Ontario

MEDICAL ASSISTANCE IN DYING

LESSONS LEARNED: TRACK 2 NON-REASONABLY FORESEEABLE NATURAL DEATH (NRFND)

MAY 15, 2024

Clarification of Track 2 Safeguard Misinterpretations

On March 17, 2021, Bill C-7, an Act to amend the Criminal Code (Medical Assistance in Dying) provided legislative change to allow for the provision of Medical Assistance in Dying (MAiD) to individuals who have a non-reasonably foreseeable natural death (NRFND). All NFRND (Track 2) deaths are reported to the Ontario Office of the Chief Coroner (OCC) for review. Arising from these reviews, the MAiD Review Team has identified opportunities that may assist with assessor and provider interpretation of Track 2 legislation with the goal of enhancing the assessment process. The following case examples and discussions are based on review of MAiD assessment documentation submitted to the OCC and are provided to illustrate these opportunities.

CASE EXAMPLE 1 (CE1)

CE1 was a 74-year-old person with a medical history of hypertension, left basal ganglia hemorrhagic stroke without residual motor deficits, stage IV mixed type neurocognitive disorder, and progressive vision loss due to primary open-angle glaucoma. Upon the glaucoma diagnosis, treatment with prescription eye drops was first provided. However, it was reported that there was poor compliance with treatment and follow up with the attending ophthalmologist. Thus, CE1 was subsequently required to stop working and driving as their vision impairment progressed. CE1 was evaluated by a new ophthalmologist in April 2021 for the progression of their vision impairment, where they were deemed to not be a candidate for surgical intervention due to the advanced stage of disease.

Following their stroke, CE1 reported challenges with short-term memory and became increasingly dependent on their spouse to manage their instrumental activities of daily living, and aspects of personal care due to their vision impairment. CE1 had a concurrent diagnosis of chronic major depressive disorder and suicidal ideation, the latter which resulted in previous admissions to a mental health unit. They received ongoing psychiatric support for many years, however their depression and suicidality were refractory to multimodal psychiatric treatment attempts.

CE1 expressed their interest in MAiD to their family physician, due to their vision impairment, and loss of hope for improvement of their vision and quality of life. They were subsequently assessed by two independent MAiD assessors who had not prior been involved in CE1's care, and they were found eligible to receive MAiD under Track 2 MAiD legislation. The requestor's verbal

expression of interest in MAiD was documented as the trigger of the 90-day assessment period, and the legislatively required expertise in the condition which led to the MAiD request (glaucoma) was documented as provided by one of the MAiD assessors. Documentation of the opinion and informed options that were provided by the assessor with expertise in the condition, was limited.

The initial MAiD eligibility assessment occurred with the attending MAiD practitioner, CE1, and their spouse. Information demonstrating that CE1 was informed of potential means to alleviate their suffering due to their visual impairment, during the eligibility assessments, or throughout the assessment period, was limited. Furthermore, there was a lack of explicit documentation present to demonstrate that both assessors discussed and agreed that CE1 gave serious consideration to all alternative options offered, as part of the assessment and informed consent process.

Further correspondence between the attending practitioner and CE1 did not occur following the initial eligibility assessment, rather follow up planning for MAiD provision occurred in correspondence between the MAiD practitioner and the spouse. The MAiD date was chosen by CE1's spouse based on the spouse's preference of timing and was short of meeting the minimum 90-day assessment period*. CE1 was provided MAiD 71 days after their initial eligibility assessment.

(* Although not part of the scope of this document, the extent of involvement of the spouse in the decision-making raised considerations regarding potential impacts to voluntariness and coercion which are embedded in the legislative requirements for all MAiD deaths.)

Case Observations

Initiation of the 90 Day Assessment Period:

Learning Point: The start of the 90-day assessment period is not triggered by a written or verbal request for MAiD.

The 90-day minimum assessment period occurs between the day on which the first evaluation of the request is completed by a MAiD assessor, and the day which MAiD is provided. This is initiated by either the primary or secondary MAiD assessor and may include reviewing the requestor's records, meeting with the requestor, or engaging in any reflection or consideration of information that forms part of a requestor-specific assessment for MAiD (1).

Assessment Period, NOT a Reflection Period:

Learning Point: The 90-day assessment period is a legislated procedural safeguard for Track 2 MAiD case management. It is not intended to be a period for requestor to reflect on whether to proceed with MAiD as with the previously legislated 10-day reflection period.

The intended purpose of the 90-day assessment period is to provide suitable time for the MAiD assessors to explore relevant aspects of the requestor's circumstances and identify potential treatment or service options for their condition or disability.

Shortening the 90-day Assessment period:

Learning Point: The assessment period was incorrectly shortened.

