

## TELEMEDICINE: A GLOBAL APPROACH TO TRENDS AND PRACTICES

**Authors: Ben Fuhrmann, Edona Vila, Keegan Boyd, Anna Marrison and Janet Ozembloski\*, Borden Ladner Gervais LLP**

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### LAWS AND REGULATIONS ON TELEMEDICINE

#### 1. Is telemedicine allowed in your country? If so, how is it defined?

Canada permits regulated healthcare professionals to practice telemedicine, now commonly termed 'virtual care'. Various organisations that regulate or provide guidance on virtual care have somewhat different definitions.

For example, the Federation of Medical Regulatory Authorities of Canada defines virtual care as 'the provision of care (including synchronous and asynchronous) by means of electronic communication (telephone, video, email, text, or other internet hosted service or app) where the patient and the physician are at different locations, including but not limited to interviewing, examining, advising, diagnosing and/or treating the patient'.<sup>1</sup>

The College of Physicians and Surgeons of Ontario defines virtual care as 'any interaction between patients and/or members of their circle of care that occurs remotely, using any form of communication or information technology, including telephone, video conferencing, and digital messaging (eg, secure messaging, emails, and text messaging) with the aim of facilitating or providing patient care'.<sup>2</sup> This definition is largely consistent with definitions in other provinces.

#### 2. Please provide a high-level overview of the legal framework regarding telemedicine in your country.

Each province and territory has its own regulatory 'college' (ie, a self-governing regulatory body) for each regulated health professional. For example, the College of Physicians and Surgeons of Ontario regulates virtual care administered by doctors to patients in Ontario, while the British Columbia College of Nurses & Midwives regulates virtual care administered by nurses to patients in British Columbia. These colleges publish guidelines, policies, and standards that their respective members are required to follow.

Each province legislates what is paid for under its public health insurance scheme and thereby informs what physicians in particular are permitted to charge to patients.

#### 3. Briefly identify the key licensing bodies for telemedicine and outline their responsibilities.

Each relevant college licenses healthcare professionals to practice generally. Within the regulatory structure, most colleges publish guidance on virtual care.

<sup>1</sup> The Federation of Medical Regulatory Authorities of Canada, 'Framework on Virtual Care' online: <https://fmrac.ca/wp-content/uploads/2022/07/FMRAC-Framework-on-Virtual-Care.pdf>.

<sup>2</sup> College of Physicians and Surgeons of Ontario, 'Virtual Care' online: [www.cpso.on.ca/en/Physicians/Policies-Guidance/Policies/Virtual-Care](http://www.cpso.on.ca/en/Physicians/Policies-Guidance/Policies/Virtual-Care).

The licensing bodies for doctors in each province and territory are: the College of Physicians and Surgeons of British Columbia, the College of Physicians & Surgeons of Alberta, the College of Physicians & Surgeons of Manitoba, the College of Physicians and Surgeons of Ontario, the Collège des médecins du Québec, the College of Physicians and Surgeons of New Brunswick, the College of Physicians & Surgeons of Nova Scotia, the College of Physicians and Surgeons of Prince Edward Island, the College of Physicians and Surgeons of Newfoundland and Labrador, the Yukon Medical Council, the Northwest Territories Professional Licensing Health and Social Services, and the Nunavut Professional Licensing Department of Health and Social Services. Similarly, each province has regulatory bodies for other healthcare professionals, including nurses, physiotherapists, pharmacists, social workers, etc.

#### **4. Was telemedicine authorised during the Covid-19 pandemic?**

Virtual care was authorised both prior to and during the Covid-19 pandemic. Virtual care use increased dramatically during the pandemic, with virtual visits accounting for 71.1 per cent of all primary care visits during the first four months of the pandemic. In the same period in 2019, virtual visits accounted for only 1.2 per cent of all primary care visits.<sup>3</sup>

#### **5. Is there any possibility of the regulatory landscape being changed in the post-pandemic scenario? Or has there been already a change in the regulation in the post-pandemic scenario?**

Although there have been discussions regarding a pan-Canadian licence, there is no pan-Canadian approach to licensure at this time.<sup>4</sup> It is likely that the colleges will maintain oversight over virtual care in the post-pandemic scenario. However, pan-Canadian organisations like the Canadian Medical Association (CMA) have implemented frameworks and policy recommendations to ensure that the various colleges regulate virtual care consistently.<sup>5</sup>

