FEATURE: SAFE MEDICAL CARE  PATIENT PORTALS:  a new communication tool for doctors and patients  
■ MEDICAL PRACTICE how to manage conflict and aggressive behaviour in medical practice  
■ LEGISLATION organ and tissue donation: who has the final say?  
■ TECHNOLOGY smartphone recordings by patients: be prepared, it’s happening
from the CEO

Perhaps you have noticed we’ve recently been talking more about “mutuality” and referring to the Association as a “mutual.” Some of you have wondered whether this signals a change in how the CMPA operates and provides services to members, and more to the point, what it means for the typical CMPA member.

Mutuality has always been at the core of the CMPA business model, yet it is generally not well understood. The CMPA as a “mutual” means the CMPA and its members collectively share in the costs, risks, and benefits associated with membership. More specifically, the CMPA provides medical liability protection to members while, in turn, those members are responsible to their colleagues and to the CMPA to practise in a manner consistent with the values of the medical profession.

Mutuality is consistent with the imperative for health professionals to assume both individual and collective responsibility for the care they provide. The results of the CMPA’s recent biennial membership survey reflect this view, with more than three in four members indicating it is “very important” for the CMPA to require members whose medical liability experience is significantly greater than their peers to participate in appropriate educational programming.

While the same survey reaffirms that our members continue to be highly satisfied with the services the CMPA provides, we recognize that as the delivery of health services evolves, members’ liability protection needs and expectations are changing. Consequently, we are adapting our services to meet those needs while working with other healthcare partners to contain the costs of liability protection.

I can assure you that, as we begin introducing enhancements to the CMPA assistance model in the coming months, most members will not see any significant changes in the services or assistance they receive from us. We will continue to work with members to manage risk in medical practice, and provide advice, assistance, and educational resources. Those members experiencing significantly greater-than-average medical-legal difficulties will receive additional, customized support aimed at improving safety and reducing risk in their practice.

I look forward to sharing more news with you as we advance our plans this year, while continuing to serve you, members of the mutual.

Hartley Stern, MD, FRCSC, FACS
The office safety plan

Read about the steps you can take to maintain a safe medical office and protect everyone who enters—patients, visitors, staff, and yourself.

Organ and tissue donation: Who has the final say?
Involved with post-mortem organ and tissue donations? Read about the regulatory requirements around these donations so you can effectively meet your obligations and reduce the potential for complaints.

Organ and tissue donation: Who has the final say?

Involved with post-mortem organ and tissue donations? Read about the regulatory requirements around these donations so you can effectively meet your obligations and reduce the potential for complaints.

Patient portals: A new communication tool for doctors and patients

Online patient portals are emerging as a tool that can empower patients and improve communication between physicians and patients. Learn how you can lessen the risks of using patient portals, giving them the best chance of being used successfully.

Smartphone recordings by patients: Be prepared, it’s happening
Patients can benefit from using their smartphones or other devices to record their visit to your office. But you should consider preparing your office so patients get the most out of the recordings and you avoid potential risks.

How to manage conflict and aggressive behaviour in medical practice
You need a combination of skills and strategies to successfully manage situations where patients or family members behave aggressively or make unrealistic demands.

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what’s new

Physician leaders invited to workshop on workplace culture

Are you a physician leader looking to develop a workplace culture that promotes and prioritizes safe medical care? Develop the attitudes, knowledge, and skills you’ll need by attending the CMPA medical-legal workshop being held in Vancouver on April 27 at the 2017 Canadian Conference on Physician Leadership. For more information, go to the CMPA website, www.cmpa-acpm.ca. To register online, go to www.physicianleadershipconference.com.

CMPA part of new CanMEDS Consortium

The CMPA is one of 13 healthcare organizations that recently united and pledged to embed the CanMEDS framework across the continuum of a Canadian doctor’s education and career. Known as the CanMEDS Consortium, these organizations have committed to improving patient care by using the CanMEDS values and competencies when educating doctors. To learn more, go to the CMPA website, www.cmpa-acpm.ca.

CMPA Perspective articles published online first

More readers are interested in accessing our articles online so we’re publishing some CMPA Perspective articles on the CMPA website (www.cmpa-acpm.ca) before they appear in the print magazine.

