



# Standard of Practice: Medical Assistance in Dying (2022)

A **Standard of Practice** is the minimum standard of professional behavior and ethical conduct expected by the College on a specific issue.

## Medical Assistance in Dying (MAiD)

### Preamble

On February 6, 2015, the Supreme Court of Canada issued a ruling in *Carter v Canada (Attorney General)* striking down certain provisions of the *Criminal Code of Canada* relating to medically assisted death.

It is legal for a qualified medical professional in Canada to assist an adult patient to die, where specified criteria have been met. Federal legislation establishes the legal framework for MAiD in Canada, including eligibility criteria and safeguards that must be satisfied prior to providing MAiD.

This Standard should be interpreted in the context of federal and provincial legislation relating to MAiD. Nothing in this Standard reduces a physician's obligation to comply with any and all applicable laws. Moreover, to the extent that anything in this Standard may be inconsistent with legislative requirements, legislation will always take precedence.

Physicians are encouraged to consult legal counsel to discuss unique or specific circumstances which may arise, or to obtain specific advice regarding the current state of the law relating to MAiD. The College recognizes and anticipates that this Standard may require amendment as additional legislative responses emerge.

### Standard of Practice

#### 1. Foundational Principles

- 1.1 This Standard should be interpreted in a manner that:
- (a) respects the autonomy of patients, such that capable adults are free to make decisions about MAiD within the criteria established in this Standard of Practice;
  - (b) simultaneously respects the right of physicians to refuse to provide this intervention in instances where a patient does not meet the legislative criteria, or the physician declines on personal grounds;
  - (c) maintains the dignity of patients and treats patients, their family members, and others involved in end-of-life decisions with respect;
  - (d) encourages equitable access to MAiD;
  - (e) recognizes an appropriate balance between freedom of conscience of the physician and the patient's right to life, liberty and security of the person.

## **2. Purpose of Standard**

- 2.1 This Standard:
- (a) provides information that will assist physicians and the public to understand the criteria and procedural requirements that must be met regarding MAiD;
  - (b) outlines specific requirements for MAiD, including the criteria that must be met for a patient to be eligible;
  - (c) outlines the procedures to be followed by licensed Newfoundland and Labrador physicians who are approached by patients to request MAiD;
  - (d) provides document templates to assist physicians and patients involved in MAiD;
  - (e) emphasizes the importance of complying with reporting requirements, and oversight mechanisms, if any, relating to MAiD.

## **3. Definitions**

- 3.1 Certain terms have a specific meaning in this Standard.
- (a) **adult** means a person who has attained the age of 18 years, and it does not include a mature minor for the purposes of this Standard;

- (b) **capacity** means the ability to understand the subject matter in respect of which a health care decision must be made, and to appreciate the consequences of that decision;
- (c) **eligibility criteria** means the criteria set out in this Standard, which must be met by a patient in order to access MAiD, and “eligible” and “eligibility” have corresponding meanings;
- (d) **First Clinician** means the qualified medical professional, whether physician (excluding a resident, per section 4.3 of this Standard) or nurse practitioner, who bears primary responsibility for overseeing all aspects of the medical aid in dying process. The First Clinician, where they are a qualified physician, performs the duties set out in section 10 of this Standard;
- (e) **independent witness** means an individual who is at least 18 years of age, who understands the nature and consequences of MAiD, and who is not excluded from acting as a witness to a patient’s request for medical aid in dying for any reason, including the limitations set out in the *Criminal Code of Canada*, section 241.2, or any other legislative requirement;
- (f) **medical assistance in dying (MAiD)** describes the situation where a medical professional or other individual administers medication, or provides access to medication for self-administration by a patient, which intentionally brings about the patient’s death, at the request of the patient;
- (g) **medication** means medication prescribed by the First Clinician in a dose and quantity intended to bring about the end of the patient’s life;
- (h) **nurse practitioner** is a qualified registered nurse who is licensed by the applicable regulatory body to practice as a nurse practitioner, in accordance with any and all applicable legislative and regulatory requirements;
- (i) **palliative care** means care provided to people of any age who have a life limiting illness, with little or no prospect of cure, and for whom the primary goal is quality of life, through the prevention and relief of pain and other distressing symptoms, intending neither to hasten nor postpone death, and offering support to patients and their families;
- (j) **patient** means an adult who seeks MAiD;
- (k) **physician** means an individual who holds a full or provisional license from the College of Physicians and Surgeons of Newfoundland and Labrador which does not restrict the individual from providing MAiD.