While the specifics of how healthcare professionals administer virtual care may change, the regulatory landscape is not expected to change to facilitate the continued adoption of virtual care. At this juncture, the provinces and the federal government are working together to accelerate the development of virtual care services across Canada.<sup>6</sup>

#### **6. What types of teleservices are allowed (eg, second opinion, teleconsultation, teliagnosis, telesurgery, among others)?**

There are generally no specific restrictions on permissible teleservices if they are clinically appropriate. The CMA has issued guidance on problems that are not amenable to virtual care, including new and significant emergency symptoms such as chest pain, shortness of breath, loss of neurological function, ear pain, abdominal symptoms, and musculoskeletal injuries.<sup>7</sup> A provider can generally administer any service if they are able to maintain the same standard of care that would be applicable if they provided the service in-person.

<sup>3</sup> Canadian Medical Association, 'Virtual Care in Canada: Progress and Potential' online: <https://cma.ca/sites/default/files/2022-02/Virtual-Care-in-Canada-Progress-and-Potential-EN.pdf>.

<sup>4</sup> L Sweatman and C Laviolette, 'Cross-Canada virtual care licensure requirements and best practices' online: <https://www.blg.com/en/insights/2021/06/cross-canada-virtual-care-licensure-requirements-and-best-practices>. See note 4.

<sup>5</sup> Government of Canada, 'Pan-Canadian virtual care priorities in response to COVID-19' online: [www.canada.ca/en/health-canada/corporate/transparency/health-agreements/bilateral-agreement-pan-canadian-virtual-care-priorities-covid-19.html](http://www.canada.ca/en/health-canada/corporate/transparency/health-agreements/bilateral-agreement-pan-canadian-virtual-care-priorities-covid-19.html).

<sup>7</sup> Canadian Medical Association, 'Virtual Care Playbook' online: [https://cma.ca/sites/default/files/pdf/Virtual-Care-Playbook\\_mar2020\\_E.pdf](https://cma.ca/sites/default/files/pdf/Virtual-Care-Playbook_mar2020_E.pdf).

The Canadian Medical Protection Association (CMPA) (which provides liability protection for Canadian physicians) has provided specific guidance for particularly difficult or complex interactions such as medical assistance in dying and involuntary psychiatric assessments, but notes that nothing prevents doctors from providing these services virtually if they meet the standard of care.<sup>8</sup> The provider must always assess if virtual care is appropriate in the circumstances and is in the patient's best interests.<sup>9</sup>

**7. Who can use telemedicine services? Please indicate if whether only doctor-doctor or also patient-doctor remote medical services are allowed.**

All regulated healthcare professionals can provide virtual care to patients if they comply with their college's relevant practice standards and guidelines. The provision of virtual care services is not limited to provider-to-provider interactions.

**8. Please outline the funding model for telemedicine. Is it available in your jurisdiction public health system? Is telemedicine under mandatory insurance coverage? Please indicate what legislation applies.**

Public funding for virtual care increased dramatically during the Covid-19 pandemic and it appears that many of the 'temporary' payment codes are now becoming permanent. Provincial health insurance legislation in each province determines coverage for publicly insured healthcare services. The precise services that each province covers varies. For example, the Ontario Health Insurance Plan covers expenses for synchronous video and telephone care, but it does not cover asynchronous messaging.<sup>10</sup> In British Columbia, the province covered relay text or email communications during Covid-19.<sup>11</sup>

Where a province's public health insurance plan does not insure a particular medical service, a patient or a patient's private insurer may pay a physician to perform the medical service. Many private insurers in Canada have begun covering virtual care services for their clients.<sup>12</sup>

**9. Please indicate whether any insurance requirements are applicable to telemedicine services providers.**

All colleges require their regulated healthcare professional members to obtain professional liability insurance as a prerequisite to practicing. The CMPA provides Canadian physicians professional liability protection against claims arising out of clinical patient care. The CMPA itself generally assesses its coverage position on a case-by-case basis. The CMPA has provided its coverage position where a legal action arises out of the below virtual care scenarios:

- Patient and physician both reside in Canada – the CMPA will generally provide coverage.
- Patient and/or physician temporarily outside of Canada – where the parties have an established doctor-patient relationship, the CMPA will generally provide coverage for actions arising out of urgent follow-up care.

