SASKATCHEWAN RN ASSOCIATION

Guideline for RN(NP) Involvement in Medical Assistance in Dying

November 2016

Introduction

On June 17, 2016, Bill C-14, legislation regarding medical assistance in dying, received Royal Assent and is now in force across Canada. The legislation amends the *Criminal Code*, creating exemptions from criminal prosecution for nurses and their colleagues on the health care team. This means when eligibility criteria and other conditions are met, it is possible for Registered Nurse (Nurse Practitioners) [RN(NP)s] to be involved in medical assistance in dying without facing criminal prosecution. The provision of a medically-assisted death is also within the scope of practice for RN(NP)s in Saskatchewan.

"Medical assistance in dying must be provided with reasonable knowledge, care and skill, and in accordance with any applicable laws, rules or standards" (*Criminal Code*, 1985, 242.2[7]). Failing to comply with this and other legal requirements could result in being convicted of a criminal offence. The Saskatchewan Registered Nurses' Association (SRNA) is working with the Saskatchewan Ministries of Health and Justice, regulatory bodies, employers and other stakeholders to provide consistent and standardized information for the delivery of a medically-assisted death.

Purpose of the Guideline

RN(NP)s have been named in the *Criminal Code*, along with medical practitioners as having the ability to administer medical assistance in dying. The purpose of this document is to highlight the changes to the *Criminal Code* in relation to the provision of medical assistance in dying and delineate the role of RN(NP)s in this process, if they choose to participate, and have the support of their client, and their agency or employer. This includes a description of the legislation, principles, responsibilities and process steps for their involvement in medical assistance in dying in Saskatchewan. There is a separate SRNA resource titled *Guideline for RN Involvement in Medical Assistance in Dying* which will provide direction to RN(NP)s who may be involved in aiding rather than administering a medically-assisted death.

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Conscientious Objection

The SRNA recognizes that an RN(NP) may not be comfortable providing or assisting with a medically-assisted death. The law and the SRNA do not compel an RN(NP) to provide or assist in this process. RN(NP)s who have a conscientious objection to participating in medical assistance in dying:

- are not obligated to provide or assist with a medically-assisted death;
- have a professional obligation to refer the person to a medical or nurse practitioner who will provide a medically-assisted death if all applicable requirements are met, or refer the person to a designated contact person for this purpose, and
- must continue to provide care to address the person's other health care needs unless and until it is provided by another qualified health care provider.

The Canadian Nurses Association (CNA) *Code of Ethics* provides guidance to RN(NP)s in their practice and to effectively manage discussions about conscientious objections with their client, agency or employer.

RN(NP) Competency and Scope of Practice for Involvement in Medical Assistance in Dying

RN(NP)s involved in medical assistance in dying must be licensed by the SRNA and comply with the requirements of the *Criminal Code*, as well as any provincial requirements. RN(NP)s are also accountable for complying with all other applicable SRNA bylaws, standards and the CNA *Code of Ethics*.

As with all aspects of their practice, RN(NP)s need to understand the legal framework for the provision of medical assistance in dying, including the federal legislation, provincial/regional processes and standardized protocols. RN(NP)s need to be familiar with agency or employer policies and procedures specific to medical assistance in dying, as well as and other applicable legislation, for example, those that relate to admitting and discharge privileges. It is important to note that employers may limit but cannot expand the scope of the RN(NP).

As a new practice in Canada, data and evidence will be collected and tracked to inform practice, and meet federal requirements as defined in the *Criminal Code*. Education materials and resources are being developed. As new evidence comes available, this practice guideline will evolve and be adapted to reflect current practice consistent with legislation, practice standards and code of ethics. In the early stages, RN(NP)s are advised to connect with the SRNA to understand current evidence and practice, and provincially and federally coordinated processes.

RN(NP)s cannot delegate any aspect of medical assistance in dying to any other health professional. For additional guidance, RN(NP)s are encouraged to contact the Canadian Nurses Protective Society (CNPS) to ensure awareness of the applicable provisions of the *Criminal Code* and understanding of potential legal issues.

