MEDICAL ASSISTANCE IN DYING

Policies of the College of Physicians and Surgeons of Ontario (the "College") set out expectations for the professional conduct of physicians practising in Ontario. Together with the *Practice Guide* and relevant legislation and case law, they will be used by the College and its Committees when considering physician practice or conduct.

Within policies, the terms 'must' and 'advised' are used to articulate the College's expectations. When 'advised' is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice.

Additional information, general advice, and/or best practices can be found in companion resources, such as *Advice to the Profession* documents.

Definition

Medical Assistance in Dying (MAID): Under the federal legislation, MAID refers to circumstances where a physician[1] or nurse practitioner[2], at a patient's request: (a) administers medications that cause a patient's death; or (b) prescribes or provides medications for a patient to self-administer to cause their own death, in accordance with the legal requirements.

Policy

1. Physicians who assess patients for and/or provide MAID **must** comply with the relevant legal requirements for MAID, including those pertaining to the eligibility criteria, safeguards, and reporting (an overview of which is provided in the College's *MAID: Legal Requirements* companion resource).[3,4]

[1] A physician who is entitled to practise medicine in Ontario, including postgraduate medical trainees.
[2] A nurse who is entitled to practise in Ontario as a nurse practitioner by holding an extended class of certificate of registration.
[3] This includes: Sections 241.1-241.4 of the *Criminal Code*, R.S.C. 1985, c. C-46 (hereinafter, "*Criminal Code*"); *Regulation for the Monitoring of Medical Assistance in Dying*, SOR/2018-166, enacted under the *Criminal Code*; and Section 10.1 of the *Coroners Act*, R.S.O. 1990, c. C.37.
[4] Physicians may want to seek independent legal advice if they have questions about meeting the legal requirements.

2. Physicians **must** comply with the expectations set out in this policy and other relevant College policies[5], and the terms and conditions of their certificate of registration.
    a. Physicians who choose not to assess patients for or provide MAID for reasons of conscience or religion **must** comply with the expectations set out in the College's *Human Rights in the Provision of Health Services* policy.
    b. When assessing patients for and/or providing MAID, postgraduate medical trainees **must** comply with the terms and conditions of their certificate of registration.[6]
    c. Physicians **must** only assess patients for and/or provide MAID if they have the requisite knowledge, skill, and judgment to do so.

Capacity and Consent

3. Consistent with the College's *Consent to Treatment* policy, physicians **must** ensure the patient is capable[7] and provides valid consent[8] to receive MAID.
    a. Physicians **must** ensure the patient has the capacity to consent at these specific points in the MAID process:
        i. when the eligibility assessments are conducted; and
        ii. when MAID is provided; or
        iii. when entering into a written arrangement that waives the requirement for final express consent.[9]
    b. Where the patient's capacity or voluntariness is in question, physicians **must** conduct and/or refer the patient for a specialized capacity assessment[10].

4. As part of obtaining informed consent, physicians **must** discuss the following with patients who are indicating a preference for self-administered MAID:
    a. The location of the self-administration, including whether the patient is able to store the medications in a safe and secure manner so that it cannot be accessed by others;

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[5] This includes the College's *Consent to Treatment*, *Decision-Making for End-of-Life Care*, *Human Rights in the Provision of Health Services,* *Medical Records Documentation*, and *Medical Records Management* policies.
[6] See Section 11(8) of Ontario Regulation 865/93, made under the *Medicine Act, 1991*, S.O. 1991, c. 30.
[7] Meaning the patient is able to understand and appreciate the history and prognosis of their medical condition, treatment options, the risks and benefits of their treatment options, and the certainty of death upon self-administering or having a physician administer the medications.
[8] In order for consent to be valid, it must be related to the treatment, informed, given voluntarily, and not obtained through misrepresentation or fraud.
[9] See Sections 241.2 (3.2)-(3.5) of the *Criminal Code* for more information. These written arrangements are also described in the College's *MAID: Legal Requirements* companion resource.
[10] See the Ministry of the Attorney General's website for a list of capacity assessors.

b. The potential complications associated with self-administration, including the possibility that death may not be achieved;
c. That should the patient's death be prolonged or not achieved, it will not be possible for the physician to intervene and administer medications to cause their death unless the patient is capable and can provide consent immediately prior to administering, or the patient has entered into a written arrangement providing advance consent for physician-administered MAID;[11] and
d. How patients and their family, friends and/or caregivers can prepare for the death if the physician is not present, including what to do when the patient is about to die or has just died (e.g., whom to contact at the time of death).[12]

Medications

5. Physicians **must** use their professional judgment in determining the appropriate medication protocol to achieve MAID,[13] and the goals of the protocol **must** include controlling the patient's pain and anxiety.

