Abortion Rights Coalition of Canada

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Consultation feedback on CPSO's *Human Rights in Provision of Health Services* Policy

Dear College of Physicians and Surgeons of Ontario,

I am the Executive Director of the Abortion Rights Coalition of Canada. Thank you for the opportunity to provide feedback on your *Human Rights in the Provision of Health Services* policy.

I appreciate some of the clarifications and extra guidance you've provided for physicians in the Advice document. Also, thank you for not calling the refusal to provide healthcare based on personal beliefs a "right" (although that incorrect word is still in your *Professional Obligations and Human Rights* policy).

Overall however, I feel the policy is still unworkable because a sizable proportion of doctors who deny care will likely never obey the requirement to make an effective referral, as they feel it makes them complicit in something they are morally against. Without any monitoring or enforcement of your policy, it will be quite ineffectual.

I'm not sure what proportion of doctors might refuse to even make a referral, but I would encourage the College to help these physicians move towards provision of the objected-to services or at least effective referrals, by requiring them to partake in Values Clarifications workshops, and to be exposed to patients who need the services they object to (such as by shadowing an abortion provider). Positive measures such as these can work for some.

This letter provides some comments on your policy. First, I'd like to introduce a more accurate term for the practice of so-called "conscientious objection" – **belief-based care denial (BBCD).** This can be defined as the refusal by a healthcare professional to provide a legal, patient-requested medical service based on their personal or religious beliefs.

Discrimination and undermining of human rights

Regarding the definition of Discrimination at the top of your new policy, the problem is that BBCD itself constitutes discrimination. Denials of reproductive healthcare are discriminatory or have discriminatory effects based on gender equality, because the care is largely delivered to women and 2S/LGBTQ people, in particular abortion care, contraception, and gender-affirming

care. Refusal to provide medical assistance in dying (MAiD) due to personal beliefs is discriminatory based on grounds of age or disability.

BBCD automatically imposes a burden on patients because at the very least, it requires the patient to visit another provider. But even if the care denier refers appropriately and the patient receives services promptly, BBCD is still inherently harmful – it demeans patients by undermining their dignity and autonomy and sends a negative message that stigmatizes them and the healthcare they need. The burdens of BBCD can be far greater still and have been extensively documented. Around the world, people needing abortions have been left to suffer serious injury or even die because doctors exercised BBCD.

Further, BBCD denies patients a right and benefit that is enjoyed by others who were able to secure services sooner from a non-objector in a respectful way. Unfortunately, BBCD is often accompanied by other harmful or abusive behaviours by the care denier.

Section 5 of your new policy, "Duty to provide services free from discrimination," suffers from the same problems mentioned above. Further, subsection 5c says that physicians must not discriminate when making decisions about "providing or **limiting** health services." That means your own policies allowing belief-based care denial violate the Ontario *Human Rights Code* and directly contradict your intent to prohibit discrimination.

Section 1 of the policy states: "Physicians must take reasonable steps to create and foster an environment in which the rights, autonomy, dignity and diversity of all patients, or those seeking to become patients, are respected." BBCD by its very nature undermines the rights, autonomy, and dignity of patients as described above, as well is in my peer-reviewed published articles with co-author Dr. Christian Fiala, here and here.

Further, doctors have a special responsibility to serve the public, and they enjoy a privileged position and a monopoly on healthcare. Patients are dependent on doctors and generally cannot obtain safe or effective care outside the medical system. When doctors exercise BBCD, they are deliberately refusing to do part of their chosen profession for personal reasons, thereby abandoning their fiduciary duty to patients and abusing their trust.

Patients' best interests

The CPSO's *Professional Obligations and Human Rights* policy states: "Physicians must act in their patients' best interests." The practice of BBCD directly contradicts the ethic of acting in the patient's best interest, because the very essence of BBCD is the prioritization of doctors' interests over that of patients.

Section 7 of your new policy, "Health services that conflict with physicians' conscience or religious beliefs," states "that physicians must fulfill their professional obligations and fiduciary duty to their patients by putting patients' interests first." If that is truly the case, then you cannot allow a practice that turns this ethic upside down, as BBCD does.

Prohibited behaviours

Sections 2 and 11 of your new policy list behaviours that the physician **must not** do (bolding in original). Considering there is no monitoring of objectors or enforcement of these directives, and considering that very few patients can muster the resolve to make a complaint, it is rather disingenuous of the CPSO to issue such declarations. How will you know when doctors disobey the directives, and what will you do about it? As far as I can tell the answers are: virtually never, and next to nothing.

Section 2c. states that doctors must not impose their beliefs on patients, but that is exactly what the act of BBCD does, whether the doctor mentions their beliefs to the patient or not. When a doctor engages in BBCD, it means their denial of care stems directly from their beliefs and is therefore an imposition of those beliefs. To put it another way, when a doctor refuses to provide a necessary treatment that they normally should provide, solely because they have a religious belief against it, they are imposing their belief on that patient. It might be better actually, if the doctor is upfront about their beliefs or even "preaches" to the patient – at least then the patient understands what's really happening, and the care denier has not deliberately left them ignorant about the true reasons for their refusal (such a lack of transparency would be patronizing, cowardly, and unethical).

