Medical Assistance in Dying
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Medical Assistance in Dying

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History & Background

- Prior to recent changes, the Criminal Code of Canada prohibited the provision of any form of assistance in dying

- In the early 1990s, Sue Rodriguez, a woman suffering from ALS challenged the constitutionality of these statutory provisions
History & Background

- Ms. Rodriguez’s argument was that the prohibitions on assisted-suicide violated her rights under s. 7 of the *Charter*

- Section 7 guarantees the right to life, liberty and security of the person

- She took this challenge all the way to the Supreme Court of Canada in 1993
History & Background

- The Court ultimately held that the prohibition on assisted suicide was constitutional, and the Criminal Code provisions remained in place.
- Thus, the Court held there was no constitutional right to assisted dying.
- It was a tight decision – 4 vs. 5 judges.
More than 20 years later, in 2015, the Supreme Court unanimously overruled *Rodriguez* in the *Carter* decision.
The Court ruled that the Criminal Code provisions at issue “infringe s. 7 of the Charter and are of no force or effect to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) 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.”
Carter Decision

- The Court gave the federal government one (1) year to introduce legislation that was compliant with its decision

- Bill C-14 received Royal Assent and came into force June 17, 2016
Bill C-14

- Maintains prohibitions against counseling or aiding a “suicide”, and of course against homicide

- Creates exemptions and guidelines that permit:
  - Medical assistance in dying (“M.A.I.D.”)
  - Aiding the process of medical assistance in dying
  - Providing information about lawful medical assistance in dying

- Failure to follow guidelines may result in conviction
Bill C-14

Medical assistance in dying is defined as:

- (a) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or
- (b) the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.
Bill C-14

- Only physicians and NPs can prescribe or administer the medications to cause medically-assisted death

- Under the Criminal Code, RNs cannot administer or prescribe the medications that would be used for medically assisted death
CNO Document on M.A.I.D.

- Guidance on Nurses’ Roles in Medical Assistance in Dying, June 23, 2016
- The document summarizes many of the key aspects of Bill C-14
- Provides recommendations and guidance
Nurses’ Role in M.A.I.D.

- RNs can assist physicians and NPs in the process of M.A.I.D.
  - CNO example: inserting IV line
- PROVIDED they have ensured the eligibility and process safeguards for M.A.I.D. have been met
- The Criminal Code does not permit RNs to administer the medication
- An Order, Delegation or Directive will not permit an RN to administer or prescribe medication for M.A.I.D. purposes
Nurses’ Roles in M.A.I.D.

- RNs can aid a person to self-administer a substance that has been prescribed for the purposes of M.A.I.D., so long as the person makes an “explicit” request for that assistance
  - PROVIDED they have ensured the eligibility and process safeguards for M.A.I.D. have been met
- But the RN cannot administer the medication
Nurses’ Roles in M.A.I.D.

- RNs (and NPs) can also provide information to persons on the lawful provision of medical assistance in dying.
- Doing so will not render them culpable for counseling or aiding a suicide, so long as the information is on lawful M.A.I.D. (E.g. the process, the requirements, etc.),
- Should NOT encourage the patient/client to undergo M.A.I.D.
Nurses’ Roles in M.A.I.D.

- RNs/NPs cannot act as an independent witness that signs and dates a written request for M.A.I.D. if they are directly involved in providing health care services, or personal care, to the client making the request for M.A.I.D.
NPs’ Role in M.A.I.D.

- Bill C-14 permits NPs to:
  - Administer a medication to the client that will cause the client’s death (provided the client is eligible for M.A.I.D. and the guidelines have been followed), and;
  - Prescribe a medication to a client to self-administer and in so doing cause their own death
- NPs can also provide an independent 2nd opinion on a client’s eligibility to receive M.A.I.D. (which is a M.A.I.D. process requirement, covered later in this presentation)
NPs’ Role in M.A.I.D.

- It may not be appropriate for an NP to provide M.A.I.D.
  - If NP is not competent to perform procedure
  - If NP is not authorized to prescribe any controlled substances required for the procedure
NPs’ Role in M.A.I.D.

- An NP should consider their ability to provide this service **early** in the process to support timely access to care.

- NPs who do not or cannot provide medical assistance in dying must refer the client who requests this to another NP or physician who provides M.A.I.D. services.
Providing M.A.I.D.

