



Medical Assistance in Dying

Regulatory Perspective

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Overview

1. Background
2. CPSO's work
3. Practice & Compliance Issues



Disclosures

- **No financial disclosures**
- **I am**
 - Head of Policy at CPSO
 - Lead on CPSO MAID file
- **I was an affiant in CPSO Litigation**



Background

The Supreme Court MRAs develop guidance based on *final*
Code prohibition on *Carter* for 'interim period' until
patients from getting as MRAs revise guidance based on
Federal law



***Carter* decision
1 Year
Suspension**

**1 Federal Government
13 Provincial/Territorial
13 MRAs**

**Federal law in
force**



MRA Work

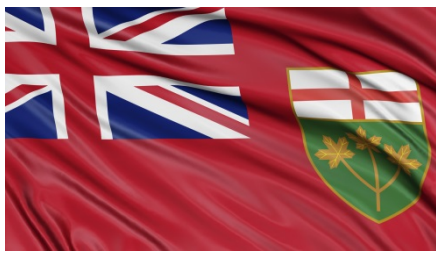
Majority of MRAs have a resource on MAID

→ Reflect federal law

→ Address gaps/practice issues:

- **Guiding principles**
- **Interpretation of eligibility criteria**
- **Conscientious Objections**
- **Drug Protocols & Prescribing**
- **Record Keeping & documentation**

Legal mandate: Regulate the profession to protect and serve the public interest



Ontario

- **Ontario College of Family Physicians**
- **Ontario Hospital Association**
- **Canadian Medical Association**
- **Joint Centre for Bioethics - U of Toronto**



**Ontario College of
Pharmacists**

**College of Nurses of
Ontario**





CPSO's work

Pre-Federal Law

Federal Law



COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

POLICY STATEMENT #1-16

Interim Guidance on Physician-Assisted Death

APPROVED BY COUNCIL: January 2016
PUBLICATION DATE: Issue 1, 2016
KEY WORDS: Physician-Assisted Death; Supreme Court of Canada; *Carter v. Canada*; Competent Adult; Decision-Making Capacity; Consent; Canadian Charter of Rights and Freedoms; Conscientious Objection; Reconciling Rights; Effective Referral; Sample Process Map.
RELATED TOPICS: The Practice Guide; Consent to Treatment; Medical Records; Planning for and Providing Quality End-of-Life Care; Professional Obligations and Human Rights.
LEGISLATIVE REFERENCES: Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11; Coroners Act, R.S.O. 1990, c. 37; Criminal Code, R.S.C., 1985, c. C-46; Health Care Consent Act, 1996, S.O. 1996, c.2, Sched. A.
REFERENCE MATERIALS: *Carter v. Canada (Attorney General)*, 2015 SCC 5; *Carter v. Canada (Attorney General)*, 2016 SCC 4.
COLLEGE CONTACTS: Public and Physician Advisory Service



COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

POLICY STATEMENT #4-16

Medical Assistance in Dying

APPROVED BY COUNCIL: June 2016
REVIEWED AND UPDATED: June 2016
PUBLICATION DATE: Posted Online June 2016
KEY WORDS: Medical Assistance in Dying; Physician-Assisted Death; Supreme Court of Canada; *Carter v. Canada*; Federal Legislation; Competent Adult; Decision-Making Capacity; Consent; Canadian Charter of Rights and Freedoms, Conscientious Objection; Reconciling Rights; Effective Referral; Sample Process Map.
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REFERENCE MATERIALS: *Carter v. Canada (Attorney General)*, 2015 SCC 5.
OTHER RESOURCES: Fact Sheet: Ensuring Access to Care – Effective Referral
COLLEGE CONTACTS: Public and Physician Advisory Service

RELATED TOPICS: The Practice Guide; Consent to Treatment; Mandatory and Permissive Reporting; Medical Records; Planning for and Providing Quality End-of-Life Care; Professional Obligations and Human Rights.
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MAID policy



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POLICY STATEMENT #3-15

Consent to Treatment

APPROVED BY COUNCIL: February 2001
REVIEWED AND UPDATED: September 2005, May 2015
TO BE REVIEWED BY: May 2020
PUBLICATION DATE: Issue 2, 2015
KEY WORDS: Consent; treatment; patient autonomy; capacity; substitute decision-maker; material risks; consent forms; emergency

