



# POLICY

## Medical Assistance in Dying

<b>STATUS:</b>	APPROVED
<b>Approved by Council:</b>	Sept 17, 2016
<b>Amended:</b>	n/a
<b>To be reviewed:</b>	n/a

### Background

On February 6, 2015, the Supreme Court of Canada struck down the law prohibiting medical assistance in dying.<sup>1</sup> The Canadian Government amended the Criminal Code provisions effective June 17, 2016.<sup>2</sup> The new legislation contains a number of requirements that must exist for physicians or nurse practitioners to provide medical assistance in dying. The most important of those are:

- 1) The patient must be eligible for health services funded by a government in Canada;
- 2) The patient must be at least 18 years of age and capable of making decisions with respect to their health;
- 3) The patient must have a grievous and irremediable medical condition;
- 4) The patient must have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure;
- 5) The patient must have given informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering including palliative care;
- 6) Two practitioners (physicians or nurse practitioners) must confirm that the patient meets the criteria established in the legislation to receive medical assistance in dying.

<sup>1</sup> *Carter v. Canada (Attorney General)*, 2015 SCC 5; <https://www.canlii.org/en/ca/scc/doc/2015/2015scc5/2015scc5.html?resultIndex=1>

<sup>2</sup> *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* [http://laws-lois.justice.gc.ca/PDF/2016\\_3.pdf](http://laws-lois.justice.gc.ca/PDF/2016_3.pdf)

The legislation states that a person has a grievous and irremediable medical condition only if they meet all of the following criteria:

- 1) They have a serious and incurable illness, disease, or disability;
- 2) They are in an advanced state of irreversible decline in capability;
- 3) That illness, disease, disability or state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable;
- 4) Their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time they have remaining.

The federal government has indicated that medical assistance in dying is intended to be restricted to those individuals who are declining towards death, allowing them to choose a planned death.

The new legislation contains a number of other provisions that provide protection to individuals involved in assisting patients to access medical assistance in dying. Among those are:

- 1) Protection for physicians and nurse practitioners who provide medical assistance in dying based upon a reasonable but mistaken belief that the patient qualified;
- 2) Protection for pharmacists and other health care workers who assist with medical assistance in dying;
- 3) Protection for individuals who provide information to patients about medical assistance in dying;
- 4) Protection for individuals who assist patients to self-administer medication that has been prescribed to them for the purpose of medical assistance in dying.

The College of Physicians and Surgeons of Saskatchewan has established this policy for the following purposes:

- 1) To provide information that will assist physicians and the public in understanding the criteria and procedural requirements that must be met regarding medical assistance in dying; and
- 2) To outline the specific legal requirements to participate in medical assistance in dying and to establish expectations of physicians who are involved with medical assistance in dying.

## Definitions

**Medical Assistance in Dying (MEDICAL ASSISTANCE IN DYING)** is defined in s. 241.1 of the *Criminal Code* to mean:

- 1) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or
- 2) the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.

**Administering Physician** – the physician who provides or administers the pharmaceutical agent(s) intended to cause the patient's death. The administering physician is responsible for confirming that all of the requirements of this Schedule have been met before the pharmaceutical agent(s) that intentionally cause the patient's death can be provided or administered. There can only be one administering physician for each patient.

## Foundational Principles

The foundational principles used by the College in developing this document include:

- 1) *Respect for patient autonomy*: Competent adults are free to make decisions about their bodily integrity. Given the finality of medical assistance in dying, significant safeguards and standards are appropriate to ensure that respect for patient autonomy is based upon carefully developed principles to ensure informed patient consent and consistency with the principles established by Canadian Law;
- 2) *Access*: Individuals who seek information about medical assistance in dying should have access to unbiased and accurate information. To the extent possible, all those who meet the criteria for medical assistance in dying and request it should have access to medical assistance in dying;
- 3) *Respect for physician values*: Within the bounds of existing standards of practice, and subject to the expectations in this document and the obligation to practise without discrimination as required by the *CMA Code of Ethics* and human rights legislation, physicians can follow their conscience when deciding whether or not to provide medical assistance in dying;
- 4) *Consent and capacity*: All the requirements for informed consent must clearly be met. Consent is seen as an evolving process requiring physicians to continuously communicate with the patient. Communications include exploring the priorities, values and fears of the patient, providing information related to the patient's diagnosis and prognosis, providing treatment options including palliative care interventions and

answering the patient’s questions. Consent must be express and voluntary. Given the context, a patient’s decisional capacity must be carefully assessed to ensure that the patient is able to understand the information provided and understands that the consequences of making a decision to access medical assistance in dying;

