

CLINICAL COMMENTARY

“My First Experience with the End of Life Act Prescription”

David Gunn, MD

A 78-year-old male with coronary artery disease and obstructive sleep apnea presented to establish care. He reported becoming more winded while playing tennis and thought it could be due to his age. Six-minute walk test showed hypoxemia to 83%, and he was referred for pulmonary consultation. PFTs, showed DLCO 45% of predicted and High Resolution Chest CT (HRCT) showed idiopathic pulmonary fibrosis (IPF). He was started on pirfenidone (Esbriet) and stopped due to GI side effects. He was switched to nintedanib (Ofev) and has tolerated it well. His expected mortality from IPF-GAP is 42% at three years, being at stage two.

The patient continued to have periodic episodes of dyspnea at rest and with minimal exertion, which was understandably very anxiety provoking. After several of these episodes, he will return for follow up for a frank discussion about the treatment options for future episodes, his desires for no heroic measures and long-term care options. The patient developed a strong attachment to me as his family physician and the one who first discovered his diagnosis. He also expressed gratitude for visits which provided great calm and relief. After one episode, the patient and his wife discussed end of life care, including hospice and palliative care. Having no experience with the end of life act, I referred the patient to palliative care. The palliative care physician recommended liquid morphine and referred him back for the actual end of life prescription.

To write the end of life prescription, the patient must meet a few criteria.¹ First, the patient must be an adult with California residency, have the capacity to make informed medical decisions, and have a terminal diagnosis within six months. Second, the patient must make two oral requests no less than 15 days apart and a third written request at some point during this process. The attending physician must refer the patient to a consulting physician and if indicated, a mental health specialist to determine capacity and document absence of impaired judgement due to a mental disorder. All written and oral requests must be recorded in the medical record. (See Appendix A).

This situation made me uncomfortable. Did I not take an oath not to prescribe a lethal drug to anyone? Yet in this instance, I felt there was more humanity in allowing this patient to die peacefully than to have him suffer mentally and physically with the eventuality of his disease. It is not often one witnesses someone seeking death's door, let alone holding the key for them to unlock it. And I am in just this position. I asked myself

is this right? Is this wrong? In what way can they both be true? And knowing this, what should I do? Obviously, I am not the first physician or individual to consider these questions.²⁻⁵

“Therefore all things whatsoever ye would that men should do to you: do ye even so to them: for this is the law and the prophets.”⁶

We each have our own systems of personal beliefs, through which we make decisions about right and wrong. I believe in God, and as a born again Christian have conservative views about God's plan for our lives, the challenges He sets up for us to encounter and the lessons that we and others around us and after us experience and learn from. In this example, if he wants us to suffer at the end of life, there is a reason (I trust in God there is, or I try to have faith there is!). I may not be able to understand the reason, or think the reason is no good, but I am mortal and flawed and cannot understand God's plan. Therefore, I should not interfere with God's plan.

Yet, I love this patient, in the Christian sense of the word. He sees me as his physician and relies on me to protect him. To deny him the medicine that would end his life seems disingenuous to how I feel about our relationship. In my heart of compassion, I want to relieve this man's suffering. How can I force my own beliefs about not interfering with God's plan on another person who is suffering? What would I want for myself were I in his position?

We discussed palliative care, the use of morphine for air hunger, and the likelihood that this medication would give him the relief and comfort he looks for as the end of his life approaches. He asked about the end of life pill. I thought about the Hippocratic Oath that I took when I graduated from medical school seven years ago. Written 2400 years ago, the Hippocratic Oath is one of the oldest professional oaths.⁷ However, medical students pledging their allegiance to the oath as a group is relatively recent. The practice began at the University of Wittenberg in Germany in 1508, and it has waxed and waned in popularity until the second half the 20th century, when it became entrenched as a medical school tradition.

Nearly all medical students take an oath of some sort today—either the Hippocratic Oath or one of a growing number of replacements.

