

ADVISORY STATEMENT



Medical Assistance in Dying (MAiD): Considerations for Occupational Therapists

Occupational therapists practise within the scope of the profession, with knowledge of, and adherence to, national and provincial legislation, regulations, standards of practice and policies relevant to the practice of occupational therapy — COTBC Code of Ethics (p. 4)

Purpose

This advisory statement provides an overview on medical assistance in dying (MAiD), including current legal and ethical considerations for occupational therapy practice in British Columbia.

Medical Assistance in Dying

Background

MAiD is defined as “the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or 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” (Government of Canada, 2016).

MAiD was declared legal in Canada on June 17, 2016, after Bill C-14 enacted amendments to the [Criminal Code of Canada](#). The changes to the *Criminal Code* exempt health care professionals, including occupational therapists, from criminal liability where MAiD is legally performed, as stated in c. C-46: “241 (5.1) 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” (*Criminal Code*, 1985, c. C-46).

While there will be future changes to the legislation, at present in order for a person to receive MAiD, they must meet all of the following criteria:

1. Be eligible for health services funded by a government in Canada.
2. Be at least 18 years of age and capable of making decisions about their health.
3. Have a grievous and irremediable medical condition, defined as
 - having a serious and incurable illness, disease, or disability;
 - being in an advanced state of decline that cannot be reversed;
 - enduring physical or psychological suffering that is intolerable to them and cannot be relieved under conditions that they consider acceptable; and
 - being at the point in their condition where natural death is reasonably foreseeable.
4. Have made a voluntary request for MAiD that was not requested as a result of external pressure.

5. Have given informed consent to receive MAiD after having been informed of the means that are available to relieve their suffering, including palliative care. This includes providing consent at the final moment when MAiD is to be provided.

Only a person who is able to directly give consent can be provided MAiD at this time. Consent cannot be provided through an alternative or substitute decision maker, or a personal advance directive.

On February 24, 2020, proposed legislative changes were introduced in a bill by the Honourable Minister of Justice and Attorney General of Canada. These proposed changes include:

- repealing the “reasonable foreseeability of natural death” criterion,
- excluding eligibility for persons suffering solely from mental illness,
- maintaining and easing safeguards for persons whose natural death is reasonably foreseeable,
- adding new safeguards for persons whose natural death is not reasonably foreseeable, and
- potentially waiving final consent for eligible persons under certain circumstances.

Parliamentary review of Canada’s current MAiD law is pending, including the proposed changes outlined above, as well as recommendations for three specific topic areas: (1) mature minors, (2) advanced directives and (3) mental illness.

Documentation Requirements

Specific documentation requirements must be met as part of the MAiD process. In British Columbia, a Patient Request Record form must be completed by the person requesting MAiD, or by their proxy under the person’s express direction if the person is unable to physically sign the form. The form is currently available only in English. A professional translator must also sign the form if language translation services are required.

Currently, two independent witnesses, who must be at least 18 years old and understand the nature of the request for MAiD, must act as witnesses for a person’s request for MAiD. The proposed legislative changes recommend reducing this requirement to one witness.

A witness is not considered independent if they meet any of the following criteria:

- 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 the person’s death;
- 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 the person resides;
- are directly involved in providing health care services to the person making the request; or
- directly provide personal care to the person making the request.

As stated above, if a person is unable to physically sign and date the Patient Request Record form, a proxy can act on their behalf under the person’s express direction. The proxy must meet the following criteria:

- cannot be one of the two independent witnesses;
- must be at least 18 years of age and understand the nature of the request for MAiD;
- must not know or believe that they are a beneficiary in the person’s will, or a recipient of financial or other material benefit resulting from the person’s death; and

- must sign the form in the presence of the person requesting MAiD and the two independent witnesses.

All written and verbal requests for MAiD and a summary of discussion must be documented in the person's medical record.

Eligibility Assessments

Once a person requests MAiD, the eligibility process requires the opinion of two independent medical assessors, one of whom must also be the prescriber and/or administrator of the lethal substances. Only a physician or nurse practitioner may be a medical assessor.

