INFORMATION
TRANSPARENCY
ACCOUNTABILITY
PUBLIC'S
RIGHT-TO-KNOW

More information to be posted on the public register

Council approves posting Cautions-in-Person, SCERPs

Council approved a range of by-laws that will see more information put on the public register.

The three-year Transparency Initiative was born of a growing recognition that access to more information may assist the public in choosing a health-care professional, enhance regulatory accountability and better inform any evaluation of the performance of professional regulation.

The new information to be posted includes criminal charges, cautions-in-person, specified continuing education or remediation program (SCERPs) orders, discipline findings in other jurisdictions, and licences in other jurisdictions.

"These by-laws represent an important and fundamental change for both the public and the medical profession," said Dr. Carol Leet, College President. "As such, we took a deliberately principled approach, carefully considering transparency and fairness," she said.

The College was joined in this Transparency Initiative by the colleges that govern dentists, pharmacists, nurses, physiotherapists, and opticians. Together we formed a group – the Advisory Group for Regulatory Excellence (AGRE) – to develop recommendations for making categories of information about all our members available to the public; and improve information provided to the public about colleges more generally.

"In order for the public to trust that the system works, we need to demonstrate that the system works," said Dr. Rocco Gerace, College Registrar. "We need to show value to the public which we serve. After all, we live in a new era of expectations and the practices of health-care regulators must reflect this reality," he said.

AGRE considered the degree of risk posed to patients as the measure in determining which outcome ordered by the Inquiries, Complaints and Reports Committee (ICRC) should be posted on the public register; it was decided that the more serious the ICRC outcome, the more important that the information be made public.

Timeline of New Information Added to the CPSO Public Register

2013

- Medical Records Location
- Notices of Hearing
- Hearing Status
- Reinstatement Decisions
- Outcome/Status of Out-of-Hospital Premises Inspections

2014

- Criminal Convictions
- Bail Conditions
- Illegal Practitioners

2015

- Criminal Charges
- Cautions-in-Person
- SCERPs (specified continuing education or remediation program) orders
- Licences and Discipline Findings – Other Jurisdictions

The College's mandate is public protection, whether information is public or not. We will continue to ensure that physicians are safe to practise.

Dr. Gerace pointed out that the Transparency Initiative is not meant to shift the onus onto the public to protect itself. "The College's mandate is public protection, whether information is public or not. We will continue to ensure that physicians are safe to practise. We have many processes to ensure that if there are risks to the public, physician practice is limited or stopped. The purpose of providing greater transparency is to ensure that the public has information to make decisions based on their values and to demonstrate the regulatory actions taken by the College in cases where potential risk was identified."

Given the importance of the issues, the by-law consultation was open from December 2014 to April 2015, considerably longer than the required 60-day by-law consultation period.

"We knew that these were significant issues and we wanted to provide a meaningful opportunity for both physicians and members of the public to respond," said Dr. Leet.

For the most part, Council proceeded with approval of the by-laws as drafted, however, all feedback was carefully considered. In regard to the by-law that will see discipline findings in other jurisdictions become public, Council decided to specify in the by-law that only those findings made on or after September 1, 2015, will be posted. This will bring these matters in line with other information to be posted, such as licences in other jurisdictions.

Council also directed that the issue of removal of information on the public register be visited at an upcoming meeting. The by-laws, as approved, are currently silent on the issue. A number of physician respondents, however, had stated that it was unfair for information about cautions-in-person and SCERPs to remain on the public register indefinitely and suggested removal after a certain period. Members of the public did not support this position, and were particularly concerned that there would be no public information about physicians with histories of cautions-in-person or SCERPs.

Council directed that staff conduct further analysis of the issue.

