



# MEDICAL ASSISTANCE IN DYING IN CANADA:

*IMPLICATIONS FOR PEOPLE WITH MENTAL ILLNESS*

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MEDICAL ASSISTANCE IN DYING – IMPLICATIONS  
FOR PATIENTS WITH MENTAL ILLNESS  
DR. BEN MCCUTCHEN  
DAY IN PSYCHIATRY 2018

**Declaration of Conflict of Interest:**

**I DO NOT** have any affiliation (financial or otherwise) with any for-profit or not-for-profit organizations.

I have received an honorarium for this presentation from the Grand River Hospital Foundation.

**I DO NOT INTEND** to make therapeutic recommendations for medications that have not received regulatory approval

# MEDICAL ASSISTANCE IN DYING – IMPLICATIONS FOR PATIENTS WITH MENTAL ILLNESS

DR. BEN MCCUTCHEN  
DAY IN PSYCHIATRY 2018

This 2018 Day in Psychiatry educational event has received unrestricted educational grants from the following organizations:

- Lundbeck
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- Janssen
- Purdue
- Shire
- Sunovion
- The KW Pharmacy
- HLS Therapeutics

MEDICAL ASSISTANCE IN DYING – IMPLICATIONS  
FOR PATIENTS WITH MENTAL ILLNESS  
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Mitigating Potential Conflicts of Interest:  
**Not applicable**

## **Learning Goals**

Understand the historical context of MAID in Canada

Appreciate how current MAID legislation applies to patients with mental illness

Review consent and capacity assessment

Apply issues related to consent and capacity to MAID assessments

Discuss future directions for MAID in Canada, including advanced care requests

Review resources that will assist practitioners who have received a MAID request

[1] It is a crime in Canada to assist another person in ending her own life. As a result, people who are grievously and irremediably ill cannot seek a physician's assistance in dying and may be condemned to a life of severe and intolerable suffering. A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel.

Carter v. Canada (Attorney General), 2015 SCC 5

## WORKSHOP CASE #1A

- Sarah is a 45-year-old single woman with a 12-year history of a severe anorexia nervosa. She was recently admitted to hospital because of rapidly decreasing weight, which is approaching a dangerously low level at 69 pounds. Sarah has had at least 7 admissions in the past 5 years, and she was force-fed on 1 occasion in the ICU. Her treating physician feels that all therapies have failed, and there are no additional treatment options for her anorexia beyond the care plan that she is currently receiving. She expresses that she would be better off dead.
- A psychiatric assessment did not reveal any other psychiatric illnesses, either current or present. She refuses to be force fed, claiming that it had been a very degrading experience and violated her basic values and beliefs. She emphatically says that she is suffering intolerably and requests assisted dying. She has been deemed capable to make decisions about MAID.

## MCQ

- Based on what you currently know about Medical Assistance in Dying (MAID) in Canada, do you think Sarah would be a eligible for MAID?
- A. Yes
- B. No



## HIPPOCRATIC OATH

“With regard to healing the sick, I will devise and order for them the best diet, according to my judgment and means; and I will take care that they suffer no hurt or damage. Nor shall any man’s entreaty prevail upon me to administer poison to anyone”



## THE DEBATE

- Autonomy vs Nonmaleficence
- Subjective vs External
- Patient rights vs Provider rights
- Assisted dying due to illness vs Right to die
- Suicide prevention vs Assisted dying



PS OF CHANGE

2016: *E.F.*  
*V. CANADA*

2012 - 2015:  
*CARTER V.*  
*CANADA*

1993: *RODRIGUEZ*  
*V. BRITISH*  
*COLUMBIA (AG)*

2: SUICIDE  
GALIZED

Canadian: Criminal Code, R.S.C. c. C-46 s. 745  
Rodriguez v. British Columbia (AG), [1993] 3 S  
Canada (AG) v E.F., 2016 ABCA 155  
Carter v. Canada (AG), 2015 SCC 5

## CHAPTER 1: SUE RODRIGUEZ



"If I cannot give consent to my own death, whose body is this? Who owns my life?"

- Sue Rodriguez

## CHAPTER 2: GLORIA TAYLOR & KAY CARTER



Gloria Taylor

[56] “I am dying. I do not want to, but I am going to die; that is a fact. I can accept death because I recognize it as a part of life. What I fear is a death that negates, as opposed to concludes, my life. I do not want to die slowly, piece by piece. I do not want to waste away unconscious in a hospital bed. I do not want to die wracked with pain. It is very important to me that my family, and my granddaughter in particular, have final memories that capture me as I really am – not as someone I cannot identify with and have no desire to become.”

