memo

OFFICE OF THE PRESIDENT & CEO

Covenant Health

DATE: November 5, 2015
TO: Physician and Administrative Leaders, Community Board Members
FROM: Patrick Dumelie, President and Chief Executive Officer
RE: Covenant Health response to Physician Assisted Death

Following the Supreme Court of Canada's ruling that declared invalid the prohibition on assisted death in February 2015, Covenant Health has been actively engaged in consultation and draft policy work on this issue, under the leadership of Dr. Gordon Self, VP Mission, Ethics and Spirituality and our Palliative Care Institute.

Throughout, we remain committed to upholding our institutional integrity—honouring our mission to affirm the sacredness of life, while respecting the needs and values of all we serve, and with those with whom we work.

The Supreme Court has given Parliament and the provincial governments a year to respond in developing the necessary legislative frameworks in which physician assisted suicide and voluntary euthanasia could be legally practiced, and under what specific medical conditions and criteria.

Covenant Health and Catholic providers across Canada are an important voice in this critical national conversation. As Covenant Health works with others to understand the implications of the ruling, we have focussed our efforts on advocating for:

- comprehensive, quality Palliative Care as a core component of the health system across Canada

- the development of comprehensive and rigorous criteria and processes in the emerging practice that mitigates risks to patients, health professionals, caregivers and health care providers

In Fall 2015, Covenant Health presented to the Federal External Panel on Options for a Legislative Response to *Carter v. Canada*, as well as the Canadian Provincial/Territorial Expert Advisory Group on Physician-Assisted Dying (PAD). The Q + A document attached provides an overview of our contribution to the discussion.

The issue of physician assisted death is complex and raises many questions. Covenant Health has consulted with many of our physicians, clinical leaders and community boards over the past ten months while considering our ethical principles, mission and values.

We are also working with Catholic providers across Canada to draft common policies and approaches, and together with our colleagues in Alberta Health Services and various professional bodies to reflect on such issues as conscience, medical criteria, standards of practice and other implications of the Supreme Court ruling, with the aim of minimizing harm.

It is important to note the Supreme Court of Canada ruling recognizes the constitutional rights of both patients and physicians, and that such rights need to be reconciled. In keeping with our principles and moral integrity, Covenant Health also continues to affirm the conscientious rights of our staff and physicians where the exercise of conscience does not put the person in care at risk of harm or abandonment (*Health Ethics Guide,* 2012). This is also affirmed in our code of conduct (*Our Commitment to Ethical Integrity).*

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Covenant Health

As the legislative and regulatory responses emerge, we will continue to develop our draft policy and will engage and inform you as Covenant Health leaders and physicians. As you reflect on this issue as a health care leader and respond to questions in the care setting, here are a few considerations:

- We are confident we will find a way to respond respectfully and compassionately to requests for physician assisted death that does not abandon the person in our care or compromise the values of our providers or organization.
- The Supreme Court of Canada ruling changes nothing as far as our steadfast commitment to providing quality palliative and end-of-life care. Every day in our facilities across the province our physicians and staff provide outstanding compassionate care to people at the end of life and to their families, including appropriate pain and symptom management, as well as responding to their diverse spiritual and emotional needs.
- Covenant Health remains committed as leaders of integrated palliative and end-of-life care, and in fact, advocates for strengthening access to these essential services.

As a Senior Leadership Team, we are grateful to the physicians and clinical staff who embody the mission, values and ethical traditions of our organization, and who respond to meeting the needs of our patients and residents at the most vulnerable moments of life.

It is with your commitment to excellent service and our practice of measured, prudent ethical reflection that will help us navigate the questions and implications of the Supreme Court of Canada ruling, in keeping with who we say we are.

If you have questions about this topic or our progress in working with others in response, please contact Gordon directly. For further resources in your own reflection or discussion with your teams, please see

- Catholic Health Alliance of Canada Position Paper
- "Caring for our common home also means caring for people planning to leave it, too," Ethics Made Real, June 2015, Dr. Gordon Self

Question + Answer

Phsycian Assisted Death

Q + A

November 2015

Background

In February 2015, the Supreme Court of Canada declared invalid the prohibition on assisted death. The Court has given Parliament and the provincial governments a year to respond in developing the necessary legislative frameworks in which physician assisted death could be legally practiced, and under what specific medical conditions and criteria.

The issue of physician assisted death is complex and raises many questions. Covenant Health has consulted with many of our physicians, clinical leaders and community boards while considering our ethical principles, mission and values. We are also working with Catholic providers across Canada to draft common policies and approaches and, together with our colleagues in Alberta Health Services and various professional bodies, to reflect on such issues as conscience, medical criteria, standards of practice and other implications of the Supreme Court ruling, with the aim of minimizing harm.

In Fall 2015, Covenant Health presented to the Federal External Panel on Options for a Legislative Response to *Carter v. Canada*, as well as the Canadian Provincial/Territorial Expert Advisory Group on Physician-Assisted Dying (PAD). The following represents our contribution to those discussions.