The new information posted on the public register includes:

- **Criminal charges** – this includes all *Criminal Code* and *Health Insurance Act* charges, where known to the College. Information will include the fact and content of the charge; and the place and date of the charge, if known. This information will be removed when the charge is no longer outstanding.
- **Cautions-in-person** – a summary of any decision in which a caution-in-person is ordered by the Inquiries, Complaints and Reports Committee for investigations commenced on or after January 1, 2015. A caution-in-

TRANSPARENCY PRINCIPLES

PRINCIPLE 1:
The mandate of regulators is public protection and safety. The public needs access to appropriate information in order to trust that this system of self-regulation works effectively.

PRINCIPLE 2:
Providing more information to the public has benefits, including improved patient choice and increased accountability for regulators.

PRINCIPLE 3:
Any information provided should enhance the public's ability to make decisions or hold the regulator accountable.

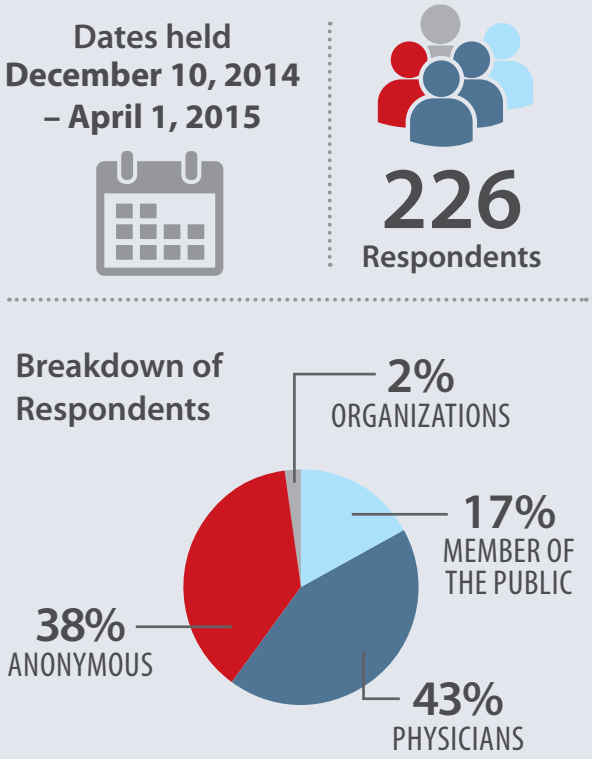
PRINCIPLE 4:
In order for information to be helpful to the public, it must:
- be timely, and easy to find and understand.
- include context and explanation.

person is ordered when the Committee has a significant concern about conduct or practice that can have a direct impact on patient care, safety or the public interest if it is not addressed. It will also be noted if the decision has been appealed and, if the decision is overturned, it will be removed.

- **Specified Continuing Education or Remediation Program (SCERPs) orders** – if educational or remediation needs for a physician are identified by the Inquiries, Complaints and Reports Committee and a voluntary agreement cannot be reached, a physician may be required to take a specified continuing education or remediation program (SCERP). This might include taking educational courses (e.g., opioid prescribing, medical record-keeping, and communications) or one-on-one instruction with another physician. There may also be a reassessment component to ensure that remediation has been successful. This information will be posted for investigations commenced on or after January 1, 2015.

- **Discipline findings in other jurisdictions** – where known to the College on or after September 1, 2015, information about the fact of the finding, the date of the finding, and the jurisdiction in which the finding was made will be posted on the public register.

CONSULTATION FACTS



- **Licences in other jurisdictions** – the College will post a notation of current medical licences held in other jurisdictions of which the College is aware (as of September 1, 2015). MD

PRINCIPLE 5:
Certain regulatory processes intended to improve competence may lead to better outcomes for the public if they happen confidentially.

PRINCIPLE 6:
Transparency discussions should balance the principles of public protection and accountability, with fairness and privacy.

PRINCIPLE 7:
The greater the potential risk to the public, the more important transparency becomes.

PRINCIPLE 8:
Information available from Colleges about members and processes should be similar.

When do outcomes become public?

