

August 6, 2015

College of Physicians and Surgeons of Saskatchewan
101-2174 Airport Drive
Saskatoon, Saskatchewan
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RE: Consultation on draft policy on conscientious objection

To whom it may concern:

We write this letter in response to the College of Physicians and Surgeons of Saskatchewan's (CPSS) ongoing consultation on its Policy on Conscientious Objection.¹

As outlined in the draft policy, we welcome the recognition of:

- Physicians' obligation to provide full and balanced health information, referrals, and health services to their patients in a non-discriminatory fashion.
- Physicians' exercise of freedom of conscience to limit the health services that they provide should not impede, either directly or indirectly, access to legally permissible and publicly-funded health services.
- Physicians' exercise of freedom of conscience to limit the services that they provide to patients should be done in a manner that respects patient dignity, facilitates access to care and protects patient safety.

Further, we welcome the policy's outlining of the requirements placed on physicians who decline to provide services on moral or religious grounds. Such requirements include making *arrangements that will allow the patient to obtain the services if the patient chooses*, which would entail meeting with *another physician or health care provider who is available and accessible and who can either provide the health services or refer the patient to another physician or health care provider who can provide the health services* and providing continued care until the new health care provider assumes care for that patient. In providing the referral, the policy requires that the physician not communicate, otherwise behave, in a manner that is demeaning to the patient or the patient's beliefs, lifestyle, choices or values. In emergency situations or when it is not possible to arrange for another physician to provide necessary treatment, the policy requires physicians, if clinically competent, to provide treatment even if providing that treatment conflicts with their conscience or religious beliefs.

While these requirements demonstrate a strong commitment on behalf of the College to align its policy with international professional, technical and accountability bodies, we believe the Policy could be strengthened. Such guidance includes: the International Federation of Gynecology and Obstetrics (FIGO) Ethical Guidelines on Conscientious Objection,² the World Health Organization Safe abortion technical and policy guidance for health systems,³ the Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,⁴ and the work of UN Treaty bodies.

UN treaty bodies have clearly outlined the obligations governments have to ensure that conscientious objection is regulated in a manner that clearly enshrines the duties of health professionals and holds them effectively accountable to honouring these

¹ The submission was developed by Action Canada for Sexual Health and Rights, Sexual Health Centre of Saskatoon and Planned Parenthood Regina.

² <http://www.glowm.com/pdf/English%20Ethical%20Issues%20in%20Obstetrics%20and%20Gynecology.pdf>

³ http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/

⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement>



duties.⁵ Treaty bodies have held that by failing to address and mitigate a barrier to accessing necessary and often life-saving health services, the lack of regulation on conscientious objection and the requirement to provide accurate and unbiased information about medical options, effective referrals and urgent or emergency care, constitutes a violation of international human rights law, including the right to health.⁶

The right to the highest attainable standard of health is the fundamental right of every individual and includes access to timely, acceptable and affordable health care of appropriate quality. Sexual and reproductive health is recognized by international human rights bodies as integral to the right to health.⁷ Provinces, in order to qualify for the cash contributions from the Government of Canada, must comply with the Canada Health Act, which obligates provinces to provide universal coverage to all insured persons for all medically necessary hospital and physician services.⁸ Abortion, specifically, is recognized as a medically necessary procedure and services must therefore be fully accessible in hospitals and in clinics.⁹ The College has a duty to ensure that all physicians in the province meet the criteria outlined in the Act by guaranteeing that individuals have access to abortion services as part of a comprehensive package of sexual and reproductive health services and information, without barriers or delays. Meeting the accessibility requirement outlined in the Act, as well as general equality legislation, therefore requires the regulation of conscientious objection in a manner that is consistent with the guidance of international bodies.

In strengthening consistently with these international guidance frameworks, Action Canada for Sexual Health and Rights, Sexual Health Centre Saskatoon and Planned Parenthood Regina recommend that the College consider integrating the following issues so as to further align the Policy with international best practice:

Further clarity regarding the referral process, ensuring that the patient is referred to another practitioner who is willing and trained to provide the service and who is working within the same health facility or another easily accessible health facility.¹⁰

As it stands, the draft policy requires the objecting physician to refer the patient to an available and accessible physician able and willing to perform the sought service. However, in order to be consistent with the standard set within the International Federation of Gynecology and Obstetrics (FIGO) guidelines on conscientious objection, the policy should place explicit requirements on the physician to seek an easily accessible physician, with a preference for a referral to another physician working within the same health facility. Such a requirement will assist in ensuring that referrals are effective, which includes being timely.

Sexual and reproductive health services, which include abortion services, are among the services that physicians are most frequently unwilling to provide. This reality impacts other barriers to abortion services, including the limited availability of such services across the country. Only 1 in 6 hospitals in Canada offers abortion services. Saskatchewan is said to be one of the most difficult provinces in Canada to access abortion services.¹¹ Access to abortion services outside of Regina and Saskatoon is severely limited, resulting in significant challenges for those living outside of these urban centres, which result in delays in

⁵ CEDAW Committee Concluding Observations: Croatia, para. 117, UN Doc. A/53/38/Rev.1 (1998); Italy, para. 360, UN Doc. A/52/38/Rev.1 (1997); United Nations. 2011; World Health Organization. 2012. *Safe abortion: technical and policy guidance for health systems*, 2nd ed., p. 89; Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/66/254. New York, UN General Assembly; para 24 and para 65 (m).

⁶ CEDAW Committee, Concluding Observations: Croatia, para. 117, UN Doc. A/53/38/Rev.1 (1998); Italy, para. 360, UN Doc. A/52/38/Rev.1 (1997); Poland, para. 25, UN Doc. CEDAW/C/POL/CO/6 (2007).

