

Medical Assistance in Dying (MAID)

2022



THIS DOCUMENT WAS APPROVED BY THE CRNNL COUNCIL IN OCTOBER, 2022

Updated March 2023

This document replaces *Registered Nurses and Nurse Practitioners – Aiding in Medical Assistance in Dying* (2016) and
Nurse Practitioners Providing Medical Assistance in Dying (MAID) (2018)

The College of Registered Nurses of Newfoundland and Labrador (CRNNL)¹ is the regulatory body for Registered Nurses (RNs) and Nurse Practitioners (NPs) in Newfoundland and Labrador (NL). The mandate of the College is to protect the public through self-regulation of the nursing profession in accordance with the *Registered Nurses Act, 2008*.

The purpose of this practice guideline is to outline the practice expectations of NPs providing Medical Assistance in Dying (MAID) or RNs/NPs aiding in MAID. RNs/NPs are required to practice within their scope of practice and individual competence, in accordance with legislative and regulatory requirements and employer/organizational policies when providing or aiding MAID. If RNs/NPs have questions or concerns about how MAID legislation applies to their nursing practice or about liabilities related to MAID, they are encouraged to speak to their employer or seek legal advice (e.g., Canadian Nurses Protective Society (CNPS) or the employer and/or personal legal counsel).

MAID legislation was first introduced on June 17th, 2016 and has been updated several times since then through Amendments to the *Criminal Code of Canada* (*Criminal Code or CCC*). Content of this document reflects the latest Amendments to the *CCC* that took effect March 17th, 2021. RNs/NPs need to be aware that changes may still occur in legislation with resultant changes in the College's MAID document. RNs/NPs must ensure they review the most current sections of MAID legislation (*CCC*) and the most current version of the College's MAID document before providing or aiding in MAID.

In this document, the College has included information on:

- Legislative changes to the *Criminal Code* related to MAID
- General nursing accountabilities
- NPs providing MAID
 - Scope of practice of NPs providing MAID
 - Eligibility criteria for MAID
 - Ensuring safeguards are met when natural death is reasonably foreseeable or when natural death is not reasonably foreseeable
 - Duties of the first and second MAID clinicians
 - MAID Medication
 - Documentation
 - Reporting Requirements (updated)
- RNs and NPs Aiding in MAID
 - Providing nursing support
 - Preparing MAID medication
 - Acting as an independent witness
 - Documentation
- Self-care
- Conscientious objection

In addition, excerpts from the Amendments of the *Criminal Code of Canada* related to MAID that came into effect on March 17th, 2021 are included in this document.

NOTE: On March 9, 2023, Bill C-39 received Royal Assent and immediately came into effect, officially postponing the eligibility date for persons suffering solely from a mental illness until March 17, 2024.

¹Herein referred to as the "College"

Medical Assistance in Dying

Definition:

Section 241.1 of the *Criminal Code of Canada* defines MAID as:²

- (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.*

The *Criminal Code* defines the health care professionals involved in the provision of MAID as:

medical practitioner (MP) means a person who is entitled to practise medicine under the laws of a province.

nurse practitioner (NP) means a registered nurse who, under the laws of a province, is entitled to practise as a nurse practitioner – or under an equivalent designation – and to autonomously make diagnoses, order and interpret diagnostic tests, prescribe substances, and treat patients.

Pharmacist means a person who is entitled to practise pharmacy under the laws of a province.

Note: the *CCC* does not make any reference to RNs in the provision of MAID and as such RN is not defined as a health care professional involved in **providing** MAID.

Background:

The *Criminal Code* provisions that relate to MAID first came into effect on June 17, 2016. The Amendment makes it legal to provide MAID, describes how it is to be provided, and creates criminal offences for the failure to provide MAID according to the *CCC*. It established safeguards for clients and offered protection to health professionals who provide MAID, along with individuals who assist in the process. MAID must be provided with reasonable knowledge, care, and skill, and in accordance with any applicable laws, rules, or standards. Health care professionals, including RNs/NPs, who fail to comply with legal requirements may be convicted of a criminal offence.

RNs/NPs are encouraged to review the relevant section in the *Criminal Code* related to MAID and to connect with the College, employer or personal legal counsel, employer insurer, and/or CNPS prior to providing or aiding in MAID.

Recent Legislative Changes:

On March 17th, 2021, the *Criminal Code* was amended again in response to the *Truchon v. Attorney General of Canada* decision of the Superior Court of Quebec. The 2021 Amendments provides for MAID in the event that natural death is not reasonably foreseeable, broadens language, which was seen as discriminatory against persons with disabilities, and specifies the meaning of independent witnesses and

² Areas that are shaded reflect excerpts taken directly from the Criminal Code of Canada. A link to the CCC is found in the bibliography.

clinicians. The Amendment also provides a two-track approach to procedural safeguards for medical/nurse practitioners (MP/NP) to follow based on whether a person's natural death is reasonably foreseeable. Amendments to the *Criminal Code* included changes to:

- Eligibility criteria
- Safeguards
- Waiver of final consent
- Monitoring and reporting requirements.

