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Medical Assistance in Dying: What Are My Professional Obligations?

Guidance for Members of the OCSWSSW

Introduction

In February 2015, the Supreme Court of Canada found that the prohibition against physician-assisted dying in the *Criminal Code* of Canada was unconstitutional. In response to the Supreme Court's decision, Parliament passed legislation on medical assistance in dying ("MAID") on June 17, 2016. This means that doctors and nurse practitioners in Canada can now provide medical assistance in dying, where this is done in accordance with the federal legislation as well as any applicable provincial laws, rules or standards.¹

This historic and controversial event has evoked strong and opposing views, ranging from those who welcome the new law, seeing it as a compassionate means to allow individuals to die with dignity, to those who have strong adverse feelings about assisting a person to die, usually rooted in moral and/or religious beliefs. Regardless of one's personal feelings, those working in the health care field are now confronted with carrying out this new law. Although the law does not compel an individual to provide or assist in providing medical assistance in dying², social workers and social service workers must nevertheless be mindful of their professional obligations.

Not surprisingly, the new law has aroused uncertainty and anxiety for many College members who have questions such as:

- What role would I play with MAID?
- What if I don't want to be involved?
- If I assist in providing MAID, am I vulnerable to legal action?

¹ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241.2 (7).

² Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241.2 (9).

This paper will guide College members in understanding their professional obligations in relation to MAID. As with any new legislation, there are many fine points that will be worked out as health care professionals apply the legislation to their day-to-day work. The College will keep close watch on this issue as it evolves over the coming months.

Eligibility criteria and process for MAID

A person may receive medical assistance in dying if they meet all of the following criteria:

- They are eligible for health services funded by a government in Canada;
- They are at least 18 years of age and capable of making health care decisions;
- They have a grievous and irremediable medical condition;
- They have made a voluntary request for MAID that was not a result of external pressure; and
- They give informed consent to receive MAID after having been informed of the means that are available to relieve their suffering, including palliative care.³

The law requires that a patient make a written, signed and dated request for MAID before two independent witnesses,⁴ who also sign and date the request. An assessment by a doctor or nurse practitioner is carried out to determine eligibility for MAID and, if the patient meets the criteria, the law requires a second assessment by a doctor or nurse practitioner, to confirm eligibility.⁵ The first and second assessors must be independent of each other and the patient, for example, they must not have a supervisor-supervisee relationship.⁶ There must be a period of 10 clear days between the date the patient signs the request and when MAID is provided, unless their death or loss of capacity to provide informed consent is imminent.⁷ A patient found to be ineligible for MAID may seek an assessment from another doctor or nurse practitioner. A doctor who has a conscientious objection to providing medical assistance in dying should not abandon the patient and should refer the patient to a non-objecting, available and accessible physician, nurse practitioner or agency.⁸ The same applies to nurse practitioners.⁹

³ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241.2 (1).

⁴ For the definition of independent witness, refer to Bill C-14, Section 241.2 (5).

⁵ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241.2 (3).

⁶ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241.2 (6).

⁷ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241.2 (3)(g).

⁸ College of Physicians and Surgeons of Ontario, *Policy Statement #4-16, Medical Assistance in Dying*, page 5.

⁹ College of Nurses of Ontario, *Guidance on Nurses' Roles in Medical Assistance in Dying*, page 3.

Professional obligations

Although social workers and social service workers are confronted daily by emotionally charged situations, for many, there is perhaps no greater challenge than considering MAID. Reviewing the College's standards of practice is a good place to begin in sorting out the issue. Members are reminded that they are required to "maintain current knowledge of policies, legislation, programs and issues related to the community, its institutions and services in their areas of practice."¹⁰ The Ministry of Health and Long-Term Care (MOHLTC) has established an email address for general questions about MAID (endoflifedecisions@ontario.ca) and is developing tools and supports for clinicians engaged in the provision of MAID. Many health care facilities have also developed educational tools for employees, or are in the process of doing so. Members are urged to take the steps necessary to ensure they have a solid understanding of this issue.

Given the highly controversial nature of the new law, and its potential for polarizing people, members must also ensure they are "aware of their values, attitudes and needs and how these impact on their professional relationships with clients."¹¹ Members must also "distinguish their needs and interests from those of their clients to ensure that, within professional relationships, clients' needs and interests remain paramount."¹² Although the law states that doctors and nurse practitioners may provide MAID, and are identified as those who conduct the eligibility assessment, some health care facilities are establishing teams or panels, including other disciplines, to assist in this assessment. Participating in such a team is voluntary and College members may choose to be involved or not.

