



Decision-making Tool

TELEPRACTICE AND DIGITAL RECORDS MANAGEMENT IN THE HEALTH AND HUMAN RELATIONS SECTORS

Produced by the CIQ's Telepractice Working Group

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SUMMARY

The ICT boom has had an impact on professional practice in every profession, which means that professional practice must be adapted to ensure secure and quality services/care.

The telepractice working group of the Conseil interprofessionnel du Québec (CIQ) formed a subgroup composed of representatives from nine professional orders to delve more deeply into certain aspects of telepractice in the health and human relations sectors, broadened to include animal health (veterinary health).

The process involved study of the brief entitled *Clinical Telehealth in Québec: an Ethical Perspective* published in May 2014 by the Commission sur l'éthique en science et en technologie (CEST), specifically its recommendations for the professional orders. Their aim was to come up with recommendations and practical suggestions to address the protection of the public concerns raised by this form of practice within an intrajurisdictional context.

The CEST's recommendations specifically addressed to the professional orders:

That professional orders in the health sector introduce a monitoring mechanism:

- 1) *for emerging telehealth practices, in particular health professionals' use of personal mobile devices such as smartphones as they evolve and are implemented*
- 2) *using an interprofessional and intersectoral approach, in order to be able to track the use of these technologies and ensure adequate quality control. (p. 39)*

That professional orders define practice standards for telehealth (p.43)

That professional associations and orders continue to promote the responsible practice of telehealth and ensure their members receive adequate support and training. (p. 62)

Observations

The subgroup arrived at three conclusions after reviewing these recommendations:

- The CEST’s recommendations are legitimate and useful in terms of protecting the public
- The professionals orders should reaffirm or develop specific professional guidelines with regard to telepractice
- Many of these guidelines are relevant to all professionals

Aim of this document

Based on these observations, we produced this document with the following objectives in mind:

- Suggest guidelines to govern professional practice in the area of telepractice
- Formulate rules or principles concerning a particular profession’s use of a technology based on specific aspects related to its use
- Indicate the required knowledge and skills to ensure that services delivered to the public by professionals employing ICT comply with the highest quality standards
- Identify potential standards with respect to digital records management

We submit this to the professional orders for use as a reference tool. First, to assist the order’s senior administrators as they make decisions concerning the control of telepractice from a protection of the public perspective. Second, to provide members of the orders with minimum guidelines for telepractice. We have designed the document to be adaptable for use by both members and administrators of the professional orders.

And, while the working subgroup was made up of representatives of orders in the health, human relations, and animal health fields, these recommendations may be useful to all professional orders and their members.

1. INTRODUCTION

The use of information and communication technologies (ICT) in clinical and professional practice has grown considerably, improving access to care/services, facilitating the transmission of information among professionals (Poder, Bellemard, Bédard, and Lemieux 2015), and, under certain circumstances, reducing associated costs (American College of Physicians 2015).

Professional practice has been affected by ICT use, which means that certain adaptations must be made to ensure secure and quality delivery of services/care. ICT use in the practice of professionals in Québec is steadily rising and with this, several issues need to be considered by the professionals using these technologies, in terms of both professional guidelines for telepractice and digital records management.

Telepractice refers to the practice of a profession at a distance by means of ICT. It comprises teleconsulting, tele-expertise, telemonitoring, tele-assistance, and tele-imaging, as well as training and supervisory activities. The notion of telepractice includes telehealth. For the purposes of this document, it also includes the use of mobile telephones and the Internet.

The activities associated with telepractice mainly comprise:

- Public information by means of ICT
- Remote delivery of professional services to patients/clients
- Management and sharing of patients'/clients' confidential information and digital records

In 2005, the Ministère de la Santé et des Services sociaux (MSSS) officially recognized and set out guidelines for telepractice in the *Act respecting health services and social services* (c S-4.2), section 108.1, par. 2. Telepractice raises a number of issues and so is also affected by other laws and regulations, especially with respect to the confidentiality of personal information¹, security of medical information² and its transmission,³ and the protection of information.⁴

¹ *Charter of Human Rights and Freedoms* (chapter C-12); *Professional Code* (c. C-26); *Civil Code of Québec* (art. 37); *Act Respecting Health and Social Services* (c S-4.2, section 19); *Act respecting the protection of personal information in the private sector* (c P-39.1, section 13); *Code of Ethics* (for each profession).