- Gloria Taylor, statement in *Carter v. Canada* 2012 BCSC 886



Kay Carter

# HISTORY OF PHYSICIAN ASSISTED DYING IN CANADA

QUEBEC



2009 - Debate on euthanasia sparked by position paper / citizen polls

2012 - Select Committee on Dying with Dignity

June 5 2014  
S-208 "End of Life" Bill

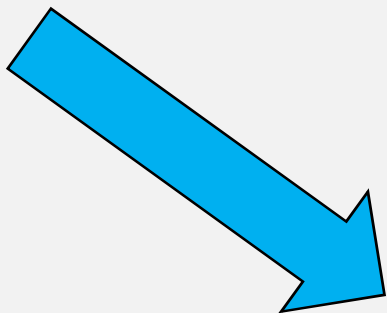
Feb 6 2015 Supreme Court ruling Carter v. Canada + 12-month Suspension of Declaration of Invalidity

Oct 19 2015  
Canadian Election

Nov 2015 Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying

Feb 2016 Report of the Special Joint Committee on Physician-Assisted Dying

Feb 6 2016 Extension of Suspension of Declaration of Invalidity



Lifts prohibition on “physician assisted suicide” for “**a competent adult person who 1) clearly consents to the termination of life; and 2) a grievous and irremediable medical condition (including an illness, disease, or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.**” “Irremediable” it should be added, does not require the patient to undertake treatments that are not acceptable to the patient.

Carter v. Canada (Attorney General)

## WORKSHOP CASE #2B

Linda is 58 year old woman in your family practice who endures chronic and intolerable suffering as a result of a pain disorder. Despite an exhaustive workup over the course of several years by several specialists, her symptoms are medically unexplained. She has involuntary muscle spasms, causing severe and constant pain and migraines. Her eyelids have started to spasm shut, rendering her blind; She has ineffective digestion and often going days without eating. She has objective findings of weight loss and loss of muscle mass. Over the past year she has become non-ambulatory and needs to be carried or use a wheelchair. She describes her quality of life as “non-existent” and presents to you office, requesting MAID.

Based on what you currently know about Medical Assistance in Dying (MAID) in Canada, do you think Linda would be a eligible for MAID?

- A. Yes
- B. No

## WORKSHOP CASE #2B

You are concerned about referring Linda to a MAID provider, but given her ongoing physical and psychological suffering, you refer her to psychiatrist. The psychiatrist finds that Linda is neither depressed nor suicidal, and suggests no concerns about her capacity to make complex decisions related to her ongoing treatment. The psychiatrist reviews the available medical history and laboratory investigations, and diagnoses Linda with Functional Neurological Disorder / Conversion Disorder.

Based on what you currently know about Medical Assistance in Dying (MAID) in Canada, do you think Linda would be eligible for MAID?

- A. Yes
- B. No



## CHAPTER 3: THE CASE OF E.F.

E.F. was a 58-year-old woman with severe conversion disorder that led to impairment in function and non-existent quality-of-life

Not suicidal nor depressed. Mentally competent and voluntarily consenting with supportive family, but “simply exhausted after years of suffering indescribable pain”

submitted an application for MAID and was granted the application by a motions judge in May 2016. However, this decision was appealed by the Government of Canada. Two questions raised on appeal:

**Is MAID available to those who are not terminally ill?**

**Is MAID available to those whose medical condition is psychiatric in nature?**



## RELEASE OF BILL C-14: AMENDMENT TO CRIMINAL CODE

- Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, received assent on June 17, 2016.
- 241.2 (1) A person may receive MAID only if they meet all 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 MAID after having been informed of the means that are available to receive their suffering, including palliative care

# C-14: IMPLICATIONS FOR PATIENTS WITH MENTAL ILLNESS

can have a grievous and irremediable medical condition only if they meet

“This is a cynical misinformed and unconstitutional piece of legislation that condemns many patients to lives of unbearable suffering and cruelty”

-BC Civil Liberties Association

and incurable illness, disease or disability

**on disorder, OCD, anorexia, schizophrenia?**

and state of irreversible decline in capability

**various mental illnesses, or**

disease or disability or that  
significant psychological suffering that is  
relieved under conditions that they consider

**Schizophrenia, PTSD, severe depression**

d) their natural death has become reasonably  
their medical circumstances, without a prognosis  
the specific length of time that they have remaining

**Anorexia, malnutrition in frail and elderly, metabolic syndrome**

“law failed to include essential safeguards such as a requisite role for palliative care” and  
“vulnerability assessment to rule out coercion, inducement and abuse”

