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2 **DRAFT**
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5 **Physicians and the Ontario *Human Rights Code***
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7 **Related Policies, Documents and Legislation**
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9 *CPSO Policies*

10 Ending the Physician-Patient Relationship

11 Practice Guide
12

13 *Legislation*

14 *Human Rights Code, R.S.O. 1990, c.H.19.*
15

16 *Additional Documents*

17 Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to*
18 *Accommodate* <http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2>

19 Ontario Human Rights Commission, *Accommodating Persons with Disabilities,*
20 <http://www.ohrc.on.ca/en/resources/factsheets/disability2>

21 Ontario Human Rights Commission, *How Far Does the Duty to Accommodate Go?*
22 <http://www.ohrc.on.ca/en/resources/factsheets/disability4>

23 Ontario Human Rights Commission, *Guide to the Human Rights Code,*
24 <http://www.ohrc.on.ca/en/resources/Guides/GuideHRcode2>

25 Canadian Medical Association, *Code of Ethics*

26 **Contact**

27 Public and Physician Advisory Services

28 **Introduction**

29 Ontario's *Human Rights Code*¹(the *Code*) articulates the right of every Ontario
30 resident to receive equal treatment with respect to goods, services and facilities
31 without discrimination based on a number of grounds, including race, age, colour,
32 sex, sexual orientation and disability.² This imposes a duty on all those who

¹ R.S.O. 1990, c.H.19, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm

² Section 1 of the *Human Rights Code*, R.S.O. 1990, c. H.19 states, Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation,

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33 provide services in Ontario – which includes physicians providing medical
34 services – to provide these services free from discrimination.

35 **Purpose**

36 The goal of this policy is to help physicians understand the scope of their
37 obligations under the *Code* and to set out the College’s expectation that
38 physicians will respect the fundamental rights of those who seek their medical
39 services.

40 **Scope**

41 This policy is applicable to all situations in which physicians are providing medical
42 services.

43 **Policy**

44 Physicians must comply with the *Code* when making any decision relating to the
45 provision of medical services. This includes decisions to accept or refuse
46 individuals as patients, decisions about providing treatment or granting referrals
47 to existing patients, and decisions to end a physician-patient relationship.

48 While the College does not have the expertise or the authority to make complex,
49 new determinations of human rights law, physicians should be aware that the
50 College is obliged to consider the *Code* when determining whether physician
51 conduct is consistent with the expectations of the profession. Compliance with
52 the *Code* is one factor the College will consider when evaluating physician
53 conduct.

54 This policy is divided into two sections, each of which addresses physicians’
55 obligations under the *Code*. The first addresses physicians’ obligations to provide
56 medical services without discrimination. The second address physicians’
57 obligations to accommodate the disabilities of patients or ~~potential patients~~
58 individuals who wish to become patients.

59 **1. Providing Medical Services without Discrimination**

60 The *Code* requires that physicians provide medical services without
61 discrimination.

age, marital status, family status or disability. The Ontario Human Rights Commission’s position is that the obligation not to discriminate on the basis of ‘sex’ includes an obligation not to discriminate on the basis of pregnancy, breastfeeding and gender identity.

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62 This means that physicians cannot make decisions about whether to accept
63 individuals as patients, whether to provide existing patients with medical care or
64 services, or whether to end a physician-patient relationship on the basis of the
65 individual's or patient's race, ancestry, place of origin, colour, ethnic origin,
66 citizenship, creed, sex, sexual orientation, age, marital status, family status
67 and/or disability.³

68
69 This does not prevent physicians from making decisions or exercising
70 professional judgement in relation to their own clinical competence. Physicians
71 are always expected to practice medicine in keeping with their level of clinical
72 competence to ensure they provide patients with quality health care in a safe
73 manner. If physicians feel they cannot appropriately meet the health care needs
74 of a patient or ~~potential~~ an individual who wishes to become a patient, they are
75 not required to accept that person as a patient or to continue to act as that
76 patient's physician, provided they comply with other College policies in so doing⁴.