RELATED TOPICS: Practice Guide: Confidentiality of Personal Health Information; Decision-making for the End-of-Life; Delegation of Controlled Acts; Ending the Physician-Patient Relationship; Physician Relationships with Industry; Practice, Education and Research; Complementary/Alternative Medicine; Marijuana for Medical Purposes; Medical Records; Prescribing Drugs; Telemedicine

LEGISLATIVE REFERENCES: Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A; Mental Health Act, R.S.O. 1990, c. M.7; Substitute Decisions Act, 1992, S.O. 1992, c. 30.

REFERENCE MATERIALS: Canadian Medical Protective Association. *Consent: A guide for Canadian physicians*, 4th Edition (May 2004); *Helping patients make informed decisions* (April 2014); *Is this patient capable of consenting?* (June 2011)

COLLEGE CONTACTS: Public and Physician Advisory Service



COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
POLICY STATEMENT #4-15

Planning for and Providing Quality End-of-Life Care

APPROVED BY COUNCIL: September 2002
REVIEWED AND UPDATED: February 2006, September 2015
TO BE REVIEWED BY: September 2020
PUBLICATION DATE: Issue 3, 2015
KEY WORDS: Communication; advance care planning; consent; substitute decision-maker; palliative care; potentially life-saving treatment; life-sustaining treatment; cardiopulmonary resuscitation (CPR); do not resuscitate order; "Do Not Resuscitate" order; certification of death; physician-assisted death; hastened death; conflict resolution; organ and tissue donation

RELATED TOPICS: Practice Guide: Consent to Treatment; Confidentiality of Personal Health Information; Mandatory and Permissive Reporting; Ending the Physician-Patient Relationship; Professional Obligations and Human Rights; Medical Records

LEGISLATIVE REFERENCES: Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A; Personal Health Information Protection Act, 2004, S.O. 2004, c.3, Schedule A, R.S.O. 1990, Reg. 1004, General enacted under the *Statute of Ontario*; R.S.O. 1990, c. V.46, Coroners Act, R.S.O. 1990, c. 27; Ontario Regulation 114/04, General, Sections 18, 19, 20 and 21, made under the *Medical Care Act*, 1997, S.O. 1997, c.30; *Infirmary Gift of Life Network Act*, R.S.O. 1990, c. H20; *Criminal Code*, RSC, 1985, c. 46.

REFERENCE MATERIALS: See Back Page

OTHER REFERENCES: Frequently Asked Questions

COLLEGE CONTACTS: Physician Advisory Service



COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
POLICY STATEMENT #4-12

Medical Records

APPROVED BY COUNCIL: November 2000
REVIEWED AND UPDATED: September 2005, November 2006, May 2012
PUBLICATION DATE: Dialogue, Issue 2, 2012
KEY WORDS: Records; Chart; Documentation; EMR; Retention; Storage and Security; Confidentiality of Personal Health Information; Mandatory Reporting; Consent to Medical Treatment; Test Results Management

LEGISLATIVE REFERENCES: *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, as amended; *Ontario Regulations 856/09 and 241/94*, as amended (made under the *Medical Care Act*, 1997); *Health Insurance Act*, R.S.O. 1990, c. H.6; *Independent Health Facilities Act*, R.S.O. 1990, c. 13; *Mental Health Act*, R.S.O. 1990, c. M.7; *Personal Health Information Protection Act*, 2004, S.O. 2004, c.3, Sched. A; *Public Hospitals Act*, R.S.O. 1990, c. P40; *Long Term Care Homes Act*, 2007, S.O. 2007, c. 2; *Health Care Consent Act*, 1996, S.O. 1996, c. 2, Sched. A; *Children's Law Reform Act*, R.S.O. 1990, c. 12; *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B.

