Submission to the College of Physicians and Surgeons of Ontario (CPSO)
Re: Interim Guidance on Physician-Assisted Death

Dying With Dignity Canada (DWDC) is pleased that you are consulting on the Interim Guidance on Physician Assisted Death (PAD) with Ontarian stakeholders and residents.

A. Who We are
Dying With Dignity Canada (DWD Canada) is a national organization committed to alleviating needless suffering at end-of-life. We provide information, support and advocacy for Canadians who want a peaceful death and serve as a resource for those interested information about physician assisted dying.

We speak on behalf of the 85% of Ontarians who expressed their support for Physician Assisted Death (PAD) in the 2014 Ipsos Reid Poll.

Our organization includes a Physicians Advisory Council comprised of physicians who support assisted dying and a Disability Advisory Council comprised of individuals with disabilities who support assisted dying. Their input forms a key part of our response. We also have a grass roots network of volunteers and supporters who believe they should have control over their end of life choices.

As the largest national and provincial voice on physician assisted dying, we are pleased to offer this formal submission in response to the Interim Guidance document.

B. Tone and Direction of the Interim Guidance
Our organization is very supportive of the general tone and direction of the CPSO's Interim Guidance. We believe that the College has adopted the considered and compassionate approach necessary for the implementation of physician assisted dying as per the 2016 Carter case. Our submission highlights the key recommendations we strongly support and one critical omission. We also note a few suggested improvements.
C. Positions Dying With Dignity Canada Strongly Supports

Line 123: Grievous and Irremediable Medical Conditions
Dying With Dignity Canada is pleased with the definition of grievous and irremediable outlined in the *Interim Guidance*. We believe that both definitions carefully articulate the letter and spirit of the Supreme Court of Canada in the *Carter* decision.

Line 156: Conscientious Objection
Dying With Dignity Canada commends the CPSO for their *Professional Obligations and Human Rights Policy* and its position on effective referral for physician assisted dying.

The *Interim Guidance* outlines a compassionate approach that balances the rights of objecting physicians with the rights of the patient. We believe that the CPSO has struck a thoughtful balance that reconciles the rights of both groups.

*Dying With Dignity Canada submits that the CPSO must hold firm on this policy. Further, it should be used as the gold standard for other medical colleges across the country.*

Line 222: Self Administration
DWDC is pleased that College has outlined a process that supports self-administration and includes guidelines for patients and caregivers to be provided with information on protocols after a self-administered physician assisted death has occurred.

Line 226: Reporting and Data Collection
Dying With Dignity Canada supports the CPSO’s position on the establishment of a formal oversight and reporting agency which may be part of a federal/provincial framework.

D. Critical Omission

Protection of providing physicians
Dying with Dignity Canada is concerned about the omission of guidelines protecting physicians who provide PAD from losing hospital privileges or being otherwise disciplined. We believe that in a patient-centred approach to physician assisted dying, patients should be able to receive a
physician assisted death wherever they are, whether it is an institution (hospital, hospice, long-term care facility) or their own home.

Some institutions will protest against having to provide a service they believe to be at odds with their mission or ideology. In the case of a clash between institution's rights and patient's rights, the rights of patients must come first.

_Dying With Dignity Canada believes it is critical that the College insist physicians’ professional privileges or licenses cannot be altered solely because they provide assistance to die in full compliance with appropriate laws and regulations in an institution that receives public funds._

**E. Suggested Improvements**

**Line 69: Criteria**

Line 69 of the _Interim Guidance_ advises that Ontario physicians should only provide physician assisted dying to residents in Ontario who are insured under the Ontario Health Insurance Plan. However, there may be instances where critically ill patients are unable to access a physician assisted death in their home province, but may be able to receive it in Ontario.

_Dying With Dignity Canada submits that the CPSO should include provisions in the criteria for reciprocal billing with other provinces and territories._

**Line 219: Mandatory Waiting Period**

We have noted that the _Interim Guidance_ document requires a mandatory waiting period of 15 days, before a second request can be made. This is likely so the physician can ensure the patient's wish for an assisted death is enduring.

We believe the determination of whether a request is enduring should be part of the physicians’ assessment process for approving the request, without arbitrary minimum waiting periods. It is particularly important that in cases of terminal illness where time is of the essence, patients not be subject to mandatory minimum wait times.

_Dying With Dignity Canada rejects mandatory minimum waiting periods. If, notwithstanding our recommendation, the College proceeds to recommend minimum wait times, in cases of terminal_
illness where time is of the essence, there must be an ability for patients to access PAD more quickly.

**Line 219: Witnesses**

In the Stage 1 chart, the CPSO states that the second request for a physician assisted death must be documented and signed by two witnesses, one of whom may not be the attending or consulting physician, a relative, anyone entitled to a portion of the patient’s estate, an owner or employee of a health care facility where the patient is receiving treatment.

While safeguards are critical, DWDC is concerned that some people suffering from grievous and irremediable medical conditions may find it challenging to locate a witness who meets the above criteria. It may be especially problematic, for elderly, isolated patients who are in long-term health facilities.

*DWDC submits that as the process already ensures a patient’s request is documented by two physicians, a further witness is not required. If the College is determined to require a witness, we submit that the witness need not be independent, and that their sole role should be to affirm the identity of the patient. If unchanged we believe this requirement will place an onerous and unreasonable burden on the patient seeking an assisted death.*

**Line 219: Documentation**

In the Stage 1 chart, the CPSO requires that the second request for PAD be a written request (which may be oral and transcribed by another party, or written by the patient), and that it be dated and signed by the patient. However, there may be instances where a patient is no longer able to date and sign a document.

*Dying With Dignity Canada submits that the patient must be allowed to sign-off on a second request by other means such, whether audio or video, and that this be included in the patient’s file.*

**Line 220**

In the Stage 2 chart, the CPSO states that if the patient loses mental capacity at any time before they receive a physician assisted death, then PAD is no longer an option.
DWDC submits that the Sample Process Map, be amended to state that in cases where a patient has fulfilled all the eligibility and process requirements, but has lost capacity, for example, by slipping into a coma, that their request for PAD should still be allowed to proceed.

DWDC acknowledges that the issue of capacity may be addressed at either the federal or provincial legislatures, and future legislation will take priority over the CPSO’s protocols.

In Conclusion
We thank you for the opportunity to provide feedback on the Interim Guidance document. We appreciate the work and thought put forward by the CPSO. In our view, this may be the most important document from the College in decades. Should you have any questions or wish to discuss our submission further, we would be pleased to make ourselves available to you for such consultation.

While Colleges of Physicians and Surgeons exist to reconcile the rights of both doctors and patients, in our experience, patients’ rights are sometimes neglected. We believe you have struck a thoughtful balance between the two. We strongly encourage you to stay the course. We believe your approach will not only serve Ontarians, but should be adopted as the gold standard across the country.

We have made some suggestions to further improve this policy and encourage you to accept our suggestions as your prepare your protocols and policies on physician assisted dying.

January 12, 2016