

Disclosure of COVID-19 Vaccination Status by Physicians

Policy position recommendation

1. The CMA strongly encourages physicians to voluntarily disclose their vaccine status to their patients to allow patients to make an informed decision about their care and bolster vaccine acceptance.
2. The CMA continues to call for mandatory vaccination of all health care workers to protect themselves, their families, communities, and those in their care.

A. Rationale

- The question of mandatory disclosure of vaccination status gives rise to two conflicting primary duties: 1) the duty to care owed to the patient by the physician – and, if relevant, by the institution in which they work – to act in the patient’s best interest and 2) the duty owed to the physician by their institution and regulator to protect their right to keep their personal health information confidential and private. In short, it involves a weighing of a *patient’s right to know* versus a *physician’s right to privacy*.
- When there are competing duties, the objective is to prevent compromising either duty. This can be best achieved by encouraging *voluntary* disclosure so that physicians are not *obligated* to share their personal health information with regards to their vaccination status with patients **and** instituting mechanisms that significantly minimize potential harm to patients by unvaccinated physicians through regulatory and institutional measures, such as vaccine mandates, and ensure that participating physicians and institutions are held accountable for their compliance.
- There is no substantive patient right to know their physician’s health status, including vaccination status. Currently, healthcare workers are not legally obligated to disclose their vaccination status to their patients. This is primarily due to privacy rights, and the implications

of protecting and storing this information, and the potential for discrimination against this information.

- Mandatory reporting of personal health information to authorities (e.g., public health or hospitals/employers) for a legitimate and reasonable purpose (e.g., as a condition of travel or employment) is distinct from and does not eliminate one's right to keep their personal health information private from individuals, including patients. Public authorities have a duty of confidentiality toward the information and are permitted to collect, use, and disclose it for a number of legitimate reasons core to their mandates and functions (e.g., public health, to identify and manage risk). Although there are specific instances where physicians are professionally obligated to share their personal health information (e.g., as a condition of employment), these disclosures are made to authorities with the responsibility and safeguards in place to maintain the confidentiality of that information for the narrow purpose for which it is used. In the case of HIV status, risk to patients is currently managed through disclosure to regulatory colleges, not to patients. Patients are not held to that standard and are not well-placed to fulfil these functions in a systematic way.
- An alternate approach to requiring physicians and other healthcare workers to disclose their vaccination status to patients is to mandate vaccination for all healthcare workers. Vaccine mandates address the underlying rationale for mandatory disclosure – patient safety – without the need to disclose personal health information to patients.

B. Background

- There has been discussion and some precedents about whether physicians have an obligation to disclose personal health information dating back to discussions about HIV status.
- There is some scholarship on the ethics of disclosure of transmission risks to patients by physicians infected with an infectious disease, such as in the case of Hepatitis B virus.
- Disclosure could entail an overt mechanism, like wearing a badge displaying if someone is vaccinated, or directly telling patients upon their arrival or request. It could also entail a more indirect mechanism like a mandatory vaccinate-or-mask (VOM) policy.
- There has been patchwork implementation of regulations and guidelines regarding these issues, by both government and healthcare institutions, which has created inconsistencies across Canada.
- There is generally no legal obligation to disclose HIV-positive status, excluding few healthcare related jobs where there is a small risk of transmission in performing some medical tasks. It is more likely to be required to disclose HIV status to the regulatory body than to the employer. Disclosure to patients would be required in the unlikely event of a possible HIV exposure, so they can seek medical advice or post-exposure treatment.

