

# **OTLA Submission to the College of Physicians and Surgeons of Ontario**

## *Professional Responsibilities in Medical Education*

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 draft policy and Advice document on Professional Responsibilities in Medical Education.

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 supports the emphasis in the draft policy and advice document on the additional expectations for patient consent in the medical education and training context.

OTLA commends the draft policy requirement that a physician involved in the education or training of a medical student and/or trainee must report to the medical school or health-care institution if a medical student/trainee conducts him or herself in a manner which may jeopardize professional care of ethics. The mandatory nature of the requirement with the word “must” emphasizes the importance of a physician’s role and duty in training the next generation of physicians, and importantly, the duty to advise others about any issues with the medical student/trainee. However, to ensure informed and ongoing patient consent for care, OTLA recommends that the reporting responsibilities at paragraph 14 of the draft policy mandate communication by a physician of incidents involving a medical student or trainee affecting a patient care to the patient or substitute decision-maker.

A patient or substitute decision-maker should be informed of a reportable event as it relates to their care. This would allow the physician to discuss the incident with the patient/substitute decision-maker and discuss steps the physician, medical student and/or trainee can take to address the situation. This would ensure that there continues to be patient consent for the involvement of the physician, medical student and/or trainee in the patient’s care. This may also reduce concern and promote trust among the patient, physician, medical student and/or trainee.

The inclusion of the patient in the reporting responsibilities recognizes that although these events may not constitute a “harmful” or “no-harm” incident that must be disclosed under the College’s Disclosure of Harm policy, this information may nonetheless be critical to inform patient consent to treatment.

## **Conclusion**

OTLA thanks the College for inviting us to provide input on this initiative. OTLA would be pleased to discuss our position and recommendations further should the need arise.