



Medical Board of California

July 28, 2016

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Care and Choice at the End of Life

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COMPASSION AND CHOICES

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Goals

- ◆ Overview of **Medical Aid in Dying**
- ◆ Review ORS 127.8
- ◆ Review CA EOLO Act (ABX2 – 15)
- ◆ Compare the two State Laws
- ◆ Discuss the experience of the Oregon Health Authority and the Oregon Medical Board
- ◆ Consider future implications for MBC
- ◆ Q&A



Sources

- ◆ Personal Experience
- ◆ State Epidemiologist – Oregon Health Authority
 - ◆ Katrina Hedberg MD
- ◆ Oregon Medical Board
 - ◆ Joseph Thaler MD – Medical Director
 - ◆ Kathleen Haley JD – Executive Director
- ◆ National Death With Dignity Center
 - ◆ George Eighmey JD - President



“*my hats....*”

DRG – Personal Experience

Rural Family Practice (Philomath, OR - 38 years)

- DWD: ~ 30 patients (~ 15 Attending ; ~ 15 Consulting)

Oregon Medical Board (7 years)

(2 years as Chair / Interim *Pro Tem* Med. Dir.)

C&C National Medical Director (2 years)

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THE ART OF MEDICINE

To cure sometimes,
to relieve often,
to comfort always...