² *Act respecting the protection of personal information in the private sector* (section 10); *Act respecting Access to documents held by public bodies and the Protection of personal information* (section 63.1); *Act Respecting Health and Social Services* (section 108.1).

³ *Act to establish a legal framework for information technology* (c C-1.1).

⁴ *Act respecting Access to documents held by public bodies and the Protection of personal information* (section 70.1); *Act respecting the protection of personal information in the private sector* (section 17).

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In May 2014, the Commission de l'éthique en sciences et technologies (CEST) published a brief entitled *Clinical Telehealth in Québec: an Ethical Perspective*. The brief was intended to address the absence of reflection on ethical aspects, raise public awareness of the issues involved, and support decision-making with respect to telehealth. The CEST's report contains recommendations that specifically address the professional orders:

That professional orders in the health sector introduce a monitoring mechanism:

- 1) *for emerging telehealth practices, in particular health professionals' use of personal mobile devices such as smartphones as they evolve and are implemented;*
- 2) *using an interprofessional and intersectoral approach, in order to be able to track the use of these technologies and ensure adequate quality control. (p. 4 of English summary)*

That professional orders define practice standards for telehealth; (p.6)

That professional associations and orders continue to promote the responsible practice of telehealth and ensure their members receive adequate support and training. (p. 11)

2. MANDATE OF THE WORKING SUB-GROUP

The telepractice working group of the Conseil interprofessionnel du Québec (CIQ) formed a subgroup composed of representatives from nine professional orders to further examine certain aspects of telepractice in the health and human relations sectors, broadened to include animal health (veterinary health).

Since November 2015, the subgroup has met eight times to identify common issues linked to the growing expansion of telepractice activities. Their first step was to produce an overview of practices. It has been included here in Appendix 1.

Based on this, they identified and discussed several issues concerning professional practice. To address these issues, they formulated recommendations addressed to the professional orders. Because most of these issues are common to many orders, the group decided to address them in a jointly prepared document. The purpose of this joint document is to present common principles that may serve as guidelines for the use of ICT by professionals so that they may adapt their professional practice to this new context (Appendix 2). If needed, orders may develop more specific principles for their members. We have also highlighted aspects requiring special attention by administrators of the professional orders (Appendix 3).

Following this, the Centre facilitant la recherche et l'innovation dans les organisation (CEFRIO) conducted a survey in June 2016 to ascertain Québec professionals' usage of digital tools and their main concerns and needs in this area. Eleven orders took part in the initial survey. CEFRIO will publish a report after they have analyzed the data they collected.

In short, in light of the growing use of ICT in professional practice, it is important to:

- Offer orders guidelines for governing professional practice in the area of telepractice
- Formulate telepractice rules or principles for every profession based on specific aspects related to its use
- Indicate the required knowledge and skills to ensure that services delivered to the public by professionals employing ICT comply with the highest quality standards
- Identify potential standards with respect to digital records management

3. PROFESSIONAL GUIDELINES FOR TELEPRACTICE


In light of the issues we have identified, we believe it is important to remind members of the professional orders of several familiar principles, considered from the perspective of remote practice.

In this paper, we have only covered legal aspects related to interventions within a single territory or jurisdiction. With regard to interjurisdictional contexts, the CIQ's telepractice working group produced an analytic summary that we have included in Appendix 4. The interjurisdictional context involves a number of major issues requiring discussion. Given the complexity of the issues involved, this document covers only remote interventions within a single jurisdiction: Québec.

3.1 Laws and regulations

Professionals who engage in telepractice should, in addition to complying with the laws and regulations governing ICT use, comply with the laws and regulations governing their professional practice.

Telepractice is a technology-assisted approach employed by professionals to meet the needs of patients/clients as they practise activities included in their scope of practice and activities reserved to them. Professionals' interventions should comply with their scope of practice and the activities reserved to them.

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|  Attention required | <ul style="list-style-type: none">• Are the regulations governing professional practice adapted to ICT use?• Should some regulations be amended to reflect this new reality? |
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3.2 Professional standards and norms

Professionals who engage in telepractice should refer to the same standards and norms as those governing face-to-face intervention.

