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Patients Rights Council

# Update

## The patient's best interests & medical authoritarian power in the UK

The British Medical Association (BMA) has released a confidential, 77-page draft of proposed guidelines that would allow doctors to withhold or withdraw tube feeding and hydration from patients who are not competent and unable to speak for themselves, as long as the doctor is acting in the "patient's best interest." Without fluids, patients usually die within two to three weeks.

The guidelines were circulated after a landmark UK Supreme Court ruling, handed down on July 30, 2018, that doctors and families or caregivers no longer need to apply to the Court of Permissions if they agree that death by dehydration is in the patient's best interest. If there is no agreement between the family and the doctors, then a Court of Permissions ruling in the case would be necessary. [NHS Trust and Others v. Y, 7/30/18]

The new BMA guidelines empower doctors to end—without court oversight—the lives of patients who are in a permanent vegetative state, in a minimally conscious state, or in a locked-in state as well as those with advanced dementia and those with "multiple comorbidities, frailty, or degenerative neurological conditions."

According to the *Daily Mail*, the guidelines state:

Due to the degenerative nature of their condition, these patients are on an expected downward trajectory and will inevitably die, usually as a result of their underlying condition, although perhaps not imminently and could, potentially, go on living for many years. [Daily Mail, 8/13/18]

Thirty years ago, Nikkie Kenward contracted a severe strain of a virus,

Guillain-Barre Syndrome, and was in a locked-in state for five months, unable to move, breathe on her own, or talk—yet she was conscious, in pain, and could hear what people were saying. She eventually regained many of her abilities and was released from the hospital after six months. [Daily Mail, 7/31/18] Given the BMA guidelines, patients like her could be forced to die and not given the chance to recover or improve.

The guidelines also state that doctors should falsify these patients' death certificates by listing the patient's underlying condition, not dehydration, as the cause of death—making oversight impossible.

Dr. Peter Saunders, head of the UK's Care Not Killing Alliance, called the guidelines "the very worst kind of doctor paternalism" and "a recipe for euthanasia by stealth." [MercatorNet, 8/20/18] ■

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## Status update on 2018 state doctor-prescribed suicide bills

This year, 21 state legislatures considered bills to legalize or study doctor-assisted suicide. Of those states, only one, Hawaii, passed a measure to legalize the practice, but it took supporters 20 years of costly and intensive lobbying to achieve their goal. The new law will take effect in January 2019.

Sixteen other states defeated their assisted-suicide bills. Those states include: Alaska, Arizona, Connecticut, Delaware, Indiana, Iowa, Massachusetts, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Rhode Island, Utah, and Wisconsin. Utah not only rejected its bill (HB 210) to legalize prescribed suicide, but it passed a new law that expressly "expands the crime of manslaughter to include intentionally and knowingly providing another with the physical means to commit suicide." [HB 86]

Four states—Michigan, New Jersey, Ohio, and Pennsylvania—have bills that are still alive. Compassion & Choices (C&C), the activist group that is pushing state assisted-suicide legalization, is ramping up pressure on New Jersey legislators. Starting on September 27, C&C is organizing rallies in Trenton "to demand that lawmakers bring the bill [A 1504] to the floor for a vote." [C&C News, 9/14/18]

In Maine, advocates are attempting to gather over 60,000 voter signatures to put their Maine Death with Dignity Act initiative on the 2019 ballot. They tried to qualify the initiative last year for the 2018 ballot, but failed.

Legislators in California passed a bill [AB 282] that amends the state's Penal Code to allow terminally ill patients to be "deliberately" aided, advised, or encouraged to ask for legal assisted suicide. (See page 2 for more information.) ■

## While the constitutionality of California’s assisted-suicide law remains in question, legislators pass a new bill allowing vulnerable patients to be “encouraged” to die

In most states, this would be inconceivable. But California is not like most states. It’s a state where the legislative majority appears bent on making sure that terminally ill patients can opt for doctor-prescribed suicide—even if they have to be pressured to do so.

### Assisted-suicide law ruled unconstitutional

As reported in the last *Update*, California’s two-year-old assisted-suicide law, the End of Life Option Act (EOLOA), was ruled null and void by Superior Court Judge Daniel A. Ottolia on May 15 of this year. The judge found that the law was unconstitutionally passed during a special session, called by Governor Jerry Brown to specifically find ways to increase funding for Medi-Cal (California’s Medicaid program) and other state health care services. The California Constitution requires that bills passed during a special session conform to the “subjects specified in the [governor’s] proclamation” calling for that session. [California Constitution, Article 4, Sec. 3 (b)] (See *Update*, 2018, no. 2, for more information on the judge’s ruling.)