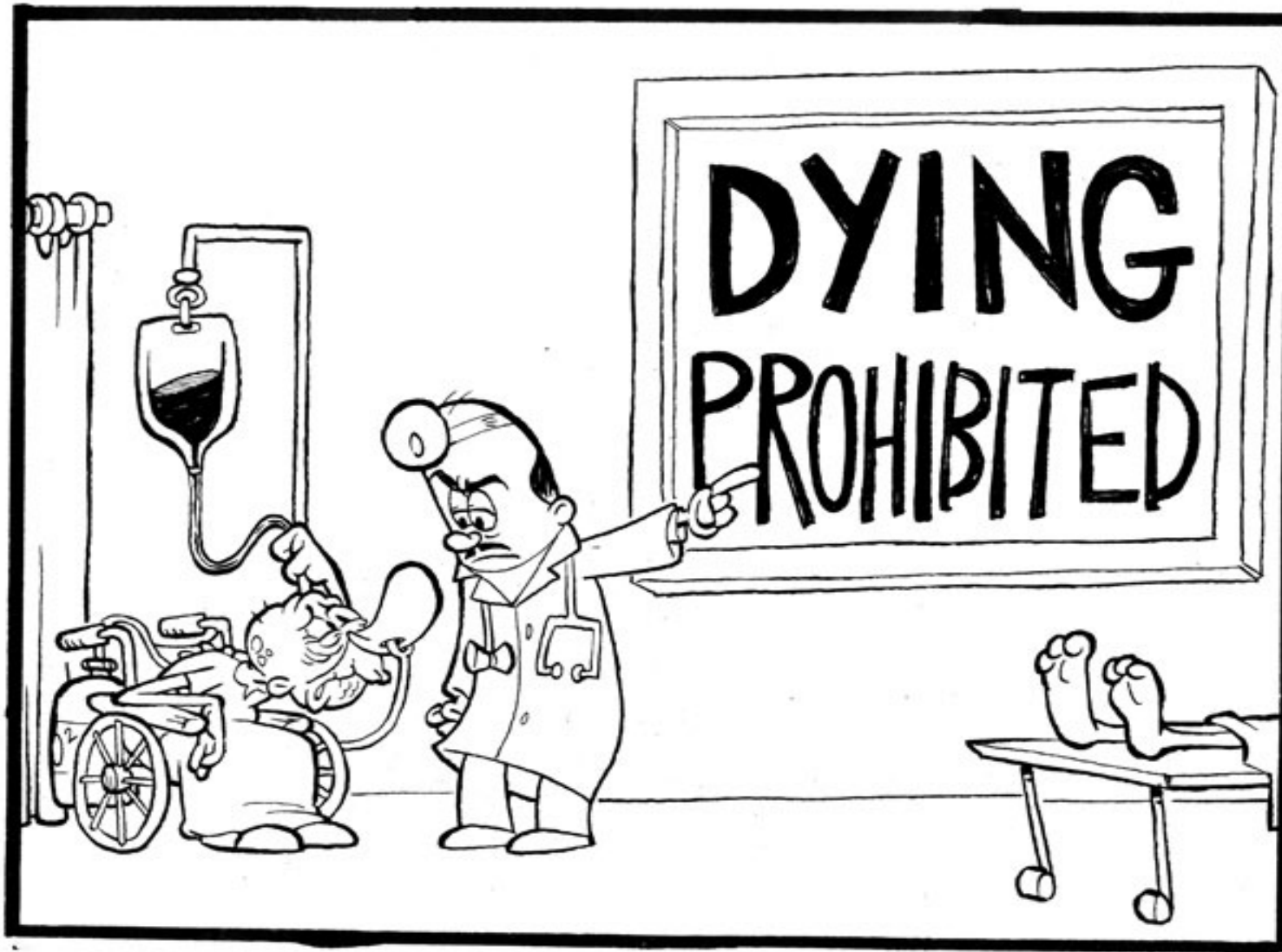
HIPPOCRATES

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End of Life Care: What is the Licensee's role?

- ◆ To **Care** for the patient
 - ◆ To **Teach** the patient/family
- ◆ To **Respect** the wishes of the patient
- ◆ To **Comfort** and **Alleviate** Suffering



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End of life options:

- ◆ Full treatment
- ◆ Decline (some or all) treatments
 - ◆ Unwanted medical care
- ◆ Hospice/Palliative Care
- ◆ VSED (“*terminal fasting*”)
- ◆ Terminal Sedation (in hospice)
- ◆ Medical Aid in Dying



Not an EOL option....



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The Art and Science of Medicine include:

- ◆ Patient Autonomy
- ◆ Shared Medical Decision Making
- ◆ Professionalism
 - ◆ (Integrity vs Personal Beliefs)



Medical Aid in Dying - USA

- ◆ Oregon – (referendum) 1997
- ◆ Washington – (referendum) 2009
- ◆ Montana (Supreme Court) 2009
- ◆ Vermont – (leg. vote) 2013
- ◆ California – (leg. Vote) 2016



EOLO Act in California: Patient Requests for Information

- ◆ ~ 250,000 deaths each year in California
 - ◆ ~ 34,000/yr in Oregon
- ◆ ~ 3,500 requests for information each year about Death with Dignity in OR
- ◆ Projection ?: **30,000-50,000/yr in CA**



Oregon: Death with Dignity
(ORS 127.8)

California: End of Life Option Act
(ABX – 15)

- ◆ Laws are very similar
- ◆ Oregon has 18 years of data and experience
- ◆ California - ???



THE OREGON EXPERIENCE
1997-2016

Death with Dignity

ORS 127.800-897

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ORS 127.800 – .897
“Death With Dignity:”
caveats...

- ◆ Dignity is defined by the dying patient. (Dignity is not defined by the doctor, the hospice nurse, legislators, ethicists, medical boards, etc.)
- ◆ A person with a terminal illness may have a dignified death in many ways:
 - ◆ Choosing all or some treatments
 - ◆ Choosing no treatments
 - ◆ Choosing to have control of the “timing” of death

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ORS 127 .800 - .897
Death With Dignity Act (DWD)

An adult who is **capable**, is a **resident** of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a **terminal disease**, and who has **voluntarily** expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 - 127.897.



ORS 127

Physician Components

- ◆ Two physicians
 - #1: Attending
 - #2: Consulting
 - ◆ Referral if psychiatric diagnosis uncovered
 - ◆ Both must affirm patient eligibility

(Not PA / NP / DC / ND)



Attending Physician Responsibilities

- ◆ Two oral requests from patient
(not necessarily in person)
 - ◆ At least **15** days apart
- ◆ Written request (after both doctor's eval.)
 - ◆ Signed by two witnesses
- ◆ Prescription may not be written until 48 hours after second oral request



Physician Responsibilities

- ◆ Inform patient of feasible alternatives:
 - ◆ Hospice Care / Palliative Care / Pain Control
- ◆ Must request (but may not require) patient notify next of kin of Rx request

Physician Responsibilities



- ◆ Both Prescribing and Consulting Physicians must complete Dept. of Human Services' (DHS) forms
- ◆ Prescribing Physician must inform DHS only if prescription is written
- ◆ Pharmacy must be informed of medication's intended use (1999)
- ◆ Follow-up form w/in 10 days of patient's death (rev. 2010)

