

## *Medical Assistance in Dying (MAiD)*

*This policy has been developed to set the professional expectations of physicians who are involved with MAiD; and to outline the specific legal requirements for MAiD assessors and providers.*

### **INTRODUCTION:**

Medical Assistance in Dying (MAiD) has been legal in Québec since 2015 and in the rest of Canada since 2016. Since then, the law with respect to eligibility for MAiD has continued to evolve.

This Policy reflects the current state of Canadian law with respect to MAiD (as established by the *Criminal Code*).

This policy was developed with the assistance of the Professional Standard Regarding MAiD prepared by the College of Physicians and Surgeons of Nova Scotia, which was adopted from the Model Standards developed by the MAiD Practice Standards Task Group convened by Health Canada - September 2022 to March 2023.

Throughout the Policy, the terms ‘must’ and ‘should’ are used to articulate the College’s expectations. ‘Must’ indicates a mandatory requirement. ‘Should’ indicates that physicians can use reasonable discretion when applying this expectation to practice.

This policy must be interpreted in the context of any federal and provincial legislation relating to MAiD. Nothing in this Policy reduces a physician’s obligation to comply with any and all applicable laws.

This policy must be read in conjunction with other regulatory policies including the Policy on [Conscientious Objection to Provision of Service](#).

This policy should also be read in conjunction with the [Canadian Medical Association Code of Ethics](#). Physicians are further encouraged to consult with the resources available through the Canadian Medical Protective Association and the Canadian Association of MAiD Assessors and Providers.

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## **POLICY:**

### **REQUIREMENTS FOR ALL PHYSICIANS PARTICIPATING IN MAiD**

#### **1. Reasonable Knowledge, Care, and Skill**

- 1.1 MAiD must be provided with reasonable knowledge, care, and skill, in accordance with the standards of the profession.

#### **2. Scope of Practice**

- 2.1 Physicians must practice only within a scope for which they are appropriately trained, licensed, and competent. It is strongly recommended that physicians participating in MAiD complete the Canadian MAiD Curriculum (CMC) administered by the Canadian Association of MAiD Assessors and Providers (CAMAP).
- 2.2 Physicians who choose to assess eligibility for or provide MAiD, must have sufficient training, experience, and qualifications to safely and competently do so in the circumstances of each case.

#### **3. Duties to Persons Potentially Eligible for MAiD**

- 3.1 Physicians must take reasonable steps to ensure persons are informed of the full range of treatment options available to relieve suffering.
- 3.2 Physicians must not assume all persons potentially eligible for MAiD are aware that MAiD is legal and available in Canada.
- 3.3 Physicians must respond to all reasonable questions from persons regarding MAiD or make an effective referral to another physician or nurse practitioner or program known to be willing to discuss eligibility for MAiD.
- 3.4 When advising persons on their potential eligibility for MAiD, physicians must take reasonable steps to ensure the person does not perceive coercion, inducement, or pressure to pursue or not pursue MAiD.

#### **4. Responsibilities of Physicians Unable or Unwilling to Participate in MAiD**

- 4.1 No physician can be compelled to prescribe or administer substances for the purpose of MAiD.
- 4.2 Physicians who are unable or unwilling to participate in MAiD practice as set out in this Policy:
  - 4.2.1 must complete an effective referral for any person seeking to make a request, requesting, or eligible to receive MAiD;

- 4.2.2 must advise the person that they are not able or willing to assist with the making of a request for an assessment for MAiD or the provision of MAiD;
  - 4.2.3 must provide, with the consent of the person, all relevant and necessary health records to the physician or nurse practitioners or program providing services related to MAiD;
  - 4.2.4 must continue to provide care and treatment not related to MAiD if the person chooses; and
  - 4.2.5 should make an effective referral to another physician or nurse practitioner if the person does not wish to remain in their care.
- 4.3 Physicians with an existing therapeutic relationship with a person requesting MAiD (independent of the MAiD request) must not discharge the person from their care on the grounds that a MAiD request has been made or the person is also receiving services from a MAiD team or centralized process.