Required behaviours

Section 9 lists what physicians **must** do when engaging in BBCD. Again, an honour system based on your assumption that objectors will follow these guidelines will not be effective, at least not for those unwilling to compromise their personal or religious beliefs. If a care denier thinks that referring someone for an abortion is nearly as immoral as doing the abortion themself, then they're certainly not going to take additional "reasonable" steps or follow-up action – which means they also won't be putting a plan in place on how to connect patients to services.

Again, how will the CPSO know whether doctors follow these directives, and what will you do when they don't? I presume the answers again are: virtually never, and next to nothing.

Section 13 requires physicians to take reasonable steps to stop acts of violence, harassment, and discrimination. Since BBCD is itself an act of discrimination against pregnant people seeking abortions and terminally ill people seeking MAiD, this ironically means that your new policy requires physicians to report other physicians who engage in BBCD. I guess that's one form of enforcement, but a rather inadequate one and probably not what you intended.

Catholic hospitals

As you know, the majority of Catholic hospitals in Canada will not provide MAiD services or many reproductive healthcare services, including abortion, contraception, and sterilization, as well as pregnancy complication care that requires termination to protect the health/life of the pregnant person. This occurs despite the fact that Catholic hospitals are publicly funded.

I wonder how your Human Rights policies apply to Catholic healthcare institutions and the doctors that work there? Are they completely exempt? For example, if an anti-abortion doctor at a Catholic hospital refuses to provide an effective referral for termination, or even mistreats the patient, will the patient have any recourse with the CPSO? Or do documents such as the *Health Ethics Guide* of the Catholic Health Alliance of Canada trump your policies and render the patient complaint process null and void?

The *Health Ethics Guide* is silent on referrals for abortion or MAiD but says: "Surgical interventions, hormonal therapy, and referrals for sexual reassignment are inconsistent with Catholic teaching regarding the principles of totality and integrity and thus should not be performed in Catholic facilities." (pg 40)

Will the CPSO be contacting the Catholic Health Alliance of Canada to ask them to change their policy on referrals for "sexual reassignment"? Will you ask them to add language to their Guide that effective referrals are required in Ontario for any care that is denied for belief-based reasons, including at Catholic hospitals? Will you inform all doctors at religious healthcare institutions in Ontario that they are subject to your effective referral policy?

Notes on Advice document

On page 8/9, you state that an effective referral does not "require that the physician endorse or support the service, treatment, or procedure." Of course, many objectors will not see it that way. To them, giving a referral means participating in the "immoral" treatment. Facilitating the abortion would seem to them like a tacit endorsement and support of the treatment.

Remember, you are dealing with peoples' religious beliefs here. They aren't just going to turn them off at a certain point. Once you allow doctors to make care decisions based on their religious beliefs, it's difficult to draw a line for two reasons: 1) Many care deniers will not let themselves be constrained by limits you place on their ability to practice faith-based medicine; and 2) It's not possible to question or challenge the sincerity or truth of someone's religious beliefs, including to what extent they "need" to rely on them in their practice.

At the bottom of pg 9 under "What are some examples of an effective referral?", you give the example of a care denier contacting Ontario's Care Coordination Service in the case of MAiD referrals. There is no such coordinating agency for abortion and reproductive care, but could you please add these specific examples of where care deniers can refer to?

- National Abortion Federation Canada's Patient Assistance Fund (1-800-772-9100)
- Action Canada for Sexual Health and Rights – Access Line (1-888-642-2725)

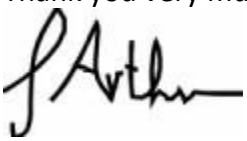
Monitoring and enforcement

In my previous submission to the CPSO (April 5, 2021, regarding your *Professional Obligations and Human Rights* policy), I included some suggestions of monitoring and enforcement measures that could be taken. I again ask the CPSO to please implement some of these:

- Require all objectors to register so they can be monitored.
- Require all objectors to file a report every time they refuse services based on their personal or religious beliefs.
- Investigate any inadequate or problematic reports.
- Randomly conduct regular audits on objecting doctors.
- Discipline those who violate the policy.
- Develop a more robust disciplinary policy (one that does not rely solely on patient complaints).
- Make the complaint process easier for patients, such as preventing the doctor from learning the complainant's identity.
- Hold objectors financially liable for any harms done to patients.
- Prohibit existing objectors from working alone, especially in small communities where they are the only physician.
- Encourage employers to prioritize hiring of non-objecting physicians, and to pay objecting physicians less.
- Engage in public advocacy to encourage complaints when doctors refuse care or referrals – e.g., create a brochure for doctors' offices, post easy instructions on your website, and publish media articles.

To conclude, I ask you to seriously consider the position that BBCD is unethical and unworkable in healthcare, and to start moving towards strongly discouraging it and eventually disallowing it. In the meantime, I ask you to please add BBCD monitoring and enforcement measures to your Human Rights policies and implement them.

Thank you very much.



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