

Guidance on Nurses' Roles in Medical Assistance in Dying

June 23, 2016

Introduction

This document provides nurses¹ with guidance about their accountabilities related to medical assistance in dying². Nurses are accountable for complying with other College standards and guidelines as applicable. They are available at www.cno.org/standards.

Medical assistance in dying, as defined in the *Criminal Code*, only refers to when:

- A nurse practitioner (NP) or physician provides assistance by administering a medication to a client, at their request, that causes their death (i.e., clinician-assisted medical assistance in dying); or
- An NP or physician prescribes or provides a medication to a client, at their request, so that they may self-administer the medication and in doing so cause their own death (i.e., client self-administered medical assistance in dying).

Changes to the *Criminal Code* came into effect on June 17, 2016. The revised law allows for eligible people to receive medical assistance in dying. It establishes safeguards for clients and offers protection to health professionals who provide medical assistance in dying, along with people who assist in the process in accordance with the law. The law requires that medical assistance in dying must be provided with reasonable knowledge, care and skill, and in accordance with any applicable laws, rules or standards. Nurses who fail to comply with legal requirements may be convicted of a criminal offence. If you have questions or concerns, please seek legal advice.

Nurses' Role in Medical Assistance in Dying

Medical assistance in dying requires the involvement of an NP or a physician. An NP can provide an eligible client with medical assistance in dying provided that it is done in accordance with the law as well as any applicable provincial laws, rules or standards. Registered nurses (RNs) and registered practical nurses (RPNs) can participate by providing nursing care and aiding an NP or physician to provide a person with medical assistance in dying in accordance with the law. In relation to clinician-assisted medical assistance in dying, the law only allows NPs and physicians to administer medications to cause the death of a client who is receiving medical assistance in dying. No other persons, including RNs and RPNs, are legally permitted to administer medication for clinician-assisted medical assistance in dying.

¹ RN, RPN and NP

² This document is based on *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>

When any nurse is assisting an NP or a physician to provide medical assistance in dying in accordance with the law, they may perform activities such as educating clients, providing support to clients and family or inserting an intravenous line (with an order) which will be used to administer medications that will cause the death of a client.

When a client self-administers, with the client's explicit request, the law allows for a person to aid the client to self-administer a medication to cause death, provided that medication has been prescribed by an NP or physician for the client for medical assistance in dying.

Conscientious Objection

The College recognizes a nurse's freedom of conscience. A nurse may have beliefs and values that differ from those of a client and may not be comfortable providing or participating in medical assistance in dying. The law does not compel an individual to provide or assist in providing medical assistance in dying. However, conscientious objection must not be directly conveyed to the client and no personal moral judgments about the beliefs, lifestyle, identity or characteristics of the client should be expressed. Nurses who conscientiously object must transfer the care of a client who has made a request for medical assistance in dying to another nurse or health care provider who will address the client's needs. Nurses can work with their employers to identify an appropriate, alternative care provider. Until a replacement caregiver is found, a nurse must continue to provide nursing care, as per a client's care plan, that is not related to activities associated with medical assistance in dying.

A Nurse Practitioner's Role in Medical Assistance in Dying

The law allows NPs to provide the following to clients who have requested medical assistance in dying:

- administering a medication to the client, at their request, that will cause the client's death (i.e., clinician-assisted medical assistance in dying); and
- prescribing or providing a medication to the client to self-administer, and in doing so, cause their own death (i.e., client self-administered medical assistance in dying).

In addition, an NP may provide an independent second opinion on a client's eligibility to receive medical assistance in dying.

It may not always be appropriate for NPs to provide medical assistance in dying to their clients. For example, the NP is not:

- competent to perform medical assistance in dying; or
- authorized to prescribe controlled substances which may be required for that client.

An NP should consider their ability to provide this service early in the process to support timely access to care. NPs who do not personally provide medical assistance in dying must refer the client who requests this to another NP or physician who provides this service.

Providing Medical Assistance in Dying

NPs who provide medical assistance in dying must provide clients with information about the risks, eligibility criteria, safeguards, and processes—including what to expect.

Three Stages in Medical Assistance in Dying

1. Determining eligibility.
2. Ensuring safeguards are met.
3. Providing medical assistance in dying whether it is provided by the NP or physician, or self-administered by the client.

NPs must comply with the *Documentation* practice standard and with record keeping and reporting requirements set by government. The College will inform NPs of additional requirements as they become available.

Stage 1: Determine Eligibility

NPs who provide medical assistance in dying are responsible for establishing the client's eligibility for the procedure.

1.1 Criteria

The law states that to be eligible for medical assistance in dying, the client must:

- be at least 18 years of age;³
- be capable of making decisions about their health;
- have a grievous and irremediable medical condition;
- voluntarily request medical assistance in dying (in particular, not as a result of external pressure);
- give informed consent to receive medical assistance in dying after they were informed of treatments available to relieve their suffering, including palliative care; and
- be eligible to receive health services funded by a government in Canada.

