February 18th, 2014

Hello colleagues at the CPSO:

CPSO: DRAFT POLICY PHYSICIANS OBLIGATIONS AND HUMAN RIGHTS

I would like to thank the members of CPSO for being open to consultation with the public and for your work on the policy on Human Rights. Much of it is good. I too support the protection of patients’ safety and access to care. **A patient’s safety starts with the doctor’s good judgment which comes from a well-formed conscience.** I don’t know how else to practice excellent medicine that is caring, compassionate, safe, timely and does not discriminate, except to work with an understanding of one’s conscience. Decision making based on moral stances are rational and evidence based. Therefore any amendments to the policy to defend doctors’ rights to conscience, in my opinion are good medicine.

I appreciate that the College accepts existing Charter rights of freedom of religion and conscience and I urge you to maintain that moral stance. **I would ask that you amend the draft policy so as to eliminate the requirement to provide or refer for any treatment which violates that doctor’s professional conscience.**

I am gravely concerned that segments of the policy restrict freedom of conscience. All persons believe in freedom of conscience and this principle is a foundation of our democratic country and enshrined in the Canadian Charter, the United Nations’ Universal Declaration of Human Rights: Article 1, the CMA policy and the OCFP policy on rights.

Sections 8, 10 and 11 suggest, on pain of sanction, that physicians who decline to participate in certain acts for reasons of conscience should be compelled to refer their patients to other physicians who will perform these acts. **Referring** to a reliable referral source is considered material cooperation in the act and must be declined for reasons of conscience. In compelling physicians to refer, the CPSO is limiting their right to conscientious objection.

The draft policy contradicts the Code of Ethics of the Canadian Medical Association:

7. Resist any influence or interference that could undermine your professional integrity.
9. Refuse to participate in or support practices that violate basic human rights.
12. Inform your patient when your personal values would influence the recommendation or practice of any medical procedure that the patient needs or wants.
23. Recommend only those diagnostic and therapeutic services that you consider to be beneficial to your patient or to others.

And it contradicts the document ‘**JOINT STATEMENT ON PREVENTING AND RESOLVING ETHICAL CONFLICTS INVOLVING HEALTH CARE PROVIDERS AND PERSONS RECEIVING CARE**’- Approved by: Canadian Medical Association, Canadian Healthcare Association, Canadian Nurses' Association, Catholic Health Association of Canada


16. Health care providers should not be expected or required to participate in procedures that are contrary to their professional judgment or personal moral values or that are contrary to the values or mission of
their facility or agency. Health care providers should declare in advance their inability to participate in procedures that are contrary to their professional or moral values. Health care providers should not be subject to discrimination or reprisal for acting on their beliefs. The exercise of this provision should never put the person receiving care at risk of harm or abandonment.

11. If a health care provider cannot support the decision that prevails as a matter of professional judgment or personal morality, allow him or her to withdraw without reprisal from participation in carrying out the decision, after ensuring that the person receiving care is not at risk of harm or abandonment.

If the draft policy is passed with limitations of conscientious objection by physicians, it would cause severe harm on the doctor patient relationship, eroding trust and turning the whole medical system upside down. Patients trust in their doctor to “First: Do no harm” is the main healing component of the consultation. See for details: [http://www.consciencelaws.org/background/policy/associations-001.aspx](http://www.consciencelaws.org/background/policy/associations-001.aspx).

I am afraid there will be many unintended negative consequences of this draft policy, should it be passed. At the very least it will negatively affect patient care, quality of care, research and access in Ontario and **erode trust as part of a society wide phenomenon**.

One of the reasons for this new policy given by the CPSO is to improve access for patients who want birth control pill or abortion. Practically speaking this has been a **non-issue** in medical practice in most of Ontario, for many years as patients may self-refer for pregnancy terminations. Innovative practices could help solve access issues, such as: telemedicine, 1-800 telephone lines, enhanced public health services and defined interdisciplinary cooperation (with other professionals such as pharmacists).

Will this draft policy improve access? In fact there is no proof that the new policy will increase access.

And in the example of a referral for abortion, requiring a referral actually may increase the time, **risk** and inconvenience.

If doctors who decline to refer for a procedure that they believe is harmful to the patient, and are subsequently sanctioned, they will find it difficult to be available for patient care. Those patients who want a doctor who abides by their conscience won’t have access to that kind of doctor who follows the principle “first: do no harm”. What about **those patients’ rights** to access to care? A conscientious physician, with this draft policy in place may decide they have no choice but to practice in more urban settings, thereby also limiting access for rural residents to a doctor who follows “first: do no harm”.

The draft policy as it stands is especially concerning given the reality of the legalization of euthanasia and assisted suicide. Many physicians, I would say the majority, have a moral and ethical problem with doing these so called treatments. Since experts who once lobbied for physician assisted suicide and euthanasia in Europe, are now asking for a moratorium because of abuses, there are real concerns over the abuse of vulnerable persons. Vulnerable persons of all sorts need protection that comes from a trusting relationship. Do we want to force doctors to refer or even provide services like these? Or be sanctioned by the CPSO?
What about the future of medicine? Some of the best and brightest medical school applicants will think twice before applying to medical school if they have to compromise their integrity. This may not lower access but it may lower innovation and advancement in medicine that comes from an open mind ruled by conscience. The future of ongoing research on seriously ill persons, and the start of new research projects which involve very ill persons are also in serious jeopardy if this policy comes into practice, and with patient’s option to ask for physician assisted suicide and euthanasia.

What to do when there are cases of injustice, possible discrimination or delays in treatment? I believe the current policy deals with this on a case by case basis and it seems to work.

The wording of the draft policy is vague at times and difficult to understand, without fully defining contexts of services. Much more work needs to be done on defining services, application of the balance of rights of patients and physicians and the impact on society. As the draft stands it has a chilling effect on doctors who work with difficult patients (personality disorders and those with addictions) who may make inappropriate demands that are deemed by the doctor to be harmful for the patient. What is in the best interest of the patient sometimes is to refuse an inappropriate request, thereby educating and managing boundaries. The draft policy gives the impression such a refusal may be discrimination, rather than therapy, undermining good patient care. Aren’t difficult patients entitled to the best care? The way the draft policy stands it is open for abuse. Refusing to provide or perform some procedures is not discriminatory when it is based on a properly informed conscience: This has everything to do with the physician’s decision about the wrongness of those procedures/treatments.

With such a restriction on freedom of conscience in the draft policy, a rational case can be made that some harm may come to patients and society if the draft policy is passed. And that harm can be important.

A physician should never be compelled to act against rational conscience decisions, and that compulsion goes against Charter and human rights. I ask that you amend the draft policy by removal of the requirement to perform a procedure, requested by the patient, that the doctor believes to be harmful to the patient or to refer on pain of sanction.

There are many creative ways to maintain and respect a balance of conscience rights between patients and doctors who treat them. The ministry of health is charged with finding ways to allow patients to access medical services. Surely a tolerant country like Canada can come up with a way to make this work without limiting freedom of conscience.