

# **Under-examined End-of-Life Option: Hastening Death by Voluntarily Stopping Eating and Drinking (VSED)**

**ICEL2 (Halifax NS), Sept. 15, 2017**

**Thaddeus Mason Pope, JD, PhD**

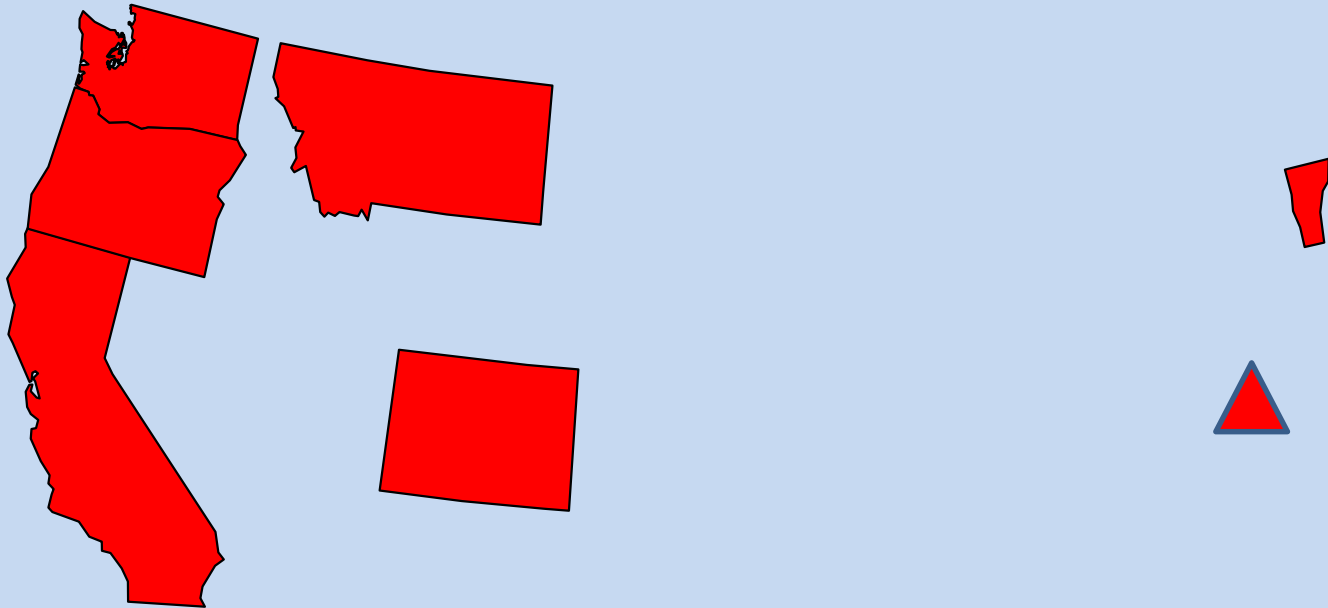
**Mitchell Hamline Health Law Institute**

