
Standards of Practice of the Yukon Medical Council (“the Council”) are the minimum standards of professional behavior and ethical conduct expected of all physicians registered in Yukon. Standards of Practice will be referenced in the management of complaints and in discipline

1. Background /Summary

As of March 17, 2021, the *Criminal Code* was amended and there are now two different sets of safeguards for the provision of Medical Assistance in Dying (MAID), with some differing considerations and processes. The two available streams are:

1. MAID when the patient’s natural death is reasonably foreseeable.
2. MAID when the patient’s death is not reasonably foreseeable.

Under the *Criminal Code*, RSC 1985, c.C-46, two forms of prescribing and administering medical assistance in dying are permitted:

- the administering by a medical practitioner or nurse practitioner of a substance to a person at their request that causes their death;
- the prescribing or providing by a medical practitioner or a nurse practitioner of a substance to a person at their request, for their self-administration and in doing so cause their own death.

The new legislation also includes important changes regarding consent. For **patients whose natural death is not determined to be reasonably foreseeable**, the assessors must be satisfied of the patients’ full and informed consent to MAID at the time of administration.

Advanced consent agreement is now permitted for **patients whose natural death is reasonably foreseeable** under the following circumstances:

- the patient has been assessed and all eligibility criteria and safeguards have been met to receive MAID;

- the patient is at risk of losing decision-making capacity before their preferred date to receive MAID, and has been informed of that risk;
- the patient has made a written agreement with their provider in advance waiving their consent at the time of administration.

In addition, the federal Minister of Health has made regulations for the monitoring and reporting of MAID. Health Canada is the designated recipient of reportable information from physicians, nurse practitioners and pharmacists. Registrants must be aware of, and comply with, both the federal legislation and reporting requirements for MAID.

Physicians are also encouraged to consult legal counsel, for example through the Canadian Medical Protective Association (CMPA), to discuss unique or specific circumstances which may arise, or to obtain specific advice regarding the current state of the law relating to medical assistance in dying.

2. Definitions

medical practitioner means a person who is entitled to practice medicine under the laws of a province. (*Criminal Code*, RSC 1985, c.C-46) *Note: In the *Criminal Code*, Province includes Territories;

nurse practitioner means a registered nurse who, under the laws of a province, is entitled to practise as a nurse practitioner—or under an equivalent designation—and to autonomously make diagnoses, order and interpret diagnostic tests, prescribe substances and treat patients. (*Criminal Code*, RSC 1985, c.C-46);

pharmacist means a person who is entitled to practise pharmacy under the laws of a province. (*Criminal Code*, RSC 1985, c.C-46);

reasonably foreseeable death must be assessed on a case-by-case basis, in relation to the specific person seeking MAID, and must consider the whole of their individual and unique medical circumstances. Most people who are

considered to have a reasonably foreseeable natural death are expected to die within a few weeks or months. A person's death may also be foreseeable in the temporal sense over longer periods, depending on the circumstances under consideration. Members are encouraged to use their best judgment and discretion and to consult as required when making a determination regarding the reasonable foreseeability of a patient's death;

expertise must also be assessed using the member's best judgment and discretion. When expert consultation is required, members are encouraged to consider the specialization and experience of the consulting practitioner, as they would in any other case when seeking consultation and are encouraged to reach out to CMPA or Yukon Medical Council with questions on this duty as may be required;

Most responsible practitioner (MRP) is the practitioner acting as one of the two required **medical assessors (MAs)** who will be prescribing and administering or prescribing and providing the lethal substance. They are also referred to as the assessor-prescriber; OR they are acting as one of the two medical assessor responsible for the federal reporting and acting as assessor-prescriber. They may be, but are not required to be, the assessor that administers the lethal substance;

Registrants means physicians licensed and in Yukon and registered pursuant to the *Medical Profession Act*.

3. Process Map for Medical Assistance in Dying

The process map outlined below details the steps that physicians must undertake in relation to medical assistance in dying. It complies with federal legislation and outlines safeguards that must be adhered to, by law, prior to the provision of medical assistance in dying. Nurse practitioners and other professionals are noted in the process map only to the extent necessary to reflect relevant provisions of the federal legislation. Expectations for the responsibilities and accountabilities of nurse practitioners, pharmacists and other health care providers are set by their respective regulatory bodies and are not the responsibility of Yukon Medical Council.

Physicians and nurse practitioners, along with those who support them, are protected only from criminal liability if acting in compliance with the federal legislation and any applicable provincial or territorial laws, standards or rules.

