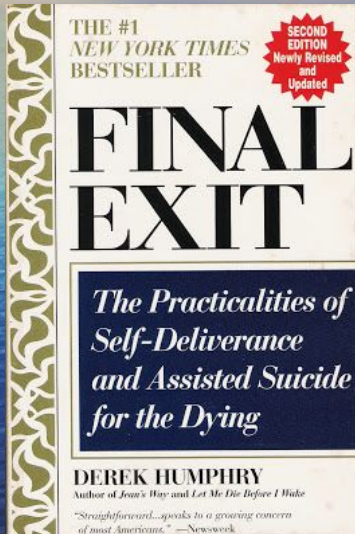
## *Washington v. Glucksberg and Quill v. Vacco, 1997*



- Does right to refuse life-sustaining treatment imply right to aid in dying?
- Distinguished *Cruzan*
- Held: No constitutional right to assisted death



# Hemlock Society



- Founded 1980
- Supported patient suicide and legislation for assisted dying
- Later renamed End of Life Choices, then merged with Compassion & Choices

## "Death with Dignity" Movement

- Oregon law model
  - Passed 1994, took effect 3 years later after injunction lifted
- Washington 2008
- Vermont 2013
- Movement revived by Brittany Maynard case



# Brittany Maynard



# Physician-Assisted Suicide?

- Is it a patient's right?
- Is it a rejection of the value of human life?
- "I will never give a deadly drug to anyone if asked for it, nor will I make a suggestion to this effect."
  - Hippocratic Oath

## California's End of Life Option Act

- Passed at special session on health care
- Signed into law October 2015
- Took effect 90 days after special session adjourned
  - June 9, 2016
- Referendum to repeal failed to qualify for ballot



# Controversial Law



## Governor Jerry Brown

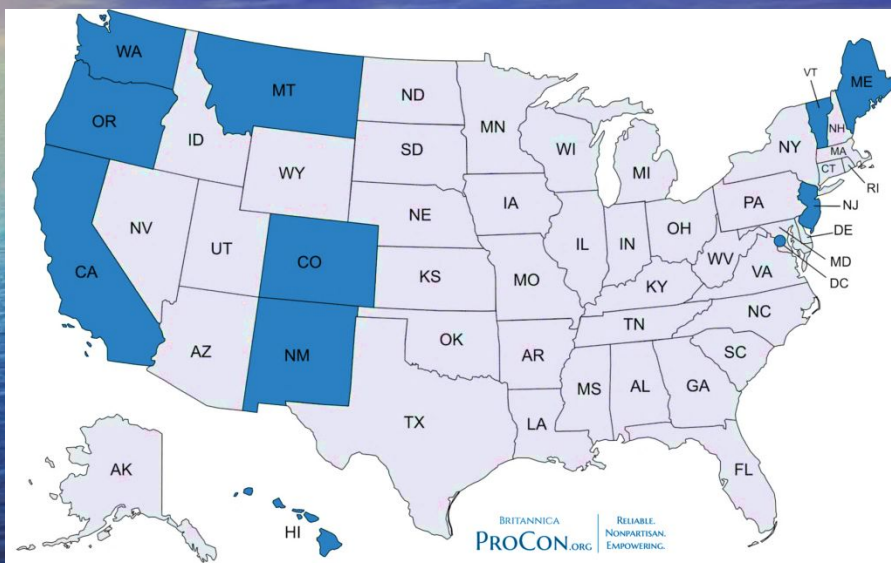
"I do not know what I would do if I were dying in prolonged and excruciating pain. I am certain, however, that it would be a comfort to be able to consider the options afforded by the bill. And I wouldn't deny the right to others."

# Sunset Clause



- Law to remain in effect only until January 1, 2026
- Sunset clause removed in 2021

## Legal in 11 U.S. Jurisdictions





## *Ahn v. Hestrin*, 2020

- Filed 2016, claiming law unconstitutional because it treats terminally ill patients differently from others
- Also, claimed inappropriately passed in a special session on health care
- 2018, injunction against enforcement issued
- Law later reinstated during legal challenge
- Court ruled no standing
- Lawsuit dropped after End of Life Options Act revised

## S.B. 380, 2021



- Sought to remove barriers
- Reduced the required waiting period
- Eliminated final attestation
- Removed sunset clause

# Voluntary Participation

- Healthcare providers and health systems not required to participate
- Insurance providers not required to cover costs
  - Medi-Cal covers cost of drugs, using state funds
  - Medicare does not cover the cost of drugs

## Non-Participation, Physician



- Physicians who do not participate must inform patient
- Must transfer medical records upon request



# Non-Participation, Health Care Facility



- “End of Life Option Act
- “Dignity Health will not participate in the activities authorized under the act”

