

Response of Medical Legal Society of Toronto (MLST) to the College of Physicians and Surgeons of Ontario (CPSO) re Draft / Interim Guidance on Physician-Assisted Suicide (PAD).

The Medico-Legal Society of Toronto (MLST) was founded in 1950 by a group of doctors and lawyers to promote medical, legal and scientific knowledge, cooperation and understanding between the professions in the interest of justice and in the best interests of patients and clients. The MLST's Submissions Committee is mandated to advocate on behalf of and in alignment with the MLST's mission, vision and objects, and to monitor and respond to government and stakeholder issues as well as calls for input. The CPSO has invited feedback from all stakeholders to assist the CPSO in updating its End of Life policy, currently being reviewed. Accordingly, the following submissions have been developed by the MLST and are hereby respectfully conveyed to the CPSO.

The CPSO is required to respond to the court decision (Carter V. Canada), which lifts the ban on Physician-Assisted Suicide, on providing Guidance for Physicians, who may or may not wish to participate in a patient's request for such medical service. As such the CPSO has requested feedback from various organizations, which may have an interest in this policy and the MLST has agreed to respond to this request.

On reviewing both the court decision and the CPSO Draft Guidelines, the MLST believes that the rationale behind providing such a service protects interests of both the patient and the service provider, as well as the interest of society, while respecting the patient's wishes. These draft Guidelines have gone a long way to meet these objectives.

The CPSO has developed these criteria considering the following:

- The professional and legal obligations articulated in existing College policies and legislation that apply in the physician-assisted death context;
- The criteria for physician-assisted death as set out by the SCC; and
- Guidance for physicians on practice-related elements specific to the provision of physician-assisted death.

Generally speaking, we believe that the rationale and methodology outlined in these guidelines appear to be well thought out. We appreciate that under less pressure and with some more time, the guidance provided by the CPSO may become more nuanced, detailed and/or practical.

At this stage, we will confine our comments to the just one part of the document, at Page 7, Line 220, last bullet point, (and bolded to identify the offending sentence) which reads as follows:

Stage 2: Prior to the provision of physician-assisted death

CAPACITY ASSESSMENT AND SECOND OPINION BY CONSULTING PHYSICIAN

- The attending physician must assess the patient for capacity and voluntariness, or refer the patient for a specialized capacity assessment where the patient's competence is in question.

- The attending physician must remind the patient of his/her ability to rescind the request at any time.
- A second consulting physician must ensure that the requisite criteria for physician-assisted death have been met. This includes assessing the patient's capacity and voluntariness.
- Both the attending and consulting physician must independently document that the patient is competent and able to consent.
- **If at any time the patient loses the mental capacity to rescind his/her decision, physician-assisted death ceases to be an option.**

This appears to mean that **if at any time** the patient loses the mental capacity to rescind **after** the decision has been made and after all appropriate steps have been taken, physician assisted death (PAD) ceases to be an option. This does not appear to be the intent of the Supreme Court decision nor is it fair to the process.

For example, if the patient has a brain tumour (e.g. Glioblastoma) with excruciating headaches and has met the criteria to date, and the day before the physician assisted action is to proceed, mental capacity is lost due to the condition for which the PAD request was granted, then this would condemn the patient to remain in this excruciating state for days to weeks. This makes no sense or logic.

We would suggest the following amendment:

“If at any time the patient loses the mental capacity to rescind, for any reason **other than for the one for which the assisted suicide was requested**, then physician assisted death ceases to be an option.”

That would be fair to the process and we believe, the intent of the SCC and the constitutional rights and protection of both the patient and the physician.