

**Submission to the College of Physicians and Surgeons of Ontario
Consultation on Medical Assistance in Dying policy**

May 14, 2021

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians in Canada. Established in 1964, the EFC provides a national forum for Canada's four million Evangelicals and a constructive voice for biblical principles in life and society.

We are grateful for the opportunity to participate in the CPSO consultation on its Medical Assistance in Dying (MAID) policy. Our submission shares our perspective and concerns about conscience protection and care of those who are vulnerable and recommends specific changes to the policy.

Conscience protection

Freedom of conscience and respect are the hallmarks of a healthy democracy. They are critical for living in a society of deep moral and religious differences. They facilitate a society in which differences are accommodated to further inclusion, participation and equity amidst diversity. Canadian philosophers Jocelyn Maclure and Charles Taylor, for example, advocate an open pluralism where no one set of beliefs is imposed by the state. They envision a pluralism where the state treats its citizens with fairness and respect.¹

Freedom of conscience is the first fundamental freedom in the *Charter of Rights and Freedoms*. It is foundational to pluralism. A pluralist society seeks to facilitate a public realm where we are all able to live out our deeply held beliefs without fear of reprisal.²

As Medical Assistance in Dying (MAID) becomes more accessible to different segments of the population, the need for strong and clear conscience protection for doctors becomes increasingly urgent. Bill C-7 has reduced safeguards and expanded eligibility to include Canadians who are not dying. In less than two years, those with mental illness alone will be eligible for euthanasia and assisted suicide. More expansion is being considered as the special joint parliamentary committee studies expanding eligibility to mature minors and those who cannot consent at the time of the procedure.

¹ *Secularism and Freedom of Conscience*, Harvard University Press, 2011.

² For more discussion on this, see <https://www.evangelicalfellowship.ca/Communications/Articles/November-2020/Joining-conscience-with-respect-Enabling-public-w>

Objections to MAID

In the 2012 *Carter* case, the trial judge acknowledged that “The evidence shows that thoughtful and well-motivated people can and have come to different conclusions about whether physician-assisted death can be ethically justifiable” (paragraph 343).³ She noted that “physicians set out to esteem and value life and that intentionally ending the life of a patient is either ethically inconceivable or conceivable only in stringently defined exceptional circumstances” (paragraph 310).

As MAID provisions expand, robust conscience protection is essential for doctors who find it ethically inconceivable to be involved in ending the life of their patient, directly or indirectly, as well as for doctors who would only participate in stringently defined, exceptional circumstances.

Objections to MAID may be rooted in conscience, religious belief or philosophy of care, or they may be due to professional judgment and the circumstances of a particular patient.

Even medical professionals who don’t object to all euthanasia may feel they cannot end the life of a patient who still has decades to live, or whose request is motivated by despair over inadequate living conditions or lack of support. News reports tell of Canadians with disabilities who are considering hastened death because of their financial needs.⁴

As the Canadian Society of Palliative Care Physicians notes in its submission to this consultation,

Physicians who do not wish to participate directly or indirectly in MAiD should have their integrity and fundamental freedoms, including freedom of conscience, protected. Although conscience is often simply portrayed as “for” or “against” MAiD, in practice it is much more nuanced. Each individual physician may have inherent values, grounding professional expertise, and moral beliefs that determine their level of participation or non-participation which must be respected.⁵

Conscience is rooted in the convictions and judgment of the individual physician. It is not the same for all physicians, even among those whose convictions are religiously informed.

We support the following statement on Conscientious Objection in the CPSO policy on MAID: “The College recognizes that physicians have the right to limit the health services they provide for reasons of conscience or religion. For clarity, the College does not require physicians who have a conscientious or religious objection to MAID to provide MAID under any circumstances.”⁶

³ <https://www.canlii.org/en/bc/bcsc/doc/2012/2012bcsc886/2012bcsc886.html>

⁴ <https://www.citynews1130.com/2020/07/27/vancouver-woman-disabilities-medically-assisted-dying/>;
<https://www.tvo.org/article/catastrophic-pandoras-box-disabled-ontarians-speak-out-against-proposed-maid-law>

⁵ <http://policyconsult.cpso.on.ca/wp-content/uploads/2021/04/CSPCP-input-to-CPSO-consultation-on-MAiD-and-professional-obligations-Mar-31-2021.pdf>

⁶ <https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Assistance-in-Dying>

Effective referral requirement

The CPSO policy requires physicians to facilitate MAID by providing an effective referral against their deeply held beliefs. This requirement puts pressure and unreasonable expectations on doctors. It pushes against their ability to practise with personal and professional integrity. This creates a negative environment for doctors that ultimately impacts patients.

As we stated in a 2015 letter to the CPSO President on draft policy on Professional Obligations and Human Rights:

... providing an effective referral involves more than providing information about clinical options. Providing a referral means the doctor is convinced that in their judgment the best interest of the patient is served by a particular course of medical treatment or procedure. By providing the referral, the doctor is taking direct action and is, in effect, prescribing a course of action or treatment for a patient. Some doctors believe that providing an effective referral is morally the same as providing the course of action or treatment itself. To compel them to do so, then, is a violation of their Charter rights and freedoms.⁷

Physicians can inform their patients about legal options at the patients' request. However, they should not be compelled to facilitate the procedure by providing an effective referral.

