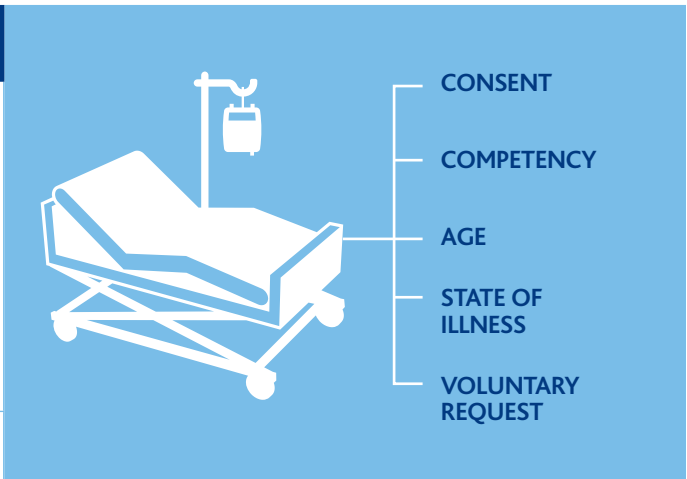


SCHEDULE A: LEGAL STATUS OF PHYSICIAN-ASSISTED DEATH (PAD) IN JURISDICTIONS WITH LEGISLATION¹

A) Patient eligibility for PAD at time of request	
UNITED-STATES² Washington Vermont Oregon	PATIENT MUST BE: <ul style="list-style-type: none"> ■ An adult ■ Competent/capable of making an informed decision and self-administering medication ■ Resident of the state in which PAD will be performed ■ Terminally ill (expected death within 6 months) ■ Requesting PAD voluntarily
EUROPE³ Belgium Luxembourg Netherlands	PATIENT MUST BE: <ul style="list-style-type: none"> ■ Adult, emancipated minor⁴ or minor⁵ ■ Competent/Capable of making an informed decision and conscious⁶ ■ Suffering from constant and unbearable physical or mental pain ■ Terminally ill ■ Requesting PAD voluntarily
LEGISLATIVE DEVELOPMENTS IN CANADA⁷	
Quebec	PATIENT MUST BE: <ul style="list-style-type: none"> ■ Of full age ■ Capable ■ In end-of-life⁸ ■ Suffering from a serious and incurable illness ■ Suffering from an advanced state of irreversible decline in capability ■ Experiencing constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable ■ Insured in the province of Quebec ■ Requesting medical aid in dying (MAD) voluntarily



Key Points:

The following analysis was framed in the context of the Carter case which challenges the legal status of PAD. These European jurisdictions recognize a patient’s right to both euthanasia and PAD. Quebec’s Bill 52 (An Act respecting end-of-life care) refers to medical aid in dying (MAD), which must be administered personally by a physician.

The term “terminally ill” is defined differently depending on the jurisdiction. In the US, the term refers to having a prognosis of 6 months or less, whereas in Europe, no specific timeline is required. Bill 52 follows the European model.

Bill 52 and the European jurisdictions recognize a patient’s psychological suffering as a factor whereas US jurisdictions are limited to recognizing physical suffering.

1 The terminology used in this document is reflective of the definitions used by CMA in end-of-life discussions. See Appendix 2: Care at the end of life.

2 Montana and New-Mexico have recognized the right to PAD through court-rulings, see Statutory exception (Switzerland) and case-mandated (USA) PAD legal status (see p. 8).

3 Switzerland provides physicians with a defense against prosecution for PAD, see Statutory exception (Switzerland) and case-mandated (USA) PAD legal status (see p. 8).

4 Emancipated minors can qualify as eligible patients in Belgium; minors that receive consent from legal guardians are eligible in the Netherlands.

5 In the Netherlands, patients aged 16-18 who are deemed competent can receive PAD after parental/guardian consultation. Patients aged 12-16 who are deemed competent can receive PAD with parental/guardian consent. In Belgium, if the patient is a non-emancipated minor, a consultation with a pediatric psychiatrist or psychologist is necessary.

6 Patient consciousness is not required in the Netherlands.

7 Two Private Member’s Bills have also been introduced in Canadian parliament by MP Steven Fletcher, Bill C-581 and Bill C-582.

8 Term is undefined in Bill 52.

B) Procedure to follow when a patient requests physician-assisted death



<p>UNITED-STATES Washington Vermont Oregon</p>	<p>A PHYSICIAN MUST:</p> <ul style="list-style-type: none"> ■ Receive an oral and written request (signed by two witnesses) from the patient ■ Receive a second oral request from the patient 15 days later ■ Confirm patient eligibility criteria (as stated above) ■ Refer patient for second opinion by a consulting physician ■ Counsel patient on conditions for taking the medication and offer an opportunity to rescind the request⁹ ■ Fulfill documentation requirements ■ Prescribe medication after a 48 hour waiting period
<p>EUROPE Belgium Luxembourg Netherlands</p>	<p>A PHYSICIAN MUST:</p> <ul style="list-style-type: none"> ■ Receive a request from the patient¹⁰ ■ Communicate with patient over a “reasonable period of time” to ensure patient eligibility (as stated above) and consent ■ Inform patient of health condition, life expectancy and discuss palliative care options¹¹ ■ Believe that there is no other reasonable alternative other than PAD and that the request is voluntary ■ Refer patient for second opinion by an independent physician¹² ■ Verify whether or not advance care directives have been registered¹³
<p>LEGISLATIVE DEVELOPMENTS IN CANADA</p>	
<p>Quebec</p>	<p>A PHYSICIAN MUST:</p> <ul style="list-style-type: none"> ■ Receive a signed form (Minister’s form) from the patient (or other, if patient is physically unable to sign) ■ Confirm patient eligibility criteria (as stated above) ■ Inform patient of prognosis and other therapeutic possibilities ■ Communicate with patient at reasonable intervals to confirm MAD wish and persistence of suffering ■ Refer patient for second opinion by an independent physician ■ Take care of and stay with the patient until death ensues

Key Points:

All jurisdictions require a second opinion.

