

Ontario Trial Lawyers Association Submission to the College of Physicians and Surgeons of Ontario

Review of Policies on Continuity of Care

December 9, 2018

The Ontario Trial Lawyers Association appreciates the opportunity to make submissions to the College of Physicians and Surgeons of Ontario (the College) on its review of policies on Continuity of Care. The goal of this review is to ensure that the College's policies continue to reflect patient-centered care. OTLA believes that ensuring that there are no breakdowns in continuity of care that may negatively impact patient health and care provided is extremely important and therefore welcomes this review.

The Ontario Trial Lawyers Association (OTLA) was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others, while at the same time advocating aggressively for safety initiatives.

Our mandate is to fearlessly champion, through the pursuit of the highest standards of advocacy, the cause of those who have suffered injury or injustice. Our commitment to the advancement of the civil justice system is unwavering.

OTLA's members are dedicated to the representation of wrongly injured plaintiffs across the province and country. OTLA is comprised of lawyers, law clerks, articling students and law students. OTLA frequently comments on legislative matters, and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

As requested by the College, OTLA respectfully provides the herein submission with respect to the various policies which deal with Continuity of Care. OTLA will comment on the various areas which are being reviewed by the College and follows its structure in responding. OTLA will only comment on those portions of the policies which directly affect our clients and are otherwise within our knowledge base.

A. Executive Summary

OTLA agrees with the College that Continuity of Care (COC) is an essential component of patient-centred care and is critical to patient safety. The COC policies provide an opportunity to clarify the responsibilities of physicians and to promote best practices in patient care. These policies will promote positive health outcomes, improve quality of care, and reduce adverse patient outcomes.

OTLA does have specific suggestions, based on the experience of our members and their clients, concerning the Availability and Coverage, Managing Tests and Transitions in Care policies.

B. Policy: Availability and Coverage

OTLA agrees that physicians being responsive to patients or other healthcare providers is an important component of providing good healthcare. Proper communication is critical for patient safety. At a minimum, this must include a telephone and voicemail system, to allow patients, laboratories, and other health care providers, to contact physicians directly or leave messages if they are unavailable.

We note that the College has received many submissions which suggest that this may create a risk of harm to patients, who might leave a message rather than seeking medical attention. We do not consider this risk to be significant. Many, if not most, physicians currently use this technology, and we are unaware of any medical negligence cases arising from a patient's failure to seek urgent medical attention as a result of having left a voicemail. Any such risk can, of course, be mitigated by leaving appropriate instructions on the voicemail message, directing patients with medical emergencies to call 911.

OTLA fully supports the proposed policy with respect to coverage. The proposed requirement that physicians who order tests ensure that they can be responded to at all times is appropriate. The physician who ordered the test is best-suited to interpret its significance in the context of the patient's clinical history and presentation. Where that physician cannot be available, another physician with access to his or her records is an adequate substitute.

Our experience is that a significant volume of medical negligence cases arise from the failure of physicians to respond to and act on significant test results in a timely fashion. Requiring physicians to ensure coverage to receive and respond to critical test results at all times will improve patient outcomes.

C. Policy: Managing Tests

In general, OTLA supports the draft policy, which clarifies the College's expectations for test results management. As noted above, a significant volume of medical negligence litigation involves test results which are not acted upon in a timely fashion, or at all.

The proposed policy requires physicians to communicate critical test results to patients, but provides that they may delegate this communication to staff or other health care professionals in appropriate cases. We recommend that this be amended to require the physician to document any such delegation, to minimize any confusion as to who is expected to communicate the results to the patient.

With respect to "no news is good news" strategy, our recommendation is that the policy be amended to require physicians to give patients the right to require that all results be communicated (in other words, to opt out of any "no news is good news" strategy). Patients have a right to be fully informed with respect to their health, and a patient who wishes to exercise this right is less likely to be the victim of a missed test result. Again, this will improve patient outcomes.

D. Policy: Transitions in Care

Too often patient care slips through the cracks when patients are transferred between physicians or other healthcare providers. In general, OTLA supports this policy, which sets out common sense approaches to transition in care.

With respect to referrals, while we agree that the referral should include the referring physician's sense of urgency, where appropriate, we suggest that the policy be amended to require the

referring physician to provide sufficient information to permit the consultant physician to triage the referral.

The proposed policy provides that the consultant physician must acknowledge the referral within 14 days. We suggest that this be reduced to 7 days. There is no other industry in Canada in which a 14 day delay to acknowledge communication would be considered acceptable. Delay in referrals can compromise patient care and should be minimized where possible.

We note that the College has also received a number of submissions with respect to the question of whether the referring or consultant physician should communicate appointment and other information to patients. OTLA takes no position on this question, but does urge the College to specify who has this responsibility. Leaving this to the judgment or agreement of the individual practitioners, without clearly identifying responsibilities, invites the possibility that important information will not be communicated to patients.

Similarly, the policy provides that both discharge summaries and consultation reports should provide recommendations regarding further interventions or testing. We recommend that the policy should provide that both discharge summaries and consultation reports identify who is responsible for any further steps, to avoid any possible confusion in responsibilities.

Discharge summaries should be viewed an integral part of the patient's treatment plan and not as an administrative afterthought. They should be done simultaneously with discharge to ensure care providers and the patient, at the time of discharge, can have a proper understanding of both the treatment received and the ongoing plan of treatment.

E. Conclusion

OTLA thanks the College for inviting it to provide input on the draft policies and supports the College's initiative to ensure continuity of care. The proposed policies clarify the responsibilities of physicians and, we believe, will improve patient care for everyone.