## **ASSESSORS AND PROVIDERS**

### **5. Requirements for Both Assessors and Providers**

- 5.1 At least two practitioners must be involved in the assessment of eligibility of a person requesting MAiD.
- 5.2 Assessors and providers must:
  - 5.2.1 be independent practitioners. An independent practitioner is a physician or nurse practitioner who:
    - (a) is not a mentor to the other practitioner or responsible for supervising their work
    - (b) does 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) does not know or believe that they are connected to the other practitioner or to the person making the request in any other way that would affect their objectivity;
  - 5.2.2 act consistently with the Professional Standards and Guidelines Regarding Treating Self and Family Members regarding treating family members or anyone with whom they have a close personal or emotional involvement; and,
  - 5.2.3 complete all the required documentation and reporting as set out in section 20.0.

5.3 A request for MAiD or for assessment for MAiD is a confidential matter between a physician and patient. Assessors and providers must not disclose that a person has requested a MAiD assessment or provision without the consent to do so from the person.

## **6. Duties of Assessors**

6.1 Physicians must not conduct an assessment for MAiD on the direction of anyone other than the person requesting MAiD.

6.2 Assessors must provide a written opinion attesting to whether the person requesting MAiD meets the eligibility criteria for MAiD.

6.3 Where natural death is not reasonably foreseeable (Track 2), assessors must discuss with the person requesting MAiD the reasonable and available means to relieve the person's suffering, including, where appropriate, counselling services, mental health and disability support services, community services, and palliative care and determine whether the person has given serious consideration to those means.

6.4 Where natural death is not reasonably foreseeable (Track 2) and a reduction in the requirement that there be at least 90 days between the day on which the first assessment for MAiD entitlement begins and the day on which MAiD is provided is being considered by the provider, assessors must provide an opinion as to whether the loss of the person's capacity to provide consent to receive MAiD is imminent.

## **7. Duties of Providers**

7.1 Physicians must not provide MAiD on the direction of anyone other than the person requesting MAiD.

7.2 Before providing MAiD, providers must assess eligibility and ensure that all procedural safeguards are met.

7.3 The provider who prescribes or obtains a substance for the purpose of MAiD must, before the pharmacist dispenses the substance, inform the pharmacist that the substance is intended for that purpose.

7.4 Providers must ensure safe prescribing, use, storage, and return of substances related to the provision of MAiD.

## **8. Involvement of Medical Trainees**

8.1 Postgraduate medical trainees can participate in MAiD.

8.2 Postgraduate medical trainees and other physicians involved in assessing a person's eligibility for MAiD must ensure that there is independence between the provider and the assessor. Specifically, the requirement for independence between the provider and assessor is not satisfied if one is a mentor or supervisor to the other.

- 8.3 Medical students must not act as assessors or providers. They may observe assessments and provisions but only with the express consent of the person.

## **ELIGIBILITY FOR MAiD**

### **9. Eligibility Criteria**

- 9.1 Physicians must only provide MAiD to a person requesting MAiD where all the following eligibility criteria, as established by the *Criminal Code*, are met:
- 9.1.1 the person is eligible for health services funded by a government in Canada;
  - 9.1.2 the person is at least 18 years of age and capable of making decisions with respect to their health;
  - 9.1.3 the person has made a voluntary request for MAiD that was not made as a result of external pressure;
  - 9.1.4 the person has given informed consent to receive MAiD after having been informed of the means that are available to relieve their suffering, including palliative care;
  - 9.1.5 the person has a grievous and irremediable medical condition. These criteria are met only where the provider and assessor are of the opinion that:
    - (a) the person has a serious and incurable illness, disease, or disability;
    - (b) the person is in an advanced state of irreversible decline in capability; and
    - (c) the illness, disease, or disability or that state of decline causes the person enduring physical or psychological suffering that is intolerable to the person and cannot be relieved under conditions that the person considers acceptable.

