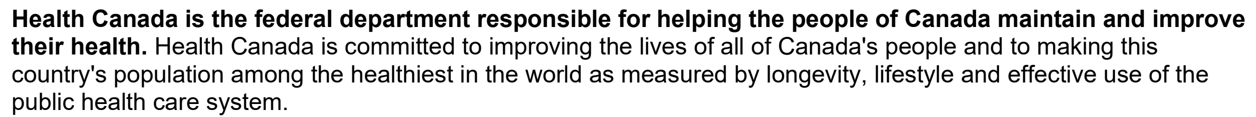
Background Document: The Work of the MAID Practice Standards Task Group



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Introduction

In September 2019, the Superior Court of Québec determined that the medical assistance in dying (MAID) eligibility requirement of reasonably foreseeable natural death (Canada) and end of life (Québec) violated Canada's *Charter of Rights of Freedoms*. Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*, which was passed by Parliament in March 2021, modified Canada's MAID legislation by removing this requirement. This modification permitted persons with serious but non-life-threatening conditions to make requests for MAID (under what has come to be known as 'Track 2' requests). However, the federal government excluded those with mental illnesses from accessing MAID for a period of two years, that is, until March 17, 2023 (subsequently extended until March 17, 2024).

Bill C-7 required the federal Ministers of Justice and Health to create an Expert Panel on MAID and Mental Illness (the Expert Panel) whose role was to recommend 'safeguards, protocols and guidance' to structure the practice of MAID for persons with mental illnesses (the Expert Panel recommended the use of the term 'mental disorder,' which will be employed hereafter).

During its deliberations, the Expert Panel made a number of observations with respect to the existing MAID framework. First, it noted that cases of mental disorder as a sole underlying medical condition (MD-SUMC) bear many clinical similarities when compared with some other cases already permitted under the new 'Track 2' (natural death not reasonably foreseeable) in terms of the types of complex questions raised (e.g., with respect to irremediability). Second, it noted that persons with mental disorders were already accessing MAID provided they had another qualifying condition. These requesters could have had mental disorders that were well-treated or quiescent, or ones that were relatively active. However, this possibility did not necessarily exclude their eligibility but instead had to be taken into consideration during the MAID assessment. Third, the Expert Panel noted that persons with histories of suicidal ideation and suicide attempts and persons who were in situations of structural vulnerability were also already accessing MAID. Again, these factors did not preclude eligibility but had to be given consideration in the process of MAID eligibility assessment.

Based on the above observations, the Expert Panel concluded that it did not make sense to create a unique set of legislated safeguards for cases of MD-SUMC when cases of similar complexity – including requesters who had both mental and physical disorders – were already being handled under the existing system. The Expert Panel also concluded that the concerns highlighted in the debates about MAID for persons with mental disorders were of a clinical nature and what was needed was additional clinical guidance for ***all*** MAID requests that are complex by virtue of raising questions about how to establish incurability and irreversibility, capacity, suicidality, and/or the impacts of structural vulnerability upon the requests themselves, including requests by persons with MD-SUMC.

The Expert Panel recognized several relevant parameters within which it had to formulate its recommendations. First, the responsibility for regulation of clinical practice and the

organization of MAID delivery rests with a variety of actors at provincial and territorial levels: ministries of health, MAID programs, and health professional regulatory authorities. Yet the Expert Panel was appointed by the federal government to provide recommendations to the federal government. The Expert Panel further recognized that there is no single authority that can impose uniformity at the clinical level of MAID practice in Canada. Indeed, uniformity is not necessarily even desirable as it may constrain the flexibility required to respond to the specific needs of individuals and families in local communities.

Therefore, the Expert Panel made recommendations that 'intended to lay out a broad set of principles to structure the practice of MAID MD-SUMC' and recognized that 'their implementation and further elaboration will require concerted action at federal and provincial/territorial levels, as well as actions by regulatory colleges and expert professional bodies.'

