

9 January, 2015

NUMBER 23/15

COLLEGE OF PHYSICIANS AND SURGEONS
OF SASKATCHEWAN
TO COUNCIL

FROM: Registrar

SUBJECT: Draft Policy – Conscientious Objection

For Your Decision

M E M O R A N D U M

DATE: January 9, 2015
TO: Council
FROM: Bryan E. Salte
RE: Draft Policy – Conscientious Objection

1. Decision Required

I suggest that Council review the draft Policy Statement below and determine if it supports the document in principle.

Due to the potentially contentious nature of the document, I think that it should be the subject of a consultation request to allow interested parties to have input before it is adopted in its final form.

2. Background

The background is contained in Info 200_14. The Council appointed a committee to review and make suggestions for a policy which could be considered by Council.

Bryan Salte, Karen Shaw, Micheal Howard-Tripp, Susan Hayton, Marcel de la Gorgendiere and Susan Halland participated in the meeting at which this was discussed.

The group reached a consensus on the suggested content of such a policy.

In general, the group agreed with the concepts contained in the draft conscientious refusal policy in Info 200, but suggested some changes to clarify some aspects of the policy.

3. Suggested changes from what was contained in the Draft Conscientious Refusal Policy in Info. 200

- 1) The principle change was to remove the statements which stated that there were disciplinary consequences associated with physicians who refuse to follow the policy. While that may be true, no other College policy contains such a statement.
- 2) A statement that a physician should not promote his or her own moral or religious beliefs when interacting with a patient (similar to what is stated in the statement

by the College of Physicians and Surgeons of Manitoba on page 15 of info 200) was added.

- 3) There were other changes which primarily were intended to make the policy somewhat clearer to apply.

4. The policy – changes not tracked

What follows is how the document with the changes recommended by the Committee.

POLICY - CONSCIENTIOUS REFUSAL

This document is a policy of the College of Physicians and Surgeons of Saskatchewan and reflects the position of the College.

1. Purpose

This policy seeks to provide clear guidance to physicians and the public about the obligations which physicians have to provide care to patients and how to balance those obligations with physicians' right to act in accordance with their conscience if they conflict.

2. Scope

This policy applies to all situations in which physicians are providing, or holding themselves out to be providing, health services.

3. Definitions

Freedom of conscience: for purposes of this policy, actions or thoughts that reflect one's deeply held and considered moral or religious beliefs.

Lawful excuse: a reason provided by law that relieves a person of a duty (e.g., physicians have a lawful excuse not to treat a patient who requests a procedure that will not achieve the goal that the patient seeks).

4. Principles

The College of Physicians and Surgeons has an obligation to serve and protect the public interest. The Canadian medical profession as a whole has an obligation to ensure that people have access to the provision of legally permissible and publicly-funded health services.

Physicians have an obligation not to interfere with or obstruct a patient's right to access legally permissible and publicly-funded health services.

Physicians have an obligation to provide health information, referrals, and health services to their patients in a non-discriminatory fashion.

Physicians have an obligation not to abandon their patients.

In certain circumstances a physician will have a lawful excuse to refuse to provide a service requested by a patient.

Physicians' freedom of conscience should be respected.

It is recognized that these obligations and freedoms can come into conflict. This policy establishes what the College expects physicians to do in the face of such conflict.

5. Obligations

5.1 Taking on new patients

Physicians must not refuse to take people on based on the following characteristics of, or conduct by, them:

- a. age;
- b. race, national/ethnic/Aboriginal origin, colour;
- c. sex, gender identity, or gender expression;
- d. religion or creed;
- e. family or marital status;
- f. sexual orientation;
- g. physical or mental disability;
- h. medical condition;
- i. socioeconomic status;
- j. engaging in activities perceived to contribute to ill health (e.g., smoking, drug or alcohol abuse); or
- k. requesting or refusing any particular publicly-funded health service.

The above obligation does not prevent physicians from making *bona fide* decisions, or exercising professional judgment, in relation to their own clinical competence. Physicians are always expected to practice medicine in keeping with their level of clinical competence to ensure that they safely deliver quality health care. If physicians genuinely feel on grounds of lack of clinical competence that they cannot accept someone as a patient because they cannot appropriately meet that person's health care needs, then they should not do so and should explain to the person why they cannot do so.