The EFC recommends removing the requirement that physicians provide an effective referral for MAID from the CPSO policy. The requirement that physicians provide an effective referral against their deeply held beliefs violates freedom of conscience and religion.

Patient care and freedom of conscience

In the *Carter* decision, the Supreme Court asserted that nothing in their declaration would compel physicians to provide assistance in dying. They went on to state that "The Charter rights of patients and physicians will need to be reconciled in any legislative and regulatory response to this judgment" (paragraph 132).⁸ These statements taken together indicate a need to reconcile the rights of patients and physicians without compelling objecting physicians to provide assistance, whether direct or indirect.

These rights can be reconciled. Manitoba and Alberta are examples of how conscientious objection can be accommodated without impeding access to MAID.

In fact, protecting physicians' conscience benefits patients. It fosters trust and open, honest communication. It allows patients to find a doctor whose beliefs accord with their own, whether they seek a doctor who supports MAID or one who does not carry it out.

⁷ <https://www.evangelicalfellowship.ca/Communications/Outgoing-letters/February-2015/Re-Draft-Policy-Professional-Obligations-and-Hum.aspx?rss=185e90e1-feac-493c-87b3-ba166a0b5f9c>

⁸ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do?q=carter>

The Council of Canadians with Disabilities clearly advocates for robust conscience protection for Ontario healthcare professionals so that people with disabilities are able to find doctors they can trust as allies:

Given the ubiquity of medical ableism, it is of utmost importance that physicians and other healthcare providers whose views of the quality and worth of lives lived with disability differ from the majority be afforded robust protection of their conscience rights. People with disabilities need to be able to find doctors and other healthcare providers who they know will fight for their lives when necessary. Without legal protection of the conscience rights of healthcare professionals, this will not be possible. A failure to enact legislation to protect the conscience rights of healthcare professionals would thus leave thousands of Ontarians with disabilities without recourse to healthcare professionals who they can trust to serve as allies against the ubiquity of medical ableism that devalues and endangers their lives.⁹

Reasonable expectations?

The CPSO consultation asks whether its MAID policy sets out reasonable expectations for physicians.

The CPSO policy requires individual doctors to be the gateway for access to MAID, when access is a responsibility that is held system wide. It is not necessary to require doctors to provide effective referrals against their deeply held beliefs in order to safeguard patient access to services.

As the EFC wrote to the CPSO President in 2015:

... there is no right for a patient to demand and receive a particular service from a specific physician. It is the health care system that is obligated, not the individual physician, and the system established for the delivery of services must respect the diversity and plurality of both those who access the system and those who provide the services. The onus is on the health care system, and in this case the CPSO, to devise policies that respect and accommodate the Charter rights and freedoms of both the patients and the physicians. We are concerned that under the proposed policy the burden is being placed on the individual physician when it is the CSPO which is bound by the Charter and has a duty to accommodate the Charter rights of both patients and the physicians. The CPSO policy must balance the rights of all involved and ensure the rights and freedoms of all are respected and accommodated.¹⁰

⁹ <http://policyconsult.cpso.on.ca/wp-content/uploads/2021/04/Council-of-Canadians-with-Disabilities-Redacted.pdf>

¹⁰ <https://www.evangelicalfellowship.ca/Communications/Outgoing-letters/February-2015/Re-Draft-Policy-Professional-Obligations-and-Hum.aspx>

As the EFC's factum to the Ontario Court of Appeal with co-intervenors Christian Legal Fellowship and the Assembly of Catholic Bishops of Ontario stated:

If the *state* has failed in meeting any constitutional obligations owed to one group (i.e. patients), the remedy is not to sacrifice the constitutional freedoms of another group (i.e. healthcare professionals); rather the *state* must continue to respect both patients' and physicians' rights by, for example, allowing or arranging for alternative access options. Other Canadian jurisdictions have found ways to ensure such a reconciliation.¹¹

Further, the CPSO must ensure equitable access to the profession. The equality rights in section 15 of the *Charter* support the right to be free from discriminatory barriers to employment, including barriers imposed based on one's religion. The Court of Appeal did not address this facet of the issue in its decision.

Psychiatrist Dr. Sephora Tang described the pressure doctors feel to participate in MAID at the Senate Committee hearings on Bill C-7 last fall:

Cases will inevitably arise where MAID providers will question the appropriateness of administering death as a response to suffering. For the safety of patients, and in order to provide appropriate medical care, health care professionals must be given freedom to maintain their professional autonomy in declining involvement in requests for death that they deem inappropriate.

Under the current legal framework, I may be sanctioned for declining to facilitate my patient's request to end their life. As a psychiatrist, this places me in a precarious predicament as my work in suicide prevention is incompatible with current expectations under the law to facilitate suicide.

