



# Practice Standard

## Medical Assistance in Dying

### Preamble

This document is a standard of the Board of the College of Physicians and Surgeons of British Columbia.

Registrants are expected to be aware of and comply with their legal, ethical and professional obligations, and are encouraged to seek the guidance of legal counsel, or medical-legal advice from the Canadian Medical Protective Association (CMPA). Registrants may also contact a member of registrar staff at the College to discuss professional and ethical obligations.

### Legislative Guidance

The Parliament of Canada has amended the Criminal Code, RSC 1985, c.C-46 to allow medical assistance in dying (MAiD) under certain limited circumstances. Medical assistance in dying means the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.

In order for a patient to receive MAiD, they must meet all of the following criteria:

- a. they are eligible for health services funded by a government in Canada
- b. they are at least 18 years of age and capable of making decisions with respect to their health
- c. they have a grievous and irremediable medical condition
- d. they have made a voluntary request for MAiD that, in particular, was not made as a result of external pressure
- e. they have given informed consent to receive MAiD after having been informed of the means that are available to relieve their suffering including palliative care

### Grievous and Irremediable Medical Condition

A person has a grievous and irremediable medical condition only if they meet all of the following criteria:

- a. they have a serious and incurable illness, disease, or disability
- b. they are in an advanced state of irreversible decline in capability

- c. that illness, disease, disability or 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
- d. 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 they have remaining

The federal government has indicated that MAiD is intended to be restricted to those individuals who are declining towards death, allowing them to choose a peaceful death as opposed to a prolonged, painful or difficult one.

### **Rights and Autonomy**

Patients have the right to make decisions about their bodily integrity (autonomy) and to have access to unbiased and accurate information about relevant medical issues and treatments. Physicians have an obligation to provide their patients with health information and health services in a non-discriminatory fashion and an obligation not to abandon their patients. Culturally and spiritually appropriate end-of-life care services should be available to all patients.

Physicians have the right to decide whether or not to perform medical assistance in dying. Nothing in the Criminal Code compels a person to provide MAiD.

### **Process**

The process respecting MAiD involves the opinion of two independent medical assessors (MAs), one of whom shall also be the prescriber/administrator of the lethal substances. Only a physician or nurse practitioner may be a MA.

1. Physicians must have the appropriate competencies, qualifications, experience and training to render a diagnosis and prognosis of the patient's condition, together with the appropriate technical knowledge and competency to provide MAiD in a manner that is respectful to the patient. Physicians must have a complete and full discussion about MAiD with the patient; physicians are expected to provide patients with all the information required to make informed choices about treatment and to communicate the information in a manner that is easily understood by the patient.
2. Both MAs must agree in writing that the patient meets the criteria for MAiD as set out by the Criminal Code which includes that the patient has a grievous and irremediable medical condition causing suffering that is intolerable to the patient. A request for MAiD is contextual to the patient's medical condition, its natural history and prognosis, treatment options and the risks and benefits associated with each option. Both MAs are responsible to ensure that the patient understands such factors and is able to communicate a reasoned decision based on that understanding.
3. Both MAs must be licensed for independent practice in their respective Canadian jurisdictions, and at least one MA must be licensed in British Columbia.
4. Both MAs must be independent of each other. The MAs are independent if they:
  - a. are not a mentor to the other MA or responsible for supervising their work

- b. do not know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death, other than standard compensation for their services relating to the request
  - c. do not know or believe that they are connected to the other MA or to the person making the request in any other way that would affect their objectivity
- 5. One of the MAs, but not both, may provide their assessment by telemedicine provided that, during the telemedicine assessment, another regulated health professional is in physical attendance with the patient to act as a witness to the assessment.
- 6. The patient requesting MAiD must be competent and able to give free and informed consent to MAiD.
  - a. Both MAs must be satisfied that the patient is mentally capable of making a free and informed decision at the time of the request and throughout the process.
  - b. If either MA is unsure that the patient has capacity to consent to MAiD the patient must be referred to another practitioner with expertise in capacity assessment, such as a psychologist, psychiatrist, neurologist, geriatrician, or FP/GP with additional training and expertise for a further in-person capacity assessment.
  - c. The patient must maintain mental capacity for MAiD to proceed. If at any time during the progression of the patient's condition, the patient loses the mental capacity to rescind his or her decision, MAiD ceases to be an option.
  - d. MAiD cannot be provided to patients who are not able to give consent including when consent is given through an alternate or substitute decision-maker, or through a personal advance directive.
- 7. Both MAs must:
  - a. be satisfied that the request for MAiD was a voluntary request and was not made as a result of external pressure and that it was made after being advised of their grievous and irremediable condition
  - b. ensure that the request for MAiD is made in writing before two independent witnesses
  - c. ensure that there are at least 10 days between the day on which the request was signed by or on behalf of the patient and the day on which MAiD is provided, or if both MAs are of the opinion that the patient's death or loss of capacity to provide informed consent is imminent, any shorter period that the MAs consider appropriate to the circumstances
  - d. ensure that the patient has been informed that they may, at any time, and in any manner, withdraw their request
- 8. Physicians must inform the patient requesting MAiD of the following and the information must be included in the patient's medical record with a copy provided to the patient:
  - a. the patient's diagnosis and prognosis

