

## Ethics Consultation Service

### Patient Discharge from Hospice Services for Pursuing Medical Aid in Dying

October 13, 2022

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#### Abstract

An ethics consultation request was made to the Academy Ethics Consultation Service by a prescribing physician for medical aid in dying in the State of New Mexico. She expressed her concern that a hospice agency for a patient who requested and implemented medical aid in dying under her prescription was told she would be immediately discharged from the hospice service if she pursued medical aid in dying.

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#### I. Case Summary

A physician in New Mexico prescribed medical-aid-in-dying medications for an elderly female who met the legal criteria for medical aid in dying. The patient was an at-home hospice patient in a rural area. Upon learning that the patient was pursuing medical aid in dying, the hospice nurse informed the family that the patient would have to be discharged on the day the family went to pick up the medications. The family “put her off” and picked up the medications. The patient ingested the medications and died peacefully with her family present. When the family advised the hospice of her death, they were told that the deceased patient would be discharged immediately and that the family was to “call Emergency Medical Services for pronouncement.”

The family said there was no information about this practice of “immediate discharge” of a patient who pursues medical aid in dying on the hospice website or in their policy. They felt this was an “unfair” practice and that it should be reported. The prescribing physician requested this ethics consult to evaluate the ethical issues raised in this case.

Date of Request: September 20, 2022

Date(s) of Consultation: September 29 2022 3:30 – 4:40 pm (EST)

Source of Consult Request:

- Prescribing MAID Clinician
- Consultant for MAID Clinician
- Other MAID Clinician
- Other

## II. Ethics Question(s) as Described by Requester

Is it ethical for a hospice to discharge a patient from service for pursuing medical aid in dying?

## III. Ethics Question(s) as Formulated by the Academy’s Ethics Consultation Team

“Is it ethical for a contracted hospice agency to discharge a patient because of the patient’s intent to pursue medical aid in dying under the law governing medical aid in dying in the State of New Mexico without prior notification or referral to another agency?”

## IV. Information Gathering

### 1. Review of the Hospice Agency’s Policy on Medical Aid in Dying:

Under “Purpose” the policy states: *“The purpose of this policy is to describe the decision by (hospice agency name) not to participate in the procedures for Self-Administering Medical Aid-in-Dying Medications under applicable state laws.”*

Under “Policy” it states in item 3.3:

*“(hospice agency) and home health agencies, through their Governing Bodies, have adopted this policy to reflect their choice not to participate in Medical Aid-in-Dying and not to permit any Medical Director, Associate Medical Director, or Medical Consultant acting within the scope of his or her contracted duties with an (hospice agency name) hospice or home health agency to prescribe or provide Medical Aid-in-Dying Medication for a patient of the hospice or home health agency who intends to Self-Administer the Medical Aid-in-Dying Medications while the patient is in (the Agency’s) service.”*

Under “Procedure” it states in item 4.1:

(hospice name) “hospices and home health agencies do not participate in Medical Aid-in-Dying;  
Specifically:

- 4.1.1. *(name) hospices and home health agencies do not provide Medical Aid-in-Dying Medications to any individual under applicable state laws.*
- 4.1.2. *(name) hospices and home health agencies do not permit its staff to participate in, or help facilitate, Medical Aid-in-Dying for patients in its service*
- 4.1.3. *(name) hospices and home health agencies do not permit any Medical Director, Associate Medical Director, or Medical Consultant, while acting within the scope of her or his private practice of medicine, to prescribe or provide Medical Aid-in-Dying Medication for a patient who intends to Self-Administer Medical Aid-in-Dying Medication while the patient is in (name's) service.*

Under "Procedure" it states:

Item 4.2:

*(name) "hospices and home health agencies will notify patients of this Policy through written notice at the time of admission."*

Item 4.3:

*"If a patient of (name) elects to transfer his/her care to another health care provider, (name) will, upon the patient's request, transfer the patient's medical records to the new health care provider. The agency must contact the Regional President of Hospice in the event that a patient wishes to participate in Medical Aid-in-Dying and does not wish to transfer to a new health care provider."*

Item 4.4:

*"Nothing in this policy affects the obligation of (name) and its staff to follow (name) policies regarding advance directives, Do Not Resuscitate Orders, and other policies governing end-of-life care and decision making."*

## **2. Review of New Mexico Medical Aid in Dying Statute CH132-HB47-2021**

"A health care entity that prohibits medical aid in dying shall accurately and clearly articulate this in an appropriate location on any website maintained by the entity and in any appropriate materials given to patients to whom the health care entity provides health care in words to be determined by the health care entity." (HB47/a, Page 12) section 6.