Follow us on Twitter, @CMPAmembers, and watch for new articles from the CMPA each month!

2017 report of the CMPA nominating committee

The CMPA is governed by an elected council of 30 practising physicians representing 10 geographical areas across Canada. In 2017, 11 council positions are scheduled for nomination and election in the following areas: British Columbia and Yukon, Alberta, Ontario, Québec, Nova Scotia, and Prince Edward Island.

The CMPA Nominating Committee considers nominees and selects those it will recommend to the membership for election to council. Current members of council may also choose to seek nomination and re-election for an additional three-year term.

The slate of candidates recommended by the nominating committee can be found in the 2017 Report of the Nominating Committee, which is available exclusively on the CMPA website, www.cmpa-acpm.ca. Terms of office commence immediately following the 2017 CMPA Annual Meeting being held on August 23, 2017. Once elected, councillors serve for a three-year term.

In addition to those candidates proposed by the nominating committee, CMPA members have the opportunity to seek nomination and election to council on the basis of their province/territory of work (geographical area) and their type of practice. All nominees are asked to consider how their experience in the following areas may contribute to the governance of the CMPA: medical, clinical, and safe medical care experience; leadership in the medical profession; influence beyond the medical community; medical education and/or research experience; business, legal, and governance experience; and financial and/or investment literacy.

The council election process, including how candidates are nominated and elected, is governed by Article 4 of the CMPA By-law.

KEY ACTIVITIES AND DATES

1. Release of the nominating committee’s list of proposed candidates on the CMPA website
   February 22

2. Deadline for receipt of nominations from members resulting in a contested election
   April 5

3. Release of election information and voting platform opens to members in geographical areas where elections are required
   May 10

4. Online voting ends
   June 14

5. Election results are announced at the CMPA Annual Meeting
   August 23
Most patient visits are agreeable and physicians take great satisfaction in helping patients with their health needs. At times, however, physicians and their staff encounter patients or family members who make unreasonable demands or display manipulative, aggressive, angry, or threatening behaviour. These encounters can be unpleasant, stressful, counter-productive, and even dangerous. Doctors need a combination of skills and strategies to successfully manage aggressive and demanding behaviours to have productive, effective, and safe doctor-patient relationships.

Difficult patient encounters
While each physician has his or her own perspective on difficult patient encounters, these often involve patients who have unrealistic expectations of their care or health, insist on treatments that are not clinically indicated, are dissatisfied with their care, ignore medical advice, or engage in verbal abuse.1 Difficult patient encounters can have a lasting impact on physicians and can promote feelings of negativity, unhappiness, even self-doubt about clinical competence.

Many factors come into play in every physician-patient encounter. Being mindful of these can help doctors mitigate conflict and aggression. Physicians should be aware of their communication style, as well as the emotions involved—their own and their patients’.2 Situational stressors such as time pressures during patient appointments, negative bias towards specific health issues, and personal matters can all affect the encounter. Patient factors such as language barriers, poorly defined symptoms, non-adherence to medical advice, unhealthy lifestyles, underlying health issues, and personality disorders may also play a role.

A combination of skills and strategies can help doctors successfully manage aggressive and demanding behaviours.
It all comes back to communication

Just as good communication skills are necessary for effective patient care, communication is also at the heart of dealing successfully with conflict or patient aggression. Making an effort to connect with the patient, listen actively, convey empathy, and communicate clearly can help physicians understand and address patients’ motivations, emotions, and expectations.

There are a variety of tools to assist physicians with difficult encounters. In the ACE model, the ‘A’ refers to authority or power. Patients exert power or authority by the information they choose to share with their doctors, their level of engagement in their healthcare, and their decisions to follow treatment plans. Physicians exert authority by controlling the flow of conversation with patients and the diagnostic and treatment options offered. Doctors should use their authority appropriately and effectively. ‘C’ refers to collaboration, which occurs when physicians and patients jointly define problems, pursue investigations, and undertake treatment. While not all patients will collaborate with their doctors, physicians’ abilities to enhance cooperation and foster a partnership with patients are important. ‘E’ signifies empathy, a hallmark of the physician-patient relationship. Extending empathy by focusing on the patient’s emotions, and being firm but compassionate, can help return a difficult patient encounter to success.