<sup>8</sup> CMPA, 'Telehealth and virtual care' online: [www.cmpa-acpm.ca/en/covid19/virtual-care#can-use-virtual-care-dying-services](http://www.cmpa-acpm.ca/en/covid19/virtual-care#can-use-virtual-care-dying-services).

<sup>9</sup> See note 3.

<sup>10</sup> Ontario Schedule of Benefits, online: [https://health.gov.on.ca/en/pro/programs/ohip/sob/physerv/sob\\_master\\_20221201.pdf](https://health.gov.on.ca/en/pro/programs/ohip/sob/physerv/sob_master_20221201.pdf).

<sup>11</sup> Doctors of BC, 'Temporary Changes for Telehealth and Telephone Services' online: [www.doctorsofbc.ca/sites/default/files/specialist\\_covid-19\\_billing\\_information.pdf](http://www.doctorsofbc.ca/sites/default/files/specialist_covid-19_billing_information.pdf).

<sup>12</sup> See note 4.

- Patient residing outside of Canada – the CMPA will generally not provide coverage.
- Physician residing outside of Canada – where a physician is residing outside of Canada on a long-term basis, the CMPA will generally not provide coverage to the physician.<sup>13</sup>

## REQUIREMENTS APPLICABLE TO HEALTHCARE PROFESSIONALS AND INSTITUTIONS

### 10. Who can practise telemedicine in your country? Please indicate whether other healthcare professionals are authorised to provide remote health services under the applicable rules (eg, nurses, psychologists, nutritionists, alternative health therapies providers, etc).

Authorisation depends on the specific requirements of each professional college in each province. At this time, all regulated healthcare practitioners can practice virtual care if they comply with their college's relevant practice standards and guidelines.

### 11. Are there any specific education requirements or trainings that healthcare professionals need to meet or attend to provide telemedicine services?

College policies and guidelines will generally dictate that their respective healthcare professionals have the skillset to be able to provide competent care virtually and may provide additional resources such as guidelines or continuing development courses to achieve such competency.<sup>14</sup>

### 12. Is there any registration requirement applicable to physicians that provide telemedicine services?

Aside from licencing requirements to practise medicine generally, licencing requirements in the virtual care context arise where the patient and the physician are located in different jurisdictions (ie, the physician in one province and the patient in another). Many colleges require physicians to be licenced in the jurisdiction that their patient physically resides in when receiving virtual care.<sup>15</sup> This includes the relevant colleges in British Columbia, Ontario and Alberta.<sup>16</sup> Further, the College of Physicians and Surgeons of Saskatchewan has an option for a specific virtual care licence that permits out-of-province physicians to provide solely virtual services in Saskatchewan.<sup>17</sup>

Please also see question 17.

<sup>13</sup> See CMPA, 'Telehealth and Virtual Care', online: [www.cmpa-acpm.ca/en/covid19/virtual-care](http://www.cmpa-acpm.ca/en/covid19/virtual-care).

<sup>14</sup> See, for example, the College of Physical Therapists of British Columbia, 'Telerehabilitation' online: [https://cptbc.org/wp-content/uploads/2020/12/CPTBC\\_Standards\\_2020\\_Telerehabilitation.pdf](https://cptbc.org/wp-content/uploads/2020/12/CPTBC_Standards_2020_Telerehabilitation.pdf) ; College of Physicians and Surgeons of Ontario, 'Virtual Care', see note 3; Alberta College of Speech Language Pathologists and Audiologists, 'Virtual Care Standard' online: [acslpa.ca/members-applicants/key-college-documents/standards-of-practice/1-7-virtual-care/](http://acslpa.ca/members-applicants/key-college-documents/standards-of-practice/1-7-virtual-care/)

<sup>15</sup> See note 5.

<sup>16</sup> As note 15. Also, College of Physicians and Surgeons of Alberta, 'Virtual Care Standard of Practice' online: <https://cpsa.ca/physicians/standards-of-practice/virtual-care/#appropriateliability>; College of Physicians and Surgeons of Ontario, 'Virtual Care', see note 3.