- 5) *Clarity*: Medical Regulatory Bodies should ensure, to the extent possible, that guidance or standards which they adopt:
  - a) provide guidance to patients and the public about the requirements which patients must meet to access medical assistance in dying;
  - b) advise patients what they can expect from physicians if they are considering medical assistance in dying; and,
  - c) clearly express what is expected of physicians.
- 6) *Dignity*: All patients, their family members and significant others should be treated with dignity and respect at all times, including throughout the entire process of care at the end of life;
- 7) *Accountability*: Physicians participating in medical assistance in dying must ensure that they have appropriate technical competencies as well as the ability to assess decisional capacity, or the ability to consult with a colleague to assess capacity in more complex situations;
- 8) *Duty to Provide Care*: Physicians have an obligation to provide ongoing care to patients unless their services are no longer required or wanted or until another suitable physician has assumed responsibility for the patient. Physicians should continue to provide appropriate and compassionate care to patients throughout the dying process regardless of the decisions they make with respect to medical assistance in dying.

## 1. Conscientious Objection

A physician who declines to provide medical assistance in dying must not abandon a patient who makes this request; the physician has a duty to treat the patient with dignity and respect. The physician is expected to provide sufficient information and resources to enable the patient to make his/her own informed choice and access all options for care. This means arranging timely access to another physician or resources, or offering the patient information and advice about all the medical options available. Physicians must not provide false, misleading, intentionally confusing, coercive or materially incomplete information, and the physician’s communication and behaviour must not be demeaning to the patient or to the patient’s beliefs, lifestyle choices or values. The obligation to inform patients may be

met by delegating this communication to another competent individual for whom the physician is responsible.

A physician who declines to provide medical assistance in dying must make available the patient's chart and relevant information (i.e., diagnosis, pathology, treatment and consults) to the physician(s) providing medical assistance in dying to the patient when authorized by the patient to do so; and document the interactions and steps taken by the physician in the patient's medical record, including details of any refusal and any resource(s) to which the patient was provided access.

## 2. Requirements for Access to Medical Assistance in Dying:

**Federal legislation requires that** to be eligible for medical assistance in dying, the patient must meet all of the following criteria:

- a) be eligible for publicly funded health services in Canada;
- b) be at least 18 years of age and capable of making decisions with respect to their health;
- c) have a grievous and irremediable medical condition (including an illness, disease or disability); and
- d) make a voluntary request for medical assistance in dying that is not the result of external pressure; and
- e) provide informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve the patient's suffering, including palliative care.

According to the federal legislation, a person has a grievous and irremediable medical condition only if **all** of the following criteria are met:

- a) they have a serious and incurable illness, disease or disability;
- b) they are in an advanced state of irreversible decline in capability;
- c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and,

- d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

**The College requires that:**

A. Any physician who conducts an assessment for the purpose of determining if a patient is eligible for medical assistance in dying pursuant to these requirements must:

1. have received approval from a Regional Health Authority or the College to perform assessments for the purpose of determining if a patient is eligible for medical assistance in dying: and,
2. be satisfied that the patient seeking medical assistance in dying has a grievous and irremediable medical condition which the physician has verified by:
  - a. a clinical diagnosis of the patient’s medical condition; and
  - b. a thorough clinical assessment of the patient which includes consideration of all relevant, current and reliable information about the patient’s symptoms and the available medical treatments to cure the condition or alleviate the associated symptoms which make the condition grievous, including, where appropriate, consultation with another qualified physician;
3. be fully informed of the current relevant clinical information about the patient and his/her condition;
4. be qualified to render a diagnosis and opine on the patient's medical condition or be able to consult with another physician with relevant expertise for the limited purpose of confirming the diagnosis, prognosis or treatment options;
5. use appropriate medical judgment and utilize a reasonable method of assessment;
6. when assessing whether a patient’s illness, disease or disability or state of decline causes the patient enduring physical or psychological suffering that is intolerable to the patient and cannot be relieved under conditions that the patient considers acceptable, ensure that:
  - a. the unique circumstances and perspective of the patient, including his/her personal experiences and religious or moral beliefs and values have been seriously considered;
  - b. the patient is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and

