

July 12, 2024

Via email: consultations@cpso.on.ca

Dr. Nancy Whitmore Registrar College of Physicians and Surgeons of Ontario 80 College Street Toronto, ON M5G 2E2

Dear Dr. Whitmore:

Reporting Requirements – Consultations

The Canadian Medical Protective Association ("CMPA") appreciates the opportunity to participate in consultations concerning the draft policy, companion and advice documents on Reporting Requirements.

As you know, the CMPA delivers efficient, high-quality physician-to-physician advice and assistance in medico-legal matters, including the provision of appropriate compensation to patients injured by negligent medical care. Our evidence-based products and services enhance the safety of medical care, reducing unnecessary harm and costs. As Canada's largest physician organization and with the support of our over 111,000 physician members, the CMPA collaborates, advocates and effects positive change on important healthcare and medico-legal issues.

The CMPA's comments focus on the companion draft document, Legal Reporting Requirements. While we appreciate the College's efforts to provide information to members in plain language, we would suggest some amendments to ensure key details in the relevant legislation are reproduced in the new Legal Reporting Requirements document to avoid misleading physicians.

The following are examples of sections in the draft Legal Reporting Requirement document where it would be helpful to ensure better consistency with the relevant legislation:

- "Reasonable grounds to believe" To be consistent with the relevant legislation, we recommend referring to "reasonable grounds to believe" in certain sections of the draft companion document.
 - In those sections, the text of the draft document has been shortened to "physicians who believe that..." rather than "physicians who have reasonable grounds to believe," which is the language used in the relevant legislation and which imposes a higher legal threshold for reporting. Indeed, "reasonable grounds to believe" has been determined by the courts to encompass the standard of probability.1 Examples of some of this wording in the draft document include:
 - Physicians "who believe" that another regulated health professional may have sexually abused a patient must file a report [...], while section 85.1 of the Health Professions Procedural Code ("HPPC") refers to "reasonable grounds" to believe.
 - o Physicians "who believe" that a patient working as a flight crew member, air traffic controller or in another aviation job [...] must report [...], while section 6.2 of the Aeronautics Act refers to "reasonable grounds" to believe.
 - o Physicians "who believe" that a patient with a certificate issued under the Canada Shipping Act may have a medical condition [...] must report [...], while section 90(1) of the Canada Shipping Act refers to "reasonable grounds" to believe.
 - Physicians "who believe" that a patient working in a job related to railway safety may have a medical condition that might pose a danger to safe railway operations must report [...], while section 35(2) of the Railway Safety Act refers to "reasonable grounds" to believe.

¹ Baron v. Canada, 1993 CanLII 154 (SCC), [1993] 1 RCS 416, p. 447.

Sexual abuse

- o It would be preferable if the section on duty to report sexual abuse specified that the reporting requirement only applies when the information is "obtained in the course of practising the profession," which is the language found in section 85.1(1) of the HPPC and in the current College Policy. This is an important caveat, as information learned solely in a personal or social setting would not generally trigger a mandatory reporting obligation.
- While the draft document continues to state that physicians must make best efforts to tell the patient before submitting a report, the draft has removed the condition that efforts to tell the patient are only required "where information concerning sexual abuse is obtained from the patient". We recommend reverting to the language in the current Policy to ensure consistency with section 85.1(3) of the HPPC. This clarification is important since physicians generally do not need to inform the patient about making a report in circumstances where they form their own independent reasonable belief that a colleague might be sexually abusing a patient.

• Pilot or air traffic controllers

The draft document states "Physicians who believe that a patient working as a flight crew member, air traffic controller <u>or in another aviation job</u> may have a medical condition that might pose a danger to aircraft safety must report..." To ensure consistency with the *Aeronautics Act* and reduce the risk of potentially misleading physicians, we recommend that a footnote be added to "patients in another aviation job," to specify that the reporting obligation refers to "other holder[s] of a Canadian aviation document that imposes standards of medical or optometric fitness".

We trust these comments will be of assistance to the College in finalizing its policy, companion and advice documents on *Reporting Requirements*.

Yours sincerely,

Dr. W. Todd Watkins, BSc (Hon), MD, CCFP, CCPE Associate Chief Executive Officer