## Physician Beliefs about Aid in Dying

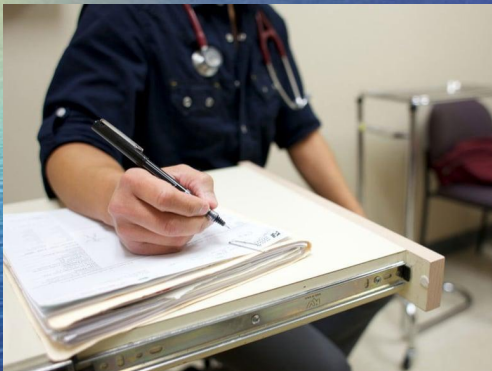
Assumption	Data
Most patients choose Aid in Dying because of physical pain	Loss of pleasure in life and loss of autonomy are bigger factors
Health insurance may cover Aid in Dying over more expensive, potentially curative therapies	Explicitly prohibited under the End of Life Option Act
Aid in Dying would not be necessary with excellent palliative care	95% of participants in 2022 were enrolled in hospice and/or palliative care

# Why Do Patients Choose Aid in Dying?



- Decreased enjoyment in life
- Loss of autonomy
- Loss of dignity
- Pain, nausea, other suffering from illness
- Fear of future suffering

## *Christian Medical & Dental Associations, et al. v. Bonta, et al., 2023*



- Nonparticipating physicians challenged requirement to document patient's oral request
- Based on religious convictions
- Injunction granted



# *United Spinal, et al. v. State of California, et al., 2024*



- Claim of discrimination against people with disabilities
- People with disabilities encouraged to choose aid in dying
- Dismissed with prejudice

## Requirements for Aid in Dying



- At least 18 and a California resident
- Mentally competent
- Prognosis of six months or less
- Able to self-administer the aid-in-dying drug

## Process: Patient



- Personally makes two oral requests, at least 48 hours apart
- Written request no longer required
- Must be able to take the drug without assistance

## Process: Physician

- Determines patient's capacity, referring to a mental health specialist if in question
- Confirms informed decision and counsels patient
- Refers to consulting physician for confirmation of the diagnosis and prognosis as well as capacity
- Dispenses aid-in-dying drugs
- Completes required documentation



# What Happens Next?

- Aid-in-dying drugs are usually barbiturates that cause unconsciousness
- After taking them, people fall into a deep sleep within 10 minutes, followed by coma, respiratory depression, and death shortly thereafter
- Typically, death occurs within two to five hours of ingestion

UCSF Health, n.d.

# Safeguards

- Physicians need not participate
- Insurance may not deny coverage for illness while suggesting aid-in-dying drugs
- Undue influence is punishable
- May not be included in advance directive or POLST
- Patient may always withdraw the request

## Safeguards (cont'd)

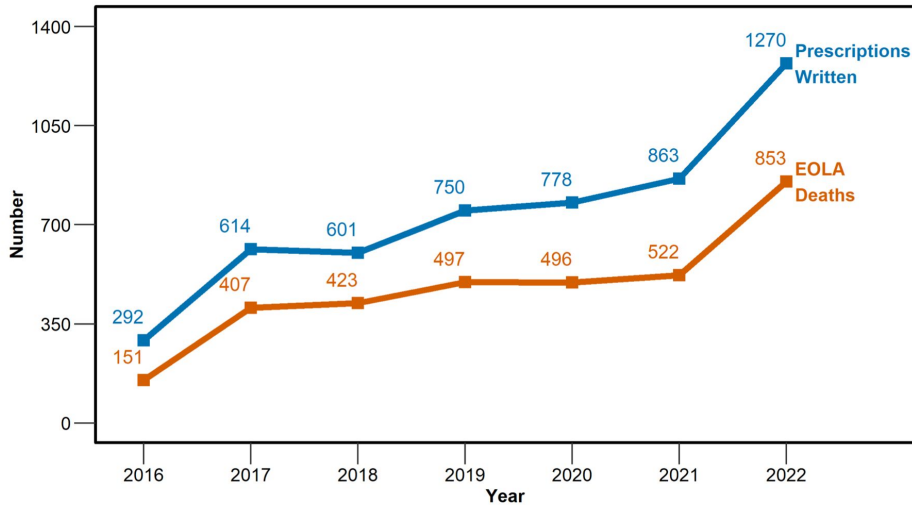
- Patient must be able to take the medication without help
  - Any other person administering the medication to a patient faces criminal charges
  - But no penalty for being present
- No other person may request the aid-in-dying drugs on a patient's behalf

