Submission To The College Of Physicians And Surgeons Of Manitoba On Physician-Assisted Death
from the Manitoba League of Persons with Disabilities (MLPD)

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The Manitoba League of Persons with Disabilities (MLPD) is a united voice of people with disabilities and their supporters that promotes equal rights, full participation in society, and which facilitates positive change through research and public education. MLPD appreciates the opportunity to respond to the CPSM's Statement on PAD.

This submission is framed within a disability rights perspective **which acknowledges that systemic and individual discrimination continues to exist within health care systems. This is partially based on the goal of medicine which is to cure the abnormality and return the patient to commonly held beliefs about acceptable functionality. Thus, persons with disabilities continue to feel vulnerable, coerced, unduly influenced, and ambivalent because of these culturally constructed experiences within the health care system.**

The CPSM Statement includes the possibility that the individual with disabilities feels vulnerable in a number of ways:

- **The definition section is left open for an interpretation of, for example, what is grievous, what is irremediable (Definitions section);**
- **the systematic discrimination of not being able to find a cure for a "catastrophic injury" (section III D);**

- **what is reasonable treatment or non-treatment given the condition of the individual, and who determines what is reasonable;**
- **who determines the degree to which psychological suffering is proportionate to the diagnosis or symptoms;**
- **How does the doctor determine the voluntariness of the decision made by an individual along with the Medical Decisional Capacity of the individual (s. IV). The understanding of what is voluntary has within it no analysis of the issues surrounding coercion, duress, undue influence, societal devaluation, etc. ;**
- **The determination of informed consent in order to determine, for example, that the decision is made without coercion or undue influence from family members, health care providers or others (s. V 4 c).**

The Supreme Court indicated the object of the criminal code legislated prohibition was to protect vulnerable persons from being induced to commit suicide at a time of weakness. Where is the vulnerability assessment that arises from a discriminatory understanding of disability?

While the Draft CPSM Statement may permit assisted suicide on the basis of psychological suffering, this may place people with serious mental and emotional disabilities at risk, as well as people who have not yet come to grips with their disability. The Statement also makes the existence of a "grievous and irremediable medical condition" one of the two primary criteria – this potentially means that all Canadians with a serious diability can access Assisted

Suicide. Disability is not a grievous and irremediable condition. The second criteria, "intolerable suffering," is completely subjective and will make it difficult to review decisions of doctors who feel the existence of a disability is intolerable.

As such, there is a continuing concern about the possible systemic discrimination within the health care system and individual discriminatory attitudes found within such institutions. What oversight is there for the assessment of individuals made vulnerable by such discriminatory attitudes?

Guidelines for Legislative and Policy Response

Assisted suicide must be available only to competent adults with a terminal illness that is the cause of enduring suffering that is intolerable to the individual.

Requests for physician-assisted death must be reviewed and authorized by an independent review panel with sufficient information to determine if the necessary criteria are met. Ontario's Consent and Capacity Board is an example of a model for the review panel.

Whenever an individual requests Physician-Assisted Death, this should automatically trigger involvement in suicide prevention measures. This would minimize the distinction between people with and without disabilities who want to end their lives.

In making its decision the Review Panel must consider the following information:

- The person's request and reasons for the request;

- A clinical evaluation by a qualified physician regarding whether the person meets the medical criteria;
- A clinical evaluation by a qualified physician regarding whether the condition is irremediable in the sense that it is likely to cause death within twelve months;
- A clinical evaluation by a qualified physician that the person is competent to make the decision;
- An assessment of whether the request is informed and voluntary;
- An assessment of potential alternative courses of action that might reduce the person's suffering. This assessment must be conducted by a qualified professional in consultation with the patient, and must address a full range of alternatives to physician-assisted death including medical treatment, counselling and disability related supports.

There must be a means by which an interested party can intervene in the proceedings of the review panel. An interested party would have a real and material interest, including but not limited to a public interest standing, concerning the possibility of coercion or discrimination.

A monitoring and public reporting system must be in place to track and report on:

- the number of requests;
- the reasons given;
- medical condition, socio-economic circumstances and demographic factors associated with persons making requests, and those whose requests are authorized or denied;
- availability and acceptance or refusal of alternative courses of action identified;

- efficacy of alternative interventions including access to medical treatment and palliative care;
- outcome of requests authorized and denied.

These principles will assist legislators, policy makers and regulators attain a balance between dignity, autonomy and inclusion for Canadians with disabilities. Monitoring and reporting mechanisms must be put in place to guide ongoing evaluation and adaptation of the system as may be needed to ensure compliance with underlying values, principles and guidelines. Developing and implementing a system for regulating physician-assisted death must be a coordinated legislative, policy and program development priority involving provincial/territorial and federal governments and the community.

The MLPD Provincial Council and Ethics Committee believe that one such system for regulating physician-assisted death would be an end-of-life Review Panel to deal with requests from physicians for physician-assisted death. Such a panel would refocus the alleged sole power invested in doctors to make decisions regarding physician-assisted death to a community-based body with the jurisdiction to review such cases and determine the best interests of patients and physicians facing such dilemmas. We would endorse such a panel and strongly suggest it be composed of key stakeholders, including physicians, clinical ethicists, nurses, and members of the disability community with expertise on end of life issues.