Medical Aid in Dying in NY

David C. Leven, Executive Director
Emeritus and Senior Consultant
End of Life Choices New York

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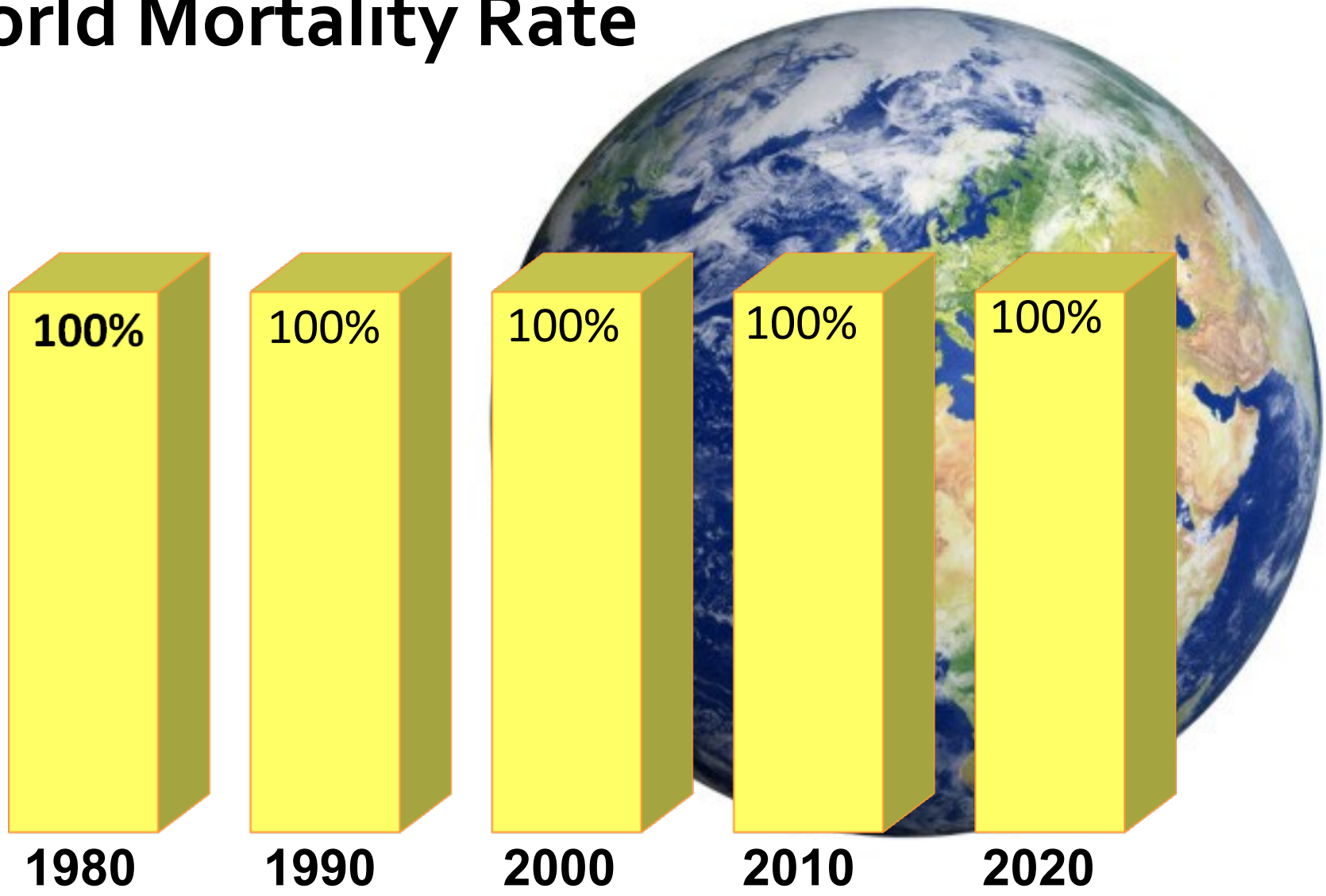
World Mortality Rate



Dying

"For all but our most recent history, dying was typically a brief process . . . . These days, swift catastrophic illness is the exception; for most people, death comes only after long medical struggle with an incurable condition . . . ."

