20 March, 2015 NUMBER 73/15

COLLEGE OF PHYSICIANS AND SURGEONS

OF SASKATCHEWAN

TO COUNCIL

FROM: Registrar

SUBJECT: Draft Policy – Conscientious Refusal

For Your Decision

M E M O R A N D U M

DATE: March 20, 2015
TO: Council
FROM: Bryan E. Salte
RE: Draft Policy – Conscientious Objection

1. Decision Required

Distributed with this document is a proposed redraft of the policy approved in principle by the Council in January.

Council can:

1) adopt the policy with or without changes
2) decide not to approve such a policy; or
3) refer the matter back to the committee with specific suggestions for changes or other action

There may be other possible decisions available to the Council as well.

2. Decision Required

Info. 38/15 summarized some of the information which the College had received and some issues which had been identified in the feedback process.

Since Info. 38/15 was distributed, there have been additional developments:

1) The SMA has expressed opposition to the draft policy. This memo is distributed without further clarification of the SMA's letter which is attached, but the position taken by the SMA is that "The SMA believes the current document does not adequately protect the physicians from being compelled to act contrary to their conscience. Furthermore, the SMA believes that the draft document may have unintended consequences for the profession including the ability of the province to recruit and retain highly skilled providers. Consequently, the SMA requests that the College engage in a dialogue with the SMA to reconcile these

issues and create a policy which serves the profession and the people of Saskatchewan."

2) The College obtained information from the Ontario College relating to information that they received before approving their policy. Among the things which the Ontario College found significant were that in excess of 80% of the respondents to the poll that they commissioned concluded that physicians should be required to provide a referral to another provider if the physician had a conscientious objection to providing a particular form of treatment, and a submission from the Human Rights Commission of Ontario. We have a copy of the single page letter (attached) which supported the Ontario policy but are awaiting the polling results and the complete submission by the Ontario Human Rights Commission.
3) I have had a discussion with legal counsel for the Ontario College related to section 2 of the **Canadian Charter of Rights and Freedoms** (the **Charter**). We both are fairly confident in our view that a challenge to a document such as that developed by the Ontario College or the draft Saskatchewan policy would survive a **Charter** challenge.
4) The committee which developed the draft policy (Dr. Hayton, Dr. Shaw, Dr. Howard-Tripp, Ms. Halland, Mr. de la Gorgendiere and Bryan Salte) met to discuss the feedback from Info. 38_15 and possible improvements to the draft policy. That feedback is summarized in the next section.

3. Issues addressed by the Committee at its March 19 meeting

The committee addressed the issues below. For each issue there is a short summary of the discussion and the recommendation of the committee in red font:

1) Should there be an introduction to the policy which explains why the policy is thought necessary and what the policy is intended to achieve?

The committee thought that an introductory paragraph which addresses the reasons for the policy can provide a useful clarification for the policy.

The committee noted the preamble to the Ontario policy which refers to

- a patient's right to be free of discrimination,
- the College's expectation for physicians who limit their health services because of personal values and beliefs,
- the expectation that physicians will practice with compassion, service, altruism and trustworthiness,
- the expectation that all patients will receive equitable access to care, particularly those patients who are vulnerable and/or marginalized,
- the expectation that physicians will communicate effectively and respectfully in a manner that supports patient autonomy and an informed patient,
- the expectation that conflicts between physician's values and patient interests will be managed with patient interest paramount;

The committee identified the following interests and principles which should be included in such an introductory paragraph:

- Patient autonomy;
- A patient's right to continuity of care, especially as recognized in the Code of Ethics;
- A patient's right to information about their care, especially as recognized in the Code of Ethics;
- Patients should not be disadvantaged or left without appropriate care due to the personal beliefs of their physicians;
- Physicians should not intentionally or unintentionally create barriers to patient care;
- Reasonable limits on a physician's ability to refuse to provide care are appropriate unless there is a good legal reason that the patient's interests should not be accommodated;
- Medical care should be equitably available to patients whatever the patient's situation, to the extent that can be achieved.

2) Should the policy contain a statement that the policy does not deal with physician assisted death?

The committee concluded that a statement that the policy does not address issues related to physician assisted dying should be included in the policy. There is considerable uncertainty associated with physician-assisted death following the **Carter** decision. There may be legislation by the Federal or Provincial Government which addresses the issue before February 2016 when the **Carter** decision will come into effect if no new legislation is passed. The ethical implications of physician-assisted death have not been fully explored.

The situation of physician-assisted death can be revisited later, when it is clearer whether there will be legislation that addresses the issue and, if there will be, what that legislation will state.

3) Should the policy be more specific that it addresses physician objections to providing treatment based upon a conscientious objection and does not address physician objections to providing a specific treatment based upon clinical judgment?

The reference to the phrase "lawful excuse" may be confusing. The intention of the policy is not to interfere with appropriate clinical judgment but to address those situations where a physician is unwilling to provide a form of medical care due to that physician's conscientious objection to providing that form of care. The policy would be improved with clarification. That can be achieved by removing the statement:

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

The statement can be replaced with:

> This obligation does not prevent physicians from refusing to refer patients based upon the physician's clinical judgment that the health service would not be clinically appropriate for the patient. If the physician refuses to refer a patient based upon the physician's clinical judgment, the physician should provide the patient with a full explanation for the reason not to refer.