Professionals who engage in telepractice are governed by the same guidelines, protocols, norms and standards of practice as those generally recognized as applying to face-to-face practice. Professionals should therefore comply with the guidelines that have been established by their professional order or other bodies recognized in Québec (e.g., Institut national d'excellence en sante et services sociaux - INESSS).

Professionals engaging in telepractice should ensure that the delivery of care/services is secure, in accordance with the most up-to-date and conclusive data.


Professionals must also meet the required minimum technical parameters or standards for ensuring data reproducibility. For instance, remote imaging must meet the requirements to ensure a quality image.

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|  Attention required | <ul style="list-style-type: none"> • Do we need to establish standards or norms specific to particular aspects of telepractice? • Should we establish minimum required standards to ensure the reproduction of data obtained through telepractice? |
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3.3 Professionals' responsibilities and ethical obligations

Professionals engaging in telepractice are entirely responsible and professionally liable for the acts they perform.


When professionals engage in telepractice, their professional liability is the same as for their face-to-face interventions.

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|  Attention required | <ul style="list-style-type: none"> • Does professional liability insurance cover telepractice? |
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Professionals engaging in telepractice must fulfill the same responsibilities and ethical obligations as those governing face-to-face practice.

When professionals engage in telepractice, they must comply with the same ethical obligations as those governing their onsite practice.

Professionals should refer to their professional order to learn about their obligations.

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|  Attention required | <ul style="list-style-type: none"> • Does the Ethics Code cover specific aspects related to remote professional interventions? • Should additional details be included to better reflect this dimension? |
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3.4 Appropriateness of engaging in telepractice

Professionals should exercise their professional judgment when it comes to engaging in telepractice to determine whether it is appropriate for their patient/client.


Telepractice can be a good option, especially in terms of improving efficiency of the health system and the quality and accessibility of care and services. It can be used to promote patient/client involvement in their care, provide timely, continuing care/services, and access to qualified professionals.

In the current context of budget cuts and sweeping reforms of the public health system, there may be a lot of pressure to engage in telepractice. To decide whether a particular type of care/service can be delivered through telepractice, professionals should use their professional judgment to determine whether the use of a technological tool allows them to comply with existing standards of practice and provide quality and secure service. They should start by considering the appropriateness and actual benefits of this approach compared to a face-to-face intervention.

Professionals must always place the interests of the patient/client first. To do so, they must ensure that:

- A remote intervention is applicable and provides actual added value to the patient/client
- A remote intervention is appropriate from a clinical/professional perspective:
 - identification and analysis of whether the use of technological resources involves possible risks or impacts for the patient/client. For instance, could engaging in telepractice result in a security problem for the person receiving the services?
- The technology is accessible to both the professional and the patient/client
- The performance of existing facilities is adequate
- The professional and patient/client have sufficient knowledge and skill to ensure the quality and security of the intervention
- The data or information obtained by technological means will be reliable and useful for establishing an adequate treatment plan or the appropriate service for the patient/client.

To this end, the [Guide to Ethical Reflection for Telehealth Stakeholders](#) is a useful tool (CEST 2014). Additional helpful information can be found in a paper published in 2011 in Scotland entitled [A Review of Telehealth in Scotland](#).

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|  Attention required | <ul style="list-style-type: none">• Should we develop additional points, specific to a particular profession, that would be useful for guiding decisions about whether to engage in telepractice? |
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3.5 Consent

Professionals must always obtain free and informed consent, both for care/services and for the use of telepractice.


Under no circumstances does telepractice affect professional obligations related to consent. Prior to performing any intervention as part of the professional services rendered, consent is a regulatory requirement for all professionals, regardless of the means or context of the intervention.

Professionals are required to inform patients/clients concerning the nature of the intervention, expected results, significant risks, and any alternative solutions available to them. Information must be presented clearly so that patients/clients can make an informed decision. To this end, professionals may provide their patients/clients with written information to help them make a decision. It should also be kept in mind that the obligation to obtain consent is a continuing process; patients/clients may withdraw their consent at any time.