More & more  
jurisdictions  
**expanding**  
EOL liberty

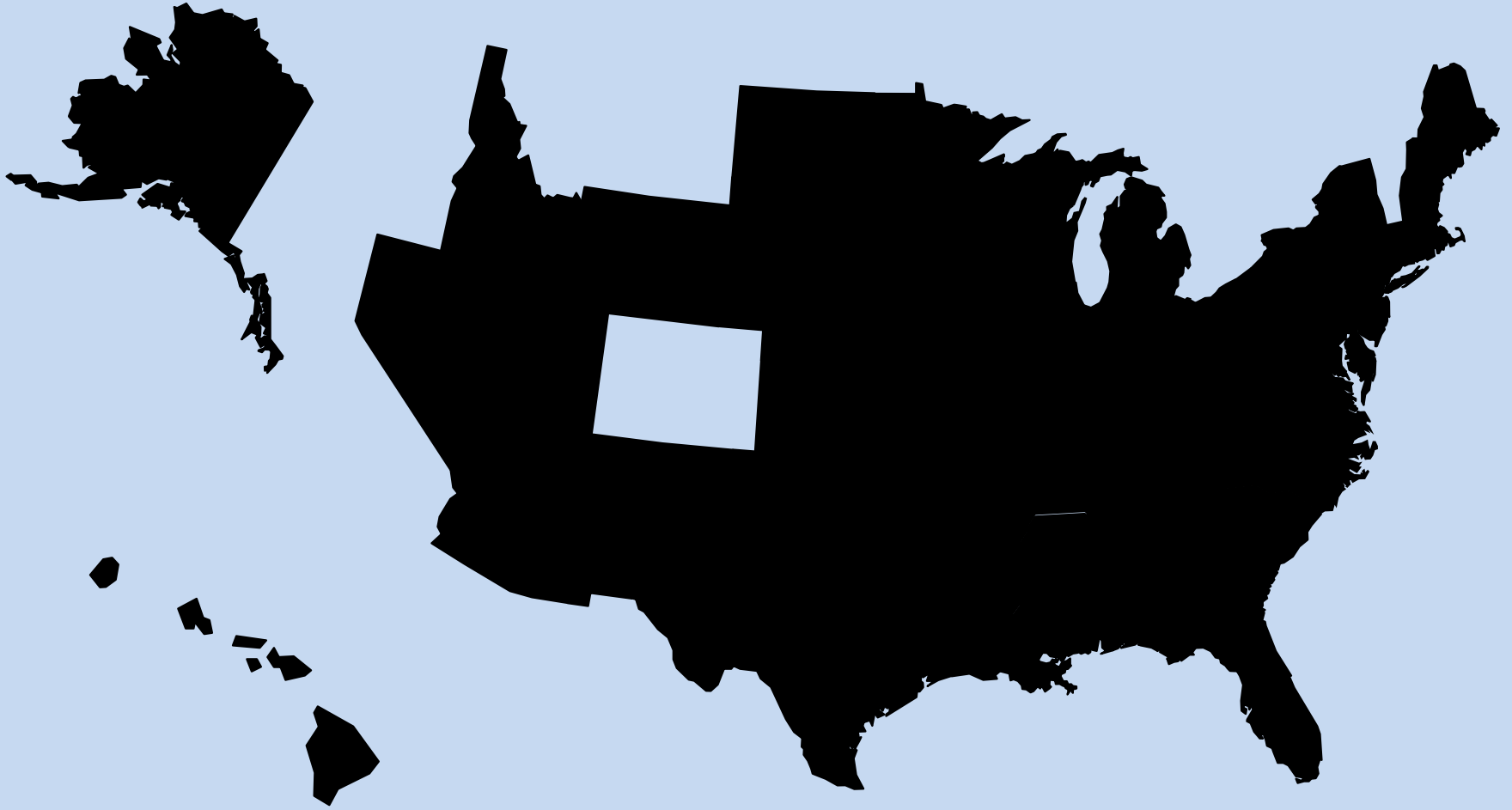
Most VISIBLE exit option

# Medical aid in dying

# MAID legal in 7 US states



# MAID illegal in 49



**BUT**

**Other** exit  
options

**VSED**



**V**oluntarily

**S**topping

**E**ating &

**D**rink

**Define**

**VSED**

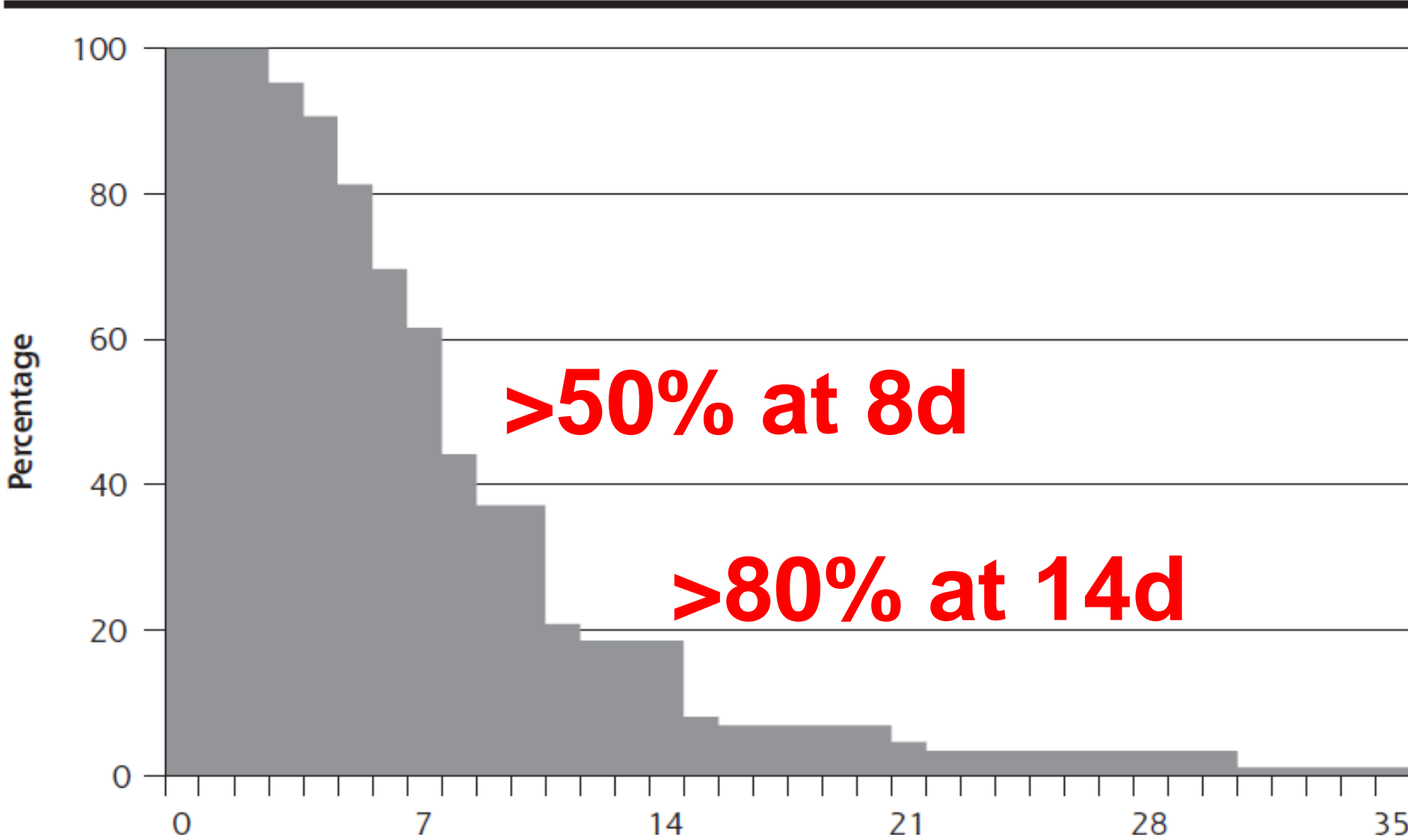
3

Physiologically  
**able** to take food  
& fluid by mouth

Voluntary,  
**deliberate**  
decision to stop

**Intent:** death  
from dehydration

Figure 1. Cumulative survival curve for duration until death after start of VSED.



**Bad**

**rap**





**Peaceful**

**Comfortable**

A woman with short, curly white hair, wearing a bright pink long-sleeved shirt and dark trousers, stands on a stage. She is gesturing with her right hand. To her left is a small black table with a blue and white patterned tissue box. To her right is a wooden chair with a black leather seat. In the background, a large, three-dimensional red 'X' is illuminated. The stage floor is covered with a red, textured material. The background is dark with some stage lighting equipment visible.

Phyllis  
Schacter

SPECIAL ARTICLE

# Nurses' Experiences with Hospice Patients Who Refuse Food and Fluids to Hasten Death

Linda Ganzini, M.D., M.P.H., Elizabeth R. Goy, Ph.D., Lois L. Miller, Ph.D., R.N.,  
Theresa A. Harvath, R.N., Ph.D., Ann Jackson, M.B.A., and Molly A. Delorit, B.A.