The EOLOA was a two-year bill that had already been defeated during the 2015 regular session. It could not be heard again until the start of the next regular session in January 2016. But the democratic leadership wanted the assisted-suicide bill to be passed in 2015, so they introduced it in the special session designated for health care funding bills, and strong-armed its passage in just 11 days.

Judge Ottolia’s decision that EOLOA is unconstitutional has been appealed by California Attorney General Xavier Becerra, claiming that the assisted-suicide law dealt with health care. Initially, Becerra’s request for an immediate stay of the ruling, allowing a temporary reinstatement of the law, was denied by the Court of Appeals. However, Becerra filed a second stay request that was granted on June 15. A date for oral arguments in the case has not as yet been scheduled.

### Legislators grease the skids for patient abuse

Even though the validity of the EOLOA is still very much in question, legislative leaders embraced an EOLOA-related bill this year that amends the California Penal Code “to prohibit a person whose actions are compliant with the End of Life Option Act from being prosecuted for deliberately aiding, advising, or encouraging suicide.” [AB 282, Legislative Counsel’s Digest, 8/20/18] The bill was originally introduced in 2017, but legislators “fast-tracked” it this year, and it passed on August 20. As expected, Governor Jerry Brown signed it into law in September.

Commenting on the bill’s passage, PRC Consultant Wesley J. Smith wrote,

[I]f someone—say, a relative due to inherit money, a caregiver tired of the responsibility, an assisted-suicide ideologue, a doctor or nurse, heck *anyone for any reason*—encourages, advises, pressures, guilts, convinces, cajoles, and/or actively aids a dying person to commit assisted suicide under the California law, the persuader cannot be prosecuted. Talk about exposing the vulnerable dying to abuse!” [*National Review*, 8/15/18]

### The latest report on the EOLOA’s body count

A month after the EOLOA was ruled unconstitutional, the California Department of Public Health (CDPH) released its statistical data on reported 2017 assisted-suicide deaths. A total of 577 patients received prescriptions for lethal drugs written by 241 individual doctors in 2017. Of those patients, 363 ingested the drugs and died. An additional 11 patients, who obtained their drugs in 2016, took them in 2017 and died—bringing the 2017 reported body count to 374. The CDPH doesn’t know what happened to 128 patients (22%), since there has been no death certificate or ingestion status report submitted for these individuals. [CDPH, *California End of Life Option Act 2017 Data Report*, 6/22/18]

There was an earlier CDPH report that covered the reported deaths during the first six months after the EOLOA was enacted in 2016. Combining the data from both 2016 and 2017, the total number of reported EOLOA deaths is 768. (See the table below.)

California’s reports are incredibly skimpy, leaving more questions than answers. The EOLOA authors wanted it that way, citing patient confidentiality. But that means there is little oversight of a practice that directly results in the death of patients. ■

### California: Reported Assisted-Suicide Deaths June 9, 2016 - December 31, 2017

Data supplied by lethally-prescribing doctors & death certificates.<sup>1</sup>  
Figures are those reported by the state.

Categories	TOTAL	2017	2016
Reported number of assisted-suicide patients given lethal drug prescriptions	768	577	191
Reported assisted-suicide deaths	485 [63%]	374 [65%]	111 [58%]
Unreported assisted-suicide deaths	Unknown <sup>1</sup>	Unknown <sup>1</sup>	Unknown <sup>1</sup>
Individual reporting doctors who wrote lethal drug prescriptions	414	241	173
Cases where the patient’s status (living or deceased) or ingestion status is not known	187 [24%]	128 [22%]	59 [31%]
Number of patients referred for a psychiatric evaluation	?	Not Reported	Not Reported
Cases where prescribing doctor was present at the time lethal drugs were ingested	?	Not Reported	Not Reported
Complications from lethal drug ingestion	?	Not Reported	Not Reported
Patients’ reasons for requesting death	?	Not Reported	Not Reported
Cases of doctor non-compliance with the assisted-suicide law	?	Not Reported	Not Reported

1. The California Public Health Department, the state agency required by End of Life Option Act to issue an annual statistical report and oversee the law, has no way of knowing whether the report submitted by lethally-prescribing doctors for each assisted suicide case is accurate or complete. The other report data source, death certificates, only indicate that a patient has died from an underlying illness, but, by law, are not permitted to list drug overdose as the accurate cause of death.