### **10. Assessing Eligibility**

#### *Capacity*

- 10.1 To find a person eligible for MAiD, the provider and assessor must be of the opinion that the person requesting MAiD has capacity to make decisions with respect to MAiD at the time of the MAiD assessment.
- 10.2 When assessing for capacity to make decisions with respect to MAiD, the provider and assessor must determine whether the person has the capacity to understand and appreciate:
- 10.2.1 the history and prognosis of their medical condition(s);
  - 10.2.2 their treatment options and their risks and benefits; and
  - 10.2.3 that the intended outcome of the provision of MAiD is death.

- 10.3 As capacity is fluid and may change over time, physicians must be alert to potential changes in a person's capacity. Where appropriate, assessors and providers should undertake serial assessments of a person's decision-making capacity.
- 10.4 Where appropriate, assessors and providers should consult with clinicians with expertise in the assessment of decision-making capacity.
- 10.5 All capacity assessments must be conducted in accordance with clinical standards and legal criteria.
- 10.6 Assessors and providers must document the reasoning and evidence upon which their assessment of capacity was based.

*Serious and Incurable Illness, Disease or Disability*

- 10.7 To find a person has a grievous and irremediable medical condition, the provider and assessor must be of the opinion that the person has a serious and incurable illness, disease, or disability.
- 10.8 'Incurable' means there are no reasonable treatments remaining where reasonable is determined by the clinician and person together exploring the recognized, available, and potentially effective treatments in light of the person's overall state of health, beliefs, values, and goals of care.

*An Advanced State of Irreversible Decline in Capability*

- 10.9 To find a person has a grievous and irremediable medical condition, the provider and assessor must be of the opinion that the person is in an advanced state of irreversible decline in capability.
- 10.10 Capability refers to a person's functioning (physical, social, occupational, or other important areas), not the symptoms of their condition. Function refers to the ability to undertake those activities that are meaningful to the person.
- 10.11 'Advanced state of decline' means the reduction in function is severe.
- 10.12 'Irreversible' means there are no reasonable interventions remaining where reasonable is determined by the clinician and person together exploring the recognized, available, and potentially effective interventions in light of the person's overall state of health, beliefs, values, and goals of care.

*Enduring Physical or Psychological Suffering That is Intolerable to Them and That Cannot be Relieved Under Conditions That They Consider Acceptable*

- 10.13 To find that a person has a grievous and irremediable medical condition, the provider and assessor must be of the opinion that the person's illness, disease, or disability or state of decline causes the person enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable.

- 10.14 For the purposes of forming the opinion that the suffering criterion for MAiD is met, assessors and providers:
- 10.14.1 must explore all dimensions of the person’s suffering (physical, psychological, social, existential) and the means available to relieve them;
  - 10.14.2 must explore the consistency of the person’s assessment of their suffering with the person’s overall clinical presentation, expressed wishes over time, and life narrative;
  - 10.14.3 must be of the opinion that it is the person’s illness, disease, or disability and/or state of decline in capability that is the cause of the person’s suffering;
  - 10.14.4 must be of the opinion that the suffering is enduring; and
  - 10.14.5 must respect the subjectivity of suffering.

#### *Voluntariness*

- 10.15 To find a person eligible for MAiD, assessors and providers must be satisfied that the person’s decision to request MAiD has been made freely, without undue influence (contemporaneous or past) from family members, health care providers, or others.