The definition of "lawful excuse" can be deleted and the reference to "lawful excuse" in the statement "In certain circumstances a physician will have a lawful excuse to refuse to provide a service requested by a patient" can be changed to "In certain circumstances a physician will have a **legitimate clinical reason** to refuse to provide a service requested by a patient"

4) Should the policy state more clearly the expectation when a physician may be required to provide a treatment to which the physician has a conscientious objection?

The committee discussed the difference between the statement in the draft policy that:

> 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.

and the statement in the Ontario College policy that the obligation is limited to "emergencies".

> Physicians must provide care in an emergency, where it is necessary to prevent imminent harm, even where that care conflicts with their conscience or religious beliefs.

The committee concluded that the section may benefit from an additional reference to the obligation in the Code of Ethics to "Provide whatever appropriate assistance you can to any person with an urgent need for medical care." The committee concluded that the current draft of the provision is otherwise appropriate.

5) There are two possible ways to express an expectation of what a physician is required to do if that physician has an ethical obligation to a form of medical care that the patient is considering.
   a) The physician can be expected to refer the patient to another physician who can provide treatment;
   b) The physician can be expected to refer the patient to someone who can provide the necessary information for the patient to make an informed choice and, if the patient makes a clinical choice to receive treatment, to either provide the treatment or refer the patient to someone who will provide the treatment.

The committee concluded that the policy may be more appropriate if it refers to an obligation of a physician with a conscientious objection to refer a patient to another provider who can provide balanced and appropriate information to the patient relating to the medical treatment that the patient is considering. The physician should not be

obligated to provide a referral to a physician who will ultimately potentially provide the service.

As concrete examples:

A physician with an ethical objection to referring a patient for an abortion would not be obligated to refer a patient to an obstetrician who will perform an abortion. Rather, the physician would be obligated to refer the patient to another physician who can have an informed discussion with the patient about abortion and, if the patient after that discussion chooses to have a therapeutic abortion, refer the patient to an obstetrician willing to perform the abortion.

A physician with an ethical objection to referring a patient for a vasectomy would not be obligated to refer a patient to a urologist who will perform vasectomies. Rather, the physician would be obligated to refer the patient to another physician who can have an informed discussion with the patient about vasectomies and, if the patient after that discussion chooses to have a vasectomy, either perform the procedure or refer the patient to another physician who can perform the vasectomy.

6) What should the response be to CMPA's suggestion that there is a discrepancy between the list of prohibited grounds of discrimination in the Conscientious Refusal policy and in the College document "Physician-Patient Relationships"?

The committee concluded that there should not be a discrepancy, and the conscientious refusal policy should refer to the list in the Physician-patient relationship document.

7) What should be the response to the CMPA's suggestion that there is potential ambiguity when two paragraphs in section 5.1 begin with the words "The above obligation" and its suggestion that the second paragraph would be clearer if it instead began with the phrase "The duty of a physician not to refuse to accept a patient based on the characteristics identified does not prevent …"

The committee agreed to make the change recommended by CMPA

8) What should be the response to the CMPA's suggestion that the policy overstates the obligation to inform patients about treatment options and instead of stating that there is an obligation to provide patients with information about treatment options, the

policy should state that there is an obligation to provide patients with information about **reasonable** treatment options?

The committee agreed with the intention of CMPA's recommendation but felt that it would be better expressed if it referred to "**clinically appropriate** treatment options", rather than "**reasonable** treatment options".

9) What should be the response to the CMPA's suggestion that the policy should remove two paragraphs in 5.3 and 5.4 which state that "This obligation does not prevent physicians from refusing to refer patients where there exists a recognized lawful excuse (see s.3)"?

The committee disagreed with the recommendation. It is further discussed under paragraph 3 above.

10) What should be the response to the CMPA's suggestion that the policy should include a reference to the grounds upon which a physician cannot terminate a doctor-patient relationship in addition to referring to the prohibited grounds of discrimination which prevent a physician from using those grounds as a basis to refuse to accept a patient into the physician's practice?

The committee disagreed with the recommendation. What may lead to a physician terminating a patient from his/her practice is a much more nuanced decision that a difference in values between a physician and a patient or a conscientious objection by a physician. If the issue of non-discrimination in terminating a physician-patient relationship is to be addressed in a College document, it more appropriately belongs in the College document relating to "Physician-patient Relationships".

4. Other issues

After the meeting of the committee concluded, the Registrar's staff reviewed the draft policy again. We think that the statement "The obligation to inform patients may be met by delegating the informing process to another competent individual for whom the physician is responsible." In 5.2 of the policy should be deleted. The rest of the policy references a referral to a physician or another health care provider who can provide the appropriate, balanced, information to the patient. It is unclear how that expectation could

be met by a member of the physician's staff "for whom the physician is responsible". If another physician, it is unlikely that the physician "would be responsible" for that physician. If that person is not a physician or a nurse practitioner, it is difficult to see how that patient could receive the information that is appropriate for the medical treatment.

CPSO has a statement in its policy document that "The College expects physicians to proactively maintain an effective referral plan for the frequently requested services they are unwilling to provide". Should the College have something similar in its policy?

