

SUBMISSION OF ARCH DISABILITY LAW CENTRE

To the College of Physicians and Surgeons of Ontario

In response to

The College's Consultation on its Policy:

"Planning for and Providing Quality End-of-Life Care"

February 20, 2015

1. About ARCH Disability Law Centre

ARCH is a not-for-profit specialty community legal clinic dedicated to defending and advancing the equality rights of people with disabilities in Ontario. ARCH is governed by a volunteer board of directors, a majority of whom are people with disabilities. ARCH provides Summary Advice and Referral Services to Ontarians with disabilities and represents individuals as well as disability organizations in test case litigation at all levels of tribunals and courts. We provide education to people with disabilities on disability rights and to the legal profession on disability law. We also make submissions to government on matters of policy and law reform. Information about ARCH can be obtained from our website at www.archdisabilitylaw.ca.

2. About this Submission

Thank-you for offering us the opportunity to comment on the draft policy “Planning for and Providing Quality End-of-Life Care” (the Policy). ARCH acknowledges that end-of-life medical treatment can give rise to unique and complex questions that can be difficult to navigate. ARCH supports the College of Physicians and Surgeons of Ontario’s (CPSO) efforts to provide guidance to physicians and to protect the interests of patients, particularly those who may experience challenges expressing their wishes when it comes to end-of-life treatment options.

ARCH’s submissions focus on the impact of the draft policy upon low-income persons with disabilities who may require end-of-life medical treatment, or who may, for various reasons, not wish to consent to end-of-life treatment.

3. Comments on the Draft Policy

Communication

Section 2 of the Policy provides guidance to physicians with respect to communication during end-of-life care situations. In addition to the suggestions set out in section 2, ARCH recommends that the Policy state that physicians have a legal obligation under Ontario’s Human Rights Code to accommodate the disability-related needs of their patients. Some patients with disabilities will require accommodations in order to ensure effective communication between the physician and the patient. This can include, for example, patients who are Deaf or hard of hearing and require American Sign Language interpretation, patients who use alternative and augmentative communications, patients with intellectual disabilities who require the use of clear language, and other patients with disabilities. Where necessary, physicians put disability accommodations in place

in order to ensure that they can communicate effectively with their patients regarding end-of-life treatment decisions.

The second paragraph of section 2 discusses involving family members or others in the patient's care. It is important for physicians to understand that in some circumstances, involving another person is a disability-related accommodation. For example, some people with intellectual disabilities have support circles or supported decision-makers. Supported decision-makers are people who assist the person with the disability to understand, make, and communicate decisions, including decisions related to health care treatment. Involving such persons in end-of-life care decisions may be necessary in order to accommodate the patient's disability.

Equally, it is important to ensure that the patient (or the substitute decision-maker where the patient is incapable) desires the involvement of persons close to them and has control over who to involve in treatment decisions. Some persons with disabilities may be in relationships in which others exert power over them and attempt to make decisions for them without their consent. Physicians may be in a position to assist patients to involve those they wish to involve, and prevent those they do not wish to involve from interfering.

Consent to Treatment

Section 4.2 states that physicians are entitled to presume that a patient is capable of giving or refusing consent unless there are reasonable grounds to think otherwise. ARCH submits that it would be helpful to give some examples or describe what constitutes "reasonable grounds." What physicians would consider reasonable grounds will vary considerably, depending on the individual physician's personal experiences, moral code, cultural and religious beliefs, knowledge of the law, and other factors. In the context of consent to treatment, physicians should be following the provisions of the *Health Care Consent Act*, and the case law on consent to treatment, which outline what factors to consider in order to determine whether a person is incapable of consenting to treatment decisions. Including some examples of what constitutes reasonable grounds according to the law would provide important guidance for physicians.

ARCH has made additional comments in this regard in our submission regarding the CPSO's consultation on its "Consent to Treatment: Draft Policy".

Life-Saving and Life-Sustaining Treatment

Section 5.2 states that if a patient or substitute decision-maker does not consent to life-saving or life-sustaining treatment, it is still appropriate to provide palliative care. ARCH recommends adding the words "provided the patient or substitute decision-maker consents to palliative care" in order to clarify that physicians must obtain consent for this type of treatment.

Euthanasia and Physician Assisted Death

Section 7.2 of the Policy must be revised in light of the recent Supreme Court of Canada decision *Carter v. Canada (Attorney General)*, 2015 SCC 5.

ARCH would like to emphasize to the CPSO that physician assisted death/ suicide is a topic of considerable controversy within disability communities. A number of national, provincial and local disability advocacy organizations have released statements regarding physician assisted death/ suicide and have warned of potential dangers to persons with disabilities should physician assisted death/ suicide become more widely available. Should the CPSO decide to create a policy on this topic, ARCH recommends that the CPSO hold extensive public consultations and provide opportunities for disability communities and persons with disabilities to provide input on the policy.