– Atul Gawande, NEW YORKER (Aug. 2, 2010)

Dying

About 90% of Americans now die from chronic, progressive, incurable diseases. People live longer now but not necessarily better.

- Many chronically ill, seriously ill and terminally ill patients have, among other things:
  - Poorly controlled symptoms, particularly pain.
  - Psychiatric disorders and psychosocial and spiritual distress.
  - Concrete needs in the home.
  - Challenges in care coordination, communication, decision making, goal setting.

Dying

- A 2021 study by Duke University found that the US ranked 43 of 81 countries on how well health centers “provide for the physical and mental well being of patients at the end of life”.
- Journal of Pain and Symptom Management

Medical Aid in Dying

- For those who are dying the issue is not whether they will die, but how they are going to die and who makes decisions at life's end.
- Medical aid in dying should be an available option in addition to other ways in which death might be hastened; stopping or never starting treatment, Voluntarily Stopping Eating and Drinking (VSED), and Palliative Sedation.

Medical Aid in Dying

- Medical aid in dying (MAID) occurs when a terminally ill, mentally competent adult patient, who is likely to die within six months, takes prescribed medicines, which must be self-administered, to end suffering and achieve a peaceful death.
- Two physicians must determine that the patient has decision making capacity and that within a reasonable degree of medical judgement has an illness or condition that will produce death within six months.