- CNO M.A.I.D. Guidance Document: “NPs who provide medical assistance in dying must provide clients with information about the risks, eligibility criteria, safeguards, and processes – including what to expect” (p. 4)
- NPs must comply with CNO guidelines and practice standards in relation to M.A.I.D.
  - E.g. Documentation practice standard
  - Record keeping and reporting requirements set by government.
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.
Stage 1: Determining Eligibility

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

- If an NP concludes that the client does not meet the criteria for medical assistance in dying, the client is free to seek M.A.I.D. from another NP or physician.

- The subsequent physician or NP must conduct their own assessment against the eligibility criteria.
Stage 1: Determining Eligibility

- The client must:
  - Be at least 18 years of age
  - Be capable of making decisions about their health
  - Have a grievous and irremediable medical condition
  - Voluntarily request medical assistance in dying
  - Give informed consent to receive medical assistance in dying after they were informed of treatments available to relieve their suffering, including palliative care
  - Be eligible to receive health services funded by a government in Canada.
“A client has a Grievous and irremediable medical condition 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.
Stage 1: Determining Eligibility

- Consent and capacity issues
- 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
Stage 1: Determining Eligibility

- The client must be able to understand that death is the anticipated outcome.
- When obtaining consent, an NP must inform the client that he or she may, at any time and in any way, withdraw his or her request for M.A.I.D.
- 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: Written Request

- Bill C-14 requires that clients make a written request for M.A.I.D.

- The request must be signed and dated by the client after the NP or physician has informed the client that he or she suffers from a grievous and irremediable medical condition.
Stage 2: Ensure Safeguards are Met: Written Request

- 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.
Stage 2: Ensure Safeguards are Met: Written Request

- The individual 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
  - 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.
Stage 2: Ensure Safeguards are Met: Independent Witnesses

- The written request must be signed and dated by two independent witnesses
Stage 2: Ensure Safeguards are Met: Independent Witnesses

- The witnesses must:
  - Be 18 years of age
  - Understand the nature of the request for M.A.I.D.
Stage 2: Ensure Safeguards are Met: Independent Witnesses

- The 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
  - Be an owner or operator of a health care facility where the client is being treated, or any facility in which the client resides
  - Be directly involved in providing health care services, or personal care, to the client
Stage 2: Ensure Safeguards are Met: Second Opinion

- An NP who provides M.A.I.D. 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.
Stage 2: Ensure Safeguards are Met: Second Opinion

- The NP/physician providing the second opinion must be independent, and NOT:
  - Be in a mentoring or supervisor relationship with one another
  - Be connected in any other way that would affect their objectivity
  - 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
Stage 2: Ensure Safeguards are Met: Second Opinion

- The NP administering M.A.I.D. must be satisfied that the NP/physician providing the second opinion satisfies the above criteria.

- If the second opinion does not agree that the client meets the eligibility criteria, M.A.I.D. cannot be administered.

- A further second opinion can be sought.
Stage 2: Ensure Safeguards are Met: Communication with Pharmacist

- NPs must inform the pharmacist that the prescription is intended for medical assistance in dying before the pharmacist dispenses the medication.

- The CNO recommends that NPs communicate with pharmacists early in the process to support access to M.A.I.D.
Stage 2: Ensure Safeguards are Met: Waiting Period

- Bill C-14 requires a 10-day waiting period between the time the client signs the request and the provision of M.A.I.D.
- This waiting period can be shortened if it is in the NP’s/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: Administering M.A.I.D.

- NPs in Ontario are not permitted to prescribe controlled substances

- If the prescription of a controlled substance is required for the administration of M.A.I.D., NPs must refer the procedure to a physician
Stage 3: Administering M.A.I.D.: Consent

- Immediately before administering M.A.I.D. or providing a prescription for a client to self-administer, NPs must:
  - Give the client an opportunity to withdraw their request
  - Ensure that the client gives express consent to receive medical assistance in dying.
Stage 3: Administering M.A.I.D.: Certify Death

- All MAID deaths will require a notification to the Office of the Chief Coroner
- Coroners will be required under the Coroners Act to launch an investigation into all M.A.I.D. deaths
- Recommended to have medical records easily accessible for coroner’s investigation to ensure efficiency in these investigations
- Only the coroner can complete the medical certificate of death
Conscientious Objection

- Bill C-14 is clear that nothing compels an individual to provide or assist in providing medical assistance in dying.
Conscientious Objection

- The College has said in its Document on M.A.I.D. that:
  - Conscientious objection must not be directly conveyed to the client
  - 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.
Conclusions, Q&A

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