Dr. Slavik, president of the SMA and Bonnie Brossart, CEO of the SMA met to discuss the draft policy on March 20. The meeting was cordial and they seemed to view the changes to the draft of the policy recommended by the committee to be a positive step.

They did not suggest any specific changes to the revised draft (which they only received at the meeting) but neither did they express support for the revised draft.

5. Attached Documents

1) The revised draft of the agreement, in revision-marking mode (page 10)
2) The revised draft of the agreement, with the changes accepted (the same document as 1) above (page 14)
3) The policy *Professional Obligations and Human Rights* recently adopted by the Ontario College (page 18)
4) The accompanying document from the Ontario College to the policy *Professional Obligations and Human Rights* containing Frequently Asked Questions (page 26)
5) The letter from the SMA to the College relating to their concerns about the policy (page 29)
6) The letter from the Ontario Human Rights Commission supporting the Ontario College's policy (page 30)

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.

Deleted: right to

This policy is based upon the following principles relating to the physician-patient relationship

- The fiduciary relationship between a physician and a patient;
- Patient autonomy;
- A patient's right to continuity of care, especially as recognized in the *Canadian Medical Association Code of Ethics*, which states "Having accepted professional responsibility for a patient, continue to provide services until they are no longer required or wanted, until another suitable physician has assumed responsibility for the patient, or until the patient has been given adequate notice that you intend to terminate the relationship."

Formatted: Font: Italic

- A patient's right to information about their care, especially as recognized in the *Code of Ethics* which states "Provide your patients with the information they need to make informed decisions about their medical care, and answer their questions to the best of your ability" and "Make every reasonable effort to communicate with your patients in such a way that information exchanged is understood."

Formatted: Font: Italic

- Patients should not be disadvantaged or left without appropriate care due to the personal beliefs of their physicians;
- Physicians should not intentionally or unintentionally create barriers to patient care;
- Reasonable limits on a physician's ability to refuse to provide care are appropriate unless there is a good legal reason that the patient's interests should not be accommodated;
- Medical care should be equitably available to patients whatever the patient's situation, to the extent that can be achieved.

2. Scope

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

This policy does not apply to physician-assisted death or physicians' conscientious objection related to a potential physician-assisted death. The College recognizes that this is currently an issue which is in a state of development and may be revisited by the College at a later time.

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.

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 full and balanced 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 legitimate clinical reason 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

It is important to provide medical care in a way that is consistent with *The Saskatchewan Human Rights Code* and the *Code of Ethics*. The College document *Patient-Physician Relationships* addresses the expectations of physicians who are considering taking on a new patient.

The Canadian Medical Association *Code of Ethics* says:

> 17. In providing medical service, do not discriminate against any patient on such grounds as age, gender, married status, medical condition, national or ethnic

Deleted: holding themselves

Deleted: ¶

Deleted: ***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).¶
¶

Deleted: lawful excuse

Formatted: Indent: Left: 0"

origin, physical or mental disability, political affiliation, race, religion, sexual orientation, or socioeconomic status. This does not abrogate the physician's right to refuse to accept patients for legitimate reasons.

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 duty of a physician not to refuse to accept a patient based on the characteristics identified 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 clinically appropriate 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.

The obligation to inform patients may be met by referring a patient to another physician or health care provider who can meet the obligations of this section relating to the medical treatment that the patient is considering.

Deleted: Physicians must not refuse to accept patients 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.¶

Deleted: The above obligation

Formatted: Font: 12 pt

Formatted: Don't allow hanging punctuation, Font Alignment: Baseline

Formatted: Indent: Left: 0"

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 physician or other health care provider who can meet the expectations of paragraph 5.2, who is willing and able to accept the patient, and if the patient decides to receive a clinically appropriate health service, that physician can either provide that treatment or refer that patient to another physician or health care provider who can provide that treatment.

Deleted: provide the service.

This obligation does not prevent physicians from refusing to refer patients based upon the physician's clinical judgment that the health service would not be clinically appropriate for the patient. If the physician refuses to refer a patient based upon the physician's clinical judgment, the physician should provide the patient with a full explanation for the reason not to refer.

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

Formatted: Indent: Left: 0"

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. Physicians are expected to follow the *Code of Ethics* which establishes an expectation that physicians will "Provide whatever appropriate assistance you can to any person with an urgent need for medical care." These obligations hold even in circumstances where the provision of health services conflicts with physicians' deeply held and considered moral or religious beliefs.

Formatted: Don't allow hanging punctuation, Font Alignment: Baseline

Deleted: is

Deleted: s

This obligation does not prevent physicians from refusing to refer patients based upon the physician's clinical judgment that the health service would not be clinically appropriate for the patient. If the physician refuses to refer a patient based upon the physician's clinical judgment, the physician should provide the patient with a full explanation for the reason not to refer.

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

Formatted: Indent: Left: 0"

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.

