



College Case Studies

2016 Education Day and Annual General Meeting

When duty calls: legal and professional obligations in medical practice

Overview

- Introductions

Panelists:

- Mr. Graeme Keirstead
- Dr. Patrick Rowe
- Ms. Patricia Bowles

Presenter:

- Dr. Galt Wilson, Senior Deputy Registrar
- Audience response – using your i-Clicker
- Case studies

Using your i-Clicker

1. Turn your i-Clicker on using the on/off button at the bottom of the panel; a solid blue light indicates power is on.
2. Select your preferred answer using the corresponding buttons: A, B, C, D or E.
3. If your answer was received, the vote status light will be green; if your answer was not received, the vote status light will be red.
4. You can only register one answer per question.
5. Let's do a trial run.
6. **Please don't forget to return your i-Clicker at the end of the session!**

Trial run

The i-Clicker can also be used as:

- A. An entry fob to the College offices.
- B. A next generation multimedia smartphone.
- C. A hand-held device to access my electronic medical records.
- D. All of the above.
- E. Absolutely nothing – I'll leave it on the table following the session.



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Format

1. Present scenario
2. Your opinion – i-Clickers
3. Results
4. Panelist discussion and your input—move to microphones

WARNING



Uncertainty is an inevitable part of medical practice and there is a measure of ambiguity in **some** of these scenarios.



We made them up...

You don't know these
cases—they aren't real.

When duty calls: legal and professional obligations in medical practice

Topics

1. A child in need of protection.
2. Medical certificates of death.
3. Directing a patient to stop driving, due to a medical condition.
4. An angry patient with firearms.
5. Obligations regarding medical records when working in a setting you do not own.

1

A child in need of protection

Doing right—but what is that?

A child in need of protection

Doing right—but what is that?

Ryan Jones brings his three-year-old son, Ben, to see you. Ben has a runny nose, cough and low-grade fever. Ben isn't happy. His nose is mucky. His T-shirt is dirty. He smells of urine and apple juice. Ryan has a faint whiff of liquor on his breath.

When Ben starts to cry and begs to go to McDonald's, Ryan loses it. He tells his son to "shut up" and raises his arm, feigning a slap. Ben looks terrified.



A child in need of protection

Doing right—but what is that?

A few days later, Ben's mother, Erin, comes in for a final check of a shoulder injury before returning to work.

After examining Erin, you tell her about Ryan and Ben's visit. You explain your legal obligation to report children in need of protection.

Erin begins to cry. She assures you that she sent Ryan packing the previous night. She promises he won't be back. As a child, Erin spent extended periods in foster and group homes. She desperately doesn't want this reported.

She is working Saturday night. You ask Erin who will be caring for Ben. Her reply is unconvincing.

A child in need of protection

Doing right—but what is that?

i-Clicker question

Do you have a duty to report your concerns about Ben?

- A. No, none of the 12 circumstances specified in the Act apply.
- B. No, you came by this information in the context of physician-patient relationships. It is confidential.
- C. Yes, but only with Erin's consent.
- D. Yes, but unless you have Erin's consent, you may not release the patient record without a court order.
- E. Yes, you must report and provide the social worker with all the information you have about Ben with potential relevance to the investigation.

A child in need of protection

Doing right—but what is that?

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A child in need of protection

Doing right—but what is that?

Considerations

Legislation

- *Child, Family and Community Services Act*

College *Professional Standards and Guidelines*

- *Duty to Report* (page 3)
<https://www.cpsbc.ca/files/pdf/PSG-Duty-to-Report.pdf>

2

Medical certificates of death

You may be the only one able to help

Medical certificates of death

You may be the only one who can help

It is Friday at 4:30 p.m.—the last day of a two-week locum. A funeral director calls the office seeking assistance.

Sam Ross, a 93-year-old, in the practice since 1963, was found dead in his home early that morning. The office chart confirms that Sam was incapacitated with multiple medical problems: COPD, low-threshold angina, heart failure, DM2 and CKD. There is an advance directive and a DNR form.

Even so, you've never laid eyes on Sam.



Medical certificates of death

You may be the only one who can help

i-Clicker question

When asked to complete the medical certificate of death, you reply that you:

- A. Will not. You have not personally seen this patient.
- B. Will not. The death was unexpected. It is a coroner's case.
- C. Will. Your review of the patient record allows you to reasonably conclude that Sam died of natural causes, likely ischemic heart disease.
- D. Will. It appears the death was natural and may be attributed to ischemic heart disease with reasonable accuracy. But just to be sure, you will mark the MCD "INTERIM," save a copy and have the usual physician submit a final report.
- E. Not today. This can wait until the usual physician is back on Monday. The *Vital Statistics Act* allows 72 hours to complete the medical certificate.

