

November 24, 2020

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Dr. Nancy Whitmore  
Registrar & CEO  
College of Physicians and Surgeons of Ontario  
80 College Street  
Toronto, ON M5G 2E2

Dear Dr. Whitmore:

**Re: External Policy Consultations on *Telemedicine, Delegation of Controlled Acts and Professional Responsibilities in Medical Education Policies***

The Canadian Medical Protective Association (CMPA) appreciates the opportunity to provide feedback to the College regarding its Consultations on the *Telemedicine, Delegation of Controlled Acts, and Professional Responsibilities in Medical Education Policies*.

As you know, the CMPA delivers efficient, high-quality physician-to-physician advice and assistance in medical-legal matters, including the provision of appropriate compensation to patients injured by negligent medical care. Our evidence-based products and services enhance the safety of medical care, reducing unnecessary harm and costs. As Canada's largest physician organization and with the support of our over 100,000 physician members, the CMPA collaborates, advocates and effects positive change on important healthcare and medical-legal issues.

The CMPA welcomes the College's initiative to update these Policies and Advice to the Profession documents. We are pleased to offer the following comments in this regard.

***Telemedicine***

The CMPA recommends that the *Telemedicine* Policy and accompanying Advice to the Profession document be modernized to reflect the expanded use of telemedicine arising from the pandemic, including greater specificity regarding the regulatory expectations for virtual care as well as additional practical guidance.

While the general principles included in the current version of the *Telemedicine* Policy continue to be important, the CMPA submits that an update is required with more specific guidance given the evolution of telemedicine over the past several years, and particularly the rapid and broad adoption of virtual care in the context of COVID-19.



### *Expanded Use of “Virtual Care”*

It would be helpful for the CPSO to revisit its definition of telemedicine and to define the concept of virtual care. The CMPA recommends that clear definitions be added to the Policy regarding the breadth and definition of these terms as they are not used uniformly amongst physicians and guidance on the expectations of the College would be beneficial.

In our experience, it is not always clear to physicians in this changing environment what aspects of the delivery model constitute “virtual care” and the applicable regulatory expectations. For example, many physicians are not certain whether all care provided in absence of an in-person visit qualifies as virtual care. Given the increasing prevalence of virtual care in the current context, it would help address misapprehensions regarding the College’s expectations if clear definitions were added as well as specific guidance regarding the application of the Policy.

### *Appropriate Use of Virtual Care*

It will be important to reconsider the general expectation in the current version of the Policy that suggests the use of telemedicine should be justified and its appropriateness considered based on all of the circumstances in each instance. The Policy should be updated to acknowledge the current context, including the opportunities afforded by virtual care, and its increased prevalence in actual practice. It would also be helpful if the College clarified its expectations for physicians regarding the regular use of virtual care for the longer term, particularly as public health measures related to COVID-19 are withdrawn.

In the last several months, the CMPA has received numerous calls from members with inquiries about various aspects relating to the implementation and appropriate use of virtual care. It is our experience that physicians would benefit from more specific guidance with respect to these clinical issues.

For example, it would be helpful if the College set out its expectations regarding the following issues:

- The types of clinical issues and encounters that are best-suited to virtual care and the media that should be used depending on the situation (e.g., telephone, videoconferencing, etc.);
- Practical guidance for selecting appropriate virtual care platforms;
- Strategies for integrating virtual and in-person care modalities; and
- Regulatory expectations for “virtual clinics”.

We know from our discussions with physicians that they struggle to understand the College’s expectations for the exercise of “professional judgment” when determining whether virtual care is appropriate in a particular circumstance, particularly in the context of the current pandemic.

It would be helpful if the College provided relevant factors as well as specific examples to consider when determining whether a patient encounter is or is not suitable for virtual care. It would also be helpful to clarify how these factors change when providing virtual care during the pandemic as well as after public health measures related to the pandemic are withdrawn.

### *Privacy Considerations*

The CMPA recommends that the Policy specifically address the necessary steps that should be taken by physicians to meet consent, privacy and security requirements.

