February 18, 2015

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

Subject: Professional Obligations and Human Rights Policy

The Ontario Medical Association is grateful for the opportunity to provide comments on the College’s draft policy: Professional Obligations and Human Rights. The OMA undertook a broad member consultation to gather views on the draft policy. The OMA Board deliberated extensively on the draft policy and the implications it could have for physicians’ freedom of conscience. This Association struggles with endorsing the draft policy which, although progressive in its efforts to ensure patient access, forces physicians to take actions that may conflict with their fundamental beliefs. We disagree that enforcing a single, strict ‘rule’ governing physician behaviour when it comes to an issue as personal as moral or religious beliefs is feasible. We suggest that the College withdraw the current draft and undertake further study, particularly given the direct comment on point in the recent Supreme Court decision in Carter v. Canada.

Both patients and physicians are protected under the Ontario Human Rights Code as well as the Canadian Charter of Rights and Freedoms. That being the case, it is imperative that the policy does not undermine a physician’s right to freedom of conscience. Furthermore, the Carter decision emphasized the need to reconcile patient and physician Charter protections. The draft policy has not reconciled these protections since an “effective referral” (an affirmative action that contributes to the outcome) cannot be said to address the physician’s right to freedom of conscience. This recent Supreme Court decision provides further evidence that the policy must have flexibility in terms of the options available to physicians who are unable to provide services because of moral or religious beliefs.

We propose that this policy not focus on forcing physicians to perform services to which they object. Instead, the policy should focus on improving information about and access to alternative options. The OMA believes that in circumstances where the physician is unable to personally provide medical services, he or she must not impede the patient in accessing those services elsewhere. The issue of access when it comes to contentious medical services is a complex one that will require stakeholder collaboration to develop a more nuanced approach. “Effective referral” represents only one tool - a fairly blunt one at that - we can use to resolve these conflicts. The policy should contemplate intermediate options. For
example, the College might allow physicians to post general information about their scope of practice in a visible place for all patients. Another option would be for the policy to allow physicians to make generic referrals to third party organizations or agencies that maintain information about service providers. Incorporating any of these approaches would require further discussion.

We understand that the goal of this policy is to protect patient dignity and ensure patients can access the medical services they seek and we support that aim. However, we believe the College will have more success in achieving its goal if physicians are not forced to comply with a rigid process that may present serious moral dilemmas and diminish their dignity. In reassessing this draft policy, we urge the CPSO to consider the fact that physicians are also protected under the Code and that the College will be obliged to consider the Code when determining whether physicians' conduct is consistent with the College's expectations.

Thank you for considering these comments.