In the telepractice context, professionals should be capable of providing additional explanations to obtain free and informed consent from their patients/clients:

- The confidentiality and integrity of data related to the use of technologies
-
- The effectiveness, benefits and risks linked to services delivered through telepractice
- The full set of services delivered by means of telepractice, and the type of technology being employed (email, videoconferencing, software, etc.), including any limitations

In general, consent may be obtained verbally, but a regulatory or administrative provision (e.g., internal procedure of a particular setting or insurer) may stipulate the requirement for written consent. In the absence of such a provision, professionals may nevertheless decide, to ensure sound management of their practice and associated risks, opt for written consent. In a telepractice context, it may be particularly wise to obtain written consent, even when no regulatory obligation exists.

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|  Attention required | <ul style="list-style-type: none"> • Should written consent be required when using technological support? • Are there particular points that should be considered to assist professionals in obtaining consent? • Would it be wise to obtain consent specifically for ICT use in professional practice? |
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3.6 Confidentiality of telepractice sessions

Professionals must ensure confidentiality when delivering services at a distance.

Professional practice, whether in the context of telepractice or a face-to-face session, is rooted in the obligations mentioned in the orders' respective codes of ethics. Among other things, professionals must ensure confidentiality during telepractice sessions. This means that the technology in question should be reasonably certain of guaranteeing confidentiality of the session. The following points should be considered:

- Security of the connection between the client and the professional
- Discretion and privacy; just as the office is shut for a face-to-face session, the “virtual door” should be shut also
- Computer infrastructure meets best practice requirements for data quality and security

Professionals should also pay particular attention to the following aspects:

- Obtain the consent of the patient/client regarding the presence of a third party during a remote session e.g., computer technician)
- Establish a physical environment that guarantees confidentiality, at both locations, for the professional and the patient/client
- Take reasonable steps to ensure that confidentiality is protect; e.g., if a third party is present, they should also be required to respect confidentiality (computer technician or caregiver)

- Accurately assess the reliability and confidentiality of measuring instruments, software, or other mobile applications (consult “Reliability of measuring instruments and other mobile applications”)

3.7 Emergency protocol

Professionals engaging in telepractice should have a plan in place for emergencies, whether technical or clinical, to ensure the physical and psychological security of persons requiring care/services via this method.

Plan for technical emergencies (breakdown or failure)

Three types of technical emergency could arise:

- Mechanical failure (tools employed)
- Interface breakdown (network, application)
- Power failure

Professionals must have an alternative plan, depending on the nature of the intervention.

For example:

- Have a backup electrical power system (UPS, generator) or alternative access to computer data; an auxiliary system is important, as are regular verifications
- Include in the service contract with the supplier emergency access to parts in the event of mechanical failure, and an alternative system in the event of an electrical blackout
- Include in the training of personnel who use the technology a procedure to follow in the event of a power or mechanical failure
- Plan with patients/clients for an alternative communication method

In this respect, the Ordre des pharmaciens du Québec issued guidelines in 2011 concerning [robotization and the use of ICTs in pharmacy](#) (La robotisation et les technologies de l'information et de la communication en pharmacie).

Clinical emergency plan

- Identify what resources are available and accessible to the person being served via telepractice: public system, resources provided in the community where the person resides, emergency services, and the person’s professional and personal support network. Assess the person’s knowledge about these resources and take reasonable steps to ascertain how to access them should it become necessary.
- Depending on the patient’s/client’s situation or condition, identify a third party who could be called upon and whose role should be defined ahead of time based on the characteristics of the individual being served by means of telepractice (age, vulnerability, suicidal risk, etc.)

3.8 Reliability of measuring instruments and other mobile applications

Professionals should ensure the reliability of measuring instruments or mobile applications used for a distance service. Results and their interpretation must be valid and identical to those obtained face to face.

The App Store and Google Play are teeming with applications of all kinds. Given the explosion of devices and the market, professionals must ensure that measuring instruments or other mobile applications they use for their telepractice are capable of providing reliable and authentic data.


Professionals should choose measuring instruments and other mobile applications that are accredited by Health Canada or other recognized bodies. At this stage in the technology revolution, professionals must be prudent in their choice of devices and applications. To this end, it is important to seek information in order to fulfill all of their obligations.