- b. feasible alternatives (including comfort care, palliative care and pain control)
  - c. option to rescind the request for MAiD at any time
  - d. risk of taking the prescribed substances
9. The following information must be in the patient's medical record:
- a. copies of all relevant medical records from other physicians/practitioners involved in the patient's care supporting the diagnosis and prognosis of the patient's grievous and irremediable condition, disease or disability; this includes ensuring that a specialist has provided a diagnosis and prognosis, including treatment recommendations, and that this has been discussed with the patient by the specialist
  - b. all written and oral requests for MAiD and a summary of the discussion
  - c. confirmation that after the completion of all documentation that the patient was offered the opportunity to rescind the request
  - d. confirmation that the two MAs have discussed and determined which MA will prescribe and/or administer the substance used for MAiD
  - e. confirmation by the prescribing MA that all the requirements have been met including the steps taken and the substance prescribed
10. Physicians who act as MAs are required to use and fax to the BC Coroners Service the following provincial forms:
- a. record of request by patient for MAiD
  - b. the record of each assessment completed by the MAs, including the prescribing MA
  - c. a record of capacity assessment, if done

MAs must use the preprinted medication order/medication administration record when issuing a prescription for MAiD, and also fax this form to the BC Coroners Service.

11. A physician who prescribes or administers the substance to be used in MAiD shall do so in the patient's name, and indicate on the prescription(s) that the indication is MAiD. The pharmacist shall dispense the prescription for the MAiD substance directly to the prescribing physician. The physician will provide it to the patient for self-administration, or administer the substance themselves. Additionally, the physician is responsible for returning to the pharmacy any unused substances as soon as reasonably practicable, and ideally within 48 hours of confirmation of the patient's death.
12. A physician who prescribes or administers the substance to be used in MAiD, must, immediately before providing or administering the substance, give the patient the opportunity to withdraw their request for MAiD and ensure that the patient gives express consent to receive MAiD. The physician must personally attend the patient during the self-administration or administration of medical assistance in dying and remain in attendance until death is confirmed. This may not be delegated to another person or professional.
13. A physician who prescribes or administers the substance to the patient is responsible for completing the medical certificate of death and completing the BC Coroners Service

Report of MAiD Death form. In addition, physicians must comply with any request for information or provision of medical records sought by the BC Coroners Service or an agency tasked with completing a review of MAiD. Physicians are required to complete the medication administration record provided by the pharmacist, and retain that record as part of the medical record.

### **Documentation**

A patient's request for MAiD should be signed and dated by the patient requesting MAiD. If the patient is unable to sign and date the request, another person, who is at least 18 years old and who understands the nature of the request for MAiD and who does not know or believe that they are 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, may do so in the patient's presence on their behalf, and under the patient's express direction.

A patient's request for MAiD must be witnessed by two independent witnesses who must be at least 18 years old and understand the nature of the request for MAiD. A person is not considered independent if they

- a. know or believe that they are 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,
- b. are an owner or operator of any health-care facility at which the patient making the request is being treated or any facility in which that patient resides,
- c. are directly involved in providing health-care services to the patient making the request, or
- d. directly provide personal care to the patient making the request.

In order to meet the requirement that medical assistance in dying is indicated on the Medical Certificate of Death and that the cause of death is the underlying illness/disease causing the grievous and irremediable medical condition, the Vital Statistics Agency recommends that the Medical Certificate of Death be completed as follows:

- report MAiD in PART I (a)
- report the underlying illness/disease causing the grievous and irremediable medical condition in Part I
- report manner of death as "Natural"

### **Conscientious Objection**

Physicians may make a personal choice not to assess patients for and/or perform MAiD, based on their values and beliefs. The College expects the physician to provide patients with enough information and assistance to allow them to make informed choices for themselves. This includes consulting with other experts on relevant medical facts and, when needed, competency assessments.

Physicians who object to MAiD on the basis of their values and beliefs are required to provide an effective transfer of care for their patients by advising patients that other physicians may be

available to see them, suggesting the patient visit an alternate physician or service, and if authorized by the patient, transferring the medical records as required.

Where needed, physicians must offer assistance to the patient and must not abandon the patient. While a physician is not required to make a formal referral on behalf of the patient, they do have a duty of care that must be continuous and non-discriminatory. Physicians should not discuss in detail their personal beliefs and should not pressure patients to disclose or justify their own beliefs. In all cases, physicians must practise within the confines of the legal system, and provide compassionate, non-judgmental care according to the CMA *Code of Ethics*.