- c. treatment options described to the patient include all reasonable medical treatments to cure the condition or alleviate the associated symptoms which make it grievous or, if the patient is terminal, palliative care interventions; and the patient adequately understands the:
  - 1. current and anticipated course of physical symptoms, ability to function and pain and suffering specific to that patient; and
  - 2. effect that any progression of physical symptoms, further loss of function or increased pain may have on that specific patient; and
  - 3. available treatments to manage the patient’s symptoms or loss of function or to alleviate his/her pain or suffering.
- B. Each physician must document in the patient’s medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements of any assessment related to the patient’s eligibility for medical assistance in dying.

### **3. Specific Requirements for Assessing Medical Decision Making Capacity**

- A. Any physician who conducts an assessment of a patient for the purpose of determining if the patient is capable of making decisions with respect to their health pursuant to the federal requirements must be:
  - 1. fully informed of the current relevant clinical information about the patient and his/her mental and physical condition; and
  - 2. able to assess competence in the specific circumstances of the patient whose capacity is being assessed or be able to consult with another physician with relevant expertise for the limited purpose of assessing the patient’s medical decision making capacity.
- B. When it is unclear whether the patient is competent to make a decision to request medical assistance in dying, a psychiatric/psychological consult is required to examine the patient's decision-making capacity (or limitations) in greater detail.
- C. Each physician must document in the patient’s medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements of any assessments of a patient’s medical decision making capacity.

## 4. Specific Requirements for Obtaining Informed Consent

**The federal legislation requires that** before a physician provides medical assistance in dying, the physician must:

- (a) ensure that the request for medical assistance in dying was:
  - i. made in writing and signed and dated by:
    - a. the patient; or
    - b. where the patient is unable to sign and date the request, by another person (proxy) at the express direction of and in the presence of the patient. The person who serves as the proxy must:
      - 1. be at least 18 years of age;
      - 2. understand the nature of the request for medical assistance in dying;
      - 3. not know or believe that they are a beneficiary under the will of the patient or a recipient in any other way of a financial or other material benefit resulting from the patient's death; and
  - ii. signed and dated after the patient was informed by a physician or nurse practitioner that the patient has a grievous and irremediable medical condition.
- (b) be satisfied that the request was signed and dated by the patient or by the patient's proxy before two independent witnesses who then also signed and dated the request;
- (c) ensure that the person has been informed that they may, at any time and in any manner, withdraw their request;
- (d) ensure that another physician or nurse practitioner has provided a written opinion confirming that the person meets all of the eligibility criteria and be satisfied that they and the other physician or nurse practitioner providing the opinion are independent in that each of them:
  - i. is not a mentor to the other practitioner or responsible for supervising their work;
  - ii. does not know or believe that they are a beneficiary under the will of the patient, or a recipient, in any other way, of a financial or other material benefit resulting from that patient's death, other than standard compensation for their services relating to the request; or



- iii. does not know or believe that they are connected to the other practitioner or to the patient in any other way that would affect their objectivity;
- (e) ensure that there are **at least 10 clear days** between the day on which the request was signed by or on behalf of the patient and the day on which medical assistance in dying is provided or — if they and the other physician or nurse practitioner are both of the opinion that the patient’s death, or the loss of their capacity to provide informed consent, is imminent — any shorter period that the first physician or nurse practitioner considers appropriate in the circumstances;
- (f) immediately before providing medical assistance in dying, give the patient an opportunity to withdraw their request and ensure that the patient gives express consent to receive medical assistance in dying;
- (g) be satisfied that the patient remains capable at the time the patient will receive medical assistance in dying;
- (h) if the patient has difficulty communicating, take all necessary measures to provide a reliable means by which the patient may understand the information that is provided to them and communicate their decision.

