

eConsult: Frequently Asked Questions about Managing Liability Risk

What is eConsult?

An eConsult occurs when a requesting clinician sends a patient-specific question to a specialist using secure technology. An eConsult provides timely, efficient access to specialist advice and may avoid the need to refer a patient to be seen, in person, by a specialist. eConsult services vary in the technology they use. Some are developed by public organizations and provided without charge, while others are created by a private group and charge users a fee.

How is an eConsult different from an informal consultation?

In many organized care settings, when a clinician has a question about a patient, they can ask a colleague for advice. These "hallway consultations" happen frequently and though the requesting clinician often gets the advice needed, there is no formal documentation of the consultation. There is also no way for the specialist to get paid.

What is the CMPA's position on clinicians and specialists using eConsult to provide patient care?

The Canadian Medical Protective Association (CMPA) supports the appropriate use of eHealth tools that enable clinicians to provide quality care more efficiently and effectively to their patients while improving overall access to care. Before participating in an eConsult service, clinicians are advised to determine whether doing so is appropriate in the patient's particular case, and whether they are satisfied that eConsult allows them to meet their legal, ethical, and professional responsibilities.

What are clinicians' legal, professional, and ethical obligations?

Duty of Care

The requesting clinician has a doctor-patient relationship with the patient, which creates a duty of care. The requesting clinician holds the duty of care to proceed with the eConsult and move the closed eConsult interaction into the patient record.

A clinician may create a duty of care by providing advice on a patient. This can be done via a face-to-face visit with the patient, or a communication (call, email, eConsult) with another clinician. In the case of eConsult, a specialist providing advice is expected to gather the appropriate information (if available and use it to provide sound medical advice. A specialist providing advice through an eConsult retains important responsibilities regarding appropriate and complete clinical guidance (similar to a traditional consultation), even though the specialist may not know the patient's name or have met the patient face to face. If the specialist is unable to provide advice, this should be clearly stated, and ideally, alternative suggestions should be made e.g., recommend a different specialty, or suggest a traditional referral.

Standards of Care

Although there are not yet specific standards for eConsultations, clinicians should assume that the standards for in-person consultations and referrals established by organizations and colleges apply to eConsults. In general, requesting clinicians should be able to provide necessary information about the patient's problem; the clinical question to be answered; patient details; and relevant investigations, treatments, and medications. Specialists should have sufficient details about the patient's condition to be able to provide answers to specific questions and give appropriate advice.

Specialists should generally decline to provide advice through an eConsultation if they feel that the available information is inadequate, or a physical examination is needed to provide the appropriate advice. eConsultation services often allow back and forth dialogue for the specialist to gather more information from the requesting clinician and for the requesting clinician to seek clarification from the specialist. A clinician who proceeds with an eConsultation that does not meet the standard of care may be subject to disciplinary proceedings by the physician's college and may be liable in a civil action for any injury the patient suffers because of that failure to meet the standard.

Obtaining the patient's consent

Patient consent is implied in an eConsult as this interaction remains within the circle of care; however, advising your patient of your use of this tool is good practice.

Who is the Most Responsible Physician (MRP) during an eConsult?

When using the eConsult service, the requesting clinician remains the MRP for the patient, i.e., when a specialist accepts an eConsult, it does not transfer the responsibility of care or decision making to the specialist as may be the case with a traditional referral. The requesting clinician maintains the treatment authority and must use clinical judgement, in discussion with the patient, to determine how and whether to implement the specialist's recommendations.

Privacy

As clinicians have ethical and legal obligations to keep their patients' personal health information private and confidential, they should be satisfied that any eConsultation service they rely on has adequate security and privacy protocols to protect patient information. More information about privacy considerations for eConsultations is available from provincial and territorial privacy commissioners, colleges, and the CMPA.

Medical Records

Requesting clinicians should document in the patient's medical record the information that would normally be expected with any consult or referral request, including the patient information provided to the specialist, details of exchanges with the specialist, the specialist's recommendations, and the reasons for following the specialist's recommendations (or not). A specialist providing treatment recommendations or advice to a

requesting clinician through an eConsultation should document the information provided to the treating clinician, the substance of any exchange with the treating clinician, information considered throughout the course of the consultation, and their recommendations to the treating clinician. The record of the encounter should be retrievable by the specialist through the service or retained by the specialist in case a question arises later about the information provided or advice given. Legal proceedings often start long after a referral is made, and consultation provided, and these records may be the clinicians' only source of information to refresh their memory.

Licensing

Before participating in eConsultation services while located in a different province/territory, clinicians should consider whether they have met applicable licensing and credentialing requirements. Such consultations are applicable to the CMPA *Principles of Assistance for Providing virtual care (including telehealth)*. The use of the Ontario eConsult service would not generally affect a clinician's eligibility for CMPA assistance when providing medical care for patients located within Canada. However, in general, clinicians are not eligible for CMPA assistance for medico-legal difficulties that may arise as a result of eConsult services completed while the clinician is located outside of Canada; clinicians who provide eConsult services while located outside of Canada will want to ensure they have alternate liability protection.

Contact

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For more information, please refer to:

- <https://www.cmpa-acpm.ca/en/membership/protection-for-members/principles-of-assistance/providing-virtual-care-including-telehealth>