STEP 1 - Patient makes initial inquiry for medical assistance in dying to a physician or a nurse practitioner

Patient rights:

Patients have the right to make decisions about their bodily integrity (autonomy) and to have access to unbiased and accurate information about relevant medical conditions and their treatment. Registrants have an obligation to provide their patients with health information and health services in a non-discriminatory fashion and an obligation not to abandon their patients.

The Yukon Medical Council expects registrants to provide their patients with enough information and assistance to allow them to make informed choices for themselves. This includes consulting with other experts on relevant medical facts and, when needed, obtaining competency assessments.

Physician rights to conscientious objection and duty to transfer care:

There is nothing in the *Criminal Code* that compels a physician to prescribe or administer MAID. Physicians who have a conscientious objection to medical assistance in dying are not obligated to proceed further through the process map and evaluate a patient's inquiry for medical assistance in dying. Objecting physicians must provide the patient with timely access to another non-objecting physician or resource with accurate information about all available medical options. The objecting physician must document, in the medical record, the date on which the referral was made, and the physician, nurse practitioner and/or agency to which the referral was directed.

Criminal Code Requirements-Independent witness for patient request:

The *Criminal Code* requires that a patient's request for medical assistance in dying must be made in writing after they have been informed that they have a grievous and irremediable medical condition, in the presence of one independent witness. This witness must then also sign the request.

To be considered independent, a witness must:

- a. be at least 18 years of age;

- b. understand the nature of the request for medical assistance in dying.

A witness will **not** be considered independent if:

- a. The witness knows or believes that they are a beneficiary under the will of the patient making the request, or that they will receive, in any other way, any financial or other material benefit resulting from the patient's death;
- b. The witness is an owner or operator of any health-care facility at which the patient making the request is being treated or any facility in which the patient resides;
- c. The witness is directly involved in providing health-care services to the patient making the request unless this is their primary occupation, and they are paid to do so;
- d. The witness directly provides personal care to the patient making the request unless this is their primary occupation, and they are paid to do so. If the witness is directly involved in providing health-care services or directly providing personal care to the patient as their primary occupation and they are paid to do so, they must not be the medical practitioner or nurse practitioner who will provide:
 - I. medical assistance in dying to the patient, or
 - II. an opinion confirming the patient meets the criteria for medical assistance in dying, as set out in section 241.2(1) of the *Criminal Code*.

Proxy for patient request:

The *Criminal Code* requires that if the patient requesting medical assistance in dying has the mental capacity to make a free and informed decision with respect to their health but is physically unable to sign and date the request for medical assistance in dying, another person may sign in the patient's presence, on the patient's behalf, and under the patient's express direction.

The person acting as a proxy must be at least 18 years of age, understand the nature of the request for medical assistance in dying, and not know or believe that they are a beneficiary under the will of the patient making the

request, or that they will receive, in any other way, any financial or other material benefit resulting from the patient's death.

Documentation of patient request:

The physician must document the date of the patient's request for medical assistance in dying in the medical record. A copy of the physician's written opinion regarding whether the patient meets the eligibility criteria must also be included in the medical record. The physician is also responsible for ensuring all forms, paperwork, and reporting requirements of Health Canada are complied with.

Form of the patient request:

Yukon has its own Request for Medical Assistance in Dying form for use by patients. A patient request is only required to be made in writing, however this form is available to patients and serves as a guide for patients. A patient may make a request after they have been informed that they have a grievous and irremediable medical condition. A link to this form is provided in the appropriate section of this Standard.

STEP 2- Assessment of eligibility by two independent MAs

For a patient to receive MAID, both MAs must agree that the patient meets all of the following criteria:

- a. They are 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, as defined by meeting the following criteria:
 - They have a serious and incurable illness, disease, or disability;

Note: *Patients whose only medical condition is a mental illness, and who otherwise meet all eligibility criteria, will not be eligible for MAID until March 17, 2023.*

- They are in an advanced state of irreversible decline in capability;
- That illness, disease, disability, or 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;

- d. They have made a voluntary request for MAID that, in particular, was not made as a result of external pressure;
- e. They have given informed consent to receive MAID after having been advised of the means that are available to relieve their suffering, including palliative care, and other applicable services.

The process respecting MAID involves the opinion of two independent MAs, one of whom shall also be designated the MRP and act as the assessor-prescriber of the lethal substances. Only a physician or nurse practitioner may be a MA. Both MAs must be licensed for independent practice in their respective Canadian jurisdictions, and the MRP designated to act as the assessor-prescriber must be licensed in Yukon.