NP and RN Roles in MAID

It is important that RNs/NPs recognize they can have a role in MAID, whether it is as an NP providing MAID or an RN/NP aiding in MAID. **RNs cannot provide MAID or determine if a client meets eligibility criteria or that safeguards have been met.** Only a NP or MP may provide a medication³ for MAID to a client who has requested MAID and meets eligibility criteria, act as an assessor of eligibility criteria, or provide an expert opinion in conditions that cause suffering.

General Nursing Accountabilities

RNs/NPs are responsible for understanding and complying with *Criminal Code of Canada* provisions, regulatory requirements, and employer policies related to MAID and further responsible for understanding how they apply to their nursing practice, setting, and role.

- RNs/NPs must review the most current version of the College's MAID Document.
- RNs/NPs must review any guiding documents from other regulatory bodies (e.g., the College of Physicians and Surgeons of Newfoundland and Labrador (CPSNL) or the Newfoundland and Labrador Pharmacy Board (NLPB), etc.) to understand the scope of practice of other health care professionals participating in MAID.
- RNs/NPs must determine the employer's position in permitting MAID in the employment setting and be aware of any applicable policies, guidelines, procedures, and/or processes in place to guide the RN's/NP's practice in MAID.
- RNs/NPs must review current Canadian Nurses Protective Society (CNPS) resources related to MAID.
- RNs/NPs should seek legal advice as needed to understand the relevant provisions of the *Criminal Code*.
- MAID legislation stipulates that MAID must be provided in accordance with "*reasonable knowledge, care and skill and in accordance with any applicable provincial laws, rules or standards*". This means that failure to comply with any federal law, provincial law, rule, or the standard of care may nullify the exemption in providing/aiding in MAID. RNs/NPs must be aware of all the necessary conditions and safeguards set out in the *Criminal Code*.
- Both RNs/NPs who have the necessary knowledge can provide information or education about MAID to clients/families upon the client's request.
 - MAID legislation permits all health-care professionals to provide information about the lawful provision of MAID to a client.

³The CCC uses the word substance. For the purposes of this document, medication is used instead of substance unless direct reference from CCC is made.

Under section 241 (5.1)³, for *greater certainty, no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying.*

- However, subsection 241(1)(a)(b) of the *Criminal Code* stipulates that:
everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years who, whether suicide ensues or not,
 - (a) counsels a person to die by suicide or abets a person in dying by suicide; or*
 - (b) aids a person to die by suicide.*
- It is important for RNs/ NPs to understand that there is a difference in the context in which the term “counsel” is being used in MAID and the therapeutic relationship. It is important for RNs/ NPs to be mindful of the two definitions of counselling:
 - Under the *Criminal Code*, “counsel” includes “*procure, solicit and incite*”. **RNs/NPs must only provide information on MAID upon the client’s explicit request.** RNs/NPs should not initiate a discussion on MAID with clients because this may be interpreted as counselling and thus an offence under the *Criminal Code*.
 - In a therapeutic relationship “counsel” is used by RNs/NPs as a means of communication, information sharing, active listening, client education, and the provision of psychological support. RNs/NPs must still have conversations with clients/families to address underlying needs related to MAID. RNs/NPs provide timely information to clients upon their request for information regarding MAID.

NPs Providing MAID

The *Criminal Code* permits NPs to provide MAID, including but not limited to, determining eligibility criteria, ensuring procedural safeguards are met, obtaining the client’s informed consent, prescribing or administering the MAID medication, acting as First or Second MAID clinician (**provider or assessor**), etc., in accordance with the requirements stipulated in the *Criminal Code*.

Scope of Practice of NPs Providing MAID

NPs must reflect upon on their scope of practice in light of their education, experience, and individual competence (necessary knowledge, skills, judgment, and personal attributes) when considering providing MAID. Before providing MAID, NPs must be knowledgeable of:

- the *Criminal Code of Canada* provisions related to MAID,
- any federal and provincial (if and when enacted) legislation and/or direction,
- any College documents related to MAID,
- the employer’s position in permitting MAID in the employment setting and any applicable policies, guidelines, procedure and/or processes, and
- any professional or employer legal advice.

NPs must engage in continuing education to obtain and maintain competency in providing MAID.

Eligibility Criteria

NPs who provide MAID are responsible for establishing whether the client meets eligibility criteria to receive MAID. Under section 241.2(1), *a person may receive medical assistance in dying only if they meet*

all of the following criteria:

- (a) they are eligible – or, but for any applicable minimum period of residence or waiting period, would be eligible – for health services funded by a government in Canada;
- (b) they are at least 18 years of age and capable of making decisions with respect to their health;
- (c) they have a grievous and irremediable medical condition;
- (d) they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
- (e) they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

Grievous and Irremediable Medical Condition

The NP must also establish whether the client who is requesting MAID suffers from a grievous and irremediable medical condition. Under section 241.2(2), *a person has a grievous and irremediable medical condition only if they meet all of the following criteria:*

- (a) they have a serious and incurable illness, disease or disability;
- (b) they are in an advanced state of irreversible decline in capability; and
- (c) that illness, disease or disability or that 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.
- (d) *[Repealed, 2021, c. 2, s. 1]*

Exclusion

(2.1) *For the purposes of paragraph (2)(a), a mental illness is not considered to be an illness, disease or disability.*

MAID legislation currently excludes cases where mental illness is the sole underlying medical condition. This exclusion remains in effect until March 17, 2024. The federal government reviewed this criterion with an expert panel and have proposed recommendations for mental disorder as the sole underlying condition for MAID.