Both medical assessors must be satisfied that the person requesting MAiD is mentally capable of making a free and informed decision at the time of the request and throughout the process. If either medical assessor is unsure that the person has capacity to consent to MAiD, they will request a capability assessment from a third assessor or specialist.

In British Columbia, one of the eligibility assessments can be completed by telehealth, as arranged by the physician or nurse practitioner. A regulated health professional must witness an eligibility assessment conducted via a telehealth videoconferencing system and provide their registration number.

A. Occupational Therapy Roles in MAiD

Providing End-of-Life Care

Occupational therapists work across the continuum of the lifespan. This includes providing occupational therapy services for clients who are receiving end-of-life care. Occupational therapists provide client-centred, culturally safe services that can enable individuals to access their environment, relieve discomfort, maintain important relationships, make choices, create meaningful memories, preserve a sense of purpose, and participate in activities to empower a sense of self-efficacy and control during the dying process. In this context, occupational therapists may, in some circumstances, aid a medical practitioner or nurse practitioner with MAiD providing that they follow the rules of legislation, provincial requirements, and practice standards. This includes following standards for consent, professional boundaries, managing client information, and supervising support personnel.

Providing Information About End-of-Life Options

In order to enable clients to make informed decisions, occupational therapists must be able to provide accurate, objective information in a respectful and thoughtful manner on the legal provision of MAiD. Occupational therapists should be able to interpret and understand when a client is making an inquiry about MAiD and must clearly document any request for or discussion about MAiD in the client's medical record.

Occupational therapists are permitted to provide the Patient Request Record form and information about MAiD as an end-of-life option but must not encourage or discourage any option for care over another, such as hospice and palliative care. Additionally, occupational therapists must know the limitations of occupational therapy scope of practice in addressing client questions or requests for MAiD. For example, if an occupational therapist is approached by a client asking about MAiD, the

occupational therapist may consider saying, “Can you tell me more about what information you are looking for, so I can clarify or direct you to someone who can answer your questions?”

Should a referral to another health care provider be warranted, occupational therapists will obtain consent from the client for the referral and proceed with agreed-upon occupational therapy service plans as appropriate.

Acting as an Independent Witness or Proxy

Occupational therapists registered with the College of Occupational Therapists of British Columbia are permitted to act as a witness for a telehealth eligibility assessment for MAiD, even if they are providing health care services to the person. They may also act as a proxy to sign and date the Patient Request Record form if the client is physically unable to do so.

Occupational therapists acting as a witness on the MAiD Patient Request Record form must meet the specified requirements and cannot be directly involved in providing health care services to the person making the request. Occupational therapists should always confirm current provincial requirements and seek clarification from their employer before acting as an independent witness or proxy, to ensure adherence to legislative requirements and employer policies.

Contributing to Eligibility Assessments

Under the current legislation, occupational therapists are not permitted to determine client eligibility for MAiD. However, as stated by the College of Occupational Therapists of Ontario (2017), they “are often relied upon for their knowledge, skill, and experience in assessing the functional abilities of clients as it pertains to capacity for decision-making and may be asked to assist in this regard” (p. 5).

Occupational therapists offer cognitive screening, assessment, and intervention as standard clinical practice when there are concerns about client function or occupational performance. By evaluating the client’s cognitive strengths and limitations in the context of performing everyday life activities, occupational therapists can identify strategies and adapt the environment to enable client participation.

Given the complexity of the process in assessing capacity to consent in relation to MAiD requests, occupational therapists are advised to participate in any employer mandated and recommended educational opportunities, as well as complete self-directed learning to maintain or enhance competence in this clinical practice area.

B. Other Considerations for Occupational Therapists Affected by Assisted Dying

Ensuring Individual Competence

Occupational therapists are obligated to “practise within the scope of the profession, with knowledge of, and adherence to, national and provincial legislation, regulations, standards of practice and policies relevant to the practice of occupational therapy” (COTBC, 2006, p. 4) as they apply to MAiD.

