Physician Assisted Dying Update

The Council of the College has approved its Standard of Practice for Physician Assisted Death (PAD). It comes into force and effect on February 6, 2016 or whenever PAD is no longer illegal in Canada.

See Schedule M attached.

Schedule M attached to and forming part of By-Law No. 11 of the College.

PHYSICIAN ASSISTED DEATH

BACKGROUND

The Supreme Court of Canada (SCC) declared that as of February 6, 2016 it will no longer be illegal for a *physician* to assist a competent adult person to die where that person:

- clearly consents to the termination of life; and
- has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to that person. [1]

The SCC also found that:

- Nothing in its declaration compels *physicians* to provide assistance in dying.
- The *Charter* rights of both *patients* and *physicians* must be reconciled in any legislative or regulatory regime in which *physician assisted death* is permitted.
- *Physicians* are capable of reliably assessing *patient* competence and it is possible to detect vulnerability, coercion, undue influence, and ambivalence as part of the assessment process for informed consent and medical decision making capacity.
- Informed consent can apply to a *patient* seeking *physician assisted death*, so long as care is taken to ensure the *patient* is properly informed of his/her diagnosis and prognosis and the treatment options offered to the *patient* include all reasonable palliative care interventions.

This Schedule:

- establishes the standards of practice and ethical requirements of *physicians* in relation to *physician assisted death*;
- comes into force and effect on February 6, 2016; and
- is subject to existing legislation, including the Criminal Code.

Should a legislative framework governing any aspect of *physician assisted death* be implemented, the legislation will take priority over the requirements of this Schedule where there is any inconsistency.

DEFINITIONS

The following definitions apply in this Schedule and do not necessarily apply in other contexts.

Physician Assisted Death - medical intervention by a *physician* which involves providing or administering pharmaceutical agent(s) that intentionally cause the *patient's* death at the *patient's* request.

Grievous and Irremediable Medical Condition - a medical condition, including an illness, disease or disability, that causes enduring suffering that is intolerable to the *patient*. *Physicians* must meet all of the requirements of this Schedule when assessing whether a *patient* has a *grievous and irremediable medical condition* for the purpose of determining if *physician assisted death* will be provided to a *patient*.

Patient - the person requesting *physician assisted death* and whose well-being must be the primary concern of any *physician* involved with responding to such a request.

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[1] Carter v. Canada (Attorney General), 2015 SCC 5; https://www.canlii.org/en/ca/scc/doc/2015/2015scc5/2015scc5.html?resultIndex=1

Physician - a member of the College who is registered on the Manitoba Medical Register and who is licensed to practice medicine, excluding a member who is only practicing within a residency training program.

Administering Physician – the *physician* who provides or administers the pharmaceutical agent(s) intended to cause the *patient's* death. The *administering physician* is responsible for confirming that all of the requirements of this Schedule have been met before the pharmaceutical agent(s) that intentionally cause the *patient's* death can be provided or administered. There can only be one *administering physician* for each *patient*.

REQUIREMENTS

I. Minimum Requirements of All *Physicians*

A. A *physician* must not promote his or her own values or beliefs about *physician assisted death* when interacting with a *patient*.

B. On the grounds of a conscience-based objection[2], a *physician* who receives a request about *physician assisted death* may refuse to:
   1. provide it; or
   2. personally offer specific information about it; or
   3. refer the patient to another *physician* who will provide it.

C. A *physician* who refuses to refer a *patient* to another *physician* or to personally offer specific information about *physician assisted death* on the grounds of a conscience-based objection must:
   1. clearly and promptly inform the *patient* that the *physician* chooses not to provide *physician assisted death* on the grounds of a conscience-based objection; and

   2. provide the *patient* with timely access to a resource[3] that will provide accurate information about *physician assisted death*; and

   3. continue to provide care unrelated to *physician assisted death* to the *patient* until that *physician's* services are no longer required or wanted by the *patient* or until another suitable *physician* has assumed responsibility for the *patient;* and

   4. make available the *patient's* chart and relevant information (i.e., diagnosis, pathology, treatment and consults) to the *physician(s)* providing *physician assisted death* to the *patient* when authorized by the *patient* to do so; and

   5. document the interactions and steps taken by the *physician* in the *patient's* medical record, including details of any refusal and any resource(s) to which the patient was provided access.