The *Criminal Code of Canada* requires that all clients requesting MAID are assessed to determine if they have the capacity to provide informed consent to request and receive MAID. NPs must ensure they follow federal and provincial legislative requirements for determining capacity.

The *Criminal Code* is silent on whether virtual assessment of client eligibility or witnessing of client requests can be done virtually. NPs must follow the organization's internal processes related to MAID and consult with appropriate individuals within their organization to determine the appropriateness of engaging in virtual nursing practice related to MAID to ensure that all checks and balances are met. NPs engaging in virtual nursing practice are encouraged to review the College's most current version of Virtual Nursing Practice on the College's website.

Ensuring Safeguards are Met

As of March 21, 2021, the *Criminal Code* provides a two-track approach to procedural safeguards based upon whether a client's natural death is reasonably foreseeable. Each client requesting MAID should be assessed on a case-by-case basis to determine if their natural death is reasonably foreseeable. The primary provider of MAID (NP/MP) must ensure the procedural safeguards are met prior to providing MAID.

Safeguards-Natural Death Reasonably Foreseeable

Under section 241.2(3), *subject to subsection (3.2), before a medical practitioner or nurse practitioner provides medical assistance in dying to a person whose 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, the medical practitioner or nurse practitioner must*

- (a) be of the opinion that the person meets all of the criteria set out in subsection (1);*
- (b) ensure that the person's request for medical assistance in dying was
 - (i) made in writing and signed and dated by the person or by another person under subsection (4), and*
 - (ii) signed and dated after the person was informed by a medical practitioner or nurse practitioner that the person has a grievous and irremediable medical condition;**
- (c) be satisfied that the request was signed and dated by the person – or by another person under subsection (4) – before an independent witness who then also signed and dated the request;*
- (d) ensure that the person has been informed that they may, at any time and in any manner, withdraw their request;*
- (e) ensure that another medical practitioner or nurse practitioner has provided a written opinion confirming that the person meets all of the criteria set out in subsection (1);*
- (f) be satisfied that they and the other medical practitioner or nurse practitioner referred to in paragraph (e) are independent;*
- (g) if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision; and*
- (h) immediately before providing the medical assistance in dying, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive medical assistance in dying.*
- (i) [Repealed, 2021, c. 2, s. 1]*

Safeguards-Natural Death Not Reasonably Foreseeable

Under section 241.2(3.1), *before a medical practitioner or nurse practitioner provides medical assistance in dying to a person whose natural death is not reasonably foreseeable, taking into account all of their medical circumstances, the medical practitioner or nurse practitioner must*

- (a) be of the opinion that the person meets all of the criteria set out in subsection (1);*
- (b) ensure that the person's request for medical assistance in dying was
 - (i) made in writing and signed and dated by the person or by another person under subsection (4), and*
 - (ii) signed and dated after the person was informed by a medical practitioner or nurse practitioner that the person has a grievous and irremediable medical condition;**
- (c) be satisfied that the request was signed and dated by the person – or by another person under subsection (4) – before an independent witness who then also signed and dated the request;*
- (d) ensure that the person has been informed that the person may, at any time and in any manner, withdraw their request;*
- (e) ensure that another medical practitioner or nurse practitioner has provided a written opinion confirming that the person meets all of the criteria set out in subsection (1);*
- (e.1) if neither they nor the other medical practitioner or nurse practitioner referred to in paragraph (e) has expertise in the condition that is causing the person's suffering, ensure that they or the medical practitioner or nurse practitioner referred to in paragraph (e) consult with a medical*

practitioner or nurse practitioner who has that expertise and share the results of that consultation with the other practitioner;

(f) be satisfied that they and the medical practitioner or nurse practitioner referred to in paragraph (e) are independent;

(g) ensure that the person has been informed of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services and palliative care and has been offered consultations with relevant professionals who provide those services or that care;

(h) ensure that they and the medical practitioner or nurse practitioner referred to in paragraph (e) have discussed with the person the reasonable and available means to relieve the person's suffering and they and the medical practitioner or nurse practitioner referred to in paragraph (e) agree with the person that the person has given serious consideration to those means;

(i) ensure that there are **at least 90 clear days** between the day on which the first assessment under this subsection of whether the person meets the criteria set out in subsection (1) begins and the day on which medical assistance in dying is provided to them or – if the assessments have been completed and they and the medical practitioner or nurse practitioner referred to in paragraph (e) are both of the opinion that the loss of the person's capacity to provide consent to receive medical assistance in dying is imminent – any shorter period that the first medical practitioner or nurse practitioner considers appropriate in the circumstances;

(j) if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision; and

(k) immediately before providing the medical assistance in dying, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive medical assistance in dying.

