Policy on Physician-Assisted Dying

Approved by the Council of the College of Physicians and Surgeons of Newfoundland and Labrador: March 12, 2016

Appendix updated March 29, 2016]

On February 6, 2015, the Supreme Court of Canada issued a ruling in *Carter v Canada (Attorney General)* striking down the provisions of the *Criminal Code of Canada* prohibiting physician-assisted death. The court suspended the implementation of its decision for twelve months, and a later petition for an additional four month extension was granted. After June 6, 2016, it will no longer be illegal for a physician in Canada to assist an adult patient to die where specified criteria have been met.

The Supreme Court of Canada recognized that risks associated with physician-assisted death can be limited through a carefully designed and monitored system of procedural safeguards and oversight. In addition to legislation which may be enacted at the federal or provincial level, this Policy prescribes safeguards and oversight to give effect to the *Carter* decision. The College recognizes and anticipates that this Policy may require amendment as the legislative response emerges.

1. Foundational Principles

1.1 This Policy should be interpreted in a manner that:

(a) respects the autonomy of patients, such that capable adults are free to make decisions about physician-assisted death within the criteria established in this Policy;

(b) simultaneously respects the right of physicians to refuse to provide this intervention in instances where a patient does not meet the legislative criteria, or the physician declines on personal grounds;

(c) maintains the dignity of patients and treats patients, their family members, and others involved in end-of-life decisions with respect;

(d) encourages equitable access to physician-assisted death;

(e) recognizes an appropriate balance between freedom of conscience of the physician and the patient's right to life, liberty and security of the person.

2. Purpose of Policy

2.1 This Policy:

(a) provides information that will assist physicians and the public to understand the criteria and procedural requirements that must be met regarding physician-assisted death;

(b) outlines specific requirements for physician-assisted death, including the criteria that must be met for a patient to be eligible;

(c) outlines the procedures to be followed by licensed Newfoundland and Labrador physicians who are approached by patients requesting physician-assisted death;

(d) provides templates of documents to assist physicians and patients involved in physician-assisted death;

(e) emphasizes the importance of complying with reporting requirements, and oversight mechanisms, if any, relating to physician-assisted death.

3. Physician Guidance

3.1 This Policy should be interpreted in the context of federal and provincial legislation impacting upon physician-assisted death. Nothing in this Policy will reduce a physician's obligation to comply with any and all laws which apply, including any obligations to report to or seek approvals from an oversight body. Moreover, to the extent that anything in this Policy may be inconsistent with legislative requirements, legislation will always take precedence.

3.2 Physician-assisted death is a new intervention available to patients in Canada. It is advisable for physicians to consult with the Canadian Medical Protective Association (CMPA) prior to participating in physician-assisted death, and in individual circumstances as required, for such guidance as CMPA may be prepared to provide.

3.3 Physicians should be cognizant of their own emotional, physical, and mental well-being. While patients and their families are obviously directly impacted by an individual's choice to seek physician-assisted death, physicians may also find themselves affected by this process. Physicians are strongly encouraged to seek advice and guidance from wellness programs that are available to them, including those offered by the Canadian Medical Association or through its local branch, the Newfoundland and Labrador Medical Association, employer wellness programs, or from other sources.

4. Definitions

4.1 Certain terms have a specific meaning in this Policy.

adult means a person who has attained the age of majority specified in the *Age of Majority Act*, being 19 years, and it does not include a mature minor for the purposes of this Policy;

capacity means the ability to understand the subject matter in respect of which a decision must be made, and to appreciate the consequences of that decision;

eligibility criteria means the criteria set out in this Policy, which must be met by a patient in order to access physician-assisted death, and "eligible" and "eligibility" have corresponding meanings;

medication means the medication prescribed by or administered by the First Physician, prescribed in a dose and quantity to bring about the patient's end of life;

palliative care means care provided to people of any age who have a life-limiting illness, with little or no prospect of cure, and for whom the primary goal is quality of life, through the prevention and relief of pain and other distressing symptoms, intending neither to hasten nor postpone death, and offering support to patients and their families;

patient means an adult who seeks physician-assisted death;

physician-assisted death describes the situation where a physician administers medication, or provides access to medication for self-administration by a patient, which intentionally brings about the patient's death, at the request of the patient;

Policy means this *Policy on Physician-Assisted Dying*;

treatment includes refusal to treat, withholding treatment, or withdrawal of treatment.