#### *Informed Consent*

- 10.16 Providers must obtain informed consent directly from the person requesting MAiD, not the substitute decision-maker of an incapable person.
- 10.17 When seeking informed consent, providers must:
- 10.17.1 discuss all reasonable, accepted, and available treatment options with the person requesting MAiD, including the associated benefits, risks, and side effects, which include informing the person of the means that are available to relieve their suffering, including palliative care;
  - 10.17.2 inform the person whose natural death is not reasonably foreseeable of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services, and palliative care and offer consultations with relevant professionals who provide those services or that care;
  - 10.17.3 inform the person that they may, at any time and in any manner, withdraw their request for MAiD, and that they will be given an opportunity to withdraw their request immediately before MAiD is provided (except where there is a valid final consent waiver – see section 16);



10.17.4 inform the person requesting MAiD of any possible complications associated with provider-administered and self-administered MAiD, including the possibility that death may not occur; and

10.17.5 inform the person who is indicating a preference for self-administered MAiD that if the person's death is prolonged or not achieved, it will not be possible for the provider to intervene and administer a substance causing their death unless the person is capable and can provide consent immediately prior to administering, or the person has entered into a written arrangement providing advance consent for physician-administered MAiD (see section 17).

### **PROCEDURAL SAFEGUARDS**

#### **11. Natural Death is Reasonably Foreseeable**

11.1 Before providing MAiD to a person **whose natural death is reasonably foreseeable** (Track 1), taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining, the provider must:

11.1.1 be of the opinion that the person meets all of the eligibility criteria for MAiD;

11.1.2 ensure that the person's request for MAiD was:

- (a) made in writing and signed and dated by the person (or by another person as permitted by law); and
- (b) signed and dated after the person was informed by a physician or nurse practitioner that the person has a grievous and irremediable medical condition;

11.1.3 be satisfied that the request was signed and dated by the person, or by another person as permitted by law, before an independent witness who then also signed and dated the request;

11.1.4 ensure that the person has been informed that they may, at any time and in any manner, withdraw their request;

11.1.5 ensure that another physician or nurse practitioner has provided a written opinion confirming that the person meets all of the eligibility criteria for MAiD;

11.1.6 be satisfied that they and the assessor are independent of each other;

11.1.7 if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision; and

11.1.8 unless the conditions for a waiver of final consent or advance consent – self-administration have been met (see sections 20.0 and 21.0), immediately before

providing MAiD, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive MAiD.

## **12. Natural Death is NOT Reasonably Foreseeable**

- 12.1 Before providing MAiD to a person whose natural death is not reasonably foreseeable, taking into account all of their medical circumstances (Track 2), the provider must:
- 12.1.1 be of the opinion that the person meets all of the eligibility criteria for MAiD;
  - 12.1.2 ensure that the person's request for MAiD was:
    - (a) made in writing and signed and dated by the person or by another person as permitted by law; and
    - (c) signed and dated after the person was informed by a physician or nurse practitioner that the person has a grievous and irremediable medical condition;
  - 12.1.3 be satisfied that the request was signed and dated by the person — or by another person as permitted by law — before an independent witness who then also signed and dated the request;
  - 12.1.4 ensure that the person has been informed that the person may, at any time and in any manner, withdraw their request;
  - 12.1.5 ensure that another physician or nurse practitioner has provided a written opinion confirming that the person meets all of the eligibility criteria for MAiD;
  - 12.1.6 if neither they nor the assessor has expertise in the condition that is causing the person's suffering, ensure that they or the assessor consults with a physician or nurse practitioner who has that expertise and shares the results of that consultation with the other practitioner (see sections 13.2.8-13.2.12) for further content on 'expertise');
  - 12.1.7 be satisfied that they and the assessor are independent of each other;
  - 12.1.8 ensure that the person has been informed of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services, and palliative care and has been offered consultations with relevant professionals who provide those services or that care;
  - 12.1.9 ensure that they and the assessor have discussed with the person the reasonable and available means to relieve the person's suffering and they and the assessor agree with the person that the person has given serious consideration to those means;

12.1.10 ensure that there are at least 90 clear days between the day on which the first eligibility assessment for the current request begins and the day on which MAiD is provided to them or — if the assessments have been completed and they and the assessor are both of the opinion that the loss of the person’s capacity to provide consent to receive MAiD is imminent — any shorter period that the provider considers appropriate in the circumstances;

12.1.11 if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision; and

12.1.12 unless the conditions for an advance consent – self-administration have been met (see section 17.0), immediately before providing MAiD, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive MAiD.