THE TRADITIONAL HIPPOCRATIC OATH⁷

I swear by Apollo the physician, and Asclepius, and Hygieia and Panacea and all the gods and goddesses as my witnesses, that, according to my ability and judgment, I will keep this Oath and this contract:

To hold him who taught me this art equally dear to me as my parents, to be a partner in life with him, and to fulfill his needs when required; to look upon his offspring as equals to my own siblings, and to teach them this art, if they shall wish to learn it, without fee or contract; and that by the set rules, lectures, and every other mode of instruction, I will impart a knowledge of the art to my own sons, and those of my teachers, and to students bound by this contract and having sworn this Oath to the law of medicine, but to no others.

I will use those dietary regimens which will benefit my patients according to my greatest ability and judgment, and I will do no harm or injustice to them.

I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a pessary to cause an abortion.

In purity and according to divine law will I carry out my life and my art.

I will not use the knife, even upon those suffering from stones, but I will leave this to those who are trained in this craft.

Into whatever homes I go, I will enter them for the benefit of the sick, avoiding any voluntary act of impropriety or corruption, including the seduction of women or men, whether they are free men or slaves.

Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private.

So long as I maintain this Oath faithfully and without corruption, may it be granted to me to partake of life fully and the practice of my art, gaining the respect of all men for all time. However, should I transgress this Oath and violate it, may the opposite be my fate.

APPENDIX A

C CONSULTING PHYSICIAN INFORMATION	
PHYSICIAN'S NAME (LAST, FIRST, M.I.)	TELEPHONE NUMBER () -
MAILING ADDRESS (STREET, CITY, ZIP CODE)	
PHYSICIAN'S LICENSE NUMBER	

D ELIGIBILITY DETERMINATION
TERMINAL DISEASE
CHECK BOXES FOR COMPLIANCE: <input type="checkbox"/> 1. Determination that the patient has a terminal disease. <input type="checkbox"/> 2. Determination that patient is a resident of California. <input type="checkbox"/> 3. Determination that patient has the capacity to make medical decisions** <input type="checkbox"/> 4. Determination that patient is acting voluntarily. <input type="checkbox"/> 5. Determination of capacity by mental health specialist, if necessary. <input type="checkbox"/> 6. Determination that patient has made his/her decision after being fully informed of: <input type="checkbox"/> a) His or her medical diagnosis; and <input type="checkbox"/> b) His or her prognosis; and <input type="checkbox"/> c) The potential risks associated with ingesting the requested aid-in-dying drug; <input type="checkbox"/> d) The probable result of ingesting the aid-in-dying drug; <input type="checkbox"/> e) The possibility that he or she may choose to obtain the aid-in-dying drug but not take it

E ADDITIONAL COMPLIANCE REQUIREMENTS
<input type="checkbox"/> 1. Counseled patient about the importance of all of the following: <input type="checkbox"/> a) Maintaining the aid-in-dying drug in a safe and secure location until the time the qualified individual will ingest it; <input type="checkbox"/> b) Having another person present when he or she ingests the aid-in-dying drug; <input type="checkbox"/> c) Not ingesting the aid-in-dying drug in a public place; <input type="checkbox"/> d) Notifying the next of kin of his or her request for an aid-in-dying drug. (an individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason); and <input type="checkbox"/> e) Participating in a hospice program or palliative care program. <input type="checkbox"/> 2. Informed patient of right to rescind request (1 st time) <input type="checkbox"/> 3. Discussed the feasible alternatives, including, but not limited to, comfort care, hospice care, palliative care and pain control. <input type="checkbox"/> 4. Met with patient one-on-one, except in the presence of an interpreter, to confirm the request is not coming from coercion <input type="checkbox"/> 5. First oral request for aid-in-dying: <input type="text"/> / <input type="text"/> / <input type="text"/> Attending physician initials: <input type="text"/> <input type="checkbox"/> 6. Second oral request for aid-in-dying: <input type="text"/> / <input type="text"/> / <input type="text"/> Attending physician initials: <input type="text"/> <input type="checkbox"/> 7. Written request submitted: <input type="text"/> / <input type="text"/> / <input type="text"/> Attending physician initials: <input type="text"/> <input type="checkbox"/> 8. Offered patient right to rescind (2 nd time)