For example:

- Familiarize themselves with the conditions of use (including confidentiality policy)
- Determine the responsibility of the manufacturer, supplier, and installer before setting up the system, device, etc., especially concerning maintenance, repairs, technological calibration, and process validation
- Use the most recent version of the software
- Consider the service call response time or replacement time for renting another device, availability of a training program
- Establish the provenance and validity of information and data in order to detect errors and possible limitations, etc.
- Know the data hosting service

They must also make sure that the devices to be used have been calibrated. If such devices have been sold by a Canadian company, it is possible to check whether the devices or software have been certified by visiting <http://webprod5.hc-sc.gc.ca/mdll-limh/index-fra.jsp>.

Infoway Health Canada may be a useful resource for those who want to know which device or application, from among the quickly expanding offer, is most suited to the needs of the professional and their client. A variety of documents are available for consultation at: <https://www.infoway-inforoute.ca/en/>

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|  <p>Attention required</p> | <ul style="list-style-type: none">• Will the choice of mobile device or application affect the quality and security of the service to the point that provision should be made to control the use of such devices or applications?• Should further reflection be undertaken, together with INESSS, to decide on the norms or criteria to be applied when choosing devices and applications? |
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3.9. Interoperability

Professionals, in contexts where it applies, must make sure that the application or software they are using is interoperable with the systems in place.

The principle of interoperability or inter-working in computing is a computer system's capacity to function with other computer products or systems, existing or in the future, without restricting access or implementation.

Several points need to be considered:

- Allows access (download, import) to the personal measurements contained in a mobile device belonging to the client, e.g., integrate the patient's/client's blood pressure or blood sugar reading into his or her record while identifying the source and tool that was used
- Does software for professionals include mobile platform interface (to allow the possibility of multiple mobile platforms if needed)
- Ease with which data can be shared, giving professionals access to the right information, at the right time, for the right patient/client


4. INITIAL AND CONTINUING EDUCATION FOR PROFESSIONALS

Professionals should have all the knowledge and skills required for the delivery of care/services by means of telepractice.

Given that most existing initial training programs either do not, or, only superficially address service delivery through telepractice, further reflection on this point is necessary.

According to their ethical obligations, professionals must ensure they have the necessary skills, knowledge, and aptitude to practice their profession. The same principle applies to telepractice. Thus, professionals who deliver care/services by means of telepractice, must acquire the technological skills necessary for the proper use of technological tools. They must also make sure they have access to technical support whenever necessary.

In addition, with a view to continuing quality improvement of professional acts and protection of the public, it is important to plan for regular evaluations and updating of required skills.

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|  <p>Attention required</p> | <ul style="list-style-type: none">• Should profession-related competencies for technology use be defined?• Should a minimum level of training be developed based on professionals' expressed needs?• Should the orders develop or provide continuing education opportunities related to telepractice?• Should training committees in every professional order consider the need for ICT training as part of professional practice? |
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The MSSS is currently identifying telehealth training needs in health institutions

5. TRAINING OF PATIENTS/CLIENTS – SERVICE QUALITY

Professionals should ensure that patients/clients are provided with training on the technology used prior to providing services through telepractice.


According to the study *Advocacy of Home Telehealth Care Among Consumers With Chronic Conditions* (Lu, Chi, Chen 2013: 811), patients/clients voiced two main concerns about the use of technological tools:

- Lack of knowledge about the different functions of the tools and how to use them
- Concern about the possibility of a breakdown or equipment failure

6. DIGITAL RECORDS MANAGEMENT

Like telepractice, digital records management is a significant telecommunications issue. The principles addressed in this section on digital management have been drawn and adapted from the reference framework produced by the Ordre des ergothérapeutes du Québec entitled [Cadre de référence sur les aspects clinico-administratifs liés à l'exercice de la profession d'ergothérapeute dans le secteur privé](#) (OEQ, 2015).

The issues related to the use of digital records should be of primary concern to the professional orders.

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|  <p>Attention required</p> | <ul style="list-style-type: none">• Should regulations governing record-keeping be adapted to include aspects specific to digital records management? For example: traceability, documented rectifications. |
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6.1 Controlling access to records – security

Professionals are responsible for ensuring the adequacy of means used maintain the security of records.