When in the midst of challenging interactions with patients, physicians should avoid arguing, talking over patients, and making judgmental statements. It is advisable to speak in a conversational tone. Verbalizing the difficulty can help define it. Consider saying something like, “We both have very different views about how your symptoms should be investigated and that’s causing some difficulty between us. Do you agree?” This approach names the problem without assigning blame. Supporting patients, finding common ground, and focusing on solutions may increase the possibility of finding a way to work more effectively together.

The FIFE model (feelings, ideas, function, and expectations) is another possible approach when dealing with conflict and aggression. This model explores patients’ emotions, their ideas on what caused the problem, the effects of the illness or problem on functioning and relationships, and their expectations for care and for the future. Eliciting patients’ expectations helps develop trust, and assists physicians and patients to understand why they have come together and what they are hoping to achieve. When patients appear to have finished discussing their expectations, it may be appropriate to ask, “Is there something else?” or “Is this what you expected would happen today?” which allows patients to more fully express their needs and feelings. This type of question will also help determine what can be covered in that particular consultation and what may need to be discussed at a later visit. When physicians cannot meet patients’ expectations, it is best to communicate this directly, for example, “Based on my clinical assessment, opioid medications are not indicated for your condition” or “I cannot discuss your friend’s care because it would be a breach of confidentiality.”

When dealing with insistent or aggressive patients, it is also important for physicians to be consistent and follow their own practice rules. For example, physicians who routinely avoid providing medical advice by telephone or email should remain firm, despite patients’ pleas. Physicians should keep their professional perspective, even when patients indicate the doctor is the problem. Maintaining control of the situation without being overly authoritative is critical.
Handling patient complaints

When patients complain openly about an aspect of their care or the medical practice, physicians should try to address the complaint directly. Whatever the complaint, it is important to respond calmly and respectfully to the dissatisfied patient. Often, a face-to-face discussion helps resolve the matter or at least allows patients and physicians to clarify their issues or concerns and discuss how to move forward. It is also a learning opportunity. If appropriate, physicians should tell patients about any changes or specific steps that will be taken to address the issue. Such discussions should generally be documented in the patient’s record.

Remain calm and professional when speaking to patients and families, even when facing an angry patient or undeserved criticism. Staying composed and not raising your voice may de-escalate a tense situation.
Maintaining a safe environment

Patients exhibiting aggressive behaviour can pose a threat to office staff and physicians. Although it is generally necessary to meet with patients in private, away from other patients and staff, physicians must be mindful of their own safety and may want to ask a staff member or colleague to join them. Doctors should maintain some physical space between themselves and aggressive patients, and should try not to interrupt or talk over them. Doctors and staff should also know how to quickly contact security or the police. Discussions on how to approach patients with challenging behaviours and debriefs with the team after an occurrence may contribute to the overall positive culture for doctors and their staff. Also, physicians may be able to manage patient expectations by creating a policy on how they will respond to anyone’s use of aggressive behaviour or offensive language, and then making the policy public by placing a sign in their practice.

Considering ending the physician-patient relationship

Sometimes excessive complaints, significant conflict, or a loss of trust may lead physicians to consider ending the doctor-patient relationship. While this may be necessary on occasion, doctors should think carefully before doing so. Physicians are permitted to end a doctor-patient relationship for reasons other than retirement, relocation, or leave of absence provided the patient does not need urgent or emergent care. The patient generally requires adequate notice to find another doctor. While important in all jurisdictions, doctors in Québec must have reasonable and just cause to end the relationship. Doctors should also be aware of any human rights legislation, regulatory authority (College) policies, and codes of ethics that prohibit discrimination in the provision of medical services and that may require reasonable grounds to discharge a patient or that may otherwise affect one’s ability to terminate the relationship. If the relationship is terminated, this should be documented in the patient’s medical record.

While always maintaining patient confidentiality, physicians may consider speaking to a trusted peer when thinking about parting ways with a patient. Sometimes a different perspective or wise suggestion may help physicians identify ways to truly assist a difficult or angry patient. Members can also contact the CMPA to speak with a physician advisor.