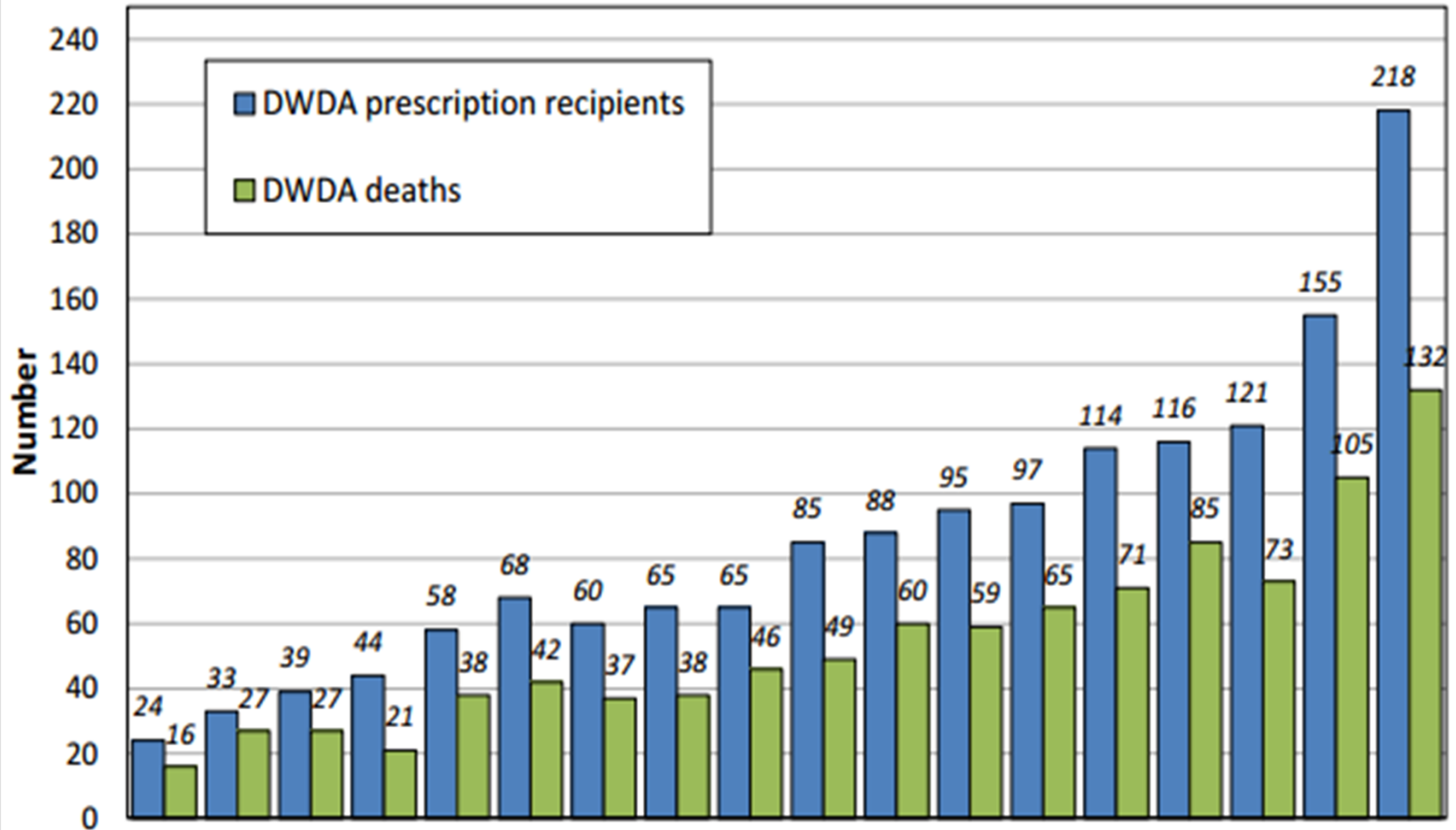
Statistics

(ORE. PUBLIC HEALTH DIV. ANNUAL REPORT 2/2016)



- ◆ 2015:
 - ◆ 218 DWDA prescriptions written
 - ◆ 132 DWDA deaths (61%)
 - ◆ (2014 = 155 / 105) (67%)
- ◆ Since 1997:
 - ◆ 1,545 DWDA prescriptions written
 - ◆ 991 DWDA deaths (64%)
(38.6/10,000 deaths)

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*DWDA prescription recipients and deaths
by year, Oregon, 1998-2016*

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2015 - OR DWD

- ◆ 218 prescriptions by 106 physicians
 - ◆ 1 – 27 prescriptions
 - ◆ 5 referrals for mental health evaluation
- ◆ 92.2% in hospice
- ◆ 90% died at home
- ◆ 99% had health insurance