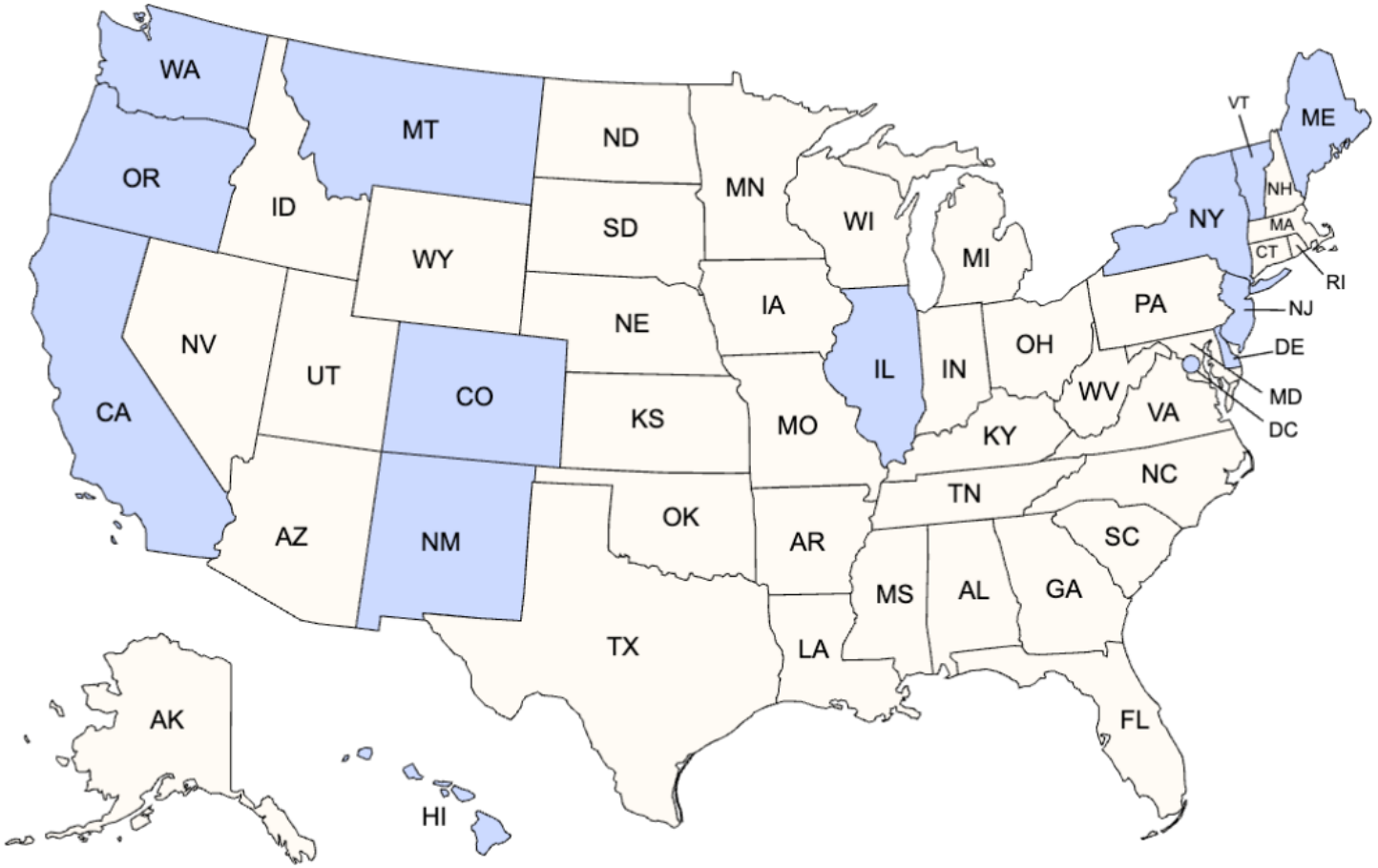
Medical Aid in Dying

- Medical aid in dying is not just a reasonable end-of-life care option, but a better choice for some terminally ill patients than other ways in which death may be hastened.
- Most importantly, it has been proven to be a safe, ethical medical practice which benefits patients and families and causes no harm.

Medical Aid in Dying

- Medical aid in dying occurs throughout the country, but in states other than those where it is now authorized, it is done underground, is unregulated and may not be legal.
- The practice should be legal, above ground and reasonably regulated. Physicians and family members should not be at risk of punishment.

Medical Aid in Dying



Medical Aid in Dying

Medical aid in dying is not assisted suicide

- Terminally ill patients who consume life ending medicines are not suicidal. Stark differences exist between suicides and medical aid in dying.
- People who die by suicide often have a mental illness. They could continue to live but choose not to, dying in isolation, often impulsively and violently, and their deaths are tragic.

Medical Aid in Dying

- To the contrary, medical aid in dying is available only to terminally ill patients who will soon die; their disease is killing them; the process usually takes at least several weeks from the time a prescription is requested and taken (if ever); it occurs after consultation with two physicians and almost always with family support; and it is empowering.

Medical Aid in Dying

The term "assisted suicide" is rejected by the:

- American Public Health Association,
- American Academy of Hospice and Palliative Medicine,
- American Medical Women's Association,
- American Psychological Association,
- American Academy of Family Physicians, among others, and
- state laws which authorize medical aid in dying.

Medical Aid in Dying

- In 2017 the American Association of Suicidology issued this statement:

"Suicide is not the same as physician aid in dying".

Medical Aid in Dying

The laws allowing medical aid in dying have worked as intended

- There is evidence that deaths by medical aid in dying are at least as good, and in some cases better deaths than others. (See "Quality of Death and Dying in Patients who Request Physician-Assisted Death", Journal of Palliative Medicine, Volume 14, Number 4 (2011);445-450).

Medical Aid in Dying

- There is evidence that family members of those who request medical aid in dying feel better prepared and accepting of the death, and that there are no negative effects. (See "Mental Health Outcomes of Family Members of Oregonians Who Request Physician Aid in Dying", Journal of Pain and Symptom Management, Volume 38, Issue 6 (2009);807-815.)

Medical Aid in Dying

- About 90% of those in who end their lives by medical aid in dying are receiving hospice care (which means that even hospice can't meet all the needs of all dying patients); almost all have health insurance, and most are college educated. (See https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year25.pdf).

Medical Aid in Dying

- A comprehensive cancer center in Seattle which implemented a program for patients to access medical aid in dying found that "Overall, our Death with Dignity program has been well accepted by patients and clinicians". See N Eng. J Med 2013; 368:1417-1424

Medical Aid in Dying

None of the problems expected or anticipated by opponents or skeptics have emerged.

- There is no evidence of disproportionate impact on vulnerable populations. (See "Legal physician-assisted dying in Oregon and the Netherlands: evidence concerning the impact on patients in "vulnerable groups", Journal of Medical Ethics 2007; 33;591–597.)

Medical Aid in Dying

- There is no proven case of coercion or abuse.
- With regard to those with disabilities, consider, particularly, a letter from the Executive Director of Disabilities Rights Oregon where he categorically states that "DRO has not received a complaint of exploitation or coercion of an individual with disabilities in the use of Oregon's Death with Dignity Act" (letter dated Feb. 10, 2016)

Medical Aid in Dying

- We must certainly be vigilant to hopefully ensure that people in vulnerable populations are not being abused or coerced.
- But to date, there is no evidence that this has been or is likely to be a problem.
- There have been no substantiated complaints in any court or administrative agencies.

