



College of Physicians and Surgeons of British Columbia

Legislative Guidance

Physician-assisted Dying

Preamble

On February 6, 2015, the Supreme Court of Canada (SCC) in *Carter v. Canada* struck down the provisions in the Criminal Code prohibiting physician-assisted dying (PAD) (sections 241(b) and section 14). However, the Supreme Court of Canada suspended the decision for a period of 12 months.

The SCC decision establishes PAD as a charter right for “a competent adult person who clearly consents to the termination of life and has a grievous and irremediable medical condition (including an illness, disease or disability) that causes suffering that is intolerable to the individual.” The decision allows both assisted suicide, where the patient is provided assistance in intentionally ending his or her own life, and euthanasia, where a physician directly administers a lethal dose of medication in accordance with the wishes of the patient. The SCC also stated that “nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying.”

Registrants are expected to be aware of and comply with their legal, professional and ethical obligations and are encouraged to seek the guidance of legal counsel or the Canadian Medical Protective Association (CMPA). Registrants may also contact a member of registrar staff at the College to discuss professional and ethical obligations.

The College recognizes that there may be legislation in the future that addresses some of the matters discussed in this document. Where such legislation exists, the provisions of that legislation will take priority over the provisions of this document if there is any inconsistency between the two.

Carter Decision

The SCC in its decision established certain requirements that must be met in order for a physician to assist a patient to die:

- A. The patient must be an adult.

The SCC used the term “competent adult” which the College has interpreted to mean an individual, who is by law, capable of giving consent.

In BC the *Infants Act* codifies the ability of a mature minor to consent, or withhold consent, to health care. It is unclear what the intent of the court was in this decision in respect to mature minors. Absent further clarification through legislation or court

decisions, physicians who receive requests for assistance in dying from mature minors should exercise extreme caution.

B. The patient must consent.

The SCC used the phrase a “competent adult person who clearly consents.” PAD cannot be provided to patients who cannot provide consent.

C. The patient must have a grievous and irremediable medical condition that causes enduring suffering that is intolerable to the patient.

The SCC did not limit PAD only to patients who have a terminal illness. The term medical condition would include an illness, disease or disability. Nor is the patient required to undertake treatments that are not acceptable to the individual.

Rights and Autonomy

Patients have the right to make decisions about their bodily integrity (autonomy) and to have access to unbiased and accurate information. Physicians have an obligation to provide their patients with health information and health services in a non-discriminatory fashion and an obligation not to abandon their patients. Physicians also have the right to decide whether or not to perform physician-assisted dying.

Conscientious Objection

Physicians may make a personal choice not to perform PAD, based on their values and beliefs. The College expects the physician to provide patients with enough information and assistance to allow them to make informed choices for themselves. This includes advising patients that other physicians may be available to see them, or suggesting the patient visit an alternate health-care provider and if asked, agreeing to transfer the medical records as required. Where needed, physicians must offer assistance and must not abandon the patient. Physicians should not discuss in detail their personal beliefs and should not pressure patients to disclose or justify their own beliefs. In all cases, physicians must practise within the confines of the legal system, and provide compassionate, non-judgemental care according to the *CMA Code of Ethics*.

Process

The process respecting PAD involves the opinion of two physicians, the attending physician and the consulting physician, and the patient’s consistent expression of a desire for PAD over a reasonable period of time.

1. Both the attending and consulting physician in a situation of physician-assisted dying must:
 - a. have the appropriate competencies, qualifications, experience and training to render a diagnosis and prognosis of the patient's condition, together with the appropriate technical knowledge and competency to provide PAD in a manner that is respectful to the patient
 - b. have a complete and full discussion about PAD with the patient; physicians are expected to provide patients with all the information required to make

informed choices about treatment and to communicate the information in a manner that is easily understood by the patient

2. The attending and consulting physician must agree that the patient meets the criteria as set out by the SCC:
 - a. the patient has a grievous medical condition
 - b. the condition must not be remediable using treatment that the patient is willing to accept
 - c. the patient's suffering must be intolerable to the patient

Physicians must assess a patient's suitability for PAD against the above criteria. A request for PAD is contextual to the patient's medical condition, its natural history and prognosis, treatment options, and the risks and the benefits associated with each option. Both the attending and consulting physician are responsible to ensure that the patient understands such factors, and is able to communicate a reasoned decision based on that understanding. When it is unclear whether these criteria have been met, a psychiatric or psychological consult is required to examine the patient's decision-making capacity (or limitations) in greater detail.