F PATIENT'S MENTAL STATUS
Check one of the following (required): <input type="checkbox"/> I have determined that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder. <input type="checkbox"/> I have referred the patient to the mental health specialist****listed below for one or more consultations to determine that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder. <input type="checkbox"/> If a referral was made to a mental health specialist, the mental health specialist has determined that the patient is not suffering from impaired judgment due to a mental disorder
Mental health specialist's information, if applicable: MENTAL HEALTH SPECIALIST NAME MENTAL HEALTH SPECIALIST TITLE & LICENSE NUMBER MENTAL HEALTH SPECIALIST ADDRESS (STREET, CITY, ZIP CODE)

G MEDICATION PRESCRIBED	
PHARMACIST NAME	TELEPHONE NUMBER () -
1. Aid-in-dying medication prescribed: <input type="checkbox"/> a. Name: _____ <input type="checkbox"/> b. Dosage: _____	
2. Antiemetic medication prescribed: <input type="checkbox"/> a. Name: _____ <input type="checkbox"/> b. Dosage: _____	
3. Method prescription was delivered: <input type="checkbox"/> a. In person <input type="checkbox"/> b. By mail <input type="checkbox"/> c. Electronically	
4. Date medication was prescribed: ___/___/___	

X	PHYSICIAN'S SIGNATURE	DATE
	NAME (PLEASE PRINT)	

** "Capacity to make medical decisions" means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make

**** "Mental Health Specialist" means a psychiatrist or a licensed psychologist.

Below is the patients written request form¹:

REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I, _____, am an adult of sound mind and a resident of the State of California.

I am suffering from _____ which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe an aid-in-dying drug that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:

- I have informed one or more members of my family of my decision and taken their opinions into consideration.
- I have decided not to inform my family of my decision.
- I have no family to inform of my decision.

I understand that I have the right to withdraw or rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this request voluntarily, without reservation, and without being coerced.

Signed: _____ Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

- is personally known to us or has provided proof of identity;
- voluntarily signed this request in our presence;
- is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and
- is not an individual for whom either of us is the attending physician, consulting physician, or mental health specialist.

Witness 1: _____ Date: _____

Witness 2: _____ Date: _____

Below is the consulting physician's form¹

A PATIENT INFORMATION	
PATIENT'S NAME (LAST, FIRST, M.I.)	DATE OF BIRTH

B ATTENDING PHYSICIAN	
ATTENDING PHYSICIAN'S NAME (LAST, FIRST, M.I.)	TELEPHONE NUMBER ()

C CONSULTING PHYSICIAN'S REPORT	
TERMINAL DISEASE	DATE OF EXAMINATION(S)
Check boxes for compliance (Both the attending and consulting physicians must make these determinations.)	
<input type="checkbox"/> 1. Determination that the patient has a terminal disease. <input type="checkbox"/> 2. Determination that patient has the mental capacity to make medical decisions. ** <input type="checkbox"/> 3. Determination that patient is acting voluntarily. <input type="checkbox"/> 4. Determination that patient has made his/her decision after being fully informed of: <input type="checkbox"/> a) His or her medical diagnosis; and <input type="checkbox"/> b) His or her prognosis; and <input type="checkbox"/> c) The potential risks associated with taking the drug to be prescribed; and <input type="checkbox"/> d) The potential result of taking the drug to be prescribed; and <input type="checkbox"/> e) The feasible alternatives, including, but not limited to, comfort care, hospice care, palliative care and pain control.	