*Since 2010, Follow-up Questionnaire:
to determine circumstances at death*

- ◆ Only when physician or nurse present
- ◆ Voluntary
- ◆ Time to death (5 min – 34 hours)
- ◆ 2015 data: 27 cases
 - ◆ 14 physician
 - ◆ 13 nurse



***The Oregon Death with Dignity Act:
A Guidebook for Health Care
Professionals***

(March 1998; 4th Revision December 2008)

<https://www.ohsu.edu/xd/education/continuing-education/center-for-ethics/ethics-outreach/upload/Oregon-Death-with-Dignity-Act-Guidebook.pdf>



The Oregon Death with Dignity Act: A Guidebook for Health Care Professionals

Chapter 12

Responding to Professional Non- Compliance

Guidelines

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Guidelines

- ◆ **12.1** - Health professionals **must report** to the appropriate licensing and certifying board professionals who engage in medical **incompetence or unprofessional** conduct.
- ◆ **12.2** - If there is a concern about the **conduct of a professional in another health care discipline**, there is an ethical obligation to act. There may be a requirement for institutional or professional board reporting.

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Guidelines - 2

- ◆ **12.3** - If a health professional has **questions** about the appropriateness of a practice relative to comfort care or participation in the Oregon Death with Dignity Act, he/she should consult the staff of the appropriate licensing board for guidance.



Guidelines - 3

- ◆ **12.4** - Physicians and other health care providers with prescriptive authority need to ensure that patients receive sufficient dosages of appropriate medications for the relief of pain and suffering. The Oregon Medical Board encourages physicians to employ skillful and compassionate pain control for dying patients. The Oregon Medical Board investigates allegations of **under prescribing** for pain in the same manner as **over-prescribing**.

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Guidelines - 4

- ◆ **12.5** - Licensees should not report another professional to the licensing board simply because the other professional has cooperated with the request for a prescription under the Oregon Act. The Oregon Medical Board does not consider **good faith compliance** with the Oregon Act unprofessional conduct.



Oregon Health Authority

- ◆ Types of concerns
 - ◆ ‘Pure paperwork’ (vast majority)
 - ◆ Investigate and have Licensee correct
 - ◆ Refer to OMB if non-compliance
 - ◆ Possible violation of ORS 127.8
 - ◆ Refer to OMB
 - ◆ Approximately 2/year
 - ◆ No increase over last ten years in spite of increase in DWD cases

Oregon Medical Board



- ◆ Review all OHA referrals
- ◆ “*Letter of Concern*” to Licensee if *apropos*
 - ◆ 1 - 2 per year
- ◆ Med. Dir. may request information/charts (rare)
- ◆ Open investigation for cases with concerns
 - ◆ No cases opened in last five years (more?)
- ◆ **No disciplinary actions by OMB in 18 years of ORS 127.8**

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EOLO Act – CA (vs.) ~~DWD Act~~ – OR

- ◆ Residency (specific*)
 - ◆ Attending Physician
 - ◆ Responsible for checklists
 - ◆ **Must see patient alone**
 - ◆ Consulting Physician
 - ◆ “Independent” (*sic*)
 - ◆ 48 Hour Attestation Form
 - ◆ Language Interpreter (forms)
 - ◆ Death Certificate ?
- ◆ Residency (non-specific**)
 - ◆ Attending Physician
 - ◆ Forms
 - ◆ Consulting Physician
 - ◆ Forms
 - ◆ Prescription
 - ◆ Not electronic or FAX
 - ◆ Death Certificate
 - ◆ Cannot list DWD

(10 YEAR SUNSET)



California EOLO Act

- ◆ 443.5 (a) Before prescribing an aid-in-dying drug, the attending physician shall do ... the following:
- ◆ ...Confirm that the individual is making an informed decision ... by discussing with him or her ... the feasible alternatives or additional treatment options including, but not limited to, ... **hospice care, (and) palliative care** ...

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California EOLO Act

- ◆ 443.5 (cont'd)
- ◆ (5) Counsel the qualified individual about the importance of ... the following:
 - ◆ (A) Having another person present when he or she ingests the aid-in-dying drug prescribed
 - ◆ (B) Not ingesting the aid-in-dying drug in a public place.
 - ◆ (C) Notifying the next of kin of his or her request for an aid-in-dying drug. (A qualified individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason).
 - ◆ (D) **Participating in a hospice program.**
 - ◆ (E) Maintaining the aid-in-dying drug in a safe ... location



443.14. ... a person shall not be subject to civil, criminal, administrative, employment, or contractual liability or professional disciplinary action for participating in good faith compliance with this part, including an individual who is present when a qualified individual self-administers the prescribed aid-in-dying drug.