5. Responsibilities of Physicians who Decline to Participate

5.1 No physician can be compelled to prescribe or administer medication for the purpose of ending a patient's life.

5.2 Physicians unwilling to participate in physician-assisted death for personal, moral, religious, or ethical reasons are expected to freely offer accurate information to patients. No physician may provide false, misleading, intentionally confusing, coercive, or materially incomplete information to patients.

5.3 The College recommends that a physician who declines to participate in physician-assisted death offer the patient who seeks such advice or medical care timely access to another physician (or appropriate information resource, clinic or facility, care provider, health authority, or organization) who is:

(a) available to assist the patient;

(b) accessible to the patient; and

(c) willing to provide physician-assisted death to a patient who meets the eligibility criteria.

5.4 A physician who declines to provide physician-assisted death to a patient may not terminate the doctor-patient relationship on that basis alone. At all times, the physician must abide by other relevant College guidelines and policies.

5.5 The objecting physician should:

(a) Provide access to all relevant medical records to any other physician who is providing services related to physician-assisted death; **and**

(b) Continue to provide medical services unrelated to physician-assisted death, unless the patient requests otherwise, or until another suitable physician has assumed responsibility for the person's ongoing care.

6. Responsibilities of All Physicians

6.1 Any physician who is approached by a patient for information on physician-assisted death has an obligation to discuss the subject with the patient, the first time it is raised by the patient, regardless of whether the physician objects to providing this service.

6.2 During the first visit where the patient requests or mentions physician-assisted death, all physicians have an obligation to:

(a) engage in a fulsome discussion as to the reasons behind the patient's request, and answer any questions the patient may pose to the best of the physician's knowledge and ability;

(b) ensure that the patient has information about (and, if appropriate, a referral to) any other service or clinician that may be of benefit to the patient, including but not limited to palliative care, pain specialist, psychiatry, or non-physician services such as physiotherapy, occupational therapy, counseling, and so on; and

(c) advise the patient whether the physician is willing to personally participate in physician-assisted death;

(d) provide the patient with access to further information, including a copy of this Policy (or information on how it can be readily accessed via www.cpsnl.ca).

7. Patient Eligibility Criteria

7.1 A physician may provide physician-assisted death only in circumstances where all of the criteria listed in this section are met by the patient, in the medical opinion of the physician exercised in good faith.

(a) The patient must be an adult.

(b) The patient must be capable of giving consent to physician-assisted death throughout the physician-assisted dying process.

(c) The physician reasonably believes that the patient's decision to undergo physician-assisted death has been arrived at freely and voluntarily, without coercion or undue influence.

(d) The patient's choice to seek physician-assisted death is based on accurate information as to the process and its consequences.

(e) The patient has personally requested physician-assisted dying (i.e. not through a substitute decision maker or family member).

(f) The patient has a grievous and irremediable medical condition (which may include an illness, disease, or disability, whether physical or psychological).

(g) The grievous and irremediable medical condition must cause enduring suffering that is intolerable to the patient in the circumstances of his or her condition. To

meet the “irremediable” requirement, a patient is not required to undertake treatments that are unacceptable to the patient.

(h) The patient has made the request for physician-assisted death in writing, signed by the patient, and witnessed by an independent third party (subject to reasonable accommodation to permit accessibility by patients who may have limitations).

7.2 The patient should be competent to give consent at the time of their death. A physician should not act on a request for physician-assisted death set out in any advance directive, including a directive made pursuant to the *Advance Health Care Directives Act*, absent specific legislative guidance on this issue.

8. Qualifications of the Physician

8.1 Any physician who wishes to assist a patient in dying must be a currently licensed member of the College in good standing, whose name appears on the Medical Register (excluding residents who appear on the Educational Register).

8.2 All physicians, particularly those who wish to act as the First or Second Physician in accordance with this Policy, are strongly encouraged to complete available training or continuing professional education courses relating to physician assisted dying offered through reputable sources, such as the Canadian Medical Association.

