

## Public commentary by physicians during the COVID-19 pandemic: Risks and considerations

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During the COVID-19 pandemic, physicians have been sought out for their expertise, anecdotes, commentary and opinions regarding pandemic-related issues, including vaccines, therapies and various policies and actions taken by governments. Physicians have provided their expertise, commentary and opinions in interviews in a variety of forums, including on news and social media, many garnering an almost celebrity status.

Public comments by physicians, whether in news or social media, may "present important opportunities to enhance patient care, medical education, professional competence, and collegiality."<sup>[1]</sup> However, public comments by a physician associated with a hospital or other healthcare organization may also impact that organization's reputation by affecting the public's perception of the organization and the safety and quality of the services it provides.

Recent news coverage has highlighted concerns for healthcare organizations and potential consequences for physicians of unbridled public commentary regarding pandemic-related issues.

Decisions of Ontario courts and the Health Professions Appeal and Review Board (the HPARB) have established that inappropriate communications, including public comments, can have an impact on a physician's hospital privileges.<sup>[2]</sup> The Divisional Court has held that when considering physician privileges, it is proper to take into account the public interest, which "must include maintaining public confidence in public institutions," which in turn can be undermined by the conduct of people working in those institutions, particularly physicians.<sup>[3]</sup>

Most recently, in *Waddell v Weeneebayko Area Health Authority*,<sup>[4]</sup> the HPARB found that a physician's inflammatory and misleading social media posts and emails had a detrimental impact on the ability of the hospital and its staff to carry out their functions. The HPARB noted that the physician's "advocacy" on social media was not the appropriate vehicle by which to deal with his "complaints."

Given the important balance between enabling physicians the freedom and opportunities for public comment (and the potential public interest in those comments) and managing reputational and other risks, healthcare organizations should:

- have policies and procedures in place that provide clear guidelines and expectations for staff members making public comments, which should include a process for the approval of media interviews as well as policies on the use of personal social media accounts;
- ensure that those policies remind physicians of the importance of non-disclosure of any personal health information;

- ensure that all staff members are aware of the policies regarding social and news media; and
- remind physicians of relevant by-law provisions and policies from the College of Physicians and Surgeons of Ontario that may be relevant to their public comments.<sup>[5]</sup>

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[1] CPSO Position on Social Media – Appropriate Use by Physicians:

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Statements-Positions/Social-Media-Appropriate-Use-by-Physicians>

[2] See *Khan v Scarborough Hospital*, 2012 CanLII 38575 and *Gupta v William Osler Health System*, 2017 ONSC 1294.

[3] See *Gupta*, para 65.

[4] 2018 CanLII 39843.

[5] COVID-19 FAQs for Physicians:

<https://www.cpso.on.ca/Physicians/Your-Practice/Physician-Advisory-Services/COVID-19-FAQs-for-Physicians> The College of Physicians and Surgeons of Ontario advises that physicians should “be aware of how their actions on social media or other forms of communication could be viewed by others, especially during a pandemic”, and that “comments or actions can lead to patient/public harm if you are providing an opinion that does not align with information coming from public health or government”