Finally, the Expert Panel recognized that there was an appetite amongst professional communities and the public alike for additional obligations on practitioners engaged in MAID practice. It was this last observation that motivated the Expert Panel to turn to the provincial/territorial colleges of physicians and nurses, the bodies that actually have the authority and responsibility to regulate the conduct of practitioners.

Indeed, to facilitate adoption of its 12 recommendations (recommendations 2-13) that concern the clinical practice aspects of MAID, the Expert Panel's first recommendation was that the federal government work in collaboration with its provincial and territorial counterparts to facilitate the development of regulatory standards that would guide physicians and nurse practitioners with respect to the kinds of challenging MAID requests mentioned above.

The Expert Panel made six additional recommendations with respect to the overall functioning of the MAID system that are not directed at practitioners and therefore do not fall under the authority of health professional regulatory bodies.

Bill C-14 and subsequently Bill C-7 also mandated the establishment of a Special Joint Committee of the House and Senate to study a set of issues relating to MAID including 'reviewing the provisions enacted [in the legislation]' (C-14) and 'mental illness' (C-7).[1] In February 2023, this Committee made three recommendations relating to MAID MD-SUMC, the first of which is directly relevant to the work of the MAID Practice Standards Task Group (the Task Group):

> That the Government of Canada, in partnership with provinces and territories, continue to facilitate the collaboration of regulatory authorities, medical practitioners and nurse practitioners to establish standards for medical practitioners and nurse practitioners for

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[1] Bill C-14, *An Act to amend the Criminal Code (medical assistance in dying)* 1st session, 42nd Parliament, 2016; *Bill C-7, An Act to amend the Criminal Code (medical assistance in dying)*, 2nd Session, 43rd Parliament, 2021.

> the purpose of assessing MAID requests, with a view to harmonizing access to MAID across Canada.[2]

The Task Group was convened to support just such a collaboration and it is hoped that physician and nurse regulatory bodies will take up the practice standard documents with a view to harmonizing MAID practice across provinces and territories.

The MAID Practice Standards Task Group

The Task Group was convened by the federal government in partial fulfillment of the Expert Panel's first recommendation.

Its mandate was to create resources that could be used by regulators to operationalize the Expert Panel's guidance with respect to the challenging MAID requests mentioned above. Aware that many of the physician and nurse regulators have existing MAID regulatory standards, it set out to develop a range of resources that could be used by regulators who wished to adapt their existing standard through to regulators who wanted to substantially revise their existing one or adopt an entirely new one. The Task Group focused on resources relevant to the federal MAID legislation.

To fulfill this mandate, Health Canada invited the following six individuals whose professional experience would be relevant to the production and uptake of these resources to make up the Task Group:

- Mona Gupta (Chair) – Psychiatrist and Chair of the federal Expert Panel, Québec
- Jocelyn Downie – Legal Academic, Nova Scotia
- Gus Grant – Registrar of the College of Physicians and Surgeons of Nova Scotia, Nova Scotia
- Willi Kirenko – Nurse Practitioner and MAID Assessor and Provider, Ontario
- Laurel Plewes – Nurse and MAID Program Director, British Columbia
- Lillian Thorpe – Geriatric Psychiatrist and MAID Assessor and Provider, Saskatchewan

The MAID Practice Standards Task Group Process

The Task Group engaged in a three-phase process.

First, it drafted a set of documents, basing their substantive content on the Expert Panel report. These documents operationalized Expert Panel recommendations 2 through 13 and are described below:

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[2] Special Joint Committee on Medical Assistance in Dying, *Medical Assistance in Dying in Canada: Choices for Canadians*, February 2023, 1st Session, 44th Parliament.

1. Comprehensive Illustrative Standard

This was an illustration of what a comprehensive regulatory standard might contain to cover all relevant issues including complex Track 2 cases (including MD-SUMC). This was written to be applicable to MAID assessors and providers who are either physicians or nurse practitioners.