This policy is based upon the following principles relating to the physician-patient relationship

- The fiduciary relationship between a physician and a patient;
- Patient autonomy;
- A patient's right to continuity of care, especially as recognized in the *Canadian Medical Association Code of Ethics*, which states "Having accepted professional responsibility for a patient, continue to provide services until they are no longer required or wanted, until another suitable physician has assumed responsibility for the patient, or until the patient has been given adequate notice that you intend to terminate the relationship."
- A patient's right to information about their care, especially as recognized in the *Code of Ethics* which states "Provide your patients with the information they need to make informed decisions about their medical care, and answer their questions to the best of your ability" and "Make every reasonable effort to communicate with your patients in such a way that information exchanged is understood."
- Patients should not be disadvantaged or left without appropriate care due to the personal beliefs of their physicians;
- Physicians should not intentionally or unintentionally create barriers to patient care;
- Reasonable limits on a physician's ability to refuse to provide care are appropriate unless there is a good legal reason that the patient's interests should not be accommodated;
- Medical care should be equitably available to patients whatever the patient's situation, to the extent that can be achieved.

2. Scope

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

This policy does not apply to physician-assisted death or physicians' conscientious objection related to a potential physician-assisted death. The College recognizes that this is currently an issue which is in a state of development and may be revisited by the College at a later time.

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.

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 full and balanced 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 legitimate clinical reason 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

It is important to provide medical care in a way that is consistent with *The Saskatchewan Human Rights Code* and the *Code of Ethics*. The College document *Patient-Physician Relationships* addresses the expectations of physicians who are considering taking on a new patient.

The Canadian Medical Association *Code of Ethics* says:

> 17. In providing medical service, do not discriminate against any patient on such grounds as age, gender, married status, medical condition, national or ethnic

> origin, physical or mental disability, political affiliation, race, religion, sexual orientation, or socioeconomic status. This does not abrogate the physician's right to refuse to accept patients for legitimate reasons.

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 duty of a physician not to refuse to accept a patient based on the characteristics identified 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 clinically appropriate 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.

The obligation to inform patients may be met by referring a patient to another physician or health care provider who can meet the obligations of this section relating to the medical treatment that the patient is considering.

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 physician or other health care provider who can meet the expectations of paragraph 5.2, who is willing and able to accept the patient, and if the patient decides to receive a clinically appropriate health service, that physician can either provide that treatment or refer that patient to another physician or health care provider who can provide that treatment.

This obligation does not prevent physicians from refusing to refer patients based upon the physician's clinical judgment that the health service would not be clinically appropriate for the patient. If the physician refuses to refer a patient based upon the physician's clinical judgment, the physician should provide the patient with a full explanation for the reason not to refer.

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. Physicians are expected to follow the *Code of Ethics* which establishes an expectation that physicians will "Provide whatever appropriate assistance you can to any person with an urgent need for medical care." These obligations hold 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 refer patients based upon the physician's clinical judgment that the health service would not be clinically appropriate for the patient. If the physician refuses to refer a patient based upon the physician's clinical judgment, the physician should provide the patient with a full explanation for the reason not to refer.

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*;* Accepting 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, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; *Human Rights Code,* R.S.O. 1990, c. H.19.

REFERENCE MATERIALS: *McInerney v. MacDonald*, [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; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *Syndicat Northcrest v Amselem*, [2004] 2 S.C.R. 551.

OTHER REFERENCES: Ontario Human Rights Commission, *Policy on Competing Human Rights*, (Ontario: Jan 26, 2012).

COLLEGE CONTACTS: Public and Physician Advisory Service

Professional Obligations and Human Rights

INTRODUCTION

The fiduciary nature of the physician-patient relationship requires that physicians act in their patients' best interests.[1] In doing so, physicians must strive to create and foster an environment in which the rights, autonomy, dignity and diversity of all patients, or those seeking to become patients, are respected. This goal is achieved, in part, by fulfilling the obligations under the Ontario *Human Rights Code*[2] (the "*Code*"), which entitles every Ontario resident to equal treatment with respect to services, including health services, without discrimination.

This policy articulates physicians' professional and legal obligations to provide health services without discrimination. This includes a duty to accommodate individuals who may face barriers to accessing care. The policy also sets out the College's expectations for physicians who limit the health services they provide due to clinical competence or because of their personal values and beliefs.

PRINCIPLES

The key values of professionalism articulated in the College's Practice Guide – compassion, service, altruism and trustworthiness – form the basis for the expectations set out in this policy. Physicians embody these values and uphold the reputation of the profession by, among other things:

1. Acting in the best interests of their patients, and ensuring that all patients, or those seeking to become patients, receive equitable access to care. This is especially important with respect to vulnerable and/or marginalized populations;
2. Communicating effectively and respectfully with patients, or those seeking to become patients, in a manner that supports their autonomy in decision-making, and ensures they are informed about their medical care;
3. Properly managing conflicts, especially where the physician's values differ from those of their patients, or those seeking to become patients. The patient's best interests must remain paramount;
4. Participating in self-regulation of the medical profession by complying with the expectations set out in this policy.

PURPOSE & SCOPE

This policy sets out the legal obligations under the *Code* for physicians to provide health services without discrimination, as well as the College's professional and ethical expectations of physicians in meeting those obligations. This policy also sets out physicians' duty to accommodate individuals who may face barriers to accessing care. Finally, this policy outlines physicians' rights to limit the health services they provide for legitimate reasons while upholding their fiduciary duty to their patients.