## Not Suicide



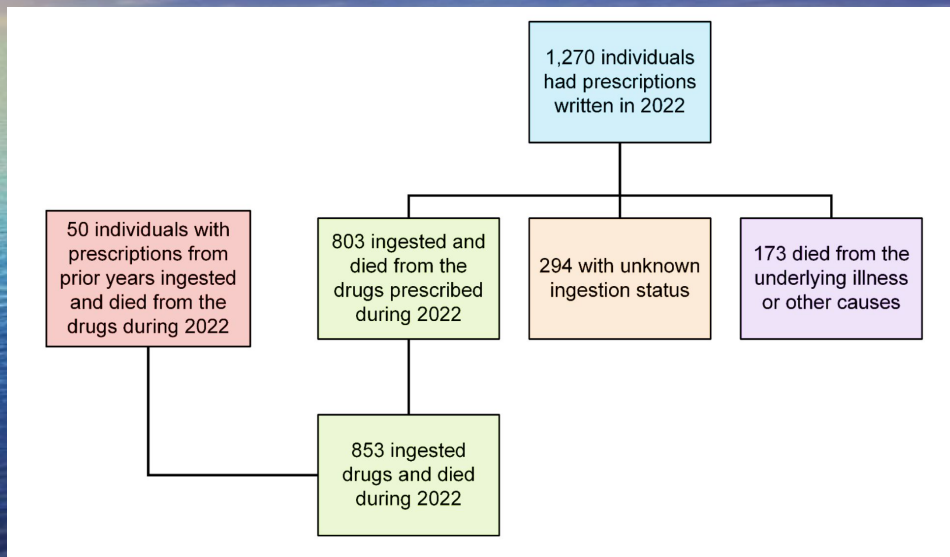


# EOLA Prescriptions and Deaths 2016 - 2022

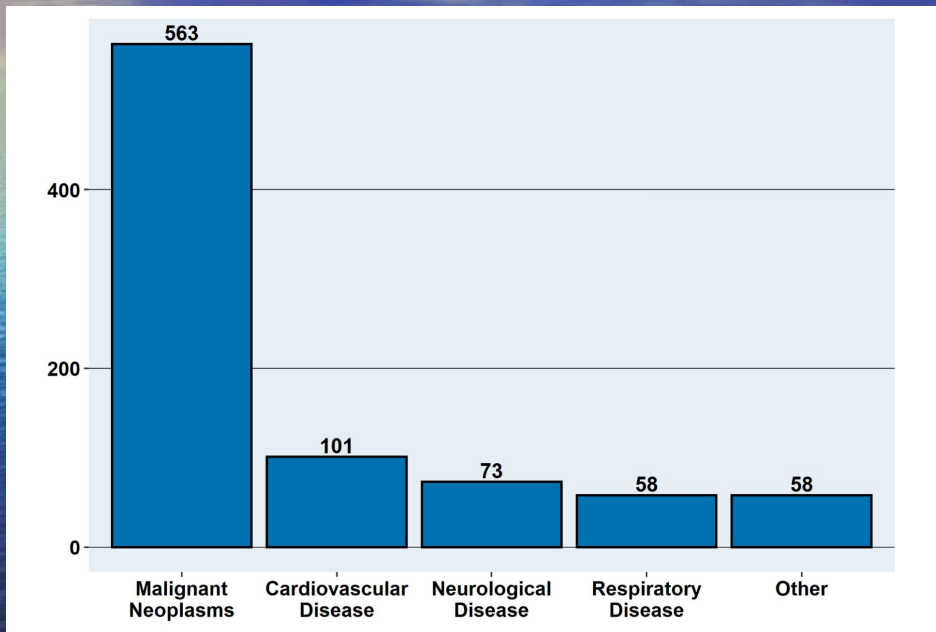


<sup>3</sup> Percentages presented in this Data Report are rounded to the nearest tenth. Due to rounding, percentages when totaled may not equal 100.0 percent.

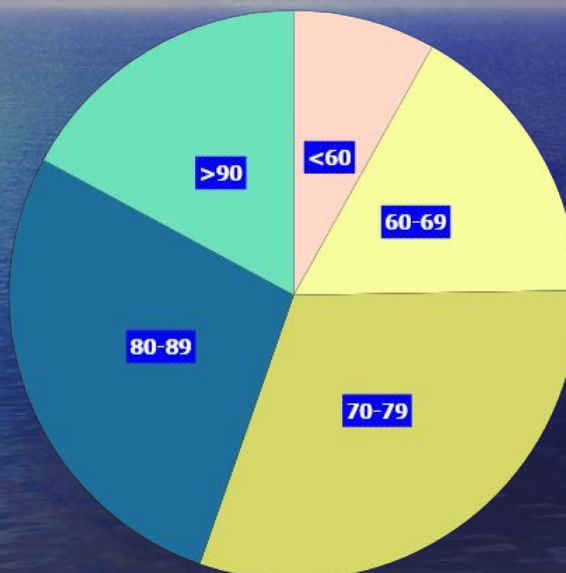
## Aid-in-Dying Prescriptions and deaths in 2022