>100 Oregon  
nurses cared for  
VSED patient

Most deaths:

“peaceful, with  
little suffering”

“opportunity for  
reflection, family  
interaction, and  
mourning”

Not for  
everyone



NATIONAL BESTSELLER

# *On My Own*

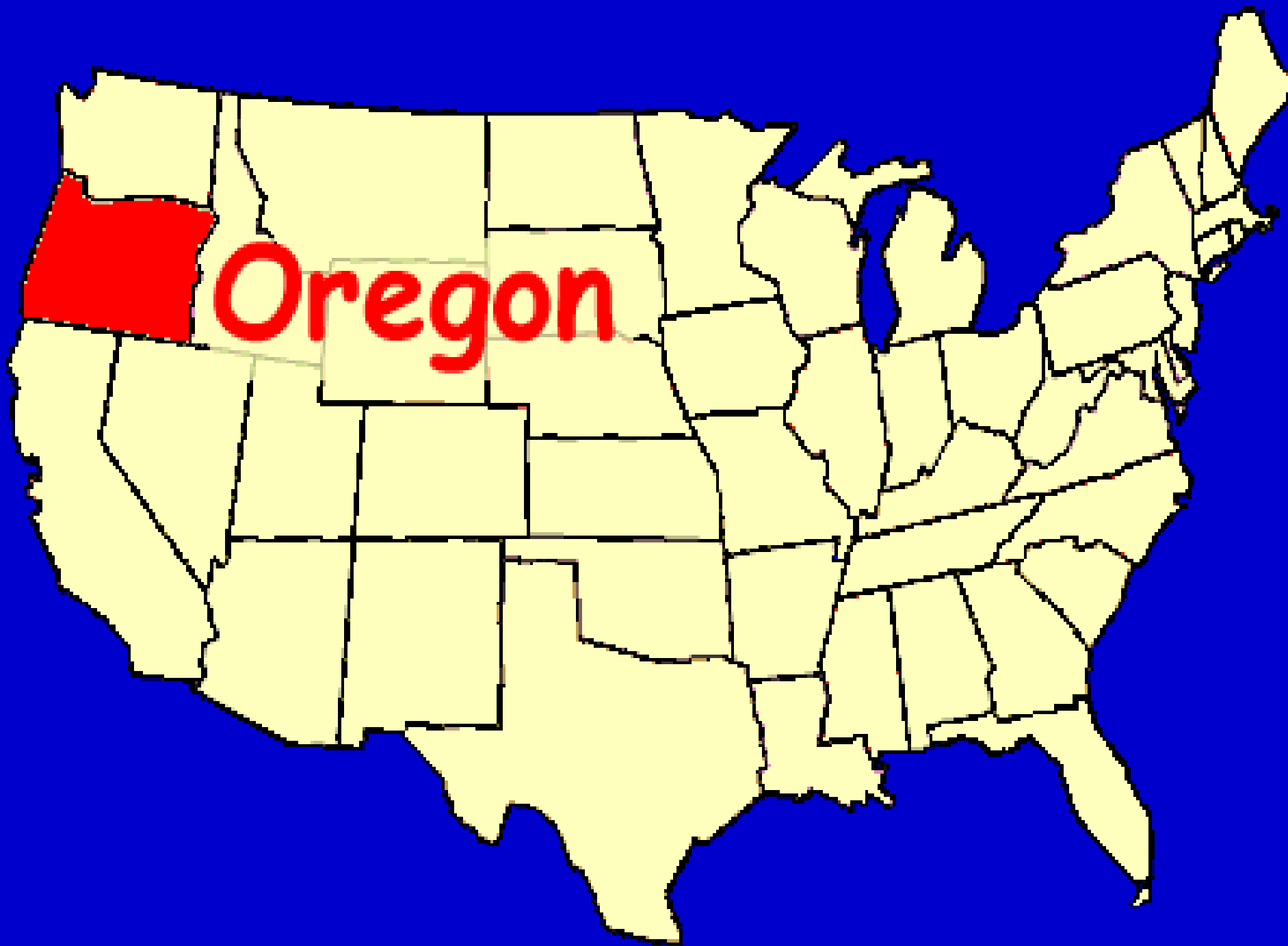
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## *Diane Rehm*

"Clear, moving and completely honest. . . . Diane Rehm has again found her voice, and, as she has always done, she speaks passionately and courageously about issues that concern us all."  
—*The Washington Post*



Preferred  
by many



Oregon

Even though MAID  
available, “almost  
twice” chose VSED

**Good  
option**

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# POSITION STATEMENT



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## Nutrition and Hydration at the End of Life

**Effective Date:** 2017

**Status:** Revised Position Statement

**Written by:** ANA Center for Ethics and Human Rights

**Adopted by:** ANA Board of Directors

JOURNAL OF PALLIATIVE MEDICINE

Volume 20, Number 1, 2017

Mary Ann Liebert, Inc.

DOI: 10.1089/jpm.2016.0290

# Position Statement

## International Association for Hospice and Palliative Care Position Statement: Euthanasia and Physician-Assisted Suicide

**Legal**

**concerns**





**Clinician  
involvement  
very important**

# Uncertainty & reluctance



Prohibited

Unsure

Permitted

Almost never: express prohibition

A close-up photograph of a standard octagonal stop sign. The sign is red with a white border and the word "STOP" in white, bold, sans-serif capital letters in the center. The sign is mounted on a dark, textured post. The background is dark and out of focus.

STOP

No U.S.  
jurisdiction  
expressly  
prohibits VSED

# BUT

Absence of a red light

**not** good enough



Clinicians want **express** permission

GO

No **statutory**

permission



No **judicial**  
precedent

No red lights

No green lights

**Lack** of clarity &  
guidance



**neglected in academic & policy circles**





Providers

ask

Is VSED

legal?

Is VSED

illegal?

**Wrong**

questions





Law is rarely binary

Risk

assessment

Measure

Mitigate

# 2

case

types

**1**

VSED **now**

by patient

with capacity

2

Advance  
directive for  
VSED **later**

(when Pt lacks capacity)