### **13. Forming an Opinion**

13.1 Before a physician provides MAiD, they must be of the opinion that the person meets all of the eligibility criteria set out in the *Criminal Code* and the assessor must have provided a written opinion confirming the person meets the eligibility criteria.

13.2 Forming an opinion about MAiD eligibility may require the provider or assessor to undertake certain actions, including:

#### *Obtaining Health Records*

13.2.1 Assessors and providers must attempt to obtain all health records and personal data that is necessary for the completion of a MAiD assessment.

13.2.2 Where a capable person refuses consent to obtaining health record and personal data necessary for the completion of a MAiD assessment, the assessors and providers must explain that, without such information, the assessment cannot be completed and therefore the person cannot be found to be eligible.

#### *Gathering Collateral Information (Including From Treating Team, Family Members, and Significant Contacts)*

13.2.3 Assessors and providers must attempt to obtain all collateral information necessary for the completion of a MAiD assessment. This may include information known to the current or previous treating team and/or family members and/or significant contacts.

13.2.4 The provider and assessor must have received consent from the capable person prior to gathering collateral information.

13.2.5 Where a capable person refuses consent to obtaining collateral information necessary for the completion of a MAiD assessment, then the assessors and providers must

explain that without such information, the assessment cannot be completed and therefore the person cannot be found to be eligible.

#### *Involvement of Other Healthcare Professionals*

- 13.2.6 Assessors and providers should involve medical specialists, subspecialists, and other healthcare professionals for consultations and additional expertise where necessary and with the consent of the person requesting MAiD.
- 13.2.7 Where a capable person refuses consent to the involvement of other health care practitioners that is necessary for the completion of a MAiD assessment, then the assessors and providers must explain that without such involvement, the assessment cannot be completed and therefore the person cannot be found to be eligible.

#### *Practitioner With Expertise- Consulting (only Track 2)*

- 13.2.8 If neither the provider nor the assessor has expertise in the condition that is causing the person's suffering, the provider must ensure that they or the assessor consult with a physician or nurse practitioner who has that expertise and share the results of that consultation with the other practitioner.
- 13.2.9 A 'practitioner with expertise' is not required to have a specialist designation. Rather, expertise can be obtained through physician or nurse education, training, and substantial experience in treating the condition causing the person's suffering.
- 13.2.10 Physicians must ensure that they have the expertise necessary to provide the consultation. In doing so, they must work within their scope of practice.
- 13.2.11 The 'practitioner with expertise' under this provision of the *Criminal Code* is providing a consultation to the assessor and provider, not a MAiD eligibility assessment.
- 13.2.12 A review of the requester's prior health records (including past specialist consultation reports) can be an important part of a complete MAiD eligibility assessment. However, such a review does not constitute 'consultation' for the purposes of this section as that requires direct contemporaneous communication with the practitioner with expertise.

## **14. Suicidality**

- 14.1 Assessors and providers must take steps to ensure that the person's request for MAiD is consistent with the person's values and beliefs, and is unambiguous and enduring. They must ensure it is rationally considered during a period of stability, and not during a period of crisis. This may require serial assessments.

- 14.2 A request for MAiD by a person with a mental disorder in the absence of any criteria for involuntary admission, is not grounds in itself for involuntary psychiatric assessment or admission.
- 14.3 Assessors and providers must consider making a referral for suicide prevention supports and services for persons who are found to be ineligible for MAiD if, in the opinion of the assessor, the finding increases the individual's risk of suicide.

## **15. Challenging Interpersonal Dynamics**

- 15.1 Assessors and providers must be alert to challenging interpersonal dynamics such as threatening behaviours of MAiD requesters or their family members. If these challenging dynamics compromise the ability to carry out the assessment in accordance with this standard, assessors and providers should seek information and advice from mentors and colleagues, or discontinue involvement in the assessment process.