Attending Physician – Definitions:

- ◆ Oregon: "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.
- ◆ California: "Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease.



Consultant – Definition

- ◆ Oregon: "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.
- ◆ California: "Consulting physician" means a physician who is **independent** from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease.

Attestation Form (CA only)



Within 48 hours prior to the individual self-administering the aid-in-dying drug, the individual shall complete the final attestation form. the completed form shall be delivered by the individual's health care provider, family member, or other representative to the attending physician to be included in the patient's medical record.



Barriers for Citizens

(Social Justice)

- ◆ LACK OF EDUCATION (of both citizens and licensees)
- ◆ OR: process cannot often, in reality, be completed in 15 days; median time for DWD is 48 days
- ◆ OR: some communities (Roseburg) have no licensees who participate
- ◆ Medical providers opposed to the law have provided patients with misinformation or delayed the patient from starting the process until it is too late

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Home | Licensees | Physicians and Surgeons | End of Life

California End of Life Option Act – Effective June 9, 2016

ABX2 15 (Eggman, Chapter 1) establishes the End of Life Option Act (Act) in California, which becomes effective on June 9, 2016 and will remain in effect until January 1, 2026. This Act gives a mentally competent, adult California resident who has a terminal disease the legal right to ask for and receive a prescription from his or her physician to hasten death, as long as required criteria is met.

- ▶ [AB-15 End of Life](#)

The law requires physicians to meet specific criteria if they are going to participate in this Act and prescribe aid-in-dying drugs to patients. The following resources give an overview of the requirements of the law for both physicians and patients:

- ▶ [The Medical Board of California's \(Board\) analysis of this bill](#)
- ▶ [Overview of the California End of Life Option Act - Winter 2016 Newsletter](#)
- ▶ [California Medical Association On Call Document](#)

The law requires specified forms to be completed before the aid-in-dying drugs can be prescribed and additional forms after the drugs have been prescribed. These forms must be submitted to the California Department of Public Health (CDPH) and also included in the individual's medical record.

- ▶ [Attending Physician Checklist and Compliance Form](#)
- ▶ [Consulting Physician Compliance Form](#)

Quick Links

- ▶ Board and Committee Dates and Locations
- ▶ Laws & Regulations
- ▶ Contact Us

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What might be the MBC potential concerns

- ◆ The *intent of the law*, and how to deal with Licensee's who violate it
- ◆ “Pure paper” complaints – what to do?
 - ◆ e.g. “Attestation Form”
- ◆ Dealing with complaints
 - ◆ Legitimate and non-legitimate
- ◆ Responding to opponents



Endoflifeoption.org

- ◆ Website includes:
 - ◆ A policy library for navigating health systems across the state (**FIND CARE**)
 - ◆ Videos and fact sheets for physicians, pharmacists, and patients
 - ◆ Information in both English and Spanish



www.endoflifeoption.org

Inbox - lynna...com - Gmail Google Umpqua Bank Corvallis-Berkeley - LS2 PAC Netflix Epicurious.com YouTube Facebook | Home National Weather Service Home | American Physicians Wiggle.com - ...rk in groups

