The College of Physicians and Surgeons of Ontario
BY E-MAIL ONLY feedback@cpsso.on.ca

Re: Draft College Policy on Professional Obligations and Human Rights

Gentlemen and Colleagues:

The draft Policy seeks to balance the rights and obligations of physicians with those of their patients. The Policy proposes boundaries to the exercise of freedom of conscience of physicians, or more precisely, the expression of conscientious objection, in the specific case where a physician is unwilling to provide a health service to a patient on moral or religious grounds (lines 112 to 169).

The Canadian Charter, and indeed, a large body of Western political theory, acknowledge the fundamental importance of freedom of conscience to the existence of an open, just, fair, and free polity. A State does not grant freedom of conscience of its citizens, but has a moral duty to acknowledge its exercise in its body of laws. There is no current Canadian jurisprudence in regards to the application, and limitations thereof, of the so-called notwithstanding clause, and therefore the exercise of freedom of conscience must be interpreted in the context in which it is applied. Given this, are the proposed boundaries reasonable and proper?

The draft Policy sets forth three arguments as a basis for this curtailment:

1. All rights are of equal importance. This is correct only inasmuch as the scope and effect of the right in question are the same, and the agents are morally equivalent. All rights are not of equal importance; the right to life trumps them all. The dead cannot exercise freedom. The draft Policy treats the right of patients to choose, and the moral obligations of the physician, as belonging to the same moral plane. This is incorrect, as even a cursory reading of the Hippocratic oath will attest. Furthermore neither the Charter nor the Ontario Human Rights Code forbid discrimination based on the

\[\text{This is the old Norse concept of might is right. Bad old ideas really do never die.}\]
moral value of specific choices (and therefore de facto acknowledge the right of conscientious objection). So much for that.

2. **Ensuring access to care.** Here is the meat of the matter. The draft policy makes no allowance for the (morally correct) position that referring a patient for a treatment the physician considers as morally reprehensible makes the physician a participant in the act. A vague and nebulous notion of ensuring access to care is invoked; this is a complex issue, and I doubt very much physicians’ moral choices and beliefs have a significant impact here. At any rate accountability is tied to the ability and power to direct and manage change, and physicians cannot be held responsible for something over which they have little if any control. To lay blame for imperfect access to care at the feet of practitioners who choose to live according to their moral beliefs has a familiar if somewhat ancient ring to it.² Pop goes the second argument.

3. **Protecting patients’ safety.** A physician should close an alternate career path, if the practitioner is regularly put in a situation where providing emergency care conflicts with his or her moral choices or beliefs. At issue here is the progressive narrowing of possibilities of career choices for many practitioners. How sad it is also that many bright and promising young people will be driven away from our Profession as it no longer aligns with their moral compass.

I propose therefore that none of these arguments are either reasonable or proper.

Professionalism rings hollow when unmoored from any consideration of the objective moral value of medical treatment, and can be construed, at best, as dissimulation,³ and at worse, acting as an agent of State policy, and not in the patient’s interest. The path the College wishes to take is the quickest way to loss of self regulation.

Two generations ago physicians surrendered any moral authority in regards to the provision of health care; these matters were left to the consideration of individual consciences. Indeed it must be admitted that many physicians consider the technical ability to perform a specific treatment sufficient moral sanction. It also cannot be gainsaid that our society is far removed from any consensus in regards to the moral value of health

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² Try Edward Gibbons

³ There is a fundamental link between patient interest and the moral value of an act
care choices. Given this, we cannot have it both ways, gentlemen. To arbitrarily\(^4\) apply strictures to the expression of conscientious objection smacks of despotism. Let us reverse the equation for a moment; what if the contentious issue were female circumcision, and physicians were censured for refusing to provide this service?

I see this draft policy as fundamentally unenforceable if approved unamended. The time for a more substantive dialogue is at hand; let us strive to accommodate these differences in a less clumsy and more effective, inclusive, and respectful manner.

\(^4\) That is, without any reference to any objective moral code