Hawaii's Our Care, Our Choice Act of 2018

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Question I:
All Correct EXCEPT

- 1. “[t]he person (who) intentionally causes another person to commit suicide” is guilty of manslaughter, a Class B felony under HRS § 707-702(1)(b).
- 2. Physician-assisted suicide (PAS) occurs when lethal drugs are prescribed by physician at patient’s request and self-administered by patient with the aim of ending his or her life (Emanuel, JAMA 2016).
- 3. Hawaii recently legalized PAS.
- 4. Prior to 1994, PAS was a crime throughout U.S.
- 5. PAS is now legal in most U.S. jurisdictions.

Ethical Arguments on Physician-Assisted Suicide (PAS)

Key Arguments in favor:

- Patient autonomy
- Preservation of dignity
- Intolerable pain and suffering

Key Arguments against:

- We have effective palliative care
- Slippery slope argument
- Integrity of the medical profession

Hippocratic Oath

- “I shall give no deadly medicine to anyone if asked nor suggest any such counsel...”

AMA Position on Physician-Assisted Suicide

- "… Permitting physicians to engage in assisted suicide would ultimately cause more harm than good. Physician-assisted suicide is fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks. Instead of participating in assisted suicide, physicians must aggressively respond to the needs of patients at the end of life…"

-- AMA Code of Medical Ethics, Opinion 5.7 (2016)

Question II:
All Correct EXCEPT

- 1. Law is known as “Our Care, Our Choice Act.”
- 2. The purpose ... is to allow qualified patients ... with a medically confirmed terminal illness ... to determine their own medical care at the end of their lives.
- 3. Data from other states indicate most patients who participate in PAS are in intractable pain.
- Hawaii’s statute does not use the term PAS.
- 4. Hawaii’s law stipulates that action “shall not … constitute suicide, assisted suicide, mercy killing, murder, manslaughter, negligent homicide, or any other criminal conduct ...”

Question III:
All Correct EXCEPT

- 1. Must be aged 18 or older.
- 2. Must be resident in state of Hawaii.
- 3. Must have a terminal disease defined as an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.
- 4. Must be capable of medical decision-making.
- 5. Patient's durable power of attorney can make request on behalf of patient.

Question IV:
All Correct EXCEPT

- 1. Qualified patient's request is for prescription that may be self-administered for purpose of ending life.
- 2. No health care provider shall be under any duty to participate in PAS but a non-participating physician is required to make a referral.
- 3. Attending provider will counsel patient of importance of having another person present.
- 4. Recommend that patient notify next of kin.
- 5. Form entitled "REQUEST FOR MEDICATION TO END MY LIFE" is provided in the statute.

Question V:
All Correct EXCEPT

- 1. Attending provider must consult another provider for a second opinion.
- 2. Attending provider need not be the patient's primary care doctor.
- 3. A retired doctor may serve as an attending provider.
- 4. Attending provider makes initial determination that condition is terminal.
- 5. Attending provider decides on patient's capability in voluntary, informed, medical decision-making.

Question VI:
All Correct EXCEPT

- 1. This is followed by referral for counseling.
- 2. The counselor ensures that patient is capable and is not suffering from under-treatment or no treatment of depression or other conditions that may interfere with making an informed decision.
- 3. The patient's personal dentist is a qualified counselor.
- 4. Psychiatrist or psychologist is a qualified counselor.
- 5. Clinical social worker is a qualified counselor.

Question VII:
All Correct EXCEPT

- 1. Patient must make two (2) oral requests, at least 20 days apart.
- 2. There must be one (1) written request for prescription that may be self-administered for purpose of ending life.
- 3. Written request shall be signed and dated by patient and witnessed by at least two individuals who can attest that patient is of sound mind, acting voluntarily and is not being coerced.
- 4. Attending physician may serve as witness.
- 5. Dentist may serve as witness.

Question VIII:
All Correct EXCEPT

- 1. Patient is denied use of prescription upon loss of capacity.
- 2. Class A felony to tamper with a patient's request.
- 3. Or to coerce a person to request a prescription.
- 4. Patient retains right to rescind request for medication or filing or using prescription.
- 5. No effect on wills, insurance or annuity benefits.

Question IX:
All Correct EXCEPT

- 1. No health care provider shall be under any duty to participate in PAS.
- 2. A non-participating physician is required to make a referral to one who will participate.
- 3. No health care facility shall be under any duty to participate.
- 4. A health care facility may prohibit a provider from participating on the premises of the health care facility.
- 5. Tenants at a Catholic facility are generally required to abide by its policy against PAS.