1. Please see the College's Practice Guide for further details; Also consistent with the Supreme Court of Canada's decision in *McInerney v. MacDonald*, [1992] 2 S.C.R. 138.
2. *Human Rights Code*, R.S.O. 1990, c. H.19.

POLICY

Human Rights, Discrimination and Access to Care

The *Code* articulates the right of every Ontario resident to receive equal treatment with respect to services, goods and facilities, without discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.[3] The *Code* requires that all those who provide services in Ontario, including physicians providing health services, do so free from discrimination.

Discrimination may be described as an act, decision or communication that results in the unfair treatment of a person or group by either imposing a burden on them, or denying them a right, privilege, benefit or opportunity enjoyed by others. Discrimination may be direct and intentional. Alternatively, discrimination may be entirely unintentional, where rules, practices or procedures appear neutral, but may have the effect of disadvantaging certain groups of people. The *Code* provides protection from all forms of discrimination based on the above protected grounds, whether intentional or unintentional.[4]

Physicians must comply with the *Code*, and the expectations of the College, when making any decision relating to the provision of health services. This means that physicians cannot discriminate, either directly or indirectly, based on a protected ground under the *Code* when, for example:

- Accepting or refusing individuals as patients;
- Providing existing patients with health care or services;
- Providing information or referrals to existing patients or those seeking to become patients; and/or
- Ending the physician-patient relationship.

The Duty to Accommodate

The legal, professional and ethical obligation to provide services free from discrimination includes a duty to accommodate. Accommodation is a fundamental and integral part of providing fair treatment to patients. The duty to accommodate reflects the fact that each person has different needs and requires different solutions to gain equal access to care.

The *Code* requires physicians to take reasonable steps to accommodate the needs of existing patients, or those seeking to become patients, where a disability[5] or other personal circumstance may impede or limit their access to care. The purpose in doing so is to eliminate or reduce any barriers or obstacles that patients may experience.

3. *Human Rights Code*, R.S.O. 1990, c. H.19, s. 1.
4. As adapted from the Ontario Human Rights Commission's definition of "discrimination".
5. Section 1 of the *Human Rights Code*, R.S.O. 1990, c. H.19 defines "disability" as follows:
   (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
   (b) a condition of mental impairment or a developmental disability,
   (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
   (d) a mental disorder, or
   (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act*, 1997.

Professional Obligations and Human Rights

The College expects physicians to comply with their duty to accommodate as set out in the *Code*, and to make accommodations in a manner that is respectful of the dignity, autonomy and privacy of the person.

Examples of accommodation may include: enabling access for those with mobility limitations, permitting a guide dog to accompany a patient into the examination room, ensuring that patients with hearing impairment can be assisted by a sign-language interpreter, being considerate of older patients that may face unique communication barriers, providing reasonable flexibility around scheduling appointments where patients have family-related needs,[6] ensuring signage reflects diverse family configurations (e.g., families with two mothers or two fathers), and/or creating forms to accommodate patients' gender identity and expression.

While physicians have a legal, professional and ethical duty to accommodate, there are limits to this duty. Physicians do not have to accommodate beyond the point of undue hardship, where excessive cost, health or safety concerns would result. The duty to accommodate is also limited where it significantly interferes with the legal rights of others.[7]

Limiting Health Services for Legitimate Reasons

The duty to refrain from discrimination does not prevent physicians from limiting the health services they provide for legitimate reasons.[8] Physicians, for instance, may be unable to provide care that is clinically indicated and within the standard of care, if that care is outside of their clinical competence. Also, physicians may be unwilling to provide care that is contrary to their conscience or religious beliefs.

While physicians may limit the health services they provide as discussed below, they must do so in a manner that respects patient dignity and autonomy, upholds their fiduciary duty to the patient, and does not impede equitable access to care for existing patients, or those seeking to become patients.

The following sections set out physicians' rights and obligations in these circumstances.

A) Clinical Competence

The duty to refrain from discrimination does not prevent physicians from making decisions in the course of practicing medicine that are related to their own clinical competence. Physicians are expected to provide patients with quality health care in a safe manner. If physicians feel they cannot appropriately meet the health-care needs of an existing patient, or those who wish to become patients, they are not required to provide that specific health service or to accept that person as a patient. However, physicians must comply with the *Code*, and College expectations, in so doing. Any decision to limit the provision of health services on the

6. Ontario Human Rights Commission, *Submission Regarding College of Physicians and Surgeons Policy Review: Physicians and the Ontario Human Rights Code*, (Ontario: August 1, 2014).
7. Further explanation of "undue hardship" is provided in the Ontario Human Rights Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*.
8. For more information see the College's Accepting New Patients and Ending the Physician-Patient Relationship policies.

basis of clinical competence must be made in good faith[9].

Where clinical competence may restrict the type of services or treatments provided, or the type of patients a physician is able to accept, the College requires physicians to inform patients of this as soon as is reasonable. The College expects physicians to communicate this information in a clear and straightforward manner to ensure that individuals or patients understand that their decision is based on an actual lack of clinical competence rather than discriminatory bias or prejudice. This will lessen the likelihood of misunderstandings.

