



# Telemedicine

**APPROVED BY COUNCIL:** April 2007

**REVIEWED AND UPDATED:** December 2014

**TO BE REVIEWED BY:** December 2019

**PUBLICATION DATE:** Issue 4, 2014

**KEY WORDS:** Telemedicine; technology; information and communication technologies; standard of care; consultation; referral; privacy; confidentiality; jurisdiction; out-of-province.

**RELATED TOPICS:** Practice Guide; Accepting New Patients; Block Fees and Uninsured Services; Complementary/Alternative Medicine; Confidentiality of Personal Health Information; Consent to Medical Treatment; Delegation of Controlled Acts; Disclosure of Harm; Dispensing Drugs; Ending the Physician-Patient Relationship; Maintaining Appropriate Boundaries and Preventing Sexual Abuse; Medical Marijuana; Medical Records; Physicians and the Ontario *Human Rights Code*; Prescribing Drugs; Test Results Management.

**LEGISLATIVE REFERENCES:** *General By-Law*, enacted under Section 94 (1) of the *Health Professions Procedural Code*, Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1001, c.18; *Health Professions Procedural Code*, Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1001, c.18; *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Schedule A.

**REFERENCE MATERIALS:** Cavoukian, Ann. *Encryption by Default and Circles of Trust: Strategies to Secure Personal Information in High-Availability Environments* (Toronto: Information and Privacy Commissioner of Ontario, Sunnybrook Health Sciences and CryptoMill Technologies Ltd., 2012).

Cavoukian, Ann, Stuart Shapiro & R. Jason Cronk, Esq. *Privacy Engineering: Proactively Embedding Privacy, by Design* (Toronto: Information and Privacy Commissioner of Ontario, MITRE Corporation and Enterprivacy Consulting Group, 2014).

Canadian Medical Protective Association. *Telemedicine – Challenges and obligations* (Ottawa: CMPA, 2013).

**OTHER REFERENCES:** Patient Information Sheet; Telemedicine: Frequently Asked Questions.

**COLLEGE CONTACTS:** Public and Physician Advisory Service

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## INTRODUCTION

Telemedicine is both the practice of medicine and a way to provide or assist in the provision of patient care at a distance<sup>1</sup> using information and communication technologies<sup>2</sup> (hereinafter “telemedicine”).

Telemedicine is in a constant state of evolution; advancements in technology provide opportunities for new approaches to the delivery of care. The CPSO recognizes the value of telemedicine and, in particular, the way in which it can benefit patients, physicians and other health-care providers, and the broader health-care system by improving access to care, and increasing efficiencies in the delivery of care.

Whether telemedicine is an appropriate way to provide or assist in the provision of patient care will depend on the circumstances of each case. This policy sets out the CPSO’s expectations of physicians who practise telemedicine.

## PRINCIPLES

The key values of professionalism articulated in the CPSO’s Practice Guide – compassion, service, altruism and trustworthiness – form the basis for the expectations set out in this policy. Physicians embody these values and uphold the reputation of the profession when practising telemedicine by:

1. Always acting in the patient’s best interest;
2. Demonstrating professional competence, which includes meeting the standard of care and acting in accordance with all relevant and applicable legal and professional obligations to provide the highest possible quality of care;
3. Maintaining patients’ privacy and confidentiality when collecting, using or disclosing personal health information;
4. Communicating and collaborating effectively with patients, physicians and other health-care providers;
5. Recognizing and appropriately managing conflicts of interest, and avoiding situations where there may be a perceived conflict of interest; and
6. Participating in the self-regulation of the medical profes-

sion by acting in accordance with the expectations set out in this policy.

## PURPOSE & SCOPE

This policy sets out the CPSO’s expectations of physicians who practise telemedicine.

