College of Physicians & Surgeons of Alberta

ADVICE TO THE PROFESSION

Medical Assistance in Dying (MAID)

Related Standards of Practice: *Medical Assistance in Dying*, *Informed Consent*, *Conscientious Objection*

The College of Physicians & Surgeons of Alberta (CPSA) provides advice to the profession to support physicians in implementing the *CPSA Standards of Practice*. This advice does not define a standard of practice, nor should it be interpreted as legal advice.

Advice to the Profession documents are dynamic and may be edited or updated for clarity at any time. Please refer back to these articles regularly to ensure you are aware of the most recent advice. Major changes will be communicated to our members; however, minor edits may only be noted within the documents.

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Questions or concerns? For more information and advice on MAID, visit the Alberta Health Services website or contact the College at info@cpsa.ab.ca. Confidential counselling is available to physicians through the Physician and Family Support Program, administered by the Alberta Medical Association.

Revised (Medical Assistance in Dying): September 2019, November 2018, July 2016, June 2016, February 2016

Published (Physician-Assisted Death): December 2015

Principles

The principles guiding the College's advice on medical assistance in dying (MAID) are:

- The College has an obligation to serve and protect the public interest.
- Physicians have a professional duty to provide respectful care for patients with diseases that cannot be cured, enshrined in precept 3 of the *Code of Ethics & Professionalism*: "Act according to your conscience and respect differences of conscience among your colleagues; however, meet your duty of non-abandonment to the patient by always acknowledging and responding to the patient's medical concerns and requests whatever your moral commitments may be."
- Physicians are expected to practise medicine commensurate with their knowledge and skills to ensure they safely deliver quality health care.
- Physicians have a Charter right to freedom of conscience and religion, as do all Canadians. A physician's conscientious objections must not impede the right of patients to receive unbiased information about and access to legally permissible and available health services. Refer to the *Conscientious Objection* standard of practice.
    - Physicians' communication and behaviour must be respectful of their patient's beliefs, lifestyle choices and values.
    - Physicians have an obligation not to abandon their patients.
    - Physicians who decline to provide a legally available medical service or information about that service due to conscientious objection are expected to offer the patient timely access to another physician or resource that will provide information about all available medical options.
    - Physicians must not provide false, misleading, intentionally confusing, coercive or materially incomplete information.
- Physicians are expected to be sensitive to the needs and concerns of other members of a patient's care team, and respectful of each individual's freedom of conscience and religion.
- Physicians must resolve any conflicts in the best interest of their patients, as stated in precept 11 of the *Code of Ethics & Professionalism*.

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ADVICE TO THE PROFESSION

Introduction

The federal government amended the *Criminal Code of Canada* to enable Medical Assistance in Dying (MAID) in June 2016. Federal reporting regulations came into effect in November 2018, adding to existing provincial requirements.

The College has worked closely with Alberta Health, Alberta Health Services (AHS) and other healthcare partners to develop direction and guidance for physicians and other practitioners with a role in MAID. Information and links to forms and reporting information posted in the secure CPSA physician portal under Additional Resources. These documents are regularly updated, so it's important for physicians to go directly to the portal every time they receive a MAID-related request.

Unique in Canada, the AHS Care Coordination Service is the hub for MAID services in Alberta. All MAID reporting is done through the AHS Care Coordination Service to simplify reporting for practitioners and provide a safeguard against non-compliance with *Criminal Code* regulations, as long as forms are completed correctly and submitted within specified timeframes.

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While not a MAID provisioner, the AHS Care Coordination Service also guides patients and practitioners (both AHS and non-AHS) through the MAID process and physicians are strongly encouraged to access this support.

The following is a step-by-step guide to clarify regulatory and professional requirements regarding MAID.

Patient Inquiry/Request for MAID

When a patient asks their physician about MAID orally or in writing, the physician is compelled to provide the patient with contact information for the AHS Care Coordination Service (maid.careteam@ahs.ca) without delay. This applies in all cases, including if the physician conscientiously objects to providing MAID.

The physician is also expected to have a complete and full discussion with the patient, seeking to understand their circumstances, perspective and reason for contemplating MAID and ensure all options for care and treatment have been considered, including disability support services and good quality palliative care. At the patient's discretion, the physician may disclose to family and other supporting individuals the patient's interest in MAID and the nature of the discussion.