A more common scenario, however, is that a College member, as a member of a clinical team, will encounter a patient who wishes to talk about MAID. In this situation, the member may provide information to the patient, and refer them to the appropriate doctor or nurse practitioner regarding next steps.¹³ However, it remains a crime to counsel a person to die by suicide.

Regardless of their specific role, members are reminded of the critical requirement of ensuring one's competence. Principle II: Competence and Integrity, Interpretation 2.1.1 states:

"College members are responsible for being aware of the extent and parameters of their competence and their professional scope of practice

¹⁰ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, Interpretation 2.1.3.

¹¹ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle I: Relationship with Clients, Interpretation 1.5.

¹² *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle I: Relationship with Clients, Interpretation 1.6.

¹³ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241 (5.1).

and limit their practice accordingly.¹⁴ When a client's needs fall outside the College member's usual area of practice, the member informs the client of the option to be referred to another professional. If, however, the client wishes to continue the professional relationship with the College member and have the member provide the service, the member may do so provided that:

- (i) he or she ensures that the services he or she provides are competently provided by seeking additional supervision, consultation and/or education and
- (ii) the services are not beyond the member's professional scope of practice.

Recommendations for particular services, referrals to other professionals or a continuation of the professional relationship are guided by the client's interests as well as the College member's judgement and knowledge."

Members who work in a setting other than a hospital may also encounter clients who are seeking MAID. The MOHLTC has established a toll-free referral support line to help Ontario clinicians to arrange for assessment referrals and consultations for patients requesting MAID.¹⁵ It is possible that a member is not comfortable, for moral or religious reasons, to assist the client with this. In this situation, "College members assist potential clients to obtain other services if members are unable or unwilling, for appropriate reasons, to provide the requested professional help."¹⁶ Appropriate reasons for refusing to provide service include that "complying with the potential client's request would violate the member's values, beliefs and traditions to the extent that the member would not be able to provide appropriate professional service."¹⁷ In any situation, members must "provide clients with accurate and complete information regarding the extent, nature, and limitations of any services available to them."¹⁸ In addition, "members respect and facilitate self-determination in a number of ways including acting as resources for clients and encouraging them to decide which problems they want to address as well as how to address them."¹⁹

¹⁴ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, footnote 1, pertaining to scope of practice.

¹⁵ Email to register or ask any questions about the service: maidregistration@ontario.ca or call 1-844-243-5880.

¹⁶ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle III: Responsibility to Clients, Interpretation 3.5.

¹⁷ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle III: Responsibility to Clients, footnote 4. ii).

¹⁸ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle III: Responsibility to Clients, Interpretation 3.1.

¹⁹ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle I: Relationship with Clients, Interpretation 1.3.

Members who are asked about MAID, regardless of their specific role or setting, may be fearful of legal action against them. It is important to note the following excerpts from Bill C-14:

"For greater certainty, no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying."²⁰

"No person is a party to culpable homicide if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2."²¹

"No person is a party to an offence under paragraph (1) (b) if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2."²²

However, if you have any questions or concerns about your role, please seek legal advice before proceeding.

Many members will be employed by organizations engaged in the provision of MAID while others may work in organizations that choose not to provide MAID or have limitations on how they provide it. Accordingly, "members employed by organizations maintain an awareness and consideration of the purpose, mandate and function of those organizations and how these impact on and limit professional relationships with clients."²³

MAID is an intense and sensitive issue, which undoubtedly will have a profound impact on those who are involved with it. Members are encouraged to "engage in the process of self-review and evaluation of their practice and seek consultation when appropriate."²⁴ Some organizations are developing resources to support staff engaged in the provision of MAID. Members are encouraged to avail themselves of such supports when needed, or to consult a manager or trusted colleague, to ensure they are appropriately addressing their own needs.

²⁰ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241 (5.1).

²¹ Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 227(2).

²² Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, Section 241 (3).

²³ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle I: Relationship with Clients, Interpretation 1.7.

²⁴ *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, Interpretation 2.1.5.

Conclusion

The law permitting MAID is controversial and may arouse intense feelings and anxieties. Members are urged to ensure their competence, which includes:

- Gaining knowledge about the legislation as well as their roles and responsibilities.
- Identifying their own values and attitudes to ensure they do not adversely affect clients.
- Seeking consultation when needed.

As with all social work and social service work practice, the best interest of the client is the primary professional obligation.

For more information

Please contact the Professional Practice Department at practice@ocswssw.org

Code of Ethics and Standards of Practice, Second Edition, 2008

<http://www.ocswssw.org/professional-practice/code-of-ethics/>

Ontario.ca webpage: <https://www.ontario.ca/page/medical-assistance-dying-and-end-life-decisions>

Bill C-14, an Act to amend the *Criminal Code* and to make related amendments to other Acts (medical assistance in dying):

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