Medical Aid in Dying

- There is no connection at all between other serious problems, barriers, discrimination, etc., that people with disabilities or others in vulneralbe populations face in health care, and medical aid in dying.

Medical Aid in Dying

- There is no evidence of any slippery slope. Medical aid in dying is only for the terminally ill, and only for the mentally competent who can clearly express their wishes.
- What is happening in other countries is not relevant. We have our own distinct history, culture, values, religious and otherwise, and it is difficult enough to get medical aid in dying laws enacted only for the terminally ill.

Medical Aid in Dying

There is widespread support for medical aid in dying in the US.

"*When a person has a disease that cannot be cured…doctors should be allowed by law to end the patient's life by some painless means if the patient and his or her family request it." (Gallup Poll, Aug,2024)*

Yes, 71%,

Medical Aid in Dying

- A substantial majority of New Yorkers support support medical aid in dying.
- Physicians in the US support medical aid in dying by a 2 to 1 margin, 52% to 27% per a 2022 Medscape poll.
- In New York physicians supported the Medical Aid in Dying Act by more than a 3 to 1 margin, 67% to 19%, per a 2018 Medscape poll.

Medical Aid in Dying

Provisions in New York's Medical Aid in Dying Act, Public Health Law, 28F

Eligibility:

1. Be an adult, aged 18 or older,

2. Have a medically confirmed terminal illness that is incurable and irreversible,

3. Be given a prognosis of 6 months or less to live,

4. Be mentally capable of making an informed health care decision,

5. Be able to self-administer the aid-in-dying medication

Medical Aid in Dying

- The individual must make an oral request to their attending physician, and the oral request must be recorded by video or audio and permanently stored in the patient's medical record.

Medical Aid in Dying

- The individual must also submit a written request for aid-in-dying medication, witnessed by two adults — neither of whom can be a relative, someone who would be entitled to a portion of the patient's estate, or anyone who may benefit financially from the patient's death.

Medical Aid in Dying

- Additional requirements:
- Qualified patients must be a New York State resident.
- Two physicians must confirm that the person is terminally ill with a prognosis of 6 months or less to live, is making an informed health care decision, and is not being coerced.

Medical Aid in Dying

- The initial evaluation of the patient by the attending physician must be conducted in person, unless the attending physician determines that an in-person visit would result in extraordinary hardship to the patient.
- The attending physician must inform the requesting individual about all of their end-of-life care options, including palliative care and hospice.

Medical Aid in Dying

- A mandatory mental health evaluation must be conducted by a psychologist, neurologist, or psychiatrist to determine that the person has the capacity to make an informed health care decision. The mental health provider must confirm in writing the dying person's capacity before a prescription can be written.

Medical Aid in Dying

- There is a mandatory waiting period of 5 days between when a prescription is written and when it may be filled, unless the attending physician determines that the patient is not expected to survive that period.

Medical Aid in Dying

- The terminally ill person can withdraw their request for aid-in-dying medication, not take the medication once they have it, or otherwise change their mind at any point in time.

Medical Aid in Dying

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Medical Aid in Dying

- Physicians, other health care providers and health care facilities acting within the law are protected from civil, criminal, and professional liability.
- The sale or issuance of physician malpractice insurance or rate charged cannot be conditioned on or affected by whether the insured participates in MAID.

Medical Aid in Dying

- Health care providers are not subject to civil or criminal liability or professional disciplinary action for being present when medication is taken, or for failing to prevent the medication from being taken.
- Private health care facilities may refuse to participate in MAID if they find it morally objectionable or if it is against their religion and they have informed the patient of the policy.

Medical Aid in Dying

- If a health care facility prohibits medical aid in dying and informs its employees in writing, an employee who violates that prohibition may be subject to sanctions by the employer.
- No obligation owing under a contract, will or other agreement may be conditioned on using or refusing MAID, and no provision in a contract, will or other agreement is valid if it impacts a patient's medical aid in dying decisions.

