January 12, 2016

Dear Colleagues,

Thank you for the privilege of contributing to the CPSO’s response to the Carter Case. I write to you not only as a medical student but also as the grandson of patients in the respective grips of severe dementia, terminal cancer, and Amyotrophic Lateral Sclerosis (ALS) and the nephew of a woman who had a hemispherectomy as a child. I have a deep emotional connection to the issue and consider it with the most serious regard.

My hope in writing is not so much to add one more opinion, as to step back and suggest a few questions for consideration as the draft is refined.

We as Canadians agree that governments sometimes pass laws that are not ethical, laws that citizens (doctors included) would be right not to follow. While we hope Canada to be the sort of place where the most infamous cases could not happen (e.g. the atrocities – often committed by doctors – in the Soviet Union and Nazi Germany, which traumatized my immigrant grandmother) it would be foolish to exempt ourselves from the concern I am raising, Canada has its own history to reckon with. Consider the evil of Canada’s residential schools and forced sterilization of Aboriginal women. To agree with what I have just noted is to see that everyone is invited, by every law, to make a moral assessment: Is this an ethical law, a law in harmony with my own understanding of right and wrong? The more we hope to see a ruling accepted (because we think it is right), the more the ruling ought to display its moral substance: the moral case for the ruling ought to be strong and clear – and publicly made. People sometimes have difficulty making moral assessments, and should be given all the help they can to make the right assessment. The bad course followed in force-sterilizing Aboriginal women and establishing residential schools resulted from presuming that the case for them was totally clear. Has the case been clearly made and explained, that the activities permitted by Carter and proposed in the draft are morally right?

There is another issue separate from the moral strength of the ruling. For physicians as physicians to properly engage in the activities permitted by Carter, those actions should be medical acts. Physicians are not physiotherapists, epidemiologists, or lawyers. Each profession is distinguished by the activities essential to them. Medicine seeks to 1) promote health of individual patients and 2) restore them to health by diagnosing and treating disease, a lack of health. Health is a state in which whole persons, and their constituents, are free to fulfill their potential¹ - e.g. eyes free to see. Healthy eyes may not always see well, as in sleep, but they are capable of doing so. I appreciate that the CPSO is dedicated to providing Ontarians with good doctors, doctors who perform medical actions well. It is uncontroversial to say that good service depends on good medical interventions, those that accomplish one or both of the above medical actions well. What doctors will therefore

need is some demonstration of the continuity between medical actions (their proper domain, as just described) and the activities permitted by Carter and proposed in the draft. My question here is not a mere technicality or a moral one in disguise; it has to do with the simple factual meaning of medicine in the constitution of the CPSO and as people in Canada have understood it. Would it not be somehow paternalistic and disrespectful toward physicians to hope that they would comply with the ruling without the CPSO clarifying how – in what way and for what reasons – the activities at issue fall within the domain of medical practice? (Or do they rather pertain to some other profession, perhaps not yet existing?)

Finally, we must pause and reflect on our Canadian values. Are conscientious objections being adequately accommodated? Diversity of thought, background, and beliefs makes my medical school environment dynamic and forces me constantly to critique my ideas. Safeguarding the consciences of medical students and practitioners protects this vital civic and academic milieu. As noted in the CPSO draft, this is challenging due to conflicting interests. Liberal nations have an established tradition where activities deemed moral and necessary by some people or groups (e.g. female circumcision) may be prohibited, provided that the ban is 1) oriented to achieving a substantive public good and 2) uses the least restrictive means to achieve that good. Similarly, one may be compelled to materially cooperate in actions that violate their conscience, assuming the two aforesaid conditions. For example, during a military draft a pacifist may be compelled to serve the government as a civilian railway conductor. The job is not directed per se toward killing the enemy, although it may allow someone else to enlist and fight. However, it contravenes the values of liberal nations to compel an individual to formally cooperate in activities that violate their conscience. This could include forcing the pacifist to become either a bomber pilot or a military signal officer who passes on the orders to drop bombs, even though the latter holds no weapon. Both activities are oriented per se toward the killing the enemy. Does the CPSO's Carter draft compel objectors to formally cooperate in actions that violate their consciences?