#MEDICINETOO

Thank you for inviting MedicineToo to participate in the consultation process for the CPSO's new draft Social Media Policy. Having reviewed the draft policy in the context of the CPSO's mandate as set out in its enabling statues and interpreted by the HPRAB in recent case law, MedicineToo is concerned that the sweeping prohibitions in paragraphs 2-6 are dangerously broad, and anticipates that these provisions will be weaponized by medical schools to silence learners who turn to social media for help addressing abuse in the learning environment.

Penalizing "disruptive" advocacy undermines the CPSO's stated commitment to Equity, Diversity and Inclusion (EDI)

In the June 2020 issue of Dialogue, CPSO Registrar Dr. Nancy Whitmore acknowledged that anti-racist advocacy by physicians is necessary even when it is "disruptive":

> Lastly, I want to touch on a very difficult subject that has been on our minds these past few weeks. The recent death of George Floyd in the United States has created a much-needed uprising across the world and brought the uncomfortable truth of racism, inequality and white privilege to the forefront of public consciousness. Medicine is, obviously, not immune to these concerns. Systemic racism and discrimination still very much exists in the field of medicine, on both the provider and the patient side. And diversity in medicine is critical to ensuring accessible, high-quality care. These issues impact not only the Black community, but also Indigenous populations, people of colour and LGBTQ+. I encourage all of you to continue thinking about these issues, to challenge yourselves and others, to listen to patients and colleagues when they discuss these concerns, and to move toward a more equitable system for all. These conversations may be uncomfortable, even disruptive, but they are key to keeping up the momentum for change. [emphasis added]

Nevertheless, paragraph 5 of the draft Social Media Policy effectively forbids physicians from engaging in EDI advocacy that may be perceived as disruptive. Tone policing EDI advocacy with the threat of professional sanctions is not supported by any reasonable interpretation of the CPSO's enabling statutes, and such administrative overreach is not rationally connected to the CPSO's mandate to serve the public interest.

CPSO's statutory mandate is professional regulation, not reputation management

Paragraph 6 of the draft Social Media policy forbids physicians from using social media to engage in any EDI advocacy that "involves" the communication of "unsubstantiated and/or defamatory" statements (including likes and retweets). The accompanying advice document suggests that the CPSO intends to police the public and private communications of physicians to ensure that they do not negatively impact the reputation of any individuals or organizations — including employers!

This would drastically expand the scope of the CPSO's duties beyond its statutory mandate:

- The CPSO's is **required** by law to investigate **every** complaint that it receives, unless the complaint is **clearly** frivolous, vexatious, made in bad faith, moot, or an abuse of process.
- Accordingly, the new draft social media policy would invite any individual (including politicians?) or organization (in the world?) to file a CPSO complaint if they believe that a physician in Ontario has made (or "liked") any sort of "unsubstantiated" statement about them on social media (including private facebook pages and group chats).
- It would also enable medical schools (or administrators) to file CPSO complaints against trainees for "unsubstantiated" social media statements about the learning environment.

- The onus would be on the physician to "substantiate" the statement(s) they authored (or merely liked/retweeted).
- The CPSO would be **required** to conduct an investigation into the veracity of each statement, and to render a decision on whether it was "substantiated" by the evidence.
- The civil tort of defamation is a highly specialized area of common law. The CPSO has neither the jurisdiction, mandate, expertise, nor resources to adjudicate defamation actions.
- Physicians wishing to sue each other over defamatory tweets may seek a remedy to such private disputes in the Superior Court of Justice (or Small Claims Court).
- The CPSO's mandate is to regulate the profession of medicine in the public interest. It is difficult to imagine how protecting the reputational interests of medical schools, hospitals, large corporations, politicians, and public figures from "unsubstantiated" criticism by physicians engaging in EDI advocacy could possibly serve the public interest.

The CPSO must prioritize learner safety when drafting and revising its policies

In a recent advice document, the CPSO affirmed that the culture of intimidation and abuse of power in medical education is "increasingly" endangering the health and safety of learners:

> Unfortunately, intimidation of medical students and postgraduate trainees is still an issue that arises in medical school education. Increasingly, the culture of medical education, and prevalence of bullying and harassment are contributing to the rise of depression, anxiety, burnout and suicidality amongst medical students and postgraduate trainees. The policy is clear that physicians must not engage in this type of behaviour.