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Medical certificates of death

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Considerations

Legislative guidance on the College website

- *Medical Certificate of Death and Stillbirths*
<https://www.cpsbc.ca/files/pdf/LG-Medical-Certificate.pdf>

Vital Statistics Agency

- *Handbook for Physicians, Nurse Practitioners, and Coroners: Medical Certificate of Death and Stillbirth*
<http://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/vsa051.pdf>

3

Directing a patient to stop driving

An often-dreaded conversation

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An often-dreaded conversation

Doug Jones, an 84-year-old long-time patient was diagnosed with Parkinson's Disease four years ago. He remains ambulatory, but his movements have slowed. His daughter called the other day concerned that her dad couldn't find his way home from the mall.

Last Sunday he called his 25-year-old grandson by his father's name all evening—even after being corrected.



Directing a patient to stop driving

An often-dreaded conversation

Today Doug is in a good mood. He moves slowly, slightly stooped. He doesn't recall the memory lapses. You perform a MoCA—he scores 27.

Doug's daughter asks if her dad should continue to drive. Doug is annoyed at that, insisting he is the best driver he knows.

Directing a patient to stop driving

An often-dreaded conversation

i-Clicker question

Your best course is to:

- A. Warn Doug not to drive, advising that you are legally obliged to report him if he continues to.
- B. Warn Doug not to drive, advising that you must report him if he will not commit.
- C. Allow Doug to continue driving. You have no duty to report, in view of his reassuring MoCA score.
- D. Advise Doug that he must stop driving and that you are legally obliged to report his medical condition.
- E. Advise Doug that he must stop driving and that you are legally obliged to report him, but cannot disclose medical information without his consent.

Directing a patient to stop driving

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Directing a patient to stop driving

An often-dreaded conversation

Considerations

Motor Vehicle Act [RSBC 1986] section 230

- Registered psychologist, optometrist, medical practitioner
- Medical condition that makes it dangerous to drive
- Report if continues to drive despite being warned of the danger
- Name, address and medical condition
- Immunity from civil action

Guidance

- Reporting a patient who may be unfit to drive:
<http://www2.gov.bc.ca/gov/content/transportation/driving-and-cycling/driver-medical/driver-medical-fitness/driver-medical-fitness-information-for-medical-professionals#unfit>
- Or search for “driver medical BC”



REPORT OF A CONDITION AFFECTING FITNESS AND ABILITY TO DRIVE

TO: ROADSAFETYBC PO BOX 9254, STN PROV GOVT VICTORIA BC V8W 9J2

FAX #: (250) 952-6888

RE: PATIENT'S NAME: ADDRESS: CITY: POSTAL CODE: DATE OF BIRTH: DRIVER'S LICENCE NUMBER: (YYYY/MM/DD) (if known)

THIS PATIENT: 1. Has a medical condition which in my opinion makes it dangerous to the patient or to the public for the patient to drive a motor vehicle. 2. Continues to drive a motor vehicle after being warned of the danger.

CONDITION(S): Please describe fully the details of the condition and/or rationale to cancel this patient's Driver's Licence

RECOMMENDATION(S):

- Cancel Driver's Licence
Road Test to Assess
Driver's Medical Examination
Specialist Consult type:
Vision Testing
Restrictions - reason and type:
Other:

Name of person reporting: (please print) Phone #:

Professional Qualifications: Psychologist Nurse Practitioner Optometrist Physician Reg. #:

Date: Signature:

BC MOTOR VEHICLE ACT (Section 230)

- (1) This section applies to every legally qualified and registered psychologist, optometrist, medical practitioner or nurse practitioner who has a patient 16 years of age or older who (a) In the opinion of the psychologist, optometrist, medical practitioner or nurse practitioner has a medical condition that makes it dangerous to the patient or to the public for the patient to drive a motor vehicle, and (b) continues to drive a motor vehicle after being warned of the danger by the psychologist, optometrist, medical practitioner, or nurse practitioner. (2) Every psychologist, optometrist, medical practitioner, or nurse practitioner referred to in subsection (1) must report to the Superintendent the name, address, and medical condition of a patient referred to in subsection (1). (3) No action for damages lies or may be brought against a psychologist, an optometrist, a medical practitioner or a nurse practitioner for making a report under this section, unless the psychologist, optometrist, medical practitioner, or nurse practitioner made the report falsely and maliciously.

The personal information on this form is collected under the authority of the BC Motor Vehicle Act (RSBC 1996, c.318, s.29) and the BC Freedom of Information and Protection of Privacy Act (RSBC 1996 c.165, s.25(b), & s.27[1](c). The information provided on this form will be used to assist in the determination of the fitness of the above-named driver to safely drive a motor vehicle. If you have any questions about the collection, use, or disclosure of the information collected on this form, contact the RoadSafetyBC toll-free at 1-855-387-7747.

MV2351 (06/15)

4

An angry patient with firearms

What if you're worried?

An angry patient with firearms

What if you're worried?

You've recently taken over a practice. You have seen Donald White once before for a sore shoulder—contused due to recoil from a high-powered rifle. He is an enthusiastic member of the local gun club.

At this visit Donald requests something to help him sleep. The neighbour's dog keeps him awake at night. Donald is clearly very angry as he tells the story. He is flushed, sweating profusely and speaking loudly and rapidly. He declares that if the dog wakes him up tonight, he is going to take one of his guns and shoot the dog. If the neighbour tries to stop him, he'll shoot him too.



