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Via email: LHanvey@bruyere.org

Louise Hanvey
Project Manager
Advance Care Planning in Canada
Canadian Hospice Palliative Care Association
60 rue Cambridge Street North
Ottawa, ON K1R 7A5

Dear Ms Hanvey:

**Re: National Framework on Advance Care Planning in Canada – Consultation Draft,
November 2010**

I am writing on behalf of the National Elder Law Section of the Canadian Bar Association (the CBA Section) to comment on the latest consultation draft of the National Framework on Advance Care Planning in Canada (the Draft Framework). The CBA Section commends the Canadian Hospice Palliative Care Association and its Task Group for its leadership in the elaboration of the Draft Framework.

In June 2010 the CBA's National Elder Law, Health Law and Wills, Estates and Trusts Law Sections provided comments and recommendations on the legal and ethical issues arising in advance care planning (ACP), with respect to advance directives (ADs), and in the foundational role of the law in the process of planning and implementation of ACP and ADs.

We are pleased to see that universal legal tenets now form part of the Draft Framework. It is well recognized that capacity is both task-specific and time-specific. Clinical and legal specialists also know that a person may be incapable in several important respects but still have capacity to consent to all or some care and treatment decisions. That said, we find in our practices across the country that these principles are neither well understood nor properly applied. The practical impact can be to increase risk, to cause indirect or direct harm, and to attract significant liability.

For this reason we urge further emphasis of these fundamental legal and ethical principles throughout the text, as detailed below:

1. While situated on page 6, the primacy of the legal and ethical requirement of consent in the final two paragraphs of the “process steps” in ACP, would be strengthened if moved to form

part of the “Important Definitions” section and repeated again under the “Guiding Principles” relating to ACP.

In the first of these final two paragraphs which opens “It is important to remember,” the words “of the decision in question” should be added at the end of the fourth sentence and “for the decision in question” added before “prior” in the last sentence.

2. Important Definitions – Page 2

Advance Directive: The words “for the particular care or treatment decision” should be added at the end of the second sentence.

Public Guardian and Trustee: Reference should be made to the “Quebec Public Curator”. The apostrophe should be removed in the abbreviation “SDMs”.

Substitute Decision Makers or SDM is a person (remove the word “incapable”) who will make decisions on behalf of a person in circumstances where the person is incapable of a particular care or treatment decision.

3. On page 3 in Section 2, paragraph 2, “with” in the last sentence should read “without”.

In paragraph 3 of the same section the words “of the particular care or treatment decision” should be added after “capable” in the second sentence.

4. On page 5 under the paragraph, “Obtaining Legal Advice” the word “can” should replace “may be able to” in the first sentence. It would be helpful to cite examples of the value of legal assistance: to explain the patient/care recipient’s right to consent; to explain issues of task and time-specific capacity; to explain the role of a SDM in giving consent; to define wishes in an AD; and to consult on the selection of an appropriate SDM and/or hold a family meeting to facilitate the communication of wishes during the process of ACP.

5. On page 12, in Section 1, “Engagement”, add “and Notaries in the Province of Quebec” after “Lawyers” in the “Professionals and Providers” category.

6. On page 15, in the final paragraph, second to last line, the word “capable” should be deleted and “capable of the particular care or treatment decision” added after “person”.

We look forward to reviewing your final document in due course and to collaboration on its implementation.

Yours truly,

(original signed by Tamra Thomson for Jane A. G. Purdie)

Jane A. G. Purdie, Q.C.
Chair
National Elder Law Section

cc. Lonny Rosen, LRosen@gardiner-roberts.com