- (l) **resident** means an individual who is registered on the Educational Register of the College to participate in postgraduate medical training in the province. It includes a resident who has been granted a provisional or full license to engage in medical practice for a short duration, in accordance with the College's Standard of Practice *Moonlighting by Students in Postgraduate Training*;
- (m) **Second Clinician** is the qualified medical professional, whether physician (excluding a resident, per section 4.3 of this Standard) or nurse practitioner, who is primarily responsible for providing a written opinion to the First Clinician evaluating the patient under the eligibility criteria. The Second Clinician, where s/he is a qualified physician, is required to perform the duties set out in Section 11 of this Standard;
- (n) **Standard** means this *Standard of Practice on MAiD*;
- (o) **treatment** includes refusal to treat, withholding treatment, or withdrawal of treatment.

#### 4. **Application**

- 4.1 This Standard applies to all physicians.
- 4.2 A physician, excluding a resident, may act as the First or Second Clinician only in accordance with this Standard.
- 4.3 A physician **may not** act as the First or Second Clinician:
  - (a) for the physician's own family member. A family member includes the spouse, parent, child, grandparent, grandchild, aunt/uncle, niece/nephew or stepfamily of the physician, and also includes any person who is unrelated by blood but who resides in the same household and is in a relationship akin to that of family with the physician.
  - (b) for any patient with whom circumstances place the physician in a real or perceived conflict of interest (for example, where the physician is a beneficiary of the patient's estate), including any relationship that may affect the physician's objectivity within the meaning of the *Criminal Code of Canada*, section 241.2(6).
  - (c) where the physician is in a mentorship or business relationship with the other Clinician which places him or her in a position of direct or indirect authority or supervisory responsibility for the Clinician, regardless of whether the other Clinician is a physician or nurse practitioner.

- (d) where relevant restrictions or limitations on the physician's medical license prevent the physician from providing MAiD for any reason.

4.4 Residents **may not** perform the role of the First or Second Clinician under this Standard.

- (a) Residents may be engaged in the medical assistance in death process in an assisting or learning capacity only, in keeping with the ordinary role of a resident in providing supervised medical care to consenting patients. This is not intended to reduce the obligation of the First or Second Clinician to personally evaluate the patient.

4.5 The *Criminal Code of Canada* provides that a nurse practitioner who is licensed and qualified by the nurse's scope of practice, and by provincial legislation, may participate in medically assisted death. Nothing in this Standard is intended to prevent a nurse practitioner, where legislation and other regulatory guidance permits, from providing MAiD to a patient.

- (a) For greater certainty, a nurse practitioner may perform a function equivalent to the First or Second Clinician under this Standard, in keeping with applicable legislation, and standards of practice issued by the appropriate regulatory body governing the conduct of nurse practitioners in the province.

## 5. **Physician Guidance**

5.1 This Standard should be interpreted in the context of federal and provincial legislation relating to MAiD. Nothing in this Standard reduces a physician's obligation to comply with any and all applicable laws, including any obligations to report to or seek approvals from an oversight body. Moreover, to the extent that anything in this Standard may be inconsistent with legislative requirements, legislation will always take precedence.

5.2 It is advisable for Clinicians to consult with the Canadian Medical Protective Association (CMPA) or legal counsel in individual circumstances, as required.

5.3 Clinicians should be cognizant of their own emotional, physical, and mental well-being. While patients and their families are obviously directly impacted by an individual's choice to seek MAiD, Clinicians may also find themselves affected by this process. Clinicians are strongly encouraged to seek advice and guidance from wellness programs that are available to them, including those offered by the Canadian Medical Association (CMA) or its local branch, the Newfoundland and Labrador Medical Association (NLMA), employer wellness programs, or from other sources.

## **6. Responsibilities of Physicians who Decline to Participate**

- 6.1 No physician can be compelled to prescribe or administer medication for the purpose of ending a patient's life.
- 6.2 Physicians unwilling to participate in MAiD for personal, moral, religious, or ethical reasons are expected to freely offer accurate information to patients. No physician may provide false, misleading, intentionally confusing, coercive, or materially incomplete information to patients.
- 6.3 The College recommends that a physician who declines to participate in MAiD offer the patient timely access to another medical professional (or appropriate information resource, clinic or facility, care provider, health authority, or organization) who is:
- (a) available to assist the patient;
  - (b) accessible to the patient; and
  - (c) willing to provide MAiD to a patient who meets the eligibility criteria.
- 6.4 A physician who declines to provide MAiD to a patient may not terminate the doctor-patient relationship on that basis alone. At all times, the physician must abide by other relevant College standards of practice.
- 6.5 The objecting physician should:
- (a) Provide access to all relevant medical records to any Clinician who is providing services to the patient related to MAiD; **and**
  - (b) Continue to provide medical services unrelated to MAiD, unless the patient requests otherwise, or until another suitable physician has assumed responsibility for the person's ongoing care.

