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Standard of Practice:
Physician-Assisted Death

This document is a Standard of Practice approved by the Council of the College of Physicians and Surgeons of Nova Scotia.

Standards reflect the minimum standard of professional behaviour and ethical conduct on a specific topic or issue expected by the College of all physicians in Nova Scotia. Standards also reflect relevant legal requirements and are enforceable under the *Medical Act*. A deviation in practice from a College Standard by a physician may give rise to discipline.

DRAFT

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1. INTRODUCTION

On February 6, 2015, the Supreme Court of Canada struck down the law prohibiting physician-assisted death[1]. The court suspended the implementation of the *Carter* decision for 12 months. The effect of the *Carter* decision is that after February 6, 2016, it will be legal for a physician to assist an adult patient to die if specified criteria have been met.

The Supreme Court of Canada recognized that the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of procedural safeguards and oversight. In the absence of federal or provincial legislation, this College Standard prescribes such safeguards and oversight to give effect to the *Carter* decision in a manner that is intended to neither restrict nor expand the court's ruling.

This Standard:

- provides information that will assist physicians and the public in understanding the criteria and procedural requirements that must be met regarding physician-assisted death;
- outlines the specific requirements for physician-assisted death as set out by *Carter*, including the criteria that must be met for a patient to be eligible for physician-assisted death;
- outlines the procedures to be followed by Nova Scotia licensed physicians who are involved with physician-assisted death;
- provides templates of documents requiring completion by physicians and patients involved in physician-assisted death;
- outlines third party reporting requirements for physicians;
- advises the public and physicians of the oversight mechanisms in place related to physician-assisted death.

This Standard needs to be read in conjunction with the Clinical Guidelines that accompany it and in the context of the definitions found in Article 11.

Since physician-assisted death is a new intervention available to patients, if there are concerns about the clarity or extent of legal issues, physicians are advised to consult with the Canadian Medical Protective Association (CMPA) prior to proceeding with physician-assisted death.

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

2. <u>INTERPRETATION</u>

This Standard is to be interpreted in a manner that:

- respects the autonomy of patients, such that capable adults are free to make decisions about physician-assisted death within the criteria established in this Standard;
- maintains the dignity of patients and treats with respect patients, their family members and others involved in end of life decisions;
- promotes equitable access to physician-assisted death;
- recognizes an appropriate balance between the physician's freedom of conscience and the patient's right to life, liberty and security of the person.

3. <u>SCOPE OF STANDARD</u>

This Standard relates only to situations where in response to a patient's request for physician-assisted death, a physician either prescribes medication or administers medication to a patient who meets the criteria in this Standard.

This Standard is not about palliative care[2]. It is not intended to affect the ongoing provision of palliative care, or to provide a substitute for it.

4. <u>RESPONSIBILITY OF PHYSICIANS NOT ABLE OR WILLING TO PARTICIPATE IN PHYSICIAN-ASSISTED DEATH</u>

No physician can be compelled to prescribe or administer medication for the purpose of physician-assisted death.

If a physician is **<u>unable</u>** to participate in physician-assisted death for reasons other than conscience (such as for reasons of personal illness, lack of availability, or lack of expertise), the physician **<u>must</u>** make an effective referral for any patient requesting physician-assisted death.

If a physician is **<u>unwilling</u>** to participate in physician-assisted death for reasons of conscience, it is **<u>recommended</u>** that the physician make an effective referral for any patient requesting physician-assisted death. During the first visit in which a patient requests physician-assisted death, this physician must:

1. advise the patient that he or she will not, for reasons of conscience, participate in physician-assisted death;
2. provide the patient with a copy of this Standard;

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[2] See definition of "palliative care" in article

3. provide the patient with the contact information for the College for general information about physician-assisted death: www.cpsns.ns.ca or 902-422-5823;

4. make an effective referral to the XXX directly or, if not willing to do so, provide the patient with contact information for the XXX[3]. If the physician is not willing to make direct contact, the physician must ensure the patient understands that the next step in the process is for the patient to contact the XXX directly and that the onus is on the patient to do so;

5. expeditiously provide all relevant medical records to the physician providing services related to physician-assisted death;

6. continue to provide medical services unrelated to physician-assisted death unless the patient requests otherwise or until an effective transfer of care has been completed.