[2] See Section 17 of By-Law #11 - conscience-based objection is defined as an objection to participate in a legally available medical treatment or procedure based on a member's personal values or beliefs.

[3] Acceptable resources may include but are not limited to other *physicians*, health care providers, counsellors and publicly available resources which can be accessed without a referral and which provide reliable information about *physician assisted death*.

II. Specific Requirements for Assessing *Patient* Eligibility for *Physician Assisted Death*

A. At least two *physicians*, one of whom must be the *administering physician*, must independently conduct this assessment before *physician assisted death* is provided to a *patient*. Each of these *physicians* must:

1. be fully informed of the current relevant clinical information about the *patient* and his/her condition; and

2. be qualified to render a diagnosis and opine on the *patient's* medical condition or be able to consult with another *physician* with relevant expertise for the limited purpose of confirming the diagnosis, prognosis or treatment options; and

3. use appropriate medical judgment and utilize a reasonable method of assessment; and

4. be satisfied that the *patient* seeking *physician assisted death:*

    a. is an adult, having reached the age of 18 years, which is the age of majority in Manitoba[4]; and

    b. has a *grievous and irremediable medical condition* which the *physicians* have each verified by:

        i. a clinical diagnosis of the *patient's* medical condition; and

        ii. a thorough clinical assessment of the *patient* which includes consideration of all relevant, current and reliable information about the *patient's* symptoms and the available medical treatments to cure the condition or alleviate the associated symptoms which make the condition grievous, including, where appropriate, consultation with another qualified *physician*; and

        iii. confirmation by each *physician* that the *patient's* medical condition is:

            - grievous in that it is very serious and the current or impending associated symptoms are enduring and cause severe physical or psychological pain or suffering; and

            - irremediable in that:

                a. there are no medical treatments to cure the condition or alleviate the associated symptoms which make it grievous; or

                b. the medical treatments which are available to cure the condition or alleviate the associated symptoms which make it grievous are not acceptable to the *patient.*

[4] *The Age of Majority Act*, C.C.S.M. c. A7

B. When a *physician* assesses whether the available treatments are unacceptable to the *patient* and whether the *patient's* suffering is enduring and intolerable to the *patient*, the *physician* must ensure that:

1. the unique circumstances and perspective of the *patient*, including his/her personal experiences and religious or moral beliefs and values have been seriously considered; and
2. the *patient* is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and
3. treatment options described to the *patient* include all reasonable medical treatments to cure the condition or alleviate the associated symptoms which make it grievous or, if the patient is terminal, palliative care interventions; and
4. the *patient* adequately understands the:
    a. current and anticipated course of physical symptoms, ability to function and pain and suffering specific to that *patient*; and
    b. effect that any progression of physical symptoms, further loss of function or increased pain may have on that specific *patient*; and
    c. available treatments to manage the *patient's* symptoms or loss of function or to alleviate his/her pain or suffering.

C. In circumstances where the *patient* requesting *physician assisted death*:

1. has not been diagnosed with a terminal illness (prognosis of less than 6 months); or
2. is not suffering from:
    a. a catastrophic and irreversible physical injury; or
    b. intractable physical pain; or
    c. an advanced state of irreversible significantly impaired function or a predictable and imminent decline to that state; or
3. appears to be experiencing suffering which is disproportionate to the *patient's* diagnosis, injury or related symptoms,

the determination that the *patient* has a *grievous and irremediable medical condition* must be supported by an independent psychiatric assessment by a *physician* enrolled on the Specialist Register as a psychiatrist. This assessment must rule out a treatable psychiatric disorder/illness that is:

i. distorting the *patient's* ability to tolerate or assess his/her suffering; or
ii. impairing the *patient's* ability to reasonably assess available treatment options.

D. Each *physician* must document in the *patient's* medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements of any assessment related to the *patient's* eligibility for *physician assisted death*.

