

# CPSM DRAFT STATEMENT ON PHYSICIAN ASSISTED DYING – OCTOBER 15, 2015

## BACKGROUND

The Supreme Court of Canada (SCC) declared that as of February 6, 2016 it is legal for a *physician* to assist a competent adult person to die where that person:

- clearly consents to the termination of life; and
- has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to that person.<sup>1</sup>

The SCC also found that:

- Nothing in its declaration compels *physicians* to provide assistance in dying.
- The *Charter* rights of *patients* and *physicians* need to be reconciled in any legislative or regulatory regime in which *physician assisted dying* is permitted.
- *Physicians* are capable of reliably assessing *patient* competence and it is possible to detect vulnerability, coercion, undue influence, and ambivalence as part of the assessment process for informed consent and medical decisional making capacity.
- Informed consent can apply to a *patient* seeking *physician assisted dying*, so long as care is taken to ensure the *patient* is properly informed of his/her diagnosis and prognosis and the treatment options offered to the *patient* include all reasonable palliative care interventions.

## SCOPE

This Statement applies to all *physicians*.

## DEFINITIONS

The following definitions apply in this Statement and do not necessarily apply in other contexts.

***Physician Assisted Dying*** - medical intervention that involves a *physician* providing or administering medication that intentionally causes the *patient's* death at the *patient's* request.

***Grievous and Irremediable Medical Condition*** - a medical condition, including an illness, disease or disability, which meets all of the following criteria in accordance with the requirements of this Statement:

1. it has been confirmed by a clinical diagnosis made by at least two *physicians*; and
2. it is grievous in that it is serious and the current or impending associated symptoms are constant or enduring and cause severe physical or psychological pain or suffering; and
3. it is irremediable in that:
  - a) there are no medical treatments to cure the condition or alleviate the associated symptoms which make it grievous; or
  - b) medical treatments which are available to cure the condition or alleviate the associated symptoms which make it grievous are not acceptable to the *patient*.

***Patient*** - the person making a request for *physician assisted dying* and whose well-being must be the primary concern of any *physician* involved in providing assistance in dying.

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

**Physician** - A member of the College who is registered on the Manitoba Medical Register and who is licensed to practice medicine, excluding a member who is only practicing within a residency training program.

**Consulting Physician** – a **physician** who is consulted to conduct an assessment or provide advice or an opinion relevant to one or more of the requirements of this Statement.

**Administering Physician** – the **physician** who provides or administers medication that intentionally brings about the **patient's** death.

(Note: The same physician can be a **consulting** and **the administering physician** provided that at least two physicians are involved as required by this Statement.)

## **REQUIREMENTS**

### **I. Minimum Requirements of All Physicians**

- A. **Physicians** must not impede **patients'** access to **physician assisted dying** or impose their moral or religious beliefs about **physician assisted dying** on **patients**.
- B. A **physician** who elects not to provide or participate in **physician assisted dying** for any reason is not required to provide it or participate in it or to refer the **patient** to a **physician** who will provide **physician assisted dying** to the **patient**.
- C. When a **physician** receives a request from a **patient** to provide or participate in providing **physician assisted dying** to that **patient** or to be referred to another **physician** who will, if that **physician** elects not to provide or participate in providing **physician assisted dying** to the **patient** that **physician** must:
  1. disclose his/her objection to providing or participating in **physician assisted dying** to the **patient**; and
  2. provide the **patient** with timely access to another member or resource<sup>2</sup> that will provide accurate information about **physician assisted dying**<sup>3</sup>; and
  3. continue to provide care unrelated to **physician assisted dying** to the **patient** until that **physician's** services are no longer required or wanted by the **patient** or until another suitable **physician** has assumed responsibility for the **patient**; and
  4. make available the **patient's** chart and relevant information (i.e., diagnosis, pathology, treatment and consults) to the **physician(s)** providing **physician assisted dying** to the **patient** when authorized by the **patient** to do so; and
  5. provide a copy of this Statement to the **patient**.

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<sup>2</sup> Resources may include but are not limited to other health care providers, counsellors and publicly available resources for physician assisted dying.