Degree of risk posed to public safety informs ICRC's approach

As part of our Transparency Initiative, we are providing more information about how decisions are made. In this article, we describe how the Inquiries, Complaints and Reports Committee (ICRC) will use degree of risk posed to patient safety to distinguish between those cases that result in public undertakings and those cases which result in non-public remedial agreements.

But how do we define risk? What factors do we look at? To assist in its evaluation of cases, the ICRC has developed a risk continuum. It is presented below:

Dr. Wayne Spotswood of the ICRC

Remedial Agreement (not Public)

In ordering a Remedial Agreement, the ICRC has determined that the issues identified during its investigation are of low risk to the public. The ICRC has satisfied itself that the physician only needs self-directed education in order to address the issues identified. The criteria for such decisions are:

- Low risk;
- No significant history; and
- The physician agrees to education and to be reassessed.

In such cases, the ICRC may advise of types of educational resources available, including relevant CPSO policies. Which type of education the physician completes is solely up to the physician, but the ICRC's decision letter will indicate the availability of one of the College's staff medical advisors to assist in developing an educational plan, if the subject physician wishes such assistance. The ICRC will determine the type and timing of reassessment.

Undertakings (Public)

In accepting an undertaking, the ICRC has determined that the issues identified during its investigation are of either moderate or high risk to the public.

An undertaking is a binding and enforceable promise from the member to the College. For example, a doctor may enter an undertaking to restrict his or her practice when there is a concern about that practice area and the physician is prepared to practise differently – or not practise at all – and the public is protected. The undertaking sets out a condition or practice restriction (the doctor will not prescribe narcotics and controlled drugs, for example).

If the ICRC determines that a physician's identified issues can be addressed with College oversight

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(supervision) of some aspect of his or her practice, without practice restrictions, the ICRC can accept an undertaking. ICRC may decide to do this when:

- there is moderate risk;
- the physician agrees to clinical supervision; and
- the physician agrees to make the undertaking public.

The ICRC panel in such a case would determine the level of clinical supervision and education (if required) and determine the type and timing of reassessment and frequency of progress reports.

In other higher-risk cases, the ICRC may determine that a physician needs to restrict his or her practice in some respect, or must not be the most responsible physician when providing care to patients.

Physicians may also address high-risk issues by giving undertakings to cease to practise medicine until a condition is met, or to resign their licence and never apply for reinstatement in Ontario or apply for a licence in another jurisdiction. These undertakings have previously been posted on the public register and will continue to be made public.

