



# When jurisdictional boundaries become barriers to good patient care

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## ABSTRACT

Canada is a pioneer in remote cancer care delivery to underserved populations; however, it is trailing behind on policies that would support clinicians in providing care using distance technologies. The current policy framework is disjointed, and discussions by professional boards about online jurisprudence associated with licensure appear to be regressive. We hope that by addressing the discrepancies in interjurisdictional practice and focusing on the key issue of “where therapy resides,” we will be able to nudge dialogue and thinking closer toward the reasoning and recommendations of national telehealth organizations. We present this discussion of jurisdictional issues and e-health practice in the context of a pan-Canadian online support program developed for cancer patients and family members. Although the present paper uses online support groups as a springboard to advocate for e-health, it ultimately addresses a broader audience: that of all Canadian health care stakeholders.

## KEY WORDS

e-Health, online support groups, policy, jurisdictional boundaries

## 1. INTRODUCTION

Canadian geographic vastness, coupled with a relatively small population, requires the use of telecommunications within our system of health care delivery so that Canadians living outside large urban areas have equitable access to health services. Based on historical data collected across Canada, use of telehealth and e-health has grown at a rate of more than 35% annually over the past 5 years and will continue to grow<sup>1</sup>. That growth will have tremendous positive implications for the health care system in terms of accessibility and cost savings associated with health care delivery.

Given an expanding requirement and the increase in scientifically-tested interventions, a need arises for well-developed, consistent professional practice standards and guidelines<sup>2</sup>. Professional associations, licensing boards, and government oversight agencies are generally turned to for new or updated standards in the health professions. Some professional associations support online service delivery and provide workable guidelines and codes of conduct for Internet practice, but depending on the profession and on the province in which the clinician practices, guidelines in Canada show great range and variability. Most professions are moving in the direction of recognizing the legitimacy of telemedicine or e-health options, and they are working toward defining ethical professional practice in this area. Unfortunately, they are lagging in one remaining critical area, that of licensure and jurisdiction. That lag threatens the development of professional delivery of e-health options, and ultimately, the potential of e-health to meet the needs of Canadians.

The foundation of e-health and other forms of telemedicine is technology, which has no borders, and yet the practice of medicine in Canada is provincially regulated<sup>3</sup>. For the most part, policies on e-health have been absent, but professional boards are beginning to formulate decisions. Our concern is that emerging e-health policy decisions are being taken up by individual professions and jurisdictions, mostly independently of one another and without consideration of broader needs and issues that have been thoughtfully investigated and well-described within telemedicine committees and organizations<sup>4</sup>. The situation is concerning, because ill-informed and disjointed policies in any single jurisdiction can impede the ability of e-health to fulfill its potential and might exclude entire professions from being able to contribute service. Within professional practice, a debate has long been underway on the processes for authorization, authentication, privacy, security, and consent; those issues have been resolved. Now it is time for a national resolution on the issues associated with licensure.

The purpose of the present commentary is to try to nudge the discussion toward resolution by putting it within a practical context—namely, that of setting up a program of professionally-facilitated online support within the public health care system. In addition, we describe the position in which we now find ourselves: feeling hamstrung at times from realizing the full potential of the online modality because of jurisdictional constraints without strong practice-based justification. Our hope is that others may come to share our belief that the benefits far outweigh the risks, and that there is a moral imperative to reconsider current policy directions in view of advancements in technology.

## **2. A PAN-CANADIAN ONLINE SUPPORT PROGRAM**

We are a group of clinician-scientists and program leaders from large Canadian cancer centres who met in support of a vision of improving access to professional psychosocial care. We thought that, through collaboration, we might better address barriers facing cancer patients and family caregivers. Group support is a recommended intervention, but high-quality group support (that is, with professional facilitation, including oncology expertise) is difficult to access for most cancer patients and family members caring for sick loved ones. These issues of access result not only from reasons of geography, but also because few professionals practice in this specialty field, and many types of cancer lead to specialized needs and patient subgroups. Additionally, fatigue (and sometimes disability from treatments), stigma, sex, and younger or older age also pose barriers to accessing group support. At any point in time, the number of cancer patients with particular characteristics and affinities wanting to connect with others in similar situations is not sufficient for each community or region to have its own “group.” Even in urban cancer centres, professionals are challenged to form groups that serve needs outside of the mainstream.

Our vision of “support groups without borders” recognizes that it sometimes takes a nation to form a group. Despite logistics challenges, we thought that electronic support groups represented the best possible option for bringing together cancer patients with similar characteristics and needs in a timely way. The online option also allows for education and support to be targeted to special groups and in-demand topics such as sexual health.

We benefited from investment by national and provincial funding bodies that allowed us to create an infrastructure to support professionally-facilitated online support groups. We developed and implemented a professional-led program of online support groups—a program with well-elaborated protocols, practices, and guidelines to ensure ethical and safe practice—and an evaluation framework that permitted close monitoring

and continuous improvement. Over the past 3 years, we have held more than 40 online groups, many with at least a few patients from more than one province. We enrolled highly distressed cancer patients, cancer survivors, and family members caring for loved ones near the end of life. We had high levels of participant satisfaction and gratitude for the service, without a single negative incident<sup>5</sup>. Patient and administrative support bode well for continuing the program.