Written Request and Unable to Sign

The law requires that the client make a written request for MAID. The request must be signed and dated by the client. Under section 241.2 (4), *if the person requesting medical assistance in dying is unable to sign and date the request, another person – who is at least 18 years of age, who understands the nature of the request for medical assistance in dying and who does 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 – may do so in the person's presence, on the person's behalf and under the person's express direction.*

Independent Witness

NPs must be satisfied that the client's written request for MAID was signed and dated by the client (or designate as outlined in 241.2(4)) before **one independent** witness who is also required to date and sign the request. Under section 241.2(5), *any person who is at least 18 years of age and who understands the nature of the request for medical assistance in dying may act as an independent witness, except if they*

- (a)* 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;
- (b)* are an owner or operator of any health care facility at which the person making the request is being treated or any facility in which that person resides;
- (c)* are directly involved in providing health care services to the person making the request; or
- (d)* directly provide personal care to the person making the request.

Exception

(5.1) *Despite paragraphs (5)(c) and (d), a person who provides health care services or personal care as their primary occupation and who is paid to provide that care to the person requesting medical assistance in dying is permitted to act as an independent witness, except for*

- (a) the medical practitioner or nurse practitioner who will provide medical assistance in dying to the person; and*
- (b) the medical practitioner or nurse practitioner who provided an opinion under paragraph (3)(e) or (3.1)(e), as the case may be, in respect of the person.*

Final Consent Waiver

Under section 241.2(3.2), *for the purposes of subsection (3), the medical practitioner or nurse practitioner may administer a substance to a person to cause their death without meeting the requirement set out in paragraph (3)(h) if*

- (a) before the person loses the capacity to consent to receiving medical assistance in dying,
 - (i) they met all of the criteria set out in subsection (1) and all other safeguards set out in subsection (3) were met,*
 - (ii) they entered into an arrangement in writing with the medical practitioner or nurse practitioner that the medical practitioner or nurse practitioner would administer a substance to cause their death on a specified day,*
 - (iii) they were informed by the medical practitioner or nurse practitioner of the risk of losing the capacity to consent to receiving medical assistance in dying prior to the day specified in the arrangement, and*
 - (iv) in the written arrangement, they consented to the administration by the medical practitioner or nurse practitioner of a substance to cause their death on or before the day specified in the arrangement if they lost their capacity to consent to receiving medical assistance in dying prior to that day;**
- (b) the person has lost the capacity to consent to receiving medical assistance in dying;*
- (c) the person does not demonstrate, by words, sounds or gestures, refusal to have the substance administered or resistance to its administration; and*
- (d) the substance is administered to the person in accordance with the terms of the arrangement.*

For Greater Certainty

Under section 241.2(3.3), *for greater certainty, involuntary words, sounds, or gestures made in response to contact do not constitute a demonstration of refusal or resistance for the purposes of paragraph (3.2)(c).*

Advance Consent Invalidated

Under section 241.2 (3.4), *once a person demonstrates, by words, sounds or gestures, in accordance with subsection (3.2), refusal to have the substance administered or resistance to its administration, medical assistance in dying can no longer be provided to them on the basis of the consent given by them under subparagraph (3.2)(a)(iv).*

Advance Consent – Self-administration⁴

Under section 241.2(3.5), *in the case of a person who loses the capacity to consent to receiving medical*

⁴ Access to MAID medication for self-administration is currently not available in NL; however, this may change in the future.

assistance in dying after self-administering a substance, provided to them under this section, so as to cause their own death, a medical practitioner or nurse practitioner may administer a substance to cause the death of that person if

- (a) before the person loses the capacity to consent to receiving medical assistance in dying, they and the medical practitioner or nurse practitioner entered into an arrangement in writing providing that the medical practitioner or nurse practitioner would

 - (i) be present at the time the person self-administered the first substance, and*
 - (ii) administer a second substance to cause the person's death if, after self-administering the first substance, the person lost the capacity to consent to receiving medical assistance in dying and did not die within a specified period;**
- (b) the person self-administers the first substance, does not die within the period specified in the arrangement and loses the capacity to consent to receiving medical assistance in dying; and*
- (c) the second substance is administered to the person in accordance with the terms of the arrangement.*

Failure to Comply with Safeguards

According to 241.3, *a medical practitioner or nurse practitioner who, in providing medical assistance in dying, knowingly fails to comply, subject to subsection 241.2(3.2), with all of the requirements set out in paragraphs 241.2(3)(b) to (h) or paragraphs 241.2(3.1)(b) to (k), as the case may be, and with subsection 241.2(8) is guilty of*

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or*
- (b) an offence punishable on summary conviction.*

Offences

According to subsections 241.4(1) & (2), *everyone commits an offence who commits forgery in relation to a request for medical assistance in dying, and everyone commits an offence who destroys a document that relates to a request for medical assistance in dying with intent to interfere with*

- (a) another person's access to medical assistance in dying;*
- (b) the lawful assessment of a request for medical assistance in dying;*
- (c) another person invoking an exemption under any of subsections 227(1) or (2), 241(2) to (5) or 245(2); or*
- (d) the provision by a person of information under section 241.31.*

For further information on offences and punishment related to failure to comply with MAID legislation, please refer to the *CCC*.