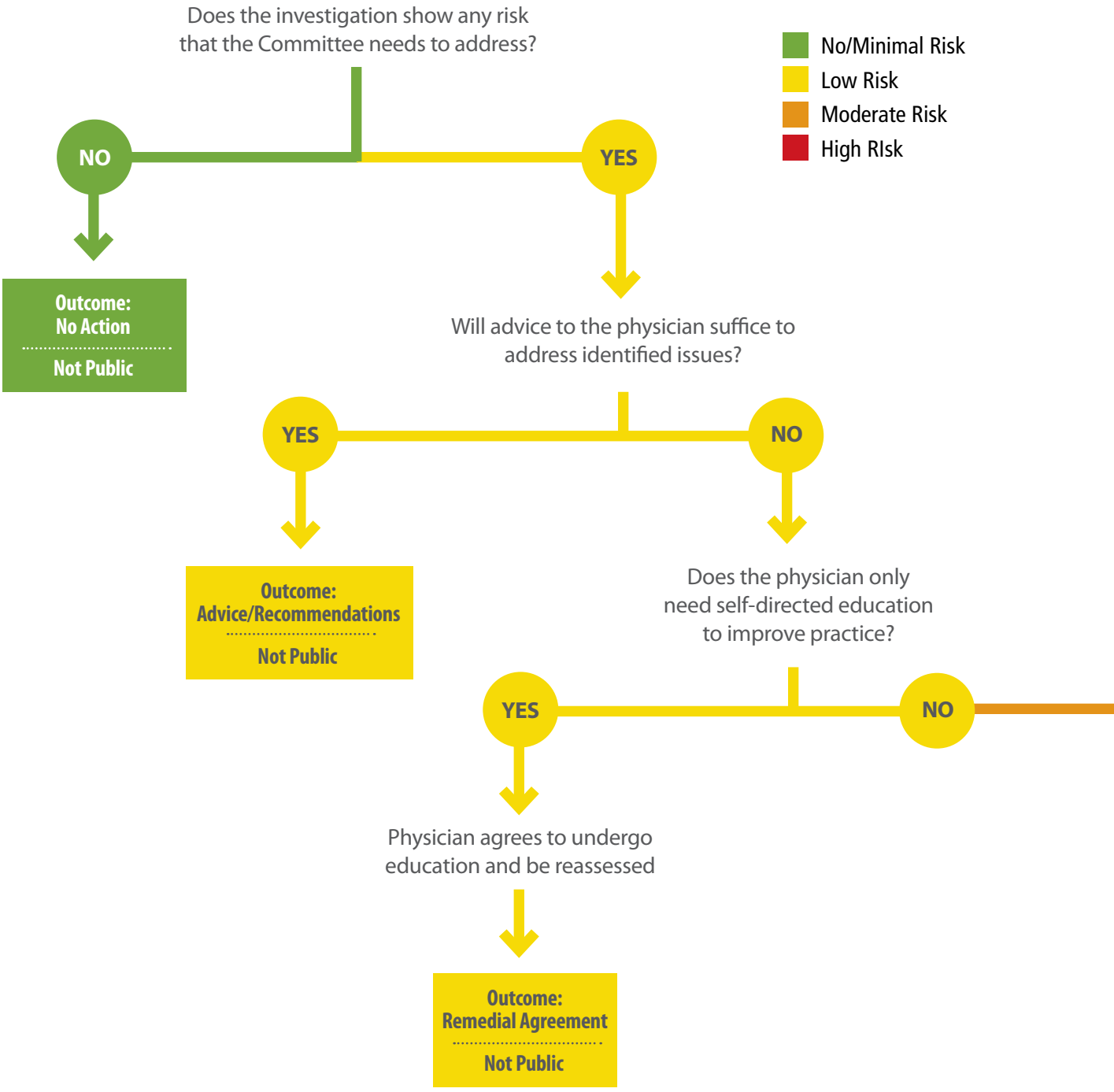
If an undertaking cannot address the issues raised in the ICRC's view, it is not accepted and the ICRC determines what action is appropriate in the circumstances. MD