**Approved by Board:** June 23, 2016; September 8, 2016  
**Effective:** June 23, 2016  
**Revised:** September 9, 2016; December 7, 2016 (FAQ); January 12, 2017 (FAQ);  
January 31, 2017; April 25, 2017 (FAQ); April 28, 2017 (FAQ)

# Questions and Answers

## *Medical Assistance in Dying*

The following attempts to address some of the questions raised by the profession.

### **Statutes of Canada – Bill C-14**

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8384014>

### **Legislative Background: MAiD (Bill C-14) – Addendum**

<http://www.justice.gc.ca/eng/rp-pr/other-autre/addend/index.html>

#### ***Are there any plans to develop an educational program for physicians who choose to perform MAiD?***

Feedback from the profession has made it clear that educational supports would benefit physicians who choose to perform MAiD. While the College generally does not develop clinical practice or pharmacotherapy guidelines directly, it strongly supports the need for physician education in this area. Physicians who perform MAiD in health authority facilities will need to be privileged to perform this service. Community-based physicians do not need privileges, but are expected to have appropriate competencies, qualifications, experience and training to establish that a patient meets the criteria for MAiD as well as the appropriate technical knowledge and competency to prescribe or administer MAiD.

#### ***Can MAiD be contained in a care plan for patients with a terminal illness who will inevitably experience a decline in competence through the trajectory of their illness and who may wish to exercise their right to die at a defined point in time?***

No. The law requires the person to be competent at the time that assistance is provided.

#### ***Are physicians who choose not to provide MAiD required to refer patients to an alternate physician?***

While physicians may make a personal choice not to provide MAiD based on their values and beliefs, the College expects them to give their patients information and assistance to allow them to make informed choices for themselves. This includes advising patients that other physicians may be available to see them, and/or directing them to an agency or health authority. If asked, physicians must agree to transfer the medical records of the patient as required. Where needed, physicians must offer assistance and must not abandon their patient. While physicians are not required to make a formal referral on behalf of their patient, they do have a duty of care that must be continuous and non-discriminatory.

#### ***If a physician is a conscientious objector, is he or she required to assess a patient for eligibility for MAiD?***

No. Physicians who choose not to perform MAiD are not required to assess their patients' eligibility for MAiD. However, while they are able to make a personal choice not to provide MAiD based on their values and beliefs, the College expects physicians to give their patients information and assistance to allow them to make informed choices for themselves. This

includes advising patients that other physicians may be available to see them, and/or directing them to an agency or health authority.

***Is the 10-day waiting period mandatory?***

No. The 10-day waiting period is set out in the legislation and can be shortened if death is imminent or there is risk of the patient becoming incompetent. It is up to both the attending and consulting physicians to use sound medical judgement to determine what constitutes a reasonable period of time based on the patient's medical condition and circumstances. Following a waiting period and after completion of all documentation, the patient must be offered the opportunity to rescind his or her request for MAiD, which must also be documented.

***Do patients still have to apply to the Supreme Court of BC for MAiD?***

No. A court order is no longer required as of June 6, 2016.

***How do I know if my patient is suffering from “enduring psychological distress”?***

One of the key considerations with regard to assessment of enduring “psychological distress” is assessment of the impact of affect (such as anxiety and/or depression) and cognitive functioning on the capacity to make an informed decision. It is well understood that cognitions and affect can impact significantly on competence to make an informed decision. Speaking to the patient's family can sometimes provide useful information. In some cases, an objective assessment of an affective state (by a psychiatrist or registered psychologist with expertise in this area) can provide clarification.

***Why do patients have to be eligible for health insurance?***

This requirement is to avoid the scenario of people who are not Canadian residents travelling to Canada strictly to access MAiD.

***How will physicians who choose to perform MAiD be compensated?***

This is a question that should be directed to the Doctors of BC.

***Why do physicians have to use a provincial form? Where can the forms be accessed?***

The provincial forms support a standardized approach to MAiD and ensure that all required elements of consent and eligibility criteria have been confirmed and documented. The forms will be provided to the BC Coroners Service to support provincial monitoring and reporting. These forms are available from the Ministry of Health website or by contacting the College.

***Why do physicians have to use a preprinted prescription? Where can this form be accessed?***

The preprinted prescription supports the use of standardized drug protocols for medications used in MAiD for either medically assisted suicide or voluntary euthanasia. These medication protocols are for MAiD prescribing whether provided in a health authority setting or in the community. Physicians working in a health authority are expected to use the preprinted order form issued by the health authority. Community-based physicians can obtain copies of preprinted order forms from the College.

