OMA Submission
CPSO Preliminary Consultation:

1) **Professional Responsibilities – Undergraduate Medical Education**
2) **Professional Responsibilities – Postgraduate Medical Education**
3) **Third Party Reports**
4) **Medical Expert Reports and Testimony**

February 2020

CPSO Preliminary Consultations re: 1) Professional Responsibilities in Undergraduate Medical Education, 2) Professional Responsibilities in Postgraduate Medical Education, 3) Third Party Reports, and, Medical Expert Reports and Testimony

The OMA welcomes the opportunity to provide preliminary feedback regarding the CPSO's 1) Professional Responsibilities in Undergraduate Medical Education, 2) Professional Responsibilities in Postgraduate Medical Education, 3) Third Party Reports, and 4) Medical Expert Reports and Testimony policies.

In preparation for our response, the OMA consulted both internally and with relevant members and/or sections, including our Uninsured Services Committee, the Section of Family Practice (SGFP), our Board of Directors academic representative and representatives from our Health Policy Committee (HPC). We've taken the consolidated feedback below with recommendations, as relevant.

1. **Professional Responsibilities in Undergraduate Medical Education &**
2. **Professional Responsibilities in Postgraduate Medical Education**

A. Preliminary Feedback:

- Through our consultation, the OMA did not receive feedback specific to these two policies. From our internal staff review, we noticed that language between the two policies is inconsistent in certain complementary sections (e.g. definitions, professional relationships, etc.). We recommend the CPSO ensure consistency between the two policies, where relevant, as this would be helpful for those reviewing them, especially when doing so simultaneously.

  While we do not have formal feedback at this time, we look forward to reviewing and potentially commenting on amendments you may make to these policies.

3. Medical Expert: Reports and Testimony

A. Preliminary Feedback:

- Through our consultation, the OMA did not receive extensive feedback from our members on this policy. From our internal staff review, we have noted a few areas where CPSO clarification would be helpful.

  Like the professional responsibility policies, we expect that we may have more to contribute in the next round of consultations. We look forward to reviewing the updated policy at that time.

B. Medical Expert Definition

- Historically, the OMA has found that physicians find the distinction between being retained as an expert witness versus being summoned as a treating doctor confusing. We have stated in previous submissions that this policy needs to be clear on expectations for physicians who serve as a witness of fact and physicians who serve as a non-treating medical expert. A witness of fact may be compelled to testify through a summons, while a medical expert cannot be compelled to testify, it is a choice.

  The OMA recommends adding a foot note to this section that highlights it is a physician's choice to participate as a medical expert.

C. Fees & Timeliness

- The OMA supports the discussion of fees (section 13) and timelines (section 27) for acting as a medical expert with those who are instructing them; however, we believe these conversations should occur at the outset in order to avoid disputes later in the process.

  The OMA recommends adding "It is **advised** that fee (for section 13) or timeline (for section 27) discussions occur at the outset" to the end of the sections noted.

D. Records Retention & Access

- Where it is advised that physicians, familiarize themselves with the legal requirements specific to retaining records and/or providing access to information (section 30), the OMA requests clarification on which "legal requirements" are applicable as we have

understood this to be a grey area. Are physicians, acting as medical experts, required to retain records?

The CPSOs direction and clarification on this point would be helpful.

4. Third Party Reports Policy

A. Preliminary Feedback

- Our members provided extensive feedback for this policy, and we expect keen interest in the next round of consultations.

- In general, we believe this policy could be more concise and less prescriptive in order to assist physicians in identifying what is required of them more easily. We appreciate that the CPSO has been working on streamlining policies and creating advice to the profession documents, that are very helpful. We hope the same structure can be utilized here.

- Lastly, our members noted several instances in the current policy where obtaining independent legal advice (e.g. consent process, access to reports, etc.) is suggested. We recommend adding a general note to the beginning of the policy (or in an advice to the profession document) that if a physician is unsure of the requirements listed, to obtain advice from a legal body, such as the Canadian Medical Protective Association (CMPA).

B. Communication

- The policy notes that a physician must clearly state the nature of their role in providing a third party report (section 5).

- In order to provide more of an explanation to this statement, the OMA recommends including the sentence “In particular, patients may be more apt to confuse the encounter with a typical appointment for health care when it is their own treating physician that is providing the report” from the end notes into this section of the policy.

C. Fees

- The OMA is supportive of physicians utilizing our Physician’s Guide to Uninsured Services (section 10) as it is a valuable practice resource and provides helpful advice for physicians and office staff on uninsured services (including third party requested services). The wording in the policy’s current state, however, is too restrictive. It is our

understanding that physicians may not charge fees that are excessive relative to the service provided and may consider, but are not limited to, the fees outlined in the guide.