This document was developed in the following manner:

- the Task Group reviewed **all** of the existing practice standards from provincial/territorial colleges of physicians and nurses to determine the subject matter colleges considered important for inclusion in a regulatory standard;
- the Task Group extracted text from the Expert Panel report that would be relevant to regulatory standards for complex Track 2 cases (including MD-SUMC) and included it in the illustrative standard (sometimes edited slightly to fit the style of a regulatory standard);
- the Task Group then derived supplemental text on topics common to all types of MAID requests (Track 1 and Track 2) from the existing standards for physicians and nurse practitioners as well as the language from the *Criminal Code* to provide the content needed for the remainder of a comprehensive standard; and
- the Task Group included headings for all topics that should be covered in a practice standard but intentionally left blank those topics for which the logistics varies by jurisdiction.

2. 'Plug-ins'

This document grouped together the specific segments of text from the comprehensive illustrative standard that operationalized the Expert Panel's recommendations about complex Track 2 cases (including MD-SUMC). At the individual regulator's discretion, some or all of these could be inserted into a regulator's existing MAID regulatory standard to ensure coverage and guidance regarding these types of cases.

3. Illustrative use of plug-ins within existing standards for physicians and nurse practitioners

The Task Group took existing practice standards from the College of Physicians and Surgeons of Manitoba (CPSM) and the Nova Scotia College of Nursing (NSCN) and inserted the plug-ins to **illustrate** how an existing standard could incorporate the plug-ins and thereby operationalize the recommendations of the Expert Panel. These were examples only and were not intended to be used by the CPSM or the NSCN.

4. **Frequently Asked Questions (FAQs)**

The Task Group took content from the Expert Panel report that would be useful for clinicians but was not appropriate for inclusion in a regulatory standard and drafted a set of FAQs that colleges could use to provide supplementary advice to their members. In a few cases, the answers to certain questions were not found in the Report but were consistent with its analysis.

In its second phase, the Task Group solicited feedback on the documents through a 'rapid review process.'

While the documents produced were primarily intended for regulators, the Task Group was aware that regulatory standards shape practice in complementarity with a variety of provincial/territorial and health authority policies, as well as guidance and guidelines from health professional associations. The participants in the rapid review process therefore included all provincial/territorial physician and nurse regulators, provincial/territorial ministries of health, health professional associations, and individual experts engaged in research relating to MAID.

The purpose of the review was to subject the Expert Panel's recommendations in the form of regulatory text to critical review by exactly those authorities with the responsibility for and experience in managing the MAID system across provinces and territories.

The Task Group then convened briefing sessions and asked for feedback on the documents' utility and complementarity with existing jurisdictional policies and guidance. It solicited recommendations for revisions including deletions or additions from all regulatory bodies for physicians and nurses in Canada, members of the MAID clinical and research communities, health professional associations, and provincial/territorial ministries of health.

The interest and participation in the rapid review process by representatives of all of these groups was remarkable. For example, the majority of physician and nurse regulators and provincial/territorial ministries of health provided feedback on the draft documents. The Task Group wishes to express its gratitude for the extensive, thoughtful, and exceptionally helpful advice provided by participants.

The feedback provided important suggestions for revisions that would help to ensure that the Task Group documents were clear, coherent, easily understood by both regulators and practitioners, were tailored to the extant MAID system, and were responsive to the realities of the organization and regulation of Canada's health care system.

Some feedback received through the rapid review process fell outside the scope of a regulatory standard (e.g., suggestions for prospective oversight models). While it could not make recommendations with respect to prospective oversight models, the Task Group believes that it is nonetheless appropriate for it to draw the readers' attention to the following established

oversight/review mechanisms that are already part of the MAID system. Existing **retrospective** oversight mechanisms include: regulatory bodies responding to complaints of non-compliance with the regulatory standards; coroners reviewing MAID deaths (all deaths in some provinces and a subset of deaths in others); the End-of-Life Care Commission in Québec which reviews all MAID deaths in that province; health authorities responding to allegations of non-compliance with policies and procedures; and police responding to allegations of breaches of the *Criminal Code*. Existing **prospective** review mechanisms include: case conferences; consultation with colleagues (one-on-one or via discussion fora (e.g., the Canadian Association of MAID Assessors and Providers and among practitioners in MAID care co-ordination services)); and consultation with the Canadian Medical Protective Association/Canadian Nurses Protective Society.