Mandatory Reporting Laws:
Child Abuse, Elder Abuse

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Background

- Willful abuse or neglect of children, elderly and other vulnerable groups believed to be widespread and under-recognized.
- Mandatory reporting laws arose from the need to identify and prevent these activities that cause serious harm and loss of lives.
- Physicians and other healthcare workers including dentists are in a prime position to diagnose or raise the suspicion of abuse/neglect.

Child Abuse

- Best-known example of mandatory reporting law relates to child abuse, broadly defined as when a parent or caretaker emotionally, physically, or sexually abuses, neglects, or abandons a child.
- Child abuse laws are intended to protect children from serious harm without abridging parental discipline of their children.

Child Abuse (cont'd)

- Child abuse is pervasive.
- Nationwide, five children are killed by abuse or neglect every day.
- Each year, some 6 million children are reported as victims of child abuse.
- In 1973, Child Abuse Prevention and Treatment Act enacted, which set standards for mandatory reporting as a condition for federal funding.

Child Abuse (cont'd)

- All States in the U.S. have statutes identifying persons who are required to report suspected child maltreatment to an appropriate agency, such as child protective services.
- They include dentists.
- Reasonable suspicion, without need for proof, is sufficient to trigger the mandatory reporting duty.

HRS § 350-1, et seq.

- Any licensed, registered professional of the healing arts or any other health-related occupation; school employees; law enforcement employees; child care providers; medical examiners/coroners; employees of public or private social, medical or mental health services agency, recreational/sports employees.
- Reason to believe that child abuse or neglect has occurred or may occur in reasonably foreseeable future.

Clues to Child Abuse

- Bruises, fractures, burns and emotional harm are recurring examples of injuries.
- Perpetrators/complicit parties typically blame home accident to mislead healthcare provider.
- Clues also include a child's fearful and anxious demeanor, wearing clothes to hide injuries, and inappropriate sexual conduct.

Clues for the Dentist

- Bruising, scratches, abrasions of head, neck, face and mouth.
- Soft tissue laceration of upper lip.
- Blackening of one or both eyes.
- Bite marks, pinch marks, cigarette burns, welts, scars around face and neck.
- Bald spots on infants (traumatic alopecia).

Dental Perspectives

- ADA: Dentists should become familiar with signs of abuse and neglect and to “report suspected cases to the proper authorities consistent with state law.”
- 1981 study: dentists felt unprepared to evaluate or be part of child protective role in cases of suspected abuse.
- Recent studies suggest this perception continues.

Elder Abuse

- Broadly construed to include physical, sexual and psychological abuse, as well as financial exploitation and caregiver neglect.
- Serious problem in the U.S., estimated in 2008 to affect one in ten elders.
- Figure is likely an underestimate, since many elderly victims are afraid or unwilling to lodge complaint against abuser whom they love and may depend upon.

Elder Abuse (cont'd)

- Law protects the "elderly" (e.g., those age 62 or over in Hawaii).
- Also extended to other younger vulnerable adults, who because of an impairment, are unable to 1) communicate or make responsible decisions to manage one's own care or resources; 2) carry out or arrange for essential activities of daily living; or 3) protect one's self from abuse.

HRS § 346-224

- Any licensed or registered professional of the healing arts and any health-related occupation who examines, treats, or provides other professional or specialized services to a vulnerable adult, including physicians, physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;…..

When to Report?

- When a person required to report … has knowledge of or reason to believe that a vulnerable adult has been abused or is in danger of abuse if immediate action is not taken.
- Suspected financial abuse that is directed towards, targets, or is committed against an elder.

Penalty Too Light?

- Criminal penalty is currently light for failure to report.
- Currently offence is a petty misdemeanor in Hawaii, punishable by up to 30 days in jail.
- Hawaii recently introduced Senate Bill 2477 that makes non-reporting by those required to do so a Class C felony punishable by up to five years in prison.

Negligence Lawsuit

- There is also risk of a negligence lawsuit based on “violation of statute” (breach of a legal duty) should another injury occur down the road that was arguably preventable by the failure to report.

Critics of Mandatory Reporting

- Experts generally believe that mandatory reporting laws are important in identifying child maltreatment.
- However, despite a five-decade history of mandatory reporting, no clear endpoints attest to efficacy of this approach.
- No data demonstrate that incremental increases in reporting have contributed to child safety.

Critics (cont'd)

- Particularly challenging are attempts at impact comparisons between States with different policies.
- A number of countries, including the United Kingdom, do not have mandatory reporting laws and regulate reporting by professional societies.

Critics (cont'd)

- Critics raise concerns surrounding law enforcement showing up at victim's house to question family about abuse, or to make an arrest or issue warnings.
- When behavior of abuser is under scrutiny, this can paradoxically create potentially more dangerous environment for patient-victim, whom the perpetrator now considers to have betrayed his trust.