REFERENCE MATERIALS: OHIP Schedule of Benefits; Physician's Guide to Uninsured Services, Ontario Medical Association

COLLEGE CONTACT: Public and Physician Advisory Services



COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
POLICY STATEMENT #2-15

Professional Obligations and Human Rights

APPROVED BY COUNCIL: September 2008
REVIEWED AND UPDATED: March 2015
TO BE REVIEWED BY: March 2020
PUBLICATION DATE: Issue 1, 2015
KEY WORDS: Ontario Human Rights Code; Canadian Charter of Rights and Freedoms; Discrimination; Duty to Accommodate; Clinical Competence; Conscience or Religious Beliefs; Access to Care; Balancing Rights; Effective Referral; Emergency Care

RELATED TOPICS: The Practice Guide: *Accessing New Patients, Ending the Physician-Patient Relationship*; Physicians and Health Emergencies

LEGISLATIVE REFERENCES: *Canadian Charter of Rights and Freedoms*; Part I of the *Constitution Act, 1867*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11; *Human Rights Code*, R.S.O. 1990, c. H.19.

REFERENCE MATERIALS: *McInnes v. Alcan Canada* (1992) 2 S.C.R. 138; *R. v. Big M Drug Mart Ltd.* (1985) 1 S.C.R. 295; *R. v. Morgentaler* (1988) 1 S.C.R. 30; *Drainage v. Canadian Broadcasting Corp.* (1994) 3 S.C.R. 835; *Syndicat Northcrest v. Amers* (2004) 2 S.C.R. 951.

OTHER REFERENCES: Ontario Human Rights Commission, *Policy on Competing Human Rights*, (Ontario: Jan 20, 2012).

COLLEGE CONTACTS: Public and Physician Advisory Service

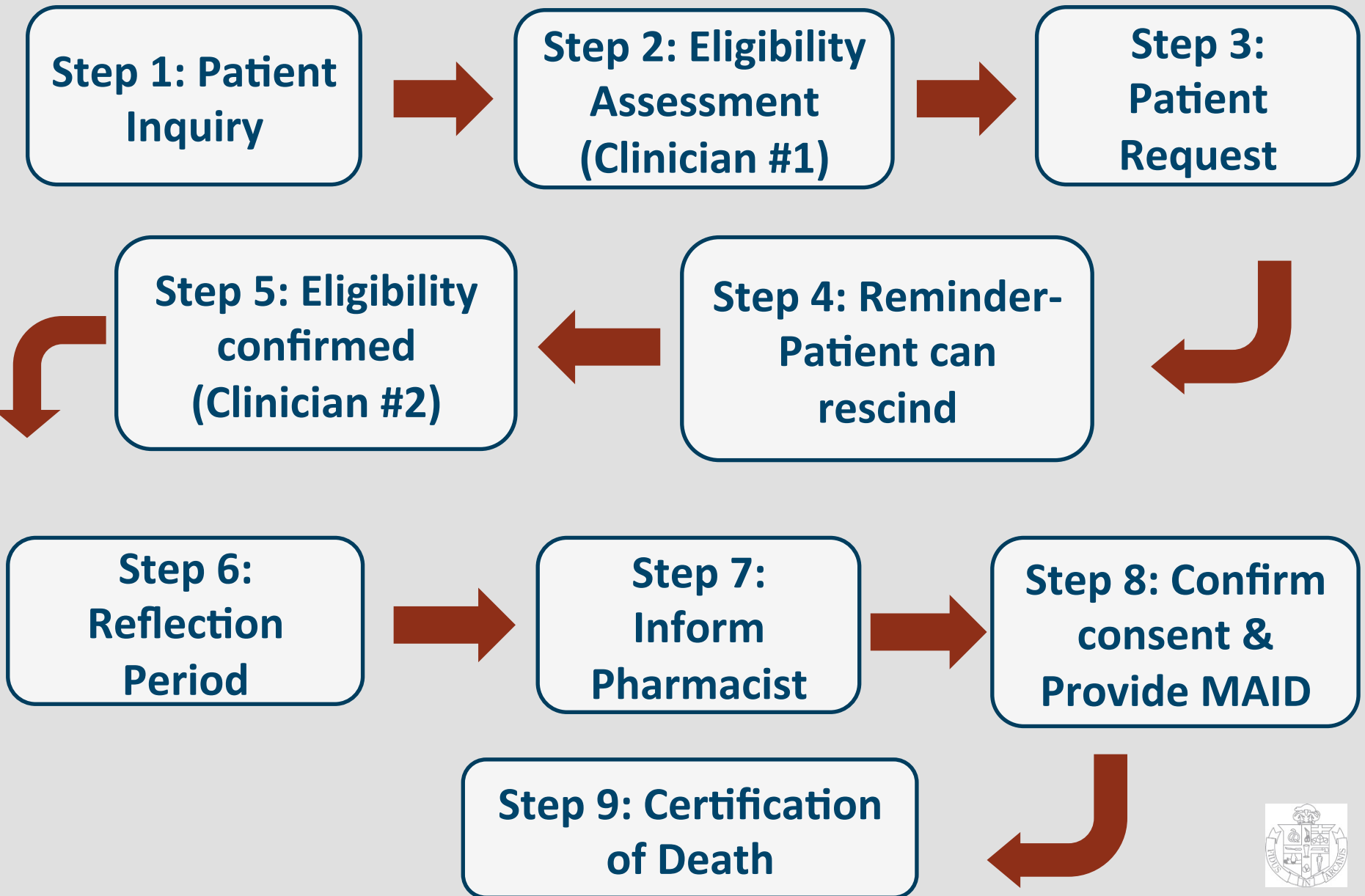
Fills Gaps:

- Record Keeping
- Conscientious Objection

Fills Gaps:

- ✓ Record Keeping
- ✓ Conscientious Objection:
Effective referral obligation

Process Map



Prescribing & Drug Protocols



- **Protocols available: members' only page**
- **Resources, no protocol is recommended**
- **Prescribing decisions = matter of professional judgement**

Conscientious Objection: 'Effective Referral'

Objecting physicians do not have to provide MAID;
they do have to provide an 'effective referral'



Referral can be made to a physician,
nurse practitioner or agency

Litigation : June 2017



Physician, nurse practitioner or agency must be non-
objecting, accessible and available to the patient;



Referral must be made in a timely manner; patient
must not suffer adverse outcome due to delay



Additional Resources

FAQs for Patients and Physicians

Medical Assistance in Dying
Policy: Frequently Asked
Questions



Medical Assistance in Dying Policy:
10 Things The Patient Should Know



Understanding Effective Referrals

FACT SHEET: Ensuring Access to Care: Effective Referral



When physicians limit the health services they provide for reasons of conscience or religion, the CPZO requires that they provide patients with an 'effective referral'.¹

What is an effective referral?
A physician makes an effective referral when he or she takes positive action to ensure the patient is connected in a timely manner to another physician, health care provider, or agency who is non-objecting, accessible and available to the patient.

Objective: Ensuring Access to Care, Respecting Patient Autonomy
An effective referral does not guarantee a patient will receive a treatment, or signal that the objecting physician endorses or supports the treatment. It ensures access to care and demonstrates respect for patient autonomy.

