

## CMPA assistance in legal matters initiated by non-residents of Canada – Revised policy

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In recent years, advances in technology and the opening of borders have created increased opportunities for physicians to provide care to non-residents of Canada. Some physicians may view these opportunities as an alternative to the constraints imposed by our publicly-funded health care system.

However, these opportunities also create increased risk for medico-legal difficulties that can ultimately be very costly. Generally, the CMPA assists its members in the event of medico-legal difficulty **arising in Canada** as a result of professional work **done in Canada**. The CMPA is not structured to assist with problems that arise outside of Canada or result from care given outside of Canada. Legal actions in the United States, in particular, can be prohibitively costly.

The CMPA is aware that members may face medico-legal difficulty elsewhere despite their best efforts not to provide care that could lead to legal action outside of Canada. In such circumstances, the CMPA has on occasion extended assistance to members and may, in its discretion, continue to do so in accordance with this and other CMPA policies.

As practice opportunities have expanded in recent years, the CMPA has communicated with members to point out potential areas of risk and/or to advise about eligibility for assistance should problems arise when treating foreign patients (see box [below](#)). Many of the principles outlined in these communications will remain in effect after the revised policy takes effect on Jan. 1, 2004.

### Revision provides consistency and clarity in three key areas

The revised policy was developed by Council to provide guidance to members as to how the CMPA will, in general, consider requests for assistance in legal matters initiated by non-residents of Canada (see definition [below](#)) in:

- matters brought in Canada;
- matters brought outside of Canada; and
- care provided outside of Canada.

Members who provide care for non-residents must carefully review the revised policy (see the revised policy [below](#)).

During the summer of 2003, members will learn about a related policy that focuses on extent of assistance in legal matters arising from the practice of telehealth.

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**CMPA assistance in legal matters initiated by non-residents of Canada:  
The revised policy (effective Jan. 1, 2004)**

Pursuant to its by-laws, all assistance extended to members of the CMPA in medico-legal matters is discretionary. The following policy, however, is intended to provide guidance to physicians as to how the Association will in general consider requests for assistance in relation to medico-legal matters that are brought by U.S. and other non-residents. **Members who may have occasion to care for non-residents must carefully review this policy.**

### Matters brought in Canada

1. Where a matter is brought in Canada (i.e., through the courts, licensing bodies or other administrative tribunals of a Canadian province or territory) by a non-resident in respect of care provided in Canada, the Association **will generally extend** assistance to the member, in accordance with the by-laws and policies of the Association.

### Matters brought outside of Canada

2. Where the matter is brought in the United States of America or in another foreign jurisdiction (i.e., through the courts, licensing bodies or other administrative tribunals of a U.S. or other foreign jurisdiction), the Association **will generally decline to extend** assistance to the member, in accordance with the by-laws and policies of the Association.
3. However, the Association **will generally extend assistance** to members who treat non-resident patients in emergent/urgent circumstances, provided that:
4.
  - a. the **care was provided in Canada**; and
  - b. the member made reasonable efforts, in the circumstances, to obtain an executed **Governing Law and Jurisdiction Agreement** in a form satisfactory to the CMPA<sup>1</sup>, where the member knew or ought to have known that the patient was ordinarily resident outside of Canada.
5. The Association may consider exercising its discretion to extend assistance in other exceptional circumstances as may be determined by Council from time to time, provided that:
6.
  - a. the **care was provided in Canada**; and
  - b. the member made reasonable efforts, in the circumstances, to obtain an executed **Governing Law and Jurisdiction Agreement** in a form satisfactory to the CMPA, where the member knew or ought to have known that the patient was ordinarily resident outside of Canada.
7. The Association will not consider exercising its discretion when a member has, directly or indirectly:
8.
  - a. solicited the treatment of a non-resident patient;
  - b. actively undertaken or offered to undertake the treatment of a non-resident patient; or
  - c. encouraged the creation of a doctor-patient relationship with a non-resident patient.
9. For the purposes of this policy, “solicit the treatment of a non-resident patient”, “actively undertake or offer to undertake the treatment of a non-resident patient”, and “encourage the creation of a doctor-patient relationship with a non-resident patient”, include:
10.
  - a. providing care to a non-resident patient in circumstances where the care could reasonably be provided outside of Canada;

- b. taking steps to advertise in the foreign jurisdiction or directing advertising meant to attract non-resident patients (including in a telephone directory, newspaper, trade magazine, Web site,<sup>2</sup> or any other medium);
  - c. facilitating pre-treatment and/or post-treatment arrangements in the foreign jurisdiction; or
  - d. quoting prices for surgical treatment or other care in the currency of that foreign jurisdiction in any advertising or promotional materials.
11. In cases where assistance is extended, consistent with its general discretion in all such matters, the Association may limit or decline to assume payment of any judgment or settlement amount in relation to any matter brought outside of Canada.

### Care provided outside of Canada

8. The Association **will generally** decline to extend assistance in relation to care provided outside of Canada, **regardless of where the action is brought**, subject to the exceptions detailed in paragraphs 9 and 10 of this policy.
- 9.
10. However, the Association will generally extend assistance to members who provide care outside of Canada as a good samaritan.
- 11.
12. In a limited number of instances,<sup>3</sup> as may be determined by Council from time to time, the Association **may** extend assistance in relation to matters regarding care provided outside of Canada if the matter is brought in Canada. In this regard, members are expected to confirm their eligibility for assistance with the Association prior to leaving Canada.
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<sup>1</sup> [A Governing Law and Jurisdiction Agreement](#) in a form satisfactory to the CMPA was mailed to members in December 2002.

<sup>2</sup> For further details on the use of Web sites, members should consult the Association's policy on assistance in legal matters arising from the practice of telehealth (to be published and sent to members in summer 2003).

<sup>3</sup> Such instances include educational and missionary work performed outside of Canada, care provided outside of Canada while accompanying a Canadian cultural group or amateur sports team or care provided outside of Canada by Canadian Armed Forces members while treating Canadian Armed Forces personnel and their dependants.