Whether the records are printed out or stored electronically, the rules concerning the security of the information they contain are the same. Consequently, professionals are responsible for ensuring that the means employed to secure record contents are adequate, regardless of the support or technology used, and this, for the entire life cycle of the record.⁵

Many factors representing a threat to the security of digital documents are not concrete in nature and require a minimum amount of knowledge in this respect. Certain security principles must be observed with respect to all digital documents contained in a record, to prevent unauthorized persons from gaining access to confidential information, and to ensure that authorized individuals are able to access such information.

⁵ The life cycle of a record begins with its creation and includes the transfer, consultation, transmission, and conservation of information it contains, including the destruction of such information.

These principles, related to the control of access to documents, mainly concern the availability, confidentiality and integrity of information contained in a digital document. They are presented in four sub-sections based on whether they are:

- General principles applicable to more than one of the aforementioned themes (sub-section 6.1.1.)
- Principles specific to each of the three above-mentioned themes (sub-sections 6.1.2, 6.1.3, 6.1.4)

6.1.1 General principles

Information contained in a record must be protected from unauthorized access in order to maintain its availability, confidentiality, and integrity. To this end, various means may be employed, including the disposition of digital material, the virtual storage of digital documents, or the user's behaviour.

Disposition of digital material to allow access only to authorized individuals

Means :

- Locking or monitoring the location of the material (server, keyboard, backup disc, mobile application, etc.)
- Strategic disposition of monitors (to prevent visual access)

Virtual location (e.g., computer directory, email inbox) of digital documents to which only authorized individuals have access

Means :

- Creation of an access profile and login name
- Use of an individual password or other effective means such as a smart card or biometric key
- Regular and automatic creation and updates (Barreau du Québec 2011; Levier 2005; MSSS 2007) of protection mechanisms aimed at limiting the risk of intrusion from external sources.

Preventive actions linked to user conduct

Means :

- Vigilance: as with paper records, professionals must exercise vigilance when confidential data is temporarily unlocked (e.g., open session) to prevent unauthorized individuals from gaining access

- Disconnection of active sessions: as an extra security measure, inactive sessions should be disconnected after a reasonable period of inactivity

6.1.2 Availability of data

Because records are a communication tool, diligence must be exercised to ensure the availability of the information they contain. To this end, means should be put in place, both to compensate for an interruption in service (computer breakdown) and to enable the rapid location of required information.

Mechanisms to protect against the loss of information due to an interruption in service

Means :

- Device (e.g, surge protection bar, battery) to protect the electrical system against power surges
- Compliance with standards recommended by suppliers with respect to ventilation of the computer or server
- Regular or real-time data backup programs

Diligent method for retrieving records

Means :

- Separate sub-directory (filing system) for each record
- Common identifying element (e.g., name, file no.) for all digital documents referring to a single record: The *Act to establish a legal framework for information technology* stipulates that a record may be composed of one or several documents (section 3). In conformance with section 4 of this Act, when a record contains several documents, they must structurally linked by an identifying element (client name, file no., etc.) to be considered to form a whole.

6.1.3 Confidentiality of data

The confidentiality of records must be ensured throughout their life cycle. This requires the institution of measures to control access to digital records to prevent anyone other than authorized individuals from consulting confidential information. Such individuals shall be those stipulated by law or those for whom the client has confidentiality.

The confidentiality of teletransmitted information will be addressed in section 6.2.

Preventive actions related to breach of confidentiality

Means :

- Written security agreement concluded with a supplier from Québec or Canada prior to the use of a cloud computing supplier to host confidential information
- Confidential information erased from technological equipment prior to disposal (garbage or recycling)
- Erasure of confidential information from technological equipment OR confidentiality agreement established in writing with the service provider prior to equipment repair or maintenance
- Secure method for destruction of confidential data for more information, refer to the Commission d'accès à l'information du Québec
http://www.cai.gouv.qc.ca/documents/CAI_FI_destruction.pdf

6.1.4 Integrity of data

The contents of a record must be kept intact in a way that prevents them from being altered. To this end, the conditions for record conservation and correction must be conducive to the maintenance of their integrity. For instance, whenever a professional makes a correction to the record, it must be logged.