6. To allow a pharmacist sufficient time to obtain and/or prepare the medications required, physicians **must** notify the dispensing pharmacist as early as possible that medications for MAID will be required.

7. Before administering the medications for MAID, physicians **must** have a contingency plan in place to address potential complications.[14]

Medical Records Documentation and Management

8. Consistent with principles set out in the College's *Medical Records Documentation* policy, physicians **must** capture, where applicable, the following in the patient's medical record:
    a. all oral and written requests for MAID, the dates they were made, and a copy of the patient's written request;[15, 16]

[11] See Section 241.2 (3.5) of the *Criminal Code* for advance consent for self-administration requirements. These written arrangements are also described in the College's *MAID: Legal Requirements* companion resource.
[12] For more information, see the College's *Advice to the Profession: End-of-Life Care*.
[13] Physicians may wish to consult the Canadian Association of MAID Assessors and Providers' resources on medication protocols or examples of medication protocols used in other jurisdictions.
[14] For more information, see the Canadian Association of MAID Assessors and Providers' Complication with MAID in the Community in Canada: Review and Recommendations resource.
[15] This documentation requirement applies to all physicians who receive requests for MAID, including physicians who choose not to assess patients for or provide MAID for reasons of conscience or religion.
[16] The Ministry of Health has developed Clinician Aid A to assist patients who request MAID.

b. each element of the patient's assessment in accordance with the eligibility criteria for MAID and a copy of the relevant Clinician Aid[17] with their written opinion;
c. the analysis undertaken to determine whether the patient's natural death was or was not reasonably foreseeable;
d. the steps taken to confirm that the relevant procedural safeguards were met and a copy of any Clinician Aid(s) and written opinion(s) or assessment(s) they received;
e. a copy of any written arrangement that waives the requirement for final express consent;[18]
f. the medication protocol used (i.e., drug[s] and dosage[s]); and
g. the time and date of the patient's death, if known.

9. Consistent with the College's *Medical Records Management* policy, physicians **must** provide patients and authorized parties[19] with access to, or copies of, all the medical records in their custody or control upon request, unless an exception applies.[20, 21]

Medical Certificates of Death

10. Physicians who provide MAID **must** complete the medical certificate of death.[22, 23]

11. When completing the medical certificate of death, physicians:
    a. **must** list the illness, disease, or disability leading to the request for MAID as the cause of death; and

[17] The Ministry of Health has developed Clinician Aid B for physicians who provide MAID and Clinician Aid C for physicians who conduct an eligibility assessment.
[18] The Ministry of Health has developed Clinician Aids D-1 and D-2 for MAID providers and patients to use as templates for written arrangements.
[19] Authorized parties include substitute decision-makers and estate trustees/executors of the estate where applicable, and third parties where consent has been obtained.
[20] See Section 52 of the *Personal Health Information Protection Act, 2004, S.O. 2004, c.3, Sched A* for a comprehensive list of the exceptions.
[21] See the College's *Advice to the Profession: Protecting Personal Health Information* document for more information about requests for access to the patient's medical information.
[22] Section 21 of the *Vital Statistics Act*, R.S.O. 1990, c. V.4. For general information on certifying a patient's death, see the College's *Advice to the Profession: End-of-Life Care*.
[23] Sections 10 and 10.1 of the *Coroners Act* require physicians to report deaths to the Office of the Chief Coroner for Ontario (OCC) when the person's death is due to a non-natural cause (e.g., accident, homicide, etc.) or due to MAID. In circumstances where the OCC has discretion as to whether the death ought to be investigated, the OCC will make that determination and will complete the medical certificate of death (or a replacement medical certificate of death) for the deaths that they investigate.

b. **must not** make any reference to MAID or the medications administered on the certificate.[24]

[24] These requirements were jointly developed by the Ministry of Health, the Ministry of Government and Consumer Services, and the OCC.