-Euthanasia Prevention Coalition

## WORKSHOP CASE #1B

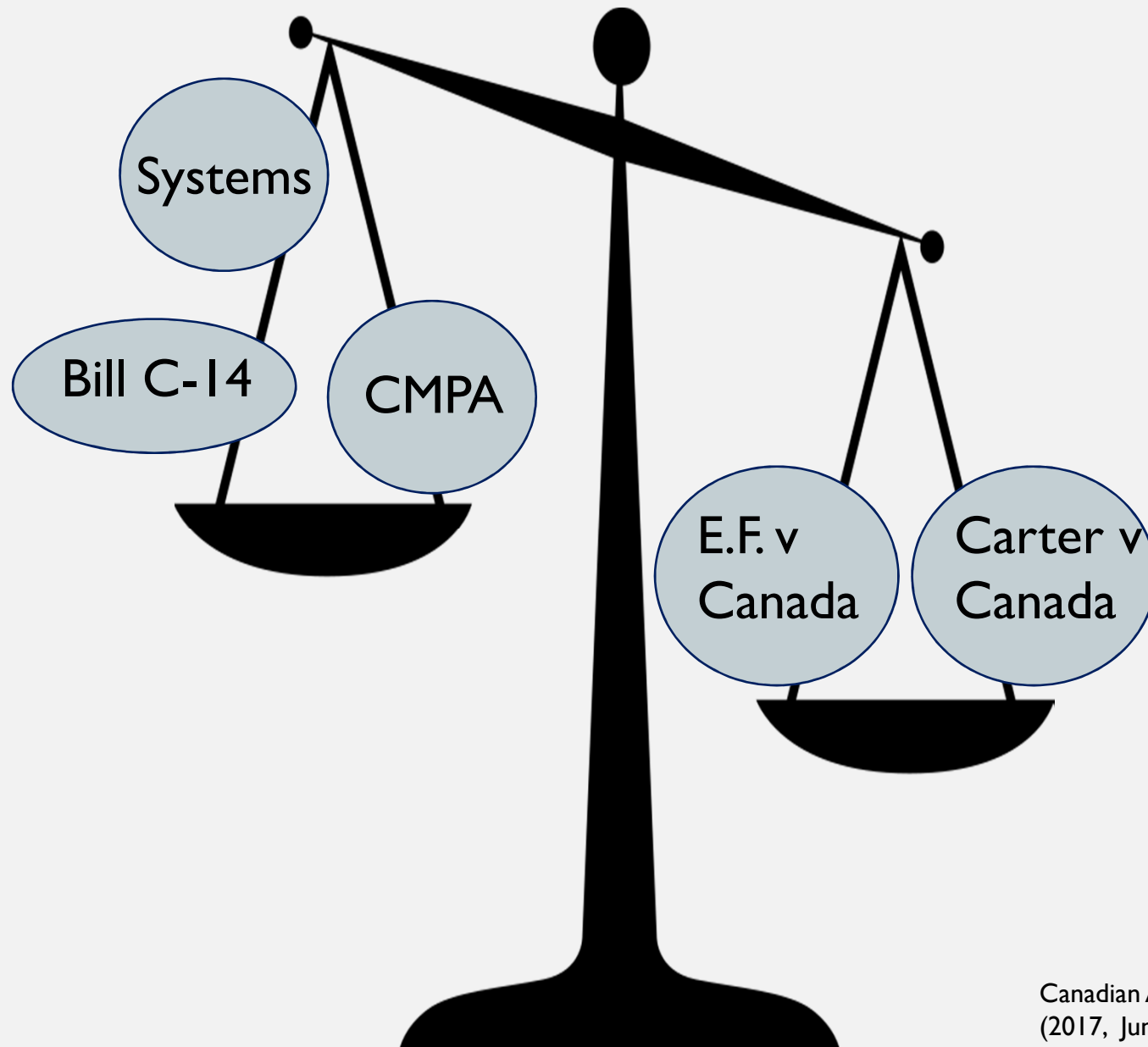
- Sarah is a 45-year-old single woman with a 12-year history of a severe anorexia nervosa. She was recently admitted to hospital because of rapidly decreasing weight, which is approaching a dangerously low level at 69 pounds. Sarah has had at least 7 admissions in the past 5 years, and she was force-fed on 1 occasion in the ICU. Her treating physician feels that all therapies have failed, and there are no additional treatment options for her anorexia beyond the care plan that she is currently receiving. She expresses that she would be better off dead.
- A psychiatric assessment did not reveal any other psychiatric illnesses, either current or present. She refuses to be force fed, claiming that it had been a very degrading experience and violated her basic values and beliefs. She emphatically says that she is suffering intolerably and requests assisted dying.