8.3 Physicians should proactively evaluate their own scope of practice in light of their training, experience, and qualifications, vis-à-vis the specific grievous and irremediable condition experienced by the patient. Physicians are responsible to determine whether the patient’s diagnosis and prognosis is a matter on which the physician is competent to opine. Physicians should consider whether consultation is warranted.

8.4 A physician may not act as the First or Second Physician:

(a) for the physician’s own family member. A family member includes the spouse, parent, child, grandparent, grandchild, aunt/uncle, niece/nephew or stepfamily of the physician, and also includes any person who is unrelated by blood but who resides in the same household and is in a relationship akin to that of family with the physician.

(b) for any patient with whom circumstances place the physician in a real or perceived conflict of interest (for example, where the physician is a beneficiary of the patient’s estate).

(c) where he or she is the administrator of a hospital or other health care facility in which the patient resides or is receiving care.

8.5 All physicians have a continuous duty to respect and abide by the Canadian Medical Association *Code of Ethics*, and the College’s *By-Law No. 5: Code of Ethics*, each of which sets out physicians’ ethical obligations toward patients. It is the responsibility of each physician to abide by the highest standard of professional conduct at all times, including during the physician-assisted dying process.

9. Duties of First Physician

The First Physician is primarily responsible for overseeing the dying process, and may obtain that role by a referral from another physician, or by direct consultation from a patient. He or she is responsible to fulfill the following obligations:

- **Receive the patient's request**
- **Evaluate the patient**
- **Provide a referral for a second assessment**
- **Communicate with the patient and with the patient's family**
- **Assist the patient**
- **Document in medical record**

9.1 Receive the patient's request

(a) The patient should make, or confirm, his or her request for this intervention in writing, signed by the patient and by an independent (non-family) witness.

(b) In the case of a patient who has accessibility challenges (physical or mental disability, illiteracy, language barriers, or otherwise), the First Physician must make reasonable accommodations to ensure effective communication with the patient.

(c) The initial request from the patient should be maintained in the medical record. If it is necessary, it is the duty of the First Physician to seek clarification or further information from the patient as to his or her wishes.

(d) Though it is not mandatory, and provided the patient agrees, the First Physician may consider whether using a video recording device to confirm the individual's consent might be appropriate in certain cases. Any resulting video must be safeguarded privately, in the same fashion as any other aspect of patient medical records.

(e) The First Physician should confirm the receipt of the patient's request *in writing* within a reasonable timeframe (i.e. within a week to 10 days of receiving the initial request), and maintain a copy in the medical record. This communication provides an opportunity to inform patients of the next steps in the physician-assisted dying process. Physicians may wish to seek advice from CMPA with respect to the contents of this communication.

9.2 Evaluate the patient

(a) The First Physician is responsible for conducting a thorough and careful assessment of the patient in light of the eligibility criteria set out above.

(b) Prior to referring the patient to the Second Physician, the First Physician shall personally assess whether the patient meets the eligibility criteria:

(i) on his or her own medical assessment of the patient, conducted alone (i.e. in the absence of members of the patient's family, though the presence of another medical professional during this assessment is acceptable), possibly in combination with the opinions of one or more other medical professionals (other than that of the First Physician) **and**

(ii) on his or her own assessment of the patient's understanding of the process, consent, voluntariness, and after addressing any questions or concerns the patient or patient's family may have about the dying process. This aspect of the patient assessment may be conducted with or without the presence of the patient's family members.

(c) The assessment of the patient's competence to consent, and the voluntariness and genuineness of the patient's wish to be assisted in dying, is an ongoing obligation. If at any time during the process the First Physician becomes aware of information or circumstances to suggest the patient may not meet the eligibility criteria, the First Physician shall address this with the patient to ascertain whether the patient wishes to withdraw his or her consent to the assisted dying process.

(d) The First Physician is not prevented from discussing with the patient any possible management options, of which the patient may not be aware, which may assist to relieve or abate the suffering experienced by the patient on an immediate basis, and to facilitate access to those options if appropriate.

9.3 Provide a referral for a second assessment, and consider additional consultation

(a) After the First Physician has conducted his or her assessment of the patient, and provided he or she is satisfied that the patient meets the eligibility criteria, the First Physician shall make a referral to the Second Physician who shall also assess the patient's compliance with the eligibility criteria.