An angry patient with firearms

What if you're worried?

You are reviewing Donald's chart, while he rants, and note several ER visits for fights. You ask him about that and he acknowledges (proudly, it seems) that he can be "a scrapper," if provoked.

You ask Donald to listen very carefully to what you are about to say. You explain that medical consultations are normally confidential, but you have a legal obligation to warn people who might be in danger. You believe his neighbour is in danger.

You are now also wondering whether someone with a history of violence is even allowed to own guns.

Donald is visibly disturbed by your comments. He "was only joking," he pleads. You "don't want to do something you'll regret," he adds. Quietly.

His manner has you feeling very anxious.

An angry patient with firearms

What if you're worried?

i-Clicker question

Your best course of action is to:

- A. Report him. All Canadian physicians have a statutory duty to report patients who possess firearms and express violent intent to the chief firearms officer of the province.
- B. Report him. Provincial legislation mandates reporting if a person licensed to possess firearms utters threats.
- C. Seek Donald's consent to notify the chief firearms officer, who is authorized to determine that a person with a history of violence, threats, or attempted violence against another person in the past five years is not eligible to possess firearms.
- D. Advise Donald that the circumstances leave you no option but to report his threats to the police immediately.
- E. If Donald refuses to disclose the identity of his neighbour, you are obliged to call the police immediately and request that Donald be escorted to a hospital for a psychiatric assessment.

An angry patient with firearms

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An angry patient with firearms

What if you're worried?

Considerations

***The Firearms Act* – sections 5, 55 and 102**

<http://laws-lois.justice.gc.ca/eng/acts/F-11.6/FullText.html#h-23>

- Federal statute
- No duty to report
- Eligibility considerations include (within five years):
 - Conviction of a violent crime
 - Mental illness associated with violence
 - Violent behaviour, threats, or attempted violence

5

The records I create belong to me
Don't they?

The records I create belong to me

Don't they?

Jennifer Walls, a GP, has been working at the Ideal Medical Clinic for three years. The clinic is owned by a non-physician investor. It accommodates six FTE physicians, including the medical director. Everyone has a panel of patients and contributes to walk-in shifts.

Jennifer was one of the first physicians to work at the clinic. It was state-of-the-art—well appointed and equipped. The work was “paperless” from day one. The arrangement is 70/30.

Jennifer's panel is now about 1,200 patients. When a friend from medical school approaches her about joining a new clinic venture as part-owner, she realizes she is ready.

The new clinic will be ready for occupancy in three months.



The records I create belong to me

Don't they?

Jennifer provides a letter to the Ideal Medical Clinic owner, giving 90 days notice and requesting access to the EMR for the IT service provider retained to install the computer network at her new location, to facilitate transfer of her records.

The owner responds with a letter stating the he will allow the transfer, on receipt of her payment of \$5,000, to cover the investment he claims to have made in the EMR on her behalf.

Jennifer has no written agreement with the Ideal Medical Clinic.

The records I create belong to me

Don't they?

The bitter legal dispute that follows is unresolved when it comes time for Jennifer to begin seeing patients at her new location.

On her final day at the Ideal Medical Clinic, the owner shuts her out of the EMR (and insists that she hand over her keys), advising that the other physicians will manage incoming reports and patients will be given her contact information, if they ask. The medical director assures her that they have the capacity to take care of any patients who choose to remain.

The records I create belong to me

Don't they?

On the first day at the new clinic, Jennifer has no access to her records. A patient with complex care needs asks how that happened. The patient submits a complaint to the College, naming the Ideal Medical Clinic.

The records I create belong to me

Don't they?

i-Clicker question

How is the College Inquiry Committee going to respond?

- A. With criticism of Dr. Walls for failing to ensure enduring access to her records for herself and her patients.
- B. With criticism of Dr. Walls for violating privacy legislation, by allowing a non-physician to assume custody of confidential patient records.
- C. With criticism of the medical director for not asserting the principle that the physician owns the records she creates.
- D. With criticism of the medical director for the absence of data-sharing contracts in the clinic.
- E. With no criticism. This is a business dispute. The College has no jurisdiction.

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i-Clicker question

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Considerations

College standard – *Medical Records*

<https://www.cpsbc.ca/files/pdf/PSG-Medical-Records.pdf>

“Physicians have an ethical, professional and legal obligation to ensure that before they create a medical record they comprehensively address the issues of ownership, custody, confidentiality and enduring access for themselves and their patients.”

The records I create belong to me

Don't they?

Considerations

College standard – *Medical Records*

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“In all situations where a physician creating a medical record is not the owner of the clinic and/or of the EMR licence issues of custody, confidentiality and enduring access by individual physicians and patients must be documented in a formal contract with the owners and/or EMR service providers.”

The records I create belong to me

Don't they?

Considerations

College standard – *Medical Records*

<https://www.cpsbc.ca/files/pdf/PSG-Medical-Records.pdf>

“The College cannot arbitrate ownership of medical records retrospectively.”

