

ADVICE TO THE PROFESSION: REPORTING REQUIREMENTS

Advice to the Profession companion documents are intended to provide physicians with additional information and general advice in order to support their understanding and implementation of the expectations set out in policies. They may also identify some additional best practices regarding specific practice issues.

Physicians have legal and professional reporting requirements. The *Reporting Requirements* policy outlines the professional expectations the College of Physicians and Surgeons of Ontario (“CPSO”) has set. The *Legal Reporting Requirements* companion resource contains a non-exhaustive list of clinical conditions and events that physicians are legally required to report.

This document is intended to help physicians interpret and effectively discharge those reporting obligations and provide physicians with advice on how to address issues that may arise in practice.

General

What do I do if I have questions about my reporting requirements?

Physicians can contact the Canadian Medical Protective Association with any questions. Physicians may also wish to consult with the Office of the Information and Privacy Commissioner of Ontario, and/or CPSO’s Physician Advisory Service.

What will happen if my patient complains to CPSO about a report I made?

Physicians are generally protected from legal action and complaints that arise when complying with their reporting requirements in good faith.

What will happen if I do not comply with my reporting requirements?

Failing to comply with a reporting requirement may have serious repercussions and may amount to professional misconduct or professional negligence.

What about my duty to maintain patient confidentiality?

As a general rule, personal health information cannot be disclosed without patient consent. However, this duty is not absolute and is overridden when there is a

30 requirement to report, or a disclosure that is permitted by law, because a potential
31 threat to public safety outweighs the need to preserve confidentiality.

32 ***What details do I need to capture in the medical record when I make a report about a***
33 ***patient?***

34 In general, documentation describing a report made about a patient will include:

- 35 • the rationale for the decision to report
- 36 • the date and time the report was made
- 37 • the person or agency to whom the report was made
- 38 • the information disclosed in the report that was made and
- 39 • if the report was discussed with the patient (and if the patient was not informed,
40 the reasons for not informing them).

41 Many reports are made in writing (i.e., letter or form). Including a copy of the report in
42 the patient's medical record will often be sufficient to discharge this requirement, but
43 physicians still need to ensure the record contains all the relevant details.

44 Where a report is not made in writing, it can be helpful to follow up on a verbal
45 conversation by sending the other party a letter confirming what was discussed, and
46 then including a copy of the letter in the patient's medical record.

47 The [Canadian Medical Protective Association](#) notes that physicians may wish to
48 document their rationale for *not* reporting a patient in situations where they have
49 considered whether a reporting requirement exists. If the situation relates to a non-
50 patient (e.g., another regulated health professional), it may also be helpful to document
51 the rationale for reporting or not reporting them in a personal and confidential file.

52 ***Do I have to make a report if someone else has already filed one?***

53 Yes. Physicians must make a report themselves, even if they know that a report has
54 already been made or that someone is planning to make a report. For example, a
55 physician who believes that a child needs protection would have to make a report to the
56 Children's Aid Society (CAS) even if they know that CAS is already involved.

57 ***Can I disclose a patient's personal health information (PHI) to the police?***

58 Generally, physicians are not permitted to disclose PHI to the police (or any other third
59 party) unless they have patient consent, or the disclosure is required by law. Disclosure
60 required by law may include a legal requirement to report to the police under a
61 legislation, a police request for information in the course of certain authorized
62 investigations, or pursuant to a court order or warrant. Under section 40(1) of the
63 *Personal Health Information Protection Act, 2004*¹, physicians may also disclose PHI to

¹ [S.O. 2004, c. 3, Sched. A](#). See s.40(1).

64 the police without consent if they believe on reasonable grounds that the disclosure to
65 the police is necessary for the purpose of eliminating or reducing a significant risk of
66 serious bodily harm to a person or group of persons.

67 Absent patient consent, physicians will need to carefully consider any request for
68 information and take steps to confirm that there is a lawful basis for disclosing PHI,
69 which may include seeking advice from the Canadian Medical Protective Association.

70 **Timing and Notification of Reports**

71 ***What can I tell patients to best support them when I make a report?***

72 It is important to explain anything the patient might find helpful, including:

- 73 • where a report is required by law, that the report must or had to be made, and
- 74 that the reporting requirement overrides the duty of confidentiality
- 75 • the information that was or will be contained in the report and
- 76 • to whom the report was or will be made.

77 Being upfront and transparent about a report helps support and preserve a trusting
78 physician-patient relationship. In addition, it may help avoid unnecessary complaints to
79 CPSO and prevent patients from endangering themselves and others.

