College of Occupational Therapists of Ontario
Ordre des ergothérapeutes de l'Ontario

Medical Assistance in Dying

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Medical Assistance in Dying

On June 17, 2016, the federal government enacted amendments to the *Criminal Code of Canada* (the "Criminal Code") to permit physicians and nurse practitioners to provide medical assistance in dying (sometimes referred to as MAiD) and to allow other healthcare providers to aid clients in this process, provided they follow the rules of the legislation, applicable provincial requirements, and professional standards.

This document intends to provide guidance on professional expectations and ethical obligations for occupational therapists (OTs) related to medical assistance in dying. It also provides direction for occupational therapists who conscientiously object to aiding in the provision of this process with a client.

The federal and provincial government continue to monitor cases of medical assistance in dying. The federal government is obligated to review complex issues, such as requests by mature minors, advanced requests (to support those who may want to make their request now in fear of losing capacity to make such a decision later), and requests where mental illness is the sole underlying medical condition. To address some of these issues, in March 2021, the federal government passed Bill C-7, An Act to amend the Criminal Code (medical assistance in dying) and increased access to this process. This document reflects those changes. If discrepancies arise between these documents and the legislation, the legislation prevails.

Overview of the Legislation

At an individual's request, physicians and nurse practitioners are permitted to provide that individual with assistance in one of two ways:

1. Directly administer a substance that causes an individual's death; or,
2. Provide or prescribe a substance for an individual to self-administer to cause their own death.

To be eligible for medical assistance in dying, a person must meet all the criteria set out in the legislation:

- be eligible for publicly funded health-care services in Canada;
- be at least 18 years of age and mentally competent;
- have a grievous and irremediable medical condition;
- voluntarily request medical assistance in dying (not resulting from outside pressure or influence);
- give informed consent for medical assistance in dying (advance consent or substitutedecision-maker consent is not permitted). However, this can be administered to a person who has lost the capacity to consent if death is reasonably foreseeable and the person entered into an agreement with the physician or nurse practitioner consenting to medical assistance in dying before losing capacity. It can also be administered to a person who has lost capacity to consent because of self-administration of a substance provided by a physician or nurse practitioner for the purpose of medical assistance in dying.

- have one independent witness to the signature of a person on their written request for medical assistance in dying. The independent witness of their signature can be someone who provides paid health or personal care services to them.

As per federal legislation, to meet all the criteria for a person's medical condition to be considered grievous and irremediable, a person must:

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

Where death is not reasonably foreseeable:

- the medical or nurse practitioner administering medical assistance in dying must consult with another medical practitioner if the first practitioner does not have expertise on the condition of the person seeking it; and
- 90 days must pass between the first assessment of medical assistance in dying eligibility criteria and the day on which it is administered. However, this period can be shortened if the person is about to lose the capacity to make health care decisions, as long as both assessments have been completed.

A person with mental illness may be eligible for medical assistance in dying if they meet all the eligibility criteria. People suffering solely from a mental illness, however, are not eligible for medical assistance in dying until March 17, 2023, when this provision is expected to be repealed.

On May 9, 2017, the provincial government passed the *Medical Assistance in Dying Statute Law Amendment Act, 2017* to provide clarity and protection for patients and health care providers. This legislation and the March 2021 amendments to medical assistance in dying addresses:

- Benefits coverage to ensure benefits are not denied only based on medical assistance in dying;
- Protections from civil liability for health care professionals when lawfully providing medical assistance in dying;
- Protecting the privacy of health care providers and organizations that provide medical assistance in dying;
- Reporting and monitoring of medical assistance in dying cases;
- Establishing a care coordination service to assist patients and caregivers in accessing additional information and services for medical assistance in dying and other end-of-life options.

Occupational Therapist's Roles and Responsibilities in Assisted Dying

Under the legislation, occupational therapists are permitted to aid a physician or nurse practitioner in the provision of medical assistance in dying in accordance with federal and provincial legislation and the standardsof the profession.

Practice Ethically

Occupational therapists are expected to adhere to the professional Code of Ethics in all practice areas and settings. The Code of Ethics is particularly important in establishing expectations for occupational therapists regarding medical assistance in dying as the fundamental values and principles of occupational therapy inform the position of the College.

In dealing with the sensitive nature of medical assistance in dying, occupational therapists are expected to treat all clients with dignity, demonstrate respect for client choice, employ culturally safe practice, and remain non-judgmental in the decision of clients, families, and other care providers.