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Definition of Medical Assistance in Dying

In the preamble of Bill C-14 “the Parliament of Canada recognizes the autonomy of persons who have a grievous and irremediable medical condition that causes them enduring and intolerable suffering and who wish to seek medical assistance in dying” (p. 1). This is reflected in the *Criminal Code* as such:

> ***medical assistance in dying means***
> **241.1 (a)** the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or
> **(b)** the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death. (*Criminal Code*, 1985)

While it is permitted to provide information about medical assistance in dying, it remains a criminal offense to counsel or aid a person to commit suicide.

> **Counselling or aiding suicide**
> **241 (1)** Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years who, whether suicide ensues or not,
> **(a)** counsels a person to die by suicide or abets a person in dying by suicide; or
> **(b)** aids a person to die by suicide. (*Criminal Code*, 1985)

Exemptions within the *Criminal Code*

Exemptions have been created within the *Criminal Code* so that medical assistance in dying can be provided in accordance with section 241.2. The exemption for medical practitioners and nurse practitioners is as follows:

> **Exemption for medical assistance in dying**
> **227 (1)** No medical practitioner or nurse practitioner commits culpable homicide if they provide a person with medical assistance in dying in accordance with section 241.2. (*Criminal Code*, 1985)

The *Criminal Code* also contains exemptions for other people, which would apply to RNs and other health professionals to aid in medical assistance in dying.

> **Exemption for person aiding practitioner**
> **241 (3)** No person is a party to an offence under paragraph (1) (b) if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2. (*Criminal Code*, 1985)

> **Exemption for person aiding patient**
> **241 (5)** No person commits an offence under paragraph (1) (b) if they do anything, at another person's explicit request, for the purpose of aiding that other person to self-administer a substance that has been prescribed for that other person as part of the provision of medical assistance in dying in accordance with section 241.2. (*Criminal Code*, 1985)

Distinction Between Administering and Aiding

There is an important distinction between administering and aiding in medical assistance in dying within the *Criminal Code*. Within the definition of medical assistance in dying, it is clear that only medical practitioners and nurse practitioners can administer medical assistance in dying to those deemed eligible. The term administration of medical assistance in dying is interpreted to mean, that the medical or nurse practitioner:

1) Affirms that all eligibility criteria and safeguards have been met;

2) Reaffirms consent immediately prior to administration;

3) Administers the substance to cause death; and

4) Does not delegate to any other team member.

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Provision of Medical Assistance in Dying

Three stages for the provision of medical assistance in dying have emerged:

I. Seeking medical assistance in dying;

II. Assessment of eligibility; and

III. Administering medical assistance in dying.

I. Seeking medical assistance in dying

When there are requests about medical assistance in dying, RN(NP)s can be assured that the *Criminal Code* includes: "for greater certainty," a clause that states that "no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying"

(*Criminal Code*, 1985, 241[5.1]). RN(NP)s who receive requests need to provide safe and ethical care as well as provide or refer the person to obtain the necessary information about medical assistance in dying. RN(NP)s should document these discussions appropriately. For further information about documentation, consult the CNPS, which offers guidance regarding effective documentation practices.

Provincial pathways, forms and protocols have been developed in Saskatchewan to facilitate a coordinated approach to medical assistance in dying which complies with the legislation. RN(NP)s are required to follow this process in Saskatchewan. These documents are available through the SRNA (srna.org) and will also be available through the Government of Saskatchewan.

II. Assessing eligibility for medical assistance in dying

The eligibility criteria for the person seeking medical assistance in dying is as follows:

> **241. 2 (1) Eligibility for medical assistance in dying**
> A person may receive medical assistance in dying only if they meet all of the following criteria:
>
> **(a)** they are eligible—or, but for any applicable minimum period of residence or waiting period, would be eligible — for health services funded by a government in Canada;
>
> **(b)** they are at least 18 years of age and capable of making decisions with respect to their health;
>
> **(c)** they have a grievous and irremediable medical condition;
>
> **(d)** they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
>
> **(e)** they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care. (*Criminal Code*, 1985)

Further criteria for determining if the person has a grievous and irremediable medical conditions are as follows:

> **Grievous and irremediable medical condition**
> **241.2 (2)** A person has a grievous and irremediable medical condition only if they meet all of the following criteria:
>
> **(a)** they have a serious and incurable illness, disease or disability;
>
> **(b)** they are in an advanced state of irreversible decline in capability;
>
> **(c)** that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and
>
> **(d)** their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining. (*Criminal Code*, 1985)

Assessing the criteria for grievous and irremediable condition is the responsibility of the medical or nurse practitioner. As this practice evolves in Canada, it is anticipated that there will be further evidence to support this assessment, for example additional information on what constitutes a reasonably foreseeable death.

