

Dear College of Physicians and Surgeons,

I'm writing on behalf of the Abortion Rights Coalition of Canada to provide feedback on your draft policy "Professional Obligations and Human Rights." Thank you for this opportunity. My feedback focuses on the sections of your policy that relate to physician obligations to patients when physicians refuse care based on their moral or religious beliefs.

First, your draft policy is a significant improvement over the previous policy. Thank you for listening to public feedback about the critical need for physicians to refer appropriately and promptly. There are many other positive aspects to your new policy, including the requirements to communicate objections to patients directly and with sensitivity, to not delay care, to provide information on all appropriate clinical options, and to provide emergency care even when that conflicts with physician beliefs.

I do have some major concerns about the policy, however. In our detailed submission on July 28, 2014 (via email) to the College on its current policy, the following points were made:

- So-called "conscientious objection" (CO) in reproductive healthcare should be generally banned because it is not genuine freedom of conscience – it is a veto of a patient's right to healthcare, an abuse of authority over a dependent person, and an unjustified refusal to do the job one was trained and paid to do.
- Because doctors enjoy a monopoly on healthcare delivery and have voluntarily joined a public service profession, they have a duty to serve patients regardless of their own personal beliefs ("public accommodation" principle).
- Most CO targets women's reproductive healthcare needs (abortion and contraception), and this amounts to discrimination against women under human rights codes.
- The requirement for physicians to refer does not work in practice, because it is contradictory, unfeasible, and systematically abused around the world. For example, most anti-abortion doctors will also refuse to refer for the procedure or even for birth control, because they think that makes them "complicit" in an immoral act.
- Once you allow any degree of CO, you can't effectively limit its exercise because it is not possible to constrain religious beliefs by imposing a rational, evidence-based compromise (like your draft policy). For example, regardless of the law or any CO requirements, some anti-choice doctors will let women die rather than perform an abortion, as has happened in countries like Poland, Ireland, and Nicaragua.

The CPSO is undoubtedly receiving a great deal of negative feedback from anti-abortion doctors, groups, and others on its draft policy. You must therefore be already aware that you will run into serious difficulties trying to enforce your draft policy, given the strength of the social conservative lobby. I've been following the anti-abortion reaction, and while much of it is hyperbole or inaccurate – and ignores patients' rights almost completely – I'd like to highlight several typical statements from them about the referral requirement:

"If conducting a procedure would violate a doctor's conscience or beliefs, then so would facilitating that procedure through a referral. This draft policy would require a doctor to provide that referral, which is a kind of participation in the procedure." –president of the Evangelical Fellowship of Canada.

“Referrals are as morally problematic as doing the procedure itself. ... For instance, if an accused person refers an acquaintance to a drug dealer, the accused person is guilty of the crime of trafficking in narcotics. If a physician has the moral or religious conviction that abortion or euthanasia is the taking of an innocent human life, then the physician who formally refers a patient to the abortionist or euthanist has contributed to the taking of that life.” –Executive Director of the Christian Medical and Dental Society of Canada; and Albertos Polizogopoulos, Partner with the firm Vincent Dagenais Gibson LLP/s.r.l.

“[The] New rules will force all doctors to be complicit in abortion by either forcing them to do the deed *or refer to an abortionist they know will make the unwanted fetus dead.*” National Review (italics in original)

“...Canadian physicians ... who share my pro-life perspective ... may refuse to refer for abortion due to their conscience, but they may also refuse to refer due to their religious beliefs... They may be Christian, Muslim, Jewish or atheist physicians but they have an issue with abortion or contraceptives. For them, to refer for this procedure or these drugs is to be complicit in the actions and their consequences.” –Evangelical Fellowship of Canada

“...both Drs. Gabel and Leet [of CPSO] believe pro-life doctors can refer patients with unwanted pregnancies to other doctors who are comfortable with doing abortions, or even to abortion clinics, without compromising their consciences. But if there is indeed a patient’s right to be referred to an abortionist, McGill University religious studies professor Douglas Farrow told LifeSiteNews, “then I claim the patient’s right to a doctor who shares my belief that abortion is wrong. But this committee wants to drive all such doctors out of practice. What about my rights? ... If the Charter of Rights and Freedoms means anything by freedom of religion and conscience, it must mean that nobody can be forced to act against his faith or conscience. But that is what the Ontario College is considering doing to its own doctors.” – [LifeSiteNews](#)

The anti-abortion movement’s belief that the new CPSO policy will “drive pro-life doctors out of practice”, or to other provinces, rests on insider knowledge that most such doctors will indeed refuse to refer or provide emergency care for services they oppose. I completely agree with this assessment, based on my almost 30 years of monitoring the anti-abortion movement. However, while it’s possible that some doctors may move or shift careers, and some may even agree to refer, I predict that most will simply flout the policy, and continue refusing to refer or provide care with which they disagree. (A few may also pursue legal avenues against you, but the CPSO is in the right when it comes to Charter justifications of its policy.)