Medical Aid in Dying

- Insurance benefits cannot be denied based on any MAID actions, and insurers can't condition the sale or issuance of life or health insurance policies or set rates on the making or rescinding of a request for MAID, nor can insurers provide information on MAID medication unless requested by the patient or physician or communicate both the denial of coverage for treatment and information as to the availability of MAID medication.

Medical Aid in Dying

- Actions in accordance with the law shall not be considered suicide, assisted suicide, attempted suicide, promoting a suicide attempt, mercy killing, or homicide
- A medical aid in dying patient's death certificate shall specify the underlying terminal illness as the cause of death.

Medical Aid in Dying

- **Argument --“[P]reserving life” is paramount**
- What interest does the state have in preserving the life of a dying patient. These patients will soon be dead and all that they want is to control the manner and timing of their deaths, with a limited amount of physician assistance.
- The state cannot reasonably claim to have more of an interest in preserving the lives of these patients than those who might choose to die by having life sustaining treatment withheld or withdrawn.

Medical Aid in Dying

- **Argument– "[P]reventing suicide is important;**
- As we have previously discussed, medical aid in dying is not a suicide and was not contemplated when suicide statutes were devised. Dying patients who access aid in dying are not generally suicidal. They want to live but their disease is killing them. All that they are doing is hastening their deaths by a short time after a thoughtful and thorough process with many safeguards

Medical Aid in Dying

- **Argument--[M]aintaining physicians' role as their patients' healers is required;**
- There comes a time in the trajectory of the disease when physicians can no longer heal. They can, however, prevent or try to prevent more suffering, another very important role and ethical obligation.

Medical Aid in Dying

- They can do this by providing or ensuring that palliative or hospice care is provided.
- And they can help to end the suffering of the very few patients who might want to access medical aid in dying by working with such patients and prescribing life ending medications, when appropriate, or if unwilling, referring those patients to physicians who will do so.

Medical Aid in Dying

- **Argument--Doctors should not be involved in intentionally causing the death of their patients**
- We actually do not know what the intent is of the doctor. The doctor may not want the patient to die but is acting to support and respect the wishes of the patient when prescribing the drugs.

Medical Aid in Dying

- Similarly, we do not know what the intent of a doctor is when a ventilator is withdrawn.
- The doctor may actually want the patient to die or not.
- We do know that in both situations the patient will die regardless of the doctor's intent.

Medical Aid in Dying

- And, consider that the intent of the doctor is not really the point. The intent of the patient is what clearly matters.
- The doctor, in both situations, regardless of her intent is respecting and complying with the wishes of the patient.

Medical Aid in Dying

Additional Claims in opposition to MAID and Responses

- **Claim**: People may prematurely die because of an inaccurate prognostication
- **Response**: Physicians cannot generally accurately predict precisely when someone will die. But, prognostication is an essential function doctors are called on to deliver, so that patients can engage in meaningful decision-making and end-of-life planning.

Medical Aid in Dying

- Most patients do not take the medications until they are close to death. There is no question that they will be dead, usually within weeks.
- So, the fact that prognostications turn out to underestimate how long patients may live is therefore not relevant in this context.

Medical Aid in Dying

- Even if inaccurate prognostication was a relevant concern in the context of medical aid in dying, consider that inaccurate prognoses can also be made for those who choose to die by having life sustaining treatment withheld/withdrawn such as a feeding tube, ventilator, pace maker or antibiotics.
- And, deaths by those means are not prevented because of a potential inaccurate prognostication, nor should they be, provided that patients are able to make informed decisions.

Medical Aid in Dying

- **Claim:** Patients could be coerced into taking the drugs and there is no requirement that a health care professional be present when the drugs are consumed.
- **Response**: There are often drugs in the home of patients in hospice and there is no control over what happens with those drugs. More drugs than are necessary to control pain and suffering can and are sometimes given. But, unlike some hospice drugs, MAID drugs need to be self consumed.

Medical Aid in Dying

- **Claim:** Relatives or friends may not act in the best interests of the patient.
- **Response**: It is certainly possible, but keep in mind that the patient must self administer the drugs making it unlikely that they will be taken, except voluntarily.
- And, consider that we do not prevent health care agents or surrogates from making decisions that will result in death even though there may be an occasional abuse.

Medical Aid in Dying

Conclusion

There are many reasons why medical aid in dying is now an option for terminally ill, mentally competent adult patients in New York.