Physicians struggle to know the form of consent that must be obtained, when such consent should be obtained, and what technology has appropriate security standards. In this latter regard, the current version of the Policy simply directs physicians to consult with the Office of the Information and Privacy Commissioner of Ontario, the CMPA or an IT expert. While this is not uncommon, it would be preferable if the relevant considerations and steps were set out directly for physicians.

### *Remote Practices*

The College may also consider additional guidance for physicians who carry on practice while physically located outside of Ontario and outside of Canada on a permanent basis.

With the expansion of virtual care, physicians have greater flexibility with respect to where they locate their practice.

### *Increased Practical Guidance*

The Advice to the Profession Document might also address frequently asked questions from physicians regarding more practical questions relating to virtual care, including, for example, how physicians should communicate with patients regarding scheduling of virtual care encounters, appropriate settings for such encounters, and devices that should or should not be used (e.g., not a public computer).

### ***Delegation of Controlled Acts***

The CMPA recommends that the draft Policy and Advice to the Profession document emphasize the importance of ensuring that all regulated and unregulated health professionals working with supervising physicians have their own independent and adequate liability protection. The draft Policy and Advice to the Profession Document should also be amended to correct certain references to the CMPA.

### *Adequate Liability Protection*

The CMPA recommends that the draft Policy remind physicians that they are encouraged to consider whether all members of the health care team, including regulated and unregulated health professionals, have their own adequate liability protection commensurate with the risks posed by their involvement in patient care.

The CMPA has previously highlighted the importance of adequate liability protection for all health care team members, given the trend in the health care sector toward collaborative practices. Such protection is also essential to better protect patients by ensuring that they receive appropriate compensation in the event of negligence.

### *References to CMPA*

While the CMPA is pleased to see the draft Advice to the Profession Document refers to the CMPA article, “*Working with physician assistants: Collaborating while managing risks*”, there are certain other references to the CMPA in the draft documents that should be corrected.

The draft Advice to the Profession Document encourages physicians to contact the CMPA if they are unsure whether a specific procedure or treatment requires the performance of a “controlled act” (line 69). While the CMPA frequently provides physicians with risk management advice related to the delegation of controlled acts, the CMPA does not set clinical standards. Given that the definition of “controlled act” often involves clinical standards, the CMPA encourages members to seek technical interpretations from the relevant Colleges. The regulatory authorities are better placed to provide clarification on these types of more technical questions.

The CMPA requests a minor change to the insurance language used at line 261 of the draft Advice to the Profession document, under the “Liability and Billing” section. This section encourages physicians to contact the CMPA with questions about “liability coverage”. It would be preferable if the term “liability protection” were used instead of “liability coverage” to accurately reflect the nature of the CMPA’s assistance. You are likely aware that the CMPA is a mutual defence organization and not an insurance company. As such, the CMPA prefers to avoid, where possible, the use of any language that could be construed as suggesting it is an insurer.

### ***Professional Responsibilities in Medical Education***

The CMPA recommends that the draft *Professional Responsibilities in Medical Education Policy* and/or the new companion Advice to the Profession Document provide clearer expectations for physicians with respect to some of the new requirements related to violence, harassment, and discrimination.

In particular, as currently worded, it is unclear what is expected of physicians to “stop” violence, harassment and discrimination or to “support” medical students and trainees in addressing disruptive behaviour. If physicians are expected to do more than report such behaviour through appropriate channels, it would be helpful if the Policy expressly set out what is required in this regard. Otherwise it may be unclear to physicians what is expected of them in the circumstances.

The CMPA otherwise welcomes the College’s efforts to consolidate the Policies on *Professional Responsibilities in Undergraduate Medical Education* and *Professional Responsibilities in Postgraduate Medical Education*, which previously overlapped to a significant extent. We are also pleased to see that the draft Advice to the Profession Document now refers to relevant CMPA publications.

### **Conclusion**

We hope these comments will be helpful to the College in updating the *Telemedicine* documents and finalizing the draft Policies and Advice to the Profession documents on *Delegation of Controlled Acts*, and *Professional Responsibilities in Medical Education*. The

CMPA would be pleased to provide additional comments on any revised draft Policies or Advice to the Profession documents.