5. ELIGIBILITY CRITERIA FOR PATIENTS TO ACCESS PHYSICIAN-ASSISTED DEATH

1. Physicians cannot act on a request for physician-assisted death set out in a Personal Directive or similar document.

2. Physicians cannot act on a request for physician-assisted death on the direction of anyone other than the patient.

3. A physician may provide physician-assisted death only where all the following eligibility criteria are met:

   - The patient must be an adult;
   - The patient must be capable of giving consent to physician-assisted death;[4]
   - The patient's decision to undergo physician-assisted death must be made freely, without coercion or undue influence;[5]
   - The patient's decision to undergo physician-assisted death must be informed;[6]

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[3] Discussions are underway to determine which organization will maintain a list of physicians who are prepared to meet with patients to review matters associated with physician-assisted death. This draft will be updated once further information is available.
[4] see link to *Policy and Guidelines regarding Informed Patient Consent to Treatment (hyperlink these references & provide in appendix for print version)*
[5] See *Policy and Guidelines regarding Informed Patient Consent to Treatment*
[6] See *Policy and Guidelines regarding Informed Patient Consent to Treatment*

- The patient must have a grievous and irremediable medical condition (including an illness, disease or disability). To meet the "irremediable" requirement, a patient is not required to undertake treatments that are unacceptable to the patient;

- The grievous and irremediable medical condition must cause enduring suffering that is intolerable to the patient in the circumstances of his or her condition.

6. DUTIES OF FIRST AND SECOND PHYSICIANS - ASSESSMENT

A. GENERAL

This Standard requires that at least two physicians are involved in the assessment of eligibility of a patient requesting physician-assisted death. This Standard refers to these roles as the First and Second Physician.

If the grievous and irremediable medical condition is primarily a mental illness, then either the First or Second Physician must be a psychiatrist or their assessment of eligibility of the patient must be informed by a psychiatric opinion.

Physicians who take on the role of First or Second Physician must:

- thoroughly familiarize themselves with this Standard;
- not be in any conflict of interest with the patient.[7]

B. DUTIES OF FIRST PHYSICIAN

Upon obtaining written direction from the patient, the First Physician must:

1.1 act as the patient navigator, a general responsibility that includes keeping the patient informed throughout the process about all relevant information and being responsive to the patient's questions. In fulfilling this role, the First Physician must:

- engage in a discussion of the patient's diagnosis, prognosis and treatment options;
- engage in a discussion of the availability of palliative care for terminally ill patients; and
- give the patient a copy of this Standard and the contact information for the College to access general information about physician-assisted death: www.cpsns.ns.ca or 902-422-5823;

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[7] For example, neither the First or Second Physician can be a beneficiary of a person's estate. For additional guidance, see Guidelines Regarding Conflict of Interest

1.2 expeditiously assess the patient in person to determine whether the patient meets the eligibility criteria:

- In order to determine that a patient meets the eligibility criteria, the First Physician, prior to referral to the Second Physician, must rely either:
  - on his or her assessment of the patient alone; or
  - on his or her assessment of the patient in combination with the opinions of one or more other Regulated Health Professionals (not including the Second Physician for that patient).

1.3 upon being satisfied the patient meets the eligibility criteria:

- expeditiously arrange for a Second Physician to assess the patient
- inform the patient as to whether he or she, as First Physician, would be willing and able to prescribe or administer the medication.
- if unwilling or unable to prescribe or administer the medication, refer the patient to a Second Physician who is known to be willing and able to prescribe or administer the medication if the eligibility criteria are met.

1.4 before prescribing or administering the medication (if taking on that role):

- review all documentation provided by the Second Physician. Specifically, the First Physician must ensure that the Second Physician agrees that the eligibility criteria are met.
- advise the patient both orally and in writing of the patient's right to rescind the request for physician-assisted death at any time. If the patient rescinds the request for physician-assisted death and subsequently makes another request for physician-assisted death, the First Physician must re-start the process and execute all the duties of the First Physician as if the process had not been previously commenced.

1.5 complete the documentation and reporting requirements of this Standard:

- see Articles 8 and 9.

1.6 if unable to complete the role, the First Physician shall make an effective referral to another physician to take on the role of the First Physician. In this circumstance, if the Second Physician has already determined the patient meets the eligibility criteria, the Second Physician is not required to reassess the patient and provide new confirmation of eligibility.

C. Duties of Second Physician

The Second Physician must:

1.1 upon receipt of a request from the First Physician, expeditiously assess the patient in person to determine whether the patient meets the eligibility criteria:

- in order to be satisfied that the patient meets the eligibility criteria, the Second Physician must rely either
  - on his or her assessment of the patient alone; or
  - on his or her own assessment of the patient in combination with the opinions of one or more other Regulated Health Professionals (not including the First Physician for that patient).
- where arrangements have been made for the First Physician to prescribe or administer the medication, then after the Second Physician has assessed the patient, the Second Physician must send the required documentation to the First Physician confirming whether the patient meets the eligibility criteria.