## **ADVANCE CONSENT AND WAIVER OF FINAL CONSENT**

### **16. Waiver of Final Consent**

- 16.1 For the patient found to be eligible for MAiD whose natural death is reasonably foreseeable, a Waiver of Final Consent is permitted, meaning that they may waive the requirement that they give express consent immediately prior to receiving the medication used for MAiD.
- 16.2 The Waiver of Final Consent must be documented in writing with agreement that a physician would administer a medication to cause their death on or before the specified date for MAiD if the patient loses capacity. The patient must have been informed that they are at risk of losing capacity.
- 16.3 If the patient who has provided a Waiver of Final Consent still has capacity on the day of the scheduled procedure, they must be provided an opportunity to withdraw their consent.
- 16.4 The Waiver of Final Consent is invalidated if the patient demonstrates by word, sound or gestures, refusal or resistance to the administration of MAiD at the time of the procedure. For greater certainty, involuntary words, sounds or gestures made in response to contact do not constitute a demonstration of refusal or resistance.

### **17. Advance Consent – Self-Administration**

- 17.1 For the person found to be eligible for MAiD, who has elected to receive MAiD through self-administration of medications, Advance Consent is permitted.
- 17.2 Advance Consent permits a practitioner to administer medication to a person who loses the capacity to consent to receiving MAiD after self-administering medication.

- 17.3 In the case of a person who loses the capacity to consent to receiving MAiD after self-administering a medication provided to them to cause their own death, a practitioner may administer medication if:
- 17.3.1 before the person loses the capacity to consent to receiving MAiD, they and the practitioner entered into an arrangement in writing providing that the practitioner would:
- (a) be present at the time the person self-administered the first medication; and
  - (b) administer a second medication to cause the person's death if, after self-administering the first medication, the person lost the capacity to consent to receiving MAiD and did not die within a specified period.
- 17.3.2 the person self-administers the first medication, does not die within the period specified in the arrangement and loses the capacity to consent to receiving MAiD; and
- 17.3.3 the second medication is administered to the person in accordance with the terms of the arrangement.

## **OTHER CONSIDERATIONS: VIRTUAL CARE, PRESCRIBING, DOCUMENTATION**

### **18. Virtual Care**

- 18.1 Physicians may assess a person's request for MAiD and obtain consultations in relation to MAiD virtually.
- 18.2 When assessing a person for MAiD eligibility virtually, physicians must:
- 18.2.1 confirm the person agrees with the assessment proceeding virtually;
  - 18.2.2 determine that a valid conclusion can be drawn about the person's eligibility for MAiD; and
  - 18.2.3 ensure that the assessment conforms with the College's Policy on [Virtual Care](#).

### **19. Prescribing and Providing**

- 19.1 The provider who prescribes or obtains medication must, before any pharmacist dispenses the medication, confirm in writing to the pharmacist that:
- 19.1.1 the medication is for a specified patient;
  - 19.1.2 the medication is intended for MAiD for that specified patient; and
  - 19.1.3 the specified patient meets the eligibility criteria.

19.2 A provider must give a pharmacist reasonable notice that a prescription for the medication for the specified patient will be requested.

**20. Documentation and Reporting**

20.1 Physicians must document in the patient's chart that all steps in this policy have been met.

20.2 Unless exempted by regulations made by the federal Minister of Health, physicians who receive a written request for MAiD must comply with all documentation and reporting requirements set out in regulations made by the federal Minister of Health.

20.3 Physicians must comply with Guidelines for Death Certificates established by the federal Minister of Health respecting information to be included on death certificates in cases where MAiD has been provided.

**Applicable Legislation:**

*Criminal Code*, RSC 1985, c C-46, ss 241.1 to 241.4

**Document History:**

Approval Date: June 4, 2024

Review Date: June 2027