## **7. Responsibilities of All Physicians**

- 7.1 Any physician who is approached by a patient for information on MAiD has an obligation to discuss the subject with the patient, the first time it is raised by the patient, regardless of whether the physician objects to personally providing this service.
- 7.2 During the first visit where the patient requests or mentions MAiD, **all** physicians have an obligation to:

- (a) engage in a fulsome discussion as to the reasons behind the patient’s request, and answer any questions the patient may pose to the best of the physician’s knowledge and ability;
- (b) ensure that the patient has information about (and, if appropriate, a referral to) any other service that may be of benefit to the patient, including a referral to palliative care, pain specialist, or psychiatry; or non-physician services such as physiotherapy, occupational therapy, counseling, and so on; and advise the patient whether the physician is willing to personally participate in MAiD; and
- (c) provide the patient with access to further information as appropriate.

## **8. Patient Eligibility Criteria**

8.1 A Clinician may provide MAiD only in circumstances where all of the criteria listed in this section are met by the patient, in the medical opinion of the Clinician, exercised in good faith.

- (a) The patient must be an adult.
- (b) The patient must be capable of giving consent to MAiD throughout the process.
- (c) The Clinician reasonably believes that the patient’s decision to seek MAiD has been arrived at freely and voluntarily, without coercion or undue influence.
- (d) The patient’s choice to seek MAiD is based on accurate information as to the process and its consequences.
- (e) The patient has personally requested medical assistance in death (i.e. not through a substitute decision maker or family member).
- (f) The patient has previously been informed of treatment options which are available to the patient, including palliative care, and the patient has determined that they do not wish to pursue such alternative options.
- (g) The patient has a grievous and irremediable medical condition, which may include an illness, disease, or disability.
- (h) The patient is in an advanced state of irreversible decline in capability.
- (i) The grievous and irremediable medical condition must cause enduring suffering that is intolerable to the patient in the circumstances of the patient’s condition. To meet the “irremediable” requirement, a patient is not required to undertake treatments that are unacceptable to the patient.

- (j) The patient has made the request for MAiD in writing, signed by the patient in the presence of an independent witness (subject to reasonable accommodation to permit accessibility by patients who may have limitations).
- (k) The patient is competent to give consent when the Clinician provides MAiD.

**Exception:** patients whose natural death has become reasonably foreseeable may complete a written Waiver of Final Consent/Advance Consent Agreement for MAiD to take place on a particular date under the following conditions:

- (i) The written Waiver of Final Consent/Advance Consent Agreement is made with the physician or nurse practitioner who is scheduled to perform the MAiD procedure;
- (ii) The patient has been assessed and approved for MAiD;
- (iii) The patient has indicated their preferred date for their MAiD procedure;  
**and**
- (iv) The patient is at risk of losing decision-making capacity prior to their scheduled MAiD procedure.

**Note:** A Clinician must **not** act on a purported request for MAiD set out in any advance directive, including a directive made pursuant to the *Advance Health Care Directives Act*.

## 9. **Qualifications of the Clinician**

- 9.1 Physicians who wish to act as the First or Second Clinician are strongly encouraged to complete available training or continuing professional education courses relating to MAiD offered through reputable sources, such as the Canadian Medical Association (CMA).
- 9.2 Clinicians should proactively evaluate their own scope of practice in light of their training, experience, and qualifications, vis-à-vis the specific grievous and irremediable condition experienced by the patient. Clinicians are responsible to determine whether the patient's diagnosis and prognosis is a matter on which the Clinician is competent to opine, or whether consultation is warranted.
- 9.3 All physicians have a continuous duty to follow the Canadian Medical Association *Code of Ethics*, and the College's *By-Law No. 5: Code of Ethics*, each of which sets out physicians' ethical obligations toward patients. It is the responsibility of each Clinician to abide by the highest standard of professional conduct at all times, including during the MAiD process.



9.4 The First or Second Clinician may seek assistance for the patient from other medical professionals, including nurses, social workers, psychologists, and therapists. The College nonetheless emphasizes that the First Clinician should remain involved in all aspects of the MAiD process to the extent reasonably practicable.

