Feedback on Draft Social Media Policy
To: *CPSO*
From: *A Concerned Physician Member*

Dear CPSO:

I have responded to the survey soliciting feedback about the draft policy, but have deferred leaving comments in each section for a more comprehensive discussion, which I've compiled here. I have also read the draft policy and advice to the profession documents, and every comment on the discussion forum. I have put a great deal of effort into writing this feedback in a serious, informative, and comprehensive way, and hope it is valuable for informing changes to the policy.

A common theme I noticed on the online discussion forum—and a concern I share—is the "free speech" impact of this social media policy. I am sure this is a common criticism as communicated through the survey as well. I would like to justify why this free speech concern exists, give specific examples of how this concern manifests in the policy, and offer concrete amendments to the policy in line with these concerns. Rather than providing a list of amendments without context, this document is meant to provide both proposed changes *and* a rationale for them. To skip passed the justification for these amendments, they can be found on **pages 8-9**.

There is a significant landscape of books, public debates, documentaries, online videos, podcasts, and other forms of media highlighting the impact that social media is having on public discourse. Varying arguments are made about the justifiable regulation of public discourse on social media. Debates often consider the ideological and legal basis for regulating public discourse and who should have the power to regulate it at all. This debate is fierce, spilling over into the political realm, informing people's views on political parties and candidates. Disagreements arising from social media discourse have led to broken relationships. The influence of social media on public discourse for good and for ill is clear, but the debate about solutions remains ongoing.

Yet amid this unsettled debate, the CPSO seeks to enforce its own regulation. While the solution to regulating social media use is unknown to some of the most powerful institutions in the world, to the CPSO, it can be encapsulated in part as a matter of "professionalism". To be clear, I support giving physicians specific guidance on what is and is not acceptable social media conduct. I accept that despite this unsettled debate, the CPSO could still publish an appropriately tailored policy of social media use (I will propose changes below).

However, I believe that through this proposed policy, the CPSO is unwittingly entering into a charged political and cultural debate and, perhaps unknowingly, has staked a position on one side of it. The side it seems to have placed itself on explains why there are free speech

concerns. The CPSO has decided to judge social media use in part on a "generally acceptable" standard of viewpoint judgement and with an emphasis on perceptions. It is also seemingly influenced by fraught, though well-intentioned, social science theories that are themselves a source of active debate on social media.

Healthy Public Discourse and Heterodox Views

Some ideas are harmful, confusing, or dishonest. The fact that such ideas typically remain fringe rather than mainstream is a good thing. The conventional liberal wisdom about how to keep such ideas fringe is through robust, open dialogue (i.e., a maximisation of speech); however, this wisdom is no longer considered conventional. Social media is said to amplify or "platform" bad ideas and because access to bad ideas is easier, the adoption of bad ideas is said to have increased. This has generated calls for increased regulation of speech on social media and beyond to counter "disinformation." There is a simultaneous call to respond to "bad" ideas by narrowing what is considered a "good" idea. Frequently, those who do not view a robust, open dialogue as the antidote to bad ideas also seem to permit a narrower range of ideas as acceptable. None of the draft documentation from the CPSO provides reassurance that it recognizes this problem and the careful balance required in regulating the dissemination of ideas on social media.

The practice of "McCarthyism" in the United States is a prime example of how institutions and members of the public can become caught up in an inflated sense of susceptibility to "bad" ideas that require active resistance. This misapprehension, guided by a genuine concern for the protection of institutional and public integrity, leads to political and cultural repression. Accusations (e.g., of racism) on social media may come from genuine "perceptions" of addressing a "bad" idea but the accusations are typically exaggerated and unsubstantiated in this "McCarthyistic" style.