## **3. JURISDICTIONAL BOUNDARIES**

When we initiated the project, no explicit policies were in place to encourage or prohibit cross-jurisdictional support groups, except in the (positive) case of nursing. The key concern for online practice is the decision on the issue of “where therapy resides.” The nursing profession has determined that it lies with the provider; by contrast, the professions of psychology and social work have not come to that decision (Rojubally A, Stephen J, Fergus K, *et al.* Professional positions on online psychosocial care in Canada: a review of current policy statements. *Can J Commun Mental Health*. Submitted). This lack of decision is problematic, because it could technically be argued that the counsellor is practicing without a license if, as happens occasionally in our case, a group participant lives in or travels to another province.

Some of our organizations and professions have provisions permitting care for out-of-province patients: for instance, a nurse-counsellor is in compliance with national telehealth guidelines. We worked around this issue by using co-facilitation (that is, two counsellors in two provinces to co-facilitate). But such practices fall short of ensuring a satisfactory level of legal and ethical propriety sufficient to offer professional online support to patients who are seeking, and who are available, for a particular group.

Within our group, the psychologists, in particular, are concerned, because regulatory boards appear to be moving toward defining the location of therapy with the patient and not with the provider [Chair, Association of Canadian Psychology Regulatory Organizations (ACPRO). Personal communication, 2011]. The rationale underlying the restriction on practice is this: If clients residing in Saskatchewan wants to file a complaint against a psychologist in Manitoba, they are prevented from doing so because the complainants have to live in the same place as the therapist and to receive services in the jurisdiction in which the practitioner is licensed to have standing. That position strikes us as an unacceptable rationale upon which to govern best practice. In effect, it suggests that services should be shaped by “what could go wrong” and not by clinical experience, identified client need, or potential benefit.

Issues concerning jurisprudence are of course paramount, but based on our experience, we have come to know that such issues can be respected and

attended to regardless of where the therapist and the clients reside. In the world of online intervention, concerns about where the clients live increasingly appear to us to be based on faulty reasoning, not reality. Whether therapist and client are within one region or across the nation, they are, for that period of contact, living in the same virtual world.

Setting up within-province online support groups has helped us work around the jurisdictional issues; however, the vision of national groups and the entire essence of timeliness, meeting specialized needs, and access is being denied. We could reason that the online support groups are merely supportive or psychoeducational, and hence argue that the legal and ethical constraints on services provided are limited. However, regulatory bodies may not be able to choose between the therapist's role in the virtual world and the patient's expectations. It may also be difficult in court to differentiate between the therapeutic impact of "psychoeducational" interventions and "directive psychotherapy." Clear and concise information to patients in the form of consent (which is our practice) helps them to understand the intent and limits of the online modality and the group structure, but might not protect a psychologist in court. Furthermore, rebranding the psychological intent of an online support group is not the long-term solution. Measures need to be taken at both the jurisdictional and national levels to harmonize the practice and to remove the caveats that have hindered growth of online psychosocial care as an important and sought-after resource among Canadians. Within professional practice, a debate on the processes for authorization, authentication, privacy, security, and consent has long been occurring; those issues have been resolved. It is now time for national resolution on the remaining issues associated with licensure.

We think that the stance taken by a number of regulatory bodies<sup>6</sup> thus far (Chair, ACPRO. Personal communication, May 3, 2011) is counterproductive and yet another example of our profession failing to prepare for new health care markets<sup>7</sup>. In fact, as our group has shown<sup>5</sup>, online counselling can be conducted so as to satisfy all of the ethical principles espoused in Canadian Psychological Association code of ethics for psychologists<sup>8</sup>, social workers<sup>9</sup>, and counsellors<sup>10</sup>. A focus on issues of professional liability and a reluctance on the part of regulatory bodies to address those issues violates the ethical principle of maximizing benefit to people seeking or needing psychological services.

#### 4. SUMMARY

Based on evidence accumulated to date (both of the need<sup>11</sup> for and the benefit from online support groups<sup>12,13</sup>), we advocate for the urgent development of positive and creative solutions to address the tension between technological outreach and regionally

based licensing practices. Inevitably, jurisdictional restrictions will hinder the potential of e-health to help patients and the opportunities of professionals to provide that help. We are concerned that our program, the patients, and the collaborating professionals who have developed new skills, may all lose. It is imperative that we identify short-term accommodations and long-term solutions to prevent professionals from being excluded from online therapeutic care.

As a long-term solution to jurisdictional barriers, we recommend that psychology and social work adopt the nursing position on telehealth, which defines therapy as residing with the provider, and not with the patient. This policy ensures that a licensed nurse is accountable to the board of the province in which she or he is located, and that a complaint—regardless of point of origin—will be followed up within that province. A potential short-term solution for registered psychologists may reside in the form of provisions to the Canadian Psychological Association's Mutual Recognition Agreement. That agreement currently permits license recognition for psychologists working outside their jurisdiction if they formally register (and in some cases, write and pass the jurisdiction exam) in the province in which they wish to practice<sup>14</sup>. An amendment to the agreement could provide for an exemption in the case of online therapy for licensed psychologists working in public health service.

e-Health is the answer to ensuring portability and accessibility of health care services as mandated in the Canada Health Act. National organizations such as ACPRO, the Federation of Medical Regulatory Authorities of Canada, and the Canadian Counselling and Psychotherapy Association need to adopt consistent and forward-thinking position statements such as the one adopted by the Canadian Nurses Association, so as to override current provincial policy patchworks and to harmonize e-health practice across provincial boundaries. The only way to bring about the needed change is to raise awareness, to identify the caveats in the system, and to bring everyone together with a clear vision and consistent advocacy for national leverage on the issue of professional barriers to good patient care. Ultimately, we need to answer one question: Is it ethical to deny patients online care based on presumed professional risk?

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#### 6. CONFLICT OF INTEREST DISCLOSURES

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