Duties of the First and Second MAID Clinician (Provider/Assessor)

The law requires that at least two MAID clinicians⁵ (NP/NP, MP/MP, or NP/MP) are involved in the assessment of eligibility criteria of a client requesting MAID. Two NPs can fulfill the roles of first and second MAID clinicians.

Any NP who is approached by a client for information on MAID has an obligation to discuss the subject

⁵In NL, clinician may be referred to practitioner, provider, or assessor.

with the client the first time the client raises it, regardless of whether they object to personally providing this service. During the first visit **where the client requests or seeks information** regarding MAID, all NPs have an obligation to:

- a) engage in a fulsome discussion as to the reasons behind the client's request, and answer any questions the client may pose,
- b) ensure that the client has information about MAID,
- c) ensure the client has been informed of the means available to relieve their suffering, including, where appropriate, palliative care, counseling services, mental health and disability support services, community services, etc., and has been offered consultations with relevant professionals who provide services or that care,
- d) advise the client whether the NP provides MAID,
- e) refer the client if the NP does not provide MAID to an appropriate health care practitioner(s) who provides MAID or to the Regional Health Authority (RHA) MAID Coordinator/Program, and
- f) provide the client with access to further information as appropriate.

First MAID Clinician

The first MAID Clinician is primarily responsible for overseeing the MAID process. The NP may obtain that role by a referral from another health care professional, by direct consultation from a client, or from an RHA MAID Coordinator.⁶

The NP must provide a reliable means to communicate with a client who has difficulty communicating to ensure the client can understand the information provided and communicate their decision with respect to MAID. The first MAID clinician is the individual NP/MP who agrees to perform the functions of a first MAID clinician (i.e., provider), including completing the initial assessment⁷ of client eligibility criteria and ensuring safeguards are met.

The first MAID clinician must also ensure that the client is informed that they can withdraw their consent at any time (unless the client has an advanced consent arrangement) and must be given an opportunity to withdraw their request/consent and give express consent again immediately before MAID is provided. An exemption exists where the client chooses to self-administer MAID medication and fails to produce death within a specified time and causes the client to lose capacity. An advanced consent arrangement would be needed and documented for the NP as first clinician who is present to proceed to provide MAID (through a second round of MAID medication).

Determining Eligibility Criteria as the First MAID Clinician

During an assessment for eligibility for MAID, the NP must gather evidence by determining:

- whether all appropriate investigations have been done to rule out curable illness, disease, or disability, and irreversible decline in capacity,
- whether the client has been offered all reasonable and available means of alleviating their suffering,
- whether the client has been given serious consideration to these means of alleviating their suffering, and
- whether a natural death has become reasonably foreseeable.

⁶ Currently, within the RHAs, requests/referrals for MAIDs are received by the MAID Coordinator and that MAID Coordinator would help facilitate the first and second clinician/practitioner.

⁷ There may be circumstances where the first clinician may provide their assessment after the second clinician but assumes oversight of the MAID process.

Second MAID Clinician

The second MAID clinician is the individual NP/MP who agrees to assess the client at the request of the first MAID clinician to confirm whether the client meets the eligibility criteria for MAID and who agrees to perform the functions of a second MAID clinician.

The law requires that an NP who provides MAID ensure that there is a second written opinion from another NP/MP (second MAID clinician) confirming that the client meets all eligibility criteria to receive MAID. NPs who take on the role of First or Second MAID clinician must be independent from the other MAID clinician. Under section 241.2(6), *the medical practitioner or nurse practitioner providing medical assistance in dying and the medical practitioner or nurse practitioner who provides the opinion referred to in paragraph (3)(e) or (3.1)(e) are independent if they*

- (a) are not a mentor to the other practitioner or responsible for supervising their work;*
- (b) 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; and*
- (c) do not know or believe that they are connected to the other practitioner or to the person 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 clinicians not be a mentor to the other practitioner or responsible for supervision of their work but does not define the term "mentor".

Independence is defined as above within the *Criminal Code*. Therefore, NPs should carefully review the definition of independent witness prior to agreeing to evaluate a person for MAID eligibility.

In NL, it is recognized that NPs work within collaborative teams. NPs who have questions about whether or not they are in a mentor or supervisory relationship with the other MAID clinician, should contact CNPS and/or the employer/organization legal counsel for further guidance.

Special Considerations for the NP Acting as the First or Second MAID Clinician

An NP **must not** act as the First or Second MAID Clinician:

- for the NP's own family member. A family member includes the spouse, parent, child, grandparent, grandchild, aunt/uncle, niece/nephew or stepfamily of the NP, 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 NP,
- for any client with whom circumstances place the NP in a real or perceived conflict of interest including any relationship that may affect the NP's objectivity within the meaning of the *Criminal Code*, section 241.2(6),
- where relevant restrictions or limitations on the NPs license prevent them from providing medical assistance in dying for any reason, and
- according to those provisions outlined in section 241.2(6) listed above.

