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## Introduction

The Nova Scotia College of Nursing is the regulatory body for licensed practical nurses (LPNs), registered nurses (RNs) and nurse practitioners (NPs) in Nova Scotia. Our mandate is to protect the public by promoting the provision of safe, competent, ethical and compassionate nursing services by its registrants.

On June 17, 2016, the federal government enacted legislation setting out when and how medical assistance in dying (MAiD) can be provided without constituting an offence under the *Criminal Code*. This was in response to the Supreme Court of Canada's Carter decision delivered on February 6, 2015 which struck down the law prohibiting MAiD for Canadians who met certain conditions outlined by the court<sup>1</sup>.

The *Criminal Code* envisions that MAiD can be provided by either a nurse practitioner (NP) or physician<sup>2</sup>.

Since failure to comply with the conditions contained in the *Criminal Code* could result in a conviction, this guideline was developed to help NPs understand their professional accountabilities with respect to MAiD. Nurse Practitioners must ensure they have the knowledge, skills and abilities to provide safe, competent, ethical and compassionate care to clients, and follow their standards of practice.

There is a separate NSCN resource titled Medical Assistance in Dying: A Guideline for Nurses which addresses the role of registered nurses (RNs), licensed practical nurses (LPNs) and NPs who may be assisting a MAiD provider as a member of the healthcare team rather than acting as a MAiD provider themselves. The College of Physicians and Surgeons of Nova Scotia has also developed a [Professional Standard Regarding Medical Assistance in Dying](#) (2016).

## What Is Medical Assistance In Dying?

MAiD refers to the process where, at the client's request, an NP or physician:

- Prescribes and administers a medication to the client that causes their death; or
- Prescribes or provides a medication to the client so that the client may self-administer the medication and in so doing cause their own death.

Section 241.2(7) of the *Criminal Code* requires that MAiD be provided with reasonable knowledge, care and skill and in accordance with applicable provincial laws, rules or standards. Nurse practitioners who fail to comply with these legal requirements may be prosecuted under the *Criminal Code*. This document provides a summary of the requirements contained in the *Criminal Code*. Therefore, NPs should familiarize themselves with the contents of this document and ensure their practice is consistent with its terms.

## Nurse Practitioners Who Choose To Be Involved In MAiD

Nurse practitioners may provide MAiD to clients who meet eligibility criteria. In doing so, NPs must consider the following limitations:

- NPs cannot act on a request for MAiD set out in a personal directive or similar document;
- NPs cannot act on a request for MAiD on the direction of anyone other than the client, including a substitute decision-maker. If the client has difficulty communicating, NPs must take all necessary measures to provide a reliable means by which the client may understand the information that is provided and communicate their decision.
- NPs should be aware that counselling suicide, in the sense of encouraging, soliciting or inciting suicide, remains a criminal offence<sup>3</sup>.
- MAiD may be provided by two NPs, two physicians or an NP and a physician.

1 Carter v. Canada (Attorney General) [2015] S.C.J. No. 5, 2015 SCC 5 (the Carter decision)

2 This guideline applies to NPs, but it is possible for one or both of the persons referred to as the first or second MAiD provider in this guideline to be a physician. This guideline should be read with that in mind.

3 *Criminal Code*, s. 241(a)

## ELIGIBILITY CRITERIA

Under the *Criminal Code*, NPs may provide MAiD only where the following eligibility criteria are met:

1. The client is eligible or, but for any applicable minimum period of residence or waiting period, would be eligible for health services funded by the province of Nova Scotia.
2. The client is at least 18 years of age and capable of making decisions with respect to their health.
3. The client's request for MAiD is a voluntary one, made freely and without coercion, undue influence, or any form of external pressure.
4. The client must have a grievous and irremediable condition. This criterion is met only where the NP is of the opinion that the client meets all of the following criteria:
  - a. the client has a serious and incurable illness, disease or disability;
  - b. the client is in an advanced state of irreversible decline in capability;
  - c. the illness, disease or disability or that state of decline causes the client enduring physical or psychological suffering that is intolerable to the client and cannot be relieved under conditions that the client considers acceptable;
  - d. the client's natural death has become reasonably foreseeable, taking into account all of the client's medical circumstances without a prognosis necessarily having been made as to the specific length of time that the client has remaining; and
  - e. the client gives informed consent to receive MAiD after having been informed of the means that are available to relieve their suffering, including palliative care<sup>4</sup>.
5. A client with a mental illness is eligible for MAiD as long as:
  - a. the client meets the criteria set out above; and
  - b. the mental illness is not the sole underlying medical condition.

## Duties Of First And Second MAiD Providers

### GENERAL

The *Criminal Code* requires that at least two MAiD providers are involved in the assessment of eligibility of a client requesting MAiD. The following section of this guideline refers to both the first and second MAiD provider roles. For the purposes of this guideline, a MAiD provider is defined as a nurse practitioner or a physician licensed to practice in Nova Scotia.

The first MAiD provider is the individual NP or physician who agrees to perform the functions of a first MAiD provider, including completing the initial assessment of client eligibility and ensuring safeguards are met.

The second MAiD provider is the individual NP or physician who agrees to assess the client at the request of the first MAiD provider to confirm whether the client meets the eligibility criteria for MAiD and who agrees to perform the functions of a second MAiD provider.

The MAiD medication may be prescribed or administered by either the first or second MAiD provider.

Nurse practitioners who take on the role of first or second MAiD provider must be independent from the other MAiD provider. The *Criminal Code* states that the MAiD providers will be independent from each other if they:

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<sup>4</sup> Care provided to people of all ages who have a life-limiting illness, with little or no prospect of cure, and for whom the primary treatment goal is quality of life. The treatment is aimed at alleviating suffering – physical, emotional, psychological, or spiritual – rather than curing. It aims neither to hasten nor to postpone death, but affirms life and regards dying as a normal process. It recognizes the special needs of clients and families at the end of life, and offers a support system to help them cope.

- i. are not a mentor to the other MAiD provider or responsible for supervising their work;
- ii. do 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 other material benefit resulting from that person's death other than standard compensation for their services relating to the request;
- iii. do not know or believe that they are connected to the other MAiD provider or to the client making the request in any other way that would affect their objectivity.

Section 241.2(6)(a) of the *Criminal Code* requires that the MAiD providers are not in a mentor relationship with each other but does not define the term "mentor". Nurse practitioners who have questions about whether or not they are in a mentor relationship with the other MAiD provider should contact the Canadian Nurses Protective Society or a lawyer for further guidance.

Nurse practitioners must ensure they have the knowledge, skills and abilities to provide safe, competent, ethical and compassionate care to clients. Nurse practitioners are expected to remain current with the guidance provided by NSCN, employer and/or agency policy, and any applicable legislation regarding all aspects of MAiD.

### Clients who Cannot Sign and Date their Request for MAiD

If the client requesting MAiD is unable to sign and date the request, another person may do so in the client's presence and under the client's express direction. The other person must:

- be at least 18 years of age;
- understand the nature of the request for MAiD;
- 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 other material benefit resulting from that client's death.

### Independent Witnesses

Under the *Criminal Code*, any person who is at least 18 years of age and who understands the nature of the request for MAiD may act as an independent witness if they:

- are not, or reasonably believe that they are not, a beneficiary under the client's will or will receive a financial or other material benefit from the client's death;
- are not an owner or operator of a health care facility where the client is being treated or any facility in which the client resides;
- are not directly involved with providing health care services or personal care services to the client making the request;
- do not directly provide personal care to the client.