VSED now,  
patient with  
capacity

# Extremely

# low risk

of sanctions – criminal, civil, regulatory

4

Arguments

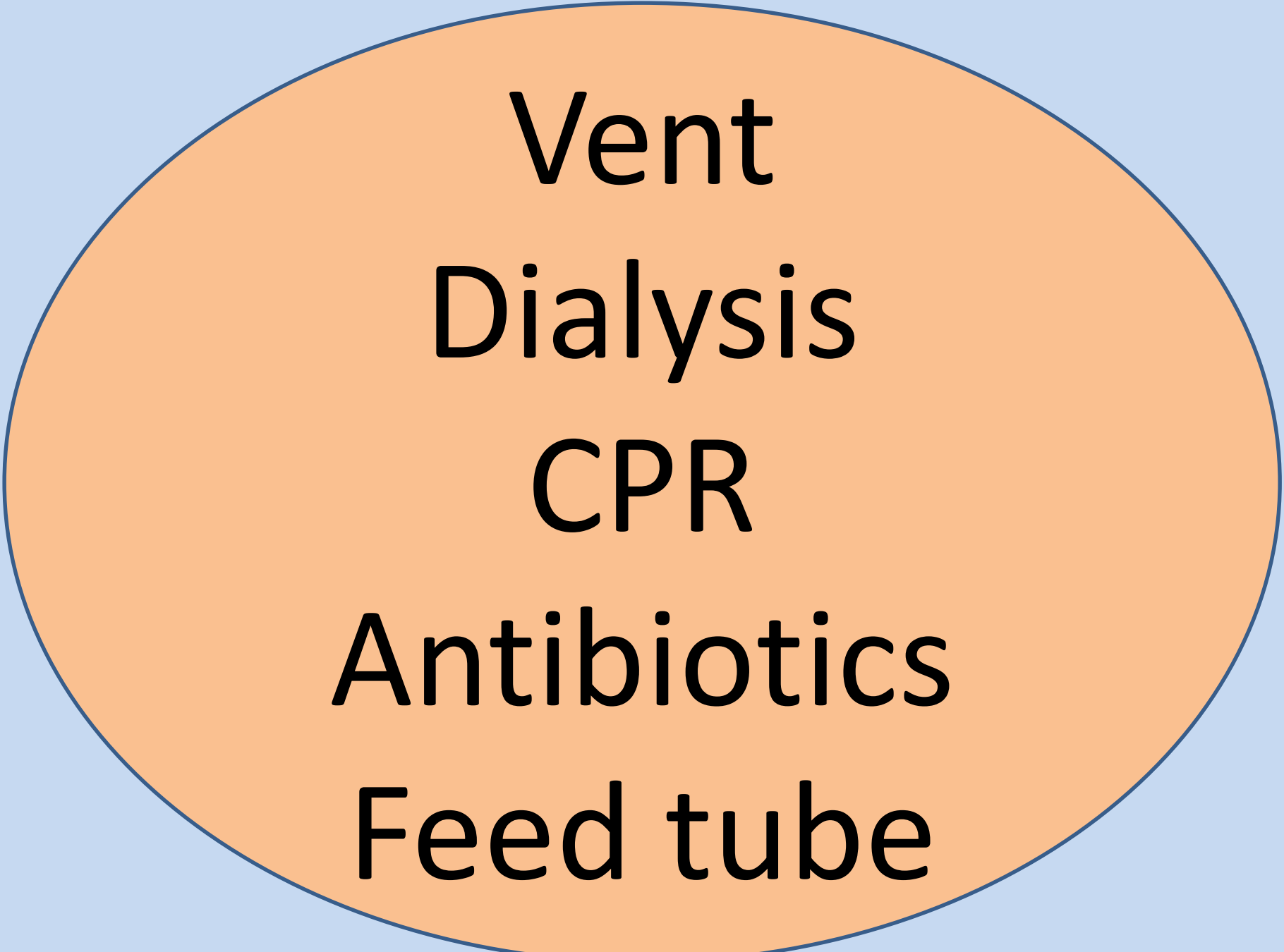
**1**

**Right to  
refuse  
medical  
measures**

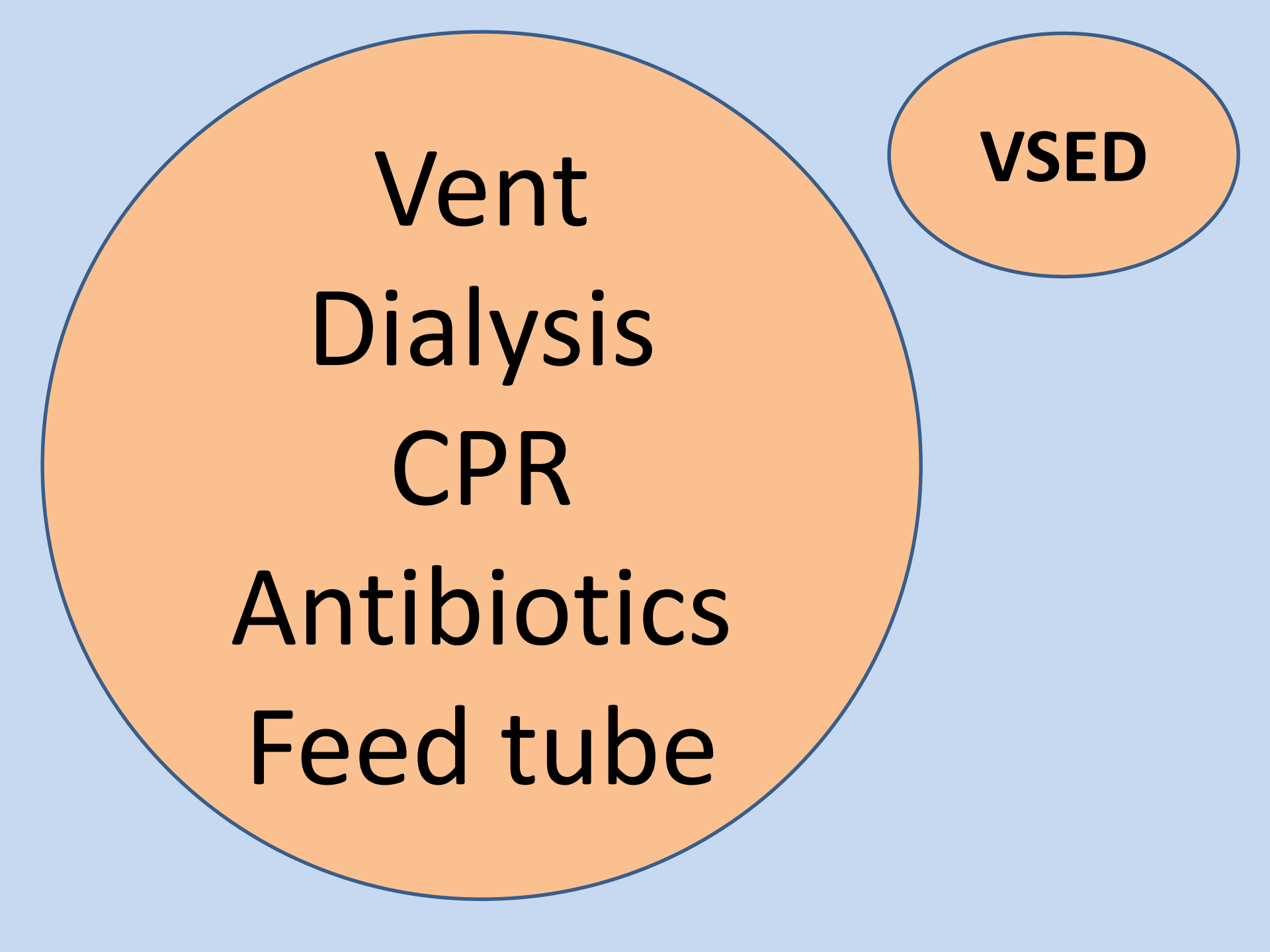
Well established

> 4 decades

**Right to  
refuse  
medical**



Vent  
Dialysis  
CPR  
Antibiotics  
Feed tube



Vent  
Dialysis  
CPR

Antibiotics  
Feed tube

**VSED**



Unclear



Vent  
Dialysis  
CPR

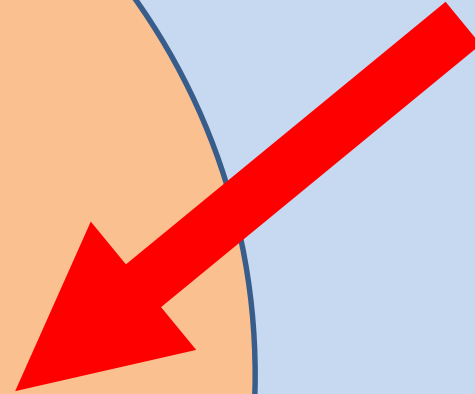
Antibiotics  
Feed tube

**ICD**

**VSED**

Vent  
Dialysis  
CPR

Antibiotics  
Feed tube



Not DIY



# FINAL EXIT NETWORK

**SUPPORTING THE HUMAN RIGHT TO A DEATH WITH DIGNITY**



# **How To Make Your Own Inert Gas Hood Kit**

By Derek Humphry

ISBN 978-0-9768263-6-5