Medical
Assistance in Dying:
Early Lessons
Learned

Lessons from Coroner's
Office

www.cpsso.on.ca



Practice & Compliance Issues

Public & Physician Advisory Services

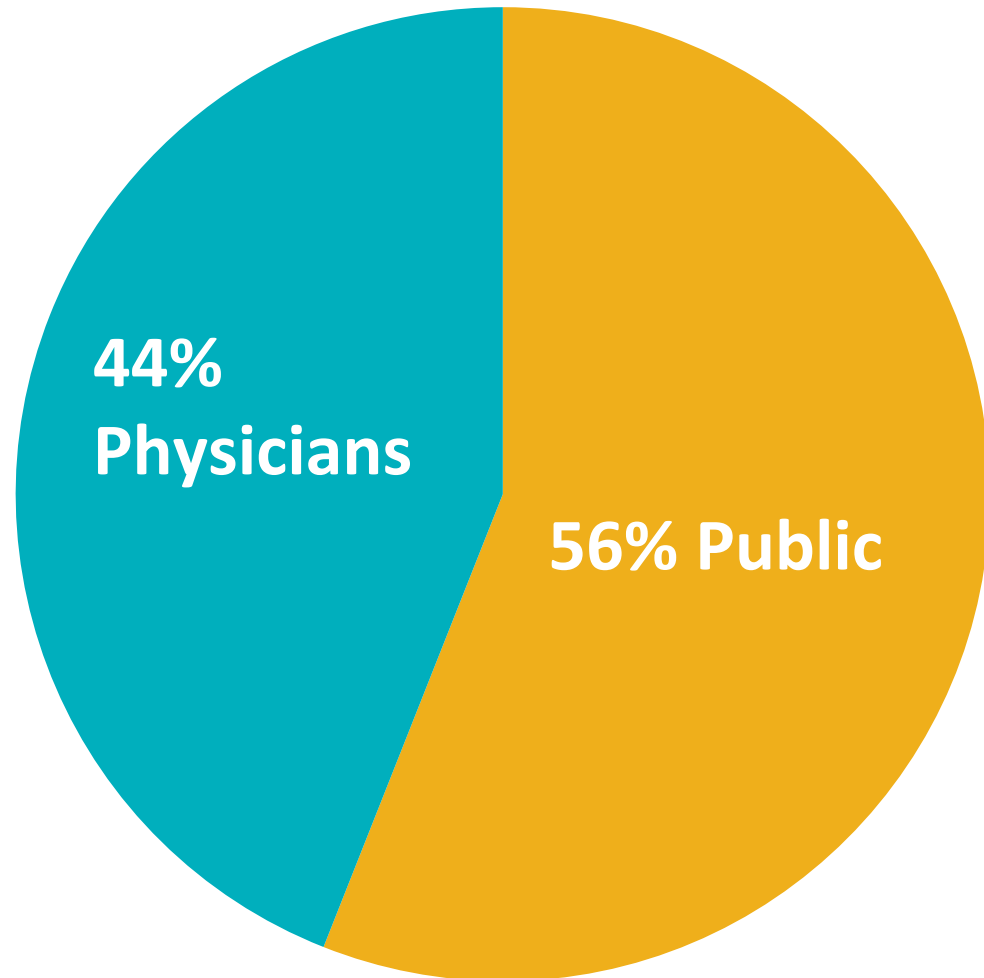
- Calls, queries from the profession and public on MAID
- Total of 681 inquiries since April 2016