Critics (cont'd)

- Others bemoan that revealing patient confidences violates the professional's ethical code of confidentiality.

Liability in Opioid Deaths

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Background

- 6 in 10 drug overdoses involve an opioid.
- Prescription opioids are a driving factor, quadrupled since 1999.
- More than 18,000 overdose deaths in 2014 involved prescription painkillers, while an additional 10,000 fatalities were attributed to heroin and 5,000 to fentanyl and other synthetic opioids.
- 91 Americans die daily from opioid overdose.

Background (cont'd)

- Doctors deemed the "biggest culprit" for opioid addiction epidemic.
- One author has pointedly asserted: "*By refusing to accept their inability to separate pain relief from addiction, physicians have long suffered the sin of hubris—and their patients have paid the price.*"

Insurer

- The Doctor's Company, a major malpractice carrier, reviewed 1,770 claims closed between 2007 and 2015 in which patient harm involved medication factors.
- In 272 of those claims (15 percent), the medications were narcotic analgesics, most often prescribed in the outpatient setting involving Methadone and OxyContin.

CDC

- The Centers for Disease Control and Prevention (CDC) has recently published treatment guidelines noting that long-term opioid use among patients with chronic pain increased the likelihood of addiction and overdose, and had uncertain benefits.
- It discouraged doses higher than the equivalent of 90 milligrams of morphine.

U.S. Surgeon General

- U.S. Surgeon General recently took historic step of writing to all American doctors asking for their help.

AMA

- AMA has developed educational module explaining epidemic and how opioid misuse is linked to heroin addiction.
- Module also outlines risk-reducing steps when using opioids for pain relief

Dental Perspective

- Most opioids prescribed to patients in the U.S. are written by physicians and other medical professionals for management of chronic (long-term) pain.
- Dentists with an appropriate license may also prescribe opioids, and do so most often for management of acute (short-term) pain such as severe tooth decay, extraction of teeth and root canals.

Dental Perspective (cont'd)

- In 1998, dentists were top specialty prescribers of opioid pain relievers, accounting for 15.5 percent of all opioid prescriptions in the U.S.
- By 2012, this number had fallen to 6.4 percent.
- ADA's 2016 policy statement: dentists should "consider [NSAIDs] as the first-line therapy for acute pain management."

Which is INCORRECT?

- A. "Opioid deaths," refers to accidental or intentional deaths caused mostly by heroin.
- B. Careless/reckless prescribing or criminal wrongdoing by doctors bear some of the blame.
- C. May form basis for wrongful death lawsuit.
- D. May lead to loss of professional license.
- E. Prescriber may face prosecution for homicide.

Civil Liability

- One remedy sought is a civil action like a malpractice lawsuit against the negligent provider for wrongful death, or for causing addiction or other harm.
- Plaintiff is asserting that by violating community professional standards, provider's substandard conduct breached his/her duty of due care and was a proximate cause of patient's injury.

Civil Liability (cont'd)

- Evidentiary proof required to sustain such an allegation is "more probable than not" or "preponderance of evidence."
- Expert medical testimony is typically necessary to establish requisite standard of care and of causation.
- Where there is gross negligence, i.e., egregious conduct that was reckless, jury may award punitive damages.

Dallaire v. Hsu

Conn. Sup. Ct., CV 07-5004043 (May 18, 2010)

- Connecticut malpractice case alleging negligent opioid prescriptions caused death.
- Patient had congenital skeletal deformity called Madelung's disease, and suffered severe pain requiring chronic opioids such as Oxycodone, Methadone, Morphine, Fentanyl, and Hydrocodone in combination and with other types of medications for anxiety, sleep problems and depression.

Dallaire v. Hsu (cont'd)

- Patient was non-compliant and had history of inconsistent pill counts and urine tests, and of stockpiling and hoarding pills.
- Following recent fracture of right arm and shoulder, she visited several doctors for narcotic prescriptions before consulting defendant.
- Doctor concluded it was an urgent situation, and that if he did not prescribe pain medications, she would engage in unsafe drug-seeking behaviors.

Dallaire v. Hsu (cont'd)

- Accordingly, doctor prescribed the following: Methadone, 40 mg 4 pills/day, MS Contin 60 mg 2/day, and Xanax, 1 mg 3/day.
- Within hours of filing her prescription, she began to stumble, developed slurred speech, and then became unresponsive and expired.

Dallaire v. Hsu (cont'd)

- Court was unpersuaded that requisite standard of care was to contact patient's prior physicians or pharmacy or to obtain her current records to determine her level of drug naiveté or tolerance or that defendant should have initiated treatment with starting doses of drugs.
- It held that reflected "*a narrow textbook approach to the practice of pain management and ignores the role of patient-physician interaction*."