When the CPSO uses phrases like "physicians expressing opinions that contradict generally accepted views" in the advice to the profession document, it does not carry a true consensus implication anymore. The twin problems of speech regulation and viewpoint narrowing are critical to understand because it means that invoking public consensus or "generally acceptable" ideas no longer holds the same range of viewpoints as it once did. The CPSO is on precarious ground if it regulates based on a "generally accepted views" standard because these are slowly becoming too narrowly defined. Enforcement using this standard will inevitably result in the stifling of productive discourse, despite the CPSO's sincere intent not to inhibit social media use by physicians

An illustration of how this "generally accepted" standard has recently broken down is in the discourse around heterodox views expressed during the pandemic regarding generalized lockdowns, vaccine mandates, and the origins of the virus. By heterodox views, I mean the expression of dissenting views from what is considered a doctrine or an established opinion. A myriad of physicians and other health professionals, professional organizations, and scientific journals joined together on social media to "debunk" (but usually simply dismiss as heretical) these opposing views. Despite an exaggeration of confidence, this dismissal of dissent occurred amid scientific uncertainty while these heterodox positions were advanced by mainstream physicians, including those with requisite expertise. An early debate I encountered was between two physician experts in epidemiology, who have several publications in prestigious

medical journals, and who hold important positions in academic institutions. One spoke out against *generalized* lockdowns as an effective measure using entirely mainstream standards of public health and infection control as justification. Despite this person's credentials and reasonableness (he did not call for *no* public health measures), his heterodox views were decried by *other physicians* as anti-scientific, harmful, and "literally killing people." Would the CPSO have concerns about an analogous heterodox position (because it violates a "generally accepted" standard), the hyperbolic and vitriolic responses by other physicians, or both? The answer cannot be gleaned from the draft policy or advice to the profession document.

I bring this to the CPSO's attention because the reputation of physicians, and of the scientific and medical enterprise generally, has been paradoxically harmed in part by such strident counter-responses to *perceived* disinformation. By constructing an "us versus them" paradigm at the pinnacle of the scientific community, the messaging became self-defeating. Many view this narrowing of discourse as an issue of free speech as, even when it is not a direct action of government, third parties are acting to set the parameters of acceptable discourse amid an *ongoing* debate. The incessant need to control narratives and discourse leads to increased skepticism by the public, not less. That some of these heterodox positions proved *reasonable* in the end has likely fuelled more conspiracy thinking than would have otherwise been the case. The importance of free speech as a fundamental human right is not only because of its instrumental value; it is critical because humans are social animals with a desire to be "heard", and because we possess instincts towards tribalism. Open dialogue is the only alternative to violence in addressing both instincts.

Therefore, the CPSO must make it truly clear that expressing heterodox or contrarian opinions, if delivered with the intent to engage in a discussion, rather than to mislead and harm, is <u>not</u> a violation of its policies. It should also explicitly state that it understands the ongoing cultural and political debate on regulating social media use and will exercise its authority with deference to this in mind. Otherwise, the CPSO becomes a content moderator of scientific debate, and despite good intentions, does so at the expense of public trust in the scientific and medical enterprise *itself*. To further erode this trust would have the opposite effect of protecting the public, which is the CPSO's core mandate.

<u>Perceptions and Double Standards</u>

While there can be genuine and justifiable concerns regarding the professional conduct of physicians on social media, a perceptions-based approach to interpretation is open to abuse and hypocrisy. As I mentioned above, enforcing perceptions of disinformation can lead to free speech concerns. A perceptions-based approach will land the CPSO squarely amid a debate about which perceptions are legitimate. This may seem like an obvious or inevitable consequence of interpreting regulation; however, in this specific case, social media activity and its regulation is an environment of *ongoing* and *fierce* debate.

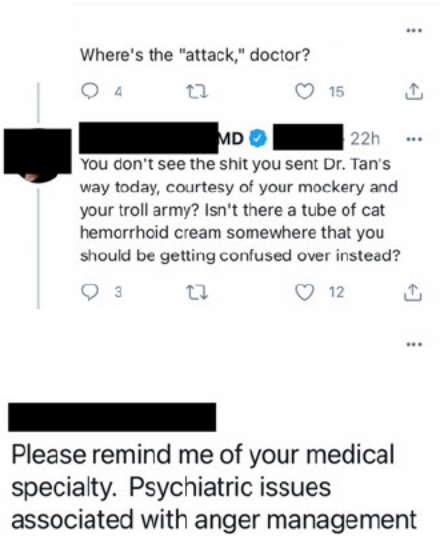
While the perceptions of others matter to a public profession such as medicine, this cannot be the sole basis of judgement. The policy does not make clear whether the intentions of the physician matters in an analysis of acceptable social media use. If they do matter, then the CPSO needs to amend the policy and/or advice document to make this clear. If not, the free speech concerns are well justified.

