#MEDICINETOO

November 16, 2020

Re: Policy Feedback from #MedicineToo

Thank you for inviting #MedicineToo to provide feedback on the CPSO's draft policy, *Professional Responsibilities in Medical Education*. #MedicineToo offers the following recommendations.

Legal Framework

- An unlawful learning environment undermines patient care and erodes the public's trust in the medical profession. Medical education must be delivered in a manner that respects the full spectrum of legal protections guaranteed to learners under the law, including (as applicable):
  - Ontario Human Rights Code
  - Ministry of Training, Colleges, and Universities Act
  - Freedom of Information and Protection of Privacy Act
  - Occupational Health and Safety Act
  - Employment Standards Act
  - PARO-CAHO Collective Agreement
- Physicians who choose to participate in the delivery of medical education must fulfill their legal and professional obligations to learners. Compliance with institutional policies may be insufficient for this purpose and physicians may need to familiarize themselves with the aforementioned laws.
- Where university or hospital policy conflicts with protections guaranteed to learners under the law (or under the PARO-CAHO Collective Agreement), legal protections always prevail over policy.
- Reprisal, discrimination, and harassment of learners is **prohibited by law** — even if it takes place outside of the learning environment, or while the learner is on leave or away on elective.
- Harassment is defined as: *engaging in a course of vexatious comment or conduct against a learner that is known or ought reasonably to be known to be unwelcome*.
- Discriminatory harassment is: harassment that is in relation to one of the following **protected characteristics** (real or perceived): age, disability, family and marital status, race, religion, or sex.
  - Subjecting learners of a protected group (e.g. IMGs) to **stricter standards** is discriminatory harassment even if no discriminatory comments are made and certain members of the group are singled out for approval (programs where IMGs must "keep their head down" to succeed).
  - Discriminatory comments about patients create a **poisoned work environment** for learners.
- Unlike other discriminatory harassment, sexual harassment can be non-vexatious in nature:
  - Hostile sexual harassment is: a course of vexatious comment or conduct on the basis of sex (i.e., biological sex, pregnancy, gender identity, gender expression, or sexual orientation).
  - Quid pro quo sexual harassment involves unwelcome (but not necessarily hostile) overtures in the context of a **power differential**: *making a sexual solicitation or advance where the person making it is in a position to confer, grant or deny a benefit or advancement to the learner and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.*
- Discrimination is broader than harassment; it encompasses any **adverse effect** on the learner resulting from **differential treatment**, **failure to prevent and remedy harassment,** or **failure to accommodate** a trainee in connection with any of the aforementioned protected characteristics.
- Unlawful discrimination and harassment can be subtle, indirect, covert, and even **unintentional**.

- Reprisal is *any action or threat intended (at least in part) as retaliation or punishment* for a learner's (real or perceived) attempt to enforce their own or another's legal rights (e.g., disclose, discuss, report, publicize, advocate against, object to, or refuse to accept mistreatment of self or others).
- **Academic reprisal** typically involves undermining learners by way of the following **tactics**: forward feeding, excessive scrutiny, referral to "coaching" or "physician wellness" services, and spurious accusations of unprofessional, uncooperative, disruptive, or "defensive" behaviour.
- Imposing academic penalties may amount to unlawful discrimination or reprisal, even where it is approved by the RPC in accordance with policy and accepted by the learner without any appeal.
- **Any organization or individual found to have facilitated, permitted, or played a role in the reprisal may be held legally responsible for condoning discrimination** — blindly "following orders" to "implement decisions" by way of "routine procedures" is not a viable legal defense.

Recommendations

- Paragraph 14 of the draft policy requires physicians to report learners to the medical school or hospital for failing to "behave professionally" in their interactions with senior physicians. Interestingly, the policy omits any requirement to report non-trainee physicians for unprofessional or inappropriate behaviour with colleagues, learners or patients. #MedicineToo warns the CPSO that this **double standard** reinforces the widespread impression among learners that senior physicians may misbehave with impunity, whereas learners are held to the strictest standards of professional behaviour. Moreover, senior physicians who harass learners often falsely accuse their victims of unprofessional behaviour to intimidate them into silence and/or to preemptively discredit them to administrators, who may be eager to facilitate such reprisal in their zeal to cover up the harassment and discourage other learners from "causing problems" in the future.
- Accordingly, paragraph 14 **exposes victims to further danger by inviting retaliation**. It is #MedicineToo's position that this problematic wording **must** be eliminated from the CPSO's Policy. At minimum, we **insist** that the following words be struck:

  14. Physicians (including MRPs, supervisors and ~~**trainees**~~) involved in the education and/or training of medical students and/or trainees must report to the medical school and/or to the health-care institution, if applicable, when a medical student and/or trainee:

  a. exhibits behaviours that would suggest incompetence, incapacity, or abuse of a patient;

  b. fails to behave professionally and ethically in interactions with patients and their families, ~~**supervisors, and/or colleagues; or**~~

  ~~**c. otherwise engages in inappropriate behaviour.**~~
- Paragraphs 10-11 require trainee supervisors to intervene if they witness a senior physician mistreating another learner and provide "support and direction" to the learner victim. This **requirement to intervene exposes trainees to danger of violence, harassment, and reprisal from the senior physician** (and from university or hospital leadership). This is an unrealistic, unfair, and unsafe burden to place on medical residents and fellows, who may themselves be victims. #MedicineToo strongly suggests limiting this responsibility to non-trainee physicians and administrators. We also suggest striking the phrase "disruptive behaviour" from paragraph 11.
- We suggest adopting the IPCO's recommendations for paragraph 13 and specifying that no learner shall be penalized for failing to disclose a relationship of such nature with their supervisor.
- To protect the safety and dignity of learners, paragraph 12 must prohibit medical schools from investigating allegations of an intimate relationship between a supervising physician and a learner **unless the learner consents to the investigation**. Penalizing a learner for refusing to disclose information about their sexuality or sex life is unlawful even if the medical school finds out that the learner has been sexually harassed (in January 2017, O. Reg 131/16 granted Ontario students, including residents, special privacy protections in this regard) and soliciting such information from witnesses and/or disseminating it (even if only on a "need to know basis") may amount to sex-based discrimination and hostile sexual harassment of the learner by the medical school.

Professional Responsibilities in Medical Education

Policies of the College of Physicians and Surgeons of Ontario (the "College") set out expectations for the professional conduct of physicians practising in Ontario. Together with the *Practice Guide* and relevant legislation and case law, they will be used by the College and its Committees when considering physician practice or conduct.

Within policies, the terms 'must' and 'advised' are used to articulate the College's expectations. When 'advised' is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice.

Definitions

Undergraduate medical students ("medical students"): Students enrolled in an undergraduate medical education program. They are not members of the College of Physicians and Surgeons of Ontario.[1]

Postgraduate trainees ("trainees") [2]**:** Physicians who hold a degree in medicine and are continuing in postgraduate medical education. Commonly referred to as "residents" or "fellows" in most teaching sites. Trainees often serve in the role of supervisors but do not act as the most responsible physician for patient care. If trainees are supervisors, then the provisions of the policy regarding supervisors apply to them.

Most responsible physicians ("MRP"): Physicians who have overall responsibility for directing and coordinating the care and management of a patient at a specific point in time, regardless of the amount of involvement that a medical student or trainee has in that patient's care.

Supervisors: Physicians who have taken on the responsibility to observe, teach, and evaluate medical students and/or trainees. The supervisor of a medical student or trainee who is involved in the care of a patient may or may not be the most responsible physician for that patient.

[1] The *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (*RHPA*) permits students to participate in the delivery of health care by allowing them to carry out controlled acts "while fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession".

[2] The majority of trainees in Ontario hold a certificate of registration authorizing postgraduate education, but regardless of the class of certificate of registration held, postgraduate trainees cannot practise independently.

Policy

Identification of MRPs, Trainees and Medical Students

1. MRPs, supervisors, and/or trainees **must** ensure that patients[3] are informed:
    a. of the name and role of the MRP along with an explanation that the MRP is ultimately responsible for their care;
    b. about the medical students and/or trainees involved in their care, their roles on the health-care team and the fact that medical students are not physicians; and
    c. about the fact that patient care in teaching hospitals and other affiliated sites where medical education occurs relies on a collaborative, team-based approach.[4]

Supervision of Medical Students

2. MRPs and/or supervisors[5] **must** provide appropriate supervision to medical students. This includes:
    a. determining a medical student's willingness and competency to participate in patient care;
    b. closely observing interactions between medical students and patients to assess:
        i. a medical student's performance, capabilities, and educational needs;
        ii. whether a medical student has the requisite competence (i.e., knowledge, skill and judgment) to safely participate in a patient's care without compromising that care; and
        iii. whether a medical student demonstrates the requisite competence (i.e., knowledge, skill, and judgement) and expertise to interact with patients in circumstances where the supervisor is not present in the room;
    c. meeting at appropriate intervals with a medical student to discuss their assessments of patients and any care provided to them;
    d. ensuring that a medical student only engages in patient care based on previously agreed-upon arrangements with the MRP and/or supervisor;

[3] Throughout this policy, where "patient" is referred to, it should be interpreted as "patient or substitute decision-maker" where applicable.
[4] Medical students could also provide the information contained in this provision.
[5] A trainee may also be a supervisor.

e. reviewing and providing feedback on a medical student's documentation, including any progress notes written by a student;
f. using their professional judgment to determine whether to countersign a medical student's documentation;
g. countersigning all orders written under the supervision or direction of a physician;[6] and
h. managing and documenting patient care, regardless of the level of involvement of medical students.