3. Both the attending and consulting physician must be licensed for independent practice in their respective Canadian jurisdictions, and at least one physician must be licensed in British Columbia.
4. Either the attending physician or the consulting physician but not both may provide their opinion by telemedicine provided that there is a regulated health professional in physical attendance with the patient. At least one of the attending or consulting physicians must meet with the patient in person.
5. The patient must be an adult or mature minor and eligible for publicly funded health care services.
6. The patient must be competent and able to give free and informed consent.
 - a. Both the attending physician and consulting physician must be satisfied that the patient is
 - i. mentally capable of making a free and informed decision at the time of the request and throughout the process, and
 - ii. capable of giving free and informed consent to PAD.
 - b. If either physician is unsure whether the patient has the capacity to consent, the patient must be referred for further capacity assessment.
 - c. The patient must maintain mental capacity for PAD to proceed. If at any time during the progression of the patient's condition, the patient loses the mental capacity to rescind his or her decision, PAD ceases to be an option.
 - d. PAD cannot be provided to patients who cannot provide consent including when consent is given by an alternate or substitute decision maker, or is provided through a personal advance directive.
7. The consent must be voluntarily given by the patient.

- a. Both the attending and consulting physician must be satisfied on reasonable grounds that
 - i. the patient's decision to undergo PAD has been made freely, without coercion or undue influence from family members, health-care providers or others,
 - ii. the patient has a clear and settled intention to end his or her life after making an informed decision, and
 - iii. the patient has requested PAD himself or herself, thoughtfully and repeatedly in a free and informed manner.
8. The patient must be informed by the attending and consulting physician of the following and the information must be included in the patient's medical record with a copy provided to the patient:
 - a. patient's diagnosis and prognosis
 - b. feasible alternatives (including comfort care, hospice care and pain control)
 - c. option to rescind the request for PAD at anytime
 - d. risks of taking the prescribed medication
 - e. probable outcome/result of taking the medication
 - f. recommendation to seek legal advice on life insurance implications

In addition, the following information also needs to be included in the patient's medical record:

- a. all written and oral requests for PAD and a summary of the discussion
 - b. confirmation that, after the completion of all documentation the patient was offered the opportunity to rescind the request
 - c. a note from the physician who prescribes/administers the medication that all the requirements have been met, including the steps taken and the medication prescribed
 - d. a copy of the medical certificate of death
9. The physicians must ensure that the patient has consistently expressed a desire for PAD over a reasonable period of time. What is a reasonable period of time will depend on the patient's medical condition and circumstances. In most situations, 15 days would be a reasonable period of time.
 10. After the reasonable waiting period and following the completion of all documentation the patient is to be offered the opportunity to rescind the request.
 11. The patient's decision to proceed with PAD requires a formal request which may be written by the patient or be oral and transcribed by another party. Both the attending and the consulting physician must obtain a written request from the patient. The request should confirm that the patient has given free and informed consent to PAD and that the requirements for PAD have been met. The written request must be dated, signed by the patient, and include the signature of an independent witness who can attest that the patient is capable, acting voluntarily and free from coercion. In both

cases, the witness should not be: the attending or consulting physician; a relative; entitled to any portion of the estate; or an owner, operator, or employee of a health care facility where the patient is receiving treatment.

12. The medical certificate of death should indicate PAD arising out of the underlying grievous and irremediable medical condition.

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