<sup>17</sup> College of Physicians and Surgeons of Saskatchewan, 'Policy: the Practice of Telemedicine' online: [www.cps.sk.ca/imis/CPSS/Legislation\\_\\_ByLaws\\_\\_Policies\\_and\\_Guidelines/Legislation\\_Content/Policies\\_and\\_Guidelines\\_Content/The\\_Practice\\_of\\_Telemedicine.aspx](http://www.cps.sk.ca/imis/CPSS/Legislation__ByLaws__Policies_and_Guidelines/Legislation_Content/Policies_and_Guidelines_Content/The_Practice_of_Telemedicine.aspx).

**13. Please indicate whether special licenses or authorisations are mandatory for institutional healthcare providers engaged in telemedicine services.**

There are no mandatory special licences or authorisations for institutional healthcare providers to provide virtual care services.

**REQUIREMENTS APPLICABLE TO TELEMEDICINE SERVICES**

**14. Are there specific requirements applicable to the telemedicine platform?**

Several provinces have designated specific requirements for virtual care platforms.

Ontario Health has established a Virtual Visits Solution Standard (VVSS) and launched a verification process for virtual care platforms, which must meet certain mandatory requirements. Ontario's public health insurance only covers virtual care if it is completed through VVSS platforms.<sup>18</sup> Nova Scotia, Prince Edward Island and Quebec have similarly recommended pre-approved videoconferencing platforms.<sup>19</sup>

The Ontario Privacy Commissioner has indicated that healthcare providers should not use a platform that requires individual patients to register with the service provider or accept terms of service and privacy policies that require collection, use, or disclosure of personal information or personal health information for purposes **unrelated** to the health providers' provision of care.<sup>20</sup>

Some provinces have strict mandates for the use of non-pre-approved platforms. Where Quebec physicians do not have access to a pre-approved platform, they must consult a cybersecurity specialist to ensure that the chosen videoconferencing platform meets Quebec and Canada's security and confidentiality standards.<sup>21</sup> In Alberta, physicians seeking to use a new telehealth platform must prepare and submit a Privacy Impact Assessment to Alberta's Office of the Information and Privacy Commissioner for review before implementation.<sup>22</sup>

**15. Are there any requirements regarding electronic equipment and internet speed for telemedicine services?**

While there are no mandated requirements, there is industry guidance provided to the regulated health professionals partaking in such services. For example, the CMA released a 'Virtual Care Playbook' that provides general best practices for all physicians delivering virtual care. When conducting virtual care visits, physicians must have:<sup>23</sup>

1. adequate screen space (usually requiring a dual-screen setup);
2. a high-definition video camera with microphone; and
3. good quality speakers or headphones.

<sup>18</sup> As note 11.

<sup>19</sup> In Quebec, the recommended videoconferencing platforms to be used are: (i) those made available to physicians by the 'Ministère de la Santé et des Services sociaux' (MSSS); (ii) those integrated into the electronic medical records approved by the MSSS; and (iii) those used by institutions in the health network that have a telemedicine program.

<sup>20</sup> Information and Privacy Commissioner of Ontario, 'Privacy and security considerations for virtual health care visits' online: <https://www.ipc.on.ca/wp-content/uploads/2021/02/virtual-health-care-visits.pdf>.

<sup>21</sup> Collège des médecins du Québec, 'Téléconsultations : quels outils ou plateformes utiliser?' online: <https://cmq.org/publications-pdf/p-1-2021-02-18-fr-teleconsultations-quels-outils-ou-plateformes-utiliser.pdf?t=1667242970190>.

<sup>22</sup> As note 17.

<sup>23</sup> As note 8.

4. If the physician cannot save and edit third-party forms through the patient's electronic medical record (EMR), a secure electronic storage device is necessary for incoming forms and completed/signed copies. The CMA recommends a USB key that automatically encrypts the data and that is protected by a strong password.
5. If the physician wishes to provide care via written messaging with patients, they must use a virtual care platform or other software that secures the messages. Conventional email provides inadequate privacy safeguards.
6. If the EMR does not include a videoconferencing feature, the physician will need to choose between general videoconferencing tools with adequate security (eg, Zoom, Skype for Business) or 'platforms' designed specifically for health care, both of which have different advantages. Physicians should be sure to disable any recording of 'meetings' with patients and ensure that only one patient can enter a meeting at a time and/or that no patient can enter without specific permission.

