



Canadian Physicians
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October 8, 2015

Dear Panel Members,

Canadian Physicians for Life is a secular organization which has a constituency of approximately 3,000 physicians, retired physicians, resident students and medical students who reject killing as the solution to any human problem. Specifically, we hold that the killing of a human being has no part to play in the profession of medicine. We consider that recent deviations from this bedrock principle are a wound to the coherence of our admired medical system, a grave setback to human progress, and a degradation of our profession.

We view the entire practice of medicine to be an inherently and inescapably *moral* exercise in which the continuous pursuit of good medical judgment requires the free exertion of a free conscience. The unique intimacy of the doctor-patient relationship requires that medical judgment directed at achieving the best possible outcome for the patient be an uninterrupted duty. The very continuity of this effort is the foundation of professional integrity.

It is perverse for any regulatory agency to decree that the physician's sincere judgment be suspended when a given procedure is controversial but not illegal. Such top-down impositions are oblivious to any concept of professional integrity. Canadians would be unfortunate to have a medical system populated by doctors who by inclination or coercion would do what they believed to be wrong.

For many complex social and political reasons Canadians must now deal with the profound errors of our Supreme Court in the matter of assisted suicide and euthanasia. Jurists who might be expected to know that Canada writes its laws in Parliament, not on the thumping drum of an opinion poll, have chosen to show deference not to the Constitution but to the crowd. The part of our Constitution called the *Charter of Rights and Freedoms* has been absurdly abused to conjure the right to be killed from its Section 7 right to life. There is now therefore no reason to believe that its Section 2 freedom of conscience could not be abused in the same way.

It is in this regard that we ask your panel to make firm recommendations to protect the judgment and conscience of physicians who reject assisted suicide and euthanasia, and so preserve a safe space in our health care system to protect all patients whose lives are at risk.

In consultation with other organizations, we have prepared the attached **document "Assisted Death and Conscience Protection in Canada"** which proposes fair treatment of the physicians who are opposed to killing their patients and those patients who express other wishes. Thank you very much for reviewing the document and taking our comments into consideration.

Yours sincerely

Will Johnston, MD
President, Canadian Physicians for Life

Assisted Death and Conscience Protection in Canada

Background

The Canadian Medical Association (CMA) recently developed a draft document called "Principles Based Approach to Assisted Dying in Canada". This document was presented to CMA General Council on Tuesday, August 26th, 2015. Members of General Council were polled on several questions related to the document. The results of the polling will eventually be considered by the CMA Board as part of a final policy document.

All options deal with the situation in which a physician is not able, for reasons of conscience, to participate in physician-assisted death. The four options were:

1. *Duty to refer directly to a non-objecting physician;*
2. *Duty to refer to an independent third party;*
3. *Duty to provide complete information on all options and advise on how to access a separate, central information, counselling, and referral service; or*
4. *Patient self-referral to a separate central information, counseling, and referral service.*

Option three received the majority of votes (144 out of 272).

This option was based on a proposal by three organizations to the CMA: Christian Medical and Dental Society (CMDs Canada), Canadian Federation of Catholic Physician's Societies (CFCPS) and Canadian Physicians for Life (CPL). Together our organizations represent several thousand Canadian physicians who are concerned about our capacity to practice medicine if there is a requirement to refer. It is our position that under Canadian law, we cannot be forced to participate in AD – either by directly doing the act or by facilitating that act through referral. At the same time, we respect our patient's autonomy and will not impede their access to legally available procedures. This proposal was drafted by a national committee of physicians from the three groups and is endorsed by our member organizations. It is offered as an example of a way to protect physician conscience rights while respecting patient autonomy. Thank you for taking the time to consider our views on this important topic.

Conscience Protection Proposal

The following proposal is offered to demonstrate that it is possible to protect conscience rights of physicians while respecting patient autonomy. There is no necessity to undermine conscience rights when allowing patients their autonomous decisions concerning end-of-life alternatives. The therapeutic relationship with an attending physician could continue for care that is unrelated to AD, unless the patient requests a transfer of care. In that case, complete care of the patient would be transferred.