In order to protect patients' best interests and to ensure that existing patients, or those seeking to become patients, are not abandoned, the College requires physicians to provide a referral to another appropriate health-care provider for the elements of care the physician is unable to manage directly.

B) Conscience or Religious Beliefs

The *Canadian Charter of Rights and Freedoms* (the "*Charter*") protects the right to freedom of conscience and religion.[10] Although physicians have this freedom under the *Charter*, the Supreme Court of Canada has determined that no rights are absolute. The right to freedom of conscience and religion can be limited, as necessary, to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.[11]

Where physicians choose to limit the health services they provide for reasons of conscience or religion, this may impede access to care in a manner that violates patient rights under the *Charter* and *Code*.[12] The courts have determined that there is no hierarchy of rights; all rights are of equal importance.[13]

Should a conflict arise, the aim of the courts is to respect the importance of both sets of rights to the extent possible.

The balancing of rights must be done in context.[14] In relation to freedom of religion specifically, courts will consider the degree to which the act in question interferes with a sincerely held religious belief. Courts will seek to determine whether the act interferes with the religious belief in a manner that is more than trivial or insubstantial. The less direct the impact on a religious belief, the less likely courts are to find that freedom of religion is infringed.[15] Conduct that would potentially cause harm to and interfere with the rights of others would not automatically be protected.[16]

While the *Charter* entitles physicians to limit the health services they provide for reasons of conscience or religion, this cannot impede, either directly or indirectly, access to these services for existing patients, or those seeking to become patients.

9. As stated in the College's Accepting New Patients policy, "Clinical competence and scope of practice must not be used as a means of unfairly refusing patients with complex health care needs, or patients who are perceived to be otherwise difficult."
10. *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, s 2(a).
11. *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at para 95.
12. *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at pp 58-61; *Human Rights Code*, R.S.O. 1990, c. H. 19.
13. *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at p 839.
14. Ontario Human Rights Commission, *Policy on Competing Human Rights*, (Ontario: Jan 26, 2012).
15. *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at paras 59-61.
16. *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para 62.

Professional Obligations and Human Rights

Physicians have a fiduciary duty to their patients.[17] The College requires physicians, who choose to limit the health services they provide for reasons of conscience or religion, to do so in a manner that:

i. Respects patient dignity;
ii. Ensures access to care; and
iii. Protects patient safety.

i. Respecting Patient Dignity

Where physicians object to providing certain elements of care for reasons of conscience or religion, physicians must communicate their objection directly and with sensitivity to existing patients, or those seeking to become patients, and inform them that the objection is due to personal and not clinical reasons.

In the course of communicating their objection, physicians must not express personal moral judgments about the beliefs, lifestyle, identity or characteristics of existing patients, or those seeking to become patients. This includes not refusing or delaying treatment because the physician believes the patient's own actions have contributed to their condition. Furthermore, physicians must not promote their own religious beliefs when interacting with patients, or those seeking to become patients, nor attempt to convert them.

ii. Ensuring Access to Care

Physicians must provide information about all clinical options that may be available or appropriate to meet patients' clinical needs or concerns. Physicians must not withhold information about the existence of any procedure or treatment because it conflicts with their conscience or religious beliefs.

Where physicians are unwilling to provide certain elements of care for reasons of conscience or religion, an effective referral to another health-care provider must be provided to the patient. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, other health-care professional, or agency.[18] The referral must be made in a timely manner to allow patients to access care. Patients must not be exposed to adverse clinical outcomes due to a delayed referral. Physicians must not impede access to care for existing patients, or those seeking to become patients.

The College expects physicians to proactively maintain an effective referral plan for the frequently requested services they are unwilling to provide.

iii. Protecting Patient Safety

Physicians must provide care in an emergency, where it is necessary to prevent imminent harm, even where that care conflicts with their conscience or religious beliefs.[19]

17. Please see the College's Practice Guide for further details.
18. In the hospital setting, referral practices may vary in accordance with hospital policies and procedures.
19. This expectation is consistent with the College's Providing Physician Services During Job Actions policy. For further information specific to providing care in health emergencies, please see the College's Physicians and Health Emergencies policy.

PROFESSIONAL OBLIGATIONS AND HUMAN RIGHTS

College of Physicians and Surgeons of Ontario
80 COLLEGE STREET, TORONTO, ONTARIO M5G 2E2

Professional Obligations and Human Rights: Frequently Asked Questions

Is Professional Obligations and Human Rights a new policy of the College?

No. This policy replaces its predecessor, which was entitled Physicians and the Ontario *Human Rights Code* and was reviewed in accordance with the College's regular policy review cycle. The Professional Obligations and Human Rights policy is a revised and updated version of the former policy.

The policy states that 'clinical competence' is a legitimate reason for physicians to refuse to treat patients. What does this mean?

This section of the policy reflects the College's general expectation that physicians will always practice within the limits of their own knowledge, skill and judgment.

Any decision made on the basis of clinical competence, however, must be made in good faith. Clinical competence must not be used as a means of unfairly refusing patients with complex health-care needs, or patients who are perceived to be otherwise difficult.

The policy discusses physicians' legal duty to accommodate the needs of patients up to the point of undue hardship. When would an accommodation be considered to impose undue hardship?

