



THE CANADIAN  
MEDICAL  
PROTECTIVE  
ASSOCIATION

L'ASSOCIATION  
CANADIENNE  
DE PROTECTION  
MÉDICALE

# Collaborative Care:

A MEDICAL LIABILITY PERSPECTIVE

## Introduction

**Health professionals have a long-standing history of working together to deliver quality, sustainable health care for Canadians and to ensure the optimal use of resources. However as the demand for health care increases, new models are being explored. Increasingly, care is being provided by collaborative teams employing the skills of the most appropriate health-care provider for the care required. This new model of health-care delivery has the potential to provide better outcomes for patients and to improve the efficiency of the system overall.**

From a patient safety point of view, well-functioning teams have great promise to deliver superior care. Poorly-functioning, in particular, poorly-communicating teams increase safety risks for patients.

This document identifies potential medico-legal risks and proposes solutions to mitigate those risks. It also addresses potential accountability and liability concerns which, if left unaddressed may hinder the achievement of collaborative care goals. Collaborative practices will be more likely to be successful if the interests of both health professionals and their patients, and those of the overall system are well protected.

## What is collaborative care?

Numerous definitions are currently used to describe practices in which health professionals work together to provide care. Collaborative care is the most common, but the terms multidisciplinary, inter-professional, shared or team care are often used interchangeably.

The Enhancing Interdisciplinary Collaboration in Primary Health Care (EICP) Initiative provides the following working definition:

*Interdisciplinary collaboration refers to the positive interaction of two or more health professionals, who bring their unique skills and knowledge, to assist patients/clients and families with their health decisions.*

### COLLABORATIVE CARE BENEFITS

Two of the most important goals for collaborative care include: optimizing Canadians' access to the skills and competencies of a wide range of health professionals; and improving primary and even specialty health care by further encouraging and facilitating health promotion and the prevention of illness.

The current and forecasted critical shortage of health professionals limits a patient's access to timely care. Collaborative care is promoted as a solution to health human resource shortages, and as a way of increasing access to and improving the quality of care. While collaborative practices should lead to the best use of the health human resources available, they do not fully address the current and forecast future shortages of physicians, nurses, and other health professionals. The CMPA

believes collaborative care alone will not resolve the gaps between the requirement for and the availability of health professionals. However, by optimizing the use of existing resources, collaborative care can be an important element of a more comprehensive solution to improving patient access to care.

## Accountability in collaborative care

Whenever individuals are brought together in teams, questions inevitably arise about the coordination of care and team leadership. These questions include important issues regarding direction of care, the delegation and supervision of medical acts, accountability and liability, and patients' understanding of the team's approach to care.

The following questions may assist individual providers in assessing their medico-legal risk in collaborative environments:

- Are the roles and responsibilities of each team member clearly defined, based on their scopes of practice and also the individual's knowledge, skill, and ability?
- Does every team member know his or her role and the role of the other team members?
- How will health-care decisions be made? Who is responsible and therefore accountable for health-delivery decisions?
- Is there a quality assurance mechanism to monitor the team function?
- What are the anticipated health-care outcomes the team is striving to achieve?

- Has the patient remained an integral if not a central member of the team?
- Is there a sound policy and procedural framework in place to define and support the team function?
- Does the team have sufficient resources to achieve the desired health outcomes?
- Who will coordinate care, manage the team, and ensure efficient and effective communication among team members and across teams?

The CMPA believes clear responsibilities and accountabilities among professionals in a collaborative care team are essential to promote patient safety, reduce the risk of medico-legal issues, and provide a record of the care given should problems arise in the future. An administrative framework is required with policies and procedures that define and describe the collaborative team's function.

The solid understanding of accountabilities among regulated professions provides a sound foundation upon which to build collaborative practices. The following recommendations will help ensure that the policies and procedures defining and describing the team function are clearly established:

- Provincial/territorial health professional regulatory authorities for each health profession should mandate that scopes of practice be updated in light of evolving collaborative care practices.
- Working together, regulatory bodies must ensure that gaps between scopes of practice are minimized.

Operating within the scopes of practices established by regulatory authorities, collaborative care teams must then formally establish their own accountability arrangements. Generally each team member remains accountable for the care he/she provides within the team model and may also be held accountable for his/her role in the results of the team.

