ETHICAL ISSUES FOR REGULATED HEALTH PROFESSIONALS IN THE ERA OF COVID-19

Health care practitioners are routinely required to make ethical decisions in their practice. COVID-19, however, poses ethical dilemmas for health practitioners that can only be characterized as extraordinary.

Health care professionals in some of the hardest hit countries, such as Italy, now face unenviable and heartbreaking ethical decisions such as which patient gets an intensive-care bed or a ventilator and which patient does not. Canadian health practitioners may not be immune from making these types of decisions, if infections rates continue to rise and the demand for intensive-care beds and ventilators outpaces its supply.

While there have been no reports of health practitioners being required to make these types of decisions thus far Canadian health care professionals and facilities are facing novel ethical dilemmas as a result of the spread of COVID-19 virus. The decision whether to continue in-person services that may not be deemed essential by you but which may be perceived as essential to a patient and whether to compromise a patient's confidentiality, which may ultimately restrict the patient's movement, are two ethical dilemmas currently being faced by health practitioners in Canada.

Continuing To Provide Non-Essential Health Care Services

In response to the COVID-19 outbreak, several provinces have enacted orders or regulations specific to health professionals and facilities.

For instance, as a result of a Directive, dated March 27, 2020, issued by Alberta's Chief Medical Officer of Health of Alberta, any place of business offering or providing non-essential health services and wellness services is required to no longer provide services to the public. The Chief Medical Officer sets out exceptions for all non-essential health services deemed urgent by the health professional providing the services.[1]

This Directive in Alberta is similar to an earlier Directive that was issued on March 19, 2020 by the Chief Medical Officer of Health of Ontario (CMHO). As a result of the Directive, dated March 19, 2020, all regulated health professionals (and people who operate group practices of regulated health professionals), such as clinic owners, are required to stop or seriously reduce all non-essential or elective in-person services until further notice. Exceptions to time-sensitive situations or cases where adverse patient outcomes would result if care is delayed are also set out in the Directive.

While British Columbia has not mandated similar closures, on March 23, 2020, the Provincial Health Officer in British Columbia advised regulated health professionals under the *Health Professions Act* to reduce all non-essential and elective services involving direct physical contact with patients and to minimal levels, subject to allowable exceptions, until further notice.[2]

While the issue of what is considered an essential service can be a grey area for some health care professionals, the CMHO and British Columbia's Provincial Health Officer recognize that clinicians are in the best position to make this determination.

[1] https://open.alberta.ca/dataset/c02f3b06-9c37-4845-98ee-d07d805fdce1/resource/32f3367d-9a15-4aef-af6e-4e960891c14e/download/health-cmoh-record-of-decision-cmoh-07-2020.pdf

[2] https://www.cdsbc.org/Documents/covid-19/PHO-Letter-Non-Essential-Services-Health-Mar-23-20.pdf

They also advise clinicians to take direction from their regulatory College in making decisions regarding the reduction or elimination of non-essential services and to consider certain principles in their decisions. For instance, British Columbia's Provincial Health Officer has set out the following principles[3] to be considered when making decisions on the reduction or elimination of non-essential services:

1. ***Proportionality:*** *Measures taken should be proportionate to and commensurate with the real or anticipated risk one is trying to prevent.*

2. ***The Harm Principle:*** *Measures taken should attempt to limit harm wherever possible, taking into consideration all available alternatives, and the balance of differential benefits and burdens that result.*

3. ***Fairness:*** *Persons ought to have equal access to health care resources, benefit ought to be offered preferentially to those who will derive the greatest benefit, and resources ought to be distributed such that the maximum benefits to the greatest number will be achieved.*

4. ***Reciprocity:*** *Certain persons or populations will be particularly burdened as a result of a reduction in non-essential services. As such, patients and clients should have the ability to have their health monitored and it be revaluated as required.*

The Directives also highlight that decisions regarding the reduction or elimination of non-essential and elective services should be made using processes that are fair to all patients.

Other provinces, such as Newfoundland and Labrador, have issued similar directives by their respective Chief Medical Health Officers.[4] Those directives along with similar accompanying principles and the recommendations of provincial Colleges that govern health professionals can assist to guide all health care professionals who have limited their practice. Many regulatory Colleges have now dedicated web pages and have also produced a list of FAQs (frequently asked questions) pertaining to COVID-19 related issues.

While Colleges are developing guidance on continuing care with clients in the era of COVID-19, some questions to consider when making clinical judgements and ethical decisions about whether to defer services could include:

- What are the possible consequences to the client if I do not provide the client with service?

- If a client does not receive my professional service at this time will their condition deteriorate and to what extent?

- Am I able to meet my client's needs using alternative means such as virtual care?

- Do I have the capacity, tools and resources to prioritized clients and services and safeguard their health for in-person visits?

Release of Personal Health Information To Public Health Officials

Those health care professionals who continue to provide services may be concerned about how to handle confidentiality issues arising from COVID-19.

Health care custodians may face the ethical dilemma about whether to contact a health authority, where, for instance, their patient discloses or exhibits COVID-19 symptoms and yet does not wish to be tested. While regulated health care professionals are not required to report suspected COVID-19 cases, if health professionals who have reasonable grounds to believe that the disclosure is necessary for the purposes of eliminating or reducing a risk of harm, then they *may* disclose information under section 40(1) of the *Personal Health Information Protection Act, 2004*

[3] These principles are almost identical to those set out in Ontario.

[4] https://www.gov.nl.ca/covid-19/files/Special-Measures-Order-Amendment-Order-March-24-2020.pdf.

(PHIPA).[5] This provision deals with disclosures related to risks and provides an exception to patient confidentiality. Any disclosed information by the health care custodian should be limited, such as contact information. Having a conversation with patients at the outset of their appointment around the limitations of confidentiality, especially pertaining to COVID-19 related issues can also be useful to navigate these issues.

Public health authorities in various provinces can also issue an order directing any health information custodian to provide information, including a client's personal health information.[6] Such an order can only be made in limited circumstances, such where there are grounds to believe the information is necessary to investigate, eliminate or reduce the immediate and serious risk to the health of any persons.

The consequences of failing to comply with such a directive can be quite significant. For instance, one can be liable to a fine of up to $5000 for each day of non-compliance, under the *Health Protection and Promotion Act (HPPA)* in Ontario.[7]

Health care professionals are better suited to make informed ethical decisions and act appropriately in order to protect both themselves and patients if they keep themselves apprised with up-to-date information. Trusted sources of information related to COVID-19 include the websites of provincial governments and the Government of Canada as well as:

1. Local and provincial centers for disease control;

2. Directives issued by Provincial and Local Chief Medical Officers;

3. Professional Associations; and,

4. Regulatory Health Colleges;

In addition to these resources, certain Health Ministries such as the Ministry of Health of Ontario have also set up a Health Care Provider Hotline for healthcare organizations that have questions relating to emergency planning.

Staying current around COVID-19 issues and consulting trusted available sources from health departments, regulatory Colleges as well as legal counsel, will not only assist health care providers in making informed ethical decisions, but will also fulfill the ethical obligation of being knowledgeable and duly diligent in a professional's practice.

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[5] *Personal Health Information Protection Act, 2004, S.O. 2004*, c. 3, Sched. A.

[6] See for instance, Provinces Under section 77.6(1)-(7) of the Health Protection and Promotion Act.

[7] Section 101 of *Health Protection and Promotion Act (HPPA),* R.S.O. 1990, c. H.7.