This leads to my main concern I have about your draft policy – the inadequate complaints and enforcement process. Currently, enforcement of CPSO policies relies on a complaint-driven process. However, most patients, even when treated unjustly by doctors, are not going to file a complaint because of the time and hassle involved, and the loss of privacy. This is especially the case for women seeking birth control or abortion, which are felt to be very private and confidential services. Further, when a patient (or someone on their behalf) files a complaint, the doctor is informed of the particulars and learns the patient’s identity, which can jeopardize the doctor/patient relationship. What patient wants to go back to a doctor she’s filed a complaint against? She would more likely choose to not file a complaint at all, especially given the difficulty of finding a new family doctor or Ob/Gyn. Finally, many patients are completely unaware they even have a right to complain, much less how to go about it.

If the CPSO goes ahead with this policy, I believe it will fail to protect patients because most objecting doctors will choose to quietly disobey the policy, and most patients won't complain. However, it may work more effectively if the CPSO also modifies its enforcement policy and implements additional monitoring and discipline. You would know best how to accomplish this, but may I please suggest some possible strategies?

1. Require all objecting doctors to register, so they can be monitored. You could start building the registry based on all the doctors you already know are objectors.
2. Require all objecting doctors to file a report (e.g., a form to complete) every time they refuse services based on their moral or religious objections, including description of the patient and encounter (no identifying info necessary), the services refused, and the referral made or action taken. Investigate any inadequate or problematic reports.
3. Randomly conduct regular audits on objecting doctors, whether or not they have filed any reports.
4. Discipline those who violate the policy, and develop a more comprehensive policy around this.
5. Make the complaint process easier – e.g., create a simpler complaint form for patients that is made prominently available in paper form at all doctor's offices, clinics, and hospitals; is easy to complete and file; and provides the option of patient confidentiality going forward. (Your current 5-page complaint form is too daunting for a large subset of patients, is unknown to most patients, and not readily available to those without computer skills or access).
6. Implement an alternate investigative procedure for complaints, which prevents the doctor from learning or discerning the complainer's identity.
7. Engage in public advocacy about the right to complain when doctors refuse care or referrals – eg, create a brochure for doctors' offices, publish an op-ed, write a position paper for your website, and keep a permanent prominent link to it on your home page, etc.

Regarding the first 3 suggestions, you may think that this level of regulation of doctors is unreasonable given the high value placed upon doctor discretion and autonomy. However, let's not forget that physicians' right to self-regulation is a privilege given to them by Canadians on the basis of trust. If we cannot trust certain physicians to fulfill their professional obligations by providing the most appropriate care that is available and legal, then those doctors do not deserve an unencumbered right to self-regulation. This should apply especially for doctors who object to providing common, medically required treatments they personally disagree with. (I'm referring to reproductive healthcare primarily; I would not include doctor-assisted euthanasia as that would be far less commonly requested and perhaps considered elective).

Finally, I would like to repeat a couple of paragraphs from our original submission last July:

“Conscientious objection” in reproductive health care should be dealt with like any other negligent failure to perform one's professional duty: through enforcement and disciplinary measures, including possible dismissal or loss of license, as well as liability for costs and any negative consequences to victims. Those who would refuse to provide or refer for abortion or contraception because of a personal or religious objection should not be allowed to enter disciplines that deliver that care, including family medicine and the Obstetrics/Gynecology specialty.

If current objectors are allowed to continue objecting, they should be required to justify each refusal, as well as accept liability and discipline for each refusal, including the risk of being transferred, demoted, or terminated. Other suggested measures include prohibiting objectors from working alone and partnering them with a non-objecting colleague at all times; and allowing employers to prioritize hiring of non-objecting physicians. Over time, such measures should reduce or eliminate the presence of doctors who refuse to deliver healthcare for which they would normally be responsible.

In conclusion, may I please urge the CPSO to withstand pressure from the social conservative lobby and implement your new policy, but with new safeguards in place to ensure that objectors are identified, monitored, and disciplined appropriately as required, and that this process not depend solely on patient complaints. Thank you very much for your kind consideration.