The office safety plan

When it comes to maintaining a safe office environment, physicians can take steps to protect everyone who enters—patients, visitors, staff, and themselves. Examples of steps that may help include:

- creating and posting a policy about what behaviour is considered inappropriate, aggressive, or threatening, and the potential consequences for anyone exhibiting such behaviour
- positioning the reception area so that it is visible to other staff and allows for a view from reception of everyone entering the office
- placing office furniture, such as chairs and desks, close to a door or exit to avoid anyone from being cornered and to allow a rapid exit
- using controlled access to certain areas within the office (e.g. having a code entry system)
- securing medical records, computers, and medical equipment
- properly storing medications in designated areas and, if applicable, securing all opioids and other controlled substances in a locked area
- having security alarms, including a system to summon assistance (e.g. panic button, personal alarm)
- having sufficient lighting near entrances and in the parking lots
- establishing and documenting emergency response procedures, and ensuring employees are properly trained

Some physicians may be considering using video surveillance as part of their office safety plan. Using video for this purpose raises privacy issues including the need to protect patient and employee privacy by meeting specific requirements of privacy legislation and medical regulatory authorities (Colleges).

Physicians who are employers should be aware of legislation regulating their responsibilities for health and safety in the workplace. In most provinces and territories, these responsibilities are set out in occupational health and safety legislation. Some of these statutes have specific requirements for managing workplace violence, such as the need to develop policies on workplace violence prevention and to provide safety training to staff. Physician-employers are encouraged to consult their employment lawyer to learn about their obligations regarding workplace safety.

In the context of a medical practice, policies, procedures, and interventions should also ensure that the confidentiality and privacy of patients and employees are protected.
**Physicians’ self-care**

Physicians who experience ongoing difficulties with aggressive or challenging patient behaviour may need additional support, particularly to avoid burnout.1 While a colleague may be able to relate to the problem and provide comfort, CMPA members can also contact the Association to speak with a physician advisor with expertise in these matters. Doctors should also take care of their physical and mental health, especially when significant levels of stress and conflict are part of their medical practice.

**Additional reading at www.cmpa-acpm.ca**

- “When physicians feel bullied: Effective coping strategies”
- “Physician-patient communication: Making it better”


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Patient portals are emerging as an important tool for improving communication between physicians and their patients, and as a means of empowering patients to become more engaged in managing their healthcare.

Patient portals are being adopted by a growing number of physicians, hospitals, and healthcare clinics in Canada and abroad. Some portals allow patients to upload health information for physicians to view, while others give patients access to their health information online. This article looks at the latter type of portal, where patients can access their information online.

Physicians and healthcare administrators are seeing benefits in making patients’ personal health information and records accessible through secure online portals that patients can view on their own time and from virtually any location.

**The benefits**

Some of the benefits of providing online access to health information include:

- empowering patients to take an active role in their healthcare
- helping patients to better understand their medical condition
- bolstering patient adherence to healthcare advice and the taking of medications
- engaging patients to confirm that their health record is correct and complete, which may assist in reducing errors
- giving patients another way to communicate with their physician, which is convenient and secure

Regardless of the existence of a patient portal, physicians continue to be responsible for ensuring that patients receive test results in a timely manner, and are informed of a diagnosis and the consequences of the diagnosis. Doctors still play a critical role in explaining medical information, exercising clinical judgment regarding diagnoses and treatments, and interpreting and communicating test and lab results for their patients in a timely and appropriate fashion. But securely posting clinical notes, test results and other pertinent information online for patients to view can help to better manage individual healthcare needs, and may lessen the likelihood of important information not being acted on.

“Seeing written information, including notes, helps patients to remember and understand a plan of care and reinforces positive behaviour,” says Dr. Gordon Wallace, Managing Director of Safe Medical Care at the Canadian Medical Protective Association (CMPA).

“Beyond these benefits, online patient portals are an important risk management tool. The more a patient is involved and knowledgeable about their own healthcare the better.”
Risks and security concerns

As a transparent way of sharing information, online patient portals do carry some risks for physicians.¹ Those risks may include:

- Security and privacy of patient information could be compromised when shared online.
- Test results and notes could be misinterpreted by patients who do not have a medical background or extensive knowledge of the healthcare system.
- Anxiety levels among patients could be raised when viewing clinical notes and test results concerning their health without a physician present to provide context and reassurance.
- Online patient portals may not be the best medium to inform patients in certain situations, such as when providing a serious or life-threatening diagnosis.
- Patient informed consent will be needed to use an online patient portal to share information among the healthcare team.