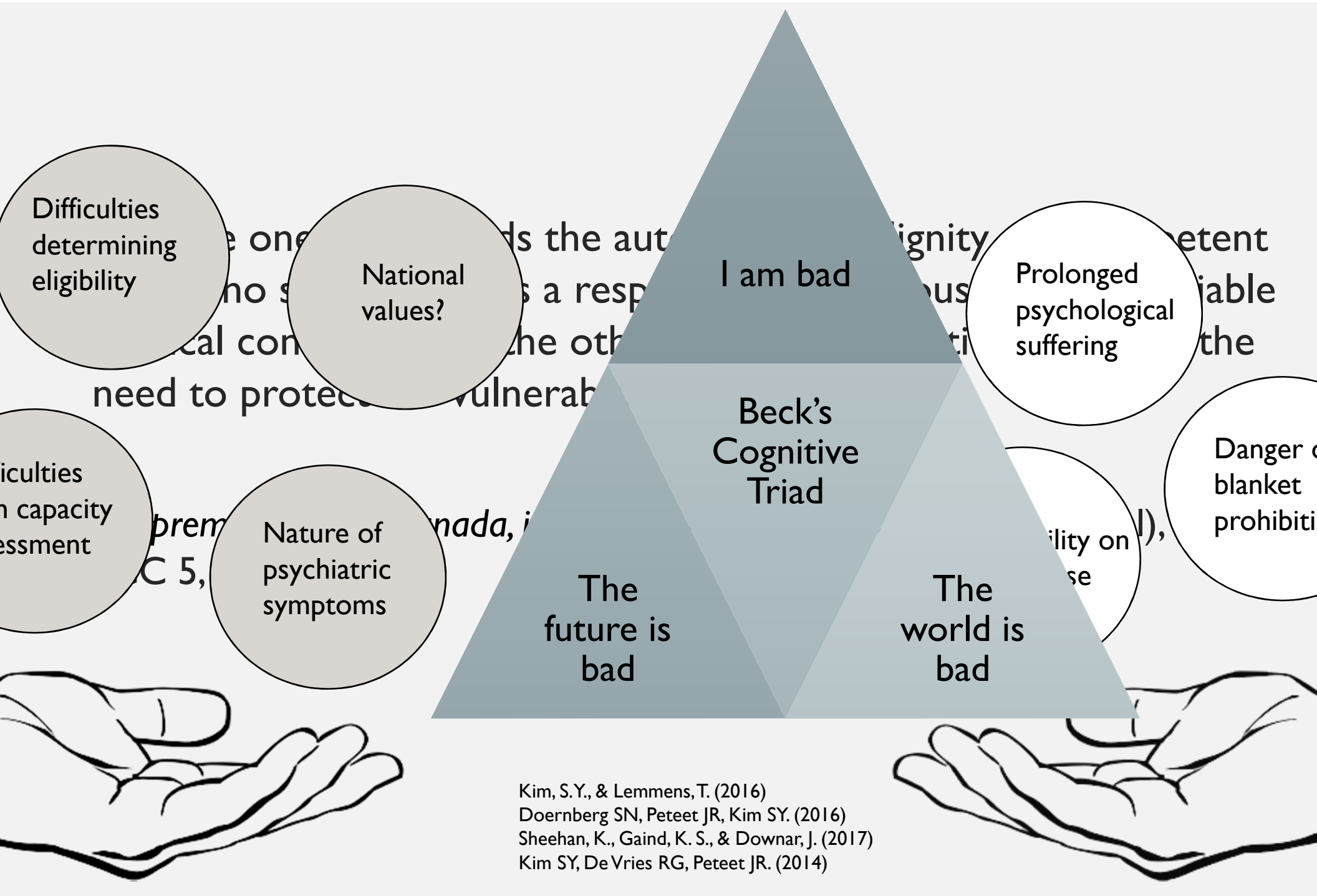
Based on what you currently know about Medical Assistance in Dying (MAID) in Canada, do you think Sarah would be eligible for MAID?

- A. Yes
- B. No

## MAID - Eligibility

- **Who is eligible?**
  - Restricted to mentally competent adults who have serious and incurable illness, disease or disability
  - Excludes mature minors and the mentally ill
  - Does not allow for advanced consent for patients with degenerative disorders
  - Only applicable to Canadian citizens
  - Limited to those who are 'suffering intolerably' and whose death is 'reasonably foreseeable'





Kim, S.Y., & Lemmens, T. (2016)  
Doernberg SN, Peteet JR, Kim SY. (2016)  
Sheehan, K., Gaid, K. S., & Downar, J. (2017)  
Kim SY, De Vries RG, Peteet JR. (2014)

## WORKSHOP CASE #3A

- John is a 45 year old man with schizophrenia, maintained on risperidone for the past twenty years, and prior to that, stelazine. He has severe tardive dyskinesia which impairs his speech. At baseline, he has some persistent negative symptoms, making it difficult for him to maintain any significant relationships outside of his immediate family. He does not have residual hallucinations or delusions, but did have these symptoms with his initial episode twenty years ago. He has worked a fulltime job at a factory for the past twenty years. He smokes 1 pack of cigarettes per day and has done this for the past 40 years. Two years ago, he was diagnosed with stage IV small cell lung cancer and has had courses of chemotherapy and radiation, unsuccessful in terms of efficacy and tolerability. He is given a prognosis of less than 3 months.