The assessment period should only be shortened in the specific circumstances where both assessors:

1. Agree that the requestor is at imminent risk for losing their capacity to provide consent, **AND**
2. Have completed their assessments, **AND**
3. Agree that the requestor is eligible to receive MAiD (1).

Expertise in the Condition:

Learning Point: Documentation regarding expertise opinion was limited. Track 2 legislation requires that expertise in the condition(s) for which the requestor is seeking MAiD, is provided during the assessment period.

- One of assessors should have expertise in the medical condition that is causing a person's unbearable suffering, such that they can offer a comprehensive review of all the means that are available to address this suffering.
- If neither MAiD assessor has expertise in the medical condition that is causing the requestor's suffering, consultation must occur with another practitioner who does identify as having this expertise. A practitioner could be considered an expert through specialization, certification, special training and application or previous experience providing health care to persons with a similar condition.
- Requestors may have, in the course of their medical trajectory, received consultations with practitioners with expertise before initiating their MAiD request. However, for the MAiD assessors to consider these consultations as meeting the legislative terms of an expertise consultation, the assessor should consider:
    - How long ago the consultation occurred.
    - Whether the consultation adequately addresses the assessors' questions about the requestor, the nature of their suffering, and whether reasonable and available means to relieve suffering were discussed with the requestor (1).
- If the prior consultation meets the above requirements and is deemed comprehensive and recent, the assessor may be able to meet their safeguard obligations by discussing with the practitioner and reviewing relevant written records (1).

Obtaining External Expertise:

- When an external practitioner is consulted to provide expertise, they do not need to complete a MAiD assessment nor comment on the eligibility of the requestor to receive MAiD.
- The legislation does not expressly require that the practitioner with expertise in the condition causing the suffering personally to meet with the requestor.
- Only one assessor is required to consult with the practitioner with expertise, however, that assessor must share the information obtained with the other assessor.
- When an external consultation for expertise is sought to identify all the alternative options to alleviate their suffering, it is incumbent on each assessor to discuss those options directly with the requestor to be satisfied that the requestor has given those options serious consideration.
- Health Canada has clarified that review of a requestor's prior health records including past specialist consultation reports does not constitute consultation for the purposes of obtaining expertise, rather it requires direct contemporaneous communication with the practitioner with expertise (3).

Informing the requestor of reasonable and available means to relieve their suffering:

Learning Point: **There was limited documented information regarding discussion with the requestor of alternative means to relieve their suffering.**

- Track 2 legislation requires that the MAID assessors are responsible for:
    1. Making the requestor aware of all available treatments and services that might relieve their suffering (1)
    2. Providing the requestor with a description of the treatments and services and their potential impact (1).
    3. Giving the requestor the opportunity to speak with relevant professionals who provide these treatments and services (1).
- It is recommended that MAiD assessors engage in robust discussion with the requestor regarding alternative means to relieve suffering, and to ensure that consultations and services are offered to the requestor to action those options, when desired.
- Follow up conversation between assessors and requestor often occurs after the initial eligibility assessment; it can also occur on multiple separate occasions if a requestor decides to accept one or more of the alternative treatment options during the assessment period.

CASE EXAMPLE 2 (CE2)

CE2 was a 97-year-old person with a medical history of atrial fibrillation, dyslipidemia, hypertension, and remote bilateral hip replacements in 1988. In 2023, they suffered a loss of balance and a fall, and experienced severe pain and limited range of motion to their hip and pelvis. They were brought to the hospital where it was determined through diagnostic imaging and orthopedic consultation that the left hip hardware had failed, and they required surgical intervention and rehabilitation. CE2 opted to forgo surgical intervention and chose to pursue MAiD due to their subjective loss of their quality of life and functional capacity.

CE2 was deemed eligible by both MAiD assessors to receive MAiD under Track 2 legislation, and the 90-day assessment period was initiated upon the first assessment for MAiD eligibility. The second assessment and a Waiver of Final Consent were also completed on the same day of the first eligibility assessment. CE2 was receiving opioid analgesia and both assessors felt that CE2 was at imminent risk of loss of capacity to provide final consent. CE2 subsequently lost capacity to provide final consent, and the attending practitioner administered MAiD by invoking the Waiver of Final Consent agreement, three days into the 90-day assessment period.

Case Observations

Differentiating Track 2 Safeguards from Track 1 Safeguards:

Learning Point: **As the MAiD practitioner initially deemed CE2 eligible under Track 2 legislation, the use of the Waiver of Final Consent is in violation of legislative requirements**.

- The Waiver of Final Consent is ONLY applicable for individuals whose natural death is deemed to be reasonably foreseeable (Track 1).
- Should the requestor's clinical condition change leading to belief that their death has become foreseeable during the assessment period, the MAiD practitioner may choose to reclassify the person to Track 1 and utilize the associated Track 1 safeguards.
- Eligibility must be clearly classified as Track 1 or Track 2, and safeguards cannot be utilized interchangeably**.** Any changes in the clinical condition that warrant reconsideration of the applicable safeguards should be assessed by the practitioner and should be clearly communicated and documented.

