

OMA Submission

CPSO Reporting Requirements Policy

August 2024



The Ontario Medical Association (OMA) appreciates the opportunity to participate in the College’s preliminary consultations on its *Reporting Requirements Policy* and companion *Legal Reporting Requirements* and *Advice to the Profession* documents. OMA staff have conducted a review of the draft policy and consulted broadly with membership through several channels. The feedback received is summarized below.

General

Provision 2. Under this section, it is stated that *“Unless doing so would pose a genuine risk of harm to themselves and/or others, physicians must notify patients about their duty to report at the earliest opportunity, and where possible, before making a report.”* Here, the previous requirement that *“advised”* physicians inform patients is replaced with a mandatory *“must”* inform patients. This places a greater burden on physicians and potentially places them in harm’s way when informing patients about certain types of mandatory reporting. While there is an exception for *“genuine risk of harm”* it is not possible in many cases to determine how a patient may react. Additionally, *“genuine risk of harm”* is a high legal standard that requires them to be able to show that there is not just a hypothetical risk, but a risk based on the behavior of the patient or confluence of the circumstances, that they then must be able to demonstrate. Accordingly, it is recommended that the standard of *“genuine risk of harm”* be revised to *“perceived or potential risk of harm”*. Making this change will allow the purpose of informing the patient to be upheld but allows the physician greater flexibility and the determination that they will face a CPSO complaint on the basis that they did not properly assess the risk in the moment.

Further, it is outlined here that physicians inform the patient at the *“earliest opportunity”*, which is vague and leaves much to interpretation of the physician (e.g. this could be before finding out certain information, immediately after finding out certain information, or at a later point). Accordingly, it is also recommended that *“earliest opportunity”* be changed to *“reasonably earliest opportunity”*. It should be clear that it is after receiving relevant information from the patient and that they can satisfy the informing requirement in a manner that reduces perceived risk of harm to the physician. Additionally, it is unclear what *“where possible”* means in this context. Given that this is a mandatory requirement, it is important that this be defined more explicitly, given that a physician could in theory be forced to respond to a complaint if a patient is unhappy with their reporting practices.

The OMA appreciates the opportunity to provide feedback on the College’s draft *Reporting Requirements* policy. Please contact us if you have questions or require additional feedback.