Source: California Department of Public Health

*California End of Life Option Act 2016 Data Report*, 6/27/17.

*California End of Life Option Act 2017 Data Report*, 6/22/18

See: <https://www.cdph.ca.gov/Programs/CHSI/Pages/End-of-Life-Option-Act.aspx>.



# No Parent Should Ask a Child to Kill

By Wesley J. Smith

The *New York Times* continues to publish articles that push euthanasia and assisted suicide.

The current example (*NYT*, 8/31/18) was written in a way that is supposed to inoculate the cause from criticism, as a daughter laments her inability to kill her cancer-stricken mother as the elder woman demanded. From “The Last Thing Mom Asked” by Sarah Lyall:

I know what I’m supposed to do, because she has told me many times. One of the stories passed down as gospel in our tiny family is about how my late father, a doctor, helped his own mother—my grandmother Cecilia, whom I never met—at the end of her life. Her cancer was unbearable. “So he gave her a big dose of morphine to stop the pain,” my mother has always told my brother and me, as if reaching the end of a fairy tale. “It had the side effect of stopping her heart.”

As it happens, I have a big dose of morphine right here in the house. I also have some hefty doses of codeine, Ambien, Haldol and Ativan that I’ve cunningly stockpiled from the hospice service, like a squirrel hoarding for winter. In my top drawer, next to Mom’s passport, are more than 100 micrograms worth of fentanyl patches—enough to kill her and several passers-by.

But I am not a trained assassin. I am not a doctor. I am not very brave. I’m just a person who wants to do the most important thing that her mother has ever asked of her. I’m also a resident of New York State, where assisted suicide is illegal.

Lyall’s point, of course, is that it is wrong to prevent doctors from assisting suicides. After all, if it were legal, she wouldn’t have felt the awful weight of her mother’s lethal request.

But here’s the thing: *A doctor is not a trained assassin either.* Assisted suicide should never be considered a medical act. To the contrary, it is a betrayal of medical ethics as all but universally understood for thousands of years.

Something else needs saying about this article regardless of the anger it might spark: *No parent should ever ask his or her child to kill.* That’s not loving and it’s not fair. It places the child in a terrible predicament, subject to awful potential guilt whether they do the deed or not. (I have had moving discussions with people whose parents

asked for this, and their anguish for refusing is heart-breaking.)

Moreover, no sick person should ever expect people who love them to gather at their bedside while he or she commits suicide or is killed by a lethal jab. It places loving family members and friends in a terrible moral and existential predicament: Attend, and they validate the suicide, while potentially confirming the suicidal person’s worst fears that he or she is a “burden” or may be less-well remembered if the family witnesses the decline.

But refuse to attend, and one risks discord with the suicidal loved one—not to mention accusations of being “judgmental” and potential ostracization from suicide-approving relatives and friends. For the person who opposes assisted suicide, it’s a terrible conundrum.

In the end, Lyall did not end her mother’s life, but loved her in a wholly appropriate and gentle way by reading *Charlotte’s Web* aloud to her mom:

You are not alone, I repeat. You’ll live on, the way Charlotte does, through your grandchildren and their children. It’s O.K. now. You can go.

As I put the book away, I see that her eyes are closed, finally, and that her breathing has evened out, so that it is shallow but calm.

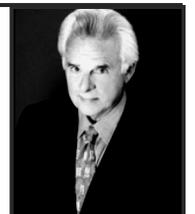
It takes one more day. There are, it turns out, many different ways to help someone die.

Exactly right.

I choked up reading that passage as it reminded me of when my most beloved Italian immigrant grandmother was dying. Mom would get into bed with her and sing Italian nursery rhymes until Grandma fell asleep. It was a gift my mother gave her mother that I will remember as long as I live.

The assisted-suicide movement has introduced the potential for great family conflict and guilt around the death bed. That isn’t compassionate—it’s a prescription for breaking hearts. ■

**Wesley J. Smith, JD**, is a consultant to the Patients Rights Council and a senior fellow at the Discovery Institute’s Center on Human Exceptionalism. His article originally appeared in *The National Review* on 9/4/18 and is reprinted here with the author’s permission.