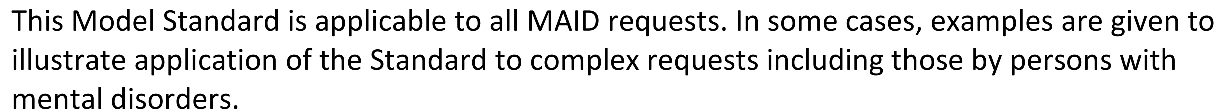
Some feedback received through the rapid review process also fell outside the Task Group's mandate (e.g., developing regulatory standards for nurses (who are not nurse practitioners) who may be involved in MAID but cannot be MAID assessors or providers under the current legal framework). While the Task Group recognizes the importance of such feedback, the Task Group had to leave these matters to be dealt with by others working outside the parameters of its mandate – development of a regulatory standard for MAID assessors and providers.

In its third and final phase, the Task Group carefully considered all of the feedback received and revised the Comprehensive Illustrative Standard (renamed 'Model Practice Standard for MAID'), the 'Plug-ins' (appendix to the Model Practice Standard for MAID), and the FAQ (renamed 'Advice to the Profession') documents based on this feedback. The Task Group did not revise the two Illustrative use of plug-ins documents (CPSM and NSCN) as these had been developed in the first phase purely as examples to show how plug-ins could be used.

The MAID Practice Standards Task Group Final Products

Thanks to the robust process described above, the Task Group was able to develop a Model Practice Standard for MAID (formerly the Comprehensive Illustrative Standard) which includes important substantive regulatory content regarding:

- the circumstances in which a practitioner can initiate a conversation about MAID
- scope of practice requirements for engaging in MAID assessment and provision
- confidentiality
- assessment of decision-making capacity
- voluntariness of the request
- assessment of incurability and irreversibility
- serious consideration of the means available to relieve suffering
- the responsibilities involved in forming an opinion about MAID eligibility
- the knowledge and competence required to be 'the person with expertise'



This Model Standard is applicable to all MAID requests. In some cases, examples are given to illustrate application of the Standard to complex requests including those by persons with mental disorders.

The Task Group recognizes that some of the guidance contained within its documents may suggest somewhat different approaches to MAID eligibility assessment than have been used in practice up to this point. The Task Group notes that this reflects the normal evolution of clinical practice. As the types of cases that MAID assessors and providers will encounter changes, guidance for the management of MAID requests will have to be updated.

The Task Group also recognizes that some of the guidance contained within its documents may differ somewhat from what is found in the Expert Panel's report. Sometimes this is a function of making the Expert Panel's recommendations fit the style/approach/format of a practice standard. In one case, content was added in response to requests for clarification by rapid review participants (e.g., guidance with respect to initiating discussions about MAID). Sometimes, it was a function of the feedback exposing the need for a substantive modification (e.g., the overwhelming majority of rapid review participants recommended against a requirement for 'the person with expertise' to be a certified medical specialist, wanting flexibility to respond appropriately to the clinical circumstances and in light of local mechanisms of service delivery). In making this revision, the Task Group was nevertheless able to respect the underlying objective of the Expert Panel report through a robust application of the accepted regulatory mechanism of Scope of Practice. Throughout, the Task Group attempted to ensure that the practice standard would achieve the objectives of Expert Panel recommendations 2-13.

As an appendix to the Model Standard, we have included a copy of the entire standard with the 'plug-ins' highlighted. These plug-ins are short sections of text that can be inserted into existing regulatory MAID standards in order to ensure coverage of particularly complex MAID requests including MAID MD-SUMC. The plug-ins are presented in this way so that the reader can appreciate the context for each plug-in.