Most importantly there is overwhelming evidence that it is a safe, ethical and painless medical practice that benefits patients and causes no harm.

There are no compelling arguments in opposition.

Medical Aid in Dying

- You have a responsibility to educate people about medical aid in dying and its benefits for those who might choose to access it!

Final Questions-Comments-Concerns

What questions, comments or concerns do you have?

David Leven, david@eolcny.org 914 907 6156

General end of life questions or about counseling, End of Life Choices New York 212 252 2015

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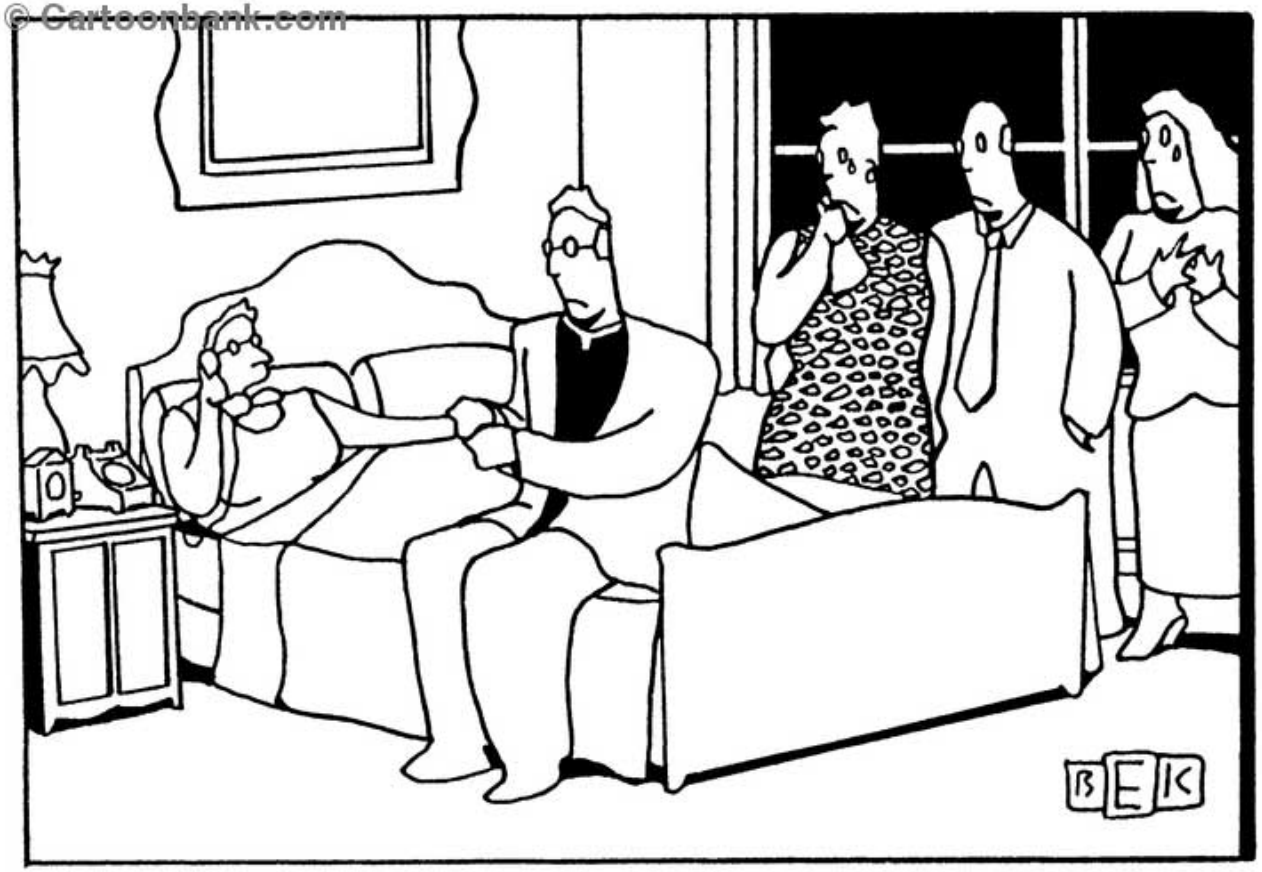

"Look, I'm dying. Gotta go."

Dying with Dignity

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"I'd like to congratulate you on dying with dignity."