

Hospitals' and Health Facilities' Policies on MAID and Conscientious Objection

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From the hospital and health facility perspective, many institutions are concerned about (a) whether they will be required to provide access to MAID, particularly if they are a faith-based institution that conscientiously objects to it, or a small or rural institution where there may be no regulated health professionals on staff willing to provide it, and (b) if they are so required, how to develop policies on MAID that align with Bill C-14, and, in particular, provide an effective referral or transfer of care protocol that respects eligible patients' *Charter* right of access to MAID in cases of conscientious objection.

It should be noted in this regard and by comparison, that the *Quebec Act* provides that "every institution" must (a) offer end-of-life care, (b) adopt a policy with respect to end-of-life care, and (c) include a clinical program for end-of-life care in its organization plan, without exception for faith-based institutions. Although the *Quebec Act* has been judicially considered in several cases and was tacitly endorsed by the Supreme Court in *Carter 2016*, it remains to be seen whether the "every institution" requirement will withstand specific judicial scrutiny in future court challenges.

Conclusion

The Supreme Court in *Carter 2015* recognized, for persons who met certain criteria, a constitutionally recognized right to MAID. The federal government enacted Bill C-14 on June 17, 2016 to reflect the constitutional parameters set out in *Carter*.

As of June 17, 2016, if an individual meets all of the five eligibility criteria listed in section 241.2(1), and the safeguards set out in section 241.2(3) are satisfied, the individual is entitled to receive information and access to MAID services. In the context of a patient-centric healthcare system, publicly funded health facilities should incorporate this concept into their MAID policies, in a manner that respects patient autonomy and dignity expressed through informed consent to medical treatment.

Regulated health professionals should follow Bill C-14 in their private practices, and the MAID policies of their health regulatory colleges and health facilities where they provide services (and the guidance of the CMPA) when faced with requests for MAID. If not, or if they conscientiously object to MAID, they should provide an effective referral or transfer of care to

another healthcare professional, institution, agency or other institution, to ensure access to MAID is respected.

Neither health facilities nor regulated health professionals should compel or require individuals who clearly meet the requirements of Bill C-14 from seeking MAID to obtain a court order. The highest court has identified MAID as a constitutionally protected right, and the lower courts may look dimly on those who unwarrantedly fetter access to it. Individuals suffering intolerable pain from grievous and irremediable medical conditions that are not terminal or physical will have to go to court to seek an exemption.

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