Similarly, we note the Doctors of British Columbia Technology Office Virtual Care Toolkit specifies that the ideal internet speed for virtual care is 20Mbps to 50Mbps or more.<sup>24</sup>

#### 16. Does the legislation provide for specific rules concerning patients' medical records?

If the virtual care platform collects or stores patient health information (eg, the patients' EMR), the platform must comply with, and must handle medical records in accordance with, the applicable privacy legislation. Ontario, New Brunswick, Nova Scotia, and Newfoundland have their own provincial health information privacy legislation (eg, Ontario's Personal Health Information Protection Act (PHIPA)). All other Canadian jurisdictions use the federal Personal Information Protection and Electronic Documents Act (PIPEDA).

Physicians have record-keeping obligations. Physicians generally must create, maintain and provide patients with a copy of their medical records.<sup>25</sup> These records generally must capture all communications with patients that occur via virtual means.<sup>26</sup>

In Ontario, if a healthcare provider (ie, a 'custodian') uses an electronic service provider (eg, a virtual care platform) to provide medical care, both the custodian and the provider are subject to certain obligations. In the case of an **agent** (ie, acting with the custodian's authorisation, for or on behalf of the custodian, and not for their own purposes),<sup>27</sup> the custodian:

- is responsible for any personal health information that the agent collects, uses, discloses, retains, or disposes of;

<sup>24</sup> Doctors Technology Office, 'Virtual Care Toolkit' online: [www.doctorsofbc.ca/sites/default/files/dto-virtual-care-toolkit\\_id\\_321934.pdf](http://www.doctorsofbc.ca/sites/default/files/dto-virtual-care-toolkit_id_321934.pdf).

<sup>25</sup> Federation of Medical Regulatory Authorities of Canada, 'Framework on Telemedicine' online: <https://fmrac.ca/fmrac-framework-on-telemedicine>; College of Physicians & Surgeons of Manitoba, 'Standard of Practice: Virtual Medicine' online: <https://cpsm.mb.ca/assets/Standards%20of%20Practice/Standard%20of%20Practice%20Virtual%20Medicine.pdf> ; College of Physicians and Surgeons of British Columbia, 'Virtual Care Practice Standard' online: <https://cpsm.mb.ca/assets/Standards%20of%20Practice/Standard%20of%20Practice%20Virtual%20Medicine.pdf> ; College of Physicians and Surgeons of Alberta, 'Virtual Care Standard of Practice' online: <https://cpsa.ca/physicians/standards-of-practice/virtual-care>; College of Physicians and Surgeons of Saskatchewan, 'The Practice of Telemedicine Policy' online: [www.cps.sk.ca/iMIS/Documents/Legislation/Policies/POLICY%20-%20The%20Practice%20of%20Telemedicine.pdf](http://www.cps.sk.ca/iMIS/Documents/Legislation/Policies/POLICY%20-%20The%20Practice%20of%20Telemedicine.pdf); The College of Physicians and Surgeons of Prince Edward Island, 'Virtual Care' online: [www.cpspei.ca/wp-content/uploads/2021/12/Virtual-Care-December-7-2021.pdf](http://www.cpspei.ca/wp-content/uploads/2021/12/Virtual-Care-December-7-2021.pdf).

<sup>26</sup> College of Physicians and Surgeons of Ontario, 'Medical Records Documentation' online: [www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Documentation](http://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Documentation).

<sup>27</sup> See note 21 above.

- must take reasonable steps to ensure that the agent does not collect, use, disclose, retain or dispose of personal health information unless it:
  - is permitted by the custodian;
  - is necessary for carrying out their duties as an agent;
  - is not contrary to PHIPA or any other law; and
- complies with any conditions or restrictions imposed by the custodian.

Electronic service providers acting as agents for the custodian must comply with these conditions and notify the custodian at the first reasonable opportunity in the event of a privacy breach.

