College of Physicians and Surgeons of Ontario
80 College Street
Toronto, Ontario
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Attn: Policy Department

August 4, 2014

RE: Physicians and the Ontario Human Rights Code Consultations

The College of Physicians and Surgeons of Ontario ("CPSO") has invited feedback from all stakeholders in regard to its review of Policy Statement #5-08, Physicians and the Ontario Human Rights Code ("the Policy"). In particular, the CPSO has asked if the Policy provides useful guidance, whether the Policy fails to address any issues, and any other ways in which the Policy should be improved. The Christian Legal Fellowship ("CLF") appreciates the opportunity to participate in this discussion, as we did in the prior CPSO consultation on Human Rights in September of 2008, and makes the following introduction and submissions.

The CLF is a national charitable association that exists to strengthen the spiritual life of its members, and encourage among Christians in the vocation of law the integration of faith with contemporary legal, moral, social and political issues. The CLF’s membership consists of approximately 550 lawyers, law students, professors, and others who support its work; with approximately one third of its members in the Province of Ontario. It has 14 chapters in cities across Canada and student chapters in most Canadian law schools. While having no direct denominational affiliation, CLF’s members represent more than 30 Christian denominations working in association together. As an association of Christian professionals, we welcome the opportunity to address the issues which the CPSO have raised in this consultation process.

The CLF has intervened in numerous legal cases relating to matters of conscience and religious freedom at the appellate and Supreme Court level. The organization also engages in policy consultations raising issues that impact, among other things, religious freedom and human rights. CLF is therefore knowledgeable and well-positioned to comment on this CPSO Policy.
In reviewing the Policy, there are three broad areas of concern for CLF. First, we submit that the Policy fails to recognize that physicians have the right to freedom of religion and conscience. Second, the Policy fails to recognize that the law protects physicians with religious beliefs from engaging in activities that violate their religious beliefs, their moral beliefs and their conscience. Third, the Policy obligates physicians, in “some circumstances” to actively refer a patient for services which violate the beliefs or conscience of the physician.

(1) **Physicians have the right to freedom of religion and conscience.**

In its current format, the Policy mentions “personal beliefs and values and cultural and religious practices are central to the lives of physicians and their patients”. This description fails to acknowledge the legal status of beliefs and religion. In fact, conscience and religion, thought, belief, opinion and expression are protected as fundamental freedoms by the Charter of Rights and Freedoms. Further, the Human Rights Code upon which the Policy is based, protects from discrimination on the basis of creed.

The Policy also precludes physicians from sharing their religious beliefs with patients: “physicians should not promote their own religious beliefs when interacting with patients, nor should they seek to convert existing patients or individuals who wish to become patients to their own religion”. While this conduct may not be appropriate in all circumstances, a blanket prohibition is problematic and a clear violation of freedom of religion and expression.

Religion as a protected freedom is more than the right to privately think or believe certain ideas and principles. It is broadly defined and demands robust protection. Freedom of religion encompasses the right to entertain religious beliefs of one’s own choosing, the right to declare religious belief openly and without fear of hindrance or reprisal, the right to manifest those beliefs by worship and practice, by teaching and dissemination. It precludes forcing an individual to act

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3. Ontario Human Rights Commission: Policy on Creed and the Accommodation of Religious Observances, October 20, 1996. While creed is not a defined term in the Code, the OHRC has adopted the following definition of creed in its Policy: “Creed is interpreted to mean “religious creed” or “religion.” It is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single supreme being or deity is not a requisite...The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed. "Creed" is defined subjectively. The Code protects personal religious beliefs, practices or observances, even if they are not essential elements of the creed provided they are sincerely held.” Policy page 4-5. “In the case of discrimination in the workplace, both management and the union have a duty to accommodate. In Central Okanagan School District No. 23 v. Renaud the Court noted that although the principle of equal liability applies, the employer has charge of the workplace and will be in a better position to formulate measures of accommodation. The employer, therefore, can be expected to initiate the process of taking measures to accommodate an employee. Nevertheless, the Court also noted that they will not absolve a union of its duty if it fails to put forward alternative measures that are available. In short, when a union is a co-discriminator with an employer it shares the obligation to remove or alleviate the source of the discriminatory effect.” Policy page 9. “Conclusion: Religious pluralism poses a challenge in any multicultural society, especially one as diverse as ours. Although the law is developing rapidly in this area, an informed spirit of tolerance and compromise is indispensable to any civil society, as well as its capacity to make opportunities available to everyone, on equal terms, regardless of creed [or other protected right].” Policy page 16.
conscience. Under the law, physicians must be afforded the ability to align their practices with their conscience in these controversial areas and others, and that right must be made clear in the CPSO Policy.

CLF therefore urges the CPSO to modify its Policy to reflect the principles outlined above, ensuring it accurately reflects physicians' rights pursuant to the Charter and the Human Rights Code.

Please note the endorsements that follow. CLF would be pleased to provide further assistance in any way the CPSO believes would be appropriate. Thank you for your consideration of our submissions.