The OMA recommends that the CPSO change the expectation/language from required to advisory.

In addition, the intent of section 11 is unclear. This should be elaborated upon, so physicians understand their obligations. Once this is clarified for our review, we will be able to provide a more fulsome analysis.

D. *Consent for Disclosure of Information*

- Communicating clearly with the examinee around consent, disclosure of information and the examinee's right to place limits on certain information is an important aspect to note. While the policy states (section 13b) that limitations "may prevent physicians from proceeding with the report process," it is not clear on whether a physician should provide a limited report citing that specific information was excluded, or if a physician should not proceed with the report based on the limitations.

  The OMA recommends adding "Indicating that a refusal or limitation has been made should be documented" to the end of 13b, to specify what should be documented.

E. Consent for Medical Examination

- For clarity, we request the following addition to section 16 "Physicians **must** obtain appropriate consent for conducting a medical examination, if such an examination is required for the purposes of completing a report."

- While the OMA understands the importance of outlining to the examinee what is entailed in the medical examination (section 18c), an area that could use clarification is the degree of detail the physician should provide in advance specific to the types of questions to be asked. We heard through our consultation that it may be hard to know the exact questions that will be asked as those can change based on responses from the examinee.

  The OMA recommends clarifying in the policy that the types of questions highlighted at the onset of the examination may expand based on the examinees response.

- Lastly, the OMA believes that an acknowledgement to a requesting party (section 21) that a report could not be completed due to validity of consent or limits imposed by an

examinee is the appropriate amount of information to provide. With the current wording requiring physicians to "discuss the matter" with the requesting party, we are concerned that physicians may feel the need to share the nature of the limitation and inadvertently disclose information without consent.

The OMA recommends changing the wording from "…they must discuss the matter with the requesting party before proceeding" to "…they must notify the requesting party before proceeding."

F. Proceeding with the Request for a Third Party Report

- Sections on comprehensiveness, accuracy, objectivity, clarity, and relevance are overly prescriptive and not properly defined. Examples include:
    - Requiring physicians to obtain all available documents (e.g. records, clinical notes, etc.) (section 25) should be narrowed to clarify to what extent physicians are obligated to search/request information for the purposes of completing a report.
    - Ensuring the information contained in the third party report is accurate (section 27) is difficult to define in this context and can be subjective. Physicians should be accurate within the limits of what is available to them. Likewise, physicians cannot be expected to judge the accuracy of information by others, even though such information may be included and relied up for the purposes of the report. We recommend adding accurate "to the best of their knowledge" to this section.
    - A requirement to note in the report what information has not been "independently confirmed" requires clarification. In its current state, this can be interpreted that physicians are to be the judge of the information when not all patient information or history can be "independently confirmed" (i.e. even an x-ray is not independently confirmed.
    - Regarding the intended audience (section 32) and use of medical language (section 33), physicians are not always aware of the audience that receives the report and their degree of understanding of medical terminology etc. Also, how "colloquial" is reasonable for a professional, medical report? Clarification would be appreciated.

The OMA recommends moving unnecessary, prescriptive language to an advice to the profession document and/or including a link to the CMPA "Treating physicians reports, IME reports, and expert opinions: the way forward" document as a reference.

G. Timeliness

- We understand that it is a requirement for a physician to provide a report "within a reasonable time" per the *Professional Misconduct* regulations. We also appreciate that the CPSO recognizes that it may not always be possible for a physician to complete a report within the 60-day period. As the OMA has expressed in previous submissions, while the policy explains that physicians should discuss extensions with the requesting party, the policy does not explain the process to follow in instances where the requesting party refuses an extension.

  The OMA recommends the CPSO clarify what a physician should do in these situations.

- We also appreciate the inclusion of "another appropriate reason" for requiring an extension, we recommend including examples of what this could include in an advice to the profession document (e.g. clinical workload, personal emergencies, patient waiting list, etc.)

H. Independent Medical Examinations: Suspicious Findings

- Where the policy states that medical examiners are to convey the findings in "written form," and "not to merely send the treating physician a copy of the third party report," we believe explanation of the difference would be helpful for our members.

- The OMA recommends this section be moved to an advice to the profession document and include information from the endnotes for further clarity:
  - "Independent medical examiners are advised to not merely send the third party report for two reasons: first, the consent may not extend to disclosure of the entire report, and second, provision of the entire report will not give the treating physician specific information about the unexpected finding."

Conclusion

The OMA appreciates the opportunity to provide feedback through this preliminary consultation. The OMA would like to continue to work with the CPSO to find practical, constructive solutions that support physician practice while enabling the CPSO to fulfil its mandate to protect the public interest.

Thank you.