August 4, 2014

Dear College of Physicians and Surgeons of Ontario,

Re: Physicians and the Ontario Human Rights Code

Thank you for the opportunity to provide input to your policy review process.

As a resident of Ontario, I urge you to uphold physicians’ freedom to practice medicine in Ontario according to their deeply held conscientious beliefs. To quote Murphy and Genuis, “willingness to do what one believes to be wrong must never be made a condition for participation in public life or for membership in professional organizations.”¹

If we coerce physicians into violating their consciences, I am concerned about the emotional harm that could be inflicted on these physicians.

In their paper, Murphy and Genuis discuss how a sense of shame and guilt often haunt people who have been forced into doing what they believe is wrong. It seems to me that such shame and guilt could end up having significant detrimental effects on physicians’ health. While we often hear from opponents of conscience protection that patients have the “right” to various non-emergency medical treatments (e.g. abortion, the birth control pill, etc.), in practice, how severe and long-lasting is the harm, if any, that is actually done to patients when they are unable to obtain that treatment immediately from a particular physician? And how does this stack up against the potential harm to the physician who is forced to consistently violate his/her conscience? It would seem to me that the supposed harm to these patients is more in the nature of a possible inconvenience and thus cannot outweigh the potential harm that would be suffered by the physician whose sense of moral integrity is at stake.

It is worth pointing out that the very Supreme Court Justice who (alone among seven Justices) found that women have a “right to abortion,” spoke strongly in defence of freedom of conscience. Madam Justice Bertha Wilson, in her reasons for judgment in the 1988 Morgentaler decision striking down Canada’s abortion law, believed that it was inappropriate for the state to take sides in the abortion debate,² as to do so “is not only to endorse but also to enforce...one conscientiously-held view at the expense of another. It is to deny freedom of conscience to some, to treat them as means to an end, to deprive them, as Professor MacCormick puts it, of their ‘essential humanity.'”³

² Although it is debatable whether the state could ever be truly neutral on the abortion issue since by definition abortion involves competing interests (that of the woman’s vs that of the fetus’s), Justice Wilson’s comments at least would imply that she felt third parties should not be forced to facilitate a woman’s choice to have an abortion. Because if a third-party is forced against their will to take part in carrying out the woman’s choice, then that person’s conscientiously-held beliefs are violated.
By extension, then, to force physicians to engage in practices that violate their consciences would be to enforce one conscientiously-held view at the expense of another. It would be to treat these physicians as a “means to an end” and would deprive them of their “essential humanity.”

Not only is a physician’s “essential humanity” at stake when freedom of conscience is denied, but more broadly so is our democratic political tradition, as Justice Wilson notes:

...an emphasis on individual conscience and individual judgment also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government. It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity and to a free and democratic political system that American jurisprudence has emphasized the primacy or “firstness” of the First Amendment. It is this same centrality that in my view underlies their designation in the Canadian Charter of Rights and Freedoms, as “fundamental”. They are the sine qua non of the political tradition underlying the Charter. (underlining in original)4

Not only is there potential for great harm to come to physicians, but I believe harm will also come to patients, should CPSO decide to remove conscience protection. If a physician is “willing” to provide or refer for a treatment that the physician believes is harmful, and if the physician does this over and over again, the physician’s conscience becomes dulled. What other treatments in future will physicians be asked to perform or make referrals for? Without a conscience to guide them, how can physicians ultimately practice good medicine? I for one would not want to be treated by a doctor who was not guided by their conscience, who simply provided a treatment in blind obedience to a state-mandated edict to “leave their morals at the door.” 5 Conscience is a bulwark against oppression by the state.

In fact, “leaving morals at the door” is not actually possible. As Murphy points out, “...every decision concerning treatment is a moral decision, whether or not the physician specifically adverts to that fact.”6 So the question becomes, since morality will always be a part of the practice of medicine, whose version of morality will triumph?

Murphy explains that colleagues of the objecting physician may be disturbed by what appears to them as a moral judgment, but those non-objecting physicians are also making a moral judgment—they judge the treatment to be good. This leads Murphy to conclude that “What unsettles them is really not that the objector has taken a moral position on the issue, but that he has made an explicit moral judgement that differs from their implicit one.”