Based on what you currently know about Medical Assistance in Dying (MAID) in Canada, do you think John would be a eligible for MAID?

- A. Yes
- B. No



## MCQ CASE 3B

- Would you feel confident completing a capacity assessment on John, related to his decision to have Medical Assistance in Dying?
- A. Yes
- B. No

# A REFRESHER ON CONSENT

## Regulation:

Health Care Consent Act  
1996

Mental Health Act, 1990

Institute Decisions Act 1992

## Important?

Valid consent for treatment,  
except in emergencies

Consent may be express or  
implied

## The following are the elements required for consent to treatment:

- 1. The consent must relate to the treatment.
- 2. The consent must be informed.
- 3. The consent must be given voluntarily.
- 4. The consent must not be obtained through misrepresentation or fraud.

## Informed consent involves

- 1. The nature of the treatment.
- 2. The expected benefits of the treatment.
- 3. The material risks of the treatment.
- 4. The material side effects of the treatment.
- 5. Alternative courses of action.
- 6. The likely consequences of not having the treatment.

# A REFRESHER ON CAPACITY

**Signs of Incapacity:** coma, unconsciousness, stroke, depression, psychosis, substance use, intellectual disability

**Capacity is:**

**General specific:** can be incapable with respect to some decisions and capable with respect to others.

**Treatment specific:** A person can be incapable with respect to a treatment at one time and capable at another time.

Capacity can **return**

Capacity is **determined by prescriber**

Capacity can be **presumed**

A person is capable of consenting to a treatment if the person is able to: **“understand”** the information that is relevant to making a decision about the treatment, and

A person is capable of consenting to a treatment if the person is able to: **“appreciate”** the reasonably foreseeable consequences of a decision or lack of decision.

What is your understanding of your condition?  
What is your understanding of the risks and benefits of this treatment?  
What could happen if this treatment is not given?

Do you believe you have a condition?  
Do you believe that this treatment could either benefit or harm you?  
What could happen to you with or without treatment?

## act as a **SDM**?

h must obtain consent  
h ranked eligible  
ified in the hierarchy:

of the person (under the  
*Decision Act*.