“E-health is a rapidly growing trend, and patients should be invited to use online portals to review their test results and clinical notes, as well as seek clarification, and take action on an agreed-on plan of care,” says Dr. Lisa Calder, Director of Medical Care Analytics at CMPA. “It is also important for physicians to take steps to mitigate the risks to ensure that patient portals are used successfully.”
To lessen risks when using patient portals, doctors should consider taking the following steps.

**Use robust security and privacy protections:** Physicians have professional and legal obligations to ensure patient information is kept private and secure. Patient portals should have security features that adequately protect patient information from unauthorized access. Features, such as encryption, along with rules about who can access data can help minimize these risks. Privacy and security issues should be part of discussions with patients when introducing patient portals.

**Manage expectations:** To manage expectations, physicians should explain to patients how the portal will be used and any limitations. Expectations should also be set around response times and when information will be posted to a portal. In some cases, patients may expect information to appear on a portal immediately. The CMPA recommends physicians include terms of use on their web-based patient portals, which clarify expectations and outline the terms and conditions under which patients may access the portal. The CMPA has developed a template terms of use agreement, which can be found at www.cmpa-acpm.ca.

**Write clear, concise notes:** Physician notes and information should be written clearly and concisely, and in a way that is easy to understand. Avoid abbreviations and jargon as these can confuse patients and other clinicians who view the file.

**Draw attention to important information or desired actions:** Physicians can draw attention to information they feel is most important for patients to know, or actions that are critically important for patients to take. For example, physicians may remind a patient of the importance of following a vaccination schedule.

**Highlight patient accomplishments:** Patient portals can also be used to highlight patient accomplishments and encourage patients to make positive changes that will improve their health. Clinicians often focus on positive change when speaking to patients directly, and the same can be done with online patient portals. Doing so may motivate patients and inspire a change of behaviour.

**Keep the language professional:** Keep language professional and focused on the diagnosis and plan of care. Remember that the information is being accessed by people outside the clinical setting.

**Provide additional information:** As a communication tool, patient portals can provide people with helpful resources and additional information concerning their health and plan of care. Physicians may insert links to reliable online resources that can help to inform and educate patients, provide context and clarification, and inspire action.

**Ensure follow-up plans are clearly visible:** Physicians should make follow-up plans visible and easily understood. Seeing the plan of care and next steps documented can help reduce patients’ anxiety and make them see that proactive steps are being taken to manage their condition. A tangible plan of action may also help patients move beyond denial and prompt behaviour change. Physicians should also tell the patient to contact the physician if they need clarification or have any concerns.

**Special circumstances**

Patient portals should not be used as the sole method of communicating with patients. There are often times when face-to-face consultations are a more appropriate means of communication. These could involve providing a diagnosis, or having a need to carefully explain a test result and provide fulsome context around what the test result means for the patient’s long-term health.
It is worth noting that most electronic health systems allow doctors to block specific notes or parts of a medical record from being visible to the patient on the portal. This may be helpful in certain situations, such as when physicians believe that reading a note on their own may cause patients anxiety, or when there is information patients do not want shared with others who may have access to the portal. Patients do have a general legal right of access to their personal health information, but there may be rare exceptions that physicians can rely on to delay access, if appropriate. More details on exceptions can be found in the CMPA article, “Sharing records, improving care, staying safe,” which can be found on the Association website, www.cmpa-acpm.ca.

There may be other situations where a patient’s medical information is deemed too sensitive to share on a portal, such as when it includes details of a person’s sexual history, instances of abuse, or mental health issues. Each patient case should be treated as unique, and physicians should exercise prudence when deciding when it is appropriate to use an online portal.

Physicians should also be aware that some patients may request that changes be made to their medical notes—whether it is an omission or having some information rewritten. Physicians should be aware of the legal and College requirements in their jurisdiction for making corrections or addendums (late entries) in the record. Not all requests for amendments need to be accommodated. More information on making appropriate changes to a medical record can be found in the CMPA article, “The medical record: A legal document—Can it be corrected?”