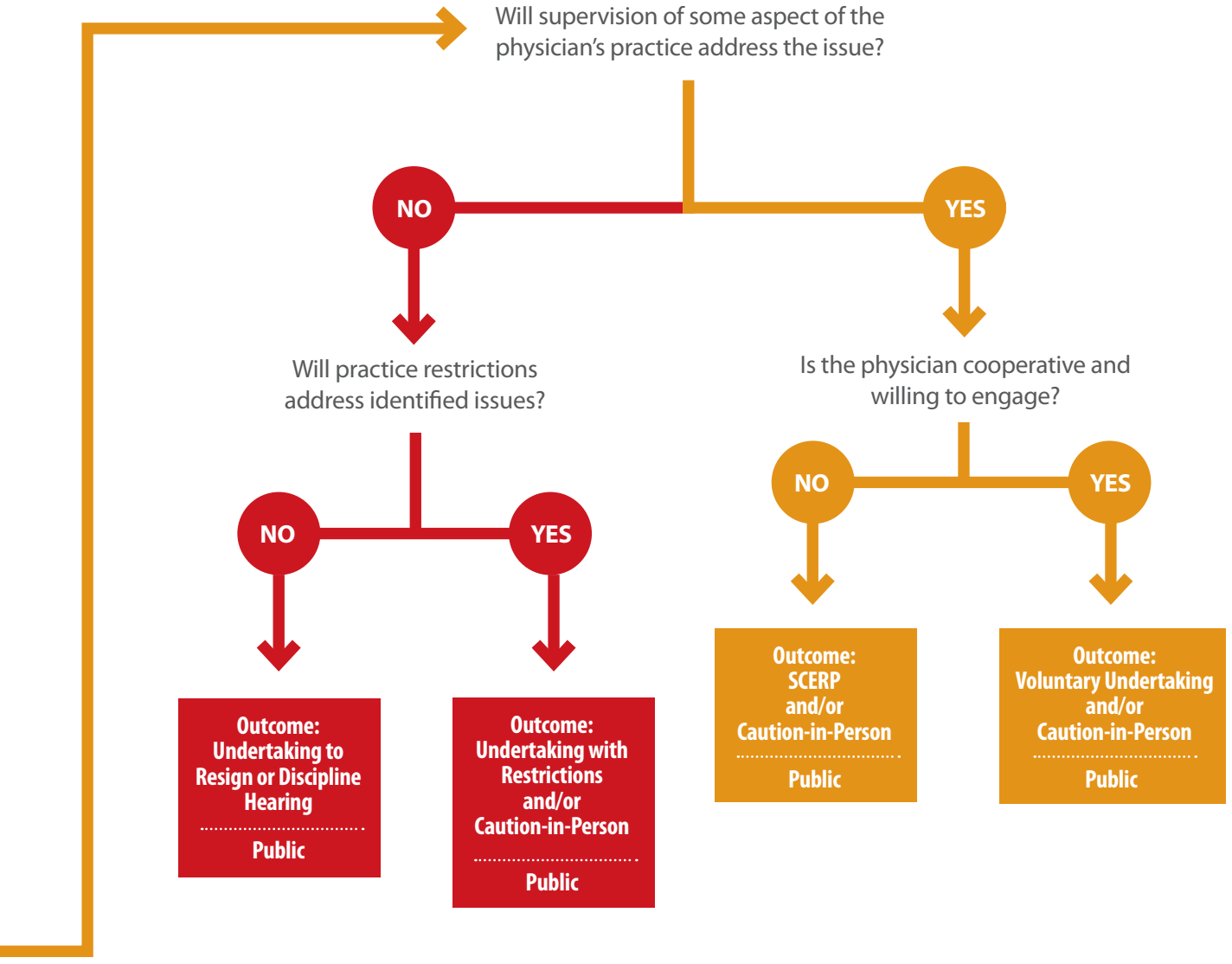
Draft Principles

The draft principles on page 20 articulate the College's approach to sexual abuse matters with content informed by the College's mandate, the College' policy and Council discussion.

Please let us know what you think of these principles in our consultation at **www.cpso.on.ca** You can also email us your opinion at **sexabuseprinciples@cpso.on.ca**

