DWD Canada Toolkit: Consultation by the College of Physicians and Surgeons of Ontario

The College of Physicians and Surgeons of Ontario (CPSO) has opened a consultation for residents of Ontario to weigh in on its draft CPSO Interim Guidance on Physician-Assisted Death.

We urge all residents of Ontario to participate in the survey and to contribute to the CPSO’s discussion board. Additional comments can be sent via email to interimguidance@cpso.on.ca or via regular mail. Please refer to our letter writing toolkit below to help craft your message.

About the CPSO Discussion Board:

All feedback will be posted anonymously. The only information that will be published alongside your comments is whether you are a member of the public or a physician. You can read about the CPSO’s posting guidelines here.

Please note that the CPSO will be closed between December 25, 2015 and January 1, 2016. While you are welcomed to submit to the discussion board at any time, all comments received during that time will be reviewed and posted in the New Year.

About the CPSO Online Survey:

- The online survey can be found here: https://www.surveymonkey.com/r/PADinterimguidance
- The consultation closes on January 11, 2016.
- The survey must be completed in one sitting as you will be unable to save and complete it later on. To complete the survey, we recommend setting aside 15-20 minutes.
- Please review the CPSO Interim Guidance document.
- You may view the survey questions prior to completing the survey, by following this link.
- For more reference information, please see DWD Canada’s Draft Policy Framework for critical considerations in legislation or regulation of physician assisted dying.
DWD Canada’s Position on the Draft CPSO Interim Guidance on Physician-Assisted Death

DWD Canada welcomes the CPSO’s proposed rules for physician assisted dying and thinks they represent a compassionate, patient-centred approach to regulating choice at end of life. DWD Canada is especially pleased that under the CPSO’s proposed guidelines, patients will not be abandoned as a result of a doctor’s moral or religious objection to physician assisted dying. Physicians who oppose assisted death for personal reasons will be required to refer patients who request it to another institution or provider in a timely manner.

Overall, the guidelines are reasonable and reflect the CPSO’s leadership on the issue.

DWD Canada’s Concerns with the Draft CPSO Interim Guidance on Physician-Assisted Death

Despite DWD Canada’s positive view of the CPSO’s proposed guidelines, three key concerns remain:

1. Witnesses

In its interim guidance document, the CPSO states a patient must make two requests for assisted death. The second request must be accompanied by signatures of two witnesses who can attest to the patient’s capacity and confirm that the patient is acting voluntarily and free from coercion. They advise that one of the witnesses cannot be: the attending doctor, a relative, an estate beneficiary or the owner, operator or an employee of a health facility where the patient is being treated.

This could represent an unfair barrier to access for some of Ontario’s most desperately ill patients; some may have difficulty obtaining the required second signature, especially if they are confined to a hospital, hospice or long-term care facility. This potential barrier to access should be reconsidered by the CPSO.

2. Competency at Time of Assisted Death

According to the CPSO’s sample process map, the patient must make the two formal requests at least 15 days apart. Two doctors — the attending physician and a consulting physician — must establish the mental competency of the patient before the process can move ahead.

However, the policy states that “if at any time the patient loses the mental capacity to rescind his/her decision, physician assisted death ceases to be an option.” This condition is problematic in cases of patients who receive approval but fall into an unexpected coma or other unresponsive state before being able to follow through with a physician assisted death.
3. Conscientious Objection and the Protection of Physicians

DWD Canada is supportive of a physician’s right to conscientious objection based on their personal moral or religious grounds. To balance a physician’s right to conscientious objection and a patient’s right to care, the CPSO has mandated a policy of effective referral to ensure that patients aren’t abandoned by the medical system.

However, the policy does not address how to protect physicians who provide assisted death from sanctions from institutions that oppose it. While protections may be addressed by federal guidelines, this matter should be included in the CPSO’s dialogue moving forward. Sanctions or the loss of hospital privileges, for example, must not be imposed as a result of physician’s personal willingness to provide assisted death. **Physicians should not face backlash from colleagues or institutions for participating in or refusing to perform physician assisted dying.**

**CPSO Survey: Key Questions to Consider**

**Question 12:** Please feel free to elaborate on your answers above. In particular, what more can be done to better help physicians assess the criteria?