Office of the Chief Coroner of Ontario

- Oversight and compliance monitoring role
- Tracking trends, practice issues

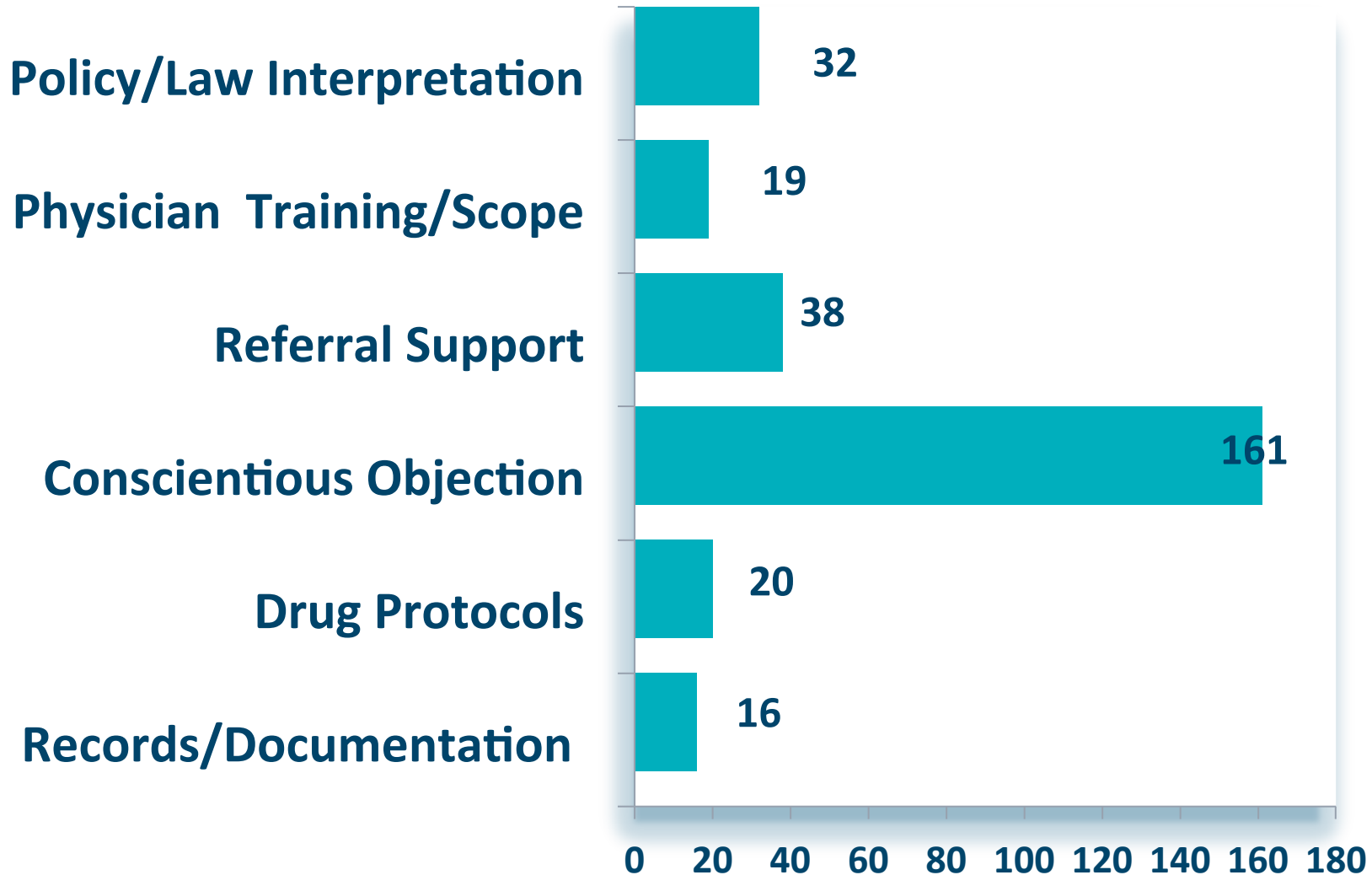
PPAS MAID Inquiries (since April 1 2016)

