

Practice Advisory for Registrants Involved in Medical Assistance in Dying (MAiD) Assessments:

Guidance on What Is and Is Not Permissible in Work with Clients

The Canadian government amended the Criminal Code in June 2016, through Bill C-14, to allow for Medical Assistance in Dying (MAiD). As outlined in the preamble of this legislation, its objectives include the need to:

- Recognize the autonomy of individuals with grievous and irremediable medical conditions which create enduring and intolerable suffering,
- Recognize that significant safeguards which reflect the irrevocable nature of death are essential in order to prevent error and abuse in providing MAiD,
- Protect vulnerable persons from being induced to end their lives, and
- Recognize that consistency across provinces in approaches to MAiD are preferable, while at the same time acknowledging provincial autonomy over a number of matters related to MAiD (e.g. regulation of healthcare professionals).

A number of provinces have provided their psychology registrants with guidance in this matter and the following practice advisory, as approved by PAM Executive Council, is based on those advisories currently published in Saskatchewan, Ontario, and British Columbia. Permission has been obtained from those jurisdictions to borrow from their advisories. Please note that it is not the position of PAM, nor its mandate, to either adopt a position on MAiD or engage in a debate over the morals of medically assisted dying. PAM does not provide direct legal advice to its registrants and if after reading this practice advisory, you continue to have concerns or confusion around the issues described herein, or your role with a client who is expressing a desire to end their life through MAiD, we suggest you consult individual legal counsel for assistance. The following advisory is intended solely to highlight a number of issues for your consideration and to ensure that you have undertaken a thorough review of these matters prior to engaging in discussions on MAiD with any of your clients.

It is important to note that the MAiD legislation applies to those individuals who are facing intolerable suffering due to an irremediable medical condition. At this time, suffering experienced as a result of mental illness or a mental health condition is not covered under the MAiD legislation. The term MAiD describes both “voluntary euthanasia” and “assisted suicide”. In regards to the former, this involves a qualified medical practitioner or nurse practitioner administering medication to a patient who is eligible for, and freely consents to MAiD. The latter refers to the provision of medication by a qualified medical practitioner or nurse practitioner to an individual who is eligible for, and freely consents to MAiD, which the patient then uses to end his or her own life. Only circumstances outlined within the MAiD legislation are exempt from criminal prosecution under the criminal code and only medical practitioners (physicians) or nurse practitioners are exempted under the legislation to provide MAiD services. It continues to remain a crime under the criminal code to assist someone to commit suicide or to counsel them to commit suicide.

Psychologists are likely to encounter the Medical Assistance in Dying issue in one of two ways:

- (1) Being requested to perform an assessment to assist in determining a client’s competence to accept MAiD
- (2) The issue of assisted death being raised by clients within the context of other clinical work

Assisting Directly in MAiD Process: MAiD Competency Assessments

Bill C-14 is an amendment to the Canadian Criminal Code that provides an indemnification (i.e., an exemption from prosecution) for assisting in the death of another person occurring in a process that is in accordance with the Act. Physicians and nurse practitioners are provided with this exemption. Additionally, there is provision in the legislation for indemnification from prosecution for those allied health professionals (e.g., psychologists) who are engaged by qualified physicians or nurse practitioners to assist in the provision of MAiD. This is stated in the following section:

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.

It is thus important to understand that in order to be indemnified against prosecution for directly participating in the MAiD procedures, a psychologist must be engaged by a qualified medical practitioner or nurse practitioner. Psychologists can potentially be asked to assist in the determination of patient capacity to make end-of-life decisions and to establish freedom from duress in making such a decision. It is within this context that PAM Council anticipates its registrants will most likely become involved in the MAiD process.

Should a PAM registrant become engaged by a qualified medical or nurse practitioner to undertake an assessment of a client as to their capacity to make MAiD – related decisions, it is strongly recommended that the following points be considered in their entirety, prior to engaging in such an activity.

First and foremost, registrants should ensure that they have the required competence to perform an assessment of capacity. Members should ensure that they understand current MAiD legislation and that in the process, informed consent for a MAiD related assessment is obtained from the client. This informed consent should include the following:

- a clear explanation of the role of the psychologist,
- a clear explanation of the assessment process,
- disclosure regarding risk of harm to the client related to the unique situation of the MAiD legislation, and,
- an explanation of the limits of confidentiality unique to this situation. In regards to this last point it is important that clients understand that collateral information may need to be obtained in order to determine an individual's capacity to make end-of-life decisions, and all parties who will be consulted for collateral information and who will have access to the results of the assessment must be included within the informed consent process.

It is essential that clients understand how assessment results will be used by the medical professionals charged with making decisions around a patient's eligibility for MAiD.

In completing the capacity assessment the following represent necessary but not necessarily sufficient domains to be examined:

- assessing for the presence of any cognitive impairment,
- assessing for the presence of mood states which could influence an individual's ability to make judgments, and
- the ability to reason and make decisions on an individual's medical situation.

All of the above is intended to determine whether or not the individual understands their illness, the purpose of their request, can meaningfully review options for treatment, can evaluate risks and benefits of receiving and refusing treatment, and can evaluate consequences and risks regarding all decisions relevant to this assessment.

Core issues to be determined in a MAiD capacity assessment include:

- an individual's competence to give informed consent for MAiD,
- an individual's ability to make independent healthcare decisions, and
- an individual's ability to request MAiD of his or her own free will.

Finally, it is important for any such assessment to:

- be based on appropriate and unbiased assessment techniques,
- ensure that the assessor is mindful of the possible fluctuation in an individual's ability to consent,
- confirm the medical facts around an individual's condition and care, include consultation with medical personnel (as appropriate) to ensure that the psychologist understands an individual's medical condition and treatment options,
- weigh any external forces or conflicts which can be influencing MAiD decision-making, and
- to appropriately identify any limitations to opinions rendered in such an assessment.

Clients seeking information regarding MAiD or discussion of assisted death

As it is now considered legal to request assisted death under certain defined circumstances, and given that a majority of Canadians support this provision, discussions on the issue might be expected to be raised by patients within the context of a psychotherapeutic relationship. Section 5.1 of Bill C-14 is relevant to this situation, is the only section of Bill C-14 to specify psychology practitioners, and provides the following indemnification:

Clarification (5.1) For greater certainty, 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.

Thus Bill C-14 anticipates that patients might raise this issue and seek information, and thus the normal process of a psychotherapeutic discussion with patients would not appear to be unduly restricted by this Act.

However, one needs to be extremely careful in the manner in which one responds to patients wishing to discuss MAiD, and how one documents that discussion. The basis for this caution is that it remains a criminal offence to "counsel" a person towards committing 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

Psychologists are cautioned to not encourage or persuade patients in any manner to seek this procedure, as to do so may be construed as counselling a patient to commit suicide. Therefore psychologists should not, and legally cannot, initiate a discussion with a patient as to whether or not MAiD may be a reasonable alternative for them. In general then psychologists who initiate MAiD discussions are not clearly indemnified from prosecution.

Personal comfort of the psychologist

It is important to recognize that not all registrants will be comfortable discussing these issues with their clients and some, as a matter of conscience, may not wish to become involved in discussions with their clients on MAiD when so engaged by a medical practitioner or nurse practitioner, or by the patient (for example in the context of a pre-existing psychotherapeutic relationship). In such circumstances registrants are permitted to discontinue providing services to their client, provided they terminate such services in accordance with procedures outlined in Section 5 of the PAM code of conduct.

Adopted by PAM Council: October 11, 2017