Via Electronic Mail and by Regular Mail

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

Attn: Policy Department

Dear Sir or Madam:

Re: Draft Policy - Professional Obligations and Human Rights

This letter responds to the public consultation initiated by the College of Physicians and Surgeons (CSPO) concerning its draft policy entitled Professional Obligations and Human Rights. This draft policy is contemplated to replace Policy Statement #5-08 - Physicians and the Ontario Human Rights Code. One major difference is that the draft policy would now force physicians to make “effective referral” with respect to medical services they are unwilling and unable to perform due to religious and conscience rights.

I am a lawyer, and a constitutional and human rights scholar, familiar with interpretation of constitutional and human rights documents, and their politics and of their interpretation.

The web survey was erroneous on points and misleading suggestions are made in it. The "standards" you now contemplate are nebulous, essentially coming down to the political bias of the decision makers, which puts into jeopardy the physician’s livelihood, and will impinge upon their rights under the Charter of Rights and Freedoms (Charter) and Human Rights Code (Code), particularly in relation to religion and conscience rights which would prevent them from making an “effective referral”, in certain circumstances particularly in relation to abortion and euthanasia. While the draft policy speaks of accommodation rights, it fails to consider CPSO’s duty to accommodate physician’s Code rights.

You talk about the Human Rights Code and give grounds of discrimination, but fail to mention that it is not what you consider unfairness that is covered by the Code but only the infringement to equal treatment without discrimination based on the specific grounds listed, namely, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, age, marital status, family status, or disability.
Specific examples and applications in the survey should have been given which would be clearly involved if this policy takes effect, such as abortion and euthanasia.

Abortion is not a right under the *Code*. There can only be discriminatory to refuse a service in respect of an abortion if the decision is based on one of the grounds specifically mentioned, such as the refusal to terminate the life of the unborn child or to accede to a non-medically necessary abortion request, because of race, for example. Refusing to provide any service based on any other grounds or reasons does not engage the *Code*. Query whether what you have labelled an "effective referral" is a “service” under the *Code*, a question you had not considered. Furthermore, a duty to accommodate does not include an “effective referral” for an abortion or to euthanasia.

Nor is there a constitutional right to an abortion. See the Supreme Court of Canada’s *Morgentaler* decision, and the clearly expressed statements of the Charter’s Framers that abortion is in no way covered or protected in the *Charter*.

The *Charter* does include the fundamental freedom of religion and conscience, as well as referring in its preamble to Canada being founded upon the supremacy of God. The *Charter* is the Constitution of Canada and trumps the *Human Rights Code*, although the *Code* does provide for a freedom of religion or creed, upon which your draft policy discriminated. It is therefore misleading to say that there is no hierarchy of rights: Constitutional rights trump statutory rights, although the *Code* would not even apply in these circumstances of abortion and euthanasia, *supra*.

It is a violation of freedom of religion and conscience to compel a doctor to make an "effective referral" for such matters as abortion and euthanasia. Nor were the limiting factors you listed relevant, namely, protection of public safety, order, health, moral and fundamental rights, and particularly so as these actions terminate life.

There is also the political sub-text to this policy, of forcing conformity to the worldview of the drafters of the policy, which does not value life from conception to natural death. It is also strange that the medical profession or some physicians, bound by oath to treat and not to harm people, consider killing acceptable or requiring doctors to participate in it through forced referrals when there is no medical necessity to causing death in the circumstances.

There are other offensive and misleading points, if not manipulations, in the consultation survey. There are false questions or questions compelling the reader to make a false choice. It attempts to portray religious or moral belief in a negative light as being opposed to treatment to save lives. There is no generally recognized religion or moral belief that would not require one to save lives, with only one exception of a particular group in relation to blood transfusions but the law has been clarified on this point in any event. On the other hand, there is an objection to killing or maiming innocent persons when not medically necessary.
These submissions are made with respect and with thanks for the opportunity to make them. It is hoped that the CPSO will take them seriously and to consider the effect of its proposed policies will have, including on the rights of others.