Informed consent and assessing capacity

The *Criminal Code* requires that the medical or nurse practitioner providing a medically-assisted death verifies that all of the eligibility criteria have been met. Assessing the patient's capacity to provide informed consent may be complex related to a number of factors, such as the effect of medications or underlying disease processes. If necessary, the RN(NP) may seek consultation from other appropriate health care providers to further assess and document the individual's capacity to provide informed consent. It is important to note that pursuant to the requirements of the *Criminal Code*, informed consent is obtained after the person has "been informed of the means that are available to relieve their suffering, including palliative care" (*Criminal Code*, 1985, 241.2[1]e). The *Criminal Code* includes direction for individuals who are able to sign and date the request for medical assistance in dying. RN(NP) s should refer to section 241.2 (4) of the *Criminal Code* in these circumstances.

> "The *Criminal Code* requires that the medical or nurse practitioner providing a medically-assisted death verifies that all of the eligibility criteria have been met."

End-of-life and culturally-safe care are identified as areas for development nationally, with the Government of Canada indicating commitment to work "with provinces, territories and civil society to facilitate access to palliative and end-of-life care" including "appropriate mental health supports and services and culturally and spiritually appropriate end-of-life care for Indigenous patients"(Bill C-14, 2015-2016. p. 2).

Safeguards

The *Criminal Code* includes "robust safeguards" intended "to prevent errors and abuse in the provision of medical assistance in dying" (Bill C-14, 2015-2016, p.1).

> **241.2 (3)** Before a medical practitioner or nurse practitioner provides a person with medical assistance in dying, the medical practitioner or nurse practitioner must
>
> **(a)** be of the opinion that the person meets all of the criteria set out in subsection (1);
>
> **(b)** ensure that the person's request for medical assistance in dying was
>
> > **(i)** made in writing and signed and dated by the person or by another person under subsection (4), and
> >
> > **(ii)** signed and dated after the person was informed by a medical practitioner or nurse practitioner that the person has a grievous and irremediable medical condition;
>
> **(c)** be satisfied that the request was signed and dated by the person—or by another person under subsection (4)—before two independent witnesses who then also signed and dated the request;
>
> **(d)** ensure that the person has been informed that they may, at any time and in any manner, withdraw their request;
>
> **(e)** ensure that another medical practitioner or nurse practitioner has provided a written opinion confirming that the person meets all of the criteria set out in subsection (1);
>
> **(f)** be satisfied that they and the other medical practitioner or nurse practitioner referred to in paragraph (e) are independent;

(g) ensure that there are at least 10 clear days between the day on which the request was signed by or on behalf of the person and the day on which the medical assistance in dying is provided or—if they and the other medical practitioner or nurse practitioner referred to in paragraph (e) are both of the opinion that the person's death, or the loss of their capacity to provide informed consent, is imminent—any shorter period that the first medical practitioner or nurse practitioner considers appropriate in the circumstances. (*Criminal Code*, 1985)

Independence of Witnesses and Practitioners

Important safeguards include ensuring independence of witnesses to the person seeking medical assistance in dying, and independence of medical and nurse practitioners providing it.

Two independent witnesses must be present to witness the person's request for medical assistance in dying. Independence of these witnesses is defined in the *Criminal Code*, as follows:

Independent Witness
241.2 (5) Any person who is at least 18 years of age and who understands the nature of the request for medical assistance in dying may act as an independent witness, except if they

(a) know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death;

(b) are an owner or operator of any health care facility at which the person making the request is being treated or any facility in which that person resides;

(c) are directly involved in providing health care services to the person making the request; or

(d) directly provide personal care to the person making the request. (*Criminal Code*, 1985)

Independence of the medical and nurse practitioners has been referenced in the *Criminal Code* in 241.2 (3)(f). It is the responsibility of the practitioner to ensure the independence of other practitioners involved in medical assistance in dying.

