



# Professional Obligations and Human Rights: Frequently Asked Questions

## **Is Professional Obligations and Human Rights a new policy of the College?**

No. This policy replaces its predecessor, which was entitled Physicians and the Ontario *Human Rights Code* and was reviewed in accordance with the College's regular policy review cycle. The Professional Obligations and Human Rights policy is a revised and updated version of the former policy.

## **The policy states that 'clinical competence' is a legitimate reason for physicians to refuse to treat patients. What does this mean?**

This section of the policy reflects the College's general expectation that physicians will always practice within the limits of their own knowledge, skill and judgment.

Any decision made on the basis of clinical competence, however, must be made in good faith. Clinical competence must not be used as a means of unfairly refusing patients with complex health-care needs, or patients who are perceived to be otherwise difficult.

## **The policy discusses physicians' legal duty to accommodate the needs of patients up to the point of undue hardship. When would an accommodation be considered to impose undue hardship?**

An accommodation is considered to cause undue hardship if it imposes excessive costs, or gives rise to health or safety concerns.

The Ontario Human Rights Commission has stated that:

- 'costs' include the actual, present financial cost of carrying out an accommodation measure, as well as any reasonably foreseeable costs that may arise.
- 'health and safety risks' include risks to the person requesting the accommodation, as well as to other employees and/or the general public.

Determinations of whether the duty to accommodate has been satisfied and whether an accommodation imposes an undue hardship are made by the Ontario Human Rights Tribunal and the Courts.

For further detail, physicians are advised to consult the

policies of the Ontario Human Rights Commission, including Policy and Guidelines on Disability and the Duty to Accommodate: [http://www.ohrc.on.ca/sites/default/files/attachments/Policy\\_and\\_guidelines\\_on\\_disability\\_and\\_the\\_duty\\_to\\_accommodate.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_disability_and_the_duty_to_accommodate.pdf).

## **The policy says that "physicians must not promote their own religious beliefs when interacting with patients, or those seeking to become patients, nor attempt to convert them." What is meant by "promoting religious beliefs"? Does this mean that physicians can never discuss religious or spiritual beliefs with their patients?**

No. The College recognizes that patients' spiritual and religious beliefs can play an important role in the decisions they make about health care, and can offer comfort if patients are faced with difficult news about their health. It is appropriate for physicians to inquire about and/or discuss patients' spiritual and religious beliefs when those are relevant to patient decision-making, or where it will enable the physician to suggest supports and resources that may assist the patient.

The policy prevents physicians from promoting their own religious beliefs to their patients. By 'promoting' the College means that physicians must not attempt to convert patients to their own religion; imply the physician's religion is superior to the patient's beliefs (spiritual, secular or religious), or otherwise make personal moral judgments about the patient's conduct that are based in the physician's religion.

## **The policy requires that physicians provide their patients with an 'effective referral' for those services the physician chooses not to provide for reasons of conscience or religion. What is an 'effective referral'?**

An 'effective referral' means a referral that is made in good faith with a view to supporting, not frustrating or impeding, access to care.

The referral must be made to another health-care provider. This includes a physician, another health-care professional or an agency. The health-care provider must not share the physician's conscience or religious objections and must be available and accessible to the patient. By 'available and accessible', the College means that the health-care provider must be in a location the patient can access, be operating and/or accepting



# Professional Obligations and Human Rights: Frequently Asked Questions

patients at the time the referral is made. An effective referral must also be made in a timely manner to allow patients to access care. Patients must not be exposed to adverse clinical outcomes due to a delayed referral.

Physicians will not be considered to have made an 'effective referral' if they:

- Refer the patient to a physician, health-care professional or agency who shares the physician's own religious or conscience objections (e.g., a referral to an anti-abortion clinic, referral to a physician who refuses to prescribe the birth control pill);
- Refer the patient to a physician, health-care professional or agency that is not accessible or available to the patient: not in a location the patient can access, or not accepting patients, or not operating at the time of the referral (e.g., referral to a physician located in Northern Ontario when the patient lives in Toronto; referral to an agency that is closed)
- Delay making a referral where the delay results in the patient being unable access care or where the delay causes adverse clinical outcome(s).