<sup>3</sup> CPSM Statement 181 *Members Moral or Religious Beliefs not to Affect Medical Care*

## II. General Requirements of All *Physicians* Involved in Providing *Physician Assisted Dying*:

### A. Knowledge and Qualifications

1. A *physician* involved in providing *physician assisted dying* to a *patient* must be:
  - a. fully informed of that *patient's* individual circumstances which are relevant to that *physician's* role in providing assistance in dying to that *patient*; and
  - b. qualified by specialty, training or experience to meet the specific requirements of this Statement which apply to that *physician's* role.

### B. Documentation:

1. A *physician* involved in providing *physician assisted dying* to a *patient* must:
  - a. document in the *patient's* medical record details as to the *physician's* involvement in relation to each of the specific requirements of this Statement which apply to that *physician*; and
  - b. otherwise meet the specific requirements for documentation of this Statement.

## III. Specific Requirements for Assessing *Patient Eligibility for Physician Assisted Dying*

### A. *Physicians* who conduct this assessment must:

1. be fully informed of the current relevant clinical information about the *patient* and his/her condition; and
2. be qualified to render a diagnosis and opine on the *patient's* medical condition or be able to consult with a *consulting physician* who is so qualified; and
3. use appropriate medical judgment and follow a reasonable plan of assessment.

### B. At least two *physicians* must be satisfied that the following criteria have been met before providing *physician assisted dying* to that *patient*:

1. The *patient* seeking *physician assisted dying* is an adult, having reached the age of 18 years, which is the age of majority in Manitoba<sup>4</sup>.
2. The *patient* has a *grievous and irremediable medical condition* which has been 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*; and

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<sup>4</sup> The Age of Majority Act, C.C.S.M. c. A7

- c. confirmation by the *physicians* that the *patient's* medical condition is:
  - i. grievous in that it is serious and the current or impending associated symptoms are constant or enduring and cause severe physical or psychological pain or suffering; and
  - ii. irremediable in that:
    - there are no medical treatments to cure the condition or alleviate the associated symptoms which make it grievous; or
    - the medical treatments which are available to cure the condition or alleviate the associated symptoms which make it grievous are not acceptable to the *patient*.

C. When *physicians* assess whether the available treatments are acceptable to the *patient* and whether the *patient's* suffering is enduring and intolerable to the *patient*, they must ensure that:

1. the unique circumstances and perspective of the *patient*, including his/her personal experiences and religious or moral beliefs and values have been seriously considered; and
2. the *patient* is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and
3. 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
4. the *patient* adequately understands the:
  - a. current and anticipated course of physical symptoms, ability to function and pain and suffering specific to that *patient*; and
  - b. the effect that any progression of physical symptoms, further loss of function or increased pain may have on that specific *patient*; and
  - c. available treatments to manage the *patient's* symptoms or loss of function or to alleviate his/her pain or suffering.

D. Where the *patient* requesting *physician assisted dying*:

1. has not been diagnosed with a terminal illness (prognosis of less than 6 months); or
2. is not suffering from:
  - a. a catastrophic physical injury; or
  - b. intractable physical pain; or
  - c. an advanced state of irreversible significantly impaired function or a predictable and imminent decline to that state; or
3. appears to be experiencing suffering which is disproportionate to the *patient's* diagnosis or related symptoms,

the determination that the *patient* has a *grievous and irremediable medical condition* must be supported by an independent psychiatric assessment which rules out a treatable psychiatric disorder/illness that is distorting the *patient's* ability to tolerate or assess his/her suffering or whether available treatment options are acceptable to the *patient*.

#### IV. Specific Requirements for Assessing Medical Decisional Capacity

- A. *Physicians* who conduct this assessment must be:
  - 1. fully informed of the current relevant clinical information about the *patient* and his/her mental and physical condition; and
  - 2. qualified to assess medical decisional capacity in the specific circumstances of the *patient* whose capacity is being assessed or be able to consult with a *consulting physician* who is so qualified.
- B. At least two *physicians* must determine that the *patient* has the medical decisional capacity to provide his/her informed consent to receive medication that will intentionally cause the *patient's* death and confirm that the *patient's* decision to terminate his/her life by *physician assisted dying* is voluntary in accordance with the requirements of this Statement.
- C. Where any one of the at least two *physicians* involved in providing assistance to the patient in dying has a reasonable doubt as to the *patient's* medical decisional capacity, the *physician* who conducts any additional assessments required by this Statement must be enrolled on the Specialist Register as a psychiatrist.