(b) After the Second Physician has assessed the patient, the First Physician must review the documentation provided by the Second Physician. The First Physician should be satisfied that the Second Physician has also concluded that the patient meets the eligibility criteria. If indicated, the First and Second Physicians may find it necessary to discuss the matter with one another.

(c) It is possible that the specific circumstances applicable to a patient may warrant a separate consultation and assessment by a qualified specialist, for example, in respect of the "irremediable" nature of the medical condition, or a patient's prognosis. The First and/or Second Physicians may choose to seek consultation to supplement their own assessments of the patient, which consultation would be over and above the First and Second Physicians' respective roles.

9.4 Communicate with the patient and with the patient's family

(a) The First Physician is the primary point of contact for the patient, keeping him or her informed throughout the process and being responsive to any questions which may arise. The patient's family may be a part of this process.

(b) The First Physician is encouraged to communicate with the patient's family during the physician-assisted dying process, to the extent that is acceptable to the patient. As with other medical interventions, the First Physician may arrange or provide access to supportive care for family members which are appropriate in the circumstances, including counselling, social work, and other resources.

(c) The First Physician shall advise the patient, both verbally and in writing, of the patient's right to rescind the request for physician-assisted death, and provide a copy of this Policy (along with any other materials which may assist) to the patient.

9.5 Assist the patient

(a) The *Carter* decision does not expressly contemplate the involvement of non-physicians in the assisted dying process.

(b) The First Physician should be prepared, if all requirements of this Policy are met, to prescribe and/or administer medication at the request of the patient.

(c) In the event that the patient chooses to self-administer, the First Physician shall clearly communicate any necessary instructions to the patient, including any possible risks or complications, and take reasonable measures to ensure that the patient understands.

(d) The First Physician must be satisfied that the patient continues to meet the eligibility criteria at the time the medication is prescribed or administered.

9.6 Document in Medical Record

(a) Keeping an adequate and careful record of a patient's request to be assisted in death is of fundamental importance. The medical record is intended to benefit and protect physician and patient alike. Given the seriousness of the condition experienced by the patient, combined with the serious and irreversible nature of the intervention itself, a physician's failure to comply with the requirements of this Policy with respect to record-keeping will be treated as a serious matter by the College.

(b) **The presence of a consultation letter from the Second Physician in the First Physician's file is mandatory, without exception**.

(c) The First Physician must keep careful and complete records of interactions with the patient, the First Physician's objective and subjective impressions of the patient's wishes, including any and all required forms and documents enumerated in this Policy. This obligation is continuous and applies to all interactions with the patient, throughout the assisted dying process.

(d) The physician's record should include substantive details regarding the nature of the discussion with the patient. It should not be limited to "ticking boxes", such as those often seen in electronic medical records. The College views the physician-assisted dying process as one which warrants thorough and considered documentation at every stage of the process.

(e) If, at any time, the patient rescinds the request for physician-assisted death, the First Physician must clearly document the patient's choice to rescind. If the patient subsequently makes another request for physician-assisted death, the First Physician must restart the process, including meeting the record-keeping and independent assessment criteria, as if the process had not been previously commenced.

10. Duties of Second Physician

The Second Physician assesses the patient under the eligibility criteria at the request of the First Physician.

- **Assess the patient**
- **Provide a documented opinion to First Physician**

10.1 Assess the patient

(a) Upon receipt of a referral from the First Physician, the Second Physician should make arrangements to assess the patient within a reasonably expeditious timeframe.

(b) The Second Physician will personally assess whether the patient meets the eligibility criteria:

(i) on his or her own assessment of the patient, conducted alone (i.e. in the absence of members of the patient's family, though the presence of another medical professional during this assessment is acceptable), possibly in combination with the opinions of one or more other medical professionals (other than that of the First Physician); **and**

(ii) on his or her own assessment of the patient's understanding of the process, consent, voluntariness, and after addressing any questions or concerns the patient or patient's family may have about the dying process. This aspect of the patient assessment may be conducted with or without the presence of the patient's family members.

10.2 Provide a documented opinion

(a) The Second Physician shall provide a written opinion to the First Physician, documenting his or her assessment of the patient in the context of the eligibility criteria. The Second Physician shall directly consult with the First Physician, if the best interests of the patient indicate that such consultation is necessary.

