YUKON MEDICAL COUNCIL

STANDARD OF PRACTICE

Medical Assistance in Dying (MAiD)

YMCS-3.6

Medical Practice

Standards of Practice of the Yukon Medical Council ("the Council") are the minimum standards of professional behavior and ethical conduct expected of all physicians registered in the Yukon. Standards of Practice will be referenced in the management of complaints and in discipline

1. Background /Summary

In February 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.

In June 2016, the federal government passed related legislative amendments in *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* (SC 2015, c 3).

It is now legal for a qualified medical professional in Canada to assist an adult patient to die, where specified criteria have been met. Risks associated with medical assistance in dying can be limited through a carefully designed and monitored system of procedural safeguards and oversight. These can be found in standards of practice such as this one, regulations, legislation (federal or provincial), and other sources.

Physicians are encouraged to consult legal counsel, for example through the CMPA, to discuss unique or specific circumstances which may arise, or to obtain specific advice regarding the current state of the law relating to medical assistance in death.

In November 2018 the *Regulations for the Monitoring of Medical Assistance in Dying* were revised to require physicians, nurse practitioners, and pharmacists to provide information related to requests for, and the provision of, medical assistance in dying (MAiD).

Information provided through web links is identified within this standard to provide the direct source of current federal legislation and reporting requirements.

2. Definitions

[Note: "province" means a province of Canada, and includes Yukon, the Northwest Territories and Nunavut – Interpretation Act, R.S.C., 1985]

Criminal Code s.241.1

medical assistance in dying means

(a) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or

(b) 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.

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medical practitioner means a person who is entitled to practise medicine under the laws of a province.

nurse practitioner means a registered nurse who, under the laws of a province, is entitled to practise as a nurse practitioner — or under an equivalent designation — and to autonomously make diagnoses, order and interpret diagnostic tests, prescribe substances and treat patients.

pharmacist means a person who is entitled to practise pharmacy under the laws of a province

3. Federal requirements, eligibility and request process

To access the most current state of law, eligibility and to learn how the request process works; refer to Health Canada's Medical assistance in dying information;

https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html

Physicians involved in MAiD must follow the rules set out in the Criminal Code

https://laws-lois.justice.gc.ca/PDF/2016_3.pdf

4. Guidance for reporting on medical assistance in dying

To access the most current federal legislation and reporting requirements refer to links below.

Regulations for the Monitoring of Medical Assistance in Dying

Guidance Document in Reporting Requirements under the *Regulations for the Monitoring of Medical Assistance in Dying*

5. Process Map for Medical Assistance in Dying

The process map that follows details the steps that physicians must undertake in relation to medical assistance in dying. It complies with federal legislation and outlines safeguards that must be adhered to, by law, prior to the provision of medical assistance in dying. Nurse practitioners and other professionals are noted in the Process Map only to the extent necessary to reflect relevant provisions of the federal legislation. Expectations for the responsibilities and accountabilities of nurse practitioners, pharmacists and other health care providers are set by their respective regulatory bodies.

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Physicians and nurse practitioners, along with those who support them, are protected only from criminal liability if acting in compliance with the federal legislation and any applicable provincial or territorial laws, standards or rules.

STEP 1 - Patient makes initial inquiry for medical assistance in dying to a physician or a nurse practitioner.

Physicians who have a conscientious objection to medical assistance in dying are not obliged to proceed further through the process map and evaluate a patient's inquiry for medical assistance in dying. As described above, objecting physicians must provide the patient with timely access to another non-objecting physician or resource with accurate information about all available medical options. The objecting physician must document, in the medical record, the date on which the referral was made, and the physician, nurse practitioner and/or agency to which the referral was directed.

STEP 2 - Physician or nurse practitioner assesses the patient against eligibility criteria for medical assistance in dying.