Supervision of Trainees

3. MRPs and/or supervisors **must** provide appropriate supervision to trainees. This includes:
    a. being familiar with individual learning plans and competencies, and program objectives;
    b. regularly evaluating a trainee's clinical competence and learning needs, and assigning graduated responsibility accordingly;
    c. determining that a trainee has the requisite competence (i.e., knowledge, skill, and judgment) to participate in a patient's care;
    d. ensuring that relevant clinical information is made available to a trainee;
    e. communicating regularly with a trainee to discuss and review their patient assessments, management, and documentation of patient care in the medical record; and
    f. directly assessing the patient as appropriate.

4. Trainees **must**:
    a. only take on clinical responsibility in a graduated manner in step with their demonstrated growing competency, although never completely independent of appropriate supervision;
    b. communicate with a supervisor and/or MRP and document:
        i. in accordance with the guidelines of their postgraduate program and/or clinical placement setting;
        ii. their clinical findings, investigations, and treatment plans;
        iii. when there is a significant change in a patient's condition;

[6] Prescriptions, telephone or other transmitted orders may be transcribed by the medical student but must be countersigned.

iv. when the trainee is considering a significant change in a patient's treatment plan or has a question about the proper treatment plan;
v. about a patient discharge;
vi. when a patient or family expresses concerns; or
vii. in an emergency or when there is significant risk to the patient's well-being; and

c. identify the MRP or supervisor who has reviewed their consultation reports and indicate the MRP's or supervisor's approval of the report.

Availability of MRP and/or Supervisor

5. MRPs and/or supervisors **must** ensure that that they are identified and available to assist medical students and/or trainees when they are not directly supervising them (i.e., in the same room) or if unavailable, they **must** ensure that an appropriate alternative supervisor is available and has agreed to provide supervision.

6. The degree of availability of an MRP and/or supervisor and the means of availability (by phone, pager or in-person) **must** be appropriate and reflective of the following factors:
    a. the patient's specific circumstances (e.g., health status, specific health-care needs);
    b. the setting where the care will be provided and the available resources and environmental supports in place; and
    c. the education, training and experience of the medical student and/or trainee.

Professional Behaviour

7. MRPs and supervisors **must** demonstrate a model of compassionate and ethical care while educating and training medical students and trainees.

8. MRPs, supervisors, and trainees **must** demonstrate professional behaviour in their interactions with:
    a. each other,
    b. medical students,
    c. patients and their families,
    d. colleagues, and
    e. support staff.

9. MRPs, supervisors, and trainees **must not** engage in disruptive behaviour that interferes with or is likely to interfere with quality health-care delivery or quality

medical education (e.g., the use of inappropriate words, actions, or inactions that interfere with a physician's ability to function well with others.[7])

Violence, Harassment, and Discrimination

10. Physicians (including MRPs, supervisors, and trainees) involved in medical education and/or training **must not** engage in violence, harassment or discrimination against medical students and/or trainees.
    a. Physicians **must** take reasonable steps to stop violence, harassment or discrimination against medical students and/or trainees if they see it occurring in the learning environment and **must** take any other steps as may be required under applicable legislation[8], policies, institutional codes of conduct or by-laws.

11. MRPs and/or supervisors **must** provide medical students and/or trainees with support and direction in addressing disruptive behaviour (including violence, harassment and discrimination) in the learning environment, including but not limited to taking any steps as may be required under applicable legislation[9], policies, institutional codes of conduct or by-laws.

Professional Relationships/Boundaries

12. MRPs and supervisors **must not**:
    a. make sexual comments or gestures toward a medical student and/or trainee;
    b. enter into a sexual relationship with a medical student and/or trainee while directly or indirectly responsible for mentoring, teaching, supervising or evaluating the medical student and/or trainee; or
    c. enter into any relationship[10] with a medical student and/or trainee that could present a risk of conflict of interest, bias, or coercion

[7] For more information, please refer to the College policy on *Physician Behaviour in the Professional Environment*, as well as the Guidebook for Managing Disruptive Physician Behaviour.
[8] For example, the obligations set out in the *Occupational Health and Safety Act*, R.S.O. 1990, c.0.1 ("*OHSA*") and the *Human Rights Code*, R.S.O. 1990, c. H.19 (the "*Code*").
[9] Physicians may have other obligations under *OHSA* and the *Code* in regard to their own behaviour in the workplace, as well as specific obligations if they are employers as defined by *OHSA* or the *Code*.
[10] E.g., dating, business, etc.

while directly or indirectly responsible for mentoring, teaching, supervising or evaluating the medical student and/or trainee.

