

HUMAN RIGHTS IN THE PROVISION OF HEALTH SERVICES

Policies of the College of Physicians and Surgeons of Ontario (the “College”) set out expectations for the professional conduct of physicians practising in Ontario. Together with the *Practice Guide* and relevant legislation and case law, they will be used by the College and its Committees when considering physician practice or conduct.

Within policies, the terms ‘must’ and ‘advised’ are used to articulate the College’s expectations. When ‘advised’ is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice.

Additional information, general advice, and/or best practices can be found in companion resources, such as *Advice to the Profession* documents.

Definitions

Discrimination: an act, communication, or decision that results in the unfair treatment of an individual or group by either imposing a burden on them, or denying them a right, privilege, benefit, or opportunity enjoyed by others. Discrimination may be direct and intentional; it may also be indirect and unintentional, where rules, practices, or procedures appear neutral but have the effect of disadvantaging certain groups of people. Discrimination is best identified by those who experience it given that there is a difference between intent and impact.

Effective referral: taking positive action to ensure the patient is connected to a non-objecting, available, and accessible¹ physician, other health-care professional, or agency.

For more definitions of key terms/concepts related to this policy, see the College’s [Equity, Diversity, and Inclusion Glossary](#).

Policy

Providing Health Services

1. Physicians **must** take reasonable steps to create and foster a safe, inclusive, and accessible environment in which the rights, autonomy, dignity, and diversity of all patients are respected, and where patients’ needs are met, by:
 - a. complying with the relevant legal requirements under the [Accessibility for Ontarians with Disabilities Act, 2005](#)² and the [Human Rights Code \(the Code\)](#)³; and

¹ ‘Available and accessible’ means that the health-care professional must be operating and/or accepting patients at the time the effective referral is made, and in a physical location the patient can reasonably access, or where appropriate, accessible via virtual care.

² *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11.

³ *Human Rights Code*, R.S.O. 1990, c. H.19. See ‘The Duty to Accommodate’ and ‘The Duty to Provide Services Free from Discrimination’ sections of this policy for more information.

32 b. incorporating cultural humility, cultural safety, anti-racism, and anti-oppression into
33 their practices.

34 2. In discharging provision 1, physicians **must not**:

35 a. express personal moral judgments about patients' beliefs, lifestyle, identity, or
36 characteristics or the health services that patients are considering;

37 b. refuse or delay the provision of health services because the physician believes the
38 patient's own actions have contributed to their condition;⁴ or

39 c. promote their own spiritual, secular, or religious beliefs when interacting with
40 patients or impose these beliefs on patients.

41 *The Duty to Accommodate*

42 3. Physicians **must** comply with their duty to accommodate patients' needs arising from a
43 protected ground under the *Code*⁵ (e.g., disability⁶, gender identity) and make
44 accommodations in a manner that is respectful of the dignity, autonomy, and privacy and
45 confidentiality of the patient, unless the accommodation would:

46 a. subject the physician to undue hardship (i.e., excessive cost, lack of outside sources
47 of funding to help offset the cost, or health or safety concerns); or

48 b. significantly interfere with the legal rights of others.⁷

49 4. Where a patient requests to receive care from a physician with a particular social identity
50 (e.g., race, ethnicity, culture, sexual orientation and/or gender identity,
51 spiritual/secular/religious beliefs, etc.), physicians **must**:

52 a. with appropriate consent⁸, provide any emergent or urgent medical care the patient
53 requires; and

54 b. where non-emergent or non-urgent care is required, take reasonable steps to
55 accommodate the patient's request if the physician believes that the request is

⁴ See the College's [Ending the Physician-Patient Relationship](#) policy for circumstances where physicians must not end the physician-patient relationship.

⁵ The *Code* articulates the right of every Ontario resident to receive equal treatment with respect to services, goods and facilities – including health services – without discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

⁶ "Disability" is defined in s. 10 of the *Code* and includes any degree of physical disability, infirmity, malformation, or disfigurement; a condition of mental impairment or a developmental disability; a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language; a mental disorder; or an injury or disability for which benefits were claimed or received under the insurance plan established under the [Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A](#).

⁷ See the Ontario Human Rights Commission's [Policy on ableism and discrimination based on disability](#) for more information on "undue hardship" and other limits on the duty to accommodate (e.g., legal rights of others).

⁸ See the College's [Consent to Treatment](#) policy for expectations on obtaining consent during emergencies.

- 56 ethically or clinically appropriate (e.g., patient would like to receive care from a
57 physician who speaks the same language to facilitate communication); or
- 58 c. tell the patient that their request will not be accommodated if the physician believes
59 that the request is discriminatory (e.g., racist, sexist, ageist, heterosexist, etc.) and
60 determine whether it is safe and in both parties' best interest to provide any non-
61 emergent or non-urgent care required.⁹

62 *The Duty to Provide Services Free from Discrimination*

- 63 5. Physicians **must not** discriminate, either directly or indirectly, based on a protected ground
64 under the *Code* when making decisions relating to the provision of health services. This
65 includes when:
- 66 a. accepting or refusing individuals as patients;
67 b. providing information to patients;
68 c. providing or limiting health services;
69 d. providing clinical referrals and effective referrals; and/or
70 e. ending the physician-patient relationship.

71 **Limiting Health Services for Clinical Competence/Scope of Practice Reasons**

- 72 6. Physicians **must** make any decisions to limit the provision of health services for reasons of
73 clinical competence and/or scope of practice in good faith, and in accordance with
74 the *Code*¹⁰ and College expectations.¹¹
- 75 a. In making this decision, physicians **must** consider the risks and benefits of limiting
76 the provision of health services and the impact it would have on patients (e.g., if they
77 would have difficulties accessing the services elsewhere in a timely manner due to a
78 lack of resources).
- 79 b. Physicians **must** communicate any decisions to limit the provision of health services
80 for reasons of competence and/or scope of practice to patients in a clear and
81 straightforward manner.