Registrants acting as a MA must have the appropriate competencies, qualifications, experience and training to render a diagnosis and understanding of the patient's condition, together with the appropriate technical knowledge and competency to provide MAID in a manner that is respectful to the patient.

When death is not reasonably foreseeable, MAID can occur in circumstances where neither MA has expertise in the condition causing the patient's suffering. However, in such circumstances, one of the MAs must consult with a medical practitioner or nurse practitioner who does have the appropriate expertise to ensure that all treatment options have been identified and explored. Both MAs must be made aware of the consultation results.

Both MAs must be independent of each other. The MAs are independent if they:

- a. are not a mentor to the other MA or responsible for supervising their work;
- b. do not know or believe that they are a beneficiary under the will of the patient making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that patient's death, other than standard compensation for their services relating to the request;

- c. do not know or believe that they are connected to the other MA or to the patient making the request in any other way that would affect their objectivity.

Eligibility assessment for prescribing MAID:

Both MAs must:

- a. agree in writing that the patient meets the criteria for MAID as set out by the *Criminal Code* and this standard;
- b. be satisfied that the request for MAID was a voluntary request and was not made as a result of external pressure and that it was made after being advised of their grievous and irremediable condition;
- c. ensure that the request for MAID is made in writing before an independent witness;
- d. ensure that the patient has a full understanding of their medical condition, its natural history and prognosis, treatment options and the risks and benefits associated with each option and is able to communicate a reasoned decision based on their understanding;
- e. ensure that, **for patients whose death is not reasonably foreseeable**, there is a minimum assessment period of 90 clear days for the patient to reflect on their choice and the information they have been provided. The 90 clear days begins the day after the assessor begins assessing the patient for the eligibility requirements set out in the *Criminal Code*. This time period can be shortened if loss of capacity is imminent if all assessments are completed and both the MRP and secondary assessor are in agreement to shorten the timeline;
- f. ensure that **for patients whose death is not reasonably foreseeable** the person seeking MAID and the assessor have discussed the reasonable and available means to relieve the person's suffering, including, where appropriate, palliative

care, mental health services, counselling services, disability services, and community services, and the assessor/s agree with the person that the person has given serious consideration to those means.

Note: For patients who death is reasonably foreseeable, there is no mandatory reflection period.

The MRP must:

- g. ensure that the patient has been informed that they may, at any time, and in any manner, withdraw their request;
- h. ensure that if an advanced consent agreement was made, the appropriate steps, outlined in this standard, were taken;
- i. ensure that, if the person has difficulty communicating, all necessary measures are taken to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision.

STEP 3- Prescribing of lethal substance for administration of MAID

Medical assistance in dying includes both situations where the assessor who is acting as the MRP and assessor-prescriber writes a prescription for medication that the patient takes him/herself (self-administration) and situations where a medical practitioner is directly involved in administering an agent to end the patient's life.

The assessor-prescriber must inform the pharmacist of the purpose for which the substance is intended before the pharmacist dispenses the substance.

The assessor-prescriber must notify the pharmacist as early as possible that medications for medical assistance in dying will likely be required. This will provide the pharmacist with sufficient time to obtain the required medications.

Physicians must exercise their professional judgement in determining the appropriate drug protocol to follow to achieve medical assistance in dying. The goals of any drug protocol for medical assistance in dying include ensuring the patient is comfortable, and that pain and anxiety are controlled.

Drug protocols for medical assistance in dying will only be dispensed to the prescriber, and

only from the Whitehorse General Hospital pharmacy. A prescriber writing a prescription for a drug protocol to hasten death must affirm with the pharmacist his/her willingness to dispense. The prescriber and pharmacist must together:

- a. determine the appropriateness of the prescribed drug protocol (adjusting dosages if necessary) and supportive care medication(s);
- b. discuss issues related to medication counselling by the physician for the patient;
- c. make arrangements for the release of the medication(s) to the physician;
- d. arrange a plan for the physician to return any unused medication(s) to the pharmacist.

STEP 4- Administering MAID

Immediately before providing MAID, the practitioner providing MAID must give the patient an opportunity to withdraw their request and ensure that the patient gives express consent to receive MAID. This rule is modified in two cases.

