



Council on Ethical and Judicial Affairs

February 18, 2015

College of Physicians and Surgeons of Ontario
80 College Street
Toronto, Ontario M5G 2E2

RE: Professional Obligations and Human Rights

To Whom It May Concern:

On behalf of the American Medical Association's Council on Ethical and Judicial Affairs, we commend the College of Physicians and Surgeons of Ontario for undertaking challenging task of drafting policy on professionalism and human rights. We would like to take this opportunity to respond to the College's invitation to offer comment on the draft.

As the College is no doubt aware, the Council on Ethical and Judicial Affairs has the responsibility of maintaining and updating the *AMA Code of Medical Ethics*. To fulfill this function, the Council analyzes ethical issues across a wide range of domains in medicine and provides recommendations for ethical physician conduct. Recommendations adopted by the AMA House of Delegates are ultimately issued as Opinions in the *Code*.

The *Code of Medical Ethics* recognizes the duty of fidelity to patients, including the responsibility not to discontinue treatment without giving the patient reasonable opportunity to make other arrangements for care (E-10.01, "Fundamental Elements of the Patient-Physician Relationship"), similar to the draft policy of the College. Like the draft policy, the *Code* further recognizes the duty not to discriminate (Opinion E-9.12, "Patient-Physician Relationship: Respect for Law and Human Rights").

The *Code* also defines circumstances in which a physician may ethically decline a potential patient (Opinion E-10.05, "Potential Patients"). Viz. when requested treatment is beyond the physician's current competence; is known to be scientifically invalid, has no medical indication, and offers no possible benefit to the patient; or is "incompatible with the physician's personal, religious or moral beliefs."

Recognizing that guidance beyond that provided in E-10.05 was warranted with respect to physicians' exercise of conscience, the Council on Ethical and Judicial Affairs recently undertook an in-depth analysis of ethical considerations in this area.

In November 2014, the AMA House of Delegates adopted the recommendations of the Council on physicians' ethical responsibilities in exercising conscience. These recommendations will be issued as an Opinion in the *Code of Medical Ethics* at the Annual Meeting of the House of Delegates in June 2015.

In the course of its analysis, the Council identified two issues of particular concern: the nature and scope of duties to inform and to refer. On these matters, the Council's conclusions differ from those of the College and we wish to share our recommendations and reasoning to help inform the College's policy deliberations.

The Council based its analysis on the understanding that physicians are not only members of a profession but are moral agents in their own right, whose need to maintain integrity grounded in their identity-conferring beliefs is worthy of respect. The Council further recognized, however, that as professionals, a physician's claim to exercise conscience requires that the individual consider carefully what is at stake for the patient and the profession as a whole and be able to articulate how the "substantive, coherent, and reasonable stable" values and principles of deeply held personal beliefs "justify acting one way or another."

In the Council's view, an account of the nature and scope of a physician's duty to inform or to refer when a patient seeks treatment that is in tension with the physician's deeply held personal beliefs must address in a nuanced way the question of moral complicity. The Council concurs that physicians must provide information a patient needs to make a well-considered decision about care, including informing the patient about options the physician sincerely believes are morally objectionable. However, the Council sought to clarify that requirement, holding that before initiating a patient-physician relationship the physician should "make clear any specific interventions or services the physician cannot in good conscience provide because they are contrary to the physician's deeply held personal beliefs, focusing on interventions or services that a patient might otherwise reasonably expect the practice to offer."

The Council also reached a somewhat different conclusion than the College with respect to a duty to refer. The College's draft policy provides that, when a physician is "unwilling to provide certain elements of care on moral or religious grounds," the physician must provide "an effective referral" to "a non-objecting, available, and accessible physician or other health care provider."

This seems to us to overstate a duty to refer, risk making the physician morally complicit in violation of deeply held personal beliefs, and falls short of according appropriate respect to the physician as a moral agent. On our view, a somewhat less stringent formulation of a duty to refer better serves the goals of non-abandonment, continuity of care, and respect for physicians' moral agency. The council concluded that:

In general, physicians should refer a patient to another physician or institution to provide treatment the physician declines to offer. When a deeply held, well-considered personal belief leads a physician also to decline to refer, the physician should offer impartial guidance to patients about how to inform themselves regarding access to desired services.

On the Council's analysis, the degree or depth of moral complicity is defined in part by one's "'moral distance' from the wrongdoer or the act, including the degree to which one shares the wrongful intent." Other factors also influence complicity, including "the severity of the immoral act, whether one was under duress in participating in the immoral act, the likelihood that one's conduct will induce others to act immorally, and the extent to which one's participation is needed to facilitate the wrongdoing."

The Council on Ethical and Judicial Affairs recognizes that physicians' latitude to act according to conscience should not be unlimited. Physicians are expected to provide care in emergencies, honor patients' informed refusal of medical interventions, respect basic civil liberties, and not act in such a way as to disadvantage a class or category of patients. The Council's deliberations led it to conclude that physicians have stronger obligations to patients with whom they have a patient-physician relationship, when there is imminent risk of foreseeable harm to the patient, and when the patient is not reasonably able to access treatment from another qualified health care professional.

In the view of the Council on Ethical and Judicial Affairs, it can be ethically permissible for a physician to act according to conscience when the decision to do so is taken with appropriate reflection and deliberation. A physician should consider whether and how significantly acting (or declining to act) will undermine the physician's moral integrity, create personal emotional or moral distress, or compromise the physician's ability to provide care. Physicians should also be mindful of the burden their decision may place, not only on patients, but also on fellow health care professionals. Physicians should always inform patients of all relevant options for treatment and in general should refer the patient to another willing health care professional for treatment the physician declines to provide, but at minimum should impartially guide patients to resources to inform themselves about how treatment. The Council also finds that, with the opportunity to exercise judgment comes the responsibility to accept the consequences of a decision to act in keeping with the dictates of well-considered, deeply held personal beliefs when those are in tension with otherwise prevailing ethical expectations of the profession of medicine.

Thank you for the opportunity to share our deliberations. If you have questions, please do not hesitate to raise them. Queries should be directed to the Council on Ethical and Judicial Affairs through AMA staff