



Protection of Conscience Project

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Clarifying the Clarification

College of Physicians and Surgeons of Saskatchewan
Guideline on Unplanned Pregnancy

Sean Murphy

Reports in the *Toronto Sun* and *Edmonton Sun* in February, 2011, stated that the College of Physicians and Surgeons of Saskatchewan would henceforth require physicians who refuse to perform abortion to refer patients to other physicians to obtain the procedure.¹ These reports were false. The *National Post* highlighted the story with a headline to the same effect. Its story was more accurate, but still misleading.² The Protection of Conscience Project began receiving e-mails from concerned physicians and others as soon as the stories appeared.

The source of the problem was a revision to the College *Guideline for Unplanned Pregnancy* that incorporated a requirement for “referral” in certain circumstances. It was this new requirement that the big dailies appear to have misunderstood and used as the basis for their inaccurate headlines and stories. To be fair to reporters and editors, the wording of the revised *Guideline* lends itself to such misunderstanding.

The story begins in January of 2010, when the College Registrar identified the 1991 *Guideline* in a 185 page document listing College policies that might be in need of updating.³ The Registrar listed policies in six categories, from those recommended for affirmation (Category 1) to those recommended for deletion (Category 6). The *Guideline for Unplanned Pregnancy* was placed in Category 5, the Registrar seeking the Council’s direction about whether or not it should be retained.

During discussion, the Registrar commented that physicians response to patients with unplanned pregnancy may be governed by the physician’s “values and beliefs.” It is not clear from the minutes whether or not the comment was directed only at physicians who object to abortion; physicians who do not object to abortion are equally guided by “values and beliefs.” In any case, a subcommittee consisting of three College Councillors was formed to review the *Guideline*. Reverend J. Fryters, a public representative, joined two physicians, Dr. A. Danilkewich and Dr. P. Hanekom, to undertake the review.⁴ In June, 2010 the Council designated Dr. Hanekom chair of the subcommittee.⁵

Reporting to the Council in September, Dr. Hanekom requested clarification of the Council’s opinion about maturity and consent capacity with respect to pregnant minors and the meaning of ‘policy’ and ‘guideline.’ He was advised that a ‘policy’ sends a stronger message to the profession than a guideline.⁶

Revision Date: 2 March, 2011

On 19 November the subcommittee, now including Dr. Karen Shaw, provided a draft *Guideline* to Council that included two references to referral.

5 (c) With reference to the option of termination of the pregnancy, the physician should appraise the patient of the availability of abortion services in the province, or elsewhere, in accordance with any current law or regulation governing such services, *and arrange for the necessary referral*. Ideally the patient should be provided the information regarding the nature of termination options, to the best of the physician's ability. (emphasis added)

11) Any physician who is unable to be involved in the further care and management when termination of the pregnancy is considered, should reveal this to the patient *and make an expeditious referral* to another available physician.⁷ (emphasis added)

The references to referral were challenged during discussion, and the guideline was returned to the subcommittee with instructions to provide a written discussion and submit a report to the Council at its February, 2011 meeting.⁸

A revised draft *Guideline* dated 12 January, 2011 was brought to the Council in February, but the subcommittee failed to deliver the expected written discussion or report. It was approved after further revisions, after which it made the news. For the most part, the 2011 *Guideline* replicates its 1991 predecessor and the changes are not substantive. This is consistent with a published comment by the Deputy Registrar that the College did not mean to change the policy, but to clarify it.⁹

It was the following new addition to the *Guideline* that triggered the inaccurate news stories and set off alarms among health care workers and others who find abortion morally objectionable:

(Preamble) Any physician who is unable to be involved *in the further care and management of any patient* when termination of the pregnancy *might be contemplated* should inform the patient and *make an expeditious referral* to another *available physician*. (emphasis added)

The Preamble appears to be directed at physicians who refuse to continue a relationship with a patient who 'might contemplate' abortion. Physicians who take this approach must be extremely rare - if any can be found at all - so it is doubtful that the situation considered here would ever arise. And while one can arrive at more than one interpretation of this passage, there is no requirement that the "available physician" be an abortion provider. Thus, it would seem that the Preamble cannot be understood to imply a duty to refer for abortion.

Section 5 of the guideline can also be interpreted in different ways.

5) Will fully apprise the patient of the *options she may pursue* and provide her with *accurate information relating to* community agencies and services that may be of assistance to her in pursuing each option. (emphasis added)

5(c) With reference to the option of termination of the pregnancy, the physician should apprise the patient *of the availability of abortion services in the province, or elsewhere, in accordance with any current law or regulation governing such services*, and should ensure that the patient has the *information needed to access such services*

or *make the necessary referral*. . . (emphasis added)

In the Project's experience, objecting physicians are usually willing to indicate that abortion may be obtained from other physicians without the need for referral, and to suggest that the patient consult a phone book or seek assistance from the College of Physicians. However, some physicians are unwilling to provide contact information for an abortion provider, on the grounds that doing so would make them complicit in the abortion that followed.¹⁰ The term "necessary referral" is confusing, since a referral is not necessary for abortion and is not required by the Canadian Medical Association.¹¹ Thus, whether or not this part of the *Guideline* is problematic hinges upon the meaning of "information needed to access."

The College policy *Performance of Abortion* is also relevant here because it specifies that a physician "who is unwilling to carry out the procedure in this instance, should advise the patient where the service may be obtained and, if requested to do so, assist the patient in establishing contact with such a physician or facility."¹² Since this passage contemplates refusal to perform an abortion in a particular instance, and not a global refusal to do so, it appears that this is directed at physicians whose refusal is grounded upon clinical competence, or upon clinical rather than moral judgement.