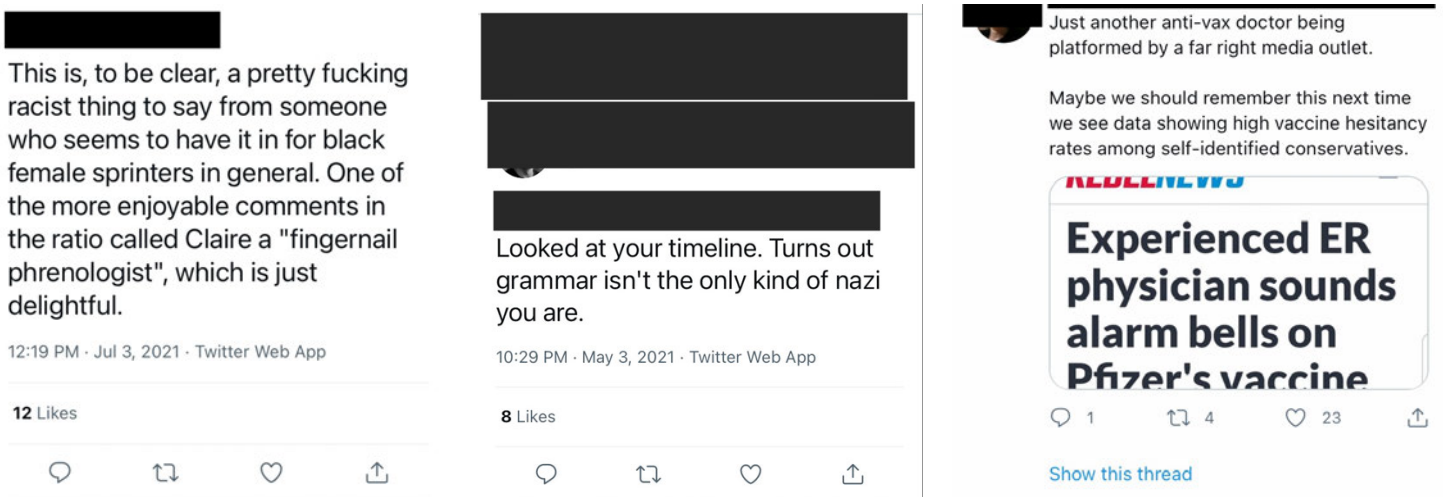
Rendering irrelevant the intention of the "accused" is a novel style of ethical and legal analysis, as intentions are typically one of the most fundamental elements in the judgement of individual action. While the CPSO is not a court of law, it has the power of legislation behind it. Principles of fundamental fairness and of due process must apply in all contexts where the power of the law is at play. The CPSO should recognize that if the intentions of the physician in a contested use of social media are of little or no relevance, it is deliberately endorsing a *radical* departure from conventional standards of judgement. The reasons for this departure are not transparently disclosed in this policy or advice to the profession document.

When intentions are irrelevant, an "ends justify the means" approach to professionalism concerns will ensue. This prediction comes from a current double standard as to what is and is not considered "professional" conduct on social media. This double standard is manifest in how content that is profane, aggressive, or personally disparaging seems to get a free pass if it is delivered within the context of advocacy. Personal accusations can be mud-slung towards other colleagues without any fear of reprisal, and they are often alleged when a heterodox opinion is shared. These allegations are also made towards other members of the public, not simply journalists, public figures, and politicians.