Occupational therapists should ensure that they are competent to perform a given intervention prior to initiating the intervention, and set clear expectations for the client, family, and other care providers, as appropriate. Additionally, occupational therapists should be familiar with policies and procedures related to MAiD relevant to their employer, health authority, facility, and care home, and seek clarification when unclear.

Conscientious Objection and Acting Ethically

Occupational therapists are expected to adhere to the College's Code of Ethics. This includes treating clients with dignity, demonstrating respect for their autonomy, and remaining non-judgemental in interactions with clients, clients' families, and other care providers.

Occupational therapists may elect not to participate or aid in the provision of MAiD on the grounds of conscience or religion. Occupational therapists who have a conscientious objection to aiding in the provision of assisted death must do so in a transparent, non-discriminatory manner that meets their ethical standards and practice obligations.

In determining if it would be appropriate to continue care, "the occupational therapist must be confident their own personal beliefs and values will not present a conflict of interest that may prevent them from acting in the client's best interests" (COTO, 2017, p. 7).

Occupational therapists who experience conscientious objection are advised to do the following:

- notify their immediate manager and seek employer support,
- not withhold information or impede their clients' access to MAiD,
- direct clients to available MAiD resources and obtain consent to refer the client to an alternative service provider who will address the client's MAiD request, and
- continue to provide other occupational therapy service components not directly related to the request for MAiD until care has been successfully transferred to another occupational therapist or care provider.

The Government of Canada has an obligation to ensure that all Canadians have reasonable access to MAiD. However, at this time, not every health facility must provide MAiD. If an occupational therapist works for an employer that declines to provide MAiD on conscientious or religious grounds, the occupational therapist should be familiar with relevant organizational resources that enable clients to access information regarding their MAiD options.

Coping and Bereavement

Coping and bereavement are sensitive and important aspects of end-of-life care. Occupational therapists encountering any death, including assisted death, in their clinical practice need to manage their professional responsibilities by recognizing their own personal and professional limits or challenges. If needed, occupational therapists are encouraged to seek support for themselves, as well as guide their colleagues, clients, and clients' families accordingly.

Monitoring the Legislative and Regulatory Landscape

Considering that end-of-life care is an evolving area in Canada, occupational therapists who encounter MAiD in their practice are advised to refer to current legislation. If there are discrepancies between this advisory statement and the legislation, the legislation will supersede information provided in this advisory statement.

COVID-19 Public Health Emergency - Temporary Regulatory Changes

The [College of Physicians and Surgeons of BC](#) and the [BC College of Nursing Professionals](#) have made temporary regulatory changes regarding the MAiD assessment process that are in effect during the COVID-19 public health emergency. Of relevance to occupational therapy practice are:

- The Patient Request Record form can be completed virtually by videoconference. The person requesting MAiD and the independent witnesses can complete their signed pages separately and submit to create a complete document.
- Both of the two required eligibility assessments can be completed virtually by a physician or nurse practitioner and the requirement for a regulated health professional to act as a witness is temporarily rescinded. No witness is required for a telemedicine assessment if they are not reasonably available.

MAiD Resources

British Columbia Bereavement Helpline

<http://www.bcbh.ca>

British Columbia Ministry of Health

Medical Assistance in Dying

<https://www2.gov.bc.ca/gov/content/health/accessing-health-care/home-community-care/care-options-and-cost/end-of-life-care/medical-assistance-in-dying>

Canadian Association of MAiD Assessors and Providers

<https://camapcanada.ca>

Dying with Dignity Canada

<https://www.dyingwithdignity.ca/>

Government of Canada

Medical Assistance in Dying

<https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>

Government of Canada

Options and Decision-Making at End of Life

<https://www.canada.ca/en/health-canada/services/options-decision-making-end-life.html>

Vancouver Island Health Authority

Bereavement Guide for Patients and Families

<https://www.islandhealth.ca/sites/default/files/2019-05/maid-bereavement-guide-patients-families.pdf>

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