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Once the patient makes an explicit request for MAID in writing (including by text or email, signed or unsigned), the physician must **report the request within 7 days** advising if they will be:

- referring the patient directly to the AHS Care Coordination Service or another practitioner (versus simply providing the patient with contact information for the AHS Care Coordination Service);
- involved in assessing the patient's eligibility; or
- providing the patient with MAID.

To report, complete applicable sections of the Physician/Nurse Practitioner Form and fax it **to MAID Reporting at 403-592-4266**. Any questions about completing the form may be directed by maidreporting@ahs.ca

Patient's written request

Before receiving MAID, the patient must provide a formal signed, dated and witnessed request (Record of Request).

If the patient is unable to sign and date the request, another person, who is at least 18 years of age and who understands the nature of the patient's request for MAID, may do so in the patient's presence on their behalf. Once signed and dated, the request must be witnessed by two independent persons who understand the nature of the request.

By law, a person cannot serve as an independent witness if they:

i. know (or believe) themselves to be a beneficiary under the will of the patient making the request, or a recipient, in any other way, of a financial or other material benefit resulting from the patient's death;
ii. are an owner or operator of any heathcare facility at which the patient is receiving treatment or in any facility in which the patient resides;
iii. are directly involved in providing healthcare services to the patient; or
iv. are directly involved in providing personal care to the patient.

The role of the witnesses is to confirm the identity of the patient requesting MAID, attest to the patient's apparent understanding of the request being made and affirm the patient is acting voluntarily, free of duress or coercion.

A physician who receives a signed, dated and witnessed request for MAID is responsible for ensuring an AHS Goals of Care Designation (GCD) order is completed and that the GCD aligns with the patient's request for MAID. The GCD will alert any emergency personnel responding to a patient distress call of the patient's wishes not to be resuscitated or transported to hospital, for a patient receiving MAID in the community.

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Patient Eligibility

Eligiblity criteria

Under federal legislation, to receive MAID a patient must be:

i. eligible, or but for any applicable minimum period of residence or waiting period would be eligible, for health services funded by a federal, provincial or territorial government in Canada;

ii. at least 18 years of age;

iii. capable of making decisions with respect to their health;

iv. have a grievous and irremediable medical condition that causes enduring suffering that is intolerable to the patient and that cannot be relieved under conditions that the patient considers acceptable;

v. have made a voluntary request for MAID that, in particular, was not made as a result of external pressure; and

vi. have given informed consent to receive MAID, after being informed of the means that are availabile to relieve their suffering, including palliative care.

As noted in (iii) above, a patient who is incapable of making an informed decision is not eligible for MAID. This includes any patient who requires a substitute decision-maker or who has lost competence since making their wishes known through a Personal Directive.

Regarding (iv), a competent adult has the right to declare intolerable suffering. The physician's role is to assess in collaboration with the patient whether the condition is grievous and irremediable (Appendix A).

Eligibility assessment

A patient's eligibility for MAID is determined through at least two assessments:

- An **initial** assessment, which may be conducted by the physician managing the patient's care or arranged by the AHS Care Coordination Service.
- A **second, independent assessment**, which may be arranged by the physician managing the patient's care or the AHS Care Coordination Service and must, by law, be performed by a practitioner who:

  i. is neither a mentor to the other practitioner nor responsible for supervising the other practitioner's work;

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ii. does not know or believe themselves to be a beneficiary under the will of the patient making the request, or a recipient, in any other way, of a financial or other material benefit resulting from the patient's death, other than standard compensation for services relating to the request; and

iii. does not know or believe themselves to be connected to the other practitioner or to the patient making the request in any other way that would affect their objectivity.

Additional specialist assessments may be arranged as necessary at the discretion of the initial assessor or second assessor. For example, if a patient suffers from a condition that may impair their capacity, the physician should consider referring the patient to a qualified healthcare practitioner for a capacity assessment and possible treatment. If the patient requesting MAID has an underlying mental health condition, a psychiatric or psychologic referral is strongly advised in order to address the effect, if any, of the mental illness on the patient's decision-making capacity.