My concern (which is shared by many colleagues) is that such allegations are made with impunity and without regard for the perception of professionalism. Yet, these same individuals would be readily able to identify a reputation-impacting statement on social media made by others. The free speech concern enters here: there is a lack of confidence that all perceptions will be given equal consideration. If only certain perceptions matter, and intentions matter little or not at all, then only one form of social media use is regulated while others are not. The concern here is of a discourse- or free speech-limiting double standard.

Take the following examples by physicians in Ontario (identities redacted as these are illustrations of a problem rather than a formal complaint). Based on my reading of the policy, these are theoretically captured by its limitations, but many doubt they will be, given their connection with "advocacy." Some of these physicians serve on national professional physician organizations, have large public platforms, and are known to make disparaging accusations against other physicians and *members of the public*.





It is unclear whether these examples are covered by this policy because of how they may be viewed as "advocacy." If they are covered, several physicians with a public platform will be seriously affected. Otherwise, the current draft of the policy puts the CPSO at risk of punishing those with heterodox views while potentially readily permitting gross breaches of professionalism by others.

The Advocacy/Professionalism Trade-Off

It is critical to understand how the impunity of these examples of social media behaviour will be justified in the name of "advocacy." The CPSO is aware of the purported trade-off between advocacy and professionalism, as its survey questions make clear and the advice to the profession document states that the CSPO "recognizes that advocacy is a key component of a physician's role". It is not obviously clear why advocacy would lead someone to publish content that can be perceived as profane, disparaging, or discriminatory. Where does this anticipated limiting of advocacy come from? A recent article in the CMAJ (https://www.cmaj.ca/content/193/3/E101) may prove useful here. The CPSO must understand what makes this alleged trade-off so concerning.

A particular section in the article stands out. It begins by arguing that current understandings of professionalism and respect for diversity are implicitly designed to maintain the power of "white cis hetero [able-bodied] men." It therefore sees the current standard of professionalism as *non-neutral* towards ending racism. It states "although [the traditional] concept of professionalism does respect diversity, it is not designed to encourage advocacy in *progressive movements*, and particularly not the critical interrogation of racism within the medical profession itself" (emphasis added). Here, we can see that a specific, well-intentioned movement is requesting a free pass when it comes to professionalism. While it may not be viewed as a "free pass", the requirement of a new definition of professionalism for "progressive" movements is disconcerting. Why might this be? Recently, some progressive advocacy has been met with a counter-response on social media employing the same confrontational tactics progressive movements often use (see above examples). It is possible that progressive advocates wish to continue their confrontation of ideas they view as

problematic, while hamstringing the "problematic" with regulation. The potential for an asymmetry of content regulation on social media is fundamental to understanding the free speech concerns I and others have about this policy.

On the contrary, advocacy is not at odds with professionalism in principle. A re-definition of professionalism is not required. Professionalism only meets social media advocacy in the *methods* employed to meet advocacy objectives.

A Novel Ideology of Advocacy

The above article expressly endorses a method of advocacy that is "antiracist". The CPSO's use of the term "microaggressions" in this policy, and other novel lexicography in other CPSO material, suggests that it is fully aware of this "antiracist" approach. These ideas seem innocuous, well-intentioned, and sincere attempts at redressing racism as it manifests in healthcare; however, the CPSO should be aware that the antiracist movement is quite literally at the heart of ongoing debates within the broader culture, on social media and beyond. A central authority like the CPSO may be exempting a certain style of advocacy from being viewed as disparaging or discriminatory and in so doing, it is choosing a "side" in an unsettled debate. It must be prepared for the distrust this will foster within its membership and among members of the public.

Another quote of concern within this article calls into question whether "curricula [that includes] race and racism as determinants of health [can adequately] prepare trainees to act *in solidarity* with…affected communities…" (emphasis added). I am concerned that a post on social media by a physician which expresses concerns about "antiracism" *as a methodology or philosophy*, or about Black Lives Matter (mentioned explicitly in this article) as *an organization*, will be construed as inconsistent with antiracist solidarity. If reprimand from the CPSO ensues because it views professionalism through an antiracist lens, this will lead to a narrowing of discourse, even when this discourse *has the same goal* as antiracism in mind. The preferential treatment of certain types of "advocacy" or "solidarity" over others is central to the free speech concerns expressed. The consequence of this differential treatment could impact the livelihood of similarly well-intentioned colleagues. It links together the "generally acceptable views" standard, public perceptions, and double standard concerns I've previously discussed.