"MEDICAL AID IN DYING-RIGHT TO KNOW - A health care provider shall inform a terminally ill patient of all reasonable options related to the patient's care that are legally available to terminally ill patients that meet the medical standards of care for end-of-life care." HB47/a, p. 9

## **3. Review of (the Agency's) Standards of Business Ethics and Conduct**

- a. *Standard: "We will provide high-quality, cost-effective health care to our patients safely and in accordance with the highest of professional standards."*

*b. Key point: "No healthcare professional should ever furnish a service or take any action that would violate a professional code of ethics or practice act."*

## **V. Ethics Consultation Team Analysis regarding information gathered**

### Opinion of the Ethics Consultation Service Team on Review #1:

The policy of this hospice agency is clear in terms of their purpose "not to participate in the procedures for self-administering medical aid-in-dying medications under applicable state laws." Also, the policy states that their agencies "do not permit its staff to participate in, or help facilitate, Medical Aid-in-Dying for patients in its service."

They also state that the agency "does not permit any Medical Director, Associate Medical Director, or Medical Consultant, while acting within the scope of her or his private practice of medicine, to prescribe or provide Medical Aid-in-Dying Medication for a patient who intends to Self-Administer Medical Aid-in-Dying Medication while the patient is in the Agency's service."

There is nothing in the policy and procedure that "prohibits" the hospice staff from providing the core elements of hospice care (symptom management, psychological, spiritual and emotional support) for the patient and family, declaration of death, and bereavement supports before or after a patient chooses the legal option of medical aid in dying.

The procedure addresses the transfer of a patient who elects to seek transfer and states "(agency) will, upon the patient's request, transfer the patient's medical record to the new health care provider." Added to this procedure the agency states "the agency must contact the Regional President of Hospice in the event that a patient wishes to participate in medical aid-in-dying and does not wish to transfer to a new health care provider." The agency does not explain what the response would be for continuing services, or discharging, for such a patient.

### Opinion of the Ethics Consultation Service Team on Review #2:

Upon review of the Hospice Agency's policy and procedure, there is nothing that states or describes the required discharge of a patient who intends to request or obtain or use a prescription under the legal criteria for medical aid in dying in the patient's state of residence. Non-participation in medical aid in dying is described in the policy and procedure of this Agency as not permitting any of their staff (physicians, contracted physicians or any health care providers) to prescribe, provide or facilitate medical aid-in-dying for a patient in their hospice service. This clearly does not state that a patient who seeks or uses this legal option shall be "immediately discharged" from the hospice service. The remaining commitments to the patient under the hospice service should continue apart from any direct participation in the act of obtaining or ingesting the medical aid in dying medications unless specifically communicated to the patient and family as the hospice agency's criteria to "discharge the patient" from the hospice service. In the absence of this prior notification given to the patient and family upon admission, this appears to be an unethical practice constituting abandonment of the patient and family in violation of core ethical principles for hospice care.

### Opinion of the Ethics Consultation Service Team on Review #3:

Reference: American Nurses Association Code of Ethics:

*Provision 2.1. "The nurse's primary commitment is to the recipient of nursing and health care services — the patient — whether the recipient is an individual, a family, a group, or a community."*

*Provision 4.2. "...nurses act under a code of ethical conduct that is grounded in the moral principles of fidelity and respect for the dignity, worth, and self-determination of patients."*

*Provision 5.4. "The nurse is obligated to provide for the patient's safety, to avoid patient abandonment, and to withdraw only when assured that alternative sources of nursing care are available to the patient."*

The actions described in this case of "discharging a hospice patient" when that patient sought the assistance of medical aid in dying as a legal right under New Mexico law seems to violate the Hospice Agency's own Standards of Business Ethics and Conduct. It also is an abandonment of the American Nurses Association Code of Ethics.

## **VI. Ethical Analysis Summary:**

Our ethical analysis of this case considers the core ethical principles underlying the case review, along with the specifics of the case given to us by the prescribing physician, as she understands those specifics from the daughter of the patient.