*The CMPA believes the same medico-legal liability system that currently protects*



Achievement of these straightforward steps would address many of the accountability issues that are purported to be obstacles to progress. These steps do not require a fundamental change to existing accountability frameworks. What they do require is a greater understanding of the roles and responsibilities for each team member as defined by his/her scope of practice and the required need, if any, for delegation or supervision by a physician.

## Liability issues

Medico-legal liability concerns are often unjustifiably cited as being barriers to collaborative care. The CMPA believes the same medico-legal liability system that currently protects the interests of both patients and individual providers can also support collaborative practices.

It is imperative all health professionals carry adequate professional liability protection. However, at the current time, such protection is not mandatory in a number of provinces/territories or for a number of professions. A legislated environment in which all health professionals must have and maintain adequate professional liability protection as a condition of licensure would further foster collaborative care.

Until this is the case, each member of the team should verify that other health-care professionals in the team have and maintain adequate liability protection. For those with claims-made protection this would include the requirement for tail coverage (extended reporting clause) to provide protection for claims initiated well after the medical care was provided. There are various mechanisms through which regulated health professions can obtain liability protection. As examples, physicians can obtain protection through CMPA membership or insurance coverage through a variety of commercial insurers; nurses can obtain coverage through the Canadian Nurses Protective Society (CNPS), or in British Columbia

and Québec through local arrangements. For hospital-based teams, except for physicians, the hospital insurers generally indemnify hospital employee team members.

Each member of the team, both individually and in collaboration with the other team members, should carefully consider what constitutes an adequate level of protection. Given that the collaborative care model may call for a number of professions to be taking on responsibilities that were previously performed solely by others (usually physicians), those professionals must adjust the levels of their protection to reflect the higher risk profiles they will be adopting. In many cases, these higher risk profiles will result in increased liability protection costs and funding authorities should take these costs into consideration. Failure to do so may discourage these professionals from entering into collaborative practice or, equally distressing, may encourage them to practise without adequate protection.

Physicians have long been exposed to the concept of joint and several liability (where more than one party is responsible for having caused injury to another but the plaintiff may recover full compensation from the provider most able to pay, even though that recovery may be out of proportion to the degree of liability). Under a collaborative care model, the risks posed by joint and several liability will now be extended to other professionals and they should make adequate provision for this risk.

Vicarious liability is a risk posed when health professionals are employees of an individual or legally-recognized entity (such as a corporation or a partnership). The employer (for example, a hospital or a physician or a group of physicians) may be liable for the negligence of employees who are acting within the scope of their employment. Depending on the composition and functioning of the collaborative team, vicarious liability may also be extended to other team members.

None of the above requirements should impede collaborative care. The unsubstantiated view that

---

*the interests of both patients and providers can also support collaborative practices.*

liability issues are barriers to the implementation of collaborative care has caused some groups and individuals to postulate the need for wholesale changes to the medical liability system. Such an approach would be unwise, unfounded and would place the overall system at risk.

## Other liability protection models

Two alternative models are often raised as possibilities for addressing liability issues within collaborative care.

### ENTERPRISE LIABILITY MODEL

An enterprise liability model operates on the principle that there is no individual liability of team members but rather liability is assessed against the team as a whole.

The Health Council of Canada notes Canadian regulatory and insurance traditions focus on individual responsibility and that there is little experience with structures that hold teams accountable for health-care decisions. This assertion may in fact understate the situation in that the law does not recognize teams as entities that can be sued. Current legal frameworks are based on the legal standing of individuals and of legally-constituted entities such as corporations and limited liability partnerships; there is no legal recognition of an unincorporated “team.”

The CMPA believes it is not necessary for Canadian law to change to recognize team liability for actions of individual members, while absolving the individuals in question of their accountability. Such a process would be highly disruptive and time consuming. As long as all health professionals have clearly defined and clearly understood scopes of practice, and all members of the team who treat patients have their own adequate professional liability protection to cover both their individual contribution to patient care, as well as their contribution as a member of the team, then the current system effectively addresses medical liability within a collaborative care setting.

Advocates of the enterprise model do not fully recognize the potential impact of removing individual professional accountability. Individual professional accountability makes a solid contribution to patient safety and to public confidence in the profession. These profession-specific frameworks reflect the standards of care appropriate to the respective scopes of practice. It would appear contrary to suggest the elimination of individual liability without also eliminating individual accountability.

