



Disclosure of Harm

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

Disclosure: the acknowledgement and discussion of harm or potential harm with the patient, substitute decision-maker, and/or estate trustee, as the case may be.

Harm: an outcome that negatively affects a patient’s health and/or quality of life.

Harmful incident: an incident that has resulted in harm to the patient (also known as an “adverse event”).

No-harm incident: an incident with the potential for harm that reached the patient, but no discernible harm has resulted.

Near miss incident: an incident with the potential for harm that did not reach the patient due to timely intervention or good fortune (also known as a “close call”).

Policy

Obligation to disclose¹

1. Physicians **must** ensure that harmful incidents are disclosed.²
2. Physicians **must** ensure that no-harm incidents are disclosed.
3. Physicians **must** consider whether to disclose near miss incidents, taking into account whether:
 - a. a reasonable person in the patient’s position would want to know about the incident; and

¹ For further information regarding the conduct of effective disclosure discussions, physicians may wish to consult the CMPA’s [Disclosing harm from healthcare delivery: Open and honest communication with patients](#).

² Physicians who work in hospitals or other health care facilities may be subject to additional disclosure requirements as established by their particular institution, as well as the requirements of Regulation 965, made under the *Public Hospitals Act*, relating to the disclosure of “critical incidents.”



29 b. the patient is aware of the incident and an explanation will reduce concern and promote trust.

30 **To whom to disclose**

31 4. Physicians **must** disclose directly to the patient or, where the patient is incapable with respect to the
32 treatment, to the patient's substitute decision-maker.

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34 5. If the patient has died, the physician **must** disclose to the patient's estate trustee (or, if there is no
35 estate trustee, the person who has assumed responsibility for the administration of the patient's
36 estate) and to the substitute decision-maker, if any.

37 **When to disclose**

38 6. Physicians **must** disclose as soon as is possible after the incident occurs.

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40 7. Disclosure is an ongoing obligation, and physicians **must** disclose additional relevant information as
41 it becomes available over time.

42 **What to disclose**

43 8. As part of disclosure, physicians **must** communicate the following information:

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45 a. the facts of what occurred and a description of the cause(s) of the incident;

46 b. any consequences for the patient, as they become known;

47 c. actions that have already been taken and those that are recommended to address any actual or
48 potential consequences to the patient, including options for follow-up care; and

49 d. actions being taken, if any, to avoid or reduce the risk of the incident recurring.

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51 9. Physicians **must** consider whether an apology is appropriate, taking into consideration the nature of
52 the incident and the consequences of the incident for the patient.³

53 **Who must disclose**

54 10. Where the incident has occurred during the course of care delivered by a sole physician, that
55 physician **must** disclose.

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57 11. Where the incident has occurred during the course of team-based care, the Most Responsible
58 Physician (MRP)⁴ **must** determine, in conjunction with the health care team, who is in the most
59 appropriate position to disclose.

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61 a. Regardless of which team member discloses, the MRP **must** ensure that disclosure occurs.

³ See *Advice to the Profession: Disclosure of Harm* [\[hyperlink\]](#) for further information regarding apologies.

⁴ The MRP is the physician who has final accountability for the medical care of a patient when the trainee is providing care.



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63 12. Physicians **must** use their professional judgment in determining whether to include in the disclosure,
64 as appropriate, other health care providers involved in the patient's care, someone trained in the
65 disclosure process, and/or someone with particular expertise in the patient's condition.

66 ***Postgraduate learners***

- 67 13. Postgraduate learners **must** inform the MRP and their clinical preceptor of any incident that requires
68 disclosure.
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70 14. In the interest of professionalism and ongoing education, MRPs **must** encourage the postgraduate
71 learners' active involvement in the disclosure process, as appropriate in the circumstances.

72 ***Subsequent physicians***

- 73 15. Where subsequent physicians have reason to believe that an incident warranting disclosure has not
74 in fact been disclosed, they **must** discuss the matter with the previous physician and ensure that
75 disclosure takes place.
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77 16. If the previous physician is unavailable (for example, due to retirement or death), the subsequent
78 physician **must** disclose, to the extent that they have the appropriate knowledge about the incident
79 to do so.

80 ***Documentation***

- 81 17. Physicians **must** record the facts of what occurred and a description of the cause(s) of the incident,
82 as well as all disclosure discussions, in the patient's medical record.