11. Prescription

11.1 A prescription for an acceptable and appropriate medication, which is prescribed with the intention of its use in physician assisted dying, must be written by the First Physician.

11.2 The prescribed medication may be administered either by the patient or by the First Physician, at the patient's request.

12. Documentation

12.1 This Policy encloses the following documents:

- Assistance to Physicians: Documentation of Physician-Assisted Death;
- Declaration of Intention for Physician-Assisted Death.

13. Reporting Requirements

13.1 The First Physician is responsible for completing the death certificate in respect of the patient in accordance with the *Vital Statistics Act* and any other applicable legislation. The College recommends the cause of death be the grievous and irremediable medical condition that qualified the patient to be eligible for physician-assisted death. Physician-assisted death (including whether by physician prescription or administration of medication) will be noted as the mechanism utilized.

13.2 The First Physician must comply with any federal or provincial legislation which requires reporting on participation in physician-assisted dying.

Framework for review of Policy:

1. Six months following initial approval date;

2. Twelve months following initial approval date;

3. Thereafter, on a three-year cycle; and

4. As required by legislative or other contextual change.

Assistance to Physicians:
Documentation of Physician-Assisted Death

The College of Physicians and Surgeons of Newfoundland and Labrador's *Policy on Physician-Assisted Dying* requires that physicians confirm, in writing, the details of the physician-assisted dying process.

The College wishes to emphasize that this intervention requires careful, thoughtful consideration from patient and physician alike. In addition to the documentation contained in the medical record, it is appropriate that the First Physician communicate in writing with patients who seek this intervention.

Upon receipt of the patient's Declaration of Intention (or a similar document, signed and witnessed, documenting the patient's desire to seek physician-assisted death), the First Physician may engage in a discussion with and assessment of the patient. Following this meeting, the First Physician is strongly encouraged to communicate, in writing, with patients, regarding the outcome of the visit and any follow-up which may occur. This letter may address the following topics:

- The physician's intentions with respect to referring the patient for a consultation by the Second Physician, including the timeline, the identity of the Second Physician (if known), including any other consultations which are warranted;

- The nature of the prescription which the physician intends to use, including any specific risks and complications relating to the lethal medication which will be prescribed;

- Acknowledging the patient's expressed desire to seek death, and advising the patient that his or her consent to death may be revoked at any time;

- Information relating to the manner in which the patient's death will be carried out, including its location, the presence or absence of family members, and the like;

- The anticipated timeline for the patient's death, taking into account any legislative requirements for a waiting period;

- Physicians are strongly discouraged from relying on a "form letter". Each letter should contain comments relating to the nature of the grievous and irremediable medical condition experienced by the patient, including the reasons why the physician has concluded that the patient satisfies the medical and legal criteria (or, the reasons why not);

- Information on how to contact the physician.

As physician-assisted death is a new intervention in Canada, physicians are encouraged to contact CMPA for advice in individual cases.

Declaration of Intention for Physician-Assisted Death

Patient's full name:	
MCP Number:	
Telephone number:	
Home address:	

I, _____, formally declare that I have a grievous and irremediable medical condition for which treatment options are limited (or for which the available treatments are not acceptable, or are intolerable, to me), and that as a result I wish to seek physician-assisted death through medical means.

I give my unreserved and voluntary consent to my physician, _____, to bring about my death through medical intervention. **I have discussed the procedure with my physician, and I have received answers to any questions or concerns that I may have**.

I understand that:

- The intended result of this medical intervention is my death.
- **If, at any time, I no longer wish to proceed with physician-assisted death, I should communicate this to my physician. I am not obligated to follow through.**
- I must follow any instructions given by my physician, including dosing instructions for my lethal prescription, strictly and correctly.
- I will be assessed by at least two physicians, independently of one another, to determine whether I meet the medical and legal criteria to receive this intervention. I acknowledge that they will determine whether I qualify under Canadian law for physician-assisted death.

I am signing this Declaration voluntarily, and of my own individual free will, without duress, coercion, or undue influence from any other person (including my family). I have reviewed, and I fully understand the meaning of, this Declaration.

I have signed this Declaration in the presence of one or more independent witnesses, each of whom is satisfied of my identity and my voluntary intention to avail of physician-assisted death.

First Independent Witness	Patient's Signature
Second Witness (Optional)	Date