13. MRPs and/or supervisors (including trainees who are supervisors) **must** disclose any sexual or other relationship[11] between themselves and a medical student and/or trainee which pre-dates the mentoring, teaching, supervising or evaluating role of the MRP and/or supervisor to the appropriate member of faculty (e.g., the department or division head or undergraduate/postgraduate program director) in order for the faculty member to decide whether alternate arrangements are warranted.

Reporting Responsibilities

14. Physicians (including MRPs, supervisors and trainees) involved in the education and/or training of medical students and/or trainees **must** report to the medical school and/or to the health-care institution, if applicable, when a medical student and/or trainee:
    a. exhibits behaviours that would suggest incompetence, incapacity, or abuse of a patient;
    b. fails to behave professionally and ethically in interactions with patients and their families, supervisors, and/or colleagues; or
    c. otherwise engages in inappropriate behaviour.

15. Physicians involved in administration at medical schools, or health-care institutions that train physicians **must** contribute to providing**:**
    a. a safe and supportive environment that allows medical students and/or trainees to make a report if they believe the MRP and/or their supervisor:
        i. exhibits any behaviours that would suggest incompetence, incapacity, or abuse of a patient;
        ii. fails to behave professionally and ethically in interactions with patients and their families, supervisors or colleagues; or
        iii. otherwise engages in inappropriate behaviour, including violence, harassment, and discrimination against medical students and/or trainees; and
    b. an environment where medical students and/or trainees will not face intimidation or academic penalties for reporting such behaviours.

[11] E.g., family, dating, business, etc.

Consent

While patient consent for treatment[12] must always be obtained, additional expectations apply in the medical education and training context.

16. The physician responsible for or who is providing care must obtain express consent[13] from the patient for:
    a. medical student observation or participation in care, and/or
    b. trainee observation of care.

17. MRPs and/or supervisors **must** use their professional judgment to determine whether to obtain express consent from patients when trainees participate in patient care.[14]

18. Where an examination, investigation and/or procedure is unrelated to or unnecessary for patient care[15], the MRP and/or supervisor **must** obtain express consent from the patient[16] and **must** be confident that the proposed examination or clinical demonstration will not be detrimental to the patient, either physically or psychologically.

Supervision of Medical Students for Educational Experiences not Part of an Ontario Undergraduate Medical Education Program

19. In addition to fulfilling the expectations set out above, physicians who choose to supervise medical students for educational experiences that are not part of an Ontario undergraduate medical education program **must**:
    a. comply with the *Delegation of Controlled Acts* policy,[17]

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[12] Obtaining informed consent includes the provision of information and the ability to answer questions about the material risks and benefits of the procedure, treatment or intervention proposed. For more information, please refer to the College's *Consent to Treatment* policy and also, the *Health Care Consent Act, 1996*, c. 2, Sched. A.

[13] Express consent is directly given, either orally or in writing.

[14] As trainees are physicians, it may not always be necessary to obtain express consent for their participation in patient care. See *Advice* for examples of when express consent may be needed for involvement of trainees in patient care.

[15] See *Advice* for examples.

[16] Regardless of whether or not the patient will be conscious during, for example an examination. For further information about medical students performing pelvic examinations, please see the Society of Obstetricians and Gynaecologists of Canada's *Guideline #246*.

[17] The College's Delegation of Controlled Acts policy applies to any physician who supervises:
1. an Ontario medical student completing an extra rotation that is not part of their MD program, and
2. a student from outside Ontario completing an Ontario educational experience where the student will be performing controlled acts.

b. ensure that they have liability protection for that student to be in the office,
c. ensure that the student:
    i. is enrolled in and in good standing at an undergraduate medical education program at an acceptable medical school,[18]
    ii. has liability protection that provides coverage for the educational experience,
    iii. has personal health coverage in Ontario, and
    iv. ensure that the student has up-to-date immunizations.[19]

b. Where physicians do not have experience supervising medical students or are unable to fulfill the expectations outlined above, they **must** limit the activities of the medical student to the observation of patient care only.

[18] For the purposes of this policy, an "acceptable medical school" is a medical school that is accredited by the Committee on Accreditation of Canadian Medical Schools or by the Liaison Committee on Medical Education of the United States of America, or is listed in either the World Health Organization's Directory of Medical Schools: http://www.who.int/hrh/wdms/en/, or the World Directory of Medical School's online registry: https://www.wdoms.org/.

[19] Please refer to the Council of Ontario Faculties of Medicine's Immunization policy: https://cou.ca/wp-content/uploads/2016/06/COFM-Immunization-Policy-2019.pdf.