# Cancer Most Common Illness



# Median Age of Participants Was 78



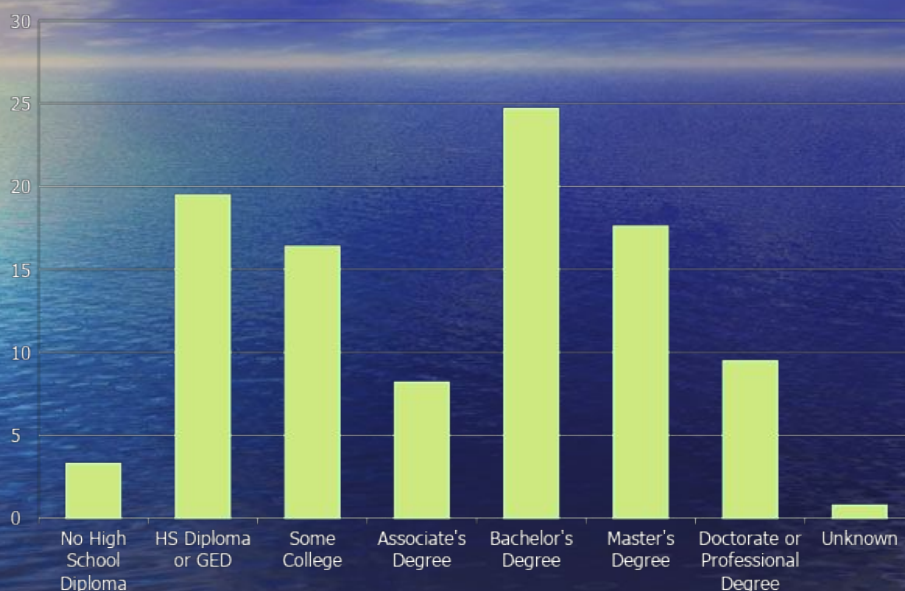


# Majority of Participants Were White



- White 89.0%
- Black 0.5%
- American Indian/  
Alaska Native 0.5%
- Asian 6.3%
- Native Hawaiian/  
Pacific Islander 0.0 %
- Other 0.0%
- Multi-race 0.6%
- Hispanic 2.8%
- Unknown 0.4%

# Most Participants Had College Degree

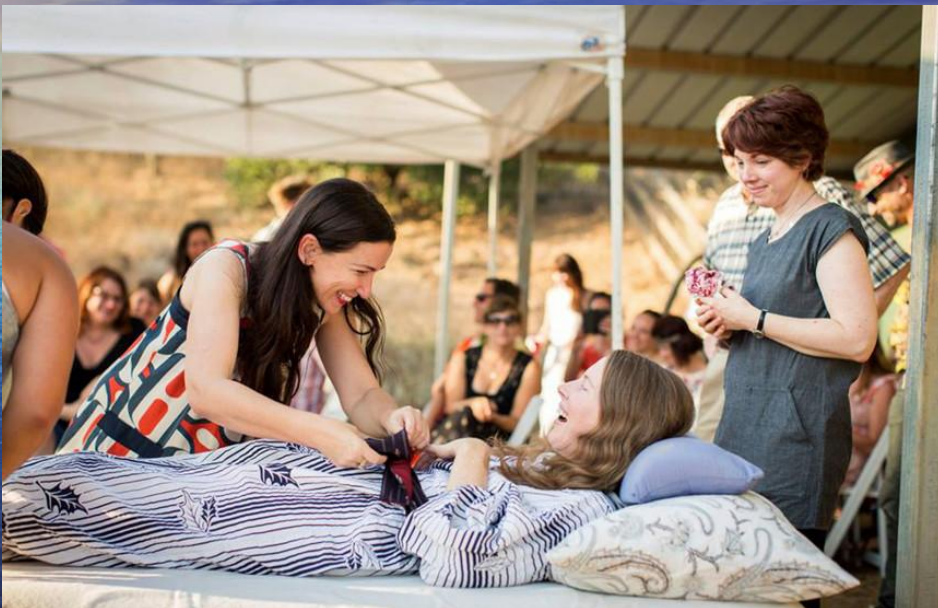


# What Are the Implications?



- Why do we see this pattern?
- Are there barriers to accessing assisted dying?
- What are the attitudes of different ethnic groups and religious traditions toward assisted dying?

## Right to Die Party





# Common Concerns



- Possible incentive to choose dying in order to avoid burdening family or for financial reasons
- Potential for undue influence, which is difficult to prove
- Clinical depression may be missed

# Undue Influence



# Undue Influence (cont'd)



- *Poor Old Granddad*: I'm not afraid to die.
- *Evil Granddaughter*: I know. I guess you might feel that you are ready to go. Did you read in the paper about the new drugs that you can get from your doctor?

# Discussion



- Is this a good law?
- What are the potential abuses of the law?



# Questions?