***Who is collecting the forms?***

As of July 19, 2016 the BC Coroners Service is the designated agency for monitoring and reporting purposes for all instances of medical assistance in dying in British Columbia. The reporting is accomplished by submitting all relevant provincial forms as well as the new BC



Coroners Service Report of MAiD Death form to the deputy chief coroner at the coordinates provided below. There is no need to phone the coroner’s office.

Physicians who provide any aspect of this service involving health authority programs or personnel should submit a copy of all provincial forms except the BC Coroners Service Report of MAiD Death form to their health authority MAiD care coordination centre. The relevant provincial forms include: Record of Patient Request; Record of Assessment (Assessor); Record of Assessment (Prescriber); Consultant Assessment of Patients Informed Consent Decision Capability; and Prescription.

Completed forms must be sent by fax to the BC Coroners Service at 250-356-0445.

**How do physicians fill out the death certificate after providing medical assistance in dying?**

In order to meet the requirement that medical assistance in dying is indicated on the Medical Certificate of Death and that the cause of death is the underlying illness/disease causing the grievous and irremediable medical condition, the Vital Statistics Agency recommends that the Medical Certificate of Death be completed as follows:

- report MAiD in PART I (a)
- report the underlying illness/disease causing the grievous and irremediable medical condition in Part I
- report manner of death as “Natural”

<b>PART I</b>	Approximate Interval Between → Onset and Death →	
Immediate cause of death.	(a) MAiD - Medical Assistance in Dying <i>due to, or as a consequence of</i>	
Antecedent causes, if any, giving rise to the immediate cause (a) above, stating the <u>underlying causes last</u> .	(b) ALS - Amyotrophic Lateral Sclerosis <i>due to, or as a consequence of</i>	
	(c) -----	
	(d) -----	

<b>Manner of Death</b>	State if death was <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Pending finalized details of natural causes	The Handbook for Physicians, Nurse Practitioners and Coroners is available on-line. See back of form for details.
	N.B. The Coroner <b>MUST</b> be notified of any unnatural death including: accidents, misadventure, suicide, etc.	
	Case discussed with Coroner: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Coroner's Name: _____	

**How is “10 clear days” defined?**

The term “clear days” is defined in section 27 of the *Interpretation Act*, which applies to all federal legislation. Essentially, a “clear day” **excludes** the days on which the events on either end occur. In the case of MAiD, this means that the day on which the written request for MAiD is signed, and the day on which MAiD is provided **do not** count towards the 10 days.

Example:

- Consent form is signed = Day 1
- MAiD is provided = Day 12
- Days in between = 10 clear days

The *Interpretation Act* specifically states:

### **Computation of Time**

#### **Clear days**

**27 (1)** Where there is a reference to a number of clear days or “at least” a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

Section 241.2(3)(g) of the [Criminal Code of Canada](#) on MAiD also specifies that if the assessor and prescriber are both of the opinion that death or loss of capacity to provide informed consent is imminent, the “10 clear days” time frame can be shortened to a period that the prescriber considers appropriate under the circumstances.

**Note:** The decision to shorten the time frame must be clearly documented in the patient’s record by both the assessor and the prescriber.

#### ***Who can witness the patient’s written request for MAiD?***

The federal law includes safeguards regarding who can and cannot witness a patient’s written request for MAiD. The witness must be independent of the patient requesting MAiD.

An independent witness **is:** at least 18 years of age and understands the nature of the request for medical assistance in dying.

An independent witness **is not:** a beneficiary or recipient of any financial or material benefit resulting from the patient’s death; the owner of the health-care facility where the patient is being treated or resides; or a person who is directly involved in the patient’s health care or personal care.

Employees of a facility may act as an independent witness providing they are not involved in the patient’s health care or personal care, and are not the owner of the health-care facility.

**Note:** Some health authorities may have a policy in place that restricts their employees from acting as an independent witness, irrespective of whether they are involved in care of the patient.

#### ***Does the federal legislation require both independent witnesses to witness the patient’s request/signature at the same time?***

Parliament intended the person to sign and date the request in front of two witnesses at the same time. The purpose of having the two witnesses present at the same time is to provide additional assurance that the request is being signed by or on behalf of the person who is seeking medical assistance in dying, and that the person is doing so voluntarily. If parliament had thought that one witness was sufficient for this purpose, it would not have required two witnesses.

#### ***Can an independent witness and a proxy signer be: a) related to each other; and b) related to the patient?***

An independent witness and a proxy signer can be: a) related to each other; and b) related to the patient, as long as they meet the requirements for being an independent witness or proxy signer (i.e. they are not a beneficiary under the patient's will).

**Can one of the independent witnesses also function as the proxy signer?**

The answer is “no” for page 1 of the request form, since a witness cannot act in two different capacities (i.e. cannot witness their own proxy signature).

The answer is “yes” for page 3 of the request form, since the prior witness would only be acting in one capacity – as the proxy signer to confirm the patient’s final consent for MAiD.