## **What if I put a notice up in my office that I don't offer specific treatments or procedures for reasons of conscience or religion? Is that sufficient to comply with this policy?**

No, merely posting a notice is not sufficient to discharge your obligations under the policy.

Communicating with patients in these circumstances is essential. Communication must occur directly, in person so that physicians can convey information to the patient, and can also obtain critically important information from the patient in kind. Information from the patient is necessary in order to comply with the expectations in policy: the requirement to provide an 'effective referral' for the care that physicians choose not to provide for reasons of conscience or religion; and the requirement to provide care to the patient in emergency situations, in order to prevent imminent harm.

When physicians communicate that there are specific treatments or procedures that they do not provide due to conscience or religion, physicians must do so in a respectful and professional manner, and with sensitivity. Physicians must never express personal moral judgments about the beliefs, lifestyle, identity or characteristics of patients.

## **The policy requires that physicians provide care in emergencies, even if the care is contrary to physicians' conscience or religion. What does the College consider to be an emergency?**

The College considers emergency situations to be those where care or intervention is required in order to prevent imminent harm to an individual. In these circumstances, the College requires physicians to act and provide care that is required to prevent imminent harm, even if the care or intervention that is required is contrary to a physician's conscience or religion. This could include, for example:

- Providing a blood transfusion, where it is required on an immediate basis, in order to save the life of the patient;
- Treating a woman for sepsis caused by an incomplete abortion;
- Treating an individual for an abscess caused by intravenous drug use.

## **The federal government's legislation on medical assistance in dying has been well publicized. What implications does the law have for this policy?**

The legislation on medical assistance in dying is the federal government's response to the Supreme Court of Canada's (SCC's) decision in the case of *Carter v. Canada*. In that case, the SCC considered the constitutional validity of criminal laws that prohibited medical assistance in dying (referred to as 'physician-assisted death' by the SCC). The SCC ruled that these laws violated the Charter rights of competent adults, who are suffering intolerably from grievous and irremediable medical conditions, and seek a physician's assistance in dying.

The SCC suspended its decision to allow the federal and/or provincial governments to design, should they so choose, a framework to govern the provision of medical assistance in dying. In response, in June 2016, the federal government passed legislation allowing eligible adults to obtain medical assistance in dying. The legislation includes rules on who is eligible for medical assistance in dying and outlines safeguards that must be followed to ensure public protection.

Physicians who have a conscientious objection to providing medical assistance in dying are directed to comply with the College's expectations for conscientious objections in general, set out in this policy. Specifically, where a physician declines to



# Professional Obligations and Human Rights: Frequently Asked Questions

provide medical assistance in dying for reasons of conscience or religion, the physician must not abandon the patient. An effective referral must be provided.

For more information on the legal obligations and professional expectations for physicians with respect to medical assistance in dying, please see the College's *Medical Assistance in Dying* policy.

**The policy requires physicians to provide care in emergencies, even where that care conflicts with physicians' conscience or religious beliefs. Does this requirement apply to medical assistance in dying? Will the College require physicians to provide medical assistance in dying, even if it is contrary to their conscience or religion?**

No, physicians who have a religious or conscientious objection to providing medical assistance in dying are not required to provide medical assistance in dying, in any circumstance. A request for medical assistance in dying is not considered an emergency. That is why the expectation set out in this policy, that physicians provide care in an emergency even where that care conflicts with their conscience or religious beliefs, has not been included in the College's *Medical Assistance in Dying* policy.

Objecting physicians are, however, required to provide an 'effective referral' in accordance with College policy. The College does not consider providing an effective referral to be 'providing' medical assistance in dying.

**What will happen if the College receives a complaint that a physician has not complied with this policy?**

The College expects physicians to comply with their legal obligations and the expectations set out in the *Professional Obligations and Human Rights* policy.

If the College receives a complaint that a physician has not complied with policy, the complaint will be investigated. A panel consisting of physicians and members of the public will consider the circumstances of the case and evaluate the physician's conduct as against the policy expectations. The College will consider any concerns regarding the professional obligations set out in this policy in accordance with its duty to serve and protect the public interest.

Physicians should be advised that if they do not comply with their legal obligations under the Ontario *Human Rights Code*, they may be the subject of a separate complaints process: a complaint to the Ontario Human Rights Commission and Tribunal. This process is separate from the College's complaints processes.