Each assessor must report their findings upon completing their assessment. Use the Practitioner Assessment form and **fax it to MAID Reporting at 403-592-4266**. Any questions about completing the form may be directed by maidreporting@ahs.ca

Referral to a Providing Practitioner

Once a patient has been declared eligible for MAID, they must be connected with a MAID provider. This connection may be made through the AHS Care Coordination Service or the physician managing the patient's care (unless the same physician will also provide MAID).

A physician who provides medical assistance in dying must have the knowledge, care and skill to provide MAID in a manner respectful of the patient's context and wishes.

The providing physician and patient must develop a plan together, usually with the assistance of the AHS Care Coordination Service. The plan should consider when, where and how MAID will be administered, who will be present (including healthcare providers and family), and an alternate plan should medical complications arise. The patient must be informed of all aspects of the plan to give informed consent.

Mandatory Period of Reflection

The usual period of reflection is 10 clear days from the date the patient signs the Record of Request ("10 clear days" does not include the day the request is signed and day MAID is provided, but does include weekends). However, the law allows a shorter period if both of the assessing practitioners agree the patient may lose cap**a**city or die within that timeframe. The patient may also choose to extend the period of reflection indefinitely, but would need to make

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a new request for MAID after six months.

Under *Criminal Code* regulations, practitioners are required to report if they become aware any of the following scenarios has occurred before MAID is provided:

- the patient has withdrawn their request;
- the patient has died of another cause; or
- the patient has become ineligible for MAID due to loss of capacity, OR the practitioner has learned the request was not voluntary.

Use the Physician/Nurse Practitioner Form (applicable sections) and fax it **to MAID Reporting at 403-592-4266 within 30 days of becoming aware.** If 90 or more days pass before becoming aware, this reporting requirement is waived.

Provision of MAID

Before providing MAID, a physician may choose to consult with the Canadian Medical Protective Association (CMPA). Confidential counselling is available to physicians through the Physician and Family Support Program, administered by the Alberta Medical Association.

Life-ending medication

A physician prescribing life-ending medications for a patient eligible for MAID may prescribe only medications recommended for that purpose by the AHS Care Coordination Service, as posted in the secure CPSA physician portal under Additional Resources.

At the patient's request, the medications may either be administered by the physician to cause the patient's death, or provided to the patient for self-administration to cause their own death.

In obtaining the medications, the physician must collaborate with a pharmacist willing to fill the prescription after being informed by the physician its purpose is to provide MAID.

The physician and the dispensing pharmacist must together:

i. plan well in advance, considering the availability and delivery of the recommended medications and medications for the alternate plan;

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ii. discuss issues related to medication counselling for the patient; and
iii. make arrangements for release of the medications to the physician.

Both physician and pharmacist are required to complete the Medication Inventory Tracking Sheet (available in the physician portal) and sign off on any unused and returned or wasted medication.

> Immediately before being provided medical assistance in dying, the patient must be given the opportunity to withdraw the request or reaffirm their consent to proceed.

When a patient wishes to self-administer, the physician is expected to bring the medications to the patient and is strongly encouraged, with the patient's consent, to remain present during ingestion to address any needs of the patient, including service provision in the event of medical complications or the failure of the medications.

Patient's opportunity to withdraw request

Immediately before being provided with medical assistance in dying, the patient must be given the opportunity to withdraw their request or reaffirm their consent to proceed. The Medical Examiner will require a record of this consent.

Recordkeeping

Physicians who are custodians are responsible to maintain in their patient's record an accurate and complete reflection of the care provided relevant to their role in MAID, including (as applicable):

i. the patient's diagnosis and prognosis;
ii. the patient's written request for medical assistance in dying (Record of Request);
iii. a record of the information provided to the patient to ensure informed consent, including other treatment options discussed;
iv. the patient's consent to treatment;
v. a copy of all eligibility assessment reports (initial assessment, second independent assessment and any specialist assessment);
vi. plan for providing MAID considering:
    a) the patient's wishes regarding when, where and how MAID will be provided, the presence of the physician and any additional support;
    b) risks and probable consequences of taking the prescribed life-ending medication; and

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c) an alternate plan to address potential complications;

vii. a statement by the providing physician confirming the patient was offered the choice to withdraw the request for MAID at any time and immediately before the provision of MAID;

viii. summary of the process undertaken in providing MAID;

ix. Record of Medication Administration; and

x. signed Medication Inventory Tracking Sheet.