## 10. **Duties of First Clinician**

The First Clinician is primarily responsible for overseeing the medically assisted dying process. The First Clinician may obtain that role by a referral from another medical professional, by direct consultation from a patient or from a Regional Health Authority's MAiD Coordinator. The First Clinician is responsible to fulfill the following obligations:

- **Receive the patient's initial inquiry for MAiD**
- **Evaluate the patient**
- **Receive the patient's written request for MAiD**
- **Communicate with the patient, the patient's family (with patient consent) and the Regional Health Authority's MAiD Coordination Services.**
- **Conduct an appropriate assessment period for patient's whose natural death is not reasonably foreseeable.**
- **Provide MAiD**
- **Document in medical record**
- **Adhere to Federal Reporting Requirements**

### 10.1 **Receive the patient's initial inquiry for MAiD**

- (a) During the first visit where the patient requests or mentions MAiD, **the First Clinician** shall:
- (i) engage in a fulsome discussion as to the reasons behind the patient's request, and answer any questions the patient may pose to the best of the physician's knowledge and ability;
  - (ii) ensure that the patient has information about (and, if appropriate, a referral to) any other service that may be of benefit to the patient, including a referral to palliative care, pain specialist, or psychiatry; or non-physician services such as physiotherapy, occupational therapy, counseling, and so on; and

- (iii) provide the patient with access to further information as appropriate.

## 10.2 Evaluate the patient

- (a) The First Clinician is responsible for conducting a thorough and careful assessment of the patient in light of the eligibility criteria set out above.
- (b) The First Clinician shall personally assess whether the patient meets the eligibility criteria:
  - (i) on the First Clinician's own medical assessment of the patient, possibly in combination with the opinions of one or more other medical professionals (other than that of the Second Clinician);
  - (ii) on the First Clinician's own assessment of the patient's voluntariness and consent to participate in the process. It may be appropriate for the Clinician to have a private discussion with the patient (i.e. in the absence of the patient's family), if there are any concerns about coercion or pressure from other individuals; and
  - (iii) on the First Clinician's assessment of the patient's understanding of the process and its consequences, and after addressing any questions or concerns the patient, or patient's family, may have.
- (c) The assessment of the patient's competence to consent, and the voluntariness and genuineness of the patient's wish to be assisted in dying, is an ongoing obligation. If at any time during the process the First Clinician becomes aware of information or circumstances to suggest the patient no longer meets the eligibility criteria, the First Clinician shall address this with the patient.
- (d) The First Clinician is not prevented from discussing with the patient any possible management options of which the patient may not be aware, which may assist to relieve or abate the suffering experienced by the patient on an immediate basis, and to facilitate access to those options if appropriate.

## 10.3 Review Second Clinician's Assessment and Consider Additional Consultation

- (a) After the Second Clinician has assessed the patient, the First Clinician must review the documentation provided. The First Clinician should be satisfied that the Second Clinician has also concluded that the patient meets the eligibility criteria. The First Clinician and Second Clinician may find it necessary to discuss the matter with one another.

- (b) In certain circumstances, a separate consultation and assessment by a qualified specialist may be required to supplement the First Clinician's own assessment of the patient.

#### 10.4 Receive the patient's written request for MAiD

- (a) The patient should make, or confirm, a request in writing, signed and dated by the patient in the presence of an independent witness. The request must be dated after the patient has been diagnosed with the grievous and irremediable condition relevant to the request.
- (b) In the case of a patient who has accessibility challenges (physical or mental disability, illiteracy, language barriers, or otherwise), the First Clinician may make reasonable accommodations to ensure effective communication with the patient.
- (c) The written request from the patient must be maintained in the medical record. If it is necessary, it is the duty of the First Clinician to seek clarification or further information from the patient as to the patient's specific wishes, and record these adequately.
- (d) The best practice is the First Clinician reviews the patient's written request prior to initiating the assessment, and maintain a copy in the medical record.

#### 10.5 Communicate with the patient and with the patient's family

- (a) The First Clinician communicates with the Regional Health Authority's MAiD Coordination services, who is typically the primary point of contact for the patient, keeping them informed throughout the MAiD process and being responsive to any questions which may arise.
- (b) The First Clinician is encouraged to communicate with the patient's family during the process, to the extent that is acceptable to the patient. As with other medical interventions, the First Clinician (or another medical professional) may provide access to supportive care for family members which are appropriate in the circumstances, including counselling, social work, and other resources.
- (c) The First Clinician shall advise the patient of the patient's right to rescind the request for MAiD, and confirm that the patient's wishes have not changed at appropriate times.