77

78 Guidelines

79

80 Although the Human Rights Commission and Tribunal have primary responsibility
81 for interpreting and adjudicating human rights matters, the following guidance is
82 intended to assist physicians in determining how to comply with the requirements
83 of the *Code*. Physicians may also wish to seek guidance from a lawyer or the
84 Canadian Medical Protective Association (CMPA).

85 i) Clinical Competence

86 As stated above, the duty to refrain from discrimination does not prevent
87 physicians from making decisions in the course of practicing medicine that are
88 related to their own clinical competence.

89 Where a physician is not able to accept an individual as a patient, provide a
90 patient with treatment, or must end a physician-patient relationship for reasons
91 related to his or her own clinical competence, the College offers the following as
92 guidance.

93 *Consider the Possibility of Referral*

94 As a first step, physicians are encouraged to consider whether individuals or
95 patients could be referred to ~~specialists~~ other physicians for the elements of care
96 that the physician is unable to manage directly.

³ *Human Rights Code*, R.S.O. 1990, c.H.19, section 1. This legal obligation is reflected in guidance contained in the Canadian Medical Association's *Code of Ethics*, paragraph 17.

⁴ See *Ending the Physician-Patient Relationship*, and the Practice Guide.

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97 *Consult College Policies*

98 If physicians decide that referral is not an option, and that they must end a
99 physician-patient relationship for reasons related to clinical competence, they are
100 expected to act in accordance with College expectations as set out in the *Ending*
101 *the Physician-Patient Relationship Policy*.

102 *Clear Communication*

103 The College expects physicians to communicate decisions they make to end a
104 physician-patient relationship, refrain from providing a specific procedure, or to
105 decline to accept an individual as a patient, and the reasons for the decision in a
106 clear, straightforward manner. Doing so will allow physicians to explain the
107 reason for their decision accurately, and thereby avoid misunderstandings.

108 Where a physician's clinical competence may restrict the type of patients the
109 physician is able to accept, physicians should communicate these restrictions as
110 soon as is reasonable. This will enable individuals to have a clear understanding
111 as to whether the physician will be able to accept them as a patient, or whether it
112 will be in their best interests to try to find another physician.

113 Where a physician's clinical competence may restrict the type of services or
114 treatment he or she can provide, the physician should inform patients of any
115 limitations related to clinical competence as soon as it is relevant. That is, the
116 physician should advise the patient as soon as the physician knows the patient
117 has a condition that he or she is not able to manage.

118

119 ii) Moral or Religious Beliefs

120

121 If physicians have moral or religious beliefs which affect or may affect the
122 provision of medical services, the College advises physicians to proceed
123 cautiously.

124

125 Personal beliefs and values and cultural and religious practices are central to the
126 lives of physicians and their patients. ~~However, as a physician's responsibility is~~
127 ~~to place the needs of the patient first, there will be times when it may be~~
128 ~~necessary for physicians to set aside their personal beliefs in order to ensure that~~
129 ~~patients or potential patients are provided with the medical treatment and~~
130 ~~services they require.~~

131

132 ~~Physicians should be aware that decisions to restrict medical services offered, to~~
133 ~~accept individuals as patients or to end physician-patient relationships that are~~

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134 ~~based on moral or religious belief may contravene the Code, and/or constitute~~
135 ~~professional misconduct.~~

136 Physicians should however, be aware that the Ontario Human Rights
137 Commission or Tribunal may consider decisions to restrict medical services
138 offered, to accept individuals as patients or to end physician-patient relationships,
139 that are based on physicians' moral or religious beliefs to be contrary to the
140 Code.

141

142

143 ~~Contravention of the Code~~ *Ontario Human Rights Code: Current Law*

144

145 Within the *Code*, there is no defence for refusing to provide a service on the
146 basis of one of the prohibited grounds. This means that a physician who refuses
147 to provide a service or refuses to accept ~~potential~~ an individual as a patient on
148 the basis of a prohibited ground such as sex or sexual orientation *may* be acting
149 contrary to the *Code*, even if the refusal is based on the physician's moral or
150 religious belief.⁵

151

152 The law in this area is unclear, and as such, the College is unable to advise
153 physicians how the Commission, Tribunal or Courts will decide cases where they
154 must balance the rights of physicians with those of their patients.