Not all MAID clinicians will feel that they have the necessary expertise or experience to assess clients with the most challenging complex chronic conditions. If neither practitioner has expertise in the condition that is causing the client's suffering, a consultation with a third practitioner with expertise in that condition is required.⁸ The expert would not be assessing the client's eligibility for MAID. Instead, they

⁸ An NP may possess the necessary expertise and be consulted to provide an opinion on a condition that causes the client's suffering.

would conduct a thorough assessment of the individual's condition and share the results of that consultation with the NP/MP in writing, so that both practitioners who assess eligibility criteria will have access to the entire information. The NP must thoroughly review and retain the written assessment provided by the expert as part of the client health record. The NP who provides MAID must also retain the written opinion provided by the second MAID clinician on whether the client met the eligibility criteria to receive MAID.

MAID Medication

NPs are authorized to prescribe and administer MAID medication and use evidence and best practices when considering each client's unique situation to inform decisions regarding MAID medication. If prescribing MAID medication for self-administration, the NP should work with the client to develop a plan for the safe storage of medication and safe disposal of unused medication.

In addition, NPs in NL are required to be knowledgeable of the NLPB's guidelines related to MAID. NPs are required to be knowledgeable of evidence-informed drug protocols, guidelines and/or policies of the employer/organization prior to providing MAID. NPs should be aware that there is some risk that a client may experience complications during, or resulting from, the administration of a lethal dose of medication, and must be prepared to manage these complications. In addition, if there is an advanced consent arrangement, and the client loses capacity and does not die within a specified time from self-administration of MAID medication, then the first NP MAID provider who must be attendance in this arrangement may provide MAID.

The NP who provides MAID must collaborate with the pharmacist who will dispense the MAID medication. Under section 241.2(8), *the medical practitioner or nurse practitioner who, in providing medical assistance in dying, prescribes or obtains a substance for that purpose must, before any pharmacist dispenses the substance, inform the pharmacist that the substance is intended for that purpose.*

The NP must also ensure the safe disposal and/or return of unused medications after providing MAID. NPs are also required to familiarize themselves with any NLPB guidelines as well as any relevant employer/organization policy regarding the prescription, use, storage, transportation, and return of MAID medications. Furthermore, NPs must comply with the most current versions of the *Standards of Practice, Medication Management*, other relevant College documents, and applicable legislation related to MAID Medication Management.

Documentation

Keeping an adequate and careful record of a client request for MAID is of fundamental importance. The client record should include details regarding the nature of the discussion/interactions with the client/family regarding MAID and the care provided during the MAID process.

NPs must document in the client record that all requirements in legislation, regulation, and employer policy have been met. In addition, they must comply with the most current version of the College's Documentation Principles and any relevant employer policy regarding documentation requirements for MAID.

Documentation must include the reasons the provider and assessor are of the opinion that all eligibility

criteria have been met and that the clinician is of the opinion that the relevant safeguards have been met. For clients who do not have a reasonably foreseeable natural death, documentation must indicate which assessor has expertise in the condition causing the client's suffering. If neither MAID clinician has this expertise, documentation should confirm that a NP/MP with the necessary expertise was consulted and that their opinion was shared between the MAID clinicians.

Documentation must also state that the two MAID clinicians agree with the client that the client has given serious consideration to the reasonable and available means to alleviate their suffering. If, at any time, the client rescinds the request for MAID, the first clinician must clearly document the client's choice to withdraw their request for MAID. Furthermore, the first MAID clinician should document that the client was given an opportunity to withdraw their request for MAID immediately before the provision of MAID and that the client gave express consent immediately before providing MAID.

NPs must also 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 any related provincial requirements.

Reporting Requirements

As of March 21, 2021, Federal MAID legislation (Bill C-7) introduced new reporting requirements, including changes to the framework for collection of data on MAID, allowing for the collection of data on all assessments following a person's request for MAID. It also modified the Federal Minister's Health regulation-making power to expand data collection related to race, Indigenous identity, and disability, and seek to determine the presence of individual or systemic inequality or disadvantage in the context of or delivery of MAID.

Health Canada recently amended the Regulations for the Monitoring of Medical Assistance in Dying and require physicians, nurse practitioners, preliminary assessors, pharmacists, and pharmacy technicians to provide information related to requests for, and the provision of, medical assistance in dying (MAID). The Regulations Amending the Regulations for the Monitoring of Medical Assistance in Dying came into effect on January 1, 2023. The regulatory amendments continue to support the collection of consistent, comprehensive information on MAID across the country by setting out reporting requirements for: health care professionals who conduct preliminary assessments of eligibility; physicians and nurse practitioners who conduct assessments of eligibility and deliver MAID; and for pharmacists and pharmacy technicians (in collaboration with a pharmacist) who dispense the necessary substances for the provision of MAID.

