DWD Canada Toolkit: College of Physicians and Surgeons of Nova Scotia
Online Consultation

The College of Physicians and Surgeons of Nova Scotia (CPSNS) has opened a consultation in order to gather Nova Scotians’ feedback on its “Standard of Practice: Physician-Assisted Death.” If adopted, these guidelines will govern how doctors in the province treat patient requests for physician assisted dying (PAD).

Dying With Dignity Canada created this toolkit to flag areas of concern in the policy and to help you fill out the CPSNS’s online survey. This is a critical opportunity to raise your voice for fair access to physician assisted dying in the province of Nova Scotia. Don’t miss out!

About the Online Survey:

- The last day to participate is February 7, 2016.
- The survey takes 15 to 20 minutes to complete.
- All responses are confidential.
- You must complete the survey in a single sitting. The website does not allow you to save your answers and complete the survey at a later date.
- To effectively complete the survey, you must first read through the “Standard of Practice: Physician-Assisted Death.”

DWD Canada’s Position on the CPSNS Draft “Standard of Practice: Physician-Assisted Death”

While DWD Canada is pleased that the CPSNS has begun work on this important issue, the organization’s draft policy is missing key details and, in some cases, threatens to impose troubling barriers to access for patients in Nova Scotia.

Here are our three main concerns:

1. **Policy on Conscientious Objection**

   In Section 4 of its draft policy, the College of Physicians and Surgeons of Nova Scotia states that if a physician is unable to participate in PAD *for reasons other than conscience* (such as personal
illness, lack of availability or lack of expertise), he or she must make an effective referral. DWD Canada supports this recommendation, as it ensures that patients will not be abandoned if their physician is not able to assist them in achieving a peaceful death.

The recommendation for the second scenario — when a physician is unwilling to provide an assisted death for reasons of conscience — is much more concerning:

- “If a physician is unwilling to participate in physician-assisted death for reasons of conscience, it is recommended that the physician make an effective referral for any patient requesting physician-assisted death.”

In DWD Canada’s view, this policy is unacceptable because it puts the onus on desperately ill patients to seek out a participating physician. In order to ensure patients are granted rightful access to assisted dying, the CPSNS must require doctors who oppose assisted dying to, in a timely manner, refer patients who request it to a willing provider or third-party referral agency, if one is in place. The referring doctor must continue to treat the patient before the transfer of care takes place. Patients must not be abandoned during their time of greatest need.

In addition, the CPSNS policy doesn’t currently require objecting doctors to inform patients about physician assisted dying, even if they request it. Patients cannot make an informed decision if they are not aware of all of their end-of-life options, including physician assisted dying.

2. Eligibility Criteria

Personal Directives

The CPSNS states that “physicians cannot act on a request for physician-assisted death set out in a Personal Directive or similar document.” This policy contradicts DWD Canada’s position, which holds that advance requests for assisted death should be honoured when made by a competent patient who, at the time of the request, has a diagnosis for a condition that is or could become grievous and irremediable. This recommendation is supported by the Provincial-Territorial Expert Advisory Group on physician assisted dying.

In its final report, the Expert Advisory Group identifies two scenarios in which loss of competency could prevent requesting patients from accessing PAD despite their eligibility:

A. The patient is eligible for PAD but loses competency between the time they request PAD and the provision of PAD;

B. The competent patient has been diagnosed with a grievous and irremediable condition, such as dementia, that will cause them to lose capacity before intolerable suffering occurs. The patient is concerned as to what their quality of life will be in this future state and has expressed that they would like a physician assisted death once they experience conditions that are intolerable to them unable to feed or toilet themselves, etc.).
The College of Physicians and Surgeons of Nova Scotia should take steps to ensure that eligible patients whose requests for PAD have been approved are not automatically denied access because of a loss of competency.

**Giving Consent**

A further eligibility requirement laid out by the CPSNS is that “the patient must be capable of giving consent to physician-assisted death.” However, the CPSNS does not expand on how consent must be given. DWD Canada upholds that patients should, in general, request PAD in writing; however, accommodations such as verbal requests must be allowed for patients who are not capable of writing or typing. Patients who can consent but cannot speak or write must be offered alternative ways to record their wishes.

### 3. Duties of Physicians

**Assessment of Two Physicians**

The CPSNS states that two physicians must determine a patient’s eligibility. The first physician would arrange for the patient to be seen by a second, non-objecting physician. If both agree that the patient is eligible, then either the first or second physician can prescribe or administer life-ending medication.

While this process is consistent with the recommendations presented by other medical colleges and advisory groups, it leaves questions unanswered about whether dying patients in remote communities will be able to obtain assessments from two *willing* physicians. To address this concern, the CPSNS should establish a system by which a requesting patient would be assessed by an out-of-town physician, who conducts the consultation either in person or via video conference.