Consideration of clinical complaints: How we arrive at different outcomes





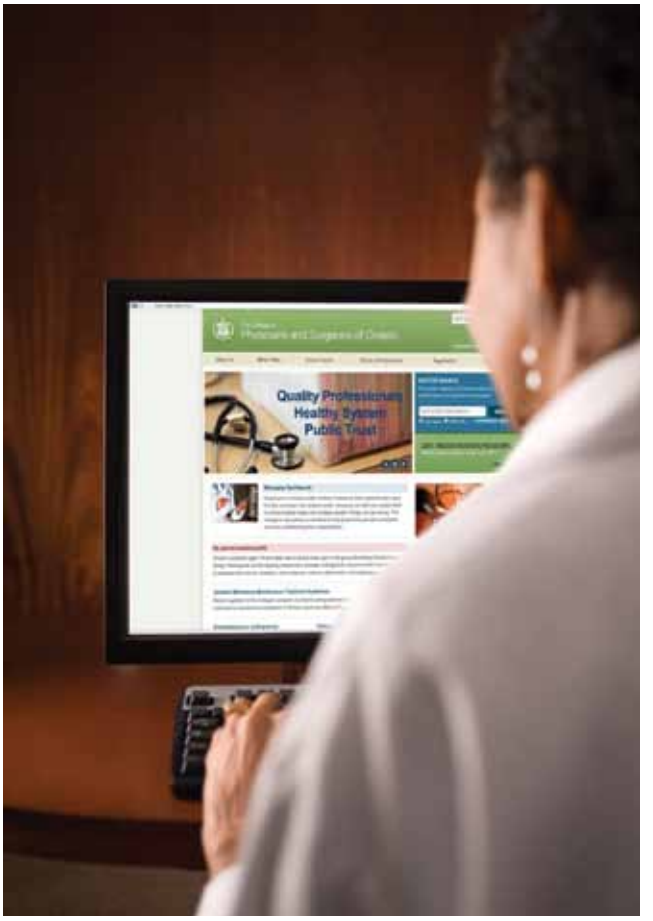
When evaluating clinical cases, the Inquiries, Complaints and Reports Committee (ICRC) will use the risk posed to patients as the main measure to distinguish between those cases that result in outcomes that are public and those that result in non-public outcomes.

The decision tree above assists the ICRC in evaluating the degree of risk posed in cases.

What is not represented in the decision tree, however, are those cases in which a lack of professionalism, cooperation or insight forms a part of the concern. Physicians who yell at colleagues, are rude to patients, bill inappropriately or put themselves in a conflict of interest may be exhibiting behaviour for which censure is warranted. If the ICRC is of the view that the behavioural issue is significant, the ICRC may order a caution-in-person or refer allegations to the Discipline Committee, both of which are public outcomes.

We will provide more information about the ICRC's evaluation of professionalism/conduct issues in the next issue of *Dialogue*.

What is not on the public register



Transparency means different things to different people.

Some people think it means that nothing should be kept confidential and that all information should be available.

We don't believe that should be the case. We believe that any information – whether it is about processes, outcomes or physicians – provided to the public should enhance public confidence, and be balanced with consideration of fairness and respect for each physician's privacy.

And, therefore, while we have put more information on the public register, some information remains confidential. The prevailing reason is that we don't believe that it serves the public interest to post the information on the public register. Here is a further explanation:

There is some information that if made available would breach a physician's personal privacy i.e., **birth date, email address, home address, personal health information**. For that reason, we believe it should remain confidential.

A guiding principle of the Transparency Initiative is the recognition that the greater the potential risk to the public, the more important transparency becomes. Council translated that principle into action by making such Inquiries, Complaints and Reports Committee (ICRC) orders as cautions-in-person and directions to complete Specified Continuing Educations or Remediation Programs (SCERPs) publically available. Information about the most serious behaviour or clinical competence concerns have been available to the public as required by the *Regulated Health Professions Act* for many years.

We believe that those matters reviewed by ICRC which receive a lower level disposition – i.e., **no action required, advice/recommendation to the physician, or remedial agreements** - should not be posted on the public register. In making its decision for a lower level disposition, the ICRC has satisfied itself that there are no concerns with the physician's care or conduct or the concerns were of a nature that posed little or no risk to the public. This decision is grounded in the Transparency Initiative's principle that any information provided should enhance the public's ability to make decisions. Members of the public have told us that they want information about the most important issues, and they want it to be brief.

Education is a critical component of public protection and the best method to reduce the likelihood that past conduct/problems will be repeated. And improving the performance of individual physicians benefits all their patients. Making public the fact that a physician is taking an educational course to improve performance or posting the outcome of a peer assessment may be perceived as punitive and diminish their educational effectiveness. It could also lead to a reduced willingness for physicians to acknowledge problems and significant delays in process, including the potential to delay important educational interventions.

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Patient safety literature shows that acknowledgement of errors is most likely to occur, and in fact sometimes only occurs, when health professionals have a safe place to identify, discuss and address problems.