Refer to the *Patient Record Content* and *Patient Record Retention* standards of practice. More information is also available in the CPSA Physician Portal under Additional Resources.

If the AHS Care Coordination Service is supporting the MAID process, they will ensure the providing practitioner has the necessary documentation to proceed with MAID at the time of provision, including the patient's Record of Request.

Reporting

The AHS Care Coordination Service manages data collection and reporting to the Minister of Alberta Health and Health Canada, as applicable. Refer to the MAID Reporting summary and other resources on the AHS website (click on the Forms tab).

All reports must be faxed within the specified timeframes to MAID Reporting (RightFax 403-592-4266**)** and, upon the provision of MAID, to the Office of the Chief Medical Examiner (detailed below). If MAID medications were provided to the patient for self-administration, the practitioner must report this to the AHS Care Coordination Service from 90 – 120 days after provision, or earlier if they become aware of the patient's death.

Timely reporting not only helps avoid unnecessary delays for patients, but also provides a safeguard for practitioners by ensuring compliance with federal reporting regulations, enacted under the *Criminal Code*.

Questions about reporting can be emailed to maidreporting@ahs.ca

Reporting to the Medical Examiner upon the provision of MAID:

- **Within 24 hours** of the patient's death as a result of MAID, the providing practitioner must submit to the Office of the Chief Medical Examiner (ME) and copy the AHS Care Coordination Service the completed:
  - Record of Request
  - Providing Practitioner Record
  - Consent to Treatment

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- Record of Medication Administration

Providing a copy of these records to the Office of the Chief Medical Examiner will fulfil the physician's obligation to report to a member of the MAID Regulatory Review Committee under clause 7 of the *Medical Assistance in Dying* standard of practice.)

Only the Medical Examiner can identify the cause and manner of death on the death certificate. The ME will not routinely require the patient's body to be shipped to Edmonton or Calgary, but may make this request if questions arise from the documentation.

More details on the Medical Examiner's role and a fax cover sheet identifying all the documents required by the ME are posted in the CPSA Physician Portal under Additional Resources.

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Appendix A: Criteria for Grievous and Irremediable

Under federal legislation, to be considered as having a grievous and irremediable medical condition, the patient must meet **all** of the following criteria:

a) have a serious and incurable illness, disease or disability;

b) be in an advanced state of decline that cannot be reversed;

c) be suffering unbearably from an illness, disease, disability or state of decline; and

d) be at a point where natural death has become reasonably foreseeable*, taking into account all of the patient's medical circumstances.

The patient does not have to have a fatal or terminal condition to be eligible for medical assistance in dying.

For support in determining if a patient has a grievious and irremediable medical condition, contact the Alberta Health Services Care Coordination Service at MAID.CareTeam@ahs.ca or Health Link 811.

*Death is considered reasonably foreseeable when a physician can justifiably predict or expect death as an outcome of the patient's medical circumstances, considering the provision of medical treatments acceptable to the patient.

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Appendix B: Background

In its February 6, 2015 ruling *Carter v. Cana*da, the Supreme Court of Canada (SCC) unanimously declared unconstitutional the Criminal Code prohibitions on physician-assisted dying as violating the individual's right to life, liberty and security of the person (s. 7). Declared invalid were both Section 241(b) of the Criminal Code that states everyone who aids and/or abets a person in committing suicide commits an indictable offence, and section 14 that says no person may consent to death being inflicted on them.

The SCC granted a one-year suspension to provide governments and regulators time to establish a regulatory framework, and subsequently extended this suspension by four months until June 2016.

The federal government passed Bill C-14 on June 17, 2016. The bill amended the Criminal Code to enable physicians and nurse practitioners to provide medical assistance in dying to persons who meet defined criteria, establish safeguards to protect vulnerable persons and provide legal protection for those who aid physicians and nurse practitioners in providing this service.

The College has worked extensively with Alberta Health, Alberta Health Services and other stakeholders to develop standards of practice and advice for physicians that align with this legislation.

In June 2016, Alberta Health Services established the Medical Assistance in Dying Care Coordiation Service (MAID.CareTeam@ahs.ca) to provide a single point of contact for Alberta patients, families and healthcare providers.

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