⁷ As recognized by the United Nations Human Rights Council and the Committee on Economic, Social and Cultural Rights.

⁸ Canada Health Act (R.S., 1985, c. C--6), online http://laws.justice.gc.ca/en/showdoc/cs/C--6/boga:3::bo-ga:s_4?page=3

⁹ Eggertson, Laura. Abortion services in Canada: A patchwork quilt with many holes. *CMAJ*. 2001 March 20; 164(6): 847–849. Online <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC80888/>

¹⁰ International Federation of Gynecology and Obstetrics. 2005. *Ethical Guidelines on Conscientious Objection*, pp. 25-27; World Health Organization. 2012. *Safe abortion: technical and policy guidance for health systems*, 2nd ed.. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, other health-care professional, or agency.

¹¹ <http://www.thestarphenix.com/health/Access+abortion+unequal+Saskatchewan/11110098/story.html>



access to services. In communities where there is generally limited access to health care providers, patients seeking to terminate a pregnancy may not have access to a health service provider willing to provide an abortion and therefore have to travel outside the community, which is particularly difficult for adolescents and young people or those with limited access to resources. In the case of time-sensitive procedures, such as abortion services, the requirement that referrals be made in a timely manner to the nearest available service provider is particularly crucial, as is the requirement that such a referral be made as a matter of ethical duty by any primary health care professional seeing a patient wishing to access abortion services.

The requirement that referrals be made in a timely manner is particularly relevant in the context of patients seeking abortion services, given the time sensitive nature of the procedure. Most abortions are performed within the first twelve weeks of pregnancy. However, there are fewer physicians who are trained to provide abortion services for patients seeking services after twelve weeks. In such cases, those seeking abortion services must often travel long distances and incur significant expenses. This creates additional barriers to a patient's ability to access timely abortion services. This is especially significant as it has been widely reported that where barriers to abortion services exist, including access to timely care, those experiencing unwanted pregnancy either delay seeking services or resort to unsafe or clandestine abortion, which often result in negative health outcomes.¹²

Attention must also be given to patients who experience stigma and/or discrimination in the context of the referral plan. For example, in communities with limited health care providers, patients seeking certain services may not have access to a provider willing to provide the service, forcing the patient to travel outside of the community – an especially significant barrier for young people or those with limited access to resources. The process for referrals in such cases must cover costs associated with travel and provide necessary supports for those with limited access to transportation and other resources. They must also be conducted in a confidential manner, with full respect to the privacy of the individual seeking the service.

The barrier created by unregulated or improperly-regulated conscientious objection also compounds or exacerbates other barriers to accessing sexual and reproductive health services and must be addressed.

Clarity regarding the measures in place to address violations of the policy.

Currently, the draft policy does not set out the measures that the College will take in cases where a physician violates their duties in a single instance or repeatedly. If the College intends to use its regular disciplinary procedures to sanction violations of its policy on conscientious objection, this should be clearly stated in the policy for those it regulates and to members of the public, especially those whose health care is jeopardized by violation of the policy. Specific procedures to hold physicians accountable to this policy must be put in place. Such accountability procedures must be transparent, timely, efficient and independent and include specific sanctions for physicians found to be in violation of the policy.

Recognizing existing barriers and the limited number of physicians providing abortion services, fertility treatment and other sexual and reproductive health information and services, investigations into violations of the policy must consider the resulting impact should there be physicians who are found to be in violation of the policy. In such cases, the College must not only hold physicians accountable to the policy but also consider the impact of violations of the policy as an exacerbating factor in determining the sanction for a physician.

Ensure that effective mechanisms are in place to track and monitor instances where physicians have resorted to conscientious objection.

Apart from ensuring accountability when physicians do not comply with the policy, the College should also put in place mechanisms that would monitor the exercise of conscientious objection even when the policy is not violated.

¹² When individuals resort to unsafe methods, the impact on health can be significant. According to Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (UN document, A/66/254), such impacts can include: serious mental health issues, the physical effects associated with the ingestion of toxic solutions, the placement of foreign bodies into the uterus, and severe trauma, among others.



This would ensure that the practice remains a personal decision and is not a reflection of a broader institutional objection (where institutions may not be allowing physicians to provide certain services). In monitoring such instances, the College can detect patterns of objection in a way that could reveal institutional involvement through biased recruitment practices, service gaps due to conscientious objection (even when physicians comply with the policy) or the enforcement of moral expectations on physicians. If the College is to become aware of incidences of institutional objection, it must make the Province aware of this information in order to allow it to take appropriate action. This recommendation is in line with the recommendations of the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (CESCR) and UN the Committee on the Elimination of Discrimination Against Women (CEDAW) in response to violations of women's sexual and reproductive rights in cases where physicians had refused to provide health services on moral or religious grounds.

ACTION CANADA FOR SEXUAL HEALTH & RIGHTS is a progressive, pro-choice charitable organization committed to advancing and upholding sexual and reproductive health and rights in Canada and globally. For more information visit www.sexualhealthandrights.ca

SEXUAL HEALTH CENTRE SASKATOON (formerly Planned Parenthood Saskatoon Centre) is a youth-friendly, pro-choice charitable organization. We serve Saskatoon and the surrounding community, providing sexual health information and resources, low-cost birth control, pregnancy options counseling and support, and doctor referrals. <http://www.sexualhealthcentresaskatoon.ca>

PLANNED PARENTHOOD REGINA is a Proactive, Pro-choice organization committed to the promotion of sexual health and wellbeing by providing education, resources, services, and referrals for the community. www.plannedparenthoodregina.com

