

OTLA Submission to College of Physicians and Surgeons of Ontario

Draft Policy: Ending the Physician-Patient Relationship

February 3, 2025

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input on the College of Physicians and Surgeons of Ontario's (CPSO or College) review of their Draft Policy (Policy) and Advice to the Profession (Advice) on Ending the Physician-Patient Relationship.

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.

PROPOSED AMENDMENTS

OTLA commends the CPSO indicating the mandatory nature of its recommendations in the policy by utilizing the word "must" throughout. This should demonstrate to the physician the serious consideration that should be given where ending the physician-patient relationship.

Expectations when ending the physician-patient relationship

OTLA recommends that the Policy reiterate the mandatory requirement for physicians to retain a patient's medical records for 10 years from the date of the last entry or 10 years from the date of the patient's 18th birthday, even in the circumstance where the physician-patient relationship has ended. This is in keeping with the regulations under the *Medicine Act*.

OTLA also recommends that the College also point out to its members that they should consider keeping records at least 15 years given provisions of the *Limitation Act*¹ which allows some legal proceedings for an act or omission to commenced upwards of 15 years after the occurrence the claim is based on occurred.

PROPOSED AMENDMENTS TO ADVICE TO THE PROFESSION:

Situations where physicians may no longer be able to provide quality care

The Advice under the subheading "*Situations where physicians may no longer be able to provide quality care*" refers to situations where a patient has been absent for a long period of time. OTLA strongly recommends this section be amended to clarify that a patient being absent for a long period of time is only an acceptable situation to end the physician-patient relationship if the

¹ *Limitations Act*, 2022, S.O. 2002, c. 24, Schedule B, s. 15(2).

patient's absence is without reasonable explanation or justification. A patient should not be penalized by losing their physician simply because they did not need to attend to obtain physician care, such as when a chronic condition is stable and thus not requiring physician intervention, or a younger patient who is otherwise fairly healthy.

To the extent the physician is ending the physician-patient relationship for this reason, then OTLA recommends that the wording in the Advice document be changed from "can" to "should" so that a physician is required to take positive steps, by either a call or a letter to the last known address, to determine whether or not the patient no longer wants to be a patient.

Outside use and de-rostering patients

The Advice to the Profession states that to avoid any potential confusion when de-rostering a patient, physicians "may want to" discuss with patients directly what de-rostering entails and why they are being de-rostered".

OTLA is of the view that this section should be amended to indicate that physicians "must" ensure that patients are aware of the expectations in a rostered practice and the potential for a patient to be de-rostered should they continually seek care outside of the rostered practice prior to ending the physician-patient relationship.