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Additional reading on www.cmpa-acpm.ca

- “Sharing records, improving care, staying safe”
- “The medical record: A legal document—Can it be corrected?”

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Physicians involved with post-mortem organ and tissue donations may be concerned about informed consent—particularly, who can provide it and how it should be obtained. Physicians may also worry about exposing themselves to complaints or legal actions when taking part in harvesting and transplanting organs and tissue. By gaining an understanding of the regulatory requirements governing organ and tissue donation, physicians can be confident they are effectively meeting their obligations to patients and their families, and potentially helping to increase the limited supply of transplantable organs.

Physicians who act in good faith and are reasonably satisfied that valid consent has been given are unlikely to face medical-legal difficulties. Indeed, the CMPA is not aware of any legal actions or regulatory authority (College) complaints arising from organ and tissue donations in Canada in the past 10 years.

**OPTING IN TO GIVE CONSENT**

Requirements for consent to donate organs and tissue are addressed in provincial and territorial statutes (in Québec, consent for such donations is addressed in the Civil Code). All provinces and territories operate opting-in systems. This means that the express consent of the donor or other specified individual is required. Such consent can commonly be given when a prospective donor registers with a provincial donor registry such as BC Transplant or Ontario’s Trillium Gift of Life Network, or when renewing one’s health card or driver’s license, or can be given more contemporaneously by the patient or substitute decision-maker (SDM).

Legislation in many provinces also allows family members and SDMs to consent at the time of death or when death is imminent. In general, consent may be given in priority order by next of kin or other specified individuals when certain conditions are met such as the absence of personal knowledge that the donor would have refused to give consent.

**SUITABILITY FOR ORGAN AND TISSUE DONATION**

An ongoing challenge for physicians and organ procurement organizations is finding ways to reduce barriers to organ and tissue donation, thus narrowing the gap between supply and demand. While Canadian regulations identify many contraindications to organ and tissue donation, such as infections and some neurological disorders, they do allow for exceptions to be made on a case-by-case basis. Indeed, one recent study found that about one-third of deceased donors in Ontario were such exceptions. Suitability is typically assessed by the organ procurement organization and the decision whether to proceed is ultimately made by the transplant physicians.

**PRESUMED CONSENT AND MANDATED CHOICE**

In an effort to increase the availability of organs, some advocates call for a system of presumed consent—the presumption that consent has been given unless there is evidence to the contrary—or a system of mandated choice whereby all Canadians would be required to declare whether they wish to donate. However, in countries that use presumed consent, donation rates vary widely and have overall average rates similar to those in opting-in systems.
Physicians may be subject to additional obligations. In Alberta, for example, physicians who make a determination of death are required to consider and document in the patient record the medical suitability of the deceased person’s organs for transplantation. For more information physicians should refer to the applicable College guidelines and to policies such as the Canadian Medical Association’s Policy on Organ and Tissue Donation and Transplantation. As well, some provincial donor registries and organ procurement organizations offer resources and advice from transplant specialists; in many hospitals transplant physicians may also be available for consultation.

**Providing care in good faith**

Provincial legislation on organ and tissue donation provides immunity from civil liability for physicians who act in good faith and without negligence in removing tissue for post-mortem donation. Such legislation is grounded in the general principle that physicians will not be found liable when acting according to the appropriate standard of care applicable in the circumstances, which is based on medical knowledge and prevailing practices at the time.

**Communicating with donor patients and their families**

Physicians are encouraged to provide prospective donors with “meaningful, understandable information” concerning donating their organs and tissue. Preferably this information is part of ongoing care and provided in advance of any crisis requiring an urgent decision or when the patient’s capacity to consent might be compromised. Such information may normally include the following: benefits and risks of donation and transplantation, procedures on the determination of death, testing of organs and tissues to determine their suitability for transplantation, measures that may be required to preserve organ function until death is determined, what will happen to the body once death has been declared, what organs or tissues are being donated, and the protocol that will be followed in the event the family objects.

Physicians should encourage prospective donors to discuss their choice with their family or SDM. This can provide greater certainty and avoid possible later conflict.