Unless exempted by regulations made by the Federal Minister of Health, physicians, nurse practitioners, and preliminary assessors who receive a written/verbal request for MAID must comply with all documentation and reporting requirements set out in federal and/or provincial legislation. NPs must familiarize themselves with the Amended Regulations in order to enter the required reporting requirements in the Canadian MAID Data Collection Portal.⁹

Currently in NL, based upon the Provincial Government's requirements for completion of the death registration, only NPs are authorized to complete the death registration¹⁰ where MAID has been

⁹ Health Canada created a guidance document to support health care professionals in fulfilling their responsibilities under the *Regulations*. Access to the guidance document can be found in the bibliography or by visiting Health Canada's MAID website.

¹⁰ As of Fall 2022, in NL, death registration notifications will be filed electronically.

provided to a client. RNs are **not** authorized to complete the death registration where MAID has been provided.

RNs and NPs Aiding in MAID

The role of the RN in MAID is limited and very different than the role of the NP who provides MAID. There may be situations where an NP chooses not to provide MAID. In these situations, the NP's scope of practice is consistent with the RN scope of practice in MAID, and as such, is limited to aiding in MAID. **RNs cannot provide MAID nor determine if a client meets eligibility criteria or that safeguards have been met.**

Under section 241(1)(3), *no person is a party to an offence under paragraph (1)(b) if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2.* Furthermore, under section 241(1)(5), *no person commits an offence under paragraph (1)(b) if they do anything, at another person's explicit request, for the purpose of aiding that other person to self-administer a substance that has been prescribed for that other person as part of the provision of medical assistance in dying in accordance with section 241.2.*

When aiding in MAID, the RN and NP may participate in providing nursing care and perform activities within their scope of practice such as:

Providing Nursing Care and Support to Clients and Families

- RNs/NPs are responsible to determine their scope of practice regarding MAID and practice within their individual competence (i.e., have the necessary knowledge, skills, and judgment, and can safely manage the outcomes of care).
 - RNs/NPs are accountable to attain the knowledge, skills, and judgment required to aid the NP/MP to provide MAID and support services to their clients.
 - RNs/NPs must ensure they are aware of the eligibility criteria, safeguards, and requirements to support they are acting appropriately with respect to a client who is requesting MAID.
 - RNs/NPs must possess a level of knowledge of MAID that allows them to appropriately address a client's questions or ensure they receive appropriate nursing care if aiding in MAID.
 - RNs/NPs must seek and/or participate in educational opportunities to gain and maintain the competencies required to aid in MAID.
- RNs/NPs must maintain privacy and confidentiality of clients and families who are involved in MAID. This includes respecting the client's wish about communicating with the family and/or support persons.
 - RNs/NPs advocate for their clients' privacy and dignity as they seek/receive MAID as their choice for their end-of-life care.
 - RNs/NPs have an ethical and legal responsibility to respect a client's informed choice and support that choice as they provide care.

Preparing the Medication(s) for MAID

- NPs/MPs prescribe and/or administer the medications for MAID. In this situation, an RN/NP may aid in MAID. However, when aiding in MAID, an RN/NP must **NOT** administer the medication

even with an order from a NP/MP or under direct supervision.

- RNs/NPs must reflect on and refrain from activities that may be viewed as actual administration of the medication, such as placing the oral medication in the client's mouth, inserting (pushing) the medication into the client's IV or feeding tube, or preparing or altering the medication to ease ingestion such as mixing with food or liquid.
- When an RN/NP is aiding in MAID, they are permitted to insert an intravenous line (with an order) that will be used in the provision of MAID.

Acting as an Independent Witness

- The *Criminal Code* requires that a person's request for MAID be made in writing and be signed and dated before one independent witness.
 - An RN/NP may be asked to act as an **independent** witness.
 - Under section 241.2(5), *any person who is at least 18 years of age and who understands the nature of the request for medical assistance in dying may act as an independent witness, except if they*
 - (a) 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;*
 - (b) are an owner or operator of any health care facility at which the person making the request is being treated or any facility in which that person resides;*
 - (c) are directly involved in providing health care services to the person making the request; or*
 - (d) directly provide personal care to the person making the request.*

Exception:

Under section 241.2(5.1), there is an exception:

a person who provides health care services or personal care as their primary occupation and who is paid to provide that care to the person requesting medical assistance in dying is permitted to act as an independent witness, except for

- (a) the medical practitioner or nurse practitioner who will provide medical assistance in dying to the person; and*
- (b) the medical practitioner or nurse practitioner who provided an opinion under paragraph (3)(e) or (3.1)(e), as the case may be, in respect of the person.*

Documenting the RN/NP Role and Nursing Care Provided in MAID

- Due to the nature and legislative requirements of MAID, it is extremely important to have quality and detailed documentation regarding the RN's/NP's interactions, conversations, and nursing care provided to the client and family prior to, during, and after MAID.
 - RNs/NPs must follow employer/organizational documentation policies regarding MAID.
 - RNs/NPs accurately document MAID conversations including, but not limited to, any requests for information related to MAID, any nursing actions in relation to aiding the NP/MP prior to, during, or after MAID, any nursing care provided to the client receiving MAID, and any resources provided to the client, etc.
 - RNs/NPs must ensure they are aware of the eligibility criteria, safeguards, and requirements to support they are acting appropriately with respect to a client.
 - RNs/NPs who are aiding in MAID are responsible to:

