

April 5, 2018

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

**Re: CPSO Policy on Closing a Medical Practice**

The Canadian Medical Protective Association (“CMPA”) appreciates the opportunity to comment on the College’s draft *Policy on Closing a Medical Practice*. We understand that the draft Policy is intended to replace the existing *Policy on Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation*.

As the College is aware, the CMPA is a mutual defence organization whose mandate does not include establishing or endorsing standards of practice. Rather, the advice the CMPA provides to its members is principally risk-management based. As such, the CMPA is pleased to provide comments on aspects of the draft Policy that may give rise to medical-legal concerns for Ontario members. We have also offered general comments on physicians contacting the CMPA for advice.

**Medical Records**

It is helpful that the draft Policy includes a more comprehensive discussion than the existing Policy regarding the College’s expectations in relation to physicians’ record-keeping obligations when closing a medical practice. Amongst other things, the draft Policy provides that in accordance with the General Regulation made under the *Medicine Act*, a physician who ceases to practise medicine can destroy records of family medicine and primary care after two years, as long as patients are notified of this timeline and given the option to transfer the records to another physician within those two years.

While this statement is an accurate reflection of the General Regulation, we are concerned that it is inconsistent with the retention period that is suggested in the College’s *Policy on Medical Records*. In particular, the *Policy on Medical Records* specifies that despite the requirements in the General Regulation, the College recommends that all medical records be maintained for a minimum of 15 years in light of the ultimate limitation period specified in the *Limitations Act*.

Since legal proceedings can be commenced long after a physician has discontinued providing care to a patient, the CMPA generally recommends that physicians maintain clinical records for at least 10 years from the date of the last entry, or for at least 10 years from the age of majority in the case of minors. The College’s recommendation in its *Policy on Medical Records* to retain records for a minimum of 15 years is therefore prudent from a risk management perspective.



For the sake of consistency, and in the interest of good risk management practices, the CMPA recommends that the draft Policy include similar language to that contained in the *Policy on Medical Records* in respect of record retention requirements.

### **Contacting the CMPA**

The draft Policy notes that where uncertainty arises over responsibilities with regard to the medical records of a deceased physician, “independent legal advice” should be sought or the College’s Physician Advisory Service should be contacted.

The CMPA has considerable experience with respect to this issue and generally the issues related to the management of records when physicians close their practices (for whatever reason). As such, it would be helpful if the draft Policy encouraged physicians to contact the CMPA in respect of these complex legal issues.

I trust these comments will be helpful to the College in finalizing the draft Policy.