Proposed process

1. **Patient requests information or assistance** to terminate his or her life from his or her physician.
2. **Physician discloses her or his conscientious objection** to participation in the termination of the life of this patient, including performing AD or referring the patient for AD.
3. **Physician counsels the patient to determine if there is an underlying cause for the request that could be otherwise resolved.** This would normally include listening to discern the goals of care of the patient and how these may be met; identifying and offering treatment for any physical, physiological or social issues impacting this request; and providing ongoing treatment, counseling and/or other referral(s) that may be appropriate.
4. If the patient still requests assisted death, the **Physician provides complete information to**

the patient about the medical options available to them. This would include information about all legal medical options.

5. If a patient chooses to be assessed for medical aid in dying, the physician will advise that the patient or their representative can access that assessment directly.

We propose that each provincial or territorial Department of Health create a mechanism that allows for patient access to an assessment for assisted death but which does not erode caregivers' conscience protections. The Quebec model requires a referral from the physician; we suggest that direct patient access also be permitted. This supports the overall philosophy of patient autonomy. If a patient chooses to pursue AD, the physician would advise that they or their representative could access the third party directly through mechanisms set up by the Department of Health and widely available to the public (e.g. phone number, website, etc). Patients must have their cognitive capacity in order to consent to AD. Those who are unable to make a call because of physical challenges can have their representative assist them in accessing an assessment for assisted death.

6. Physician makes available the patients' chart and relevant information (i.e., diagnosis, pathology, treatment and relevant consults) to the new physician selected by the patient when requested and authorized by the patient.

7. Physician may maintain a therapeutic relationship with the patient for care unrelated to AD unless the patient requests a transfer of care to a specific physician selected by the patient. The physician with the conscientious objection must not be obligated to find a physician for the patient as this will be considered facilitating and actually participating in assisted death. In the event of a transfer of care the attending physician will transfer the patient's chart upon request of and with permission of the patient. The transfer of care results in the completion of the original physician-patient relationship.

8. Each physician will respect the patient's autonomy, and their right not to be obstructed in their access to all legal alternatives at the end-of-life.

9. The death certificate and any documentation or reporting of AD is the responsibility of physician who performs AD.

The Reasons

The following rationale is offered to support this proposal:

The importance of conscience protection for patient care

Doctors can object to participating in physician-assisted death for a variety of reasons. Sometimes when patients ask to die it is a cry for help and an indication that there is an underlying physical or psychological problem that needs to be resolved. This is especially true for patients who experience mental health difficulties. Often doctors find that with the proper treatment, patients who were once convinced that they had no choice but to die can go on to live life comfortably once the underlying concern is resolved. Since all of us at one point or another will be patients ourselves we need to be concerned that physicians will consider the underlying issues in an assessment for assisted death.

Many doctors may have moral convictions on this issue that come from their professional judgment, the Hippocratic oath, their religion or creed. These convictions may apply to assisted death in general or to the circumstances of particular patients. For instance, a patient who has requested assisted death may have refused potentially life saving treatments against their doctor's advice, or they may be motivated by financial pressures, or they may wish to end their

lives without informing their loved ones. Even doctors who are theoretically in favour of assisted death may have qualms about facilitating the procedure under these kinds of circumstances, even when the patient satisfies the legal criteria.

Modern medicine is built on respect for the autonomy of the patient and in a pluralistic society patients should not be blocked from access to procedures that while controversial are nevertheless legal. At the same time, for Christian doctors in particular, the stakes are very high – moral theologians have indicated that a referral for assisted death is formal cooperation in the death of the patient and the moral equivalent of performing the act itself. This is breaking one of God's Ten Commandments. Physicians in this category are part of a religious minority who rely on the Charter of Rights and Freedoms as protection against laws that would force them to recommend something they cannot.

Referral means recommending a particular course of medical treatment, or sending a patient to an expert to recommend a particular treatment. Referral of any kind is a form of participation, making our members accomplices to the controversial procedure. In criminal law, an accomplice is as guilty as the person who commits the crime.

Physicians are professionals and must retain the ability to freely act in their patient's best interests. The best way to protect the public, the patient and the role of the physician is to safeguard physicians' conscience rights so they can exercise their professional judgment with moral integrity and independence.

Physician-patient relationship

The physician-patient relationship must be based on openness, honesty and trust. Physicians can discuss options with patients, allowing the patient to make a fully informed, autonomous decision, even when the physician disagrees with the decision. We are not trying to impose our values on the patient – but we must maintain our right to step back from the process when our moral convictions will not allow us to participate in something that we are convinced is not in the patient's long-term interests.