This policy applies to all physicians who are members of the CPSO, regardless of where the physician or patient is physically located when telemedicine is practised. Expectations are provided in relation to providing or assisting in the provision of patient care via telemedicine, which includes consulting with and referring patients to other health-care providers, and practising telemedicine across borders. This policy applies broadly to the practice of telemedicine, regardless of the specific area of practice or practice setting in which telemedicine is used.

In addition, this policy sets out the CPSO’s expectations of physicians who are not members of the CPSO, but who practise telemedicine by providing or assisting in the provision of care to patients who are physically located in Ontario at the time of care. These expectations are set out in the last section of the policy, titled ‘Expectations for Non-CPSO Members’.

## POLICY

Physicians must act in accordance with the expectations set out in this policy in all instances when telemedicine is practised.

### 1. General Expectations for Telemedicine

The practice of telemedicine is the practice of medicine; physicians’ existing legal and professional obligations with respect to practising the profession are not altered simply because care is provided via telemedicine as opposed to in-person. Accordingly, physicians are reminded that a physician-patient relationship is established via telemedicine in the same circumstances as when the relationship is established in-person.<sup>3</sup>

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1. Patients, patient information and/or physicians may be separated by space (e.g., not in same physical location) and/or time (e.g., not in real-time).

2. The specific technology that can be used is constantly evolving. Some current examples include, but are not limited to, the use of telephones (e.g., land lines and mobile phones), email, video and audio conferencing, remote monitoring and telerobotics.

3. The existence of a physician-patient relationship will be established having regard to the nature and frequency of the treatment provided, whether there is a medical record, whether the physician bills for the services provided, and any other relevant factors.



Physicians must use their professional judgment to determine whether telemedicine is appropriate in a particular circumstance each and every time its use is contemplated for patient care, consultations and referrals.<sup>4</sup> In doing so, physicians must consider whether practising telemedicine will enable physicians to satisfy all relevant and applicable legal<sup>5</sup> and professional<sup>6</sup> obligations, and meet the standard of care.

Physicians must:

- Consider the patient's existing health status, specific health-care needs and specific circumstances, and only use telemedicine if the risks do not outweigh the potential benefits and it is in the patient's best interest.
- Identify what resources (e.g., information and communication technology, equipment, support staff, etc.) are required, and only proceed if those resources are available and can be used effectively.
- Ensure the reliability, quality<sup>7</sup> and timeliness of the patient information obtained via telemedicine is sufficient, and the patient is accurately identified.
- Protect the privacy and confidentiality of the patient's personal health information. More specifically,
  - Evaluate whether the information and communication technology and physical setting being used by the physician has reasonable security protocols<sup>8,9,10</sup> in place to ensure compliance with physicians'

legal<sup>11</sup> and professional<sup>12</sup> obligations to protect the privacy and confidentiality of the patient's personal health information.

- Take reasonable steps to confirm the information and communication technology and physical setting being used by the patient permits the sharing of the patient's personal health information in a private and secure manner.

- Ensure the physical setting in which the care is being delivered is appropriate and safe; there must be a plan in place to manage adverse events and/or emergencies.

## 2. Specific Expectations for Practising Telemedicine Across Borders

In addition to the general expectations for telemedicine set out above, there are a number of specific expectations regarding the practice of telemedicine across provincial, territorial and international borders. These expectations are grounded in the CPSO's duty to serve and protect the public interest,<sup>13</sup> which includes ensuring physicians provide quality care to patients regardless of where physicians and patients are physically located.

### a) Expectations for CPSO Members

Physicians are reminded that the CPSO maintains jurisdiction over its members<sup>14</sup> regardless of where (i.e., physical location) or how (i.e., in-person or via telemedicine) they practise medicine. In keeping with its statutory obligations as a medical regulatory authority, the CPSO will investigate any

4. Physicians must make this determination when using telemedicine for the first time for a particular patient and each subsequent time its use is contemplated to ensure using telemedicine is still appropriate for that patient.