The Task Group has also prepared a document entitled 'Advice to the Profession' which elaborates upon specific clinical questions raised by the Model Standard. This document is not intended to be a clinical practice guideline. Rather, it is a companion document to the Standard such as is often drafted by regulators to provide additional guidance and clarification.
This document is accompanied by an appendix which provides some additional helpful clinical resources for MAID assessors and providers.

The positions taken in the documents reflect the Task Group's overall view on how to operationalize Expert Panel recommendations 2-13 considering the feedback received from those directly responsible for the regulation and implementation of Canada's MAID system. They should not be understood as the views of individual group members or the organizations with which they are affiliated.

What these documents are intended to do

The text contained within these documents may be useful for a variety of purposes. However, following the Expert Panel's first recommendation, they were conceived primarily as regulatory resources. The Task Group hopes that physician and nurse regulators will adopt or adapt the content of the documents in their development or ongoing revision of MAID standards. If regulators across provinces and territories choose to draw upon these resources in the drafting and revising of their own documents, a certain degree of harmony and consistency in MAID practice between jurisdictions can be achieved.

These documents may also be of use to provincial/territorial ministries of health and regional health authorities in their policy development, and to health professional associations undertaking the process of clinical practice guideline development.

Ultimately, the Task Group hopes that these resources will contribute to public confidence in the Canadian MAID system by helping clinicians align their practice with clear guidance and assisting regulators to ensure the protection of the public in the context of the relatively new Track 2 cases and eventually requests for MAID for MD-SUMC.

What these documents are **not** intended to do

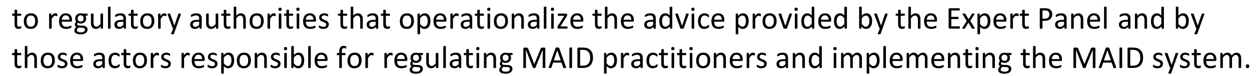
The 'Model Practice Standard for MAID' and accompanying document, 'Advice to the Profession' cannot be understood as a single, comprehensive policy governing MAID practice in Canada.

There are many actors in the MAID system including the federal government, provincial/ territorial ministries of health, healthcare institutions and professional associations playing independent but interrelated roles. As is the case with all types of clinical practice, **no one institution has the sole responsibility and authority for the governance and delivery of MAID in Canada**.

The 'Model Practice Standard for MAID' is not a proposed national regulatory standard as there is no body that has the jurisdiction to issue national regulatory standards. Furthermore, the Task Group recognizes that as there is some variability in MAID practices, policies, and procedures between provinces and territories, it is not possible for regulatory standards to be identical across all provinces and territories.

The documents themselves are neither authoritative nor binding. Rather, they serve as templates that physician and nurse regulators can use to modify or establish their own authoritative and binding regulatory standards.

These documents do not constitute a Clinical Practice Guideline (CPG). Developing a CPG was not the mandate of the Task Group. The mandate of the Task Group was to provide resources



to regulatory authorities that operationalize the advice provided by the Expert Panel and by those actors responsible for regulating MAID practitioners and implementing the MAID system.

How to use these documents

The Task Group hopes that that regulatory bodies (colleges of physicians and nurses) will use these documents to provide direction and guidance to their members. They may do this by:

- adapting the 'Model Practice Standard for MAID' and 'Advice to the Profession' as appropriate for their own jurisdictions;
- inserting some or all of the plug-ins into their already existing MAID standard; or
- referencing the 'Model Practice Standard for MAID' and/or 'Advice to the Profession' as useful guidance for their members.

The Task Group also hopes that MAID programs and institutional MAID committees will find sections of the documents useful as they draft or update their own documents.

Closing Statement

The *Criminal Code of Canada* and regulatory practice standards together form the twin pillars of the legal and clinical framework for MAID in Canada. The 'Model Practice Standard for MAID' and accompanying document, 'Advice to the Profession,' provide a solid foundation upon which the MAID system in Canada will continue to be built.