The American jurisdictions require following a particular sequence of steps when a request is made.

All jurisdictions require the consent to be considered and/or sustained over a period of time.

9 In Vermont, the physician is also required to inform the patient of palliative care options. Patients in all states can be referred for psychological consultations to evaluate their capacity to make an informed decision.

10 In Belgium and Luxembourg the request must be in written form. If the patient is unable to sign the document, it can be done by a person designated by the patient.

11 Legislation in the Netherlands does not require the physician to discuss palliative care options with the patient.

12 In Belgium, if the patient is a non-emancipated minor, a consultation with a pediatric psychiatrist or psychologist is necessary.

13 Requirement to verify is applicable in Luxembourg through the National Commission for Control and Assessment. Also applicable in the Netherlands.

C) Physician obligations and legal implications	
<p>UNITED-STATES Washington Vermont Oregon</p>	<p>PHYSICIANS</p> <ul style="list-style-type: none"> Do not have an obligation to participate in PAD Cannot be professionally disciplined Are protected from criminal and civil liability Have no duty to intervene when a patient has self-administered lethal medication, no duty to prevent the administration Who do not wish to participate in PAD have a duty to transfer patient care to another physician who can fulfill the request Have a duty to report to the Department of Health or Department of Human Services Cannot perform PAD in health care facilities that have policies against PAD
<p>EUROPE Belgium Luxembourg Netherlands</p>	<p>PHYSICIANS</p> <ul style="list-style-type: none"> Do not have an obligation to participate in PAD Are not criminally liable for participating in PAD Who do not wish to participate in PAD have a duty to transfer patient care to another physician who can fulfill the request¹⁴ Have a duty to report all PAD to a commission Can perform euthanasia following written advance care directives if all patient eligibility criteria are met and the patient is no longer conscious.¹⁵
<p>LEGISLATIVE DEVELOPMENTS IN CANADA</p>	
<p>Quebec</p>	<p>PHYSICIANS</p> <ul style="list-style-type: none"> Do not have an obligation to participate in MAD Are not civilly liable for participating in MAD¹⁶ Who do not wish to participate in MAD have a duty to notify the director of professional services who will ensure patient care transfer Have a duty to report all MAD to a commission Cannot perform MAD in palliative care hospices that have not included MAD in their policy



Key Points:

In all jurisdictions there is no requirement to participate in PAD/MAD. Each jurisdiction has a process to transfer eligible patients if the attending physician declines to participate (not explicit in the Netherlands). All jurisdictions require mandatory reporting of all PADs/MADs to ensure compliance.

In the US jurisdictions and Bill 52, health facilities have the authority to exclude PAD/MAD from services offered on-site.

PAD/MAD cannot be included in advance care directives in American jurisdictions or in Quebec.

¹⁴ No mention of this duty in legislation in the Netherlands.

¹⁵ Patients in the Netherlands must be 16 years of age or older to have an advance care directive that includes PAD.

¹⁶ Not expressly stated in the bill. The bill amends the following legislation: the Civil Code of Quebec, the Code of Civil Procedure, the Medical Act, the Pharmacy Act and the Act respecting health services and social services.

STATUTORY EXCEPTION (SWITZERLAND) AND CASE-MANDATED (USA) PAD LEGAL STATUS

SWITZERLAND

Switzerland has revised its Criminal Code to include a provision (Article 115) regarding physician-assisted death but does not have any legislation in place. Assisted dying organisations such as Dignitas and Exit Deutsche Schweiz have established patient requirements and physician guidelines to follow. The Swiss Academy of Medical Sciences, an independent foundation, has put forth medical-ethical guidelines and recommendations for the Swiss Medical Association members to follow when performing physician-assisted death. Other governmental legislative acts such as the Federal Narcotic and Psychotropic Substances Act (1951), could indirectly encompass requirements for physicians to follow when performing PAD. There are no residency requirements to be met by the patient, which explains the large influx of foreign patients receiving physician-assisted deaths in Switzerland.

ARTICLE 115

Inciting and assisting suicide

"Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty."

MONTANA

Baxter v Montana; This 2009 Montana Supreme Court decision recognized a patient's constitutional right to receive lethal medication from their physician. The patient must be competent and terminally ill to be eligible. This ruling creates a defense for physicians who are prosecuted and charged for assisting a patient in dying.

NEW MEXICO

Morris v New Mexico; This 2014 trial court decision in the state of New Mexico (judicial district surrounding Albuquerque only) recognized a patient's fundamental right to receive their physician's assistance in death. The patient must be mentally competent and terminally ill. This decision has been appealed.

Reference List

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