#### V. Specific Requirements for Obtaining Informed Consent:

- A. *Physicians* who obtain informed consent from the *patient* 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 counseling resources which are available to assist that *patient*; and
  - 4. the *patient* fully understands that:
    - a. death is the intended result of taking the lethal medication; and
    - b. the potential risks and complications associated with taking the lethal medication.
- B. At least two *physicians*, one of whom must be the *administering physician*, must each meet separately with the *patient* and obtain informed consent from the *patient* in accordance with the requirements of this Statement.
- C. Each *physician* who obtains informed consent from the *patient* for *physician assisted 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 decisional capacity; and

2. meet the legal requirements of informed consent, including informing the *patient* of:
  - a. material information which a reasonable person in the *patient's* position would want to have about *physician assisted dying*; and
  - b. the material risks associated with the provision/administration of the medication that will intentionally cause the *patient's* death; and
3. ensure that the *patient* has been informed of his or her right to rescind the request at any time, in circumstances which the *physician* has taken reasonable steps to ensure that the *patient* has understood the information that has been provided to the *patient* throughout the process; and
4. meet with the *patient* alone at least once to confirm that *patient's* decision to terminate his/her life by *physician assisted dying* is voluntary in that the *patient* has:
  - a. made the request him/herself thoughtfully and repeatedly; and
  - b. has a clear and settled intention to end his/her own life after due consideration; and
  - c. has made the decision freely and without coercion or undue influence from family members, health care providers or others.
5. confirm that the *patient* has consistently expressed the intent to terminate his/her life through *physician assisted dying* over a reasonable period of time. What is a reasonable period of time will depend on the *patient's* medical condition and other circumstances:
  - a. In the case of a *patient* whose death is imminent (anticipated within 14 days or less) there are no additional time requirements in relation to confirming a consistent intent and final decision on the part of the *patient* after the *patient* has provided his/her informed consent to terminate his/her life through *physician assisted dying* in accordance with the requirements of this Statement
  - b. In all other cases, after the *patient* has provided his/her informed consent to terminate his/her life through *physician assisted dying* in accordance with the requirements of this Statement, at least two *physicians*, one of whom must be the *administering physician*, must again each meet separately with the *patient* and the *patient* must again provide his/her informed consent to terminate his/her life through *physician assisted dying* after at least 14 days has passed from the date that the *patient* last provided his/her informed consent.

- D. Before the medication that intentionally brings about the *patient's* death can be provided or administered, the *patient* must first complete the prescribed form (Appendix A – to be created once Statement is finalized) confirming that the *patient*:
1. has been advised of and understands the legal consequences of dying by *physician assisted dying*, including the potential for denial of life insurance or other benefits that may accrue to the *patient's* estate or beneficiaries on death; and
  2. is aware of the requirements of this Statement.

Where a *patient* is physically incapable of completing the form, the *patient* may direct another person to complete it on his/her behalf, in which case it must be completed and signed in the presence of the *patient* and a witness; and

- (a) neither the person completing the form or the witness can be a *physician* who provided assistance in dying or a family member, and
- (b) the *patient* must acknowledge the signature on the form in the presence of the witness, who must sign as witness in the *patient's* presence.

## VI. Specific Requirements of the *Administering Physician*

A. The *administering physician* must:

1. have appropriate knowledge and technical competency to provide/administer the medication 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; and
2. be qualified to provide appropriate instructions to the *patient* as to how to administer the medication 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 administer the medication to him/herself; and
3. be readily available to care for the *patient* at the time the medication that intentionally brings about the *patient's* death is administered by the *physician* or taken by the *patient* until the *patient* is declared dead by a *physician*; and
4. notify the Office of the Chief Medical Examiner of the date, time and location that the medication will be taken in the presence of or administered by the *administering physician* where the location is not a health care institution; and
5. certify, in writing, on the prescribed form (Appendix B – to be created once Statement is finalized) 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 this Statement;
  - c. All of the requirements of this Statement in relation to obtaining and documenting informed consent have been met; and
6. ensure that the requirements of *physicians* set out in *The Fatality Inquiries Act*, C.C.S.M. c. F52 and *The Vital Statistics Act*, C.C.S.M. c. V60 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.

**This Statement comes into force and effect on February 6, 2016 and is subject to any relevant legislation then in force.**

**A statement is a formal position of the College with which members shall comply.**