D PATIENT'S MENTAL STATUS		
Check one of the following (required):		
<input type="checkbox"/> I have determined that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.		
<input type="checkbox"/> I have referred the patient to the mental health specialist****listed below for one or more consultations to determine that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.		
<input type="checkbox"/> If a referral was made to a mental health specialist, the mental health specialist has determined that the patient is not suffering from impaired judgment due to a mental disorder		
MENTAL HEALTH SPECIALIST'S NAME	TELEPHONE NUMBER ()	DATE

E CONSULTANT'S INFORMATION	
PHYSICIAN'S SIGNATURE	DATE
NAME (PLEASE PRINT)	
MAILING ADDRESS	
CITY, STATE, AND ZIP CODE	TELEPHONE NUMBER ()

**Capacity to make medical decisions means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make

**** Mental Health Specialist means a psychiatrist or a licensed psychologist.

The attending physician must counsel the patient about the importance of:

- Having another person present when **aid-in-dying drug** is ingested
- Not ingesting **aid-in-dying drug** in a public place or place open to public view or access
- Notifying next of kin of request for **aid-in-dying drug** (failure to do so is not reason to deny the patient the **aid-in-dying drug**)
- Participating in a hospice program
- Maintaining **aid-in-dying drug** in safe and secure location until self-administered

At the time of counseling, the attending must remind the patient that he or she may rescind their request for aid-in-dying medication at any time in any manner.

To confirm that the patient is making an **informed decision**, the **attending physician** must discuss the following with the patient:

- The patient's diagnosis and prognosis
- The risks associated with taking the aid-in-dying drug
- Probable result of taking the aid-in-dying drug

- The possibility that the patient may at any time choose not to obtain the aid-in-dying drug or may obtain the drug and choose not to take it
- Feasible alternatives or additional treatment options, e.g., comfort care, hospice care, palliative care, pain control

The **attending physician** must comply with all documentation requirements and submit all necessary forms.

In addition, the **attending physician** must:

- Offer the patient an opportunity to withdraw/rescind the request before prescribing the drug
- Verify the patient is making an **informed decision** immediately before prescribing the **aid-in-dying drug**
- Confirm all requirements are met and that appropriate steps are carried out before prescribing the aid-in-dying drug
- Fulfill all documentation requirements
- Complete the **Consulting Physician Compliance Form** and the **Attending Physician Checklist & Compliance Form**, place the forms in the patient's medical record, and submit copies of both the **Attending** and **Consulting Compliance** forms and the **patient's written request** to the California Department of Public Health (CDPH) within 30 days of writing the prescription
- Give the requesting patient the **Final Attestation Form** and instruct the patient about completing it

The **Attending Physician Follow-Up Form** must be completed within 30 calendar days of the patient's death. A copy of the form must also be submitted to CDPH. This form must be completed and signed by the **attending physician**.

REFERENCES

1. End of Life Option Act for Healthcare Professionals. Accessed 12/2018. <https://coalitionccc.org/tools-resources/end-of-life-option-act/end-life-option-act-healthcare-professionals/>
2. Palliative Care Resources for Patients and Families. Accessed 12/2018. <https://www.uclahealth.org/palliative-care/resources>
3. New law opens door to conversation about end-of-life issues. Accessed 12/2018. <https://www.uclahealth.org/vitalsigns/new-law-opens-door-to-conversation-about-end-of-life-issues>
4. End of Life Option Act. Accessed 12/2018. <https://www.cdph.ca.gov/Programs/CHSI/Pages/End-of-Life-Option-Act-.aspx>

5. As California's End of Life act goes into effect, some doctors question where to draw the line. Soumya Karlamangla; JUN 06, 2016. ACCESSED 12/2018. <https://www.latimes.com/local/california/la-me-aid-in-dying-doctors-20160606-snap-story.html>
6. King James Bible: Book of Matthew 7:12. <https://www.biblegateway.com/verse/en/Matthew%207:12>
7. The Hippocratic Oath. Accessed 12/2018. https://www.nlm.nih.gov/hmd/greek/greek_oath.html