- Review the client's chart and signed written request for MAID to determine whether documentation clearly indicates that all requirements have been met. **Note: it is not within the scope of an RN (nor an NP aiding in MAID) to determine if a client meets eligibility criteria or that safeguards have been met.**
 - If issues are identified, discuss the assessment of eligibility criteria and safeguards with the NP or MP who is to provide MAID.
 - Take appropriate steps to verify that documentation is complete and accurate and document how issues were addressed.
-
- Physicians, nurse practitioners, and preliminary assessors who receive a written/verbal request for MAID must comply with all documentation and reporting requirements set out in federal and/or provincial legislation.
 - In NL, only NPs are authorized to complete the death registration (certificate) form whereas RNs are not authorized to complete the death registration form where MAID has been provided to a client.

Self-Care for RNs/NPs Aiding or NPs Providing MAID

RNs/NPs should be cognizant of their own emotional, physical, and mental well-being. While clients and their families are obviously directly impacted by an individual's choice to seek MAID, RNs/NPs may also find themselves affected by this process. RNs/NPs are encouraged to seek advice and guidance from programs that are available to them, including employer wellness/assistance programs, or other resources.

MAID may have an emotional impact on the health care team. Providing MAID may pose a risk of increased moral distress, burnout, and trauma. To address these risks, it is important for healthcare clinicians to have debriefings with their broader healthcare team to have a safe space to discuss MAID, the client, and the perspectives and feelings of the team. RNs/NPs are encouraged to advocate for debriefings if they currently do not exist within their practice setting.

RNs/NPs should self-reflect and be aware of their feelings about MAID and determine whether it is compatible with their personal, ethical, and/or religious beliefs. If it is not, they may choose not to participate on the basis of conscientious objection.

Conscientious Objection

According to section 241.2(9), *nothing in this section compels an individual to provide or assist in providing medical assistance in dying*. RNs/NPs are not required to directly participate in the provision of MAID. However, they are required to continue providing any routine care that is not related to MAID. The College recognizes an RN's/NP's freedom of conscience. RNs/NPs may have beliefs and values that differ from those of a client and may not be comfortable providing MAID (NPs only) or RNs/NPs aiding in MAID. The law does not compel an RN/NP to aid in MAID or an NP to provide MAID. Therefore, the RN/NP may conscientiously object. The RN/NP must recognize their own personal values about MAID and take measures to avoid any negative impact on client care, nursing practice, and the practice setting.

RNs/NPs practise in accordance with their Code of Ethics and when faced with a situation where an RN or NP experiences a conflict with one's conscience, they reflect on their ethical responsibilities:

If nursing care is requested that is in conflict with the nurse's moral beliefs and values but in keeping with professional practice, the nurse provides safe, compassionate, competent, and ethical care until alternate care arrangements are in place to meet the person's needs or desires. But nothing in the Criminal Code compels an individual to provide or assist in providing medical assistance in dying. If nurses can anticipate a conflict with their conscience, they have an obligation to notify their employers or persons receiving care (if the nurse is self-employed), in advance so that alternate care arrangements can be made (CNA Code of Ethics, 2017).

RNs/NPs whose practice environments include providing or aiding in MAID, and who determine that MAID is in conflict with their beliefs and values, should inform their employer of their conscientious objection. RNs/NPs have a duty of care and cannot abandon their clients; hence, it necessitates effective referral to other health care professionals in certain circumstances.

Nurses can work with their employers to identify an appropriate, alternative care provider. RNs/NPs who conscientiously object should transfer the care of a client to another RN/NP or health care provider who can address the client's needs. Until a replacement caregiver is found, an RN/NP must continue to provide safe, competent, compassionate, and ethical care that is not related to activities associated with MAID, in accordance with the client's care plan.

NPs unwilling to provide MAID for personal, moral, religious, or ethical reasons are expected to offer accurate information to clients. NPs who decline to provide MAID should use their best efforts to offer the client timely access to another healthcare professional (or appropriate information resource, clinic or facility, MAID program, care provider, health authority, or organization) who is:

- available to assist the client,
- accessible to the client, and
- willing to provide MAID to a client who meets the eligibility criteria.
- An NP who declines to provide MAID to a client should not terminate the therapeutic relationship on that basis alone.
- The objecting NP shall:
 - provide access to all relevant medical records (with client's consent) to any clinician who is providing services to the client related to MAID; and
 - continue to provide services unrelated to MAID, unless the client requests otherwise, or until another suitable physician/NP has assumed responsibility for the client's request for MAID.

In addition, 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. RNs/NPs must not provide false, misleading, intentionally confusing, coercive, or materially incomplete information to clients.

Additional Resources:

The College is available to assist RNs/NPs to understand their regulatory requirements related to MAID. The College can provide information on the Standards of Practice, Code of Ethics, and Scope of Practice Framework to assist RNs/NPs with issues related to MAID and/or their practice. Additional resources related to MAID are also available on the College's website. For those employed outside of a RHA or those in self-employment, it is advisable to connect with the College prior to providing or aiding in MAID if they have questions with respect to policy development and/or requirements for MAID.

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