Validity of Physician Duty to Provide Effective Referrals to Patients Upheld

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A new decision affirms that physicians who are unwilling to deliver care on moral or religious grounds are obligated to provide an effective referral to another health-care provider.

In a decision released on January 31, 2018,1 the Divisional Court of Ontario declared the constitutional validity of the effective referral requirements contained in two policies of the College of Physicians and Surgeons of Ontario ("CPSO").These policies require physicians who are unwilling to deliver certain elements of care on moral or religious grounds to provide an effective referral to another physician, health-care professional or agency. Known examples of such elements of care include medical assistance in dying ("MAiD"), abortions, contraception, fertility treatments and transgender treatments. The full text of the judgment is available here.

The Effective Referral Requirement

The effective referral requirement is an individual physician's obligation; this case specifically dealt with the obligation of physicians in providing medical services they may object to on moral or religious grounds. This case does not address the obligation of hospitals to facilitate or provide effective referrals, although the role that they can offer in facilitating the referral process was acknowledged.

An effective referral is one that is made in good faith, to a non-objecting, available, and accessible physician, health-care professional or agency, and importantly, is made in a timely manner.

Court Decision

Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2018 ONSC 579

In this case, the Applicants argued that the effective referral requirements infringe a physician's right of religious freedom; specifically, that providing a referral constitutes complicity or participation in the provision of medical services to which they object. The Court acknowledged that the CPSO's policies did infringe the rights of religious freedom of some individual physicians, but in a detailed analysis, went on to find that such

infringement was reasonable and justifiable. The Court found that the policies are in fact a successful attempt to balance the religious freedom and equality rights of medical professionals with the right of patients to equitable access to patient-centered care under our publicly-funded health care system.

The Court stressed the importance of the role that physicians play as "gatekeepers" to health-care services in Ontario, stating that they have an obligation to ensure that their moral and religious beliefs do not hinder their patients' ability to receive health-care services. The role of physicians as gatekeepers, together with their obligations of non-abandonment and to put the interests of their patients ahead of their own, were significant factors in the Court's decision.

The Court noted that the CPSO policies and guidelines do in fact accommodate the concerns of many physicians who have religious or conscientious objections to the provision of certain medical services like MAiD, while also recognizing the effect on a small number of physicians whose professional lives may need to change as a result.

It was recognized that objecting physicians practicing in a hospital setting are likely to be in a better position to provide an effective referral as compared to physicians who practice as sole practitioners. The Court identified patients in remote communities and vulnerable members of society as being at highest risk of suffering from inequitable access to health care in the absence of a proper referral system.

Takeaways

This court decision upholds the *status quo* for all health-care providers, both institutional and individual, as the CPSO policy of effective referral has been in place for many years. It also remains the case that the law does not impose a requirement that a hospital must provide any particular service. With the additional facet of the legality of MAiD, however, it serves to reinforce the importance of all providers, both willing and non-willing, working together as much as possible to ensure that the burden of a conscientious or religious objection is not placed on patients, but managed within the broader health-care system.

1 *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2018 ONSC 579

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