155

156 There are some general principles however, that Courts have articulated when
157 considering cases where equality rights clash with ~~religious freedoms~~ the
158 freedom of conscience and religion⁶. They are as follows:

159

- 160 • There is no hierarchy of rights in the *Charter*; freedom of religion and
161 conscience, and equality rights are of equal importance;⁷

- 162 • Freedom to exercise genuine religious belief does not include the right to
163 interfere with the rights of others;⁸

- 164 • Neither the freedom of religion nor the guarantee against discrimination
165 are absolute. The proper place to draw the line is generally between belief

⁵ This could occur if the physician's decision to refuse to provide a service, though motivated by religious belief, has the effect of denying an individual access to medical services on one of the protected grounds. For example, a physician who is opposed to same sex procreation for religious reasons and therefore refuses to refer a homosexual couple for fertility treatment may be in breach of the *Code*.

⁶ *Canadian Charter of Rights and Freedoms*, Schedule B, *Canada Act 1982* (U.K.) 1982, c. 11, section 2(a).

⁷ *EGALE Canada Inc. v. Canada (Attorney General)* (2003), 13 B.C.L.R. (4th) 1 (B.C.C.A.), at paragraph 133.

⁸ *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 at p.33.

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166 and conduct. The freedom to hold beliefs is broader than the freedom to
167 act on them.⁹

168 • The right to freedom of religion is not unlimited; it is subject to such
169 limitations as are necessary to protect public safety, order, health, morals
170 or the fundamental rights or freedoms of others;¹⁰

171 • The balancing of rights must be done in context. In relation to freedom of
172 religion specifically, courts will consider how directly the act in question
173 interferes with a core religious belief. Courts will seek to determine
174 whether the act interferes with the religious belief in a 'manner that is more
175 than trivial or insubstantial'¹¹. The more indirect the impact on a religious
176 belief, the more likely courts are to find that the freedom of religion should
177 be limited.¹²

178
179 These principles appear to be generally applicable to circumstances in which a
180 physician's religious beliefs conflict with a patient's need or desire for medical
181 procedures or treatments. They are offered here to provide physicians with an
182 indication of what principles may inform the decisions of Courts and Tribunals.

183
184
185 *Professional Misconduct College Expectations*

186
187 ~~Irrespective of whether a physician's actions are found to have violated the Code,~~
188 ~~the physician's conduct could constitute an act of professional misconduct.~~

189
190 ~~If physicians limit their practice, refuse to accept individuals as patients, or end a~~
191 ~~physician-patient relationship on the basis of moral or religious belief, the College~~
192 ~~expects physicians to do the following:~~

193
194 The College has its own expectations for physicians who limit their practice,
195 refuse to accept individuals as patients, or end a physician-patient relationship on
196 the basis of moral or religious belief.

197

⁹ *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 headnote, and at para.36.

¹⁰ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p 336-7; *Ross v. School District no. 15*, [1996] 1 S.C.R. 825 at p.868.

¹¹ *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, at paragraphs 59-60.

¹² *Ross v. School District no. 15*, [1996] 1 S.C.R. 825; In *Syndicat Northcrest v. Amselem*, [2004] 3 S.C.R. 698, the Court said that the religious belief must be interfered with in a manner that is more than trivial or insubstantial. (at paragraphs 59, 60)

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198 In these situations, the College expects physicians to do the following¹³:
199