Logging of all entries and changes in the record

Means :

- Computer system with an audit trail that records the date and time of all entries and, if applicable,⁶ modifications (change, addition, or removal of an item) to the digital record, including the identity of the user⁷ who made the change. This way, the identity of the person who made the entry/change can be connected with the moment (date and time) it was made.

Comparison procedure to validate the maintaining of data integrity

Means :

- Change of a digital document made on a version other than the source document: this method makes it possible to ensure, by comparing with the source document, that the document's integrity has been maintained as required by law.⁸ The conservation of every version of a document makes it possible to record the history of the document and any changes that may be

⁶ When the document format is such that it can be modified.

⁷ In the event that computer equipment is shared among several users, the attribution of an identification code (username) to every user and the use of individual passwords (or other effective means such as a smartcard or biometric access key) makes it possible to authenticate users.

⁸ Act to establish a legal framework for information technology, section 6 and Civil Code of Québec, art. 2839.

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made to it. Comparing versions is thus one way to verify the integrity of the data contained in a record.

6.2 Teletransmission of information

Telecommunications technology is increasingly used for the exchange of information. However, the main modes of transmission are not secure from interception. The transmission of confidential information by technological means presents certain risks, therefore, including with regard to confidentiality. It is thus important to establish reasonable security measures, especially concerning the confidential nature of the information being transmitted.


For our purposes, we will focus mainly on email and text messaging as modes of transmission of confidential data, because these are currently the most widely used methods.

The use of these methods does not subrogate the need to obtain the consent of the client (or their legal representative) prior to the transmission of confidential information, as this step, unless otherwise indicated by the law, is a prerequisite for the transmission of confidential information.

6.2.1 Email

The rules concerning the use of email vary based on several parameters, key among them being the sensitivity of the information being transmitted. Since the nature of information being transmitted, and thus, its degree of sensitivity, is not the same for all disciplines, the procedure for using email may also vary.

Professionals should ask their order if it has issued specific guidelines or directives.

| | |
|---|---|
|  <p>Attention required</p> | <ul style="list-style-type: none">• Does the particular nature of the teletransmission of information gathered by professionals require the institution of specific guidelines? |
|---|---|

The professional orders are well aware of the particular nature of the information gathered by their members. The guidelines they issue regarding the use of email, and if applicable, the associated rules, take these particularities into account. Professions should comply with these guidelines.

In the absence of such guidelines, the following points should be considered with respect to obtaining consent:

Use of simple email⁹ as a communication method

Since a simple email is a transmission method that is not secure from interception, the transmission of confidential information with this technology presents a risk to confidentiality. Clients must be so informed so they can make an informed decision in this respect. Section 34 of the *Act to establish a legal framework for information technology* stipulates that documentation should be made available explaining the agreed mode of transmission, including the means taken to protect the confidentiality of the transmitted document. This information should therefore be entered in the record.

Security parameters established for the document contained in the email

It is essential to provide the client who is the subject of the information transmitted by email with a degree of security in keeping with the sensitivity of the information.

For example, for a client who wishes to be emailed, to a shared email address, a report containing confidential data that is not overly sensitive, the professional might propose to protect the contents of the document containing the confidential information with a password sent 1) prior to transmission of the email and 2) using another method than email (e.g., verbal communication).

Last, an unprotected document containing confidential information may be transmitted to a client by means of simple email only if the client rejects such protection and if the information's level of sensitivity allows for such a risk to be taken. In the last case, written authorization from the client to this effect would be preferable. In the event of doubt about the use of email, professionals should consult their professional order.

In the event the patient's/client's consent to the use of simple email cannot be obtained, a protected mode of transmission should be employed (e.g., virtual private network, encryption).

6.2.2 Text messaging (SMS)

The use of text messaging is increasingly common. The principles governing consent and confidentiality mentioned above (email) also apply to information transmitted through text messaging.

⁹ Not protected (e.g., by means of virtual private network, encryption, etc.).

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To start with, professionals who use text messaging for professional purposes should check to see if their profession has adopted a policy to govern the use of this mode of telecommunication.