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The End of Life Option Act

DONATE

ABOUT FOR MEDICAL PROVIDERS FIND CARE EN ESPAÑOL NEWS VOLUNTEER

ABOUT
the End of Life Option Act

RESOURCES
for Doctors

ENCUENTRE
Los Recursos en Español

Sign Up For More Info

*Email Address

*Zip Code **JOIN NOW**

The California Access Campaign
WATCH THE VIDEO

Resources For Physicians
WATCH THE VIDEO

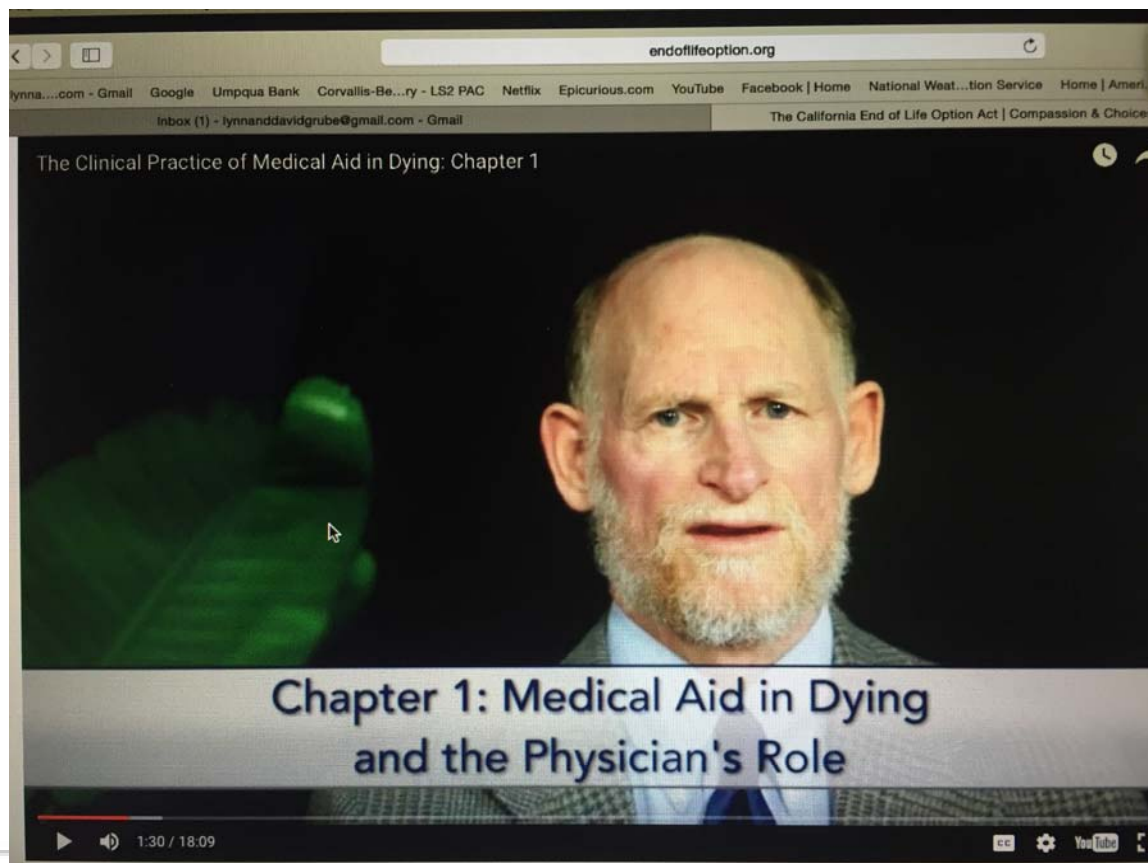
End-of-Life Information Center
VIEW RESOURCES

Info for Terminally Ill People
WATCH THE VIDEO

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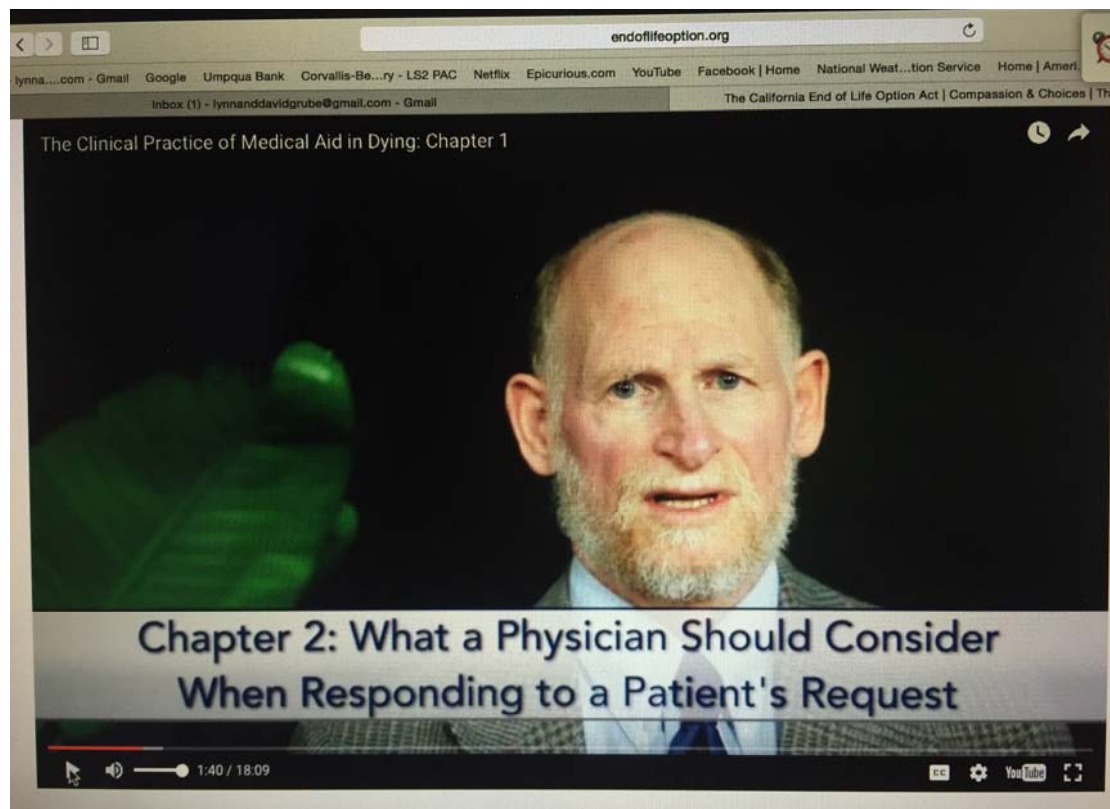
Chapter 1