An accommodation is considered to cause undue hardship if it imposes excessive costs, or gives rise to health or safety concerns.

The Ontario Human Rights Commission has stated that:

- 'costs' include the actual, present financial cost of carrying out an accommodation measure, as well as any reasonably foreseeable costs that may arise.

- 'health and safety risks' include risks to the person requesting the accommodation, as well as to other employees and/or the general public.

Determinations of whether the duty to accommodate has been satisfied and whether an accommodation imposes an undue hardship are made by the Ontario Human Rights Tribunal and the Courts.

For further detail, physicians are advised to consult the policies of the Ontario Human Rights Commission, including Policy and Guidelines on Disability and the Duty to Accommodate: http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_disability_and_the_duty_to_accommodate.pdf.

The policy says that "physicians must not promote their own religious beliefs when interacting with patients, or those seeking to become patients, nor attempt to convert them." What is meant by "promoting religious beliefs"? Does this mean that physicians can never discuss religious or spiritual beliefs with their patients?

No. The College recognizes that patients' spiritual and religious beliefs can play an important role in the decisions they make about health care, and can offer comfort if patients are faced with difficult news about their health. It is appropriate for physicians to inquire about and/or discuss patients' spiritual and religious beliefs when those are relevant to patient decision-making, or where it will enable the physician to suggest supports and resources that may assist the patient.

The policy prevents physicians from promoting their own religious beliefs to their patients. By 'promoting' the College means that physicians must not attempt to convert patients to their own religion; imply the physician's religion is superior to the patient's beliefs (spiritual, secular or religious), or otherwise make personal moral judgments about the patient's conduct that are based in the physician's religion.

The policy requires that physicians provide their patients with an 'effective referral' for those services the physician chooses not to provide for reasons of conscience or religion. What is an 'effective referral'?

An 'effective referral' means a referral that is made in good faith with a view to supporting, not frustrating or impeding, access to care.

The referral must be made to another health-care provider. This includes a physician, another health-care professional or an agency. The health-care provider must not share the physician's conscience or religious objections and must be available and accessible to the patient. By 'available and accessible', the College means that the health-care provider must be in a location the patient can access, be operating and/or accepting

Professional Obligations and Human Rights: Frequently Asked Questions

patients at the time the referral is made. An effective referral must also be made in a timely manner to allow patients to access care. Patients must not be exposed to adverse clinical outcomes due to a delayed referral.

Physicians will not be considered to have made an 'effective referral' if they:

- Refer the patient to a physician, health-care professional or agency who shares the physician's own religious or conscience objections (e.g., a referral to an anti-abortion clinic, referral to a physician who refuses to prescribe the birth control pill);
- Refer the patient to a physician, health-care professional or agency that is not accessible or available to the patient: not in a location the patient can access, or not accepting patients, or not operating at the time of the referral (e.g., referral to a physician located in Northern Ontario when the patient lives in Toronto; referral to an agency that is closed)
- Delay making a referral where the delay results in the patient being unable access care or where the delay causes adverse clinical outcome(s).

What if I put a notice up in my office that I don't offer specific treatments or procedures for reasons of conscience or religion? Is that sufficient to comply with this policy?

No, merely posting a notice is not sufficient to discharge your obligations under the policy.

Communicating with patients in these circumstances is essential. Communication must occur directly, in person so that physicians can convey information to the patient, and can also obtain critically important information from the patient in kind. Information from the patient is necessary in order to comply with the expectations in policy: the requirement to provide an 'effective referral' for the care that physicians choose not to provide for reasons of conscience or religion; and the requirement to provide care to the patient in emergency situations, in order to prevent imminent harm.

When physicians communicate that there are specific treatments or procedures that they do not provide due to conscience or religion, physicians must do so in a respectful and professional manner, and with sensitivity. Physicians must never express personal moral judgments about the beliefs, lifestyle, identity or characteristics of patients.

The policy requires that physicians provide care in emergencies, even if the care is contrary to physicians' conscience or religion. What does the College consider to be an emergency?

The College considers emergency situations to be those where care or intervention is required in order to prevent imminent harm to an individual. In these circumstances, the College requires physicians to act and provide care that is required to prevent imminent harm, even if the care or intervention that is required is contrary to a physician's conscience or religion. This could include, for example:

- Providing a blood transfusion, where it is required on an immediate basis, in order to save the life of the patient;
- Treating a woman for sepsis caused by an incomplete abortion;
- Treating an individual for an abscess caused by intravenous drug use.

The Supreme Court of Canada's decision about physician-assisted death in *Carter v. Canada* has been well-publicized. What implications does that decision have for this policy? Does it mean that physicians will be forced to kill their patients?

No. In *Carter v. Canada*, the Supreme Court of Canada was asked to consider the constitutionality of existing provisions in the *Criminal Code* that prohibit physician-assisted death in Canada. The Court found that the *Criminal Code* provisions are constitutionally invalid in circumstances where a competent adult clearly consents to the termination of life, and has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstance of his or her condition.

Carter v. Canada does not take effect until February 2016. The decision does not require or compel physicians to assist patients in ending their lives. The Court has explicitly stated that if Parliament or legislatures choose to enact law in compliance with the Court's decision, the *Charter* rights of both patients and physicians will need to be reconciled.