When a patient has died, a good practice is to call on the hospital’s organ donation coordinator (or equivalent), who may access the donor registry and who is well versed in communicating information about the donation process with the family. Communicating effectively with the family to obtain their consent has been shown to improve rates of authorization for
organ and tissue donation as well as the overall quality of the donation experience. When requesting consent from family members in the absence of the donor’s express consent, it may be helpful to keep in mind that families are more likely to regret refusing to donate their loved one’s organs and tissue rather than feeling remorseful about giving permission.

When the patient’s wishes are known and there is no reason to believe the patient changed his or her mind to donate, physicians are not obligated from a legal perspective to seek additional consent from family members or the SDM. While family members and SDMs are encouraged to respect their loved one’s expressed wishes, consensus may not always be easily achieved. For physicians, it may not be prudent to proceed without first having a tactful, considerate discussion with the family or SDM to review the donor’s wishes and secure the family’s consent. Such a discussion will serve to avoid potential disagreements, help grieving survivors cope with their loss, and reduce the possibility of medical-legal difficulties for the physicians involved.

**The Bottom Line**

- Physicians who act in good faith and are reasonably satisfied that valid consent has been given to harvest a deceased person’s organs or tissue are unlikely to face medical-legal difficulties.
- Information concerning donating organs and tissue is best provided to patients as part of ongoing care and in advance of any crisis that might give urgency to the decision.
- When a patient’s wishes are not known, legislation generally allows next of kin to consent to donate under specified conditions.
- When a patient’s wishes are known, a discussion with the family to confirm the donor’s wishes may help avoid possible disagreements and medical-legal difficulties for physicians.

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1. art. 10, 11 CCQ.
9. For example, in Nova Scotia, the Human Tissue Gift Act. R.S., c. 216, s. 1
smartphone recordings by patients: be prepared, it’s happening

In the 10 years since the launch of the first Apple iPhone in 2007, mobile devices have become integral to many people’s daily life. It is not surprising then that some patients want to bring their smartphones into their physicians’ offices to record some or all of their clinical healthcare encounter.

These recordings (audio or video) may benefit patients, giving them improved clarity about their health and a greater sense of engagement, possibly leading to better adherence to their care plan. However, any recording in a physician’s office also has the potential to raise issues, such as the privacy of other patients and staff, the impact on the doctor-patient relationship, and the incorporation into the medical record.

To leverage the possible benefits of recordings and counter any possible problems, physicians need to be prepared. They should become aware of their privacy obligations and consider whether to adopt a policy on recordings in their premises. Any policy should address potential problems that are specific to a recording’s location—that is, the policy must address recordings made in public areas, such as waiting rooms, and recordings made in private areas, such as an examination room.

Patients are likely unaware of the issues with recording in a physician’s office and recordings will likely happen.
**Privacy issues in public areas**

Patients recording in public areas of a doctor’s office, such as waiting rooms and other common spaces, could possibly capture other people who are not involved in the patient’s healthcare encounter. The recordings could include identifiable information about another patient or staff member and lead to an allegation of a privacy breach against the physician.

The allegations would be based on physicians’ ethical and legal obligations to maintain their patients’ personal health information in accordance with privacy legislation. Physicians are also required to protect the personal information of their employees. The general rule is that identifiable, personal information about an individual cannot be collected, used, or disclosed unless the individual has provided consent, or unless the collection, use, or disclosure is otherwise required or permitted by law.

The CMPA has seen cases in which video taken by a patient in a doctor’s office without the physician’s knowledge has appeared on public websites and on social media.

**Impact on the doctor-patient relationship**

A patient may have valid reasons for wanting to record a clinical encounter in a private area such as an examination room. They may want to have an accurate record of the physician’s advice, or to share the information with a family member. However, the recording of a clinical encounter by a patient without the physician’s knowledge can be perceived as reflecting a lack of confidence in the relationship on the part of the patient.

As well, misunderstandings related to recordings can lead to regulatory authority (College) complaints.

**Impact on the medical record**

Any recording made at the time of the clinical encounter (i.e. contemporaneously) could be considered part of the medical record.

The law in each province and territory requires that physicians and healthcare institutions maintain a treatment record for each patient. A recording made in the context of providing patient care is likely to be considered part of the clinical record. While not necessarily a substitute for a physician’s notes, a recording of the clinical encounter can be invaluable to a physician since it is likely the most accurate and reliable record of the encounter.