80 ***How and when do I notify patients of a reporting requirement?***

81 While it is best practice to notify patients directly and in person, depending on the
82 situation, it may be appropriate to inform the patient by telephone or in writing, or for a
83 staff member or colleague to speak with the patient instead. In deciding how to notify
84 patients of a duty to report, physicians will need to consider factors such as the
85 immediacy of the risk and sensitivity of the personal health information involved.

86 Although it is ideal to notify patients before making a report, this may not always be
87 possible. For example, a physician might notify a patient after making a report if the
88 physician only realizes they must make a report after the patient leaves their office and
89 the patient cannot be reached by telephone in a timely manner.

90 Importantly, it may not be appropriate to notify a patient of a report – either before or
91 after it is made – where doing so would pose a genuine risk of harm to the physician or
92 others, including staff, the patient, and the patient’s family members (e.g., where the
93 physician is unable to have a discussion with the patient as a result of the patient’s
94 abusive, erratic, and/or aggressive behaviour).

95 ***Physicians are required to make some reports in a “timely” manner – what is “timely”?***

96 What constitutes “timely” will depend on the circumstances of each case and, most
97 importantly, on the level and nature of the risk inherent in the situation (e.g., whether a
98 patient with a motor impairment expresses an intention to drive). At times, the level and

99 nature of the risk will need to be weighed against other factors, such as whether it
100 would be best to wait to inform a patient in person before making a report.

101 Depending on the risk and urgency of the situation, sometimes reporting in a “timely”
102 manner will mean reporting immediately.

103 **Specific Reporting Scenarios**

104 ***Do I have a “duty to warn” if I suspect my patient is going to harm themselves or*** 105 ***someone else?***

106 There is no mandatory “duty to warn” in Ontario. However, that does not mean that
107 physicians cannot, or should not, take action when they believe that a patient may pose
108 a danger to themselves or others. As always, physicians will need to exercise their
109 professional judgment, which in some cases may mean disclosing a patient’s personal
110 health information (PHI) without consent.

111 The *Personal Health Information Protection Act, 2004*² (PHIPA) allows physicians to
112 disclose a patient’s PHI without consent if there is a significant risk of serious bodily
113 harm to a person or group of persons, and the disclosure is necessary to eliminate or
114 reduce the risk of harm. For example, as the [Information and Privacy Commissioner](#)
115 notes, a psychologist at a university could disclose a student’s PHI to the student’s
116 family and physician if the psychologist believed it was necessary to reduce the risk of
117 suicide. While there are no restrictions in PHIPA on the types of persons to whom the
118 information may be disclosed, it is important that the disclosure be made to someone
119 who is in a position to reduce or eliminate the risk of harm.

120 Physicians are reminded that s. 40(1) of PHIPA does not apply in situations where the
121 law already requires a physician to make a report (e.g., if the person who may be
122 harmed is the patient’s child, this would need to be reported to the Children’s Aid
123 Society).

124 ***Am I required to report gunshot wounds?***

125 According to the *Mandatory Gunshot Wounds Reporting Act, 2005*³, every facility (e.g., a
126 public hospital) that treats a person for a gunshot wound must report to the police.

127 While this requirement does not apply to physicians directly, physicians have a general
128 professional duty to comply with their facilities’ policies, including policies that enable
129 the facility to report gunshot wounds.

² [S.O. 2004, c. 3, Sched. A](#). See s.40(1).

³ [S.O. 2005, c. 9](#). See s. 2(1).

130 **What do I tell individuals who have been affected by a privacy breach?**

131 Among other things, the [IPC](#) recommends disclosing:

- 132 • details of the breach, including the personal health information (PHI) involved
- 133 • the steps taken to address the breach, including if the breach was reported to the
- 134 Information and Privacy Commissioner (IPC), and
- 135 • contact information for a person in the organization who can address inquiries.

136 The [IPC](#) notes that there are many factors physicians may consider, such as the

137 sensitivity of the PHI involved, when deciding how to notify a patient of a privacy breach

138 (i.e., by telephone, in writing, or in person at the next appointment).