III. Specific Requirements for Assessing Medical Decision Making Capacity

A. At least two *physicians,* one of whom must be the *administering physician,* must independently conduct the assessment of the *patient's* medical decision making capacity and determine that the *patient* is competent to provide informed consent for *physician assisted death* before it is provided to a *patient*. Each of the *physicians* must be:

1. fully informed of the current relevant clinical information about the *patient* and his/her mental and physical condition*;* and

2. qualified to assess competence in the specific circumstances of the *patient* whose capacity is being assessed or be able to consult with another *physician* with relevant expertise for the limited purpose of assessing the *patient's* medical decision making capacity.

B. At least two *physicians*, one of whom must be the *administering physician,* must each independently determine that:

1. the *patient* is competent to make decisions about his/her medical care and provide informed consent to receive pharmaceutical agent(s) that will intentionally cause the *patient's* death; and

2. the *patient's* decision to terminate his/her life by *physician assisted death* is voluntary in accordance with the requirements of this Schedule.

C. In the event that any one of the at least two *physicians* has a reasonable doubt as to the *patient's* competence, an additional independent assessment must be conducted by another *physician* who is enrolled on the Specialist Register as a psychiatrist.

D. If at any time the *patient* loses his/her medical decision making capacity, *physician assisted death* can no longer be provided to the patient.

E. Each *physician* must document in the *patient's* medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements of any assessments of a *patient's* medical decision making capacity.

IV. Specific Requirements for Obtaining Informed Consent:

A. At least two *physicians*, one of whom must be the *administering physician*, must each meet separately with the *patient* to obtain informed consent in accordance with the requirements of this Schedule before *physician assisted death* is provided to the *patient*. Each of them must have sufficient knowledge of the *patient's* condition and circumstances to ensure that:

1. the *patient* is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and
2. the treatment options described to the *patient* include all reasonable medical treatments to cure the condition or alleviate the associated symptoms which make it grievous and/or palliative care interventions where the *patient* is terminal; and
3. the *patient* is offered appropriate counseling resources*;* and
4. the *patient* fully understands that:
    a. death is the intended result of the pharmaceutical agent(s); and
    b. the potential risks and complications associated with taking the pharmaceutical agent(s).

B. Each *physician* who obtains informed consent from the *patient* for *physician assisted death* must:

1. have either conducted his/her own assessment or be fully informed of the assessments conducted by other *physicians* of the *patient's* medical condition and the *patient's* medical decision making capacity; and

2. meet the legal requirements for informed consent, including informing the *patient* of:
    a. material information which a reasonable person in the *patient's* position would want to have about *physician assisted death*; and
    b. the material risks associated with the provision/administration of the pharmaceutical agent(s) that will intentionally cause the *patient's* death; and

3. ensure that the *patient* has been informed of his or her right to rescind the request at any time; and

4. meet with the *patient* alone at least once to confirm that his/her decision to terminate his/her life by *physician assisted death* is voluntary and that the *patient* has*:*
    a. made the request him/herself thoughtfully; and
    b. a clear and settled intention to end his/her own life by *physician assisted death* after due consideration;
    c. considered the extent to which the *patient* has involved or is willing to involve others such as family members, friends, other health care providers or spiritual advisors in making the decision or informing them of his/her decision; and
    d. made the decision freely and without coercion or undue influence from family members, health care providers or others.

5. confirm that the *patient* has consistently expressed the intent to terminate his/her life through *physician assisted death* over a reasonable period of time. What is a reasonable period of time will depend on the *patient's* medical condition and other circumstances:

    a. In the case of a *patient* whose death is imminent (anticipated within 7 days or less) there are no additional time requirements in relation to confirming a consistent intent and final decision on the part of the *patient* after the *patient* has provided his/her informed consent to terminate his/her life through *physician assisted death* in accordance with the requirements of this Schedule.

    b. In all other cases, after the *patient* has provided his/her informed consent to terminate his/her life through *physician assisted death* in accordance with the requirements of this Schedule, at least two *physicians*, one of whom must be the *administering physician*, must again each meet separately with the *patient* and the *patient* must again provide his/her informed consent to terminate his/her life through *physician assisted death* after at least 7 days has passed from the date that the *patient* last provided his/her informed consent.