This comment box is a good place to discuss competency at time of death. While the survey asks in Question 11 whether or not you agree that the individual must be a competent adult, it does not touch on the loss of mental capacity that is outlined in the CPSO Interim Guidance on Physician-Assisted Death Document. This document states that, “if at any time the patient loses the mental capacity to rescind his/her decision, physician assisted death ceases to be an option.” This condition is problematic in cases of a patient who received approval at all stages of the process but falls into an unexpected coma or other unresponsive state before being able to follow through with a physician assisted death.

**Question 16:** How can we improve the draft interim guidance document’s clarity? (Please feel free to elaborate on your answers above or touch on other issues related to clarity)

While the role of doctors is outlined quite clearly in the CPSO Interim Guidance on Physician-Assisted Death, little is said about conscientious objection and the protection of physicians. Doctors should not face repercussions (sanctions, loss of hospital privileges, etc.) based on whether or not they choose to participate in physician assisted dying. Protection of physicians should be addressed by the CPSO and should be included in the College’s dialogue moving forward.

**Question 19:** If you have any additional comments that you have not yet provided, please provide them below, by email or through our online discussion forum.

An important final concern to touch on is that of witness signatures and the relationship of witnesses to the patients. In its interim guidance document, the CPSO states that the second
request for a physician assisted death must be accompanied by signatures of two witnesses who can attest to the patient’s capacity and confirm that they are acting voluntarily and free from coercion. They advise that one of the witnesses cannot be: the attending doctor, a relative, an estate beneficiary or the owner, operator or an employee of a health facility where the patient is being treated.

This could represent an unfair barrier to access for some of Ontario’s most desperately ill patients: some may have difficulty obtaining the required second signature, especially if they are confined to a hospital, hospice or long-term care facility. This potential barrier to access should be reconsidered by the CPSO.

CPSO Letter Writing Toolkit

DWD Canada encourages supporters to send their feedback to the CPSO through email using the provided email address: interimguidance@cpsso.on.ca. You are also welcome to mail your letter to the following address:

College of Physicians and Surgeons of Ontario
80 College Street
Toronto, ON
M5G 2E2

Dear College of Physicians and Surgeons of Ontario,

Executive Summary:

Briefly summarize your key recommendations or concerns, using two or three bullet points. Sample prompts include:

• “Considerations for best practices and protocols for physician assisted dying should include...”
• “Patients who meet the Supreme Court of Canada criteria for a physician assisted death should not face barriers such as...”
• “I found some areas of your proposed framework troubling because...”

Body of your Letter:

In clear, concise language, outline the areas of the guidelines that you take issue with and those you support. In your own words, you may wish to highlight the following concerns:

1. Witnesses
   • The CPSO draft requires two witness signatures to affirm that the patient is capable of making a competent decision about their death and that the patient is doing so voluntarily and free from coercion. Under the guidelines, one of the witnesses cannot be: “the attending doctor, a relative, an estate beneficiary or
the owner, operator or an employee of a health facility where the patient is being treated."

- **The criteria for the second witness are limiting and could lead to unnecessary barriers to access for some patients.** In some cases, patients, especially those who are bedridden in hospital, hospices or long-term care facilities, may have difficulty finding an individual who is eligible to serve as the second witness. The CPSO must take steps to ensure that otherwise eligible patients are not denied access simply because they cannot find a second witness who meets the current criteria.

2. **Competency at Time of Death**
   - Prior to the provision of physician assisted death, two requests (one of which must be written by the patient or spoken and transcribed) are made. During the first request, the attending physician assesses capacity. Two witnesses access capacity when the second request is made, followed by a second opinion from a consulting physician.
   - The CPSO draft states that: "If at any time the patient loses the mental capacity to rescind his/her decision, physician assisted death ceases to be an option."
   - This condition is problematic in cases in which a patient who received approval at all stages of the process but falls into an unexpected coma or other unresponsive state before being able to follow through with his or her wish to die with the help of a physician.

3. **Conscientious Objection and Protection of Physicians**
   - Doctors should not face repercussions (sanctions, loss of hospital privileges, etc.) based upon their willingness to provide assisted death.
   - Protection of physicians should be addressed by the CPSO and should be included in the College’s dialogue moving forward.

**Your conclusion**
Briefly summarize the main points of your letter. In a sentence or short paragraph, reiterate the main points you made in the executive summary.

Finish your letter by thanking the College of Physicians and Surgeons of Ontario for their consideration and their leadership on the issue.

*Sincerely,*

[Your name]