82

83 **Health Services that Conflict with Physicians' Conscience or Religious Beliefs**

- 84 7. Where certain health services conflict with physicians' conscience or religious beliefs in a
85 manner that would impact patient access to those health services, physicians **must** fulfill

⁹ See the College's [Ending the Physician-Patient Relationship](#) policy for expectations when ending the physician-patient relationship.

¹⁰ The duty to provide services free from discrimination does not prevent physicians from limiting the health services they provide for legitimate clinical competence and/or scope of practice reasons.

¹¹ Also see the relevant expectations set out in the College's [Ensuring Competence: Changing Scope of Practice and/or Re-entering Practice](#), [Accepting New Patients](#), and [Ending the Physician-Patient Relationship](#) policies.

- 86 their professional obligations and fiduciary duty to their patients by putting patients’
87 interests first.¹²
88
- 89 8. Physicians **must** provide patients with enough information about all available or appropriate
90 clinical options to meet their clinical needs or concerns so that patients are able to make an
91 informed decision¹³ about exploring a particular option.
92
- 93 9. When a particular service, treatment, or procedure might be a relevant clinical option for a
94 patient and it conflicts with a physician’s conscience or religious beliefs in a manner that
95 would impact patient access, physicians **must**:
- 96 a. make any decisions to limit the provision of health services in accordance with the
97 *Code*¹⁴ and inform the patient that they do not provide that service, treatment, or
98 procedure; and
- 99 b. provide the patient with an effective referral.
- 100 i. Physicians **must** provide the effective referral in a timely manner to allow
101 patients to access care.
- 102 ii. Physicians **must** take reasonable steps to confirm that a patient was
103 connected, unless the patient has indicated that they prefer otherwise.
- 104 iii. If physicians learn that the patient was not connected, they **must** take further
105 action to provide an effective referral.
- 106 iv. Physicians **must** have a plan in place on how they will connect patients to the
107 services that would typically be requested in their type of practice, but that
108 conflict with their conscience or religious beliefs.
- 109 10. In discharging provisions 8 and 9, physicians **must**:
- 110 a. communicate the necessary information in a clear, straightforward, and neutral
111 manner;

¹² Physicians’ freedom of conscience and religion must be balanced against patients’ right to access care. The Court of Appeal for Ontario has confirmed that where an irreconcilable conflict arises between a physician’s interest and a patient’s interest, physicians’ professional obligations and fiduciary duty require that the interest of the patient prevails (para. 187 [Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2019 ONCA 393](#)).

¹³ In accordance with the College’s [Consent to Treatment](#) policy and the [Health Care Consent Act, 1996, S.O. 1996, c.2, Sched. A](#), physicians need to obtain valid consent in order to proceed with a particular treatment option. In order for consent to be valid, it must be related to the treatment, informed, given voluntarily, and not obtained through misrepresentation or fraud.

¹⁴ Limiting health services on the basis of conscience or religion does not permit physicians to discriminate on the basis of a protected ground under the *Code* and limit to whom they provide services they otherwise offer.

112 b. comply with the documentation expectations set out in the College’s [Medical](#)
113 [Records Documentation](#) policy and where relevant, the College’s [Medical Assistance](#)
114 [in Dying](#) policy¹⁵; and

115 c. where clinical referrals are provided, comply with the relevant expectations set out in
116 the College’s [Transitions in Care](#) policy.

117 11. Physicians **must not**:

118 a. withhold information about the existence of any service, treatment, or procedure
119 because it conflicts with their conscience or religious beliefs;

120 b. provide false, misleading, confusing, coercive, or incomplete information about
121 available or appropriate clinical options;

122 c. impede access to information and/or care; or

123 d. expose patients to adverse clinical outcomes due to a delay in providing the patient
124 with an effective referral.

125 12. Physicians **must** provide any necessary care in an emergency, even where that care
126 conflicts with their conscience or religious beliefs.¹⁶

127 **Addressing Violence, Harassment, and Discrimination**

128 13. If physicians see acts of violence, harassment (including intimidation), and discrimination
129 occurring against patients, health-care professionals and/or staff, they **must** take
130 reasonable steps¹⁷ to stop these acts in a manner that does not compromise the safety of
131 the physician.¹⁸

132 14. Physicians **must** take any other necessary steps¹⁹ to comply with applicable legislation¹⁹,
133 policies, institutional codes of conduct or by-laws.

¹⁵ Physicians are required to capture, where applicable, all oral and written requests for medical assistance in dying (MAID), the dates they were made, and a copy of the patient’s written request in the patient’s medical record. This requirement applies to all physicians, including physicians who choose not to assess patients for or provide MAID for reasons of conscience or religion.

¹⁶ For clarity, MAID would never be a treatment option in an emergency and physicians are not required to assess patients for or provide MAID under any circumstances.

¹⁷ There may be times where a patient or individual lacks capacity due to a health condition (e.g., severe mental illness, neurocognitive or neurodevelopmental disorder, etc.) and/or their current health status (e.g., substance intoxication, delirium, etc.) and this will need to be taken into consideration when determining what steps to take to stop the patient or individual.

¹⁸ See the College’s [Professional Responsibilities in Medical Education](#) policy and [Advice to the Profession](#) document for expectations and guidance in the medical education context, including taking reasonable steps to stop violence, harassment, or discrimination against medical students and/or postgraduate trainees and providing them with support and direction.

¹⁹ For example, the obligations set out in the [Occupational Health and Safety Act, R.S.O. 1990, c.0.1](#) and the [Code](#).