The first, in the case of a person **whose death is reasonably foreseeable**, this requirement is waived if all of the following criteria is met:

- a. Before the person loses the capacity to consent to receiving medical assistance in dying:
 - i. they satisfied all applicable criteria and safeguards;
 - ii. they entered into an arrangement in writing with the practitioner that the practitioner would administer a substance to cause their death on a specified day;
 - iii. they were informed by the practitioner of the risk of losing the capacity to consent to receiving medical assistance in dying prior to the day specified in the arrangement;
 - iv. in the written arrangement, they consented to the administration by the practitioner of a substance to cause their death on or before the day specified in the arrangement if they lost their capacity to consent to receiving medical assistance in dying prior to that day.
- b. The person has lost the capacity to consent to receiving medical assistance in dying;

- c. The person does not demonstrate, by words, sounds or gestures, refusal to have the substance administered or resistance to its administration:
 - i. Involuntary words, sounds or gestures made in response to contact are not considered a demonstration of refusal or resistance;
 - ii. If words, sounds or gestures are made that demonstrate a refusal to receive the substance, medical assistance in dying can no longer be provided on the basis of the consent outlined in this section.

Self-Administration:

The second case in which the rule may be modified occurs when the patient plans to self-administer the substance to cause their death. If a person loses capacity to consent to medical assistance in dying after self-administering a substance provided for the purposes of medical assistance in dying, an assessor-prescriber may administer a substance to cause the death of that person if all of the following criteria is met:

- a. Before the person loses the capacity to consent to receiving medical assistance in dying, they and the practitioner entered into an arrangement in writing providing that the practitioner would:
 - i. be present at the time the person self-administered the first substance;
 - ii. administer a second substance to cause the person's death if, after self-administering the first substance, the person lost the capacity to consent to receiving medical assistance in dying and did not die within a specified period.
- b. The person self-administers the first substance, does not die within the period specified in the arrangement and loses the capacity to consent to receiving medical assistance in dying;

- c. The second substance is administered to the person in accordance with the terms of the arrangement.

If the self-administering patient and the practitioner have entered into a written agreement as outlined above, the practitioner must attend the administration in person and remain until the patient's death is confirmed. The role of the practitioner in such cases cannot be delegated.

STEP 5- Reporting death

The MRP must register the death with the manner of death identified as MAID (Box 29). The cause of death is the underlying medical condition(s) (Box 25). The registration of death form must be completed in accordance with the *Vital Statistics Act*. A completed sample registration of death form can be accessed at the following link:

<https://yukon.ca/sites/yukon.ca/files/hss/hss-medical-assistance-death-sample-registration-death-certificate.pdf>

STEP 6- Documenting MAID

Registrants must inform the patient requesting MAID of the following, and the information must be included in the patient's medical record with a copy provided to the patient:

- the patient's diagnosis and prognosis;
- feasible alternatives (including comfort care, palliative care and pain control);
- confirmation that the patient meets all eligibility criteria, as outlined in this standard;
- confirmation that the patient has given serious consideration to the means to relieve their suffering;
- the patient's option to rescind the request for MAID at any time;
- the risk of taking the prescribed lethal substances.

The following information must also be retained in the patient's medical record:

- copies of all relevant medical records from other practitioners involved in the patient's care supporting the diagnosis and prognosis of the patient's grievous and irremediable condition, disease or disability;
- In cases where the death is not reasonably foreseeable, this includes ensuring that a record is retained demonstrating that a practitioner with appropriate expertise has provided a diagnosis and prognosis, including treatment recommendations, and that this has been discussed with the patient. The practitioner with appropriate expertise can be one of the two medical assessors if they possess the appropriate expertise or another practitioner;
- all written and oral requests for MAID and a summary of the discussion;
- confirmation that the two MAs have discussed and determined which MA will prescribe and/or administer the substance used for MAID;
- confirmation that after the completion of all documentation that the patient was offered the opportunity to rescind the request;
- confirmation by the assessor-prescriber that all the requirements have been met including the steps taken and the substance prescribed.

STEP 7- Reporting MAID

For the purpose of oversight or monitoring of MAID, there are specific requirements and timeframes established by the Federal Government for reporting MAID information. In the Yukon, practitioners and pharmacists report directly to Health Canada through the federal online Portal or through paper forms.

The federal requirements may change from time to time and the physician providing MAID is required to be aware of current reporting requirements as laid out in the Criminal Code (Canada) and the federal Regulations of the Monitoring of Medical Assistance in Dying.

These regulations will be amended to collect new and revised information resulting from the new law, however the amendment process is expected to take up to the year 2023 to revise and to come into force. In the interim, practitioners are advised to continue to report as usual but to be aware of and follow the revised Federal Guidance for Reporting Summary that accommodate recent changes to the legislation. These Guidelines are provided as an appendix to this Standard and may be found on the Health Canada link below.