Nonetheless, it could be interpreted to apply to physicians who, while generally willing to provide abortions, have moral objections to doing so in particular cases. Dr. Henry Morgentaler, for example, who has been awarded the Order of Canada for the dedicated delivery of abortion service for decades, is unwilling to perform abortions after about 24 weeks gestation because he does not want to abort fetuses after they have become babies.¹³ Other physicians may set lower gestational limits, and some may not be willing to provide abortions for sex selection or other social reasons. Of these, some may be unwilling to facilitate such abortions by assisting the patient in the manner indicated in the *Guideline*.

Happily, *Performance of Abortion* is one of the policies slated for review by the Council, with a recommendation that it be deleted.¹⁴ Since much of it has been incorporated into the new *Guideline on Unplanned Pregnancy*, the deletion should have no adverse effects and will relieve the profession of an ambiguous and therefore potentially troublesome directive.

The fact that the *Guideline on Unplanned Pregnancy* was under review was not formally announced, nor was the draft published for comment from the profession and the public before it was approved. However, the review process can be described as reasonably transparent because the subject was discussed at Council meetings open to the public, and the College promptly responded to Project requests for copies of relevant documents after the story broke. The failure to consult the profession and the public before approving the *Guideline* seems to reflect a lack of awareness by College Councillors that referral for morally controversial procedures is a highly contentious issue.

It is unfortunate that an effort to clarify the *Guideline on Unplanned Pregnancy* has generated such confusion and that the *Guideline* itself is, on key points, less than clear. The Protection of Conscience Project suggests that concerned physicians and medical students contact the College directly and obtain a written explanation of the *Guideline*. In the meantime, they may take comfort in the fact that physicians who object to abortion for reasons of conscience - whether globally or, like Dr. Morgentaler, selectively - can hardly be disciplined for failing to adhere to ambiguous directives or guidelines.

Notes

1. “Saskatchewan Updates Abortion Policy.” *Edmonton Sun*, 9 February, 2011 (<http://www.edmontonsun.com/life/healthandfitness/2011/02/09/17209346.html>). *Toronto Sun*, 9 February, 2011 (<http://www.torontosun.com/life/healthandfitness/2011/02/09/17209251.html>) Accessed 2011-02-09
2. Scissons, Hannah, and Boesveld, Sarah, “Anti-abortion Docs Must Provide Referrals.” *National Post*, 9 February, 2011. (<http://www.nationalpost.com/todays-paper/Anti+abortion+doctors+must+provide+referrals/4247767/story.html#ixzz1DUMkmyb0>) Accessed 2011-02-09
3. Registrar to Council, 2010-01-20, No. 20-10. *Registrar’s Review of All Current Council Policies*.
4. Extract of minutes of Council meeting of 29 January, 2010, in e-mail dated 28 February, 2011, from the Associate Registrar, College of Physicians and Surgeons of Saskatchewan to the Project Administrator.
5. Extract of minutes of Council meeting of 25 June, 2010, in e-mail dated 28 February, 2011, from the Associate Registrar, College of Physicians and Surgeons of Saskatchewan to the Project Administrator.
6. Extract of minutes of Council meeting of 17 September, 2010, in e-mail dated 28 February, 2011, from Associate Registrar, College of Physicians and Surgeons of Saskatchewan to the Project Administrator.
7. To Council from Registrar, 15 November, 2011. *Guideline: Unplanned Pregnancy*. No. 256-10
8. Extract of minutes of Council meeting of 19 November, 2010, in e-mail dated 28 February, 2011, from Associate Registrar, College of Physicians and Surgeons of Saskatchewan to the Project Administrator.
9. Scissons, Hannah, “Abortion Guidelines Updated: Rules clarify protocol for doctors unwilling to terminate pregnancy.” *Star Phoenix*, 9 February, 2011 (<http://www.thestarphoenix.com/news/Abortion+guidelines+updated/4248285/story.html#ixzz1DUM1ust7>) Accessed 2011-02-09
10. Murphy, Sean, “The Problem of Complicity.” *Protection of Conscience Project*, (<http://www.consciencelaws.org/issues-ethical/ethical082.htm>)
11. Canadian Medical Association, *Induced Abortion*. (15 December, 1988) (http://www.cma.ca/index.php/ci_id/3218/la_id/1.htm) Accessed 2011-03-02. Blackmer, Jeff, *Clarification of CMA’s position concerning induced abortion*. CMAJ • April 24, 2007; 176 (9). (<http://www.cmaj.ca/cgi/content/full/176/9/1310>) Accessed 2011-03-02

12. Registrar to Council, 2010-01-20, No. 20-10. *Registrar's Review of All Current Council Policies*, p. 181.

13. Henry Morgentaler initially advocated unrestricted abortion during the first 12 weeks of pregnancy. In 1989 he was performing abortions on women 16 weeks pregnant, moving to 18 weeks by 1996. He noted in 2004 that he had "ethical problems" doing abortions from about 24 weeks, explaining, that he did not want to abort fetuses after they had become babies. [Canadian Press, "Quebec hopes to offer late term abortions."
(http://www.ctv.ca/CTVNews/Canada/20040912/quebec_abortion_040911/) Accessed 2010-09-20; Dunphy, Catherine, *Morgentaler: A Difficult Hero*. Random House: Toronto, 1996, p. 62-64, 339.

14. "[T]he College does not attempt to 'micro manage clinical practice' in respect to other services so this policy would seem to be inconsistent with our usual approach to guiding clinical care." Registrar to Council, 2010-01-20, No. 20-10. *Registrar's Review of All Current Council Policies*, p. 181.