## DUTIES OF FIRST MAiD PROVIDER

The first MAiD provider must:

- Coordinate the client's care throughout the MAiD process. This includes keeping the client informed throughout the process about all relevant information. In fulfilling this role, the first MAiD provider must engage in a discussion of the client's diagnosis, prognosis and treatment options, including the availability of palliative care for terminally ill clients;
- Expeditiously assess the client to determine whether the client meets the eligibility criteria. In order to determine that a client meets the eligibility criteria, the first MAiD provider, prior to referral to the second MAiD provider, can rely either on their assessment of the client alone or on their assessment of the client in combination with the opinions of one or more other regulated health professionals (not including the second MAiD provider for that client);

- Receive from the client a written and signed request for MAiD, dated after an NP or physician has informed the client of the grievous and irremediable medical condition. The written request must be witnessed by two independent witnesses who must also sign and date the request;
- Ensure the client has been informed that they may, at any time and in any manner, withdraw their request;
- Upon being satisfied that the client meets the eligibility criteria:
  - Expeditiously arrange for a second MAiD provider to assess the client;
  - Inform the client whether the first MAiD provider will be able to prescribe or administer the medication
  - If unable to prescribe or administer the medication, refer the client to a second MAiD provider who is known to be able to prescribe or administer the medication if the eligibility criteria are met.

If the original first MAiD provider is unable to complete the role, they must make an effective referral<sup>5</sup> to another MAiD provider to take on the role of first MAiD provider. In this circumstance, the new first MAiD provider must do their own independent assessment of client eligibility. If the second MAiD provider has already determined the client meets the eligibility criteria, the second MAiD provider is not required to reassess the client and provide new confirmation of eligibility.

Before prescribing or administering the medication (if taking on that role) the first MAiD provider must:

- Review all documentation provided by the second MAiD provider. Specifically, the first MAiD provider must ensure that the second MAiD provider has provided a written opinion that the eligibility criteria have been met;
- Ensure that there are at least 10 clear days between the day on which the request was signed by or on behalf of the client (which must be after the date the client was informed of the grievous and irremediable medical condition), and the day on which the MAiD is provided, or, if the first and second MAiD providers are both of the opinion that the client’s death or the loss of their capacity to provide informed consent is imminent, any shorter period of time that the first MAiD provider considers appropriate in the circumstances;
- Give the client an opportunity to withdraw their request and ensure that the client gives express consent to receive MAiD immediately before providing the MAiD. If the client rescinds the request for MAiD and subsequently makes another request for it, the first MAiD provider must restart the process and execute all the duties of the first MAiD provider as if the process had not been previously commenced;
- Comply with the obligations regarding medication as outlined in the section below entitled “Prescribing or Administering Medication”;
- Comply with the obligations regarding documentation as outlined in the section below entitled “Documentation”.

## DUTIES OF SECOND MAiD PROVIDER

The second MAiD provider must:

- Upon receipt of a request from the first MAiD provider, expeditiously assess the client to determine whether the client meets the MAiD eligibility criteria. In order to be satisfied that the client meets the eligibility criteria, the second MAiD provider must rely either on their assessment of the patient alone or on their own assessment of the patient in combination with the opinions of one or more other regulated health professionals (not including the first MAiD provider for the client);
- Where arrangements have been made for the first MAiD provider to prescribe or administer the medication, then after the second MAiD provider has assessed the client, the second MAiD provider must send the required written documentation to the first MAiD provider confirming whether the client meets the eligibility criteria.

<sup>5</sup> An effective referral means a referral in good faith to another MAiD provider who is available to accept the referral, who is accessible to the client, and willing to provide medical assistance in dying to the client if eligibility criteria are met.

If the original second MAiD provider is unable to complete the role, they must make an effective referral to another MAiD provider to take on the role of the second MAiD provider. In this circumstance, the new second MAiD provider must do their own independent assessment of client eligibility. In this circumstance, if the first MAiD provider has already determined the client meets the eligibility criteria, the first MAiD provider is not required to reassess the patient and provide new confirmation of eligibility.