We also have determined that the fact of an **investigation** – be it a complaint from the public, an inquiry into a physician's capacity to practise related to their health, or an investigation into a mandatory report or a concern arising from another source – should not be posted on the public register. At this point a decision has not been made, and the College believes it would be premature to provide information about such investigations. Public safety must be achieved while maintaining procedural fairness to physicians.

In some instances, an inability to verify the accuracy of information has led to the decision not to post on the public register. The College does not have the resources to verify the accuracy of a physician's **practice focus**, and thus relies on the physician's specialty designation (if any) that is verified by the national certifying bodies.

Civil lawsuit settlements are also not reported on the public register given that the details of such agreements are not available to the College because they are usually reached in confidence between patients and doctors.

At present, **terms, conditions or limitations that are no longer in effect** are not required by law to be included on the public register and we are not seeking legislative change. The *RHPA* specifies that only the fact of "the terms, conditions and limitations that are in effect on each certificate of registration" is public.

We also do not post on the public register most health-related information that is contained in or related to **undertakings that arise from an incapacity (health-related) investigation**. These undertakings will protect the public by, for example, requiring a physician to comply with a specific treatment regime. If a physician complies with the kinds of requirements contained in an undertaking, then that information will not be posted. Doctors are entitled, just like anyone else, to have their health information remain private. Practice restrictions, however, will be made public even where they arise from health-related concerns. In those instances in which the physician disagrees with the results of an investigation, a referral to the Fitness to Practise Committee will be made alleging incapacity. The doctor has the right to defend ▸▸

How will the information be presented?

So now that Council has decided that cautions and SCERPs will be public, what will these summaries look like on the public register?

The goal in publishing cases summaries of these particular Committee decisions is to make College procedures and outcomes more transparent to the public, so as such it is important that members of the public are able to understand the nature of those decisions. Case summaries are intended to be factual, easy to read and go right to the heart of the issues, including the key findings.

The summaries will reside in the **Other Notices** section, which is on every physician's profile. Each summary will have: an introduction, reference any relevant policies, standards or laws, and an explanation of the ICRC's analysis which led to its disposition.

To provide context, there will be accompanying text to explain to members of the public the nature of Cautions and SCERPs, the investigative process, and the ICRC's role and composition.

"We will continue to evaluate our transparency practices to ensure that members of the public are able to access the kind of information that they need."

against the allegations, should the Committee find that the doctor is incapacitated, however, a summary of the entire order will be posted on the public register.

In summary, for the reasons above, the information below is not on the public register:

- Birth Date
- Email Address, Mailing Address (if not primary practice address)
- Practice Focus
- Quality Assurance Results, i.e. peer assessment finding
- Settlements (civil)
- Investigation (fact of and status)
- Mandatory Reports (fact of)
- ICRC: No Action/Recommendations/Advice/ Remedial Agreement
- Terms, Conditions and Limitations (historical)
- Incapacity matters (pre-referral)
- Incapacity undertakings

Transparency will continue to be a priority for this College. We anticipate that the transparency environment will evolve and in the coming years, we will continue to evaluate our transparency practices to ensure that members of the public are able to access the kind of information that they need. MD

Future Leaders' Day

Nominate a colleague, or yourself, for the opportunity to improve and strengthen your profession.

Do you know a physician who shows initiative, shares knowledge and inspires performance? Are you interested in educational and rewarding experiences that will challenge you and enhance your professional career? Then we want to hear from you!

On Friday, November 20th, 2015 the College will host its 5th annual Future Leaders' Day event in Toronto. We're looking for doctors who want to take a leadership role in medical self-regulation in the areas of peer assessment, clinical preceptorship and Member Outreach, just to name a few.

If you or a colleague you know are interested, send us your nominations! Contact Nawaz Pirani, Outreach/Consultation Coordinator, at 416-967-2600 ext. 765. **The deadline for nominations is August 28th, 2015**, and space is limited to 35 participants.

Don't delay. Space is limited, so apply today or nominate a colleague now!