s Personal Care

ointed by the  
ity Board

ent

th right of access

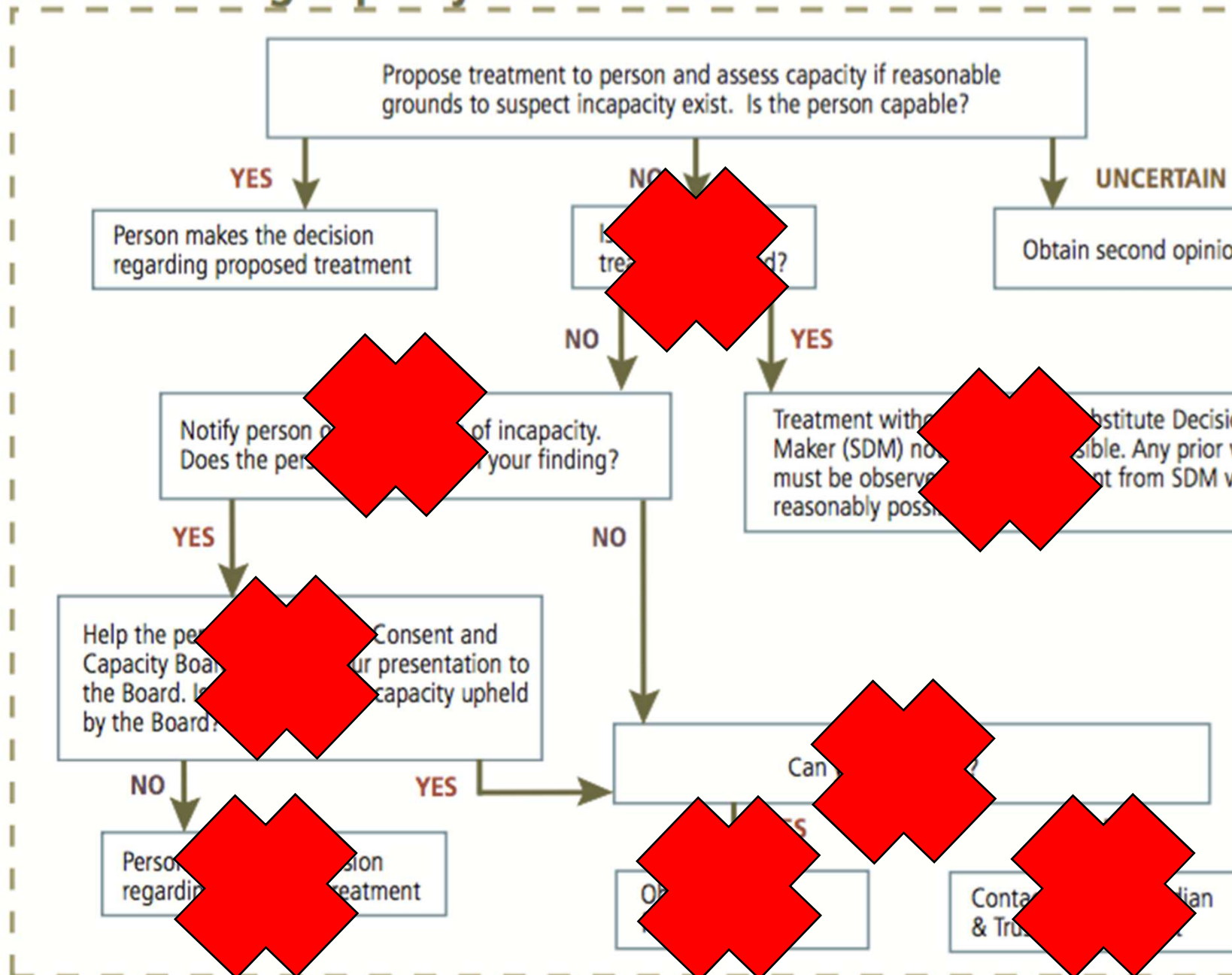
r relative (related by  
rriage or adoption)

## **SDM Responsibilities?**

hierarchy

individuals prior  
ishes or in the best  
of the individual

## Determining Capacity to Consent



Atypical  
medical  
intervention

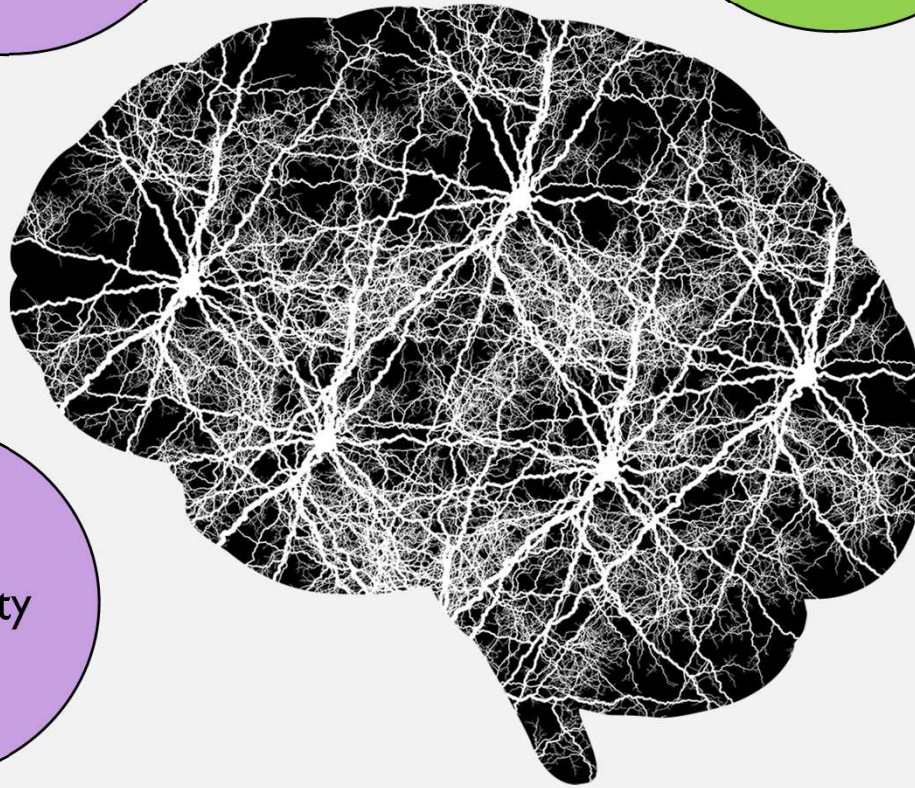
Lack of  
consistency for  
mature minors

Lack of gold  
standard for  
capacity  
assessment

Blanket  
prohibition for  
mental illness

Difficulties  
with capacity  
assessment

Problematic  
for advanced  
care  
requests



## CHALLENGES WITH CONSENT AND CAPACITY IN MAID

## WORKSHOP CASE #4

- Ali is a 79 year old man with advanced and incurable osteoarthritis. He is experiencing enduring and intolerable suffering and requests MAID. He has a twenty year history of depression, currently in partial remission, and treated with an antidepressant. You assess his condition to assess whether he meets all of the eligibility criteria set out in Bill C14.