The CPSO's new Policy on Professional Responsibilities in Medical Education (ratified June 2021) expressly forbids discrimination, harassment, intimidation, violence, and retaliation against learners, and places a positive obligation on physicians involved in the administration of medical education to protect learners from retaliation (including academic penalty).

As the CPSO is well aware, the most common way that medical schools retaliate against learners is to characterize their complaints about the learning environment as "unprofessional" or "disruptive" as a pretext for imposing academic penalty (typically professionalism coaching or remediation) and/or coercion into the OMA-PHP's Kafkaesque "disruptive behavior" monitoring contract. Medical schools look to CPSO policies and guidance documents for inspiration when drafting their own internal policies. Accordingly, vague wording in CPSO policies, when viewed through the self-serving lens of a medical educator seeking to cover up discriminatory harassment, can lend an air of legitimacy to a racialized learner's retaliation plan.

The CPSO must role model anti-racism in medical education by drafting its own policies through an anti-racist lens

In January 2021, the CMAJ published an article co-authored by the CPSO's EDI lead, Dr. Saroo Sharda, which clearly sets out how medical schools' preoccupation with "professionalism" exacerbates racism in medical education.

> Canadian medical education has relied heavily on lectures in the preclinical years and the apprenticeship model during clinical training, which, for trainees, means that the culture of what is considered professional in medicine is strongly influenced by the behaviour of their staff and seniors. Modelled behaviour forms an important part of the hidden curriculum. Learners' experience of professionalism in training programs is not race neutral, however. Racialized residents in Canadian surgical programs have reported that their competence was questioned more often than that of their gender-matched peers, and they felt less confident that their reports of discrimination (often itself considered to be an unprofessional act) would lead to appropriate action being taken.

In the September 2020 issue of Dialogue, (then) CPSO President Dr. Brenda Copps endorsed a call to action from Dr. Onye Nnorom, President of the Black Physicians' Association of Ontario, to "ensure that [the CPSO's] policies, practices, and procedures are anti-racist".

With respect, the CPSO's draft Social Media Policy is the opposite of anti-racist.

Paragraphs 2-6 are a textbook example of "constructive discrimination" (also known as "adverse effect" discrimination) — a seemingly neutral policy or practice which empirically disadvantages Code-protected groups, thereby exacerbating substantive inequality (i.e., unlawful discrimination). Constructive discrimination is prohibited by section 11 of the Ontario *Human Rights Code* and by section 15 of the *Canadian Charter of Rights and Freedoms*.

MedicineToo encourages the CPSO's legal counsel to review the draft Social Media policy in the context of recent case law on constructive discrimination and substantive equality:

- *Fraser v. Canada (Attorney General)*, 2020 SCC 28
- *Al-Turki v. Ontario (Transportation)*, 2020 HRTO 392
- *Association of Ontario Midwives v. Ontario (Health and Long-Term Care)*, 2018 HRTO 1335

Recommendations

- Eliminate paragraphs 2-6 in their entirety — including the prohibition on social media communications that may be perceived as discriminatory. If the CPSO genuinely wishes to do something about discrimination in medicine, MedicineToo respectfully suggests that holding medical educators accountable for unlawful acts of discrimination, harassment, and reprisal against learners would be a good place to start.
- Add a paragraph advising medical schools that, like patients, learners have a reasonable expectation of privacy, and medical educators must not penalize learners for social media posts that are critical of the learning environment, or that relate to EDI advocacy.
- Additionally, medical schools and educators must not use social media to silence EDI advocacy (e.g. blocking or reporting users who are critical of their institution's EDI efforts in an effort to de-platform those users and/or manipulate social media algorithms to down rank or "hide" their posts).
- The medical profession must stop blacklisting physicians for engaging in EDI advocacy.

— Dr. Ana Safavi

Founder, MedicineToo

August 2021