If the service provider is **not an agent** of the custodian, other limitations apply. Unless otherwise required by law, the electronic service provider must not:

- use any personal health information to which they have access in providing services for the custodian, except as necessary to provide the services;
- disclose personal health information to which they have access in providing services for the custodian; or
- permit their employees, or any person acting on their behalf, to have access to the information, unless the employee or person agrees to comply with the restrictions that apply to the electronic service provider.

Please also see question 23.

#### **17. Are there geographic location requirements applicable to the provision of telemedicine services?**

Each regulated professional must abide by all requirements set by their regulated professional body in both their home province and the province where the patient is located. As discussed at Question 12, different colleges have different rules.

The CMA's Virtual Care Playbook states that in general, physicians must be licenced to practise medicine where the patient they are seeing virtually is located.<sup>28</sup> Although there have been discussions regarding a pan-Canadian licence, there is no pan-Canadian approach to licensure at this time.

#### **18. Does the healthcare professional need to obtain patient's consent to engage in a telehealth?**

The substantive requirements of consent differ across the provinces. Provinces like Ontario, Manitoba, British Columbia, Alberta and New Brunswick require virtual care providers to ensure the patient has reviewed: (1) the limitations of providing the sought after care in a virtual setting; and (2) how the provider will manage the patient's personal health information.<sup>29</sup>

<sup>28</sup> As note 8.

<sup>29</sup> CPSO, 'Virtual Care', as note 3; College of Physicians & Surgeons of Manitoba, 'Standard of Practice: Virtual Medicine', s 4.2.1.iii, online: <https://cpsm.mb.ca/assets/Standards%20of%20Practice/Standard%20of%20Practice%20Virtual%20Medicine.pdf>; College of Physicians and Surgeons of British Columbia, 'Practice Standard: Virtual Care', as note 26; College of Physicians and Surgeons of Alberta, 'Virtual Care Standard of Practice', as note 17; College of Physicians and Surgeons of New Brunswick, 'Virtual Medicine' online: <https://cpsnb.org/en/medical-act-regulations-and-guidelines/guidelines/888-virtual-medicine>.

Healthcare professionals providing virtual care should obtain patient consent (or consent of a substitute decision-maker where appropriate) for this specific purpose. The CMPA recommends using a signed consent form, although verbal consent documented in the patient's record is also acceptable. Healthcare professionals should obtain this consent after discussing with the patient the increased privacy risks associated with electronic communications. Healthcare professionals should also encourage patients to participate in virtual care encounters in a private setting using their own personal electronic device/computer.<sup>30</sup>

**19. Is there any other important requirement that should be highlighted?**

This area of law is highly regulated and therefore specific requirements ought to be carefully considered depending on the location of the patient, the provider, and the virtual care technology facilitating the clinical interaction.

**DATA PRIVACY ASPECTS**

**20. Are there data privacy issues that should be considered for the exploitation of such market? If your answer is positive, please provide a short description.**

Yes. For example, the Information and Privacy Commissioner of Ontario has released Guidelines providing practical advice for healthcare providers to mitigate the unique privacy and cybersecurity risks and to meet their obligations under PHIPA.<sup>31</sup>

The Guidelines advise health information custodians to take the following steps to enhance privacy and security when providing virtual health care:

1. Conduct **privacy impact assessments** to identify and manage specific privacy and information security risks associated with providing virtual care.
2. Develop and implement **virtual health care policies** to address how virtual health care may be provided virtually.
3. **Notify patients** about those virtual care policies.
4. Ensure employees and agents participate in ongoing **privacy and security training** to reduce the risk of unauthorised collection, use, and disclosure of personal health information (including guidance specific to working from home).
5. Develop **an information security management** framework to monitor, assess, and mitigate any security risks associated with virtual platforms. and
6. Have a **privacy breach management protocol** in place for responding to actual and suspected privacy breaches related to the virtual care solution (or otherwise).

The guidelines also require that custodians implement appropriate safeguards to protect personal health information when health care is provided virtually, which may include:<sup>32</sup>

1. **technical safeguards**, such as using firewalls or protections against software threats and encrypting data on all portable storage devices;
2. **physical safeguards**, such as keeping technology that contains personal health information in a secure location; and

<sup>30</sup> As note 14.

<sup>31</sup> See note 21.

<sup>32</sup> See note 21.



