



Message from the Registrar

Update on Medical Assistance in Dying (MAID)

This is to update pharmacists and pharmacy technicians on physician assisted death (PAD), now becoming more commonly known as medical assistance in dying (MAID)*. This terminology is consistent with the federal government's proposed amendments to the *Criminal Code* arising from the Supreme Court of Canada decision in *Carter v Canada (Attorney General)*.

Between February 6, 2016 and June 6, 2016, the Supreme Court of Canada permitted individuals seeking MAID to apply to a court for relief in accordance with the criteria established in the *Carter* decision for a physician-assisted death. The deadline for the federal government to enact new legislation to amend the *Criminal Code* and clarify the rules with respect to MAID was June 6, 2016. However, as the new legislation is not yet in force, the *Carter* decision forms the law in this area as of June 6, 2016.

From our perspective, one of the main issues of the *Carter* decision is that it does not recognize a role for the pharmacist or pharmacy technician. Until new federal legislation that addresses this issue is in effect, a pharmacist or pharmacy technician who chooses to participate in a MAID process is at some risk of criminal liability.

- For pharmacists, the risk may be minimal. The information below provides guidance to pharmacists who choose to participate in MAID to minimize that risk.
- For pharmacy technicians, the risk is greater. It is currently unclear whether pharmacy technicians will be protected from legal liability if they participate in a MAID process. Accordingly, the College recommends that pharmacy technicians **do not** participate in any MAID process at this time.

The *Carter* decision established that physician-assisted death is **not** a criminal offence if it is provided to (1) a **competent adult**; (2) who **clearly consents** to the termination of life; **and** (3) has a **grievous and irremediable medical condition** (including an illness, disease or disability) that causes **enduring suffering that is intolerable** to the individual in the circumstances of his or her condition.

Subsequent Court cases in Canada have authorized pharmacists to dispense drugs as part of the physician-assisted dying process for individuals who have been found to meet the *Carter* decision criteria. However, if a pharmacist participates in a MAID process for an individual who does not meet the *Carter* requirements, the pharmacist may be exposed to criminal liability.

We anticipate that individuals in Saskatchewan will seek MAID because of the *Carter* decision and in the absence of enabling *Criminal Code* amendments and other legislation that may arise

at the provincial level. Their personal circumstances may be urgent. Pharmacists will be required make their own measured and informed decisions about whether to provide their professional services to such persons. The guidelines below are intended to minimize the legal risk to pharmacists who choose to participate in MAID processes prior to the enactment of legislation.

Guidelines

If a pharmacist chooses to provide pharmacy services in the context of a physician-assisted death, the following principles, derived from *Carter*, should be adhered to:

1. The pharmacist should be satisfied that the assisted death is being led by a physician;
2. The pharmacist should ensure that he or she does not lead the assisted death process (or be seen as leading it), and that he or she does not administer the prescribed drugs to the patient;
3. The drugs used for the assisted death should be prescribed by the physician and only dispensed by the pharmacist directly to the physician; and
4. Prior to dispensing the drugs, the pharmacist should confirm with the physician leading the process that he or she has made a medical determination that the patient is a competent, consenting adult with a grievous and irremediable medical condition that causes enduring, intolerable suffering. The pharmacist should document this confirmation.

A pharmacist may, for reasons of conscience or religion, decline to participate in a physician-assisted death without contravening the College's *Code of Ethics* **provided that** the pharmacist complies with our "Statement Regarding Pharmacists' Refusal to Provide Products or Services for Moral or Religious Reasons" found in our Reference Manual at <https://scp.in1touch.org/uploaded/58/web/refmanual/Pharmacists%20Refusal%20to%20Provide%20Products%20for%20Moral%20or%20Religious%20Reasons-Statement%20Regarding.pdf>.

However, the following statement requires clarification:

".....The reasons for the objection should be conveyed to the pharmacy manager, and to the patient. It would be improper and unethical conduct if the pharmacist used the opportunity to promote his/her moral or religious convictions, or engage in any actions, which demean the patient."

As the pharmacist may be responding to a request from a physician to participate in a MAID process, that pharmacist may express his/her objection to the physician instead of the patient. That is because under these circumstances, we consider the physician to be acting as an agent for the patient.

Next Steps

We are involved in a provincial working group who is describing the process, roles and responsibilities of providers, forms and documentation and communications strategies. We are also involved in specific sub-groups addressing provider roles and forms. These groups are

working in anticipation of new federal law and within a Regional Health Authority facilitated and coordinated process. In this context, we are striving to ensure that the roles of the pharmacist and pharmacy technician are clear as the process examines how MAID will become operational in Saskatchewan under the anticipated Criminal Code amendments as they become law. In the meantime, the College of Physicians and Surgeons of Saskatchewan has provided to us their message to Saskatchewan physicians on what to expect. It contains helpful information on the current status of this issue, including some preliminary insights that we agree with into the role of pharmacists. Members can access it on our web site at the MAID link below. We are also reviewing our *Code of Ethics*, standards of practice, guidelines and policy statements to align with the anticipated new legislation.

More information will follow as decisions are finalized. In the meantime, we will provide updates as needed, and member inquiries can be directed to info@saskpharm.ca. Additional information can be found on the College's website at www.saskpharm.ca.

** Note: "Physician-assisted dying" is the term used by the Supreme Court of Canada in the Carter decision and refers to a physician-led process; "Medical assistance in dying" or "MAID" refers to a process led by health professionals, for example, the process described in the proposed federal legislation amendments to amend the Criminal Code (Bill C-14), that includes physicians, nurse practitioners and pharmacists.*

R. J. (Ray) Joubert, Registrar
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