## News briefs from home & abroad . . .

- **Australia:** When Victoria became the first Australian state to legalize doctor-assisted suicide last November, the push to legalize prescribed death in other states and territories intensified as well. Even though euthanasia bills had been defeated earlier in 2017 by both the Tasmanian and New South Wales parliaments, Western Australia (WA) and Queensland parliaments began entertaining the idea of conducting debates on the issue. In WA, a joint parliamentary committee was formed to study the issue. It didn't take long for the committee to issue a report that strongly recommends that the WA Parliament approve laws for "voluntary assisted dying for people experiencing grievous and irredeemable suffering related to an advanced and progressive terminal, chronic, or neurodegenerative condition that cannot be alleviated in a manner acceptable to that person." [*The Western Australian*, 9/22/18] In Queensland, Premier Anastacia Palaszczuk has said that euthanasia and/or assisted suicide will not be considered in parliament this year. Based on her concerns, she said, "I would want to look very closely at the implementation of those (Victorian) laws." [*Daily Mail*, 6/25/18] The Victorian laws will take effect in June 2019.

Perhaps the most contentious debate over euthanasia legalization occurred in the Federal Parliament over the right of Australia's territories to independently vote on the issue. The debate involved the fact that, in 1995, the Northern Territory (NT) had passed a law to permit euthanasia. Four people died under the law before it was overturned by the Federal Parliament, barring the territories from making their own laws on assisted death. This year, a bill to restore the voting rights of the Australian Capital Territory (ACT) and the NT was intensely debated in the Federal Parliament, and narrowly defeated by a vote of 36 to 34. [*Sydney Morning Herald*, 8/15/18]

- **Belgium:** New statistics from Belgium indicate that there has been nearly a tenfold (982%) increase in the number of euthanasia deaths since 2003, the first full year after euthanasia was legalized. The Belgium Federal Commission on the Control and Evaluation of Euthanasia has released its latest report covering euthanasia deaths that occurred in 2016 and 2017. There was a 13.85% jump in the number of euthanasia deaths reported in 2017 over those reported in 2016. In just that 2-year time span, a total of 4,337 reported deaths occurred. It is believed that the actual total is far higher since induced deaths are frequently not reported to the Commission by the doctors who did the killing.

During 2016 and 2017, the lives of three children were legally terminated. Their names were withheld, but the Commission did report that one was 17 years-old and had muscular dystrophy, one was 11 and had cystic fibrosis, and the third was a 9-year-old child with a brain tumor. Currently, Belgium has the only law in the world that allows children of any age to be euthanized with parental approval.

Other reported data showed that there were 375 cases where the patients' respective deaths were *not* expected in the near future. In 181 cases, where the patients did not have a serious condition that would qualify them for euthanasia, their lives were ended because they had "poly pathology," two or more less serious, non-life threatening conditions (i.e., hearing loss, blindness, incontinence, etc.) that together made life unacceptable. In 8 cases, patients chose to combine their euthanasia deaths with donating their organs. Between 2014 and 2017, 210 euthanized patients had mental disorders, including depression, dementia, post-traumatic stress disorder, bipolar disorder, and autism. [*MercatorNet*, 8/29/18; *Daily Mail*, 7/23/18; *National Review*, 8/29/18]

- **Canada:** According to the *Third Interim Report on Medical Assistance in Dying [MAID] in Canada*, the most recent report covering induced deaths in 2017, there were 875 reported deaths in the first half of the year and 1,086 reported deaths in second half—a jump of almost 30%—bringing the total for 2017 to 1,961 deaths. Those figures, however, exclude MAID cases in Quebec, Yukon, Northwest Territories, and Nunavut, largely due to data gathering and reporting inconsistencies. [*Third Interim Report*, June 2018, p. 6]

In August 2018, the Canadian government issued new regulations for monitoring MAID practice countrywide. Those regulations are scheduled to take effect in November, but, for many, they don't provide adequate oversight to protect vulnerable patients and provide needed transparency. "The regulations fall short of a good-faith effort to understand the role that social determinants of health, such as poverty, insecure housing, isolation or social stigma may play in motivating a request to die," explained Catherine Frazee, professor emerita in disability studies at Ryerson University. [Health Canada, 8/9/18; *The Star*, 8/29/18]

The Patients Rights Council is a human rights group formed to promote and defend the right of all patients to be treated with respect, dignity and compassion and to work with individuals and organizations to resist attitudes, programs and policies which threaten the lives of those who are medically vulnerable. To those ends, the PRC compiles well-documented and up-to-date information on a whole range of end-of-life issues, including health care advance directives, futile care policies, health care reform, and doctor-prescribed death.

The *Update* is available to the general public; suggested minimum donation is \$25.00 [U.S.] a year. Add \$3.00 for foreign postage.

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