Supreme Court of Canada

When the Supreme Court of Canada struck down the criminal prohibition against physician-assisted death (PAD) the court held that a physician's decision to participate in these procedures was a matter of conscience, protected by the *Canadian Charter of Rights and Freedoms*. Doctors cannot be forced to participate in assisted suicide or euthanasia against their will (*Carter*, para. 132). Participation includes referral.

No precedent for forced referral

No country or jurisdiction that has legislated euthanasia, except Quebec, has forced physicians to refer for euthanasia.

The Canadian Medical Association (CMA) Code of Ethics and other policies

These documents currently define physicians' professional responsibilities:

- **Code of Ethics:** Doctors must explain to their patients when their personal values might interfere with providing a service or referral. (s.12) We are also responsible to promote ethical access to health care resources in society in general. However, an individual physician is not obliged to provide for every patient request. Physicians may not participate in, nor support practices that violate basic human rights (s.9). We propose that a policy that forces doctors to violate their moral convictions or risk being disciplined amounts to discrimination on the basis of religion or creed. These doctors have a right to

respect for their values. Lack of protection will result in the loss of excellent doctors and cause harm to patient care.

- The **CMA Policy on Abortion** does not require performance, or referral, and prohibits discrimination. The physician's duty is to continue to care for our patients' other needs. The policy on assisted suicide and euthanasia should have similar protections.
- **CMA General Council** passed a motion in 2014 that "supports the right of all physicians, within the bounds of existing legislation, to follow their conscience when deciding whether to provide medical aid in dying." We believe that this motion includes all conscience rights including the freedom not to refer.

Direct patient access to service

Direct patient access to an assessment would not morally implicate the conscientious objecting physician. The physician-patient relationship could be maintained. The provincial Departments of Health should be ultimately responsible for providing access to controversial services as an accommodation to physicians who have conscience concerns.

Public opinion

Recent Canada-wide public opinion polls indicate that the majority of respondents do not consider it appropriate to force a physician to refer for a procedure against their moral convictions, even though the patient might request the procedure. One direct access option is explicitly endorsed by a majority of respondents as a solution in such circumstances. This holds true when respondents are specifically asked about how a patient request for euthanasia should be handled.ⁱ

Conclusion

The Hippocratic Oath informed our approach to medicine for 2400 years. It is unthinkable that physicians should now be disciplined by provincial colleges simply because they wish to follow the Oath in the practice of medicine.

Endorsed by:

Dr. Diane Haak, Orillia, ON President, CMDS Canada
Dr. Thomas Bouchard, Calgary, AB President, CFCPS
Ms. Faye Sonier, Ottawa, ON Executive Director and General Legal Counsel, CPL

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ⁱ In a May 2015 survey of 1,201 Canadians conducted by Abingdon Research (overall margin of error +/- 2.8%, 19 times out of 20), the majority of respondents did not support requiring doctors to refer for procedures that were against their moral convictions. The questions asked along with the results are reproduced below.

- Imagine a doctor disagrees with a patient about a treatment the patient wants, because of the doctor's moral convictions. The doctor cannot be forced to administer the treatment and the patient cannot be forced to follow the doctor's orders. What should be the outcome?

- The doctor should not be required to provide a referral to another doctor who will administer the treatment **(12%)**
- The doctor should tell the patient how to access the procedure, but not provide a formal referral **(44%)**
- The doctor should be required to provide a referral to another doctor who will administer the treatment **(44%)**

Note that 56% of respondents said that the physician should not have to refer, made up of those who would require information only (44%) and those who required no action at all. (12%) Furthermore, the majority of respondents supported direct access as a valid option when asked the following question:

- In some circumstances, patients can self-refer to a physician or service for a procedure. In a situation where a physician's moral or religious convictions do not allow them to refer for a procedure that is requested by a patient, and the patient can self-refer themselves for the service, what should happen?

- The physician must refer for the procedure (31%)
- The physician should have to make the patient aware that they can refer themselves for the procedure, but make no referral (54%)
- The physician should not have to make the formal referral (16%)

- When asked specifically about physicians whose religious beliefs would forbid them from referring to another physician who would provide euthanasia, 58% of respondents felt that those physicians should not have to perform euthanasia or refer for it. In contrast, 28% of respondents would require a referral, while 14% would require a physician to perform euthanasia, at least under some circumstances. The margin of error is higher on this question: +/- 5%, 19 times out of 20.