Based on what you currently know about Medical Assistance in Dying (MAID) in Canada, do you think Ali would be eligible for MAID?

- A. Yes
- B. No, because of his history of depression
- C. No, because his death is not foreseeable



Canadian Mental Health  
Association's  
Position Paper on  
**Medical Assistance in  
Dying (MAiD)**

AUGUST 2017

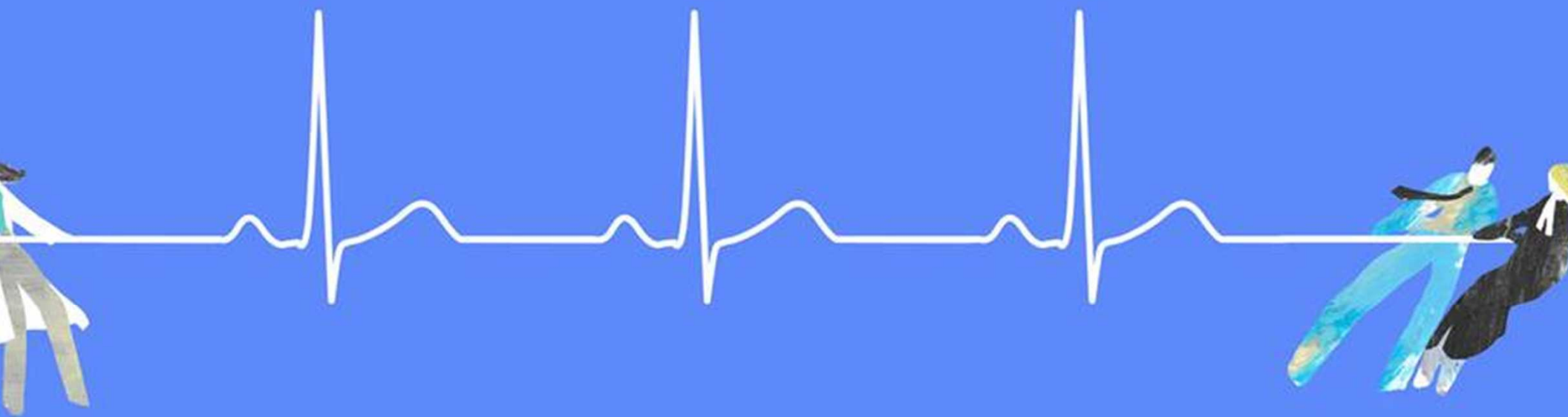


Canadian Psychiatric Association  
Association des psychiatres du Canada

Task Force on  
Medical Assistance in Dying

**2016**

**MEMBER SURVEY RESULTS**



**camh**

Centre for Addiction and Mental Health

**Policy Advice on Medical Assistance in Dying and Mental Illness  
October 2017**

# Office of the Chief Coroner/Ontario Forensic Pathology Service

## MAiD Data

Total number of medically assisted deaths in Canada between December 10, 2015 and June 30, 2017 = 2149

Statistics as of May 31, 2017:

- **Total number of cases completed in Ontario:** 481
- **Type:**
  - **Physician-administered:** 480
  - **Patient-administered:** 1 \*
- **Underlying conditions:**
  - **Cancer-Related:** 317
  - **ALS:** 37
  - **Other Neurological:** 40
  - **CV/Resp:** 52
  - **Other:** 35
- **Sex:**
  - **Female:** 226
  - **Male:** 255
- **Age:**
  - **Average Age:** 73
  - **Youngest:** 27
  - **Oldest:** 101
- **Setting of death:**
  - **Hospital:** 267
  - **Private Residence:** 172
  - **LTC Facility/Nursing Home:** 26
  - **Retirement Home/Seniors Residence:** 16







THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

## CPSO: LESSONS LEARNED

- <http://www.cpso.on.ca/Policies-Publications/Policy/Medical-Assistance-in-Dying>
- Info on
  - Determining eligibility
  - Record keeping (Patient Request Form, Physician Provider Form, Second Physician Form)
  - Office of Coroner
  - Witnesses to the Patient's Request
  - Reflection Period
  - Drug Protocol (CPSO members only)

# CANADIAN MEDICAL ASSOCIATION: MAID COURSE



Me Groups

## Medical assistance in dying (English, online, self-led)

(ID: 00002166)

**Course description :** *Learn about end-of-life care and medical assistance in dying.*

**TYPE:** Online, self-led

**DURATION:** 1.5 hours

[Find out more about this course.](#)

### ABOUT THIS COURSE

This foundational online course will provide you with the information yo ...