C. Before the pharmaceutical agent(s) that intentionally cause the *patient's* death can be provided or administered, the *patient* must first provide written consent. Where a *patient* is physically incapable of providing written consent, the *patient* may direct another person to provide it on his/her behalf, in which case the consent document must be signed in the presence of the *patient* and a witness; and

    1. neither the person completing the form or the witness can be the *administering physician* or a family member, and

    2. the *patient* must acknowledge the signature on the consent document in the presence of the witness, who must sign as witness in the *patient's* presence.

D. Each *physician* must document in the *patient's* medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements for obtaining informed consent.

V. Specific Requirements of the *Administering Physician*

A. The *administering physician* must:

1. have appropriate knowledge and technical competency to provide/administer the pharmaceutical agent(s) in the appropriate form and/or dosage that will terminate the *patient's* life in the manner in which the *patient* was informed that it would terminate his/her life at the time the *patient* provided his/her consent; and

2. be qualified to provide appropriate instructions to the *patient* as to how to administer the pharmaceutical agent(s) that will terminate the *patient's* life in the manner in which the *patient* was informed that it would terminate his/her life at the time the *patient* provided his/her consent in circumstances where the *patient* elects to administer the pharmaceutical agent(s) to him/herself; and

3. be readily available to care for the *patient* at the time the pharmaceutical agent(s) that intentionally brings about the *patient's* death is administered by the *administering physician* or taken by the *patient* until the *patient* is dead; and

4. provide reasonable notice to the Office of the Chief Medical Examiner that the *patient* is planning to die by means of *physician assisted death* where the location is not a health care institution; and

5. certify, in writing, on the prescribed form (Appendix A) that he/she is satisfied on reasonable grounds that all of the following requirements have been met:

    a. The *patient* is at least 18 years of age;

    b. The *patient's* medical decision making capacity to consent to receiving medication that will intentionally cause the *patient's* death has been established in accordance with the requirements of this Schedule;

    c. All of the requirements of this Schedule in relation to assessing eligibility for physician assisted death and obtaining and documenting informed consent have been met; and

6. ensure that the requirements of *physicians* set out in *The Fatality Inquiries Act*, C.C.S.M. c. F52 and *The Vital Statistics Act*, C.C.S.M. c. V60 in respect to reporting and/or registering the cause and manner of the *patient's* death, including completing all required forms specified by the legislation or regulations, are met in a timely fashion.

Appendix A – Certification by the Administering Physician

I, _____, am the *administering phy*sician who is providing / administering
(print physician's name)

pharmaceutical agent(s) to _____ (the *patient*) for the intended purpose
(print patient's name)

of causing the *patient's* death at the *patient's* request.

I hereby certify that:

1. I am familiar with all of the requirements for providing *physician assisted death* to a patient set out in Schedule M of By-Law 11 of The College of Physicians & Surgeons of Manitoba ("the Schedule").

2. I am satisfied that**:**

    a. The *patient* is at least 18 years of age;

    b. The *patient's* medical decision making capacity to consent to receiving pharmaceutical agent(s) that will intentionally cause the *patient's* death has been established in accordance with the requirements of the Schedule;

    c. All of the requirements of the Schedule in to assessing eligibility for physician assisted death and obtaining and documenting informed consent have been met. The following physicians were involved:

        i. _____
        [Print first and last names of the physician(s)]
        conducted the assessment(s) for patient eligibility as required by the Schedule.

        ii. _____
        [Print first and last names of the physician(s)]
        conducted the assessment(s) of the *patient's* medical decision making capacity and determined that the *patient was* competent to provide informed consent for *physician assisted death* as required by the Schedule.

        iii. _____
        [Print first and last names of the physician(s)]
        independently conducted the assessment(s) of the *patient's* medical decision making capacity and determined that the *patient was* competent to provide informed consent for *physician assisted death* as required by the Schedule.

Signed by me at _____, in the Province of Manitoba, this ____ day of _____, 20__.

_____ _____
WITNESS Administering Physician

_____ _____
Print Name of Witness Print Name of Administering Physician