Independence—medical and nurse practitioners
241.2 (6) The medical practitioner or nurse practitioner providing medical assistance in dying and the medical practitioner or nurse practitioner who provides the opinion referred to in paragraph (3) (e) are independent if they

(a) are not a mentor to the other practitioner or responsible for supervising their work;

(b) do not know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death, other than standard compensation for their services relating to the request; or

(c) do not know or believe that they are connected to the other practitioner or to the person making the request in any other way that would affect their objectivity. (*Criminal Code*, 1985)

III. Administering medical assistance in dying

Once the eligibility criteria are met and it is deemed that medical assistance in dying can be administered, the RN(NP) is involved in determining the environment and timing for administering medical assistance in dying. Working with the managers within the regional health authorities is critical, keeping in mind that the law does not compel them to offer medical assistance in dying within their institutions.

Forms and processes have been developed in Saskatchewan, including a pharmacy protocol and informed consent and eligibility assessment tools, to help ensure the appropriate safeguards are in place. Adherence to these protocols and documentation policies is important to ensure RN(NP)s comply with the requirements of the *Criminal Code*, including an important final step, where the RN(NP) must:

> **241.2.(3) (h)** immediately before providing the medical assistance in dying, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive medical assistance in dying; and
>
> **(i)** if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision. (*Criminal Code*, 1985)

It is prudent for RN(NP)s to document those who are present at the time of the administration of medical assistance in dying, along with documenting that the patient was given the opportunity to withdraw consent prior to the administration and confirmed intention to proceed. The RN(NP) may wish to have another health care professional present to witness that the person was given the opportunity to withdraw consent prior to administration. The RN(NP) who administers the pharmacy protocol for medical assistance in dying, should remain with the person until death occurs.

The *Saskatchewan Pharmacy Protocol for Medical Assistance in Dying*

> “The RN(NP) who administers the pharmacy protocol for medical assistance in dying should remain with the person until death occurs.”

The *Saskatchewan Pharmacy Protocol for Medical Assistance in Dying* has been developed in consultation with the Saskatchewan College of Pharmacy Professionals and the College of Physicians and Surgeons of Saskatchewan and other authorities and experts. The RN(NP) should refer to the current version of the protocol, which provides guidance for practitioner to administer medical assistance in dying intravenously. While an RN may initiate the intravenous line, all drugs in the protocol must be administered by the medical or nurse practitioner. At this time, a standard protocol for the self-administration of a medically-assisted death has not been formalized in the province. RN(NP)s are advised to contact the SRNA if they receive requests for self-administration of medical assistance in dying.

The *Criminal Code* also provides an exemption from criminal offence for the pharmacist involved in medical assistance in dying. It also imposes an additional obligation upon the RN(NP) or medical practitioner who prepares the prescription and administers the substance used for a medically-assisted death. The *Criminal Code* requires that:

> **Informing Pharmacist**
> **241.2 (8)** The medical practitioner or nurse practitioner who, in providing medical assistance in dying, prescribes or obtains a substance for that purpose must, before any pharmacist dispenses the substance, inform the pharmacist that the substance is intended for that purpose. (*Criminal Code*, 1985)

The RN(NP) administering the substance for medical assistance in dying should monitor and manage any unforeseen circumstances and remain with the person until death occurs. At the time of death, the death must be reported to the coroner who currently completes and signs all death certificates associated with medical assistance in dying.

Summary

Significant collaboration has occurred to ensure a safe and coordinated approach to medical assistance in dying in Saskatchewan. Referral to this guideline and the relevant provisions of the *Criminal Code* is critical to ensure adherence with the principles, responsibilities and processes for medical assistance in dying. Seeking resources to support RN(NP) practice is important to understand the latest information regarding medical assistance in dying in Canada. There will also be data collection requirements which will become clearer within 12 months of the legislation being in place, as this is a requirement of the Federal Minister of Health within Bill C-14. SRNA Practice Consultants are available to provide consultation to RN(NP)s and employers as medical assistance in dying evolves over time.

References

Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, First Session, Forty-second Parliament, 64-65 Elizabeth II, 2015-2016. Retrieved from http://www.parl.gc.ca/content/hoc/Bills/421/Government/C-14/C-14_4/C-14_4.PDF

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