139 **What can I tell patients when reporting to the Ministry of Transportation (MTO)?**

140 Recognizing how impactful a report to the MTO may be, it can be helpful to explain that:

- 141 • physicians are required by law to report to the MTO when a patient who is over
- 142 the age of 16 has certain conditions or impairments that make it dangerous for
- 143 them to drive – even if the patient does not have a valid driver’s licence or says
- 144 they will not drive. These reports result in an automatic licence suspension.
- 145 • physicians are also allowed to report other conditions that they believe might
- 146 pose a risk to road safety, even if it involves disclosing confidential patient
- 147 information. These reports do *not* always result in a licence suspension.⁴

148 **Can I give personal health information (PHI) about a patient to the Children’s Aid Society**

149 **(CAS) to assist in an investigation?**

150 Yes. Both the *Personal Health Information Protection Act, 2004*,⁵ and *Child, Youth and*

151 *Family Services Act*⁶ allow physicians to disclose PHI to help the CAS carry out its

152 statutory functions. For more information, see: [Yes, You Can. Dispelling the Myths](#)

153 [About Sharing Information with Children’s Aid Societies.](#)

154 **What can I tell patients or caregivers when reporting to the Children’s Aid Society (CAS)?**

155 Physicians can support patients by explaining, among other things:

- 156 • the threshold for reporting, which is based on a belief, not actual proof
- 157 • that they are legally required to report to the CAS once this threshold is met, and
- 158 • their role, which is to factually report their concerns to the CAS.

⁴ For example, where an individual is reported to have a condition or impairment that is well-controlled, the [MTO](#) states that it will not necessarily suspend that individual’s licence.

⁵ [S.O. 2004, c. 3, Sched. A](#). See s. 43(1)(e).

⁶ [S.O. 2017, c. 14, Sched. 1](#). See s. 125(1) to (12): Duty to report child in need of protection.

159 ***What can I do if I suspect a patient is a victim of abuse?***

160 Physicians can support patients who may be experiencing abuse, including elder abuse
161 and intimate partner violence, by:

- 162 • asking questions in a matter-of-fact tone when nobody else is in the room (e.g.,
163 “Has anyone made you afraid?” or “How are you being treated?”)
- 164 • expressing concern and reminding the patient that they are not to blame
- 165 • helping the patient access local resources and available services
- 166 • supporting the patient with filing a report, if appropriate
- 167 • encouraging the patient to develop a safety plan (e.g., compiling a list of
168 emergency numbers, taking out money), and
- 169 • arranging for a follow-up appointment.

170 Given that physicians must maintain patient confidentiality, physicians cannot file a
171 report without consent unless:

- 172 • they are legally required to report (i.e., a child, or a resident of a long-term care or
173 retirement home, has experienced or is at risk of experiencing harm), or
- 174 • the patient is at significant risk of serious bodily harm, and disclosure is
175 necessary to eliminate or reduce the risk of harm.

176 Physicians may find the following websites helpful:

- 177 • the Ministry of Children, Community and Social Services provides information
178 and resources regarding [intimate partner violence](#) and [elder abuse](#)
- 179 • the [Canadian Network for the Prevention of Elder Abuse](#) and [Elder Abuse](#)
180 [Prevention Ontario](#) both provide information about elder abuse
- 181 • the [Violence, Evidence, Guidance, and Action Family Violence Project](#) has
182 educational resources to assist health-care providers in recognizing and
183 responding to family violence.

184 ***How do I take “appropriate and timely action” when I believe another physician or***
185 ***regulated health professional is incapacitated or incompetent?***

186 When determining which action(s) are appropriate to take, it is important to choose
187 action(s) that are proportionate to the risk, considering factors such as the regulated
188 health professional’s level of awareness and insight, and whether there is a single
189 concern or apparent pattern. Depending on the circumstances, “appropriate” action may
190 include:

- 191 • facilitating the physician to contact the [Physician Health Program](#) (PHP) at the
192 Ontario Medical Association
- 193 • contacting the [Canadian Medical Protective Association](#) (CMPA) for advice

- 194 • notifying the individual to whom the regulated health professional is accountable
195 (e.g., a manager, employer, Medical Director, or Director of Care), or
196 • notifying the individual’s health regulatory college.

197 It can also be helpful to first have a conversation with the physician or regulated health
198 professional directly, although this may not always be possible or appropriate.

199 In terms of taking “timely” action, what constitutes “timely” will depend on the
200 circumstances, and the level of risk will guide how quickly the physician acts. For
201 example, taking “timely” action may mean taking immediate action if another regulated
202 health professional appears to be practising while under the influence of drugs.

203 The duty to report is ongoing, so physicians may need to take further action(s) if the
204 pattern persists. For example, if a physician raises their concern with the individual
205 directly and it appears that the issue is not being addressed, taking further action may
206 be warranted (e.g., notifying the individual's employer).

207 CPSO’s webpage on [physician wellness](#) has information on programs and resources
208 that are available to support physicians struggling with their physical or mental health.

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