

Physician-Assisted Dying Guidance Document

Background

On February 6, 2015, the Supreme Court of Canada struck down the law prohibiting physician-assisted dying.¹ The court suspended that decision for 12 months. The effect of that decision is that, after February 6, 2016, it will not be illegal for a physician to assist a patient to die if:

- 1) The patient consents;
- 2) The patient has a grievous medical condition;
- 3) The condition is not remediable using treatments that the patient is willing to accept;
and,
- 4) The patient's suffering is intolerable to the patient.

In the absence of federal, provincial or territorial legislation related to physician-assisted dying, it falls to the medical regulatory authorities in Canada to develop standards or guidance for physicians within their provinces or territories.

Introduction

Following are the recommendations of the Advisory Group on Physician-Assisted Dying that was struck by the Federation of Medical Regulatory Authorities of Canada (FMRAC) in response to the aforementioned.

The purpose of this document is to provide recommendations that can be used as a resource by the medical regulatory authorities in Canada to develop standards or guidance for physicians within their provinces or territories if there is no legislation which governs physician-assisted dying. The Advisory Group acknowledges that a draft framework from the Canadian Medical Association (CMA) formed the basis for this document.

The Advisory Group recognizes that there may be legislation in future which addresses some of the matters addressed in this document. Where such legislation exists, the provisions of that legislation will take priority over the recommendations in this document if there is any inconsistency between the two.

The Advisory Group also acknowledges that each medical regulatory authority may choose to address the issue of physician-assisted dying in a somewhat different manner. For the purpose of this document, the Advisory Group has adopted the definition of physician-assisted dying from the Supreme Court's decision in *Carter v. Canada*² as, "the situation where a physician provides or administers medication that intentionally brings about the patient's death, at the request of the patient."

¹ [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>

² *Ibid* at para. 40

Foundational Principles

Guidance or standards documents developed by the medical regulatory authorities in Canada should be based upon certain foundational principles, including:

- 1) *Respect for patient autonomy*: Competent adults are free to make decisions about their bodily integrity. Given the finality of physician-assisted 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 the Supreme Court of Canada.
- 2) *Equity*: Individuals who seek information about physician-assisted dying should have access to unbiased and accurate information. To the extent possible, all those who meet the criteria for physician-assisted dying should have access to this intervention.
- 3) *Respect for physician values*: Within the bounds of existing standards of practice, and subject to 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 physician-assisted dying. This document does not address the extent to which physicians may be expected to ensure that patients seeking information about physician-assisted dying receive that information. This document does not address the extent to which physicians may be required to refer patients to another provider if the physician is unwilling to provide physician-assisted 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 physician-assisted 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 physician-assisted dying;
 - b) advise patients what they can expect from physicians if they are considering physician-assisted 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 physician-assisted 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 physician-assisted dying.

Recommendations

Based on these aforementioned principles, the Advisory Group recommends the following for consideration by medical regulatory authorities in Canada if they choose to develop standards or guidance for physicians within their provinces or territories:

1. Requirements for access to physician-assisted dying:

1.1 The attending physician in situations of physician-assisted dying must:

- Be qualified by specialty or experience to render a diagnosis and prognosis of the patient's illness;
- Be qualified by specialty or experience to meet the requirements to provide physician-assisted dying;
- Be able to assess decisional capacity or be able to consult with a colleague to assess capacity in more complex situations; and,
- Have appropriate knowledge and technical competency to provide physician-assisted dying of the form to be administered.

1.2 Capacity

- The attending physician must be satisfied that the patient is:
 - Mentally capable of making an informed decision at the time of the request(s); and,
 - Capable of giving consent to physician-assisted dying.
- If either the attending physician or the consulting physician is unsure whether the patient has capacity, the patient must be referred for further capacity assessment.

1.3 Voluntariness

- The attending physician must be satisfied, on reasonable grounds, that all of the following conditions are fulfilled:
 - The patient's decision to undergo physician-assisted dying has been made freely, without coercion or undue influence from family members, health care providers or others;
 - The patient has a clear and settled intention to end his or her own life after due consideration; and,
 - The patient has requested physician-assisted dying him/herself, thoughtfully and repeatedly, in a free and informed manner.

1.4 Informed Decision

- The attending physician must disclose to the patient information regarding their health status, diagnosis, prognosis, the certainty of death upon taking the lethal medication, and alternatives, including comfort care, palliative and hospice care, pain and symptom control and other available resources to avoid the loss of personal dignity. The physician must advise the patient of any counselling resources that are available to assist the patient. The attending physician must inform the patient of his or her right to rescind the request at any time. The attending physician has an obligation to take reasonable steps to ensure that the patient has understood the information that has been provided.

1.5 Consistency of Decision Over Time

- The attending physician must ensure that the patient has consistently expressed a desire for physician-assisted dying over a reasonable period of time. What is a reasonable period of time will be dependent on the patient's medical condition and other circumstances. As with any other medical intervention, the patient must consent to physician-assisted dying at the time that is provided by the physician.

1.6 The Requirement of a Second Assessment

- The attending physician must consult a second physician before providing the patient with physician-assisted dying.

1.7 Documentation of Patient Wishes and Physician Assessment

- The attending physician and the consulting physician must complete a prescribed form to confirm that the patient meets the requirements for physician-assisted dying.
- The prescribed form to be completed by the attending physician should contain confirmation that the physician has advised the patient of counselling resources that are available to assist the patient and that the physician has informed the patient of his or her right to rescind the request at any time.
- The prescribed form to be completed by the attending physician and the consulting physician should contain the following:
 - The physician's diagnosis and prognosis;
 - The physician's determination that the patient has a grievous medical condition that is not remediable using treatments that the patient is willing to accept and that the patient's suffering is intolerable to the patient; and,
 - The physician's determination that the patient is capable, acting voluntarily and has made an informed decision to seek physician-assisted dying.
- The patient must complete a prescribed form confirming that the patient has given informed consent to physician-assisted dying and that the requirements for physician-assisted dying have been met. Where a patient is physically incapable of completing such a form, a third party, independent of the physician, may complete the form on the patient's behalf based upon confirmation from the patient.

1.8 Documentation Requirements – The Patient Record

- The attending physician must document the following in the patient's medical record:
 - All oral and written requests by a patient for physician-assisted dying; and
 - A summary of discussions held with the patient relating to physician-assisted dying.

2. Standards for Physician-Assisted Dying

1. Physicians are encouraged to follow the protocols developed by the Collège des médecins du Québec.
2. The attending physician must be available to care for the patient until the patient's death, if the patient so requests.