**The federal legislation also provides that** any person who is at least 18 years of age and who understands the nature of the request for medical assistance in dying may act as an independent witness, except if that person:

- (a) knows or believe that they are a beneficiary under the will of the patient, or a recipient in any other way of a financial or other material benefit resulting from the patient’s death;
- (b) are an owner or operator of any health care facility at which the patient is being treated or any facility in which patient resides;
- (c) are directly involved in providing health care services to the patient; or
- (d) directly provide personal care to the patient.

**The College requires that:**

- A. Physicians who obtain informed consent for medical assistance in dying must have sufficient knowledge of the patient’s condition and circumstances to ensure that:

1. the patient is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and
  2. the treatment options described to the patient include all reasonable medical treatments to cure the condition or alleviate the associated symptoms which make it grievous and/or palliative care interventions where the patient is terminal; and
  3. the patient is offered appropriate counseling resources; and
  4. the patient fully understands that:
    - a. death is the intended result of the pharmaceutical agent(s); and
    - b. the potential risks and complications associated with taking the pharmaceutical agent(s).
- B. Each physician who obtains informed consent from the patient for medical assistance in dying must:
1. have either conducted his/her own assessment or be fully informed of the assessments conducted by other physicians of the patient's medical condition and the patient's medical decision making capacity; and
  2. meet the legal requirements for informed consent, including informing the patient of:
    - a. material information which a reasonable person in the patient's position would want to have about medical assistance in dying;
    - b. the material risks associated with the provision/administration of the pharmaceutical agent(s) that will intentionally cause the patient's death; and
  3. meet with the patient separate from family members or others who may influence the patient's decision least once to confirm that his/her decision to terminate his/her life alone at by medical assistance in dying is voluntary and that the patient has:
    - a. made the request him/herself thoughtfully; and
    - b. a clear and settled intention to end his/her own life by medical assistance in dying after due consideration;
    - c. considered the extent to which the patient has involved or is willing to involve others such as family members, friends, other health care providers or spiritual advisors in making the decision or informing them of his/her decision; and

- d. made the decision freely and without coercion or undue influence from family members, health care providers or others.
- C. Each physician must document in the patient’s medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements for obtaining informed consent.

## **5. Additional Requirements of the Federal Legislation**

The federal legislation also:

- (a) requires physicians who receive a written request for medical assistance in dying to provide information pursuant to regulations made by the minister of health;
- (b) requires that physicians who, in providing medical assistance in dying, prescribe or obtain a substance for that purpose must, before any pharmacist dispenses the substance, inform the pharmacist that the substance is intended for that purpose;
- (c) requires physicians to comply with guidelines established for the completion of certificates of death for patients to whom medical assistance in dying is provided;
- (d) creates criminal offences for knowingly failing to comply with the eligibility and safeguard requirements set out in criminal code and destroying documents with the intent to interfere with a patient’s access to medical assistance in dying, the assessment of a request for medical assistance in dying or a person seeking an exemption related to medical assistance in dying.

The College expects physicians to comply with the federal and provincial regulations and guidelines described above as they come into force and effect.

## **6. Specific Requirements of the Prescribing or Administering Physician**

In this section “prescribing physician” refers to a physician who prescribes pharmaceutical agent(s) for the purpose of patient self-administration to terminate the patient’s life.

In this section “administering physician” refers to a physician who administers pharmaceutical agent(s) for the purpose of terminating the patient’s life.

In this section “self-administration”, “administration by the patient” and similar terms include situations where pharmaceutical agent(s) are administered with the assistance of a non-physician at the direction of the patient.