We have previously found the more common, but similar, policy of some hospice agencies to require that their staff "leave the room" during the patient's ingestion of the medical-aid-in-dying medications to be legally accepted if described in their policy, but ethically not supportable based upon the same ethical principles of respect for the patient's autonomy and the commitment to non-abandonment as a central mission of nurses and all health care professionals. This case, in contrast, not only violates the principle of non-abandonment of a patient and family, but further creates harms to the patient and family by breaking the commitment of the hospice to provide the full complement of hospice benefits, which include "Individual and family or just family grief and loss counseling before and after the patient's death." This bereavement service generally is provided up to 13 months after the patient's death and is a key component of hospice care. By unilaterally discharging the patient for pursuing or utilizing medical aid in dying, the ethical principle of non-maleficence (do no harm) is violated. At the most difficult of times for the patient and family, the very essence of hospice services is a commitment to provide end-of-life care, including the physical, emotional and spiritual care of the patient and family. Suddenly, and without notice or preparation, the hospice agency in this case severed the relationship, causing harms to the patient and family. Advising the family to "call EMS for the declaration of death" is abandonment of their commitment, stigmatizing for the family to hear the hospice wash their hands of the death, and an inappropriate use of Emergency Medical Services, risking more complications for the family.

By way of legal reference, the Centers for Medicare and Medicaid Services (title 42 - Public Health, Chapter IV, Subchapter B, Part 418 (Hospice Care), Subpart B (Eligibility, Election and Duration of Benefits) outlines in 418.26 the "Reasons for Discharge" which does not include discharge for cause related to a patient electing the legal option of Medical Aid in Dying while enrolled in hospice care.

## **VII. Ethics Consultation Team Opinion**

Our collective ethical opinion in this case is that the discharge of a patient and family from hospice services without prior written and verbal notification that the pursuance of medical aid in dying would result in such an immediate discharge is not ethically supportable. Discharge from hospice because a patient pursues their legal right to the option of medical aid in dying violates the ethical principles of respect for patient autonomy, beneficence (acting in the patient's best interest), non-maleficence (doing no harm) and is contrary to the mission of hospice staff to non-abandonment of their patients. "Non-Participation in Medical Aid in Dying" should not preclude the customary hospice services provided to patients and the commitment to the physical, emotional and spiritual care for the terminally ill patient and their family. In addition to the harms of such a practice of discharge in this case, the issue of non-transparency of the practice is ethically unacceptable.

### **VIII. Ethically Supportable Recommendations**

1. Hospice agencies should provide full disclosure of their internal policies and practices around participation or non-participation in medical aid in dying prior to enrolling a patient as an element of informed consent under a contractual agreement.
2. Hospice agencies should continue to provide usual and customary hospice services to their contracted patients which includes a commitment to provide end-of-life care, including the physical, emotional and spiritual care and symptom management of the patient and family regardless of whether a patient legally chooses to pursue medical aid in dying.
3. Hospice agencies should provide continuing education to their team members about their professional responsibilities under the law and agency policy for management and communication with their patients and families who may choose to pursue the option of medical aid in dying.
4. Hospice agencies should provide a conscientious objection option for those team members who feel morally conflicted working with patients that they know are pursuing medical aid in dying.

### **IX. Confidentiality**

All consultations are confidential. Complete documentation is recorded and protected internally by the American Clinicians Academy for Medical Aid in Dying Ethics Consultation Service. Opinions and options presented are by consensus of consultation service members and do not represent their associated institutions.

### **X. Disclaimers**

**Legal:** The ACAMAID Ethics Consultation Service does not provide legal advice. Moreover, information in this consultation summary is provided for informational purposes only and is not legal advice. Transmission or receipt of information on the Academy website or listserv does not create an attorney-client relationship and is not a substitute for obtaining legal advice from an attorney licensed to practice in your location.

**Medical:** Information in this consultation summary is not intended to substitute for professional medical advice, diagnosis, or treatment from treating, prescribing, and consulting clinicians or from mental health professionals.

**Disclaimer:** Our Ethics Consultation Service reviews cases brought to us from the clinicians and providers of Medical Aid in Dying and we do not have access to the individuals involved in the

front-line case being described. Our opinions are given based upon the medical and contextual information given to us by the requesting physician.

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**Mission Statement**

The mission of the Ethics Consultation Service of the American Clinicians Academy on Medical Aid in Dying is to provide support for clinicians involved in the practice of medical aid in dying. This support is primarily directed at addressing clinical ethics questions raised by clinicians involved with patients considering medical aid in dying, as well as ethics questions concerning medical aid in dying that may arise within hospice and palliative care agencies, healthcare organizations or grief and bereavement services. The Ethics Consultation Service may also take requests from other ethics committees seeking help from our specialized ethics service for aid-in-dying dilemmas.