#### 10.6 Assist the patient

- (a) The First Clinician must be satisfied that the patient continues to meet the eligibility criteria when the medication is prescribed or administered.

- (b) The First Clinician should be prepared, if all requirements of this Standard are met, to prescribe and/or administer medication to the patient. There is some risk that a patient may experience complications during, or resulting from, the administration of a life-ending dose of medication.
- (c) In order to allow timely intervention in the event of a complication, where the First Clinician causes the administration of a lethal dose of medication to a patient, the First Clinician should remain with the patient until the patient's death has been confirmed.

#### 10.7 Document in Medical Record

Keeping an adequate and careful record of a patient's request to be assisted in death is of fundamental importance. The medical record is intended to benefit and protect physician and patient alike. Given the seriousness of the condition experienced by the patient, combined with the irreversible nature of the intervention itself, a physician's failure to comply with the requirements of this Standard with respect to record-keeping will be treated as a serious matter by the College.

- (a) The presence of a consultation letter from the Second Clinician, confirming the patient's eligibility for medical assistance in death, in the First Clinician's file is **mandatory, without exception**.
- (b) The First Clinician must keep careful and complete records of interactions with the patient, the First Clinician's objective and subjective impressions of the patient's wishes, including any and all required forms and documents.
- (c) The medical record should include substantive details regarding the nature of the discussion with the patient. It should not be limited to "ticking boxes", such as those often seen in electronic medical records. The College views the medical aid in dying process as warranting thorough and considered documentation at every stage of the process.
- (d) If, at any time, the patient rescinds the request for MAiD, the First Clinician must clearly document the patient's choice to rescind. If the patient subsequently makes another request for MAiD, the First Clinician must restart the process, including meeting the record-keeping and independent assessment criteria, in the same way as if the process had not previously commenced.

#### 11. Duties of Second Clinician

The Second Clinician assesses the patient under the eligibility criteria at the request of the First Clinician. The Second Clinician is responsible to fulfill the following obligations:

- **Assess the patient**
- **Provide a documented opinion to First Clinician**

### 11.1 Assess the patient

- Upon receipt of a patient's written request for MAiD, the Second Clinician should make arrangements to assess the patient within a reasonably expeditious timeframe.
- The Second Clinician will personally assess whether the patient meets the eligibility criteria:
  - on the Second Clinician's own medical assessment of the patient, possibly in combination with the opinions of one or more other medical professionals (other than that of the Second Clinician); and
  - on the Second Clinician's own assessment of the patient's understanding of the nature and consequences of the process, and the patient's voluntariness and consent to participate. It may be appropriate for the Clinician to have a private discussion with the patient (i.e. in the absence of the patient's family), if there are any concerns about coercion or pressure from other individuals.

### 11.2 Provide a documented opinion

- The Second Clinician shall provide a written opinion to the RHA MAiD Coordination Services or First Clinician, documenting an assessment of the patient in the context of the eligibility criteria.
- The Second Clinician shall directly consult with the First Clinician, if the best interests of the patient indicate that such consultation is necessary.

## 12. Role of Consultant Providing Expertise in the Area of Patients Suffering

If neither the First nor Second Clinician have expertise in the condition causing the patient's suffering and whose natural death is not reasonably foreseeable, a medical practitioner or nurse practitioner who has this expertise must be consulted.

The duties of this Consultant may include, but are not limited to:

- (a) Providing their opinion on whether the patient is an advanced state of irreversible decline;
- (b) Ensuring the patient has been informed of all reasonable means available to alleviate their suffering; and
- (c) Ensuring the results of their consultation are provided to the First and Second Clinicians.

### **13. Prescription**

- 13.1 The First Clinician must write the prescription for the patient's medication:
- 13.2 The First Clinician shall inform the receiving pharmacist of the intended purpose of the prescription (i.e. a lethal dose prescribed to provide MAiD to the patient) and to provide the prescription to the receiving pharmacist within a reasonable timeframe (e.g. 48h or more prior to MAiD provision, where possible, or within timeframe established with the RHA).

### **14. Reporting Requirements**

- 14.1 The First Clinician is responsible for completing the patient's death certificate in accordance with the *Vital Statistics Act* and any other applicable legislation or regulations.
- 14.2 In the absence of legislative or regulatory guidance, the College recommends the cause of death appearing on the death certificate be the grievous and irremediable medical condition that qualified the patient to be eligible for MAiD.
- 14.3 The First Clinician must comply with any federal or provincial legislation or regulation which requires reporting on participation in MAiD. Federal reporting must be completed through the *Canadian MAiD Data Collection Portal*.

**Document History**

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