

OTLA Submission to the College of Physicians and Surgeons of Ontario

Delegation of Controlled Acts

November 16, 2020

The Ontario Trial Lawyers Association appreciates the opportunity to make submissions to the College of Physicians and Surgeons of Ontario (the “College”) on its review of the policy on the Delegation of Controlled Acts (the “Policy”).

The Ontario Trial Lawyers Association (OTLA) was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others, while at the same time advocating aggressively for safety initiatives.

Our mandate is to fearlessly champion, through the pursuit of the highest standards of advocacy, the cause of those who have suffered injury or injustice. Our commitment to the advancement of the civil justice system is unwavering.

OTLA’s members are dedicated to the representation of wrongly injured plaintiffs across the province and country. OTLA is comprised of lawyers, law clerks, articling students and law students. OTLA frequently comments on legislative matters, and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

OTLA’s Position

OTLA fully supports the College’s decision to update their Delegation of Controlled Acts Policy and the accompanying Advice document. OTLA suggests minor revisions to ensure patient consent is fully informed when medical services are provided by way of delegation, and to ensure that physicians who delegate controlled acts remain responsible and accountable.

OTLA recommends amending paragraph 11 of the Policy to require that persons seeking informed consent for Controlled Acts, that have been delegated by a physician, be required to advise patients of the delegation, as well as by what method (e.g. Medical Directive) the test or treatment have been delegated. As currently worded, there is no explicit requirement that patients must be advised of the fact that the test or treatment being consented to is a Controlled Act that has been delegated by a physician.

The legislature and the public have placed significant confidence in physicians. It is physicians, and not other forms of health professionals, who are legally entrusted to complete the most invasive and significant Controlled Acts permitted by law. In order to retain confidence and trust, it is imperative that patients are aware of any delegation of a physician’s legal authority, even where that delegation is well intentioned and reasonable under the circumstances.

Greater transparency and communication during informed consent discussions will provide patients with autonomy of choice and increased trust, while ensuring accountability. Where, for example, treatment or investigations are being recommended by way of an institutional Medical Directive, patients should be informed of same, and should be given the opportunity to ask questions about how or why the recommended tests or treatment are being suggested in their specific case.

As with all health care decisions, patients must understand the reasons behind the care recommended to them. This includes having patients understand who is providing care, who has made the medical order/recommendation for care, whether or not the test or treatment is being recommended by medical directive, and whether or not the person completing the act has been delegated to perform it under the responsibility of a physician. OTLA recommends that the College

remind the physician that there should be clear communication as the delegating physician maintains ultimate responsibility for the act that has been delegated.

Conclusion

OTLA thanks the College for inviting us to provide input on this initiative and supports the College's initiative to ensure physicians delegate Controlled Acts safely and appropriately, while also ensuring continued access to timely care. OTLA would be pleased to discuss our position and recommendations further should the need arise.