ADVICE TO THE PROFESSION: MEDICAL ASSISTANCE IN DYING

Advice to the Profession companion documents are intended to provide physicians with additional information and general advice in order to support their understanding and implementation of the expectations set out in policies. They may also identify some additional best practices regarding specific practice issues.

Updated October 1, 2020
(* indicates an updated question)

Historically, it has been a crime in Canada to assist another person to end their own life. This criminal prohibition has applied to circumstances where a physician provides or administers medication that intentionally brings about a patient's death, at the request of the patient.

However, in the case of *Carter v. Canada*,[1] the Supreme Court of Canada (SCC) determined that the criminal prohibition on medical assistance in dying (MAID) violates the *Charter* rights of competent adults, who are suffering intolerably from grievous and irremediable medical conditions, and seek assistance in dying. The federal government subsequently enacted legislation, through amendments to the *Criminal Code*, to establish a federal framework for MAID in Canada.

The *Medical Assistance in Dying* policy, including the 'Process Map' contained within the policy, set out physicians' legal and professional obligations regarding MAID. This companion Advice document is intended to help physicians interpret the expectations set out in the policy and provide guidance on how these expectations may be effectively discharged.

Effective Referrals: What Physicians Need to Know

The College recognizes that physicians have the right to limit the health services they provide for reasons of conscience or religion and so may choose not to be involved in assessing or providing MAID. In recognizing this right, the College *does not* require physicians to assess a patient's eligibility for MAID or provide MAID in any circumstances.

When physicians limit the health services they provide for reasons of conscience or religion, the College requires that they provide patients with an 'effective referral'.

What is an effective referral?

Physicians make an effective referral when they take positive action to ensure the patient is connected in a timely manner to a non-objecting, available, and accessible physicians, other-health-care professional, or agency that provides the service or connects the patient directly with a health-care professional who does.

The objective is to ensure access to care and respect for patient autonomy. An effective referral *does not* guarantee that a patient will receive a treatment or signal that the objecting physician endorses or supports the treatment. An effective referral also *does not necessarily* require that a referral in the formal clinical sense be made and does not require the physician to assess or determine whether the patient is a

suitable candidate or eligible for the treatment to which the physician objects.

An effective referral involves taking the following steps:

1. **The physician takes positive action to connect a patient with another physician, healthcare professional, or agency.** The physician can take these steps themselves or assign the task to someone else, so long as that person complies with the College's expectations.
2. **The effective referral must be made to a non-objecting physician, healthcare professional, or agency that is accessible and available to the patient.** The physician, healthcare professional, or agency must be accepting patients/open, must not share the same religious or conscience objection as the physician making the effective referral, and must be in a location that is reasonably accessible to the patient or accessible via telemedicine where appropriate.
3. **The effective referral must be made in a timely manner, so that the patient will not experience an adverse clinical outcome due to a delay in making the connection.** A patient would be considered to suffer an adverse outcome due to a delay if, for example, the patient is no longer able to access care (e.g., for time sensitive matters such as emergency contraception, an abortion, or where a patient wishes to explore MAID), their clinical condition deteriorates, or their untreated pain or suffering is prolonged.

What are some examples of an effective referral?

The following are examples of the steps physicians can take to ensure their patient is connected in a timely and appropriate manner. The examples provided are not exhaustive and the steps needed to ensure a connection is made depend on the patient's circumstances. Physicians will need to use their judgement, considering the patient's particular circumstances, when determining how to meet this obligation.

The physician or designate contacts a non-objecting physician or non-objecting healthcare professional and arranges for the patient to be seen or transferred[2].

The physician or designate connects the patient with an agency charged with facilitating referrals for the healthcare service, and arranges for the patient to be seen at that agency. For instance, in the MAID context, in appropriate circumstances an effective referral could include the physician or designate contacting Ontario's Care Coordination Service (CCS). The CCS would then connect the patient with a willing provider of MAID-related services.

A practice group in a hospital, clinic or family practice model identifies patient queries or needs through a triage system. The patient is directly matched with a non-objecting physician in the practice group with whom the patient can explore all options in which they have expressed an interest.

A practice group in a hospital, clinic or family practice model identifies a point person who will facilitate referrals or who will provide the healthcare to the patient. The objecting physician or their designate connects the patient with that point person.

For more information regarding physicians' right to freedom of conscience and religion and the basis for the College's expectations, please see the College's *Advice to the Profession: Professional Obligations and Human Rights* companion resource.

Other Frequently Asked Questions

What does the term 'medical assistance in dying' encompass?

As set out in the federal legislation, MAID refers to an individual seeking and obtaining the assistance of a physician or nurse practitioner to end his/her life. This assistance encompasses two potential scenarios:

i. The physician or nurse practitioner provides the patient with the means to end his/her own life (e.g., a prescription for a fatal dose of medication); or
ii. The physician or nurse practitioner is directly involved in administering an agent to end the patient's life. This is often referred to as voluntary euthanasia.

What criteria must be met in order for an individual to access MAID?

As set out in the federal legislation, for an individual to access MAID, they must:

i. Be eligible for publicly-funded health services in Canada;
ii. Be at least 18 years of age and capable of making decisions with respect to their health;
iii. Have a grievous and irremediable medical condition (including an illness, disease or disability);
iv. Make a voluntary request for MAID that is not the result of external pressure; and
v. Provide informed consent to receive MAID after having been informed of the means that are available to relieve their suffering, including palliative care.

As noted in the policy, before providing MAID, physicians must be satisfied that patients meet all of these criteria.