Documentation of Agreement of Shortening Assessment Period:

Learning Point: **Both assessors agreed to shorten the 90-day assessment period, however this consideration and agreement between assessors was not explicitly documented in the medical records.**

- When shortening an assessment period for a Track 2 case, both assessors must cite the reasons for shortening the assessment period and document confirmation of agreement.

- MAiD legislation does not expressly require that assessors agree on MAiD track eligibility. If the MAiD provider finds a requestor eligible under track 2 legislation, they must ensure that all associated safeguards are met. This would include that both assessors have; reviewed the information provided by a clinician with expertise in the condition, consulted with the requestor regarding the available alternative means to relieve their suffering, and agree that serious consideration of these alternative means has been given by the requestor.
- In the event of disagreement amongst the MAiD assessors, both CAMAP (Canadian Association of MAiD Assessors and Practitioners) and Health Canada recommend assessors discuss their opinions to find the most appropriate approach. They also suggest that a third opinion of eligibility be sought, as required.

Recommendations

To MAiD Assessors and Practitioners:

1. Thorough and complete documentation of all aspects of MAiD assessments should be prepared and included in the requestor's medical record including:
   - **a.** All conversations regarding MAiD assessment and planning
   - **b.** The start date of the 90-day assessment period (see section on 90-day assessment period above) and what action triggered the initial evaluation for MAiD eligibility.
   - **c.** The expertise consultation and confirmation that both assessors had an opportunity to review and consider this information.
   - **d.** The reasonable and available means to relieve suffering discussed with the requestor.
   - **e.** How both the assessors concluded with the requestor that serious consideration was given to means discussed.
   - **f.** If warranted, what reasons were cited for shortening an assessment period and documentation by both assessors that they agreed.
2. Consider that the information provided by the clinician providing expertise be documented in writing to allow for consistent and transparent sharing of the information among both assessors.
3. Consider independent re-assessment by each assessor after the expertise consultation occurs to ensure that all options have been explored and given serious consideration by the requestor.
4. When assessing imminent risk of loss of capacity and requirement of a shortened assessment period consider the following:
   - **a.** Knowledge of requestor's capacity, clinical status, and treatment plans gained through periodic re-assessment throughout the 90-day assessment period.
   - **b.** Completion of an independent reassessment of the requestor by the MAID practitioner when notified of a change in the requestor's status.

- The reassessment should ideally be completed alone with the requestor for at least a portion of the time, to avoid the potential of external pressures.

c. Discussion with the other assessor regarding the findings of the reassessment of clinical status to determine if the assessment period should be shortened.

- If in agreement, the duration of the shortened period should be determined in collaboration with both assessors and the requestor and documented.

5. Consider reviewing the following resources to help support best practice and knowledge of Track 2 safeguards:

a. Health Canada Advise to the Professions

b. Health Canada MAiD Model Practice Standard

c. Health Canada Medical Assistance in Dying: Implementing the Framework

d. Centre for Effective Practice: MAiD Track 2 Resource

e. CAMAP MAiD in Dementia

To the Canadian Association of MAiD Assessors and Practitioners (CAMAP):

1. Continue to support development of a community of practice by regularly discussing complexities involved in assessing Track 2 cases among MAiD assessors and practitioners.

2. Consider incorporating the lessons learned document from the OCC Track 2 case discussions in relevant education curricula or other communication as a means of supporting CAMAP members in their MAiD practice.

To the College of Physicians and Surgeons of Ontario (CPSO) and the College of Nurses of Ontario (CNO):

1. Consider disseminating the Track 2 lessons learned document on your respective websites as a resource for CPSO and CNO members who participate in MAiD practice.

To Health Canada and the Ontario Ministry of Health:

1. Consider how lessons learned from these Track 2 case examples may assist to identify current gaps in practice to improve MAiD regulation, policy, and practice.

2. Consider dissemination of the Track 2 lessons learned document on a wider scope to organizations, institutions, and other stakeholders as applicable.

References

(1) Health Canada (2023). Medical Assistance in Dying: Implementing the Framework. Retrieved from: Medical Assistance in Dying: Implementing the framework - Canada.ca.

(2) Health Canada, MAID Practice Standards Task Group (2023). Advice to the Profession: Medical Assistance in Dying (MAID) (2023). Retrieved from: Advice to the Profession: Medical Assistance in Dying (MAID) - Canada.ca

(3) Health Canada, MAID Practice Standards Task Group (2023). Model Practice Standard for Medical Assistance in Dying (MAID) (2023). Retrieved from: model-practice-standard.pdf (canada.ca)