



Guideline for **RN** Involvement in Medical Assistance in Dying

November 2016

Introduction

On June 17, 2016, Bill C-14, legislation regarding medical assistance in dying, received Royal Assent and is now in force across Canada. The legislation amends the *Criminal Code*, creating exemptions from criminal prosecution for nurses and their colleagues who make up the health-care team, which means that it is possible for Registered Nurses (RNs) to be involved in medical assistance in dying without facing criminal prosecution. “Medical assistance in dying must be provided with reasonable knowledge, care and skill, and in accordance with any applicable laws, rules or standards” (*Criminal Code*, 1985, 242.2[7]). Failing to comply with this and other legal requirements could result in being convicted of a criminal offence.

The Saskatchewan Registered Nurses’ Association (SRNA) is working with the Saskatchewan Ministries of Health and Justice, regulatory bodies, employers and other stakeholders to provide consistent and standardized information for the delivery of a medically-assisted death.

Purpose of the Guideline

The purpose of this document is to highlight the changes to the *Criminal Code* in relation to the provision of medical assistance in dying and delineate the role of RNs in this process if they choose to participate and have the support of their client, and their agency or employer. The guideline includes a description of the legislation, principles, responsibilities and process steps for their involvement in medical assistance in dying in Saskatchewan. There is a separate SRNA resource titled *Guideline for RN(NP) Involvement in Medical Assistance in Dying* which provides direction to RN(NP)s who may be involved in medical assistance in dying.

Conscientious Objection

The SRNA recognizes that an RN may not be comfortable being involved with a medically-assisted death. The law and the SRNA do not compel RNs or RN(NP)s to be involved in this process. RNs who have a conscientious objection to a request for participating in medical assistance in dying must promptly inform the employer of the objection. The RN has a duty to continue to provide safe, competent ethical, compassionate care until alternative care arrangements can be made. The Canadian Nurses Association (CNA) *Code of Ethics* provides guidance to RNs in their practice and to effectively manage discussions about conscientious objections with their client, agency or employer.

RN Competency and Scope of Practice for Involvement in Medical Assistance in Dying

RNs involved in medical assistance in dying must be licensed by the SRNA and comply with the requirements of the *Criminal Code*, as well as any provincial requirements. RNs are also accountable for complying with all other applicable SRNA bylaws, standards and the CNA *Code of Ethics*. RNs can be involved in providing nursing care for persons seeking medical assistance in dying however, according to the conditions in the *Criminal Code*, cannot accept delegation from a medical or nurse practitioner or act pursuant to an order for the administration of the substance used to provide medical assistance in dying.

RNs are encouraged to contact the Canadian Nurses Protective Society (CNPS) to be aware of the applicable provisions of the *Criminal Code* and understand potential legal issues.

As with all aspects of their practice, RNs need to understand the legal framework for the provision of medical assistance in dying, including the federal legislation, provincial and regional processes, and standardized protocols. RNs need to be familiar with related employer policies and procedures and other legislation. It is important to note that employers may limit but cannot expand the scope of the RN.

As a new practice in Canada, data and evidence will be collected and tracked to inform practice, and meet federal requirements as defined in the *Criminal Code*. Education materials and opportunities are being developed. As new evidence comes available, this practice guideline will evolve and be adapted to reflect current practice consistent with legislation, practice standards and code of ethics. In the early stages, RNs are advised to connect with the SRNA to understand current evidence and practice, and provincially and federally coordinated processes.

Definition and Exemptions within the *Criminal Code*

In the preamble of Bill C-14 “the Parliament of Canada recognizes the autonomy of persons who have a grievous and irremediable medical condition that causes them enduring and intolerable suffering and who wish to seek medical assistance in dying” (p. 1). This is reflected in the *Criminal Code* as such:

medical assistance in dying means

241.1 (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. (*Criminal Code*, 1985)

While it is permitted to provide information about medical assistance in dying, it remains a criminal offense to counsel or aid a person to commit suicide.

Counselling or aiding suicide

241 (1) 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. (*Criminal Code*, 1985)

Exemptions have been created within the *Criminal Code* so that medical assistance in dying can be provided in accordance with section 241.2. The exemption for medical practitioners and nurse practitioners is as follows:

Exemption for medical assistance in dying

227 (1) No medical practitioner or nurse practitioner commits culpable homicide if they provide a person with medical assistance in dying in accordance with section 241.2. (*Criminal Code*, 1985)

The *Criminal Code* also contains exemptions for other people, which would apply to RNs and other health professionals to aid in medical assistance in dying.

Exemption for person aiding practitioner

241 (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. (*Criminal Code*, 1985)

Exemption for person aiding patient

241 (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. (*Criminal Code*, 1985)

The practice of the RN falls within these exemptions, provided that the RN complies with the requirements contained in the *Criminal Code*.