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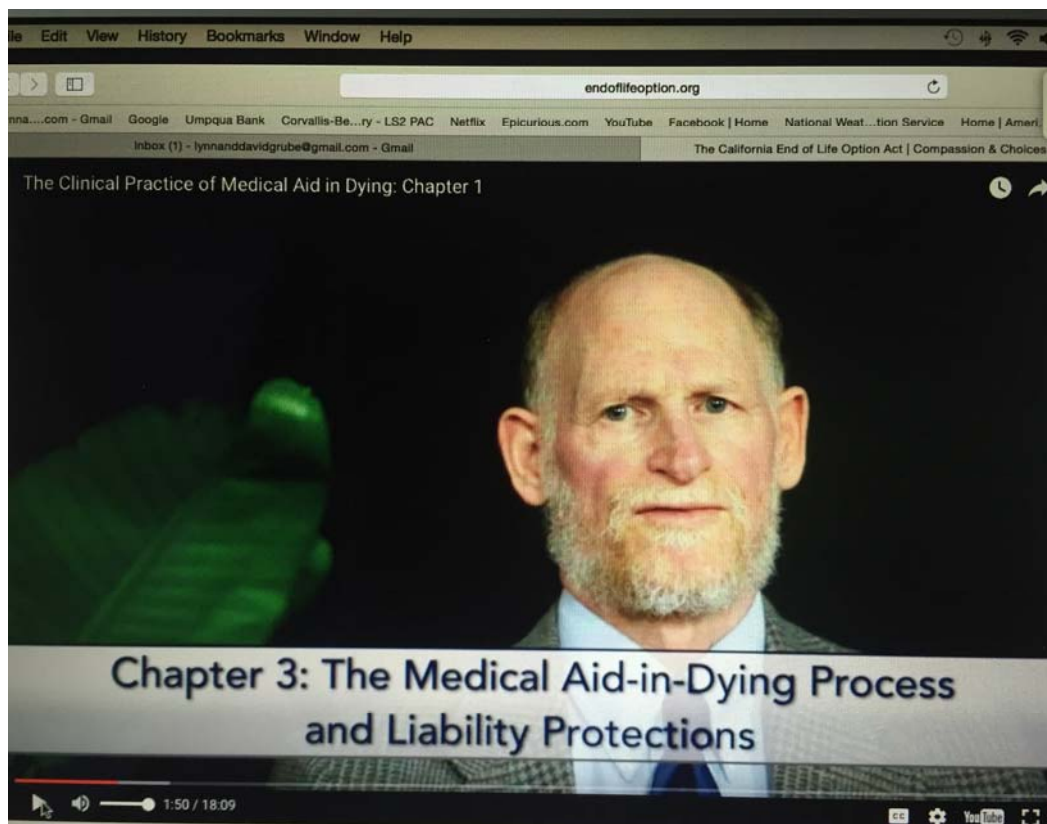
Chapter 2



