

COUNCIL BRIEFING NOTE

**TOPIC: Professional Obligations and Human Rights
- Draft for Consultation**

FOR DECISION

I. ISSUE:

- The College's *Physicians and the Ontario Human Rights Code* policy is currently under review (Appendix 1). The Working Group has developed a revised draft policy entitled *Professional Obligations and Human Rights* (Appendix 2). The draft reflects research undertaken, feedback received during the preliminary consultation period, and public polling results.
- Council is provided with an overview of the policy review and development process, along with highlights of the draft policy. Council is asked whether the draft policy can be released for external consultation.

II. BACKGROUND:

- The *Physicians and the Ontario Human Rights Code* policy articulates physicians' existing legal obligations under the *Human Rights Code* (the "Code"), and the College's expectation that physicians will respect the fundamental rights of those who seek their medical services.
- Of particular interest among physician members, organizational stakeholders, members of the public and media, is the section of the policy that addresses the College's expectations in circumstances where physicians limit the services they provide on moral or religious grounds. Such objections are commonly referred to as "conscientious objections".
- The policy, which was first approved by Council in September 2008, is currently under review in accordance with the CPSO's regular policy review cycle. A Working Group has been struck to lead the policy review.

a. Research

- The policy development process was informed by an extensive research review, which included the following:
 - **Literature Review:** A comprehensive literature review of Canadian and international scholarly articles, research papers, newspaper publications, conference proceedings, and organizational publications, was performed. The topics considered included, but were not limited to:
 - The right to and limits of conscientious objection;
 - Disclosure of objection to patients and other health-care providers;
 - Informed consent, where physicians object to viable treatment options;
 - Referrals for elements of care physicians are unwilling to provide;
 - Balancing competing human rights; and
 - The impact of conscientious objection on patients' access to care.
 - **Jurisdictional Research:** The policy positions of Canadian medical regulators, Ontario regulated health professions, and select international regulatory bodies with respect to conscientious objection and fulfilling obligations under Human Rights legislation were compared and contrasted. A summary of this research is included as Appendix 3.
 - **Legal Research (statute and case law):** A careful review of the Ontario *Human Rights Code* was undertaken to identify any amendments enacted since the last formal policy review. Also, an analysis of current case law was conducted to ascertain the legal principles articulated by the courts where equality rights clash with the freedom of conscience and religion.

b. Preliminary Public Consultation

Consultation Process

- An external preliminary consultation¹ on the current policy was held between June 4 and August 5, 2014.

¹ Invitations to participate in the consultation were sent via email to a broad range of stakeholders, including the College's entire membership. In addition, a general notice was posted on the College's website, Facebook page, and announced via Twitter. It was also published in *Dialogue* and *Noteworthy* (the College's public e-newsletter). Stakeholders were given the option of submitting their feedback in writing, via email or regular mail, via a brief online survey, or by posting comments to an online discussion page.

- During the consultation period the College received a total of 6710 responses. This included 2296 comments posted to the online discussion page and 4414 completed online surveys.
- Approximately 75% of respondents identified themselves as members of the public, 10% as physicians, and 1% as organizations. The organizational respondents included medical regulators and professional associations, as well as advocacy, religious, and patient organizations.
- All stakeholder feedback has been posted publicly on the [consultation-specific page](#) of the College's website.

Feedback Summary

- The substantive themes that emerged during the preliminary consultation period concerned the following:
 - i. *Human Rights Code* obligations, including duty to accommodate
 - ii. Conscientious objection and access to care
 - iii. Patient referrals

i. Human Rights Code obligations, including duty to accommodate

- The College expectation that physicians provide health services free from discrimination, in accordance with legal obligations under the *Code*, was met with general support.
- The Human Rights Commission of Ontario (HRCO) recommended that the new protected grounds of discrimination, gender identity and gender expression, be reflected in the draft policy.
- Some respondents, including the ARCH Disability Law Centre, suggested that the policy be restructured to reinforce that the duty to accommodate is included in the legal obligation not to discriminate.
- A number of respondents recommended that the policy be expanded to reflect that physicians' duty to accommodate may apply to other protected grounds under the *Code*, in addition to disability.
- Further clarity around what is meant by accommodation to the point of undue hardship in the medical service context was also recommended.

ii. Conscientious objection and access to care

- The majority of feedback received focused on the issue of conscientious objection or where physicians limit the care they provide on moral or religious grounds.
- The feedback on this issue is polarized. The vast majority of consultation respondents expressed their support for freedom of conscience, and the idea that physicians should not have to provide services that conflict with their moral and/or religious beliefs. Others argued that physicians should not be permitted to refuse to provide medical services for reasons relating to their moral and/or religious beliefs.
- Stakeholders supporting freedom of conscience provide the following reasons for this view:
 - There should be no limits placed on a physician's freedom of conscience as this is a right outlined in the *Charter of Rights and Freedoms* and is fundamental to a democratic society.
 - Moral reasoning is integral to the human person, and cannot be separated from professional practice without loss of integrity.
 - Physicians are not robots and should not be forced to provide services that go against their moral and/or religious beliefs.
 - Patients benefit from having a physician who practices with integrity and abides by their conscience.
- Respondents who took the opposite view argued that patients should not be denied treatment based on a physician's moral and/or religious beliefs. The following was provided in support of their position:
 - There is no place for religion in a public health system.
 - If a physician has a religious and/or moral belief that conflicts with a requirement of their job, they should select a speciality where these conflicts are less likely to arise.
 - A patient's right to care takes priority over a physician's right to freedom of religion.
 - Patients should not be impacted by an individual physician's moral and/or religious beliefs.