**Role of the First Physician**

Before bringing in the Second Physician, the CPSNS policy says, the First Physician must rely either on:

- *his or her assessment of the patient alone*; or
- *On his or her assessment of the patient in combination with the opinions of one or more other Regulated Health Professionals (not including the Second Physician for that patient).*

Though reasonable in principle, the second point is far too vague and, as a result, could lead to harmful delays for patients grappling with intolerable suffering. To improve this section of the policy, the CPSNS should detail specific circumstances in which a consultation is appropriate. DWD Canada believes that an outside consultation should only be sought if the competence of the patient is in question.
Also, the CPSNS must specify in greater detail what kinds of, and also how many, healthcare professionals can be consulted. Under Nova Scotia law, midwives, denturists and dental hygienists—practitioners whose work is unrelated to physician assisted dying—qualify as “Regulated Healthcare Professionals,” as do physicians, pharmacists, registered nurses and psychologists. The only professionals who should be consulted are those who can provide authoritative insight on a patient’s eligibility to access assisted dying.

In addition, the CPSNS must require that any outside consultations be completed in a timely manner.

**College of Physicians and Surgeons of Nova Scotia Online Consultation: Key Questions to Consider**

DWD Canada has flagged some questions for supporters to pay special consideration to when completing the survey.

### Responsibility of Physicians Unable or Unwilling to Provide Physician-Assisted Death

Section 4 of the draft standard describes the responsibility of physicians not able or willing to participate in physician-assisted death.

**Question 7**

Please indicate whether you agree or disagree that the draft standard clearly describes the required role of a physician when:

- a physician is unwilling to participate in physician-assisted death for reasons of conscience
- a physician is unable to participate in physician-assisted death for reasons other than conscience (such as for reasons of personal illness, lack of availability, or lack of expertise)

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**Question 8**

If you answered “unsure” or “disagree” to either item in question 7, please indicate how the standard should be changed to improve the clarity of the description about the responsibilities of physicians who are unable or unwilling to participate in physician-assisted death.
Question 7 asks respondents to rate the clarity of the draft policy’s recommendations on the physician’s role in PAD. The comment box in Question 8 is a good place to add in your views on the responsibilities of doctors who conscientiously object. According to the CPSNS, if a physician is unwilling to assist for reasons of conscience, “it is recommended” that the physician make an effective referral. In DWD Canada’s view, this language must be strengthened to ensure that patients aren’t unfairly deprived of rightful access to assisted dying. Whether the doctor is unable or unwilling to provide assisted dying, **he or she must provide an effective referral, to make sure the requesting patient is not abandoned.** Physicians who conscientiously object to PAD should be required to contact a participating doctor or a third-party referral agency, should one exist. The burden shouldn’t fall to the patient.

In addition, you may wish to mention that the CPSNS draft policy does not require doctors, whether or not they object to assisted dying, to communicate fair and thorough information about assisted dying to patients who ask about it. To fix this omission, the CPSNS should adopt the following language from the College of Physicians and Surgeons of Ontario’s draft guidelines for physician assisted dying:

- *In order to uphold patient autonomy and facilitate the decision-making process, physicians must provide the patient with information about all options for care that may be available or appropriate to meet the patient’s clinical needs, concerns and/or wishes. Physicians must not withhold information about the existence of any procedure or treatment because it conflicts with their conscience or religious beliefs.*

Section 5 of the CPSNS’s draft policy discusses eligibility criteria and explicitly states that “physicians cannot act on a request for physician-assisted death set out in a Personal Directive or similar document.” DWD Canada’s view is that advance requests for assisted death are valid when made by a competent patient who, at the time of the request, has a diagnosis for a condition that is or could become grievous and irremediable. This recommendation is supported by the Provincial-Territorial Expert Advisory Group on physician assisted dying. In its final report, the Expert Advisory Group outlines two situations in which advance requests for physician assisted dying could be honoured:
• The patient is eligible for PAD but loses competency between the time they request PAD and the provision of PAD;

• The competent patient has been diagnosed with a grievous and irremediable condition, such as dementia, that will cause them to lose capacity before intolerable suffering occurs. The patient is concerned as to what their quality of life will be in this future state and has expressed that they would like a physician assisted death once they experience conditions that are intolerable to them (unable to feed or toilet themselves, etc.)

Making these modifications would help ensure the wishes of eligible patients — those whose requests have already been approved but who lose competence before assisted death is provided — are honoured. The CPSNS should outline what documentation would be required for an advance request for assisted death to be considered valid.

Question 15

In Question 15, please mention any outstanding concerns you have with the clarity of the standard. In your own words, you may wish to highlight the following concerns:

• The CPSNS must include additional guidelines that protect access for Nova Scotians living in rural areas. To obtain an assisted death, all patients, no matter where they live in the province, must receive approval from two physicians. This presents barriers for patients in remote communities, where access to healthcare may be limited. To address this concern, the CPSNS should establish a system by which a requesting patient would be assessed by an out-of-town physician, who conducts the consultation either in person or via video conference. DWD Canada also recommends that other licensed healthcare practitioners (such as registered nurses or nurse practitioners) be allowed to provide assisted dying under physician supervision.

• DWD Canada upholds that publicly funded healthcare institutions, including hospitals, hospices and long-term care facilities, must be required to allow physician assisted dying on their premises. This is something the CPSNS should address in its updated policy document.
Section 6, Line 1.2 must be modified in order to define more specifically which healthcare professionals the First Physician can consult before arranging an assessment with the Second Physician. The First Physician should only be allowed to seek an outside opinion in cases where the First Physician requires an assessment of the patient’s competency to request a physician assisted death. The consultation must be completed in a timely manner.