THE CANADIAN BAR ASSOCIATION
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John R. Williams, Ph.D.
Director of Ethics
Canadian Medical Association
1867Alta Vista Dr.
Ottawa ON K1G 3Y6

Dear Dr. Williams,

Thank you for inviting comments from the Canadian Bar Association (CBA) on proposed amendments to the Canadian Medical Association's (CMA) *Code of Ethics*. I am pleased to respond on behalf of the CBA's Health Law Section (CBA Section), comprised of lawyers from each province and territory in Canada with particular interest and expertise in the area of health law.

Under *Responsibilities to the Patient*, *General Responsibilities,* is the direction, "Do not provide medical services to individuals who are not your patients". We question the underlying rationale behind this statement. It is not clear which individuals are of concern, nor what ethical issues are at stake. The statement appears inconsistent with rules 9 and 11, which respectively state, "Provide whatever appropriate assistance you can to any person with an urgent need for medical care" and "Limit treatment of yourself or members of immediate family to minor or emergency services... ".

In *Initiating and Dissolving a Patient - Physician Relationship,* it is proposed that the prohibition against discrimination in providing medical services be amended to use the word "ability" rather than "disability". As most anti-discrimination policies and human rights legislation use the language of "disability", we recommend that this language also be used in the CMA *Code*.

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Under *Communication, Decision-Making and Consent*, rule 19 would require physicians to "Respect the intentions of an incompetent patient as they were expressed through a legally valid advance directive or proxy designation before the patient became incompetent". The CBA Section is concerned that this statement does not adequately consider the wishes of a competent patient expressed orally to someone other than the proxy, nor even other statements committed to writing but not translated into a "legally valid advance directive". Assuming the intention is to determine as accurately as possible the intentions of the patient while competent, there is value to permitting consideration of a broader range of expression than that currently suggested in rule 19.

Rule 20 states that "When the intentions of an incompetent patient are unknown and when no statutory mechanism for making treatment decisions is in place, render such treatment as you believe to be in accordance with the patient's values or, if these are unknown, the patient's best interests". The rule should also allow for consideration of established common law principles or institutional policies or practices if a patient's values and wishes are unknown. Recognizing only a "statutory mechanism" is unduly narrow and restrictive.

We thank you for seeking our views, and hope that these suggestions will be helpful in your task of amending the CMA *Code of Ethics*.

Yours truly,

Original signed by Gaylene Schellenberg for F. Bergin

Fiona Bergin
Chair
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