The College des médecins du Québec, in its *Regulation respecting the standards relating to prescriptions made by a Physician* (CQLR, c M-9) stipulates that a planned message sent between two professionals or between a physician and a qualified person through texting on a mobile device constitutes a verbal prescription. A qualified professional who receives a prescription by means of instant messaging would then follow the same procedure as he or she would with a verbal prescription.

6.3 Signature affixed by means of a technological process

The *Act to establish a legal framework for information technology*¹⁰ stipulates the following with respect to signatures affixed to a digital document:

“39. The link between a person and a document, whatever the medium used, may be established by means of the person’s signature. A person’s signature may be affixed to the document by means of any process that meets the requirements of article 2827 of the *Civil Code*.

A person’s signature affixed to a technology-based document may be set up against that person if the integrity of the document is ensured and the link between the signature and the document was established at the time of signing and has since been maintained. “

According to article 2827 of the *Civil Code of Québec*: “A signature is the affixing by a person, to a writing, of his name or the distinctive mark which he regularly uses to signify his intention.”

The process used to affix a signature on technology-based documents may take diverse forms, and can vary based on the context of utilization. For our purposes, we propose guidelines for two contexts of utilization:

- A signature associated with an entry in a digital record
- A signature affixed to a document that is the subject of a teletransmission.

Signature associated with an entry in a digital record

When an entry is made in a patient’s/client’s record, the principles concerning integrity of the document mentioned in the “Integrity” sub-section of the “Digital records” section allow users to both authenticate the document’s author (automatically linking the author to the document), and to protect the integrity of the document once it has been signed. No further measures are therefore required.

¹⁰ CQLR, c C-1.1.

Signature affixed to a document that is the subject of a teletransmission

When information from a digital file is communicated by means of a teletransmission, the information thus reproduced is separate from the original technological support and is deprived of its associated protection. The parameters of this support contain the audit trail required to protect the integrity of the contents and the authenticity of the signature.

Consequently, when it is necessary to establish a link between an individual and a digital document in the context of a technology-based transmission, the challenge is twofold: authenticate the author of the document and ensure the maintenance of the document's integrity during its transmission.


This said, is it necessary to proceed in this manner for the transmission of all digital documents?

The criterion to consider when determining the appropriate signature process is the level of reliability required to authenticate the document being transmitted. The level of reliability will vary depending on the circumstances (e.g., nature of the document being transmitted), the issues at stake, and the degree of trust between the parties.¹¹

Consequently, the process may also range from entry of the professional's name at the end of the document by means of a keyboard (or the use of a preprogramed or scanned signature) to the use of a digital signature generated by a recognized tool for this purpose or issued by an accredited licensing agency.

For example, the use of a scanned written signature (scanned image), which could be appropriate in some situations, would not be acceptable when sending a document involving issues of major importance; the level of reliability associated with this signature process would be insufficient for such a document. In fact, this process exposes professionals to the risk of identity theft and fraud, as a third party could gain access to, and use the image of their signature.

In cases of doubt regarding the appropriate signature process for a transmitted document, contact your professional order.

| | |
|---|--|
|  <p>Attention required</p> | <ul style="list-style-type: none">• Do we need to plan for particular requirements concerning the level of reliability of the signature affixed on technology-based documents, based on parameters such as the nature of the document and the context in which the signature is being affixed? |
|---|--|

¹¹ Barreau du Québec. *Afin d'y voir clair - Guide relatif à la gestion des documents technologiques*. 2005. May be accessed at www.fondationdubarreau.qc.ca.

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APPENDIX 1 - PROFILE OF EMERGING PRACTICES IN THE HEALTH AND HUMAN RELATIONS SECTOR, BROADENED TO INCLUDE ANIMAL HEALTH

Clinics

- Teleconsultation (examination, evaluation, data collection, diagnostic tests, postoperative care, monitoring, psychological support and treatment, psychosocial interventions).
- Tele-assistance (peer support and real-time support among professionals to support the delivery of care/services and ensure follow-up).
- Teleconferencing among professionals or multidisciplinary team members to set up a treatment plan and for the collaborative management of care/services delivered to a patient/client.
- Use of social media and discussion forums for information sharing among professionals.
- Use of and integration of data gathered by patients/clients themselves by means of “general public” mobile applications for the