Distinction Between Administering and Aiding

There is an important distinction between administering and aiding in medical assistance in dying within the *Criminal Code*. Within the definition of medical assistance in dying, it is clear that only medical practitioners and nurse practitioners can administer medical assistance in dying to those deemed eligible. The term “administration” of medical assistance in dying means that the medical or nurse practitioner: 1) affirms that all eligibility criteria and safeguards have been met; 2) reaffirms consent immediately prior to administration; 3) administers the substance to cause death; and 4) does not delegate the administration to any other team member.

This means that it is possible for RNs to provide all aspects of nursing care and support for the process, with the exception of administering any of the medications associated with the protocol for administering a medically-assisted death, and managing any of the unintended consequences associated with administration.

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Provision of Medical Assistance in Dying

Three stages for the provision of medical assistance in dying have emerged:

- I. Seeking medical assistance in dying;
- II. Assessment of eligibility; and
- III. Administering medical assistance in dying.

I. Seeking medical assistance in dying

When there are requests about medical assistance in dying, RNs can be assured that the *Criminal Code* includes “for greater certainty,” a clause that states that “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” (*Criminal Code*, 1985, 241[5.1]).

RNs who receive requests for medical assistance in dying should provide safe and ethical care as well as refer the person to a medical or nurse practitioner or designated contact person for this purpose. RNs should document these discussions appropriately. For further information about documentation consult the applicable SRNA resources and CNPS, which offers guidance regarding effective documentation practices.

Provincial pathways, forms and protocols have been developed in Saskatchewan to facilitate a coordinated approach to medical assistance in dying which complies with the legislation. RNs should be aware that RN(NP)s are required to follow this process in Saskatchewan. These documents are available through the SRNA (srna.org) and will also be available through the Government of Saskatchewan.

II. Assessing eligibility for medical assistance in dying

It is important for the RN to understand that the Criminal Code requires the medical or nurse practitioner providing a medically-assisted death must verify that all of the eligibility criteria have been met. These assessments are the responsibility of the medical or nurse practitioner, and not the responsibility of the RN.

The eligibility criteria for the person seeking medical assistance in dying is as follows:

241.2 (1) Eligibility for medical assistance in dying

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. (*Criminal Code*, 1985)

Further criteria for determining if the person has a grievous and irremediable medical conditions are as follows:

Grievous and irremediable medical condition

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;
- (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; and
- (d) their natural death has become 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. (*Criminal Code*, 1985)

Assessing the criteria for grievous and irremediable condition is the responsibility of the medical or nurse practitioner. The RN is not involved in making this assessment and determination. RNs should document any information the person provides regarding their request for information about medical assistance in dying, so it can be taken into account by the medical or nurse practitioners.

Informed consent and assessing capacity

It is the responsibility of the medical or nurse practitioner to obtain consent and assess capacity of the person seeking medical assistance in dying. Assessing the patient's capacity to provide informed consent may be complex and if necessary, the consultation from other appropriate health care providers to further assess and document the individual's capacity to provide informed consent may be sought. It is important for the RN to understand that the *Criminal Code* requires that the practitioner obtains

informed consent after the person has “been informed of the means that are available to relieve their suffering, including palliative care” (*Criminal Code*, 1985, 241.2[1]e).

End-of-life and culturally safe care are identified as areas for development nationally, with the Government of Canada indicating commitment to work “with provinces, territories and civil society to facilitate access to palliative and end-of-life care” including “appropriate mental health supports and services and culturally and spiritually appropriate end-of-life care for Indigenous patients”(Bill C-14, 2015-2016. p. 2).

Safeguards

The *Criminal Code* includes “robust safeguards” intended “to prevent errors and abuse in the provision of medical assistance in dying” (Bill C-14, 2015-2016, p.1). RNs are not responsible to ensure safeguards are met. RNs should not assist if there is reason to believe that these safeguards are not met and should inform the team of the concerns. RNs can otherwise support the general nursing process involved in the person’s care.

241.2 (3) Before a medical practitioner or nurse practitioner provides a person with medical assistance in dying, 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 two independent witnesses 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)** ensure that there are at least 10 clear days between the day on which the request was signed by or on behalf of the person and the day on which the medical assistance in dying is provided or—if they and the other medical practitioner or nurse practitioner referred to in paragraph (e) are both of the opinion that the person’s death, or the loss of their capacity to provide informed consent, is imminent—any shorter period that the first medical practitioner or nurse practitioner considers appropriate in the circumstances. (*Criminal Code*, 1985)

Independence

Important safeguards include ensuring independence of witnesses to the person seeking medical assistance in dying, and independence of medical and nurse practitioners providing it.