Despite assertions that Bill C-14 adequately protects the freedom of conscience of physicians to decline participation in MAID, the reality is that physicians in Ontario can now be penalized by their regulating college for declining to participate in arranging and facilitating the deaths of patients, an act that for many is deeply offensive to the integrity of their character, conscience and medical moral ethics. If the status quo remains, the state is essentially being permitted to compel an unwilling practitioner to engage in an action they believe to be harmful to another person, and effectively sets up the conditions for inflicting moral injury upon health care professionals.¹²

Compelling physician and facility participation in MAID creates a poisoned environment which reduces the quality of care available to patients. Physicians are feeling pressured to participate in euthanasia against their conscience or deeply held beliefs. As the Physicians Alliance Against Euthanasia says, physicians increasingly feel pressured and bullied to participate in MAID:

¹¹ <https://files.evangelicalfellowship.ca/si/Religious%20Freedom%20in%20Canada/EFC/2018-11-14-CLF%20EFC%20ACBO%20Factum%20-%20final%20with%20Certificate.pdf>

¹² <https://sencanada.ca/en/Content/Sen/Committee/432/LCJC/03ev-55073-e>

The pressure has been intense for many physicians, especially amongst palliative specialists, some leaving even before this latest development. Descriptions were made of toxic practice environments and fear of discipline by medical regulators.¹³

We believe no one should be compelled to help bring about the death of another person against their deeply held beliefs, directly or indirectly.

Protecting and serving the public interest

The CPSO consultation asks whether the MAID policy protects and serves the public interest. We note the Council for Canadians with Disabilities submission quoted above, that there is an urgent need for relationships of trust between people with disabilities and their doctors. This need can be met, in part, by providing robust conscience protection that allows doctors who will not participate in MAID, directly or indirectly, to practise without fear of sanction.

All Ontarians would benefit from the ability to find physicians whose philosophy of care and convictions align with their own. It is in the public interest to protect patients against the possibility of subtle or overt pressure to pursue MAID. To ensure requests for MAID are voluntary and not influenced by the power imbalance in physician-patient relationships, discussions on MAID should only be patient-initiated. Physicians should not initiate a discussion about MAID or suggest MAID as an option.

An international example of this policy is found in legislation passed in Victoria, Australia, which specifically states that a healthcare practitioner must not initiate a discussion with a patient about assisted dying or suggest assisted dying to the patient.¹⁴

Section 9 of the CPSO policy requires the physician to inform the patient of the means that are available to reduce their suffering. Section 9 b requires consultation with someone who has expertise in the condition that is causing the individual the greatest suffering. What if the suffering motivating a patient's request for MAID is due to loneliness, financial need or lack of social support?

Isolation and stigma often come with incurable illness and disability. All of us are vulnerable to feelings of despair and to feeling like a burden to family or caregivers and to the medical system. The strongest independent predictor of desire for hastened death in terminally ill patients is depression and hopelessness.¹⁵ Many requests for MAID may stem from suffering that is not medical or does not have medical resolution.

¹³ <https://collectifmedecins.org/en/press-release-2/>

¹⁴ *Voluntary Assisted Dying Act 2017*, s. 8, <https://content.legislation.vic.gov.au/sites/default/files/2020-06/17-61aa004%20authorised.pdf>

¹⁵ <https://bcmj.org/articles/addressing-existential-suffering#a22>

Specific recommendations

- At the end of Section 3, add the following: “Discussions about MAID **must** be patient-initiated. Physicians **must not** suggest or recommend MAID to a patient unless the patient inquires or requests more information.”
 - The CPSO should add a statement such as the following wording adapted from Association for Reformed Political Action’s recommendation¹⁶: “Discussions about MAID must be patient-initiated. Physicians must not suggest or recommend MAID to a patient unless the patient inquires or requests more information.”
- Section 7 recommended wording: “Physicians **must** be satisfied that the patient’s decision has been made freely, without undue influence from family members, health care providers, or others, and that they have made the request themselves, thoughtfully, and in a free and informed manner and not as a result of lack of community resources to deliver care.”
 - As part of the assurance that a patient is making a free and informed voluntary request for MAID, physicians should also be satisfied that a patient’s request is not due to a lack of social or financial support. The appropriate response to a lack of support would be to facilitate support for the patient, not to carry out MAID. The CPSO should add a phrase to the end of #7 such as the one suggested by the Ontario College of Family Physicians¹⁷: “and not as a result of lack of community resources to deliver care.”
- Section 12 b recommended wording: “**must** communicate their objection to the patient directly and with sensitivity.” Delete the phrase: “informing the patient that the objection is due to personal and not clinical reasons.”
- Section 12 e recommended wording: “must not abandon the patient.” Remove the requirement to provide an effective referral. Specifically, delete “must provide the patient with an effective referral.”
- The wording “effective referral” should be deleted from Section 21. We recommend the following: “Physicians who decline to provide MAID **must** document the patient’s request, the date it was made, and the information provided by the physician or practitioner.”

¹⁶ http://policyconsult.cpsso.on.ca/wp-content/uploads/2021/04/ARPA-Submission-CPSO-MAiD-Consultation_Redacted.pdf

¹⁷ <http://policyconsult.cpsso.on.ca/wp-content/uploads/2021/04/OCFP-Feedback-CPSO-MAID-Policy-30-Apr-21.pdf>