- 200 • Communicate clearly and promptly about any treatments or procedures
201 the physician chooses not to provide because of his or her moral or
202 religious beliefs.
203
- 204 • Provide information about all clinical options that may be available or
205 appropriate based on the patient's clinical needs or concerns. Physicians
206 must not withhold information about the existence of a procedure or
207 treatment because providing that procedure or giving advice about it
208 conflicts with their religious or moral beliefs.
209
- 210 • Treat patients or potential individuals who wish to become patients with
211 respect when they are seeking or requiring the treatment or procedure.
212 This means that physicians should not express personal judgements
213 about the beliefs, lifestyle, identity or characteristics of a patient or
214 potential an individual who wishes to become a patient. This also means
215 that physicians should not promote their own religious beliefs when
216 interacting with patients, nor should they seek to convert existing patients
217 or potential individuals who wish to become patients to their own religion.
218
- 219 • ~~Tell patients about their right to see another physician with whom they can~~
220 ~~discuss their situation and ensure they have sufficient information to~~
221 ~~exercise that right. If patients or potential patients cannot readily make~~
222 ~~their own arrangements to see another doctor or health care provider~~
223 ~~physicians must ensure arrangements are made, without delay, for~~
224 ~~another doctor to take over their care.~~
225
- 226 • Advise patients or individuals who wish to become patients that they can
227 see another physician with whom they can discuss their situation and in
228 some circumstances, help the patient or individual make arrangements to
229 do so.
230
231

232 The College will consider the extent to which a physician has complied with this
233 guidance, when evaluating whether the physician's behaviour constitutes
234 professional misconduct.
235
236
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238
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¹³ These points are consistent with the guidance provided by the General Medical Council in its document, *Personal Beliefs and Medical Practice*, http://www.gmc-uk.org/guidance/ethical_guidance/personal_beliefs/personal_beliefs.asp

2. Reasonable Accommodation of Disability

Legal Duty under the Code

Under the Code, the legal obligation not to discriminate includes a duty to accommodate to the point of undue hardship. The duty to accommodate is not limited to disability¹⁴, however the information provided in this section will focus on accommodation of disability only.

~~When physicians become aware that existing or potential patients or individuals who wish to become patients have a disability which may impede or limit access to medical services, physicians must the Code requires physicians to reasonable take steps to accommodate the needs of these patients or individuals. The purpose in doing so is to eliminate or reduce any barriers or obstacles that disabled persons may experience. Reasonable accommodation of persons with disabilities should be provided in a manner that is respectful of the dignity, autonomy and privacy of the person.~~

~~Physicians can only accommodate those needs of which they are aware. Thus, the duty to accommodate is one that is shared by both the physician and the individual seeking care: the individual has a duty to inform the physician of their needs and the physician has a duty to take reasonable steps to accommodate those needs.~~

While physicians have a legal duty to accommodate disability, there are limits to this duty. Physicians do not have to provide accommodation that will cause them undue hardship¹⁵. Further explanation of 'undue hardship' is provided in the Human Rights Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*.¹⁶

Guidelines for Accommodation of Disability

Guidance on the specific steps that may be required to fulfil the duty to accommodate disability can be found in the Ontario Human Rights Commission's *Policy and Guidelines on Disability and the Duty to Accommodate* (section 3.4).

There is no set formula for accommodating the needs of persons with disabilities.

¹⁴ The Ontario Human Rights Commission has stated that the duty to accommodate could arise in relation to other enumerated or protected grounds in the *Code*.

¹⁵ *Human Rights Code*, R.S.O. 1990, c.H.19, section 17(2).

¹⁶ November 2000, available at:

<http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2/pdf>

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279 Accommodation of persons with disabilities should be provided in a manner that
280 is respectful of the dignity, autonomy and privacy of the person, if to do so does
281 not create undue hardship.¹⁷

282

283 Physicians are advised to approach situations where accommodation is required
284 on a case-by-case basis, and to tailor the nature of the accommodation to the
285 needs of the individual before them.

286

287 Examples of accommodation may include taking steps to ensure that a guide dog
288 can be brought into an examination room, or that patients are permitted to have a
289 sign language interpreter present during a physician-patient encounter.

290

291

292

293

¹⁷ Policy and Guidelines on Disability and the Duty to Accommodate, Ontario Human Rights Commission, November 2000 (pp. 12, 13) , available at <http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2/pdf>