The above obligation does not prevent physicians from making *bona fide* decisions to develop a non-discriminatory focused practice.

Where physicians know in advance that they will not provide specific services, but will provide only referrals (in accordance with s. 5.3), they must communicate this fact as early as possible and preferably in advance of the first appointment with an individual who wants to become their patient.

5.2 Providing information to patients

Physicians must provide their patients with the health information required to make legally valid, informed choices about medical treatment (e.g., diagnosis, prognosis, and treatment options, including the option of no treatment or treatment other than that recommended by the physician), even if the provision of such information conflicts with the physician's deeply held and considered moral or religious beliefs.

Physicians must not provide false, misleading, intentionally confusing, coercive, or materially incomplete information to their patients.

All information must be communicated by the physician in a way that is likely to be understood by the patient.

While informing a patient, physicians must not communicate or otherwise behave in a manner that is demeaning to the patient or to the patient's beliefs, lifestyle, choices, or values.

Physicians must not promote their own moral or religious beliefs when interacting with a patient.

The obligation to inform patients may be met by delegating the informing process to another competent individual for whom the physician is responsible.

5.3 Providing referrals for health services

Physicians can decline to provide legally permissible and publicly-funded health services if providing those services violates their freedom of conscience. However, in such situations, they must make a timely referral to another health care provider who is willing and able to accept the patient and provide the service.

This obligation does not prevent physicians from refusing to refer patients where there exists a recognized lawful excuse (see s. 3).

While discussing a referral with a patient, physicians must not communicate, or otherwise behave in a manner that is demeaning to the patient or to the patient's beliefs, lifestyle, choices, or values.

When physicians make referrals for reasons having to do with their moral or religious beliefs, they must continue to care for the patient until the new health care provider assumes care of that patient.

5.4 Treating patients

When a referral to another health care provider is not possible without causing a delay that would jeopardize the patient's health or well-being, physicians must provide the patient with all health services that are legally permissible and publicly-funded and that are consented to by the patient or, in the case of an incompetent patient, by the patient's substitute decision-maker. This obligation holds even in circumstances where the provision of health services conflicts with physicians' deeply held and considered moral or religious beliefs.

This obligation does not prevent physicians from refusing to treat a patient where there exists a recognized lawful excuse (see s. 3).

5. The policy suggested to Council – Revision-Marking mode

In order to clarify the recommended changes from the document developed by the working group, I have made the suggested changes to the original document from Info 200 in revision-marking mode. The content of this document and the one above is identical.

POLICY - CONSCIENTIOUS REFUSAL

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Deleted: It is expected that all members of the College will comply with it. Failure to do so will render members subject to College investigation and may result in disciplinary action being taken against them.

1. Purpose

This policy seeks to provide clear guidance to physicians and the public about the obligations which physicians have to provide care to patients and how to balance those obligations with physicians' right to act in accordance with their conscience if they conflict.

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2. Scope

This policy applies to all situations in which physicians are providing, or holding themselves out to be providing, health services.

3. Definitions

Freedom of conscience: for purposes of this policy, actions or thoughts that reflect one's deeply held and considered moral or religious beliefs.

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Where physicians know in advance that they will not provide specific services, but will provide only referrals (in accordance with s. 5.3), they must communicate this fact as early as possible and preferably in advance of the first appointment with an individual who wants to become their patient.

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This obligation does not prevent physicians from refusing to treat a patient where there exists a recognized lawful excuse (see s. 3).

Deleted: 6. Complaints Process¶

¶ Upon notification of a complaint under this Policy (see Form 2 [to be developed]), the College will investigate, prosecute, and remedy breaches of the obligations set out in this Policy.¶

7. Penalties¶

¶ Failure to meet the obligations set out in this policy constitutes professional misconduct. Physicians who violate this policy will be subject to discipline by the College.¶

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6. Another issue raised by the committee

The committee spent some time addressing some of the concerns which arise from end of life decisions where physicians and patients' proxies disagree on the appropriate treatment. The committee suggested that I review the Ontario legislation which establishes a process for resolving such disputes and the operation of the Capacity and Consent Board which makes those decisions in order to provide a discussion paper for Council.

Council will be asked to consider at a future meeting whether it should suggest to government that a similar process be established by the Saskatchewan legislature.