iii. Patient Referrals

- Many respondents were in support of a referral requirement in this context, and recommended that the College consider developing stronger and/or clearer language regarding physicians' responsibility to facilitate patient care.

- The opposing viewpoint was also strongly represented – many respondents disagreed with the idea that physicians should be required to provide a referral for those services they deem to be objectionable. Several respondents argued that providing a referral would make the physician ‘complicit’ in the allegedly immoral act.

c. Public Polling

- In order to supplement feedback received through the preliminary consultation, a poll of 800 Ontario residents² was conducted between May 8th and May 19th, 2014. The primary purpose of this poll was to capture public sentiment on conscientious objection in the health services context.
- Key highlights from the polling results are as follows:
 - **71%** of the Ontario public believe that physicians should not be allowed to refuse to provide a treatment or procedure because it conflicts with the physicians’ religious or moral beliefs.
 - Ontarians believe that physicians who object to providing care on moral or religious grounds should be required to do the following:
 - Provide patients with information about treatment or procedure options (**94%**)
 - Identify another physician who will provide the treatment, and advise the patient to contact them (**92%**)
 - Make/coordinate the referral (**87%**)

III. CURRENT STATUS:

- Based on research undertaken, feedback received through the preliminary consultation period, and public polling, the Working Group has developed a draft policy entitled *Professional Obligations and Human Rights* (Appendix 2).
- Overall, the content of the current policy has been maintained; subtitles have been added or revised to enhance clarity and flow.
- In light of feedback received, the draft has been restructured to provide further detail around physicians’ professional and legal obligations to provide health services without discrimination, and the manner in which these obligations are to be fulfilled.
- Furthermore, the policy has been purposefully grounded in the key values of professionalism as articulated in the College’s *Practice Guide*, particularly the professional duty to prioritize patient interests and to facilitate equitable access to

² The online panel was recruited randomly using an Interactive Voice Response system. Results can therefore be generalized to the online population of Ontario, which represents approximately 80% of the adult population. Findings are accurate to +3.5%, at the 95% level of confidence.

care. The policy emphasizes that these professional obligations are applicable in all circumstances.

- The key revisions and additions reflected in the draft policy are highlighted below:

i. Human Rights, Discrimination and Access to Care

- The two new protected grounds of discrimination – gender identity and gender expression – have been added, along with a definition for ‘discrimination’.

ii. Accommodation of Disability

- The *Accommodation of Disability* section in the current policy has been re-titled *The Duty to Accommodate* to reflect the broader scope of this section in the draft policy. Examples of accommodations for patients with disabilities or other personal circumstances that may impede or limit their access to care have been included.
- *The Duty to Accommodate* section of the draft policy has been relocated to immediately follow content on physicians’ obligation under the *Code* to provide health services free from discrimination. This is to help signal that the duty to accommodate is a component of this obligation.

iii. Limiting Health Services for Legitimate Reasons

- The policy outlines circumstances where physicians may choose to limit the services they provide due to (a) clinical competence, or (b) on moral or religious grounds.
- The most significant changes with respect to College expectations are found in the *Moral and Religious Beliefs* section of the draft.
- These revised expectations have been re-framed to emphasize the following core requirements of professionalism: (1) Respecting patient dignity; (2) Ensuring Access to Care; and (3) Protecting Patient Safety.
- As part of *ensuring access to care* in this context, the draft requires that physicians, who are unwilling to provide certain elements of care due to their moral or religious beliefs, refer the patient to another health-care provider. The policy defines an ‘effective referral’ as one that is made in good faith, to a non-objecting, available, and accessible physician or other health-care provider.

- The draft policy also requires physicians to provide care that is urgent or otherwise necessary to prevent imminent harm, suffering, and/or deterioration, even where that care conflicts with their religious or moral beliefs.

NEXT STEPS

- The next stage in the policy review process is to solicit feedback on the draft policy externally, through a consultation with the profession, the public and other interested stakeholders.
- Subject to Council's approval, the consultation will be held in the winter and stakeholder feedback will be presented to both the Executive Committee and to Council in early spring.

DECISIONS FOR COUNCIL:

1. Does Council have any feedback on the draft Professional Obligations and Human Rights policy?
2. Does Council recommend that the draft policy be released for external consultation?

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DATE: November 13, 2014

Attachments

Appendix "1": College's current *Physicians and the Ontario Human Rights Code* policy

Appendix "2": Draft *Professional Obligations and Human Rights* policy

Appendix "3": Jurisdictional Review Chart