5. Including, for example, legal obligations with respect to privacy and confidentiality as set out in the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Schedule A (hereinafter *PHIPA*), and mandatory liability coverage as set out in Section 50.02 of the *General By-Law*, enacted under Section 94(1) of the *Health Professions Procedural Code*, Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1001, c.18 (hereinafter *HPPC*).

6. Professional expectations set out in the CPSO's Practice Guide and policies.

7. For example, diagnostic images must be of sufficient quality.

8. The security standards for information and communication technology are constantly evolving, so physicians may want to contact the Office of the Information and Privacy Commissioner of Ontario and/or the Canadian Medical Protective Association for the most up-to-date advice. Physicians can also refer to the following resources: Ann Cavoukian, Stuart Shapiro & R. Jason Cronk, Esq., *Privacy Engineering: Proactively Embedding Privacy, by Design* (Toronto: Information and Privacy Commissioner of Ontario, MITRE Corporation and Enterprivacy Consulting Group, 2014); Ann Cavoukian, *Encryption by Default and Circles of Trust: Strategies to Secure Personal Information in High-Availability Environments* (Toronto: Information and Privacy Commissioner of Ontario, Sunnybrook Health Sciences and CryptoMill Technologies Ltd., 2012); Canadian Medical Protective Association, *Telemedicine – Challenges and obligations* (Ottawa: CMAA, 2013).

9. One of the ways to ensure that the technology being used has reasonable security protocols in place is to carry out telemedicine sessions within a facility accredited by the Ontario Telemedicine Network.

10. Physicians may consult with an information and communication technology and/or privacy expert if they are unsure as to whether the technology and/or physical setting is secure.

11. *PHIPA*. See footnote 5 in this policy for more information.

12. As set out in the CPSO's Practice Guide and Confidentiality of Personal Health Information policy.

13. Section 3(2) of the *HPPC*.

14. Sections 13 and 14 of the *HPPC*.

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complaints made about a member,<sup>15</sup> regardless of whether the member or patient is physically located in Ontario.

When providing or assisting in the provision of patient care in another province, territory or country via telemedicine, physicians must comply with the licensing requirements of that jurisdiction. The medical regulatory authority of the jurisdiction where the physician and/or patient are physically located when telemedicine is practised may require that physicians hold an appropriate medical licence in that jurisdiction.

## Out-of-province consultations and referrals

There may be circumstances when physicians consult with out-of-province physicians regarding their patients<sup>16</sup> or refer patients to out-of-province physicians for care via telemedicine.

Before consulting with or referring patients to out-of-province physicians for care via telemedicine, physicians must take reasonable steps to assure themselves that the consultation or referral is appropriate, just as they would when consulting with or referring patients to physicians who are physically located in Ontario. Physicians must have reasonable grounds to believe that the out-of-province physician with whom they are consulting or to whom they are referring patients for care via telemedicine is appropriately licensed.

When physicians consult with or refer patients to out-of-province physicians for care via telemedicine, they must inform their patients that the out-of-province physician is not physically located in Ontario, and may or may not be licensed in Ontario. It is recommended that physicians alert patients to the 'patient information sheet' appended to this policy, and communicate the relevant content contained in that document, as appropriate.

## b) Expectations for Non-CPSO Members

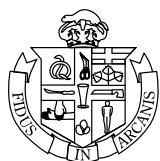
The CPSO recognizes that Ontario patients may seek care via telemedicine from non-CPSO members who are physically located outside of Ontario, independent of any involvement of a CPSO member. The CPSO expects that non-CPSO members will comply with licensing requirements in their jurisdiction, and will provide care in accordance with the standard of care.

If the CPSO becomes aware of concerns about care provided to an Ontario patient via telemedicine by a non-CPSO member, the CPSO may share that information with the regulatory authority that has jurisdiction over the member, so that appropriate action can be taken by that regulatory authority.

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15. Section 25(1) and (4) of the *HPPC*.

16. For example, by sending patient information (e.g., patients' diagnostic images or tests) to out-of-province physicians for an opinion.



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