Dallaire v. Hsu (cont'd)

- Based on all the evidence, patient's tolerance for opiates had greatly escalated, and her level of pain remained at 10± on a scale of 10.
- Defendant had independently assessed patient, determined her needs, ruled out that she was opiate naive, and based on all the circumstances prescribed Morphine, Methadone and Xanax.
- Morphine prescription of 60 mg sustained release tablet every 12 hours was not lethal to her and was not her first opioid analgesic.

Dallaire v. Hsu (cont'd)

- Court was unimpressed by various calculations offered by experts linking post-mortem drug levels to causation.
- It ruled that plaintiff had failed to sustain burden of proving causation, there being no finding that patient took more medications than prescribed or overdosed.

Failure to Treat Pain

Bergman v. Eden Medical Center

- An Alameda County jury in California turned in a verdict against an internist charged with elder abuse and reckless negligence for failing to give enough pain medication to a patient dying of cancer.
- William Bergman was an 85-year-old retired railroad worker who complained of severe back pain.
- During his 6-day stay at the hospital, nurses consistently charted his pain in the 7-10 range, and on the day of discharge, his pain was at level 10.
- He died at home shortly thereafter.

Failure to treat pain (cont'd)

Bergman v. Eden Medical Center

- After four days of deliberation, the jury, in a 9-3 vote, entered a guilty verdict, and awarded $1.5 million in general damages.
- Amount subsequently reduced to $250,000 because of California's cap on non-economic damages.
- *Bergman* case is notable for being the first of its kind, and squarely put physicians on notice regarding their duty to adequately provide pain relief.

Civil Action & Criminal Prosecution

- States such as Missouri, faced with skyrocketing cost of treating the opioid epidemic, have sued drug manufacturers, blaming them for their "*campaign of fraud and deception*."
- Given the publicity over soaring opioid death rates, one can expect aggressive criminal prosecution of drug dealers and medical professionals alike.

Criminal Prosecution

- Criminal prosecution for homicide is quite different from a civil lawsuit.
- Prosecution has to prove beyond reasonable doubt all of the legal elements contained in the definition: An act that caused the death of a human being with criminal intent and without legal justification.

Criminal Case I

- Oklahoma doctor charged with second–degree murder in overdose deaths of at least five patients from prescription painkillers and other drugs.
- Doctor had prescribed more than 3 million doses over a 5-year-period.
- In 2010, she had prescribed for a 47-year-old patient a total of 450 painkillers, muscle relaxants and anti–anxiety drugs — the so–called addict's "holy trinity."
- The patient died 6 days later.

Criminal Case II

- In 2014, a 71-year-old pain-management doctor pleaded guilty to 8 counts of second-degree murder in connection with several drug overdose deaths.
- He will serve eight years in prison.
- Doctor had reportedly prescribed more controlled drugs than any other physician in state of Oklahoma, which included Hydrocodone, Oxycodone, Alprazolam, Valium and Soma, as many as 600 pills at a time.

Criminal Case II (cont'd)

- He allegedly accepted only cash payment for the office visits.
- Review of his patient files revealed inadequate assessment of patient complaints or physical findings to justify the prescriptions.

Criminal Case III

- For the first time in 2014, New York convicted a doctor of manslaughter in the overdose deaths of patients from Oxycodone and Xanax.
- Some of the patients were prescribed as many as 500-800 pills over a 5-6 week period.

Criminal Case III (cont'd)

- The defendant, an anesthesiologist and pain- management specialist, allegedly saw upwards of 90 patients a day in his Queen's weekend storefront clinic, charging them on a per-prescription basis.
- In his defense, he claimed he was simply trying to help suffering people who misused medications and who misled him ("*tough patients and good liars*").

Unintended Consequences ?

- Doctors are increasingly cutting back or stopping entirely their prescriptions.
- Annual volume of prescription opioids shrank 29 percent between 2011 and 2017.
- As a result, some patients may resort to desperate measures to obtain their medications.

Washington Post Story
May 31, 2018

- Article draws attention to a 49-year-old trucker who had been taking large amounts of prescription opioids ever since hip surgery left him with nerve damage.
- Because no doctor nearby would write an opioid prescription, he had to drive 367 miles to his old pain clinic each month for a refill.
- Chronic pain patients may turn to unregulated alternatives, e.g., kratom, and some have threatened suicide.

American Dental Association Announces New Policy to Combat Opioid Epidemic

March 26, 2018

- The ADA supports mandatory continuing education in prescribing opioids and other controlled substances.
- The ADA supports statutory limits on opioid dosage and duration of no more than seven days for the treatment of acute pain …
- The ADA supports dentists registering with and utilizing Prescription Drug Monitoring Programs (PDMPs) to promote the appropriate use of opioids and deter misuse and abuse.