Important Links:

Health Canada:

- <https://www.canada.ca/en/health-canada/services/medical-assistance-dying/guidance-reporting-summary.html>
- <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>

Department of Justice:

- <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html>

4. Forms

The following forms are not mandatory, however, they are in place to assist assessor-prescribers and secondary assessors in ensuring compliance with legislation and regulations, as well as the federal reporting requirements. The patient request form is available for use by patients when seeking MAID, however it is not mandatory. Forms may be added or amended from time to time and physicians providing MAID are responsible for maintaining currency with changes in forms, legislation, regulations and standards. The following forms can be found on the Yukon Medical Council Website for reference under Forms: <http://www.yukonmedicalcouncil.ca/forms.html>

- 1) Patient Request for Medical Assistance in Dying;
- 2) Most Responsible Practitioner Record for Medical Assistance in Dying: Eligibility Assessment;
- 3) Secondary Assessor Record for Medical Assistance in Dying;
- 4) Most Responsible Medical Practitioner Record for Medical Assistance in Dying: Patient Safeguards and Administration.

1. Relevant YMC Standards of Practice

- Records Content: http://yukonmedicalcouncil.ca/pdfs/Records_Content.pdf
- Collaboration in Patient Care: http://yukonmedicalcouncil.ca/pdfs/Collaboration_in_Patient_Care.pdf
- Assessing the Mental Capacity of a Patient: [http://yukonmedicalcouncil.ca/pdfs/Assessing_the_Mental_Capacity_of_a_Patient.pdf](#)

STANDARD OF PRACTICE

Medical Assistance in Dying (MAID)

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Medical Practice

http://yukonmedicalcouncil.ca/pdfs/Assessing_Mental_Capacity_of_Patient.pdf

- Moral or Religious Beliefs Affecting Medical Care: http://yukonmedicalcouncil.ca/pdfs/Moral_or_Religious_Beliefs_Affecting_Medical_Care.pdf
- Informed Consent: http://yukonmedicalcouncil.ca/pdfs/Informed_Consent.pdf

2. Standard of Practice History

Version	Description	YMC Meeting Minute Approval	In Force Date
Original	Creation of policy	16-5-2.4	July 15, 2016
Revision 1		17-1-2.5	January 20, 2017
Revision 2		n/a	September 22, 2017
Revision 3	The inclusion of Federal reporting requirements	18-08-2.2	November 16, 2018
Revision 4	Amendments re new 2021 legislation		May 21, 2021

Appendix A

Guidance on Federal reporting on MAID:

For practitioners reporting directly to Health Canada through the federal online Portal or through paper forms, we are providing the additional guidance below:

When completing federal reporting forms for MAID, or using the online federal MAID Data Collection Portal, there are currently some questions that are no longer applicable or that are inconsistent with the new law. Until the required changes are made to the federal Portal and forms, medical and nurse practitioners and pharmacists are asked to follow these instructions when completing the federal forms (online or paper format):

Under Section 3: Eligibility Criteria and Related Information:

Practitioners are encouraged to continue to respond to the question "Had the patient's natural death become reasonably foreseeable, taking into account all of their medical circumstances". Reason: While a person's natural death being reasonably foreseeable is no longer an eligibility criterion for MAID, Health Canada will continue to collect responses to this question as an interim data point indicating which track of safeguards a patient would fall under (i.e. safeguards designated for persons whose deaths are reasonably foreseeable and those whose deaths are not reasonably foreseeable).

Note: The new safeguards for persons who have requested MAID and whose deaths are not reasonably foreseeable will not be captured in the federal forms or online questionnaire until the new regulations come into force. However, as a matter of good medical practice and alignment with the new MAID law, practitioners should document in the patient's record (or as instructed by provincial/territorial ministries of health or regulatory bodies) how these new safeguards were satisfied.

Under Section 4: Procedural Requirements - Providing MAID:

Practitioners must now confirm that one (1) independent witness has signed/dated the patient's official request for MAID. The current form incorrectly specifies (2) independent witnesses. Practitioners should check this requirement if they met the one witness requirement. Reason: The requirement for two witnesses has been reduced to one witness in the new MAID law.

STANDARD OF PRACTICE

Medical Assistance in Dying (MAID)

YMCS-3.6

Medical Practice

Practitioners are no longer required to respond to the question "They ensured there were at least 10 clear days between the day on which the request was signed by or on behalf of the patient and the day on which MAID was provided." This question, as well as the follow up question regarding the reason for shortening the 10 days, should be left blank (paper submission) or skipped (electronic submission). (Note: The online questionnaire will allow you to skip the follow up question if you press "Next" after receiving the "Attention" pop up box) Reason: The 10-day reflection period is no longer a procedural safeguard in the new MAID law.