### NO-FAULT MODEL

Another alternative being proposed by some stakeholders is “no-fault” insurance. The CMPA has previously detailed the limitations of no-fault systems in terms of their affordability, their ability to compensate injured patients, and the link to necessary accountability frameworks. Studies have also demonstrated that no-fault systems are inherently no more supportive of patient safety and the root cause analysis of adverse events than other liability systems. A no-fault model is not required to advance collaborative care as the mechanisms to support collaborative practices are fully available within the current system.

## Summary

### ISSUES FOR POLICY MAKERS

- Legislation should require all health professionals to have adequate professional liability protection in place as a condition of licensure.
- Regulatory authorities for each health profession need to ensure existing scopes of practices are adapted to reflect the accountability of individual team members within the collaborative care approach.
- The accountability and liability of regulated and non-regulated professions within collaborative care teams pose challenges and require careful consideration.

- Efforts to amend the current law to introduce the concept of team liability rather than individual liability should be discouraged as a “team” has no legal status, and any change to this would be highly disruptive and time consuming.
- The current medical liability system supports collaborative practices, and with easily achievable adjustments, it can be improved. There is no need to risk the viability of the Canadian health-care system by introducing no-fault or enterprise liability alternatives.

#### ISSUES FOR HEALTH PROFESSIONALS

- Health professionals should clearly understand the scope of practice of those with whom they work.
- Where scopes of practice within a team overlap, there should be well-documented delineation of responsibilities.
- The overall responsibility for health-care decisions should be clearly specified and understood by all.
- Effective and efficient communications within the team, with the patient and across teams will take on added importance; this should be supported by clear documentation.
- Each professional in the team has a responsibility to the other members to obtain adequate medical liability protection. For professions taking on expanded responsibilities, this will likely entail greater protection than is currently the case.
- Each member of the team should also confirm the others have the adequate liability protection.

## Conclusion

Collaborative care has significant potential to greatly enhance the delivery of health care in Canada. By making the best use of all

health professionals, collaborative care practices should be able to improve patient access to certain types of care and deliver that care in a more cost-effective manner. However, as with any major change, it should be approached with a prudent combination of enthusiasm and caution.

While some have suggested that medical liability concerns are a barrier to the implementation of collaborative care, the CMPA believes that, while there are important issues that must be addressed, the principal elements of the solution already exist within the current medical liability system. Governments, courts, regulatory authorities and liability protection providers are well positioned to take the readily achievable actions to resolve concerns about liability and professional accountability. They must now take action.

For their part, health professionals must also take action to ensure that they have done all they can to mitigate risks and reduce accountability and liability concerns. A key element must be to see that the roles and functions of each member of the team are clearly understood by all and supported by a robust policy and procedural framework. This will not only reduce liability risk but will reduce the likelihood of adverse medical events caused by confusion or ambiguity. As team members, those providers also have a responsibility to each other to confirm that they have adequate medical liability protection. The determination of adequacy must be based on the circumstances involved.

The CMPA is committed to working with stakeholders to support the advancement of collaborative care. It is also committed to identifying and reducing risks in collaborative care and ensuring discussions of medical liability are supported by fact so that innovative health delivery models, such as collaborative care, are not hindered by lack of knowledge or unfounded fears.

*The CMPA is committed to working with stakeholders to support the advancement of collaborative care.*





**THE CANADIAN  
MEDICAL  
PROTECTIVE  
ASSOCIATION**

**L'ASSOCIATION  
CANADIENNE  
DE PROTECTION  
MÉDICALE**

*Mailing Address:* P.O. Box 8225, Station T, Ottawa, ON K1G 3H7

*Street Address:* 875 Carling Ave., Ottawa, ON K1S 5P1

*Telephone:* 613 725-2000, 1 800 267-6522

*Facsimile:* 1 877 763-1300 *Website:* [www.cmpa-acpm.ca](http://www.cmpa-acpm.ca)

*Adresse postale :* C.P. 8225, Succursale T, Ottawa ON K1G 3H7

*Adresse civique :* 875, av. Carling, Ottawa ON K1S 5P1

*Téléphone :* 613 725-2000, 1 800 267-6522

*Télécopieur :* 1 877 763-1300 *Site Web :* [www.cmpa-acpm.ca](http://www.cmpa-acpm.ca)