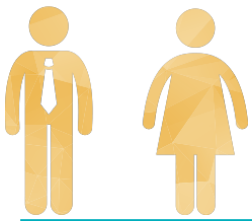
681 Inquiries total



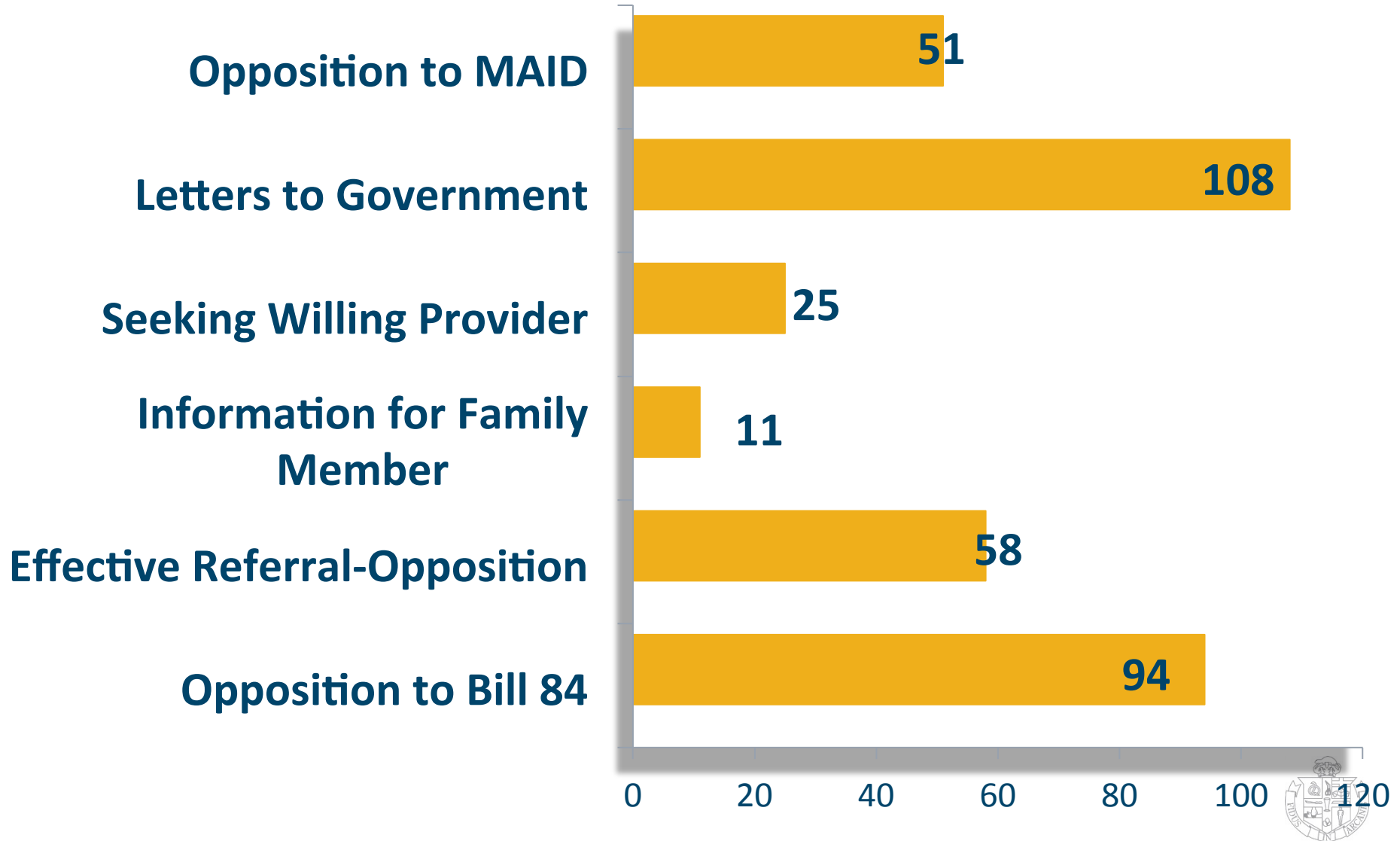


Physician Inquiries: Top Issues





Public Inquiries: Top Issues



Coroner's Office: Key Issues in Practice

→ Understanding and applying law and policy

- **Documentation:** lack of/insufficient documentation
- **Witnesses:** not independent; not contemporaneous
- **Reflection Period:** deviation for alternative reasons
- **Drug Protocols:** lack of awareness of protocols
- **Coordination & Communication:** amongst providers



Lessons from Coroner's Office



Litigation: Conscienti

Two CPSO policies:
MAID and Human Rights

Focus: 'Effective Referral' & s.2(a) and s.15(1)

Parties:

- Christian Medical & Dental Society of Canada
- Cdn Federation of Physicians & Dentists
- Saskatchewan Medical Association
- Canadian Physicians for Life
- 5 individual physicians (CPSO members)

Intervenors

- CPSO

Date: June 2017; decision on reserve

Superior Court of Justice (Divisional Court)



Litigation: snap shot

Some questions advanced...

Procedural

- Does the *Charter* apply to the CPSO?
- Are the policies 'ultra vires' CPSO jurisdiction?
- What Standard of Review is applicable?

Substantive

- Does 'effective referral' requirement violate physician *Charter* rights? [s.2(a) and s.15(1)]
- If so, is it saved by s.1?
- Is 'effective referral' equivalent to performing objectionable procedure?
- Do CPSO policies place physicians in jeopardy: adhere to beliefs or risk regulatory sanction?

Outstanding Issues

- **Application & Interpretation of Eligibility**
‘advanced decline in capability’ • ‘reasonably foreseeable death’
- **Access to Care: rural centres, willing providers**
- **Billing & Fees**
- **Oral Drugs: access & efficacy**
- **Data Collection & Oversight**
- **Mature Minors, Mental Illness , Advance Requests**

**Care Coordination
Service**



www.cpsso.on.ca