**What can physicians do about recordings in their offices?**

Physicians should prepare for patient recordings and consider adopting a policy on the use of smartphones and other recording devices in their offices.

Any policy should distinguish between what is allowed in public spaces and in private areas. At a minimum, physicians should consider whether it is necessary to prohibit patients from taking photos and making video and audio recordings in the waiting room or other public areas to protect the privacy of patients and staff members.

Physicians may also want to be proactive by encouraging patients to speak with them before making a recording of the clinical encounter in a private area. A smartphone recording of a patient’s visit has the potential to be used in a legal proceeding (in the event of a legal action or College complaint). It is therefore ideal for the physician and patient to reach an agreement about whether a recording may be made, how it will be made, and to ensure the privacy of others will not be affected. There may be times when it’s not possible to have this kind of discussion in advance, such as when someone begins recording during an emergency. In these situations physicians should find an appropriate time later to talk about the issues.

Physicians should document in patients’ medical records that a recording took place and other details (e.g. duration of the recording, topics covered, etc.). The recording itself should be maintained in the medical record or the record should indicate where the recording can be found (e.g. in a file on the office computer server). Physicians should ask the patient for a copy of the recording. If there are concerns about obtaining a reliable copy from the patient, physicians may consider offering to record the encounter and to provide a copy to the patient, or to make their own recording at the same time as the patient. Physicians who make their own recording of patient encounters are encouraged to first obtain patients’ informed consent.

In the event that a patient has inappropriately posted online a recording from the physician’s office, various options are available to attempt to have it removed, depending on the website and the content of the recording. Most social media sites provide reporting tools to request removal. Members are encouraged to contact the CMPA to discuss the options available to them in specific circumstances.

**When patients ask to record their visit...**

1. Ask them why they want to record the encounter to determine what they hope to achieve.
2. Consider whether better alternatives exist, including recording part, but not all, of the encounter, and discuss these options with patients.
3. Accept or decline the request. If declining, explain the reasons for the decision and offer to continue with the encounter regardless. If the patient insists on recording, physicians will have to use their discretion on whether or not to continue the appointment.
4. If a recording is made, note this fact in the medical record and, when possible, ensure a copy of the recording is maintained along with the clinical documentation.
The Bottom Line

Patients may benefit from recording their healthcare encounters. Open communication about the need for the recording will help ensure that recordings will not threaten the privacy of other patients and staff or affect the trust between physician and patient. If a physician believes a recording is appropriate, consideration must be given to ensuring a copy of that recording is kept as part of the medical record.

As technology advances and recordings become more common in healthcare, robust communication skills are becoming essential for physicians. The CMPA Good Practices Guide’s section on communication provides physicians with information on how to improve communication with patients.

Additional reading at cmpa-acpm.ca

- “Online physician reviews: What’s to be done?”
- “Using electronic communications, protecting privacy”

Physician Use of Smartphone Recordings

Although patients can record their clinical encounters without a physician’s consent, the same does not hold true for physicians. Clinicians who wish to record a clinical encounter must first obtain consent from the patient.

The CMPA has provided detailed information on the duties and responsibilities associated with clinical photographs and videos, and the need for de-identification of images and obtaining patient consent. The CMPA also offers a consent form template for these activities.

To prevent privacy breaches, any personal health information stored on a mobile device should be encrypted. This safeguard is a requirement in an increasing number of jurisdictions.
#CMPAtips
for members new to practice

Keep your contact information current
- Get information about membership, and ensure we can inform and assist you with any arising medical-legal issues

Update your type of work and region information
- Avoid gaps in your medical-liability protection

Take advantage of the CMPA's transition to practice payment option
- Enter practice with minimal disruptions to your cash flow

Check out the CMPA Good Practices Guide
- Review CMPA case studies to identify ways in which you could improve the care of patients

We’re here to help!

Contact the CMPA for strategies and tips to address issues concerning:
- Office management
- Patient communication
- Diagnostic error
- And much more!

CMPA's professional, personalized, and confidential advice is only a click or a call away.
Contact us at www.cmpa-acpm.ca, 1-800-267-6522

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