# Contrast

# VSED



Part of a broader  
**treatment** plan

**Supervised** by  
licensed healthcare  
professionals



**Harvard CEC**

# PAVSED

**Palliated & Assisted**

Voluntarily Stopping

Eating and Drinking

# PAVSED

Highlights **medical role** in  
palliating symptoms

Highlights the **direct care staff**  
role in providing assistance

**Recognized** as  
healthcare by  
medical  
profession

**More** position  
statements  
(e.g. ANA,  
IAHPC)

**More** clinical  
practice  
guidelines

# Caring for people who consciously choose not to eat and drink so as to hasten the end of life





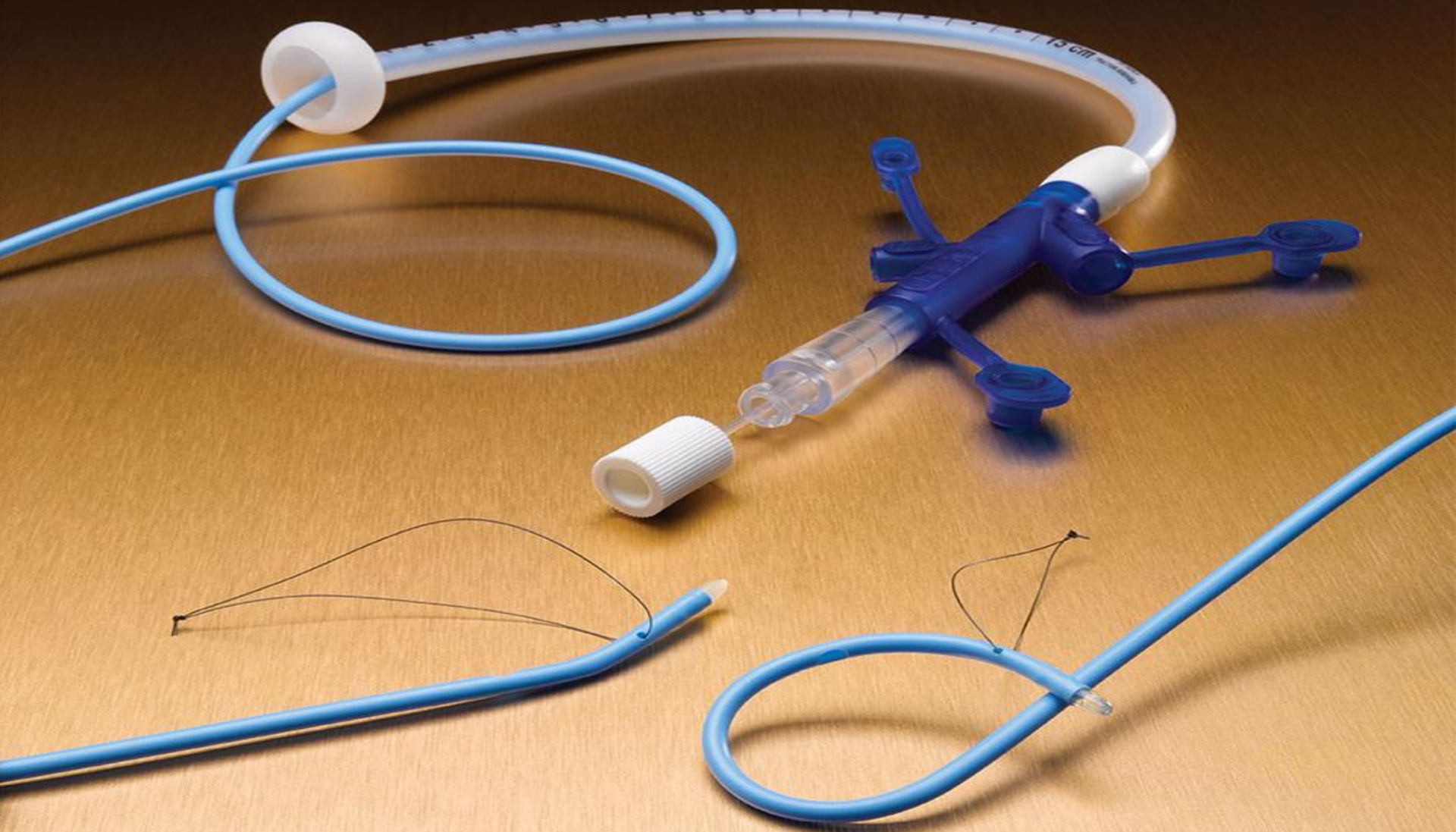


COLLÈGE DES MÉDECINS  
DU QUÉBEC

**BUT**



**Barely** established  
ANH = medical treatment



Medical b/c not “typical human”