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5 “I think it is outrageous that doctors have the right to deny things like birth control. I believe if they plan on being in a profession that helps other people, they need to leave their morals at the door.” –Kate Desjardins as quoted by the Globe & Mail in “Should doctors have the right to refuse to treat a patient,” June 27, 2014, http://www.theglobeandmail.com/life/health-and-fitness/health/do-doctors-have-right-to-refuse-to-treat/article19383553/
I think this is an important insight from Murphy. It can help us to understand not only the objecting physician’s colleagues, but also the strong negative (over?) reaction of a patient who is denied a treatment she believes she is entitled to, as in the case of Ottawa woman Kate Desjardins who was outraged for being handed a letter stating that the doctor on duty at a walk-in clinic would not prescribe the birth control pill. While Ms. Desjardins may not realize it herself, it is certainly plausible that her strong negative emotions could stem from a belief that her own moral judgment was being challenged. Was it disconcerting for her to think that someone else might have moral concerns about the birth control pill? Was someone making a moral judgment on her?

Whatever emotions Ms. Desjardins experienced (whether she was consciously aware of their origins or not), it is clear that the physician who objected to prescribing the pill was not making a moral judgment on her (or any other potential patient for that matter), but a moral judgment on himself. He believed, for reasons of medical judgment, professional ethics, and religious belief, that it would be wrong for him to prescribe the pill. But if Ms. Desjardins interpreted his reaction as a moral judgment on her, well that is unfortunate, but we can hardly blame the physician for doing what he believes he needs to do to maintain his own integrity and human dignity.

Some opponents of conscience protection believe that if physicians are not required to perform a procedure (such as abortion), they should at least be required to refer the patient to another doctor who will provide the service. But referring a patient for a procedure that the physician believes would be immoral to perform, is also immoral because it involves complicity in the act. This notion of complicity is already recognized in our existing laws. Aiding and abetting a criminal offence is itself a criminal offence, according to section 21 of Canada’s Criminal Code. Not to apply the same logic in the case of what one deems to be a moral offence seems logically inconsistent.

If physicians who object to providing/referring for controversial treatments such as the birth control pill, abortion, (and euthanasia and assisted suicide if they are legalized) are punished for doing what they believe is right and good, then physicians who object to providing such treatments could eventually be weeded out of the profession. That would leave only those physicians who support such controversial treatments remaining. Is this fair to all those patients who hold similar values to the objecting physicians? Such patients will then only have access to physicians who hold fundamentally different beliefs about what is good.

Morality cannot be separated from medicine, or any other discipline, no matter how much some in our society wish otherwise. Everyone has a belief system that guides their behaviour. A doctor who believes that abortion is as valid an option to an unplanned pregnancy as giving birth is

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21. (1) Every one is a party to an offence who  
   (a) actually commits it;  
   (b) does or omits to do anything for the purpose of aiding any person to commit it; or  
   (c) abets any person in committing it.
simply not going to be able to relate in the same way to a pregnant woman who believes with all her heart and soul that her baby is a human being, as would a physician who believes that child is a human being and worthy of the same respect as a born human being. Or if the birth control pill is not an option for a woman because of her religious beliefs, will she be able to access Natural Family Planning as readily as Ms. Desjardins feels she is entitled to access the birth control pill?

If conscientious physicians, like the three in Ottawa who have been castigated because of their refusal to provide some reproductive health services, are driven from the profession, then it seems to me that such physicians would not be the only victims of discrimination – so would countless patients in Ontario who would no longer have the opportunity to access physicians who hold an ethical worldview similar to their own and thus to medical treatment informed and guided by such ethical beliefs. Maybe that is the intention of Ms. Desjardins and some abortion activists, but I do not believe it is the intention of CPSO. I would hope that the College would respect the diversity of conscientiously held views amongst the people of Ontario and not enact any policy that would effectively discriminate against an entire class of citizens.

For all of these reasons, I respectfully urge the College to uphold and protect physicians’ freedom of conscience.

Thank you once again for the opportunity to provide these comments.

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9 “Doctors do not have the right to discriminate and deny basic health care,” Joyce Arthur, August 1, 2014; [http://rabble.ca/columnists/2014/08/doctors-do-not-have-right-to-discriminate-and-deny-basic-health-care](http://rabble.ca/columnists/2014/08/doctors-do-not-have-right-to-discriminate-and-deny-basic-health-care)