That the CPSO uses the term "microaggressions" in its official advice to the profession document is a salient example of how the CPSO appears to be promoting one side of the "regulating social media" debate. This term, while it is described in social sciences literature, is far more controversial than its plain meaning implies. The CPSO links to the Temerty Faculty of Medicine's page on this term, for more information on its impact on health care. On this same webpage, other terms used include "systems of oppression" and "harmful dominant imaginaries," which are also fraught and ambiguous catchphrases not universally accepted in social science scholarship. This webpage is a series of claims asserted without evidence and provides no citations that could be critically appraised. Unfortunately, the scientific method is inconsistently employed within social science literature and the concepts advanced tend not to be robustly and rigorously tested. They are often not reproducible and can gain a life of their own within siloed intellectual circles. Yet, this term was deliberately selected by the CPSO as an example of how marginalized groups could be made to feel uncomfortable by unprofessional speech.

The adoption of an idea like microaggressions as influencing what the CPSO may regard as potentially unprofessional conduct is a striking example of why some perceive the CPSO will be biased in implementing its social media policy. The CPSO seems to have given itself the authority to evaluate "subtl[e] expres[sions] [of] stereotype [or] prejudice" which may be "inadvertent and unintentional", and then render judgement with potential practice-changing implications. Furthermore, the policy appears to intentionally leave room that, even in the context of a mutually agreed upon debate, the perception of a third party would remain relevant. This third party who is simply watching a debate unfold on social media could identify a microaggression (or other perceived discriminatory language) and bring this to the CPSO's attention for redress. A recent chilling example comes to mind for those of us with this concern. A non-participant in a podcast conversation *transparently labeled as a debate and discussion* was deemed to have behaved unprofessionally because they allowed the debate to happen at all (https://www.chicagotribune.com/business/ct-biz-jama-editor-out-after-comments-about-racism-20210601-cmz4vxvqg5dmjof6l5njlexwy4-story.html). It does not matter where one lands on the debate advanced in this podcast; it is the call for "accountability" for even *having* the debate that is of grave concern. Does the draft policy grant the CPSO the authority to regard an analogous case in Ontario with the same accountability-requiring contempt? As currently written, it seems to do just that.

It must be emphasized that ideas (such as antiracism) in vogue within select equity advocacy communities are truly controversial, and their legitimacy still a source of active and vigorous debate. Those in touch with this lexical and epistemological debate are now watching their regulatory body be captured by one side. The loudest advocates, backed by a sense of heightened moral significance, are influencing well-meaning institutions, often for the worse. The fear is that the CPSO is another such institution that will now be implementing these flawed, if well-meaning, ideas. Physicians would now be subject to regulation based on concepts which are a source of active date, are often poorly understood, and in some cases are advocated solely out of an empathic concern not subjected to fair and reasonable scrutiny.

Linking to the Broader Ideological and Cultural Debate

In fact, one of the most significant sociopolitical issues of our present moment is in the realm of antiracism and equity, diversity, and inclusion (EDI) ideas. Many have concerns about these movements *as an approach* to combating racism. The power that these ideas can hold within institutions has led to self-censorship, for fear of the very backlash that can lead to career disruption (I provided an example above). Undoubtably, the CPSO does not intend to promote self-censorship, but antiracism or EDI ideas often have this effect and implementation on social media of a policy interpreted with these ideas in mind will silence productive discourse. These antiracism and EDI concepts have come into the mainstream very recently, despite scholarship dating back at least to the 1970s. This is not to engage in a literature appraisal, but to turn the mirror on the CPSO and ask if it knows it is entering into the middle of an ideological and cultural debate.