Implies  
ONH is  
not  
medical



ONH =

“treatment”

**Right to  
refuse  
medical**

**VSED**

**2**

**Right to  
refuse  
unwanted  
measures**



Does **not** matter  
whether food &  
fluid is “medical  
treatment”

Right to refuse  
any intervention  
(medical **or not**)

Unwanted contact

**Even if** clinically

beneficial

# Battery

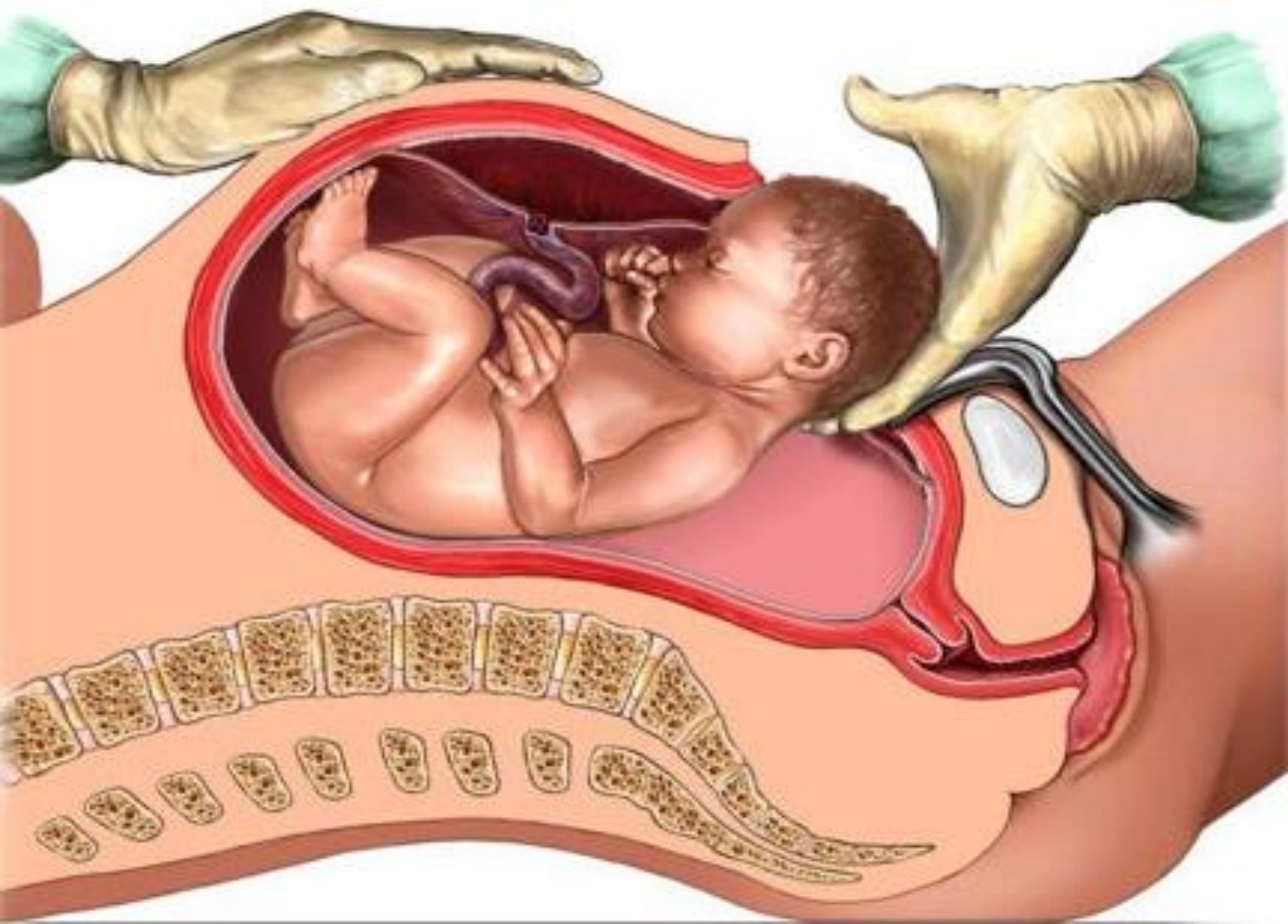


Patient  
consented  
to left ear



Physician  
operated  
on right ear

**Mohr v. Williams (Minn. 1905)**

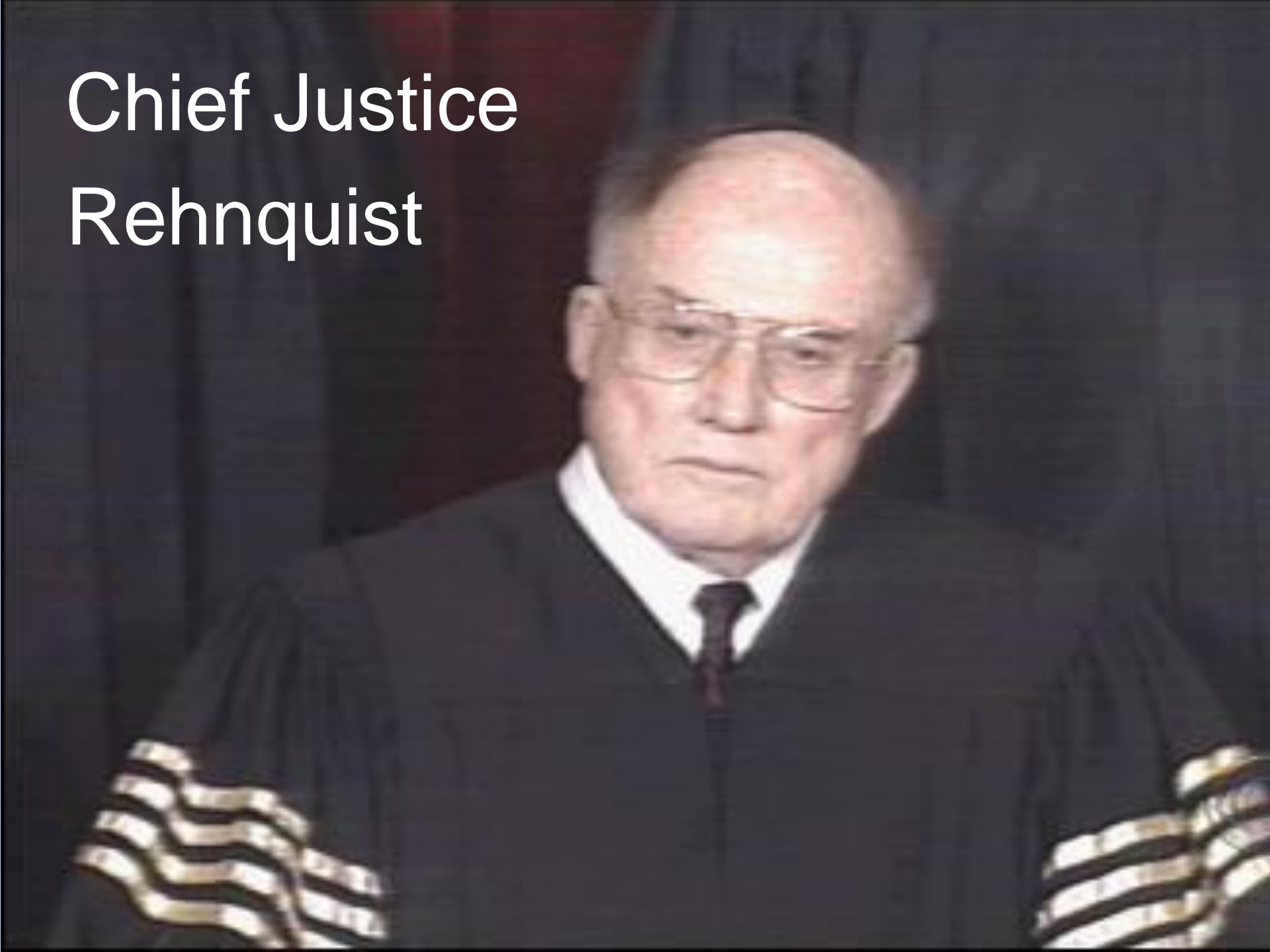




