February 19, 2015

College of Physicians and Surgeons
80 College Street
Toronto, ON M5G 2E6

Re: Draft Policy "Professional Obligations and Human Rights"

The Evangelical Fellowship of Canada (EFC) welcomes this opportunity to participate in the dialogue about the College of Physician and Surgeons (CPSO) draft policy on "Professional Obligations and Human Rights." The EFC is a national association of denominations, ministry organizations, post-secondary educational institutions including universities, seminaries and colleges, and local congregations. Some of our affiliates provide medical and health care in Canada and overseas, and many physicians are members of our affiliated denominations. The Christian Medical Dental Society (CMDS) is an affiliate of the EFC and we endorse the submission made by the CMDS and the Canadian Federation of Catholic Physician Societies (CFCPS) dated February 11, 2015.

The EFC is active in promoting the religious freedom of all persons. We agree that physicians ought to respect the rights and freedoms, and the diversity of all patients, and treat all with the same respect and dignity.

We also affirm the rights and freedoms of physicians and surgeons, including their freedom of conscience and religion. Our concern with the draft policy is that it requires doctors to provide an effective referral for services, and in some situations, undertake procedures that violate the conscience and/or religious beliefs of some doctors.

The freedoms of patients and of doctors are protected under the Charter of Rights and Freedoms (Charter). The CPSO is bound by the Charter and must not enforce policies that violate the rights or freedoms of either its members or their patients. It must make every effort to ensure that a system is in place to ensure that a physician is not compelled to participate in undertaking procedures or prescribing pharmaceuticals that violate their freedom of conscience and religion.

As noted in the brief of the CMDS and the CFCPS, there is no right for a patient to demand and receive a particular service from a specific physician. It is the health care system that is obligated, not the individual physician, and the system established for the delivery of services must respect the diversity and plurality of both those who access the system and those who provide the services. The onus is on the health care system, and in this case the CPSO, to devise policies that respect and accommodate the Charter.
rights and freedoms of both the patients and the physicians. We are concerned that under the proposed policy the burden is being placed on the individual physician when it is the CSPO which is bound by the Charter and has a duty to accommodate the Charter rights of both patients and the physicians. The CPSO policy must balance the rights of all involved and ensure the rights and freedoms of all are respected and accommodated.

The draft policy refers to the Ontario Human Rights Code (Code) which sets out the rights of Ontario residents to receive treatment without discrimination. However, the Code does not compel a service provider to provide all services demanded by a client or customer. If a service is not offered, whether it be a particular food in a restaurant or a certain type of repair by a mechanic, there is no discrimination as long as all customers are treated the same. Human rights codes are intended to protect people seeking a service from being denied that service if it is otherwise offered to others. A physician refusing to undertake a certain procedure which violates his or her conscience or religious beliefs does not constitute discrimination toward the patient seeking a treatment the physician does not offer.

Further, providing an effective referral involves more than providing information about clinical options. Providing a referral means the doctor is convinced that in their judgment the best interest of the patient is served by a particular course of medical treatment or procedure. By providing the referral, the doctor is taking direct action and is, in effect, prescribing a course of action or treatment for a patient. Some doctors believe that providing an effective referral is morally the same as providing the course of action or treatment itself. To compel them to do so, then, is a violation of their Charter rights and freedoms.

All doctors, including those with deep religious convictions, desire to serve their patients in an open and non-discriminatory manner. In a religiously, ethnically, culturally and morally plural society, the duty to accommodate extends to all, both to the patient and the physician.

One of the key values identified in the draft policy is trustworthiness. Compelling a physician to undertake a procedure or to refer a patient for a procedure that they do not believe is in the best interest of their patient, and which may harm their patient, undermines this value. Forcing a physician to violate their conscience undermines the moral integrity of the physician and the honest, respectful and open relationship that should exist between the patient and physician.

We urge the CPSO to revise the draft policy to ensure the Charter rights and freedoms of all impacted by the policy are affirmed and respected.