1.2 before prescribing or administering the medication (if taking on that role):

- review the documentation provided by the First Physician, and be satisfied that the First Physician is of the opinion that the eligibility criteria are met.
- advise the patient both orally and in writing of the patient's right to rescind the request for physician-assisted death at any time. If the patient rescinds the request for physician-assisted death and subsequently makes another request for physician-assisted death, the Second Physician must refer the patient back to the First Physician to re-start the process

1.3 complete the documentation and reporting requirements of this Standard:

- see Articles 8 and 9

7. <u>DUTIES OF FIRST AND SECOND PHYSICIANS – PRESCRIBING OR ADMINISTERING MEDICATION</u>

The medication may be prescribed or administered by either the First or Second Physician at the patient’s request.

The physician prescribing or administering the medication must be familiar with and comply with the *Clinical Guidelines for Physician-Assisted Death,* attached.

The medication may be prescribed by either the First of Second Physician. The medication can only be prescribed or administered to a patient who meets the eligibility criteria at the time of prescribing or administering the medication.

8. DOCUMENTATION

Content of this section to be added later, and will prescribe documentation requirements, including those for the First and Second Physicians. This section will also reference forms to be prepared by the First and Second Physician, and include copies of these forms. It will also include forms for patients.

9. REPORTING REQUIREMENTS

Content of this section to be inserted after further consultation. One issue that will be addressed is how to complete death certificates where physician-assisted death is involved. The College recommends the cause of death be the grievous and irremediable medical condition that qualified the patient to be eligible for a physician-assisted death. Physician-assisted death (including whether by physician prescription or administration of medication) will be noted as the mechanism utilized. Instructions will be consistent with any changes that may be made in relation to physician-assisted death under Vital Statistics regulations. This reporting on the death certificate, in combination with other reporting requirements that may be established, will ensure that incidents of physician-assisted death can be readily captured and available to the Medical Examiner and the oversight body set out in Article 10.

10. OVERSIGHT PROCESS

The College is recommending that the government of Nova Scotia appoint an oversight body to perform a monitoring function with respect to physician-assisted death. The composition of the oversight body will be determined by government, but the College is recommending it include representation from the public as well as representation reflecting medical, pharmacy, legal and ethics perspectives. Terms of reference and other information on the oversight body will be provided later.

11. DEFINITIONS

For purposes of this Standard:

"**adult**" means a person who is 19 years or older;

"**capacity**" has the same meaning as set out in the Policy and Guidelines regarding Informed Patient Consent to Treatment[8];

"***Carter* Decision**" means the 2015 decision of the Supreme Court of Canada striking down the Criminal Code provisions regarding physician-assisted death, referenced in footnote 1;

"***Carter* Trial Decision**" means the 2012 decision of the British Columbia Supreme Court, referenced as *Carter v Canada (Attorney General*), 2012 BCSC 886;

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[8] Include hyperlink to Policy

"**effective referral**" means a referral made by one physician in good faith to another physician who is available to accept the referral, accessible to the patient, and willing to provide physician-assisted death to patients who meet the eligibility criteria;

"**eligibility criteria**" means the criteria set out in Article 5 of this Standard which must be met by a patient in order to access physician-assisted death, and "eligible" and "eligibility" have similar meaning as the context requires;

"**First Physician**" means the physician who agrees to perform the functions set out in Article 6B, 7 and elsewhere in this Standard;

"**medication**" means the medication prescribed by or administered by the First Physician or Second Physician for the purposes of physician-assisted death;

"**palliative care**" means care provided to people of all ages who have a life-limiting illness, with little or no prospect of cure, and for whom the primary treatment goal is quality of life. The treatment is aimed at alleviating suffering – physical, emotional, psychological, or spiritual – rather than curing. It aims neither to hasten nor to postpone death, but affirms life and regards dying as a normal process. It recognizes the special needs of patients and families at the end of life, and offers a support system to help them cope;[9]

"patient" means the person seeking physician-assisted death;

"**physician-assisted death**" describes the situation where a physician prescribes or administers medication that intentionally brings about the patient's death at the request of the patient;

"**Regulated Health Professional**" means a currently licensed member of a regulated health profession, as that term is defined in the *Regulated Health Professions Network Act*, SNS 2012, s. 48;

"**Second Physician**" means the physician who agrees to assess the patient at the request of the First Physician to determine whether the patient meets the eligibility criteria for physician-assisted death and who performs the functions set out in Article 6C and elsewhere in this Standard.

12. ACKNOWLEDGEMENTS

- FMRAC Guidance Document approved June 6, 2015
- CPSO Policy re Professional Obligations and Human Rights
- CPSS/CPSA Policies ...... (*include reference to any other documents from MRAs that have been used for guidance)*
- *Include reference to Oregon or other documents that formed precedents for forms*

[9] From paragraph 41 of *Carter* Trial Decision.

13. DOCUMENT HISTORY

- First approved in principle by the Council of the College of Physicians and Surgeons of Nova Scotia: Date: December 11, 2015
- Approximate date of next review: Date (3 years after first approval)

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