A. The College requires that:

1. an administering physician must have the authorization of a Regional Health Authority to administer pharmaceutical agents to cause the death of patients where the pharmaceutical agent(s) are administered in a Regional Health Authority facility or the College if the pharmaceutical agents(s) are administered elsewhere;
2. a prescribing physician must have the authorization of the College to prescribe pharmaceutical agents to cause the death of patients;
3. an administering or prescribing physician must have appropriate knowledge and technical competency to provide/administer the pharmaceutical agent(s) in the appropriate form and/or dosage that will terminate the patient's life in the manner in which the patient was informed that it would terminate his/her life at the time the patient provided his/her consent;
4. a prescribing physician must have appropriate knowledge and technical competence to provide appropriate instructions to the patient as to how to administer the pharmaceutical agent(s) that will terminate the patient's life in the manner in which the patient was informed that it would terminate his/her life at the time the patient provided his/her consent in circumstances where the patient elects to self-administer the pharmaceutical agent(s) ~~to him/herself~~;
5. an administering physician must be readily available to care for the patient at the time the pharmaceutical agent(s) that intentionally brings about the patient's death is administered by the administering physician or taken by the patient until the patient is dead; and
6. A prescribing physician must
  - a. Personally take possession of the pharmaceutical agents that are intended to bring about the patient's death;
  - b. Personally deliver the pharmaceutical agent(s) to the patient at the time and location that the patient chooses to self-administer the pharmaceutical agent(s);
  - c. Be personally present at the location chosen by the patient for the patient's death at the time chosen by the patient to self-administer the pharmaceutical agent(s);
  - d. Bring the necessary equipment and pharmaceutical agent(s) to cause the death of the patient by intravenous administration to the location chosen by the patient at the time chosen by the patient to self-administer the pharmaceutical agent(s);

- d. Have received instructions from the patient that if the self-administration by the patient does not result in the patient's death, and if the patient is incapable of providing instructions, or the patient requests the physician to administer pharmaceutical agents causing death, the physician will do so;
  - e. Administer pharmaceutical agents by intravenous administration to cause the death of the patient if the self-administration by the patient does not result in the patient's death, and if the patient is incapable of providing instructions, or the patient requests the physician to administer pharmaceutical agents causing death;
  - f. remain at the patient's location until the patient's death.
7. A prescribing or administering physician must certify, in writing, that he/she is satisfied on reasonable grounds that all of the following requirements have been met:
- a. The patient is at least 18 years of age;
  - b. The patient's medical decision making capacity to consent to receiving medication that will intentionally cause the patient's death has been established in accordance with the requirements of the *Criminal Code* and this policy;
  - c. All of the requirements of the *Criminal Code* and this policy in relation to assessing eligibility for medical assistance in dying and obtaining and documenting informed consent have been met; and
8. A prescribing or administering physician must ensure that the requirements of physicians set out in all relevant federal and provincial legislation, including the *Criminal Code* and *The Coroner's Act, 1999* in respect to reporting and/or registering the cause and manner of the patient's death, including completing all required forms specified by the legislation or regulations, are met in a timely fashion.
- B. **The Coroner's Act, 1999** requires certain deaths to be reported to a coroner. A death from medical assistance in dying is a reportable death and a physician participating in a medical assistance in dying must comply with the requirements of that Act.

## **Use of Standard Forms**

The Government of Saskatchewan established a working group with broad representation to provide recommendations for forms which could be used to assist physicians, nurse practitioners, pharmacists and other health professionals to comply with the legislation.

The College expects that physicians who assess patients for eligibility for medical assistance in dying, or who administer or prescribe for medical assistance in dying will utilize the forms that have been developed.

The forms developed by the working group are attached as appendices to this policy and include the following:

- 1) Record of Request for Medical Assistance in Dying (Maid)
- 2) First Willing Practitioner Record for Medical Assistance in Dying
- 3) Second Opinion<sup>+</sup> Record for Medical Assistance in Dying
- 4) Prescription Protocol for Practitioner-Administered Medical Assistance in Dying (Injection)
- 5) Confirmation of Patient’s Consent to Medical Assistance in Dying (Maid)

Additional documentation developed by the working group will be made available through the Government of Saskatchewan, the College of Physicians and Surgeons website, or both.

## **Reporting and Data Collection**

The federal government has indicated its intention to create a formal oversight and reporting body that would collect data on medical assistance in dying.

The federal legislation empowers the federal minister of health to make regulations defining a monitoring system for medical assistance in dying in Canada. According to the federal government, these regulations could stipulate the types of data to be provided and to whom; the body that would collect and analyze the information; and how often reports would be published, for example.

Until such regulations are in force, the federal government has committed to working collaboratively with the provinces and territories on a protocol for the collection of medical assistance in dying data. The College will keep its members abreast of any developments in this regard.