Ethical analysis

- The question of mandatory disclosure vaccination status gives rise to two conflicting primary duties: 1) the duty to care owed to the patient by the physician – and, if relevant, by the institution in which they work – to act in the patient’s best interest and 2) the duty owed to the physician by their institution and regulator to protect their right to keep their personal health information confidential and private. In short, it involves a weighing of a patients’ right to know versus a physicians’ right to privacy.
- The duty to care in this context has two primary manifestations. The first is informed medical decision-making; this is an expression of the principle of patient autonomy. Medical decision-making is ideally a deliberative process that engages the patient in shared decision-making and is informed by the patient’s experience and values and the physician’s clinical judgment. The physician has an obligation to provide the patient with sufficient relevant information for the patient to make an informed decision about their care by communicating with and helping the patient navigate reasonable therapeutic options to determine the best course of action consistent with their goals of care; and communicate with and help the patient assess material risks and benefits before consenting to any treatment or intervention.
- The second manifestation is the physician’s obligation to the well-being of the patient; this is an expression of the principles of beneficence and non-maleficence. The physician must first consider the well-being of the patient and always act to benefit the patient. The physician must take all reasonable steps to prevent or minimize harm to the patient and disclose to the patient if there is a risk of harm or if harm has occurred, to recognize the balance of potential benefits and harms associated with any medical act, and to act to bring about a positive balance of benefits over harms
- In the context in question, the physician is obligated to minimize threats of infection to patients. This may require physicians to voluntarily adjust their practice in keeping with institutional and public health policy measures designed for this purpose. The physician has the responsibility to determine what measures they need to take to meet this obligation.
- The duty in conflict with the duty to care is the duty owed to the physician by their institution and regulator to protect their right to keeping their personal health information confidential in respect of the physician’s right to privacy. This is an expression of the principle of respect for persons which includes the obligation that all individuals be able to exercise their autonomy to the fullest extent possible, including the decision whether and to whom to share their personal health information. Although there are specific instances where physicians are professionally obligated to share their personal health information (e.g., as a condition of employment, HIV status under certain circumstances), these disclosures are made to authorities with the responsibility and safeguards in place to maintain the confidentiality of that information for the narrow purpose for which it is used. Patients are not held to that standard.

Other institutional policies

- Healthcare facilities are taking various approaches to requiring disclosure.
- The Ontario Medical Association is encouraging that doctors be transparent, despite not being legally obligated to disclose.
- The president and CEO of the Ontario Hospital Association stated that since the provincial government has not yet issued any directives, Ontario hospitals are encouraging or mandating staff to be vaccinated and are reviewing self-reporting employee vaccination rates.
- Toronto's University Health Network has required all staff to disclosure to their employer if they: have been vaccinated, are exempt for medical reasons, are not getting vaccinated, or choose not to disclose.
- The Royal College of Dental Surgeons of Ontario is advising dentists and staff that they don't have to disclose their vaccine status.

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References

- Barrigar D, Fligel D, Upshur R. Hepatitis B virus infected physicians and disclosure of transmission risks to patients: A critical analysis. *BMC Med Ethics* 2001; 2(4). Available: <https://bmcmethics.biomedcentral.com/articles/10.1186/1472-6939-2-4> (accessed 2021 Oct 10).
- Bensimon C, Tracy S, Bernstein M, et al. A qualitative study of the duty to care in communicable disease outbreaks. *Soc Sci Med* 2007;65(12):2566–2575. Available: <https://www.sciencedirect.com/science/article/pii/S027795360700411X> (accessed 2021 Oct 10).
- Canadian Medical Association (CMA). *CMA Code of Ethics and Professionalism* [policy]. Ottawa: The Association; 2009. Available: <https://policybase.cma.ca/en/permalink/policy13937> (accessed 2021 Oct 10).
- Canadian HIV/AIDS Legal Network. *Living with HIV, Know Your Rights 1: Disclosure at work*. Toronto: The Network; 2013. Available: <https://www.hivlegalnetwork.ca/site/know-your-rights-1-disclosure-at-work/?lang=en> (accessed 2021 Oct 10).
- Sokol, Daniel K. Virulent epidemics and scope of healthcare workers' duty of care. *Emerg Infect Dis* Aug 2006 12(6):1238-41. Available: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3291234/> (accessed 2021 Oct 10).
- Simonds A K, Sokol KD. Lives on the line? Ethics and practicalities of duty of care in pandemics and disasters. *Eur Respir J* 2009;34 (2):303-309. Available: <https://erj.ersjournals.com/content/34/2/303> (accessed 2021 Oct 10).