Two independent witnesses must be present to witness the person's request for medical assistance in dying. Independence of these witnesses is defined in the *Criminal Code*, as follows:

Independent Witness

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. (*Criminal Code*, 1985)

RNs may serve as a witness for a person seeking medical assistance in dying if they are independent in accordance with the *Criminal Code*. RNs directly providing health care services to the person making the request therefore would not be considered independent according to this section of the *Criminal Code*.

Medical and nurse practitioners providing medical assistance in dying to a person must be independent of each other. Independence of the medical and nurse practitioners has also been defined in the *Criminal Code*. It is the responsibility of the practitioners to ensure independence of each other if involved medical assistance in dying.

III. Administering medical assistance in dying

Forms and processes have been established in Saskatchewan to support the provision of medical assistance in dying. They include a pharmacy protocol, and informed consent and eligibility assessment tools. RNs need to be aware of these provincial protocols and documentation processes, and that adherence to them is a requirement for RN(NP)s administering medical assistance in dying. At this time, a standard protocol for the self-administration of Medical Assistance in Dying has not been formalized in the province.

Once the eligibility criteria are met and it is deemed that medical assistance in dying can be administered, the patient and the medical or nurse practitioner determine the suitable environment and timing for administration. RNs may aid the practitioner or patient if they reasonably believe that the medically-assisted death is being provided in compliance with all of the eligibility requirements and safeguards contained in the *Criminal Code*. It is therefore prudent for the RN to determine that the informed consent, eligibility criteria and safeguards have been met prior to being involved in medical assistance in dying.

An important final step before administration of the pharmacy protocol for medical assistance in dying, the medical or nurse practitioner who administers medical assistance in dying must:

- 241.2.(3)** (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; and
- (i) 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. (*Criminal Code*, 1985)

RN(NP)s have been advised that it is prudent for them to document those who are present at the time of the administration of medical assistance in dying, along with documenting that the patient was given the opportunity to withdraw consent prior to the administration and confirmed intention to proceed. RN(NP)s have also been advised that they may wish to consider having another health care professional present to witness that the person was given the opportunity to withdraw consent prior to administration. RNs may be asked to provide this verification and it would be prudent to document this appropriately.

The *Criminal Code* implies that the medical or nurse practitioner must personally administer the substance, which is delivered intravenously by the medical or nurse practitioner. RNs should be aware that the RN(NP) who administers the pharmacy protocol for medical assistance in dying, should remain with the person until death occurs. When aiding medical and nurse practitioners in the provision of a medically-assisted death, the RN should not administer the substance, but may: initiate the intravenous line; provide the patient with nursing care associated with their grievous and irremediable condition; and be present during the administration of the medication to provide competent, ethical and compassionate nursing interventions to meet the needs of the person and the family.

The Saskatchewan Pharmacy Protocol for Medical Assistance in Dying

The Saskatchewan Pharmacy Protocol for Medical Assistance in Dying has been developed in consultation with the Saskatchewan College of Pharmacy Professionals and the College of Physicians and Surgeons of Saskatchewan and other authorities and experts. The RN may wish to be familiar with the current version of the protocol. While an RN may initiate the intravenous line, all drugs in the protocol must be administered by the medical or nurse practitioner. At this time, a standard protocol for the self-administration of a medically-assisted death has not been formalized in the province. Members are advised to contact the SRNA if they receive requests for self-administration of medical assistance in dying.

The *Criminal Code* also provides an exemption from criminal offence for the pharmacist involved in medical assistance in dying. RNs should be aware that the *Criminal Code* requires that the medical or nurse practitioner who prescribes and administers the substance used for a medically-assisted death must inform the pharmacist.

Informing Pharmacist

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. (*Criminal Code*, 1985)

It is the responsibility of the medical or nurse practitioner administering the substance for medical assistance in dying to monitor and manage any unforeseen circumstances and remain with the person until death occurs. At the time of death, the medical or nurse practitioner reports to the coroner who currently completes and signs all death certificates associated with medical assistance in dying.

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Summary

In summary, significant collaboration has occurred to support a safe and coordinated approach to medical assistance in dying in Saskatchewan. Referral to this guideline and the *Criminal Code* is critical to ensure adherence with the principles, responsibilities and processes for medical assistance in dying. There will also be data collection requirements to inform the Federal Government, which will become clearer within 12 months of the legislation being in place, as this is a legislative requirement of the Federal Minister of Health. SRNA Practice Consultants are available to provide consultation to RNs and employers as medical assistance in dying evolves over time. SRNA members are also encouraged to contact the CNPS to understand their legal obligations regarding involvement with medical assistance in dying.

References

Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, First Session, Forty-second Parliament, 64-65 Elizabeth II, 2015-2016. Retrieved from http://www.parl.gc.ca/content/hoc/Bills/421/Government/C-14/C-14_4/C-14_4.PDF

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