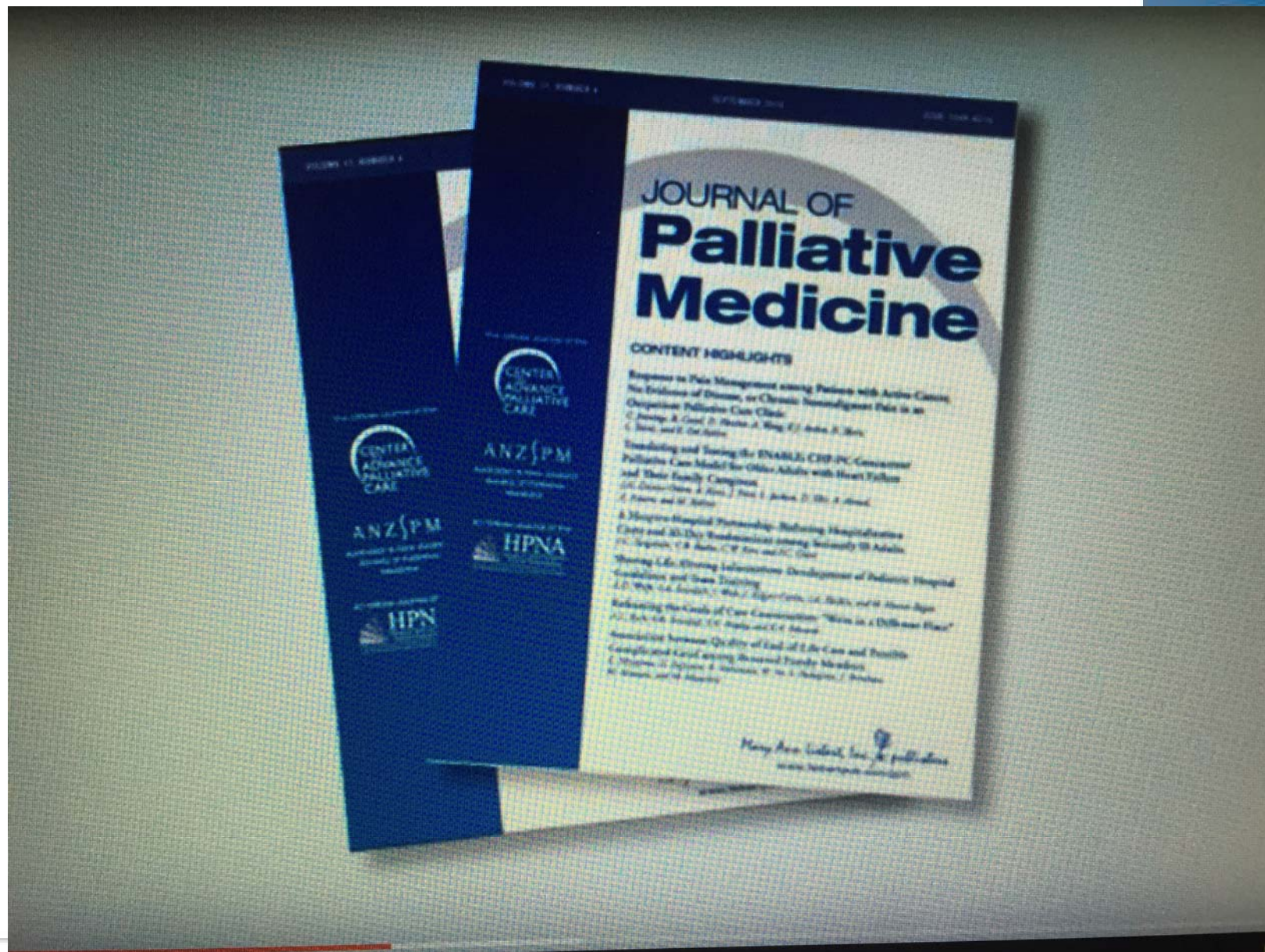
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Chapter 3



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JOURNAL OF PALLIATIVE MEDICINE
Volume 18, Number X, 2015
DOI: 10.1089/jpm.2015.0092

Clinical Criteria for Physician Aid in Dying

David Orentlicher, MD, JD,¹ Thaddeus Mason Pope, JD, PhD,² and Ben A. Rich, JD, PhD³;
Physician Aid-in-Dying Clinical Criteria Committee

- 1) How to respond to a patient's request for medical aid in dying
- 2) How to assess patient decision making capacity
- 3) How to address other significant issues

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Conclusions (OR)

- ◆ Medical aid in dying is not commonly used
- ◆ There are barriers and the law is not necessarily easy to navigate
- ◆ The OMB has not uncovered licensees who have violated the intent of the law
- ◆ The unexpected consequences are good:
 - ◆ Improved end of life care, no “slippery slope,” no abuse of disabled, poor, etc.



One does not ask of one who suffers: What is your country and what is your religion?

One merely says: You suffer, this is enough for me: you belong to me and I shall help you.



LOUIS PASTEUR MD 1886



Resources: Compassion and Choices

◆ www.endoflifeoption.org

◆ YouTube:

The Clinical Practice of Medical Aid in Dying
(all six chapters)

◆ Doc2Doc **1-800-247-7241**

◆ California Hotline **1-800-893-4548**

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