How does Covenant Health view the Supreme Court of Canada's decision?

The Supreme Court ruling, while regrettable and morally problematic, is nevertheless a reality in which Covenant Health and other Catholic health care organizations which have consistently opposed assisted death and euthanasia, must now legally recognize. To this end, we have engaged in a series of consultations with our clinicians about how we would respond to such requests in our facilities, that neither risks abandoning the person in our care, nor abandoning clinician or organizational integrity (conscience rights; faith/morals) in the process.

What is the appropriate role of health care institutions like Covenant Health?

While Covenant Health will care for patients who request PAD, we will not compromise our institutional integrity and actually provide assisted suicide or voluntary euthanasia. We believe that staying engaged with the patient in a non-judgmental, non-coercive way, and helping to explore the nature of a person's request for PAD is completely consistent with our moral and ethical tradition, even if we do not provide the service or directly refer for same. It is our assumption that, while a minority of patients will ever request PAD, an even smaller number of people will intend and follow through this request. While we will never condone or participate in an activity that is deemed unacceptable from a Catholic moral perspective, we wish to propose defensible strategies seeking to minimize harm, and to engage the regulatory bodies and others to ensure adequate safeguards are in place, without compromising our Catholic, institutional identity.

Who should govern PAD?

Ideally, having a consistent legislative approach nationally will reduce the risk of public confusion, as well as potential misunderstanding among providers and institutions if different terminology, practices, and safeguards are enacted across the country. At minimum, PAD should be regulated by the appropriate professional colleges if a national legislative framework cannot be achieved, to ensure at least consistent practice and protections provincially. This should include the right to exercise of conscientious objection. The regulatory bodies should develop policy and educational

materials to support their members, underscoring both what obligations they have to people who request PAD, and what conscience protection rights they have so neither parties are abandoned. We do not recommend it should be left for individual physicians and patients to govern.

What eligibility criteria should be considered?

As a way of minimizing potential harm given the gravity of such a contemplated decision, we believe a cautionary approach should be taken, and that a competent adult be defined as a person who is, by law, capable of giving consent. The competency requirement (to consent or to rescind consent) should apply throughout the process. We believe it will be a challenge to consistently define "grievous and irremediable medical condition" given the subjective nature and unique variables shaping a person's experience. This underscores that a response is required to explore, in a non-judgmental way, the nature of the person's request, and to seek to understand underlying needs/concerns that may be inherent but potentially remaining unaddressed. Engaging these conversations with patients will require discernment and a reflective stance that will benefit from a cooling off period and at minimum, a second physician consultation.

What safeguards should be in place?

It is our assumption that the verbalization of a request may not necessarily connote an actual intent to pursue PAD, and thus it needs to be explored in a respectful and compassionate way. Physicians and health professionals best suited to respond should work with the patient to explore the nature of the person's request, disclosing all factually relevant information—including access to palliative and hospice care—so that a person can make a free and informed choice. At all times, these conversations should be conducted in a supportive way, without judgment or coercion. From a Covenant Health, and Catholic health care perspective, while there will remain moral boundaries in what we cannot provide the patient, it is our experience that respectful, open-ended conversations will often reveal much more that we can and must do to support patients.

Should there be a mandatory waiting period?

Yes, there should be a cooling off period of some reasonable time interval. We recognize that consent is a process; for some this may require multiple conversations and exploration over a longer period of time. If either the attending or consulting physician believe the patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, they must refer the patient for counseling. During this time of exploration, it is important the person is not abandoned and that every effort is made to seek to understand the nature of the person's request and be sensitive to other possible reasons motivating the request, and therefore, other appropriate options to offer the person if indicated.

Should physicians have the right to refuse PAD for reasons of conscience?

Yes. In keeping with our code of conduct and our ethics framework, we support the exercise of conscience, insofar that "the exercise of conscientious objection must not put the person receiving care at risk of harm or abandonment" (Health Ethics Guide, #165). We have a positive moral obligation to stay engaged with the patient, and to provide factually relevant information to support the process of informed consent. This may require informing the person of other options for care (HEG #165).

What resources should be provided for physicians and health professionals?

Along with resources to support conscience and legal protection, physicians and other health care providers should be provided with training to facilitate end-of-life conversations, as well as dispute resolution/mediation support. It is important providers are confident in having such value-laden discussions in which their own biases and moral boundaries will likely surface.

What resources should be provided to patients?

There already is a lack of basic public education regarding end-of-life care in general, and now with the introduction to PAD there is the added risk of confusion and misunderstanding around terminology. The current focus on developing the legislative and regulatory frameworks will definitely assist providers and institutions, but public messaging is also required to support patient and families. From an informed consent perspective, the public needs to understand the difference between palliative and hospice care with that proposed by PAD. Covenant Health does not and will not include PAD in its definition and model of palliative, hospice, and end-of-life care.

For more information, contact:

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