

## ACCOMMODATION OF HUMAN RIGHTS AND DISABILITIES



### Guideline G-011

Patient Relations Committee

Approved by Council: September 15, 2016

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*Note to readers: In the event of any inconsistency between this document and the legislation that affects chiropractic practice, the legislation governs.*

### INTENT

To articulate members' professional, legal, ethical obligations to accommodate patients who may face barriers to accessing care.

### OBJECTIVES

- To encourage members to foster an environment in which the rights, autonomy, dignity, and diversity of all patients are respected;
- To outline members' obligations under the *Ontario Human Rights Code, 1990, (the Code)* and *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)* to:
  - provide health care services without discrimination; and
  - accommodate patients who may face barriers to accessing care.

### DESCRIPTION OF GUIDELINE

#### Introduction

Members are expected to act with personal integrity, compassion and trustworthiness in providing care to those who seek it. To this end, members are expected to render care without discrimination on the basis of the *Code* and *AODA*, and accommodate patients with disabilities up to the point of undue hardship.

The following guideline outlines the professional, legal and ethical obligations in providing care without discrimination and accommodating patients who may face barriers to accessing care.

#### Human Rights, Discrimination and Access to Care

The *Code* articulates the right of every Ontarian to receive equal treatment with respect to services, goods and facilities, without discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.<sup>1</sup> All those who provide services in Ontario, including health care services, shall do so free of discrimination.

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<sup>1</sup> *Human Rights Code, 1990, section 1*

Discrimination may be a direct or indirect act, decision or communication that results in the unfair treatment of a person or group by either imposing a burden on them, or denying them services received by others. Discrimination may be entirely unintentional, where practices or procedures appear neutral, but may have the effect of disadvantaging certain groups of people protected under the *Code*.

Members are expected to comply with the *Code*, *AODA* and *CCO*'s code of ethics, when making decisions relating to the provision of health care services to the public. Members may not discriminate, either directly or indirectly, based on a protected ground under the *Code*, when:

- accepting or refusing an individual as a patient;
- providing an existing patient with health care services;
- providing referrals to patients; and/or
- ending the doctor/patient relationship

### **The Duty to Accommodate**

The professional, legal and ethical obligation to provide services free from discrimination includes a duty to accommodate. This duty reflects the fact that each patient may have different needs and require different solutions to gain equal access to care.

The *Code* requires a member to take reasonable steps to accommodate the needs of a patient or a potential patient, where a disability or other personal circumstance may impede or limit that patient or potential patient's access to care.

“Disability” is defined in section 1 of the *Code* as follows:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

A member is required to make accommodations in a manner that is respectful of the dignity, autonomy and privacy of the patient. Examples of accommodation include:

- enabling access to health care services to those with mobility limitations;
- permitting a service or therapy animal to accompany a patient;
- ensuring a patient with a hearing or visual impairment can be accommodated; and
- ensuring signage, forms, communications and practices accommodate diversity and do not discriminate on any of the protected grounds under *the Code*.

### Limitations on the Duty to Accommodate

A member is not required to accommodate beyond the point of undue hardship, where excessive cost, health or safety concerns would result or where it significantly interferes with the legal rights of others. The *Code* prescribes three conditions in assessing whether an accommodation would cause undue hardship, which are:

- cost;
- outside sources of funding, if any;
- health and safety requirements

The Human Rights Commission and Supreme Court of Canada have set a high standard for undue hardship being a limitation on the duty to accommodate. For more information and examples of undue hardship, please see the Ontario Human Rights Commission's *Policy and Guidelines on Disability and the Duty to Accommodate* [www.ohrc.on.ca/sites/default/files/attachments/Policy\\_and\\_guidelines\\_on\\_disability\\_and\\_the\\_duty\\_to\\_accommodate.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_disability_and_the_duty_to_accommodate.pdf).

### Reconciling Competing Duties to Accommodate

There may be instances where a duty to accommodate a patient with a disability may interfere with a legal right of another patient. For example, accommodating a visually impaired patient with a service or therapy animal may trigger the allergies or illness of another patient, and interfere with his/her ability to receive chiropractic care. In such circumstances, both the patients' visual impairment and allergies would require accommodation under the *Code* and *AODA*.

Although there is not always one solution to balancing the accommodation of patients with different disabilities, the following guiding principles apply:

- Accommodation policies and practices should be flexible and creative and should apply effective problem solving based on the facts of the situation;
- It is useful to consult with each affected patient, individually to gather each patient's feedback on a possible solution that would be satisfactory to them;
- Accommodation practices should not be rigid, nor be based on impressionistic views, stereotypes or assumption, nor rate one right over another

Applying these principles to the scenario above, the member could:

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- immediately separate both patients, so the patient's allergic symptoms do not worsen. For example, one patient could be moved to a treatment room or another area of the office;
- consult with both affected patients to obtain their feedback on a possible solution. This could involve rescheduling future appointments, or keeping the patients separated in the office setting;
- note in the patient health record any specific accommodations;
- ensure the waiting area is properly cleaned and maintained so as to avoid any allergic reactions to patients;
- ensure signage, forms, communications and practices accommodate diversity and do not discriminate on any of the protected grounds under *the Code*.

### Limiting Chiropractic Services for Legitimate Reasons

There may be reasons that a member refuses or limits the care provided to a patient for reasons that do not discriminate.

If a member feels that he/she cannot appropriately meet the health-care needs, or lacks the competency or focus of practice to provide care to an existing or new patient, the member is under no obligation to provide care to that patient.

A member should only refuse to provide care for such patients in good faith, and communicate to the patient in a timely, direct, clear and straightforward manner, to avoid any misunderstanding. If refusing to provide care, the member is required to provide the patient with referrals to another appropriate health care provider and arrange for the patient to access copies of their record of personal health information.

### LEGISLATIVE CONTEXT

This guideline should be read in conjunction with:

- *The Ontario Human Rights Code, 1990*
- The Ontario Human Rights Commission Policy and Guidelines on Disability and the Duty to Accommodate
- *The Accessibility for Ontarians with Disabilities Act, 2005*
- Guideline G-009: Code of Ethics