It matters that the CPSO is entering into the midst of a debate. Firstly, to do so means it will be perceived as "picking a side" and *potentially* the wrong one. Secondly, these antiracism and EDI concepts are being questioned by a groundswell of individuals who share similar core values, but have concerns about their ideological, epistemological, and scientific merits. This

group of individuals holds *strong principles in opposition to <u>all forms</u>* of discrimination, recognizes that we live in a society where not all have equal access to opportunities, and where racism, prejudice, and bigotry *still exist*. There are serious concerns about the rigor, ethical basis, and efficacy of the theoretical approaches utilized in antiracism and EDI initiatives. These initiatives tend to rely upon a limited set of ideas that are not universally shared by those who abhor racism, sexism, or other forms of discrimination. However, rather than viewing this disagreement as a difference in emphasis or approach, to challenge antiracism and EDI methodology is *prima fascia* evidence of opposition to dismantling racism, prejudice, and bigotry itself. There are whole books, public debates, documentaries, online videos, podcasts, and other forms of media discussing how liberal-minded individuals, who have been life-long supporters of civil rights, are disillusioned with the new ideology represented in antiracism and EDI initiatives.

There is a strong sense among many, including in our profession, that these latest ideas originating in social sciences are being implemented hastily by central authorities and public institutions without proper consideration. This concern is not rooted in viewing these ideas as completely mistaken. To the contrary, it is because institutions are seeking to implement ideas when they have only been tested through scholarship that re-affirms rather than challenges them. Many people, including many physicians, are developing a sense of institutional capture, because ever increasing people are blindly implementing poorly validated idea, admittedly with good intentions. When the CPSO is seen to be adopting these ideas, it raises concerns that careers can be disrupted because of complaints interpreted with unreliable ideological premises. The CPSO should avoid committing itself to regulation of social media use by physicians centered on antiracism or EDI ideas that are at the heart of an active debate.

<u>Proposed Changes</u>

With the draft social media policy and the advice to the profession document, the CPSO has unwittingly grounded its oversight of physician behaviour on profoundly subjective and controversial ideas. These ideas are being actively debated and discussed on the very platforms on which the CPSO now seeks to play a regulatory role. Given this, the CPSO should make substantive amendments to the draft policy and advice document:

1. The policy should be amended to be based upon uncontroversial concepts; a decreased emphasis on perception at the expense of intentions; and a decreased emphasis on "general acceptance" at the expense of well-intentioned heterodox discussions. This would be more consistent with the light touch framework for regulation that the CPSO wishes to adopt.
2. The CPSO must make it truly clear that expressing contrarian opinions, if delivered with the intent to engage in a discussion, rather than to mislead and harm, is <u>not</u> a violation of its policies. It should also explicitly state that it understands the ongoing cultural and political debate on regulating social media use and will exercise its authority with deference to this in mind.
3. The policy should be limited to the clearest, rather than most fraught, examples of unprofessional behaviour on social media. Profanity, disrespect, intimidation, demeaning, abusive language, defamatory/libelous statements, and character attacks are much easier

to define transparently and robustly than perceptions of discrimination or antiracism. These should be the limit of the unprofessionalism definition. These ideas have the advantage of being well-founded in legal and social science literature, represent much more mainstream concepts understood by the public, and are easily defensible in the advice to the profession document. It will also avoid any reasonable concern of limiting advocacy. There is no need to introduce controversial concepts from the social sciences largely known only to activists, siloed intellectuals, and those who have taken their training courses.

4. The new standard of regulation by the CPSO should be to intervene when social media use is *clearly* profane, intimidating, abusive, defamatory/libelous, and/or character attacking, and when it was *intended or could easily be construed to be intended* to have that effect. Concrete examples (unlike microaggressions) of unacceptable social media activity should be given within the policy or advice to the profession document, to increase transparency and confidence.

I believe that a policy which is focused on these ideas of professionalism will be met with far fewer free speech concerns and that our profession, and the public, will be better off for it.