Know and Understand Legislation, Practice Standards, and Organizational Policies

Occupational therapists are expected to know and understand the laws that pertain to medical assistance in dying, monitor changes to these, and understand and apply the legislation to occupational therapy standards of practice and service delivery.

Under the legislation, occupational therapists are not permitted to determine client eligibility for medical assistance in dying. However, occupational therapists may have a role in assisting a physician or nurse practitioner to determine client eligibility. An occupational therapist may also be called upon, after eligibility for medical assistance in dying has been confirmed, to provide occupational therapy services including assessment, treatment, or consultation.

In addition to the legislation and College expectations, occupational therapists must be aware of their employer's position on medical assistance in dying and understand any organizational policies or procedures that apply. Occupational therapists are encouraged to seek clarification of organization policies if positions are unclear. Some organizations may decline to provide medical assistance in dying on the grounds of conscientious or religious beliefs.

Understand and Apply the Occupational Therapist's Role

Occupational therapists must understand they are not permitted to determine eligibility for assisted dying and must be aware of the steps to appropriately support the client through the process.

If a first point of contact for a client requesting medical assistance in dying, the occupational therapist must:

- Respect client autonomy, remain client-centred and treat the client with dignity regardless of the occupational therapists personal beliefs and values;
- Inform the client of the occupational therapists role in response to the request including that that the occupational therapist cannot determine eligibility;
- Obtain consent to refer the client to a health professional legally authorized to determine eligibility for medical assistance in dying (physician or nurse practitioner), and;
- Proceed with the originally agreed upon occupational therapy service plan as appropriate.

Within the occupational therapist scope of practice, there are several treatment options appropriate for clients who have elected to proceed with medical assistance in dying (Bernick, Winter,Gordon, and Reel, 2015). These may include:

- Assisting with concluding lifetime occupational roles
- Assessing capacity and/or cognition
- Exploring options for continued engagement and alternatives
- Creating meaningful memories
- Counselling individuals and families
- Providing education about options and alternatives for end-of-life care
- Assisting with equipment requirements and comfort measures
- Educating clients and family about available resources

Conscientious Objection

The legislation on medical assistance in dying respects the personal convictions of health care providers. Occupational therapists may elect not to participate or aid in the provision of medical assistance in dying due to conscience and religion.

If an occupational therapist conscientiously objects to medical assistance in dying, they are expected to:

a. Do so transparently whilst meeting the responsibilities and accountabilities of the standards of practice;
b. Respect client autonomy, remain client-centered and treat the client with dignity regardless of the occupational therapist's personal beliefs and values;
c. Not withhold information or impede access to medical assistance in dying;
d. Direct the client to available services and resources;
e. Obtain consent to refer the client to an alternate service provider who will address the client's request for medical assistance in dying, as appropriate;
f. Continue with the occupational therapy service components that are not directly related to the request for assisted dying, as appropriate, until care can be successfully transferred to another occupational therapist or alternate service provider.

When determining whether it would be appropriate to continue care, the occupational therapist must be confident their own personal beliefs and know that their values will not present a conflict of interest that may prevent them from acting in the client's best interests. Lastly, the occupational therapist must also ensure that discontinuing care will not compromise client safety or planned intervention outcomes. The discontinuation of needed professional services is addressed under Ontario Regulation 95/07: Professional Misconduct and is outlined in the Discontinuing Services practice document.

Resources

1. **Government of Canada:** Medical Assistance in Dying
2. **Ontario Ministry of Health and Long-Term Care** Medical Assistance in Dying – Health Care Professionals
3. **Ontario Ministry of Health and Long-Term Care** Medical Assistance in Dying: Information for Patients https://www.health.gov.on.ca/en/pro/programs/maid/docs/maid.pdf

References

An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), 2016

An Act to amend the Criminal Code (medical assistance in dying), 2021

Bernik, A., Winter, A., Gordon, C. & Reel, K. (2015). Could occupational therapists play a role in assisted dying? CAOT Conference Presentation. Winnipeg: Manitoba.

Carter v Canada. [2015] 1 SCR 331.

Medical Assistance in Dying Statute Law Amendment Act, 2017

Ontario Regulation 95/07: Professional Misconduct.

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College of Occupational Therapists of Ontario
20 Bay St, Suite 900, PO Box 78, Toronto, ON M5J 2N8
T 416.214.1177 • 1.800.890.6570 F 416.214.1173
www.coto.org