# Force feeding is a battery



# Chief Justice Rehnquist





“bodily integrity is  
violated . . . by sticking  
a **spoon in your mouth**  
. . . sticking a needle in  
your arm”

**Move** from legal  
bases, grounds  
for right

Respond to  
2 main legal  
concerns

**3**

**VSED**

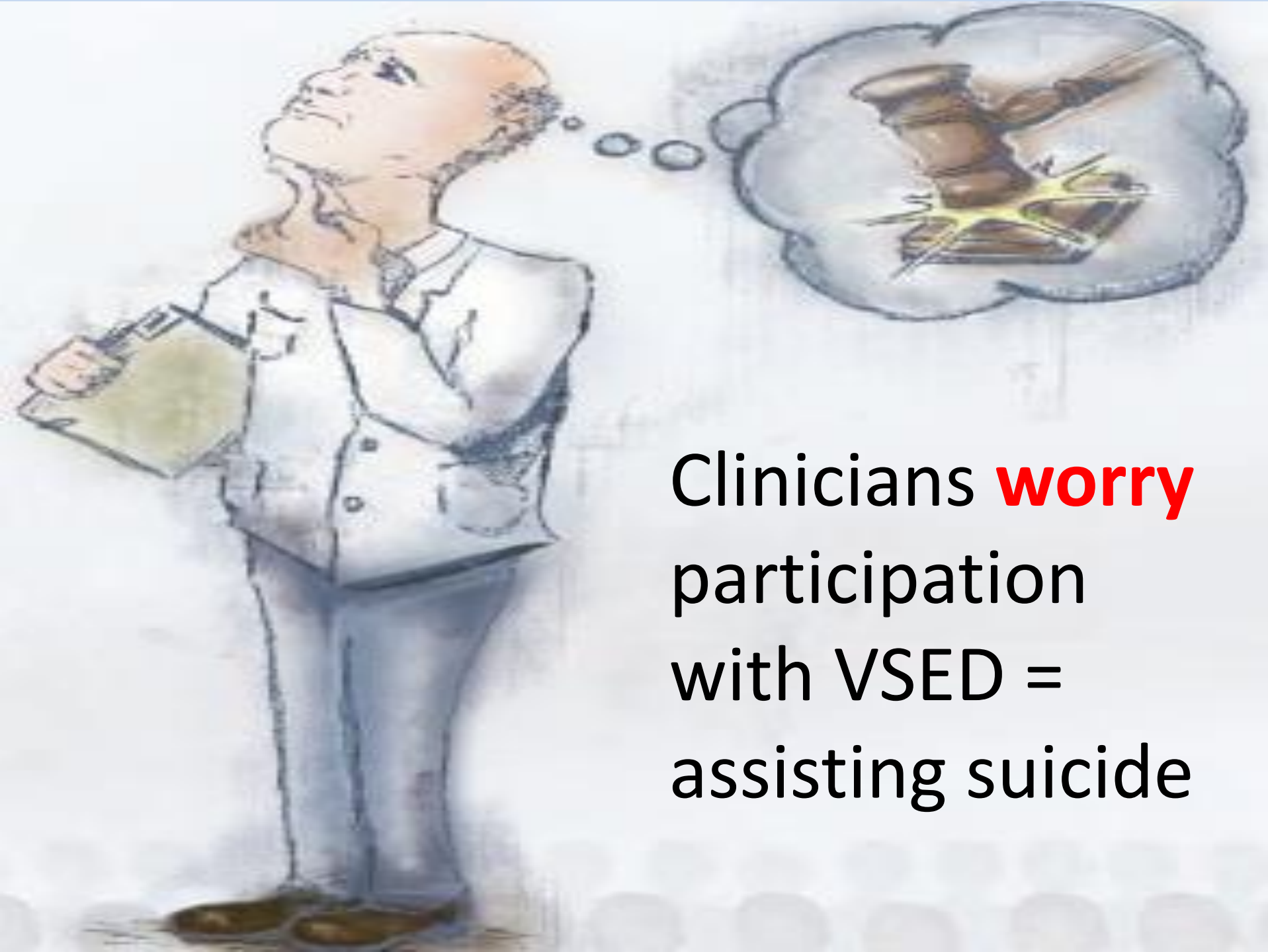
**is not**

**assisted**

**suicide**

# 49 US jurisdictions

“Every person . . . aids, or advises, or encourages another to commit suicide, is guilty of a **felony**.”