What is a grievous and irremediable medical condition?

An individual must have a grievous and irremediable medical condition to access MAID. As set out in the federal legislation, an individual has a grievous and irremediable medical condition if:

i. They have a serious and incurable illness, disease or disability;
ii. They are in an advanced state of irreversible decline in capability;
iii. 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
iv. 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 the individual has to live.

Further details on interpreting the statutory definition of a grievous and irremediable medical condition can be found in the companion resources developed by the federal government: https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html

Does an individual have to be terminally ill to receive MAID?

The federal government has stated that an individual need not have a terminal condition to be eligible for medical assistance in dying. Rather, there must be a real possibility of death, evidenced by the individual's irreversible decline, within a period of time that is foreseeable in the not too distant future. The federal government advises that the nature of the illness causing the individual intolerable and enduring suffering, and any other medical conditions or health-related factors such as age and/or frailty, are to be considered in assessing the individual's trajectory towards death.

Patients must be capable with respect to making a decision about MAID in order to receive MAID. Does this mean they have to be capable at the time of their request or when they receive MAID, or both?

The federal legislation specifies that medical assistance in dying is available only to individuals who are capable of making decisions with respect to their health. In accordance with the legislation, the patient must provide the physician or nurse practitioner with their expressed consent immediately prior to receiving medical assistance in dying. This means that the patient must maintain decision-making capacity from the time the request for medical assistance in dying is made, right up to the time at which medical assistance in dying is provided.

This is important if the patient decides to self-administer MAID. If the patient's death is prolonged or not achieved, it will not be possible for the clinicians involved in the process to administer a fatal dose of medication to achieve death unless the patient remains capable and can provide consent immediately prior to MAID being provided by the clinician.

Can requests for MAID be made through an advance directive or the patient's substitute decision-maker?

No. All requests for medical assistance in dying must be made directly by the patient, and not through an advance directive, or the patient's substitute decision-maker. The federal legislation specifies that medical assistance in dying is available only to individuals who are capable of making decisions with respect to their health. The individual's decision-making capacity must be maintained right up until the time medical assistance in dying is provided. A substitute decision-maker would only make decisions for a patient in circumstances where the patient no longer has capacity. Similarly, advance directives only take effect if the patient loses capacity. With respect to medical assistance in dying, therefore, substitute decision-makers do not have a role to play, and advance directives are not applicable.

Could an individual with a mental illness potentially meet the criteria for MAID?

Individuals with mental illness are not prevented from accessing medical assistance in dying, as long as they meet the criteria for medical assistance in dying, as set out in the federal legislation. This includes the requirement that the individual who is seeking medical assistance in dying has decision-making capacity. The federal government has stated that where an individual is suffering only from a mental illness, the criteria for medical assistance in dying would not be satisfied. The federal government has committed to conducting further studies to examine the legal, medical and ethical questions that arise where individuals, who suffer from mental illness only, are seeking a medically assisted death.

Can assessments of patient eligibility or witnessing of patient requests for MAID be done virtually, or do they need to be done in person?

The *Criminal Code* is silent on whether assessments of patient eligibility or witnessing of patient requests can be done virtually. That said, Health Canada has indicated that virtual tools can be used to support the MAID process during the pandemic.

The College acknowledges that virtual tools may be used to conduct patient eligibility assessments and witness requests for MAID in the same circumstances these tools are used for all health care: when physicians can satisfy all their legal and professional obligations. The use of virtual tools for health care, including MAID, is particularly relevant within the context of the pandemic and aligns with Health Canada's guidance.

As with use of virtual tools in general, physicians must contemplate the appropriateness of using this modality on a case-by-case basis, ensuring they can meet their legal and professional obligations. In this context, conducting assessments of patient eligibility or witnessing patient requests for MAID virtually may introduce risks that need to be mitigated in order to ensure compliance with the *Criminal Code* (e.g., ensuring voluntariness) and physicians' professional obligations. In addition to using their professional judgment, physicians might look to best practices or any guidelines that have been developed to support these practices. For example, the Canadian Association of MAID Assessors and Providers has collaborated with Dying with Dignity to develop resources which physicians may find helpful.

The College recognizes that virtual care has always played an important role in enabling access to MAID given the uneven distribution of MAID assessors and providers across the province, and similarly appreciates the increased value virtual tools offer to support access to care and mitigate the risks associated with providing care during a pandemic. Our focus is on ensuring that physicians comply with the requirements of the *Criminal Code* and that the procedural safeguards that have been put in place to protect patients are satisfied in all instances, whether done in-person or virtually.

I'm a patient and looking for assistance in accessing MAID or looking for more information, what can I do?

The provincial government has established a Care Coordination Service (CCS) for MAID to help clinicians connect patients with willing providers of MAID related services.

Patients may contact the CCS directly to receive information about end-of-life options in Ontario, including information on hospice care, other palliative care options in their communities, and medical assistance in dying. Patients can also call the CCS to request to be connected to a physician or nurse practitioner who provides medical assistance in dying services, such as eligibility assessments. The CCS can be reached toll free by calling 1-866-286-4023. Patients may also find the College's *Medical Assistance in Dying: 10 Things Patients Should Know* document to be helpful.

Endnotes

1. *Carter v. Canada (Attorney General)*, 2015 SCC 5 [*Carter*].

2. A transfer of care in this situation would be specific to the care to which the physician objects. A transfer is not equivalent to ending the physician-patient relationship. Physicians must not terminate the physician-patient relationship simply because the patient wishes to explore a care option to which the physician has a conscientious objection.