CMPA.
Empowering
better healthcare

April 29, 2016

Via email: JUST@parl.gc.ca

Anthony Housefather, MP
Chair, Standing Committee on Justice and Human Rights
House of Commons
131 Queen Street, 6-07
Ottawa, ON K1A 0A6

Dear Me Housefather:

Re: Bill C-14

The Canadian Medical Protective Association ("CMPA") recognizes the Government's efforts to introduce legislation that provides a consistent framework for the delivery of medical assistance in dying ("MAID"). As the principal provider of medical-legal assistance to Canadian physicians, the CMPA will be asked to guide physicians called upon by patients in individual cases for direction on MAID. With that perspective, the focus of the CMPA's recommendations for amendments to Bill C-14 is to ensure the legislation provides clear eligibility criteria and effective safeguards for patients, while ensuring healthcare professionals are not exposed to criminal sanction for good faith participation in MAID.

Complying with Provincial Law and Standards (Subsection 241.2(7))

The CMPA recommends that subsection 241.2(7) be deleted. This section currently states that MAID must be provided "with reasonable knowledge, care and skill and in accordance with applicable provincial laws, rules or standards." The CMPA supports the premise that MAID should be delivered in accordance with this provision. Yet, as written, the exemption in subsection 227(1) is unavailable to healthcare professionals who may fall below this standard. Healthcare professionals are obligated to deliver care to patients in accordance with professional standards, even in the absence of such a provision. It is generally accepted that healthcare professionals who are negligent in the delivery of care may be subject to regulatory or civil proceedings. However, they should not face criminal sanctions for breaching the standard of care or failing to follow a policy created by a medical regulatory authority (College).

Counselling a Person to Die by Suicide (Section 241)

Bill C-14 should be amended to expressly state that no practitioner is guilty of counselling a person to die by suicide under paragraph 241(1)(a) by providing information about MAID in the course of considering possible medical options. Without such a provision, some practitioners will be reluctant to raise with their patients, where medically appropriate, the possible availability of MAID for fear of criminal prosecution.

Clarity in Eligibility Criteria and Safeguard Requirements (Section 241.2)

The eligibility criteria for "grievous and irremediable medical condition" in subsection 241.2(2), and the requirement for practitioners to be "independent" in subsection 241.2(6), must be more clearly defined to ensure appropriate access to MAID and to protect vulnerable patients.

Bill C-14 should state unequivocally whether or not a patient must be at the end of life to be eligible to receive MAID. Uncertainty exists currently about the intended meaning of the requirement in paragraph 241.2(2)(d) that "natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining." The *Legislative Background* document states that "eligibility would not be limited to those who are dying from a fatal disease," but this is not clear from the current language of Bill C-14. If it is intended that the patient need not be at the end of life, paragraph 241.2(2)(d) should be amended to state that "natural death has become reasonably foreseeable, whether or not death is imminent." Conversely, if it is intended for patients to be at the end of life, the provision should specify that "natural death has become reasonably foreseeable and is expected to be imminent."

Paragraph 241.2(6)(c) should also be deleted for lack of clarity. The goal of ensuring that practitioners are independent can reasonably be achieved through the existing criteria in paragraphs 241.2(6)(a) and (b). In addition, regulations should be developed with respect to how healthcare professionals can reasonably confirm that the witnesses are independent pursuant to paragraphs 241.2(3)(c).

Given the potential for criminal prosecution for failing to comply, patients' access to MAID might be affected if practitioners are uncertain about the eligibility or independence requirements. The CMPA is pleased that Bill C-14 is clear regarding other criteria and safeguards, including the age requirement and the issue of advance requests for MAID.

Reasonable But Mistaken Belief (Subsection 241(6))

The protection in subsection 241(6) should be extended to include civil and disciplinary proceedings for practitioners acting in good faith. The provision currently offers protection only from criminal sanctions. Reassuring practitioners that they are protected from criminal sanctions, civil liability and regulatory scrutiny when acting in good faith is important in encouraging participation in MAID and ensuring access for patients. By way of example, the federal *Aeronautics Act* provides such protection for physicians who exercise their duty to report a patient that likely constitutes a hazard to aviation safety.[1] A similar provision is found in Vermont's end-of-life legislation.

[1] Subsection 6.5(4) of the *Aeronautics Act* states, "No legal, disciplinary or other proceedings lie against a physician or optometrist for anything done by him in good faith in compliance with this section."

Disproportionate Sanctions (Sections 241.3 and 241.31)

The sanctions proposed in section 241.3 and subsections 241.31(4) and (5) are disproportionate to the relatively minor nature of the offences. A maximum penalty of summary conviction punishable by a fine would be sufficient in the circumstances of these offences. As drafted, practitioners could be imprisoned for up to five years for failing to inform a pharmacist that the substance prescribed is intended for MAID, and for up to two years for failing to comply with reporting obligations and contravening regulations regarding the provision and collection of information relating to MAID. Such sanctions are excessive and unnecessary when less onerous punishments would be a sufficient deterrent.

Interaction with Provincial/Territorial Legislation

Bill C-14 should expressly address which law will prevail in the event of a conflict between the *Criminal Code* and legislation enacted by any province or territory regarding MAID. A possible solution is to include in the *Criminal Code* a provision that it will not supplant substantially similar or effectively equivalent provincial/territorial legislation. While not a significant concern where the provincial/territorial legislation is more restrictive than the *Criminal Code*, it is possible that some provincial/territorial frameworks for MAID could be less restrictive than Bill C-14. In those circumstances, access to MAID might be affected if practitioners are uncertain about which legislation will prevail based solely on the doctrine of paramountcy.

Conscientious Objection

The CMPA recommends that the brief reference to right of conscience in the preamble be expanded given the importance to practitioners that their personal convictions be respected in this area. Consideration might be given to including in the preamble to Bill C-14 language similar to the preamble of the *Civil Marriage Act* or the Bill C-14 *Legislative Background* document, such as "nothing in this Act compels healthcare providers to provide MAID or to otherwise impact their rights under paragraph 2(a) of the *Charter of Rights and Freedoms*."

Conclusion

We trust that these comments will be of assistance to the Standing Committee. We would be pleased to provide any other information or input as may be required.

Yours truly,

Hartley S. Stern, MD, FRCSC, FACS
Executive Director/Chief Executive Officer

HSS/lg

C. Mike MacPherson, Committee Clerk