



Professional Obligations and Human Rights

INTRODUCTION

The fiduciary nature of the physician-patient relationship requires that physicians act in their patients' best interests. 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*¹ (the "Code"), which entitles every Ontario resident to equitable treatment with respect to services, including health services.

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.

¹ *Human Rights Code*, RSO 1990, c H.19.



29 **PURPOSE**

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

35 **POLICY**

36 **Human Rights, Discrimination and Access to Care**

37 The *Code* articulates the right of every Ontario resident to receive equitable treatment with respect to
38 services, goods and facilities, without discrimination on the grounds of race, ancestry, place of origin,
39 colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age,
40 marital status, family status or disability.² The *Code* requires that all those who provide services in
41 Ontario, including physicians providing health services, do so free from discrimination.

42 Discrimination may be described as an act, decision or communication that results in the unfair
43 treatment of a person or group by either imposing a burden on them, or denying them a right, privilege,
44 benefit or opportunity enjoyed by others. Discrimination may be direct and intentional. Alternatively,
45 discrimination may be entirely unintentional, where rules, practices or procedures appear neutral, but
46 may have the effect of disadvantaging certain groups of people. The *Code* provides protection from all
47 forms of discrimination based on the above protected grounds, whether intentional or unintentional.³

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

- 51 • Accepting or refusing individuals as patients;
- 52 • Providing existing patients with healthcare or services;
- 53 • Providing information or referrals to existing patients or those seeking to become patients;
- 54 and/or
- 55 • Ending the physician-patient relationship.

56 **The Duty to Accommodate**

57
58 The legal, professional and ethical obligation to provide services free from discrimination includes a duty
59 to accommodate. Accommodation is a fundamental and integral part of providing fair treatment to
60 patients. The duty to accommodate reflects the fact that each person has different needs and requires
61 different solutions to gain equitable access to care.

² *Human Rights Code*, RSO 1990, c H.19, s 1.

³ As adapted from the Human Rights Commission of Ontario's definition of 'discrimination'.



62 The *Code* requires physicians to take reasonable steps to accommodate the needs of existing patients,
63 or those seeking to become patients, where a disability⁴ or other personal circumstance may impede or
64 limit their access to care. The purpose in doing so is to eliminate or reduce any barriers or obstacles that
65 they may experience.

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

69 Examples of accommodation may include: enabling access for those with mobility limitations, permitting
70 a guide dog to accompany a patient into the examination room, ensuring that patients with hearing
71 impairment can be assisted by a sign-language interpreter, being considerate of older patients that may
72 face unique communication barriers, and/or providing reasonable flexibility around scheduling
73 appointments where patients have family-related needs.⁵
74

75 While physicians have a legal, professional and ethical duty to accommodate, there are limits to this
76 duty. Physicians do not have to accommodate beyond the point of undue hardship, where excessive
77 cost or health or safety concerns would result. The duty to accommodate is also limited where it
78 significantly interferes with the legal rights of others.⁶

79 **Limiting Health Services for Legitimate Reasons**

80
81 The duty to refrain from discrimination does not prevent physicians from limiting the health services
82 they provide for legitimate reasons.⁷ Physicians, for instance, may be unable to provide care that is
83 clinically indicated and within the standard of care, if that care is outside of their clinical competence.
84 Also, physicians may be unwilling to provide care that is contrary to their moral or religious beliefs.
85

⁴ Section 1 of the *Human Rights Code*, RSO 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*.

⁵ Ontario Human Rights Commission, *Submission Regarding College of Physicians and Surgeons Policy Review: Physicians and the Ontario Human Rights Code*, (Ontario: August 1, 2014).

⁶ Further explanation of ‘undue hardship’ is provided in the Human Rights Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate*.

⁷ For more information see the College’s [Accepting New Patients](#) and [Ending the Physician-Patient Relationship](#) policies.



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

89
90 The following sections set out physicians' rights and obligations in these circumstances.