Since the *Carter* decision is not currently in effect, the case does not have any implications for the Professional Obligations and Human Rights policy. If Parliament and/or the

provincial legislature enact law in response to the Court's decisions in *Carter*, the College will at that time consider whether any changes to the policy are required.

A request for physician assisted death will not be considered an emergency in the context of this policy, and is therefore not a service or intervention that physicians will be required to provide, contrary to their conscience or religion.

What will happen if the College receives a complaint that a physician has not complied with this policy?

The College expects physicians to comply with their legal obligations and the expectations set out in the Professional Obligations and Human Rights policy.

If the College receives a complaint that a physician has not complied with policy, the complaint will be investigated. A panel consisting of physicians and members of the public will consider the circumstances of the case and evaluate the physician's conduct as against the policy expectations. The College will consider any concerns regarding the professional obligations set out in this policy in accordance with its duty to serve and protect the public interest.

Physicians should be advised that if they do not comply with their legal obligations under the Ontario Human Rights Code, they may be the subject of a separate complaints process: a complaint to the Ontario Human Rights Commission and Tribunal. This process is separate from the College's complaints processes.

Saskatchewan
Medical
Association

201 - 2174 Airport Drive
Saskatoon, SK
S7L 6M6

P: 306.244.2196
F: 306.653.1631
TF: 1.800.667.3781

March 17, 2015

Dr. Karen Shaw, Registrar
College of Physicians and Surgeons of Saskatchewan
#101, 2174 Airport Drive
Saskatoon, SK S7L 6M6

Dear Dr. Shaw:

Re: Feedback on Draft Policy Documents of the College of Physicians and Surgeons Of Saskatchewan

The Board of the Saskatchewan Medical Association (SMA) would like to thank the College for the opportunity to provide feedback regarding these draft documents. We would also like to acknowledge your willingness to extend the time frame governing our response. Both these documents were circulated for input within the SMA and subsequently considered at the March 11th Board meeting.

With regards to the draft *Guideline - Patient Disclosure of Intent to Harm*, the SMA would offer the following question and request. The recent Carter decision of the Supreme Court allows competent people suffering intolerably from a grievous and irremediable medical condition to seek physician assistance in dying. The current Guideline and requirement to report and/or assess competence would seem to be at odds with the recent decision. What would the obligation of the physician be in this new circumstance, particularly if the patient demands confidentiality? The SMA would request that the draft Guideline be reviewed with specific consideration to interpretation in light of the recent Carter decision.

Regarding the draft *Policy - Conscientious Refusal*, the SMA acknowledges the importance of a clear policy governing ethical consideration for the benefit of patient protection. Furthermore we acknowledge the importance of this issue to society as a whole and in particular, the medical profession. Given the importance of this issue the SMA is of the opinion that this policy document created by the College must be drafted in such a way as to protect the rights of all those involved. The SMA believes the current document does not adequately protect the physicians from being compelled to act contrary to their conscience. Furthermore, the SMA believes that the draft document may have unintended consequences for the profession including the ability of the province to recruit and retain highly skilled providers. Consequently, the SMA requests that the College engage in a dialogue with the SMA to reconcile these issues and create a policy which serves the profession and the people of Saskatchewan.

I look forward to working with you towards a mutually acceptable solution.

Sincerely,

B. Brossart

Bonnie Brossart
Chief Executive Officer

BB/wr

Ontario Human Rights Commission
Office of the Chief Commissioner
180 Dundas Street West, 8th Floor
Toronto ON M7A 2R9
Tel.: (416) 314-4537
Fax.: (416) 314-7752

Commission ontarienne des droits de la personne
Cabinet du commissaire en chef
180, rue Dundas ouest, 8e étage
Toronto ON M7A 2R9
Tél. : (416) 314-4537
Télél. : (416) 314-7752

February 19, 2015

Dr. Carol Leet
President
College of Physicians and Surgeons of Ontario
80 College Street
Toronto, Ontario M5G 2E2

Dear Dr. Leet,

Re CPSO draft policy: Professional Obligations and Human Rights

The Ontario Human Rights Commission (OHRC) has reviewed the College of Physicians and Surgeons of Ontario's (CPSO) new draft policy, Professional Obligations and Human Rights. The new draft policy addresses many of the recommendations the OHRC made in its August 2014 submission during the CPSO's preliminary consultation. It better reflects the legal principles set out in decisions by the courts and in the OHRC's Policy on Competing Human Rights.

More specifically, the CPSO's draft policy will help physicians understand the scope of their legal obligations under Ontario's Human Rights Code, and sets out the CPSO's expectation that physicians will respect the fundamental rights of those who seek their medical services. At the same time, it acknowledges a physician's right to freedom of conscience and religion. The draft policy recognizes that no right is absolute; the core of a right is more protected than the periphery; rights can be limited by the rights and freedoms of others; and that the aim is to respect the importance of both sets of rights. The draft policy effectively strives to achieve this balance of rights.

As you may be aware, I'm leaving the Commission at the end of February. Feel free to direct any questions you may have to Commission staff.

Yours truly,

Barbara Hall, B.A, LL.B, Ph.D (hon.)
Chief Commissioner