3. **administrative safeguards**, such as explicit provisions in confidentiality agreements with employees and other agents which address their obligations when delivering virtual health care.

Please also see question 16.

**21. Does the applicable regulation provide for criteria and requirements for the security systems to protect the patient's information?**

In general, the applicable regulatory bodies and industry groups recommend physicians use virtual care platforms that ensure the transmission of information remains secure and confidential.<sup>33</sup> Ontario specifically requires that all physicians use secure information and communication technology (eg, encryption-protected platforms), unless it is in the patient's best interest to do otherwise.<sup>34</sup> Physicians should not use recreational platforms like Facetime and should avoid using personal cell phones connected to unsecure Wi-Fi.

Please also see question 15.

**22. Does the applicable regulation provide for requirements for the transfer of information abroad?**

The federal PIPEDA does not prohibit organisations in Canada from transferring personal information to an organisation in another jurisdiction abroad for processing.<sup>35</sup> A transfer for processing is a 'use' of the information as defined under PIPEDA but does not amount to a 'disclosure'. PIPEDA holds organisations accountable for the protection of personal information transfers. PIPEDA also requires organisations to use contractual or other means to 'provide a comparable level of protection while the information is being processed by the third party'.<sup>36</sup>

Assuming the user is using information for the purpose it was originally collected, additional patient consent for the transfer is not required.

**23. Is there any registration of databases requirement that companies must observe? Are there requirements regarding the recording of data in the patient's medical records?**

Some provincial privacy legislation creates obligations for companies. In Ontario, if the provision of healthcare occurs through a health information network provider (a type of electronic service provider who delivers electronic services to two or more health information custodians primarily to enable communication with one another), PHIPA requires these providers to keep an electronic log of all accesses to and transfers of personal health information and make it available to the custodians on request.<sup>37</sup>

Please also see question 16.

<sup>33</sup> Collège des médecins du Québec, 'Téléconsultations : quels outils ou plateformes utiliser?', as note 22; Doctors of Nova Scotia, 'Getting Started with Virtual Care' online: <https://doctorsns.com/sites/default/files/2020-05/toolkit-virtual-care.pdf>; College of Physicians & Surgeons of Nova Scotia, 'Virtual Care' online: <https://cpsns.ns.ca/resource/virtual-care>; Doctor Technology Office, 'Virtual Care Toolkit', as note 25; Newfoundland and Labrador Medical Association, 'Virtual Care Toolkit' online: <https://nlma.nl.ca/site/uploads/2022/11/nlma-virtual-care-toolkit-2020-04-30.pdf>.

<sup>34</sup> See note 3.

<sup>35</sup> Schedule 1 of PIPEDA (the CSA Model Code for the Protection of Personal Information), Principle 4.1.3

<sup>36</sup> Office of the Privacy Commissioner of Canada, 'Guidelines for processing personal data across borders' online: [https://priv.gc.ca/en/privacy-topics/airports-and-borders/gl\\_dab\\_090127](https://priv.gc.ca/en/privacy-topics/airports-and-borders/gl_dab_090127).

<sup>37</sup> See note 21.

## LIABILITIES

### 24. Please provide a high-level overview of the liability of healthcare professionals and institutions involved in telemedicine practices.

Healthcare professionals and institutions involved in providing virtual care can face liability via three primary mechanisms: (1) the common law tort of negligence; (2) breach of contract; and (3) sanctions from regulatory bodies.

Under Canada's common law, healthcare professionals owe a duty of care to their patients to act with the skill and judgment of other healthcare professionals with similar experience/training and facing similar circumstances. A patient will be successful in a negligence claim against a healthcare professional where they can establish that the healthcare professional breached this 'standard of care' and their breach caused the patient to suffer a reasonably foreseeable injury. This framework also applies to healthcare institutions, which are judged against similarly situated institutions.

Manufacturers/suppliers of virtual care technology and equipment may also be liable in negligence. Manufacturers owe a duty of care to ensure that their products will not cause personal injury or property damage while their product is being used within the scope of its foreseeable uses. A manufacturer may be liable where a patient can establish that the manufacturer: (1) negligently manufactured or designed its product; or (2) breached its duty to adequately warn users of risk it knew or ought to have known were inherent to the product's design. Manufacturers/suppliers may also be liable for breach of contract where a contract exists between themselves and the patient.

