Controversy over doctors' right to say "no"

Religious groups, doctor's organizations, ethicists and abortion rights advocates are raising concerns around the review of an Ontario policy that outlines, among other things, physicians' right to object to patients' requests for services on moral grounds.

The College of Physicians and Surgeons of Ontario's *Physicians and Ontario Human Rights Code* is up for its five-year review, with both public and expert opinion being sought.

On one side of the spectrum, faith groups and especially Catholic organizations are asking that the current policy — which allows physicians to opt out of nonemergency services they conscientiously object to — not be amended.

Although the policy covers potential objections, the ones most discussed in the media relate to abortion referrals or prescribing birth control.

"A person should not be morally coerced to do something that he or she truly believes is the wrong thing," says Moira McQueen, executive director of the Canadian Catholic Bioethics Institute. When asked whether the same rights should apply to a solo physician in a remote community, McQueen said that "abortion and contraception are not life-threatening issues," and where a pregnancy threatens a woman's life, abortion would become an emergency service.

On the other side of the debate are organizations like the Abortion Rights Coalition of Canada. "If you're a family doctor or [obstetrician–gynecologist], you have to expect that a lot of what you're going to be doing is family planning," says spokesperson Peggy Cooke, regarding birth control objections. "If you don't want to practise medicine, don't be a doctor."

The issue isn't so black and white, according to Barbara Hall, the Chief of the Ontario Human Rights Commission. Physicians' rights to religious or moral beliefs can be curtailed when

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they infringe on others' rights, such as the right to access services without discrimination, says Hall. The college's policy "could clarify that limiting services based on moral or religious grounds could be *prima facie* discrimination."

For example, a physician who provides birth control to married women but objects to providing contraception to unmarried women may be found by a tribunal to be discriminating based on marital status.

Hall stresses the legal obligations of service providers around personal objection are often decided on a case-by-case basis. "It really comes down to the context."

Many stakeholders argue the college's new policy should include a physician's duty to refer to another doctor who will provide the service — something that isn't stipulated in the current policy.

Among these stakeholders is the Conscience Research Group, a Dalhousie University and University of Western Ontario–based ethics and reproductive health law research group that submitted a "model policy" for consci-

entious objection (published in *Health Law Review* in March 2012).

Carolyn McLeod, principal investigator of the organization, says the Ontario college's current policies relating to conscientious objection are contained in at least three separate and confusing policies. For example, the policy on ending the physician–patient relationship suggests that physicians must provide a referral or reasonable notice when discontinuing service to a patient, which, she argues, contradicts the College's Human Rights Code policy, which doesn't require a referral or notice.

Provincial regulations regarding the duty to refer in the case of a personal objection tend to be vague and vary across Canada. For instance, the College of Physicians and Surgeons of New Brunswick states that referral in the case of moral objection is "not an obligation" but "preferred practice." Quebec's line on conscientious objection is the most stringent: physicians are not only required to refer patients but also to inform them of the "possible consequences of not receiving such professional services."

Although the Ontario Medical Association (OMA) was largely unwilling to outline its position on the duty to refer, OMA President Dr. Ved Tandan wrote in an email that “If a physician is unable to provide the care a patient requests, then he or she should facilitate a referral to another provider.”

The Conscience Research Group’s submission to the Ontario College goes one step further, contending that physicians should be required to treat a patient even against their moral beliefs “when a referral to another health care provider is

not possible without causing a delay that would jeopardize the patient’s health.”

Consultation ongoing

Nearly 1300 comments were posted on the Ontario college’s public consultation forum by the Aug. 5 deadline. Most staunchly supported conscientious objection because, according to Cooke, Catholic groups have been more mobilized more than any other stakeholders around the issue.

The College’s spokesperson Prithi Yelaja said all the public comments

will be considered along with legal and literature research, and submissions from invited ethicists and religious, advocacy, patient and physician groups.

While arguing “it’s good to have a fairly open process that allows people to be heard,” Hall notes that “if rights were determined based on majority, then the rights of many minorities may be denied.” — Wendy Glauser, Toronto, Ont.

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