[more...](#)

- Introduction to MAID
- Consent and Capacity Assessment in MAID
- Procedural Issues
- Advanced Issues
- Speakers include MAID providers, CMAA lawyers, ethicists

# CENTRE FOR EXCELLENCE REPORT

- <https://thewellhealth.ca/maid/>

2:

## Step 2: Patient Eligibility Assessment for MAID

Patient meets ALL eligibility criteria

Patient completes signed formal request and dated by two independent assessors

Assessment period begins:

Independent Second Clinician conducts a separate assessment of patient eligibility for MAID

Clinician conducts patient eligibility assessment for MAID

Eligibility Criteria: 1,2,3,4

- ☐ Is at least 18 years of age
- ☐ Is capable of making decisions with respect to their health
- ☐ Has a grievous and irremediable medical condition
- ☐ Has made the request voluntarily (not due to external pressure)
- ☐ Has provided informed consent to receive MAID, after having been apprised of alternate care options that are available to alleviate their suffering, including palliative care
- ☐ Is eligible for publicly funded health care services in Canada

Patient does not meet eligibility criteria

Communicate ineligibility to patient and inform the patient of their right to consult a different Clinician to obtain another eligibility assessment

Patient meets ALL eligibility criteria

Clinician develops plan for the administration of MAID, in consultation with the patient, family/caregivers (with consent), and other members of the care team (including the pharmacist)

Designated facilities under the Trillium Gift of Life Network (TGLN) Act notify TGLN of patient's request for MAID when patient's death is imminent by reason of injury or disease

## Step-by-Step Approach

- 1. Patient Information
- 2. Assessment of Patient Eligibility
- 3. Provision of MAID
- 4. Documentation Checklist
- 5. Supporting Material and References

## **HOW TO GET HELP IN FINDING A DOCTOR OR NURSE PRACTITIONER WHO CAN PROVIDE MEDICAL ASSISTANCE IN DYING**

If you do not have access to a doctor or nurse practitioner willing to provide medical assistance in dying, you (or a family member or caregiver) can request a referral for medical assistance in dying through a care coordination service which can be reached toll-free at: 1-866-286-4022.

The care coordination service is available Monday to Friday 9am – 5pm EST in English and French (translations for other languages can also be requested). TTY services are also available at 416-953-3350. Starting September 1st, 2017 information resources will be available 24/7.

You can also contact the care coordination service for additional information and questions about requesting end-of-life care in Ontario, including palliative care resources.



On February 6, 2015, the Supreme Court of Canada struck down the ban on medical assistance in dying (MAID) for patients meeting specific eligibility requirements. The Court held that the ban deprived people suffering from grievous and irremediable medical conditions of the right to life, liberty and security of the person. On June 17, 2016, the Federal Parliament of Canada passed Bill C-14, establishing the legislation to regulate the practice of MAID.

### For patients

If you have questions about MAID at UHN, please talk to your care team.

### For staff

MAID is provided at UHN. To ensure patient safety and support our staff members, we have developed this section to help teach you what you need to know about MAID.



*Our video details eligibility criteria for MAID.*

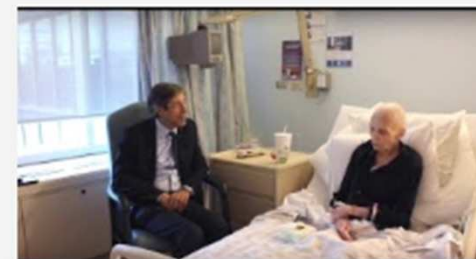


**Forms & Policies**  
(UHN staff only)

### Helpful Resources

- ▶ [MAID eLearning Module](#)
- ▶ [Overview of the MAID Process](#)
- ▶ [Professional Guidelines & Position Statements](#)
- ▶ [Canadian Life and Health Insurance Association](#)
- ▶ [Frequently Asked Questions](#)
- ▶ [Myths About MAID](#)

### MAID in the news



**A patient shares her reasons for choosing MAID**



**Clinical  
Process**



**Assessment  
Process**



**Intervention  
Process**

## REFERENCES:

Quez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519.

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