As for regulatory sanctions, a college may bring enforcement action against a healthcare professional for failing to uphold the standards of practice of that profession. Such actions can result in a number of penalties including warnings, fines, and licence suspension/forfeiture. Institutions involved in providing virtual care may face sanction from the relevant privacy regulator for failing to comply with applicable privacy legislation.

## TELEMEDICINE NUMBERS AND TRENDS

### 25. Is there any public disclosed information concerning the use and acceptance of telemedicine in your country?

Yes. The Canadian Institute for Health Information (CIHI) published a January 2022 report titled '*Virtual Care in Canada – Strengthening Data and Information*' that found the following:<sup>38</sup>

- 73 per cent of Canadians had at least one virtual health care interaction in 2021, and of those who had a virtual visit, 90 per cent of respondents were satisfied with the care they received; and
- a majority of Canadians were interested in visiting health care providers virtually (by telephone (69 per cent), video (56 per cent) and secure messaging (57 per cent))

On 3 May 2020, the Government of Canada announced an investment of CAD 240.5m to accelerate the use of virtual tools and digital approaches to support Canadians. The government directed CAD 200m to provinces and territories to accelerate their efforts to meet their health care needs.

<sup>38</sup> Canadian Institute for Health Information, 'Virtual Care in Canada: Strengthening Data and Information' online: [www.cihi.ca/sites/default/files/document/virtual-care-in-canada-strengthening-data-information-report-en.pdf](http://www.cihi.ca/sites/default/files/document/virtual-care-in-canada-strengthening-data-information-report-en.pdf).

CIHI released data indicating that (for the provinces where data were available) 48 per cent of physicians had provided at least one virtual care service in February 2020. By September 2020, this number had increased to 83 per cent. Additionally, 94 per cent of physicians have stated that they provide virtual care.<sup>39</sup>

**26. What are the perspectives and trends in relation to the matter for the next few years? Please outline any unresolved issues, proposed changes or trends for the telemedicine sector and briefly indicate how these may foreseeably affect medical practice in the near future.**

The Covid-19 pandemic was a strong stimulus for the expansion of virtual care/telemedicine in Canada. The use of virtual care is expected to continue growing over the coming years with regulated health professionals offering an even greater scope of services. For example, we are already observing the growth of artificial intelligence-enabled connected devices that assist in facilitating healthcare through preventative and diagnostic means.

With these changes, we expect that Canadian regulatory bodies will respond by providing increased regulatory guidance on the provision of virtual healthcare services. We have already seen a proposal for a pan-Canadian licence permitting healthcare professionals to practise virtual care across Canada's provincial and territorial jurisdictions.

The increased use and utility of virtual care services may impact the standard of care expected of healthcare professionals for the purposes of establishing liability in negligence. As virtual care technology develops, the standard of care may evolve to expect healthcare professionals to use the available tools to provide reasonable care to their patients.

The increasing number of private institutions offering to facilitate virtual care may raise questions in the coming years about the appropriate balance between public and private healthcare in Canada. Canada has historically enacted legislation and policies to prohibit and discourage the creation of a parallel private medical system. As recently as the summer of 2022, the British Columbia Court of Appeal released its decision on a constitutional challenge over provisions of the Medicare Protection Act that limited the offering of private healthcare services.<sup>40</sup> The Court upheld the legislation, reinforcing the strong commitment of Canadian institutions to maintaining a strong and equitable public healthcare system. Institutions looking to facilitate virtual care services will continue to contend with Canadian lawmakers in an effort to strike the appropriate balance between the policy goals of equitable healthcare and the practical realities of optimising healthcare access.

\* With additional thanks to articling students Bailey McMaster and Shanna Stanley-Hasnain for their contributions in preparing this document.

<sup>39</sup> See note 4.

<sup>40</sup> See S McEachern, R Lewis, and L Wagner, 'British Columbia Court of Appeal upholds provisions of the Medicare Protection Act' online: [www.blg.com/en/insights/2022/08/british-columbia-court-of-appeal-upholds-provisions-of-the-medicare-protection-act](http://www.blg.com/en/insights/2022/08/british-columbia-court-of-appeal-upholds-provisions-of-the-medicare-protection-act).