Thank you for this opportunity. It is the first time that I have ever responded to a College of Physicians and Surgeons of Ontario consultation.

Having been a health care teacher for many years, this is a summary of many classes taught and policies applied regarding ethical decision-making. While this response is lengthy I believe that the discussion that the College is undertaking should be as neutral of emotion-laden “rights” as possible and focus on the underpinnings of the broad framework and scope of ethical decision making. In advance, if I have misconstrued, mischaracterized, or misunderstood the profession’s ethical discussion and policies, my apologies.

As I understand it the four key ethical principles of health care ethics, in particular the medical profession, can be summarized as being autonomy, non-maleficence, beneficence and justice. Other aspects that can be influential in ethical decision making are covered within existing provincial and federal legislation and the College’s regulatory policies protecting the right to: the confidentiality and privacy, protection and support of human dignity, to receive decisions made without the influence of conflict of interest, respect and support for diversity including non-discrimination under all the aspects protected by law and upheld by the College and that medical practitioners act with integrity including having the knowledge, skills, and values that provide safe, competent, care within the frameworks of current standards and the law.

One definition of an ethical issue embeds an issue in the emerging or existing conflict of/competition of values, beliefs, goals, that occurs within the context of difficult decisions about contrasting alternatives. In the context of the Charter of Human Rights and Freedoms and in the Ontario legislation governing fairness and non-discrimination this ethical issue exists as the perceived and emergent right of a physician to his/her ‘freedom of conscience’ to refuse to provide aspects of care. This physician right competes with the perceived and at this time legislated right of patients to access what they believe to be safe, effective and lawful care free of discrimination. The perspective the patient who approaches the physician holds beliefs and values that are not the same as the physician’s. Since prescriptions and referrals for contraception (pharmaceutical, mechanical, and surgical) falls primarily to women, women who are refused this care may see this as a gender-based discrimination, however, the ‘right to freedom of conscience’ would include the right to perform or refer a man for a vasectomy.

In looking at this, I respectfully submit these questions for the following:

**The definition of a right**

1. A right helps to frame the collective and individual good of a society. Rights are constantly evolving as society evolves. Does one right give that person protection in this consultation, which has become focused around an
individual’s “reproductive rights” against another individual’s right to freedom of conscience when one is the patient and the other the physician? Is there an inherent imbalance of power when the person holding the right to freedom of conscience has the power to ‘make happen or not happen’ for the other individual? Does the exercise of that power constitute abuse in the broadest sense or discrimination against the patient who does not have the power to make the care requested, “happen”?

2. To which right will the College be seen as supporting: the right of a patient to care wherever she/he wishes to receive that care, regardless of the physician's personal value system or the right of the physician to hold and act on his/her personal right to the expression of personal conscience? Is the definition of conscience and the right to exercise it a fundamental freedom of religion and if so whose religion or lack of religion or contrary opinion about the same religion has the greater right to be supported by the College?

The principle of autonomy

1. If a patient who holds closely the belief that she/he is entitled to receive care related to contraception (and abortion) comes to a physician determined in that belief, that the prescription or referral for an abortion is an exercise of personal autonomy - is the refusal to provide care and expression of paternalism (or perhaps a less gender-laden term “parentalism”). Is the refusal to provide this care an expression of discrimination of another beliefs based on the physician’s firmly held religious/spiritual beliefs and tenets?

2. Should the College make the decision to protect the physician’s right of freedom of conscience and encode it in its policy will this enable physicians to elect to not provide care for those patients whose lifestyle also competes with their personal and typically religious beliefs? Will there be and what would be the ‘iron-clad’ parameters of the ‘right to freedom of conscience’?

3. Does a physician have the professional responsibility to uphold a patient’s autonomy despite his/her personal beliefs?

The principle of non-maleficence

1. Is the prescribing of contraceptives physically or emotionally harmful as outlined and supported by the majority of scientific reasoning and evidence? Does it fall within the duty of care that is central to the profession?

2. Further, is the prescribing or referral of patients an act that is unlawful? Since under laws (decriminalization of contraception by amendment to the Criminal Code of Canada 1969, and the Supreme Court ruling re abortion, 1988), does the physician have the right of personal beliefs to withhold care
that is not deemed to be of such significant harm that is seen as a criminal act under the law?

The principle of beneficence

1. Do the patients coming to the physician for this care believe that in receiving this care they are improving their health and/or removing what they perceive to be harmful to them be that harm physical, emotional/psychological, social, or other? Do they have the right to believe that all physicians will support their right to receive what they consider to improve their state or remove potential or actual harm from their state?

The principle of justice

1. Does the College recognize that the freedom of conscience is an expression for the largest part of religious and personal values tenets not necessarily held even by practitioners of the religion of faith of the physician (and example would be the number of people who use contraception despite the teachings of the Roman Catholic church?)
2. Is the patient’s right to care as determined by the patient more, less, or equally important to the physician’s right to personal beliefs and values, that is the exercise of his/her ‘freedom of conscience’.

As I understand it the end-posts of the range of opinion re this consultation are potential for the right of freedom of conscience to be practiced by the physician in this narrow area (contraception, sterilization, and abortion) versus the right of a patient to have access to these medical treatments/procedures as provided by her/his physician of choice or by the physician with who he/she is dealing at the time that the care is requested/required. There does not seem that there can be a reasonable middle ground in which both rights are protected equally other than what the College currently supports.

However, after considering the questions from the framework of almost 45 years of education, health, and social care practice and having lived the history of reproductive rights and responsibilities I would suggest that the College should safeguard the separation of religious beliefs and values from the practice of medicine. This separation has served the profession and the public during the past decades since contraception and abortion became legal and within safe medical practice. To do otherwise can be deemed as discrimination against the patient’s personal and even religious beliefs and directed at one gender in particular, and the setting aside of the four key principles of ethical decision making or at the least to open the door for other discussions of the exercise of this right to freedom of conscience as a rationale for withholding care.
In practical terms, would the College support physicians posting that if you are LGBTQ you should go elsewhere for care because only heterosexuality is within the boundaries of their conscience? To turn away in an emergency room from caring for those patients with lifestyle diseases such as STI or substance abuse? Refuse to order blood or blood products when the standard medical treatment requires such? If not then should the College support further than it already has the right of physicians to exercise their freedom of conscience in the area of reproductive care.

The College is faced with difficult decision however it chooses will have implications for physicians, for all health and social care professions, and for health care in Ontario.