Before prescribing or administering the medication (if taking on that role) the second MAiD provider must:

- Review the documentation provided by the first MAiD provider and be satisfied that the first MAiD provider is of the opinion that the eligibility criteria are met;
- Fulfill all requirements normally undertaken by the first MAiD provider, including ensuring the client has submitted a written request signed before independent witnesses and has provided informed consent.
- Ensure that there are at least 10 clear days between the day on which the request was signed by or on behalf the client (which must be after the date the client was informed of the grievous and irremediable medical condition), and the day on which the MAiD is provided, or, if the first and second MAiD providers are both of the opinion that the client's death, or the loss of their capacity to provide informed consent, is imminent, any shorter period of time that the second MAiD provider considers appropriate in the circumstances;
- Give the client an opportunity to withdraw their request and ensure that the client gives express consent to receive MAiD immediately before providing the MAiD. If the client rescinds the request for MAiD and subsequently makes another request for it, the second MAiD provider must re-start the process and execute all the duties of the second MAiD provider as if the process had not been previously commenced;
- Comply with the obligations regarding medication as outlined in the section below entitled "Prescribing or Administering Medication";
- Comply with the obligations regarding documentation as outlined in the section below entitled "Documentation".

## PRESCRIBING OR ADMINISTERING MEDICATION

The MAiD medication may be prescribed or administered by either the first or second MAiD provider at the client's request. The MAiD provider who prescribes or obtains medication for the purpose of providing medical assistance in dying must, before any pharmacist dispenses the medication, confirm in writing to the pharmacist that:

- the medication is for a specified client;
- the medication is intended for MAiD for that specified client; and
- the specified client meets the eligibility criteria.

The pharmacist will only release the prescribed medication to the prescriber or a person designated by the prescriber. The pharmacist may need confirmation that the MAiD provider will provide education to the client about the MAiD medications.

A MAiD provider must give a pharmacist reasonable notice that a prescription for MAiD medication will be requested. The MAiD provider must also plan for proper disposal or return of unused MAiD medications. For further information, NPs should familiarize themselves with the Nova Scotia College of Pharmacists [Standards of Practice: Medical Assistance in Dying](#), as well as, any relevant employer and/or agency policy regarding the prescription, use, storage and return of MAiD medications.

Additionally, NPs must comply with the [Nurse Practitioner Standards of Practice](#) (NSCN, 2019), the Medication Guidelines, and the [Controlled Drugs and Substances Act](#) if applicable.

## DOCUMENTATION

Nurse practitioners must document in the client record that all steps in this guideline have been met. In addition, they must comply with the [Documentation Guidelines](#) and should be familiar with any applicable agency or employer policy.

Nurse practitioners must comply with guidelines established by the federal Minister of Health respecting information to be included on death certificates in cases where MAiD has been provided, as well as related requirements or instructions from Nova Scotia Vital Statistics and the Nova Scotia Medical Examiner Service.

Unless exempted by regulations made by the federal Minister of Health, MAiD providers who receive a written request for MAiD must comply with all documentation and reporting requirements set out in any federal regulations.

## CONSCIENTIOUS OBJECTION

If MAiD is in conflict with the NPs' moral beliefs and values, they may decline to participate in any aspect of client care connected with it. However, if they choose not to participate on these grounds, the NP must promptly inform either their employer of their objection or their client if they are a self-employed NP. The NP must also continue to provide safe, competent, ethical and compassionate care until alternative care arrangements can be made to meet the client's needs or wishes.

Nurse practitioners are expected to provide health care services in a professional, non-judgmental, and non-discriminatory way. The NP must be mindful of the difference between exploring clinical options for client care and expressing personal opinions; and must avoid directly conveying any disapproving or other judgmental opinions regarding the client's decisions or beliefs about MAiD.

Further guidance on raising a conscientious objection can be found in the [Canadian Nurses Association's \(2017\) Code of Ethics](#), section G. 7 and Appendix D: Ethical Considerations in Addressing Expectation that are in Conflict with One's Conscience.

For further information on anything contained within this practice guideline, please contact a NSCN practice consultant at [practice@nscn.ca](mailto:practice@nscn.ca).