91
92 **i) Clinical Competence**

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

100
101 Where clinical competence may restrict the type of services or treatments provided, or the type of
102 patients a physician is able to accept, the College requires physicians to inform patients of this as soon
103 as is reasonable. The College expects physicians to communicate this information in a clear and
104 straightforward manner to ensure that individuals or patients understand that their decision is based on
105 an actual lack of clinical competence rather than discriminatory bias or prejudice. This will lessen the
106 likelihood of misunderstandings.

107
108 In order to protect patients' best interests and to ensure that existing patients, or those seeking to
109 become patients, are not abandoned, the College requires physicians to provide a referral to another
110 appropriate health care provider for the elements of care the physician is unable to manage directly.

111
112 **ii) Moral or Religious Beliefs**

113 The *Canadian Charter of Rights and Freedoms* (the "*Charter*") protects the right to freedom of
114 conscience and religion.⁸ Although physicians have this freedom under the *Charter*, the Supreme Court
115 of Canada has determined that no rights are absolute. The right to freedom of conscience and religion
116 can be limited, as necessary, to protect public safety, order, health, morals, or the fundamental rights
117 and freedoms of others.⁹

118 Where physicians choose to limit the health services they provide for moral or religious reasons, this
119 may impede access to care resulting in a violation of patient rights under the *Charter* and the *Code*.¹⁰
120 The courts have determined that there is no hierarchy of rights; all rights are of equal importance.¹¹
121 Should a conflict arise, the aim of the courts is to respect the importance of both sets of rights to the
122 extent possible.

⁸ *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).

⁹ *R. v Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at para 95.

¹⁰ *R. v Morgentaler*, [1988] 1 SCR 30 at pp 58-61, and see also the *Code*.

¹¹ *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at p 839.



123 The balancing of rights must be done in context.¹² In relation to freedom of religion specifically, courts
124 will consider how directly the act in question interferes with a sincerely held religious belief. Courts will
125 seek to determine whether the act interferes with the religious belief in a manner that is more than
126 trivial or insubstantial. The less direct the impact on a religious belief, the less likely courts are to find
127 that freedom of religion is infringed.¹³ Conduct that would potentially cause harm to and interfere with
128 the rights of others would not automatically be protected.¹⁴

129 While the *Charter* entitles physicians to limit the health services they provide on moral or religious
130 grounds, this cannot impede, either directly or indirectly, access to care for existing patients, or those
131 seeking to become patients. Therefore, the College requires physicians who choose to limit the health
132 services they provide on moral or religious grounds to do so in a manner that:

- 133 i. Respects patient dignity;
- 134 ii. Ensures access to care; **and**
- 135 iii. Protects patient safety.

136

137 **i. *Respecting Patient Dignity***

138 Where physicians are unwilling to provide certain elements of care due to their moral or religious
139 beliefs, physicians must communicate their objection directly and with sensitivity to existing patients, or
140 those seeking to become patients, and inform them that the objection is due to personal and not clinical
141 reasons.

142

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

149

150 **ii. *Ensuring Access to Care***

151

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

155

156 Where physicians are unwilling to provide certain elements of care due to their moral or religious
157 beliefs, an effective referral to another health care provider must be provided to the patient. An
158 effective referral means a referral made in good faith, to a non-objecting, available, and accessible
159 physician or other health-care provider.¹⁵ The referral must be made in a timely manner to reduce the

¹² Ontario Human Rights Commission, *Policy on Competing Human Rights*, (Ontario: Jan 26, 2012).

¹³ *Syndicat Northcrest v Amselem*, [2004]2 SCR 551 at paras 59-61.

¹⁴ *Syndicat Northcrest v Amselem*, [2004] 2 SCR 551 at para 62.

¹⁵ In the hospital setting, referral practices may vary in accordance with hospital policies and procedures.



160 risk of adverse clinical outcomes. Physicians must not impede access to care for existing patients, or
161 those seeking to become patients.

162

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

165

166 **iii. *Protecting Patient Safety***

167

168 Physicians must provide care that is urgent or otherwise necessary to prevent imminent harm, suffering,
169 and/or deterioration, even where that care conflicts with their religious or moral beliefs.¹⁶

DRAFT

¹⁶ 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.