The law defines that a client has a grievous and irremediable medical condition only if:

- they have a serious and incurable illness, disease or disability;
- they are in an advanced state of irreversible decline in capability;
- that illness, disease, disability, or state of decline, causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and
- their natural death is reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

If an NP concludes that the client does not meet the above criteria for medical assistance in dying, the client could request this assistance from another NP or physician who would assess them again.

³ This age requirement exists despite Ontario's *Health Care Consent Act, 1996* which does not legislate an age of majority in Ontario.

⁴ *Health Care Consent Act, 1996*, subsection 4(1).

1.2 Consent and Capacity

With respect to medical assistance in dying, a client must be at least 18 years of age.

Under the *Health Care Consent Act, 1996*, a client is capable of making decisions about their health if they are able to understand the information that is relevant to making the decision, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.⁴

In relation to medical assistance in dying, the client must be able to understand that death is the anticipated outcome. When obtaining consent, the NP must inform the client that they may, at any time and in any manner, withdraw their request for medical assistance in dying. Consent to medical assistance in dying must be provided by a capable client and not by a substitute decision-maker. If the client has difficulty communicating, the NP must take all necessary measures to provide a reliable means by which the client may understand the information that is provided to them and communicate their decision.

Stage 2: Ensure Safeguards are Met

NPs must ensure the following safeguards are in place.

2.1 Written Request

The law requires the client to make a written request for medical assistance in dying.

The request must be signed and dated by the client after they have been informed by a physician or NP that they have a grievous and irremediable medical condition. If the client is unable to sign and date the request, another individual may do so in the client's presence and under the client's express direction. The client who signs on the client's behalf must:

- be at least 18 years of age;
- understand the nature of the request for medical assistance in dying;
- not know or believe that they are a beneficiary under the client's will; and
- not know or believe that they are a recipient, in any other way, of a financial or other material benefit resulting from the client's death.

2.2 Independent Witnesses

The law requires that the NP must be satisfied that that the client's written request for medical assistance in dying was signed and dated by the client (or a person on their behalf, as described in section 2.1 above) before two independent witnesses who then also signed and dated the request.

The law requires that witnesses must be at least 18 years of age and understand the nature of medical assistance in dying. Witnesses must not:

- know or believe that they are a beneficiary under the client's will;
- know or believe that they are a recipient, in any other way, of a financial or other material benefit resulting from the client's death;

⁴ *Health Care Consent Act, 1996*, subsection 4(1).

- be an owner or operator of a health care facility where the client is being treated, or any facility in which client resides; or
- be directly involved in providing health care services, or personal care, to the client.

2.3 Second Opinion

The law requires that an NP who provides a client with medical assistance in dying must ensure that there has been a second written opinion from another NP or physician confirming that the client meets all of the eligibility criteria listed above.

The law requires that the NP or physician who provides the second opinion must be independent from the NP or physician who provides medical assistance in dying. Specifically, the two providers must not be:

- in a mentoring or supervisor relationship with one another;
- connected in any other way that would affect their objectivity.

Furthermore, the two providers must not know or believe that they are:

- a beneficiary under the client's will;
- a recipient, in any other way, of a financial or other material benefit resulting from the client's death; or
- connected to the client in any other way that would affect their objectivity.

NPs who provide a second opinion must meet the conditions listed above. If the second NP or physician concludes that the client does not meet the criteria for medical assistance in dying as outlined in section 1.1, the NP cannot proceed with providing medical assistance in dying. The client could have another NP or physician assess them against the criteria.

2.4 Communication with Pharmacist

NPs should communicate with pharmacists early in the process to support access to medical assistance in dying. NPs must inform the pharmacist that the prescription is intended for medical assistance in dying before the pharmacist dispenses the medication to the client.

2.5 Waiting Period

The law requires a 10-day waiting period between the time the client signs the request and when the medical assistance in dying is provided.

The law allows for this waiting period to be shorter if it is in the NP's or physician's opinion that the client's death, or the loss of their capacity to provide informed consent, is imminent. This must also be confirmed by the NP or physician providing a second opinion.

Stage 3: Provide Medical Assistance in Dying

3.1 Prescribing, Providing or Administering Medications That Cause Death

NPs use evidence to inform decisions about which medications to use when providing the client with medical assistance in dying. There are several medications that may be used in this process. Some of these medications may be controlled substances. In Ontario, NPs are not authorized to prescribe controlled substances. If controlled substances are needed for the client, the NP must refer to a physician. An NP needs to consider this early in the process to support timely access to care.

Refer to the *Nurse Practitioner* practice standard and www.cno.org/np (under “NP Practice Q & A”) for more information about controlled substances.

3.2 Consent and Capacity

Immediately before administering medication to cause a client’s death or providing a prescription for a medication for the client to self-administer, the law requires that NPs must give the client an opportunity to withdraw their request and ensure that the client gives express consent to receive medical assistance in dying.

3.3 Certify Death

Until further notice, NPs must report all deaths from medical assistance in dying to the Office of the Chief Coroner. A coroner will investigate and certify all deaths from medical assistance in dying. NPs must be available after providing medical assistance in dying to provide information to the coroner. Only the coroner can complete the *Medical Certificate of Death* for these clients.

CNO will continue to monitor any changes that will impact this guidance and modify this information as required. Please see www.cno.org for updates.



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