Clinicians **worry**  
participation  
with VSED =  
assisting suicide

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## Prevalence of Formal Accusations of Murder and Euthanasia against Physicians

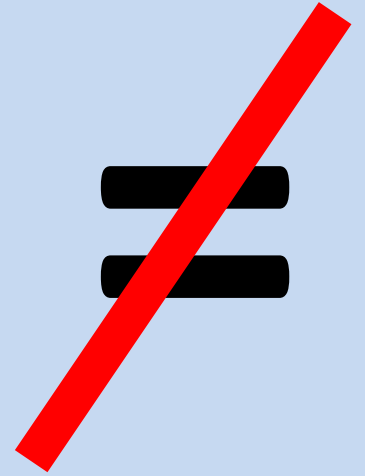
> 600 palliative  
care physicians

<i>Action that might be misperceived</i>	<i>Mean rating of risk</i>	<i>SD</i>	<i>Actual number of physicians who were accused based on this action</i>
Total sedation (the application of pharmacotherapy to induce a state of decreased or absent awareness [unconsciousness] in order to reduce the burden of otherwise intractable suffering)	4.1	1.1	2
Stopping artificially delivered nutrition/hydration	3.6	1.1	0
Stopping oral nutrition/hydration in a patient who can eat/drink when requested by the patient	3.3	1.2	0
Use of palliative and sedative medications in the process of discontinuing mechanical ventilation	3.2	1.3	6
Stopping dialysis	3.1	1.2	0
Use of barbiturates for symptom treatment	2.9	1.1	2
Use of opiates for symptom treatment	2.8	1.2	13
Use of benzodiazepines for symptom treatment	2.3	1.0	1
Other	N/A	N/A	6



**BUT**

VSED



AS

Active

Passive

AS statutes

target **active**

conduct



Normally:

“Providing the **physical  
means** by which the other  
person commits . . .  
suicide”

VSED entails

only **passive**

conduct

**Plus**



**Even if** otherwise  
within scope

**Exception**

“Nothing . . . prohibit or  
preclude . . . prescribing . .  
. administering, . . .  
purpose of diminishing . . .  
**pain or discomfort”**

Everything  
clinician does in  
VSED expressly  
**exempted** from  
AS statute

0

cases

**4**

**VSED**

**is not**

**abuse /**

**neglect**

Alleged

risk

“The facility must provide each resident with **sufficient fluid intake** to maintain proper hydration and health.”

42 C.F.R. 483.25(j)

Tag F0327

(773 Deficiencies)

The number and severity of deficiencies shown below relate only to the search terms, not necessarily all deficiencies against the home.

**Important:** If you searched for a city or home name, results for that home may be spread over several pages. To improve results, select a state and sort by city.

Date	Nursing Home	City	State	Def.	Severity Range
Sept. 22, 2015	<b>THE BROADMOOR AT CREEKSIDE PARK (REPORT)</b> <a href="#">Home Info</a>	The Woodlands	Tex.	2	K to L
April 28, 2015	<b>BRIARCLIFF HEALTH CENTER (REPORT)</b> <a href="#">Home Info</a>	Tyler	Tex.	2	L
Aug. 7, 2013	<b>KINDRED TRANSITIONAL CARE AND REHABILITATION-RIDGM (REPORT)</b> <a href="#">Home Info</a>	Fort Worth	Tex.	4	L
May 29, 2015	<b>DAI MA REAL (REPORT)</b> <a href="#">Home Info</a>	Mathis	Tex.	3	L

Deficiencies With "Dehydrate"

By Severity

B2

D326

E115

F36

G180

H12

I1

J43

K47

L10

Filter by state: All states (100%)



**BUT**

☒ I agree

☐ I disagree



# Tag 242

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard, Mail Stop S2-12-25

Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations/Survey and Certification Group

**Over**-treatment

just as risky as

under-treatment

# Conclusion

Risk  $\approx 0$

~~Risk = 0~~







Safe Harbor®



**Selected**

**References**

# Medical Futility Blog

Since 2007, I have been blogging, almost daily, to [medicalfutility.blogspot.com](http://medicalfutility.blogspot.com). This blog focuses on reporting and discussing legislative, judicial, regulatory, medical, and other developments concerning end-of-life medical treatment conflicts. The blog has received nearly **3 million** direct visits. Plus, it is redistributed through WestlawNext, Bioethics.net, and others.

*Voluntarily Stopping Eating and Drinking: Clinical, Psychiatric, Ethical and Legal Aspects*, JAMA  
INTERNAL MED. (forthcoming  
2017) (with Timothy Quill, Linda  
Ganzini, Bob Truog, Thaddeus  
Pope).

TM Pope, *Voluntary Stopping  
Eating and Drinking to  
Hasten Death: May Clinicians  
Legally Support Patients Who  
VSED?* BMC MED.  
(forthcoming 2017).

TM Pope, *Narrative Symposium: Patient, Family, and Clinician Experiences with Voluntarily Stopping Eating and Drinking (VSED)*, 6(2) NARRATIVE INQUIRY IN BIOETHICS 75-126 (2016).

TM Pope, *Prospective Autonomy and Dementia: Ulysses Contracts for VSED*, 12(3) JOURNAL OF BIOETHICAL INQUIRY 389-94 (2015).

TM Pope, *Legal Briefing: Voluntarily Stopping Eating and Drinking*, 25(1) JOURNAL OF CLINICAL ETHICS 68-80 (2014) (with Amanda West).



TM Pope, *Voluntarily Stopping Eating and Drinking: A Legal Treatment Option at the End of Life*, 17(2) WIDENER LAW REVIEW 363-428 (2011) (with Lindsey Anderson).

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