The physician or nurse practitioner must ensure that the patient meets the criteria for medical assistance in dying. As described above, the patient must:
1. Be eligible for publicly funded health services in Canada;
2. Be at least 18 years of age and capable of making decisions with respect to their health;
3. Have a grievous and irremediable medical condition (including an illness, disease or disability);
4. Make a voluntary request for medical assistance in dying that is not the result of external pressure; and
5. Provide informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

Where the patient's capacity or voluntariness is in question, the attending physician must refer the patient for a specialized capacity assessment. A patient must maintain decision-making capacity for medical assistance in dying to proceed. If at any time during the progression of a patient's condition, the patient loses the capacity to understand information and appreciate the foreseeable consequences of his/her decision, medical assistance in dying ceases to be an option.

With respect to the third element of the above criteria, a patient has a grievous and irremediable medical condition if:
- They have a serious and incurable illness, disease or disability;
- They are in an advanced state of irreversible decline in capability;

• That illness, disease or disability or that 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; and
• 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 that the individual has to live.

If the physician concludes that the patient does not meet the criteria for medical assistance in dying as outlined above, the patient is entitled to make a request for medical assistance in dying to another physician who would again assess the patient using the above criteria.

The physician must document the outcome of the patient's assessment in the medical record.

STEP 3 - Patient makes written request for medical assistance in dying before two independent witnesses.

The patient's request for medical assistance in dying must be made in writing. The written request must be signed and dated by the patient requesting medical assistance in dying on a date after the patient has been informed that they have a grievous and irremediable medical condition.

If the patient requesting medical assistance in dying is unable to sign and date the request, another person who is at least 18 years of age, who understands the nature of the request for medical assistance in dying, and who 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 material benefit resulting from the patient`s death, may do so in the patient's presence, on the patient's behalf, and under the patient's express direction.

The patient's request for medical assistance in dying must be signed and dated before two independent witnesses, who then must also sign and date the request. An independent witness is someone who is at least 18 years of age, and who understands the nature of the request for medical assistance in dying.

An individual may not act as an independent witness if they are a beneficiary under the patient's will, or are a recipient in any other way of a financial or other material benefit resulting from the patient's death; own or operate the health care facility at which the patient making the request is being treated; or are directly involved in providing the patient's health care and/or personal care.

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The physician must document the date of the patient's request for medical assistance in dying in the medical record. A copy of the physician's written opinion regarding whether the patient meets the eligibility criteria must also be included in the medical record.

STEP 4 - The physician or nurse practitioner must remind the patient of his/her ability to rescind the request at any time.

The physician or nurse practitioner must remind the patient that they may, at any time and in any manner, withdraw their request.

STEP 5 - An independent second physician or nurse practitioner confirms, in writing, that the patient meets the eligibility criteria for medical assistance in dying.

A second physician or nurse practitioner must assess the patient in accordance with the criteria provided above, and provide their written opinion confirming that the requisite criteria for medical assistance in dying have been met.

The first and second physician or nurse practitioner assessing a patient's eligibility for medical assistance in dying must be independent of each other. This means that they must not:

- Be a mentor to, or be responsible for supervising the work of the first physician or nurse practitioner;
- 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; or
- 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.

If the second physician concludes that the patient does not meet the criteria for medical assistance in dying as outlined above, the patient is entitled to have another physician assess them against the criteria.

STEP 6 - A 10-day period of reflection from date of request to the provision of medical assistance in dying.

A period of at least 10 clear days must pass between the day on which the request for medical assistance in dying is signed by or on behalf of the patient, and the day on which medical assistance in dying is provided.

In accordance with federal legislation, this timeframe may be shortened if both the physician(s) and/or nurse practitioner(s) agree that death or loss of capacity to provide consent is imminent.

STEP 7 - Physician or nurse practitioner informs dispensing pharmacist that prescribed substance is intended for medical assistance in dying.

Medical assistance in dying includes both situations where the physician or nurse practitioner writes a prescription for medication that the patient takes him/herself and situations where the physician or nurse practitioner is directly involved in administering an agent to end the patient's life.

Physician(s) and/or nurse practitioner(s) must inform the pharmacist of the purpose for which the substance is intended before the pharmacist dispenses the substance.

Physicians are advised to notify the pharmacist as early as possible (e.g. at the commencement of the reflection period) that medications for medical assistance in dying will likely be required. This will provide the pharmacist with sufficient time to obtain the required medications.

Physicians must exercise their professional judgement in determining the appropriate drug protocol to follow to achieve medical assistance in dying. The goals of any drug protocol for medical assistance in dying include ensuring the patient is comfortable, and that pain and anxiety are controlled.

Drug protocols for medical assistance in dying will only be dispensed to the prescribing physician, and only from the Whitehorse General Hospital pharmacy. A physician writing a prescription for a drug protocol to hasten death must affirm with the pharmacist his/her willingness to dispense. The physician and pharmacist must together:

(a) determine the appropriateness of the prescribed drug protocol (adjusting dosages if necessary) and supportive care medication(s);
(b) discuss issues related to medication counselling by the physician for the patient;
(c) make arrangements for the release of the medication(s) to the physician; and
(d) arrange a plan for the physician to return any unused medication(s) to the pharmacist.

STEP 8 - Provision of Medical Assistance in Dying

The patient must be capable not only at the time the request for medical assistance in dying is made but also at the time they receive medical assistance in dying.

Immediately before providing medical assistance in dying, the physician(s) and/or nurse practitioner(s) involved must provide the patient with an opportunity to withdraw the request and if the patient wishes

to proceed, confirm that the patient has provided express consent. This must occur either immediately before the medication is administered or immediately before the prescription is provided.

Physicians and nurse practitioners who provide medical assistance in dying, and those who assist them throughout the process, are protected only from criminal liability if they are acting in compliance with the federal legislation and any applicable provincial or territorial laws, standards or rules. These protections would extend, for example, to pharmacists, any individual who supports a physician or nurse practitioner (not limited to regulated health professionals), or individuals who aid a patient to self-administer the fatal dose of medication.

Where the patient plans to self-administer the fatal dose of medication at home, primary physicians:

a) must help patients and caregivers assess whether this is a manageable option. This includes ensuring that the patient is able to store the medication in a safe and secure manner so that it cannot be accessed by others;
b) must ensure that patients and caregivers are educated and prepared for what to expect by fully explaining:
    i. all of the risks and probable consequences of taking the prescribed life-ending oral medication; and
    ii. what to do when the patient is about to die or has just died, including ensuring that caregivers are instructed regarding whom to contact at the time of death;
c) should offer to be present to address any needs of the patient; and
d) are strongly advised to contact the CMPA in advance if planning to be present and contemplating administration of the IV protocol in the event of medical complications or failure of the self-administered medication.

STEP 9 - Registration of Death

Please refer to Yukon Department of Health and Social Services' "Medical Assistance in Dying Information Sheet" regarding the protocol for completing the Registration of Death Form.

STEP 10 - When notification of death to the Coroner is required

While there is no general requirement for the Coroner to be notified of a medically assisted death, if the underlying cause which leads someone to make the decision for medically assisted dying has anything to do with accident, violence, workplace exposure or injuries, the Coroner must be notified (as is normally the case).

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6. Relevant YMC Standards of Practice

- Records Content: http://yukonmedicalcouncil.ca/pdfs/Records_Content.pdf
- Collaboration in Patient Care: http://yukonmedicalcouncil.ca/pdfs/Collaboration_in_Patient_Care.pdf
- Assessing the Mental Capacity of a Patient: http://yukonmedicalcouncil.ca/pdfs/Assessing_Mental_Capacity_of_Patient.pdf
- Moral or Religious Beliefs Affecting Medical Care: http://yukonmedicalcouncil.ca/pdfs/Moral_or_Religious_Beliefs_Affecting_Medical_Care.pdf
- Informed Consent: http://yukonmedicalcouncil.ca/pdfs/Informed_Consent.pdf

7. Standard of Practice History

Version	Description	YMC Meeting Minute Approval	In Force Date
Original	Creation of policy	16-5-2.4	July 15, 2016
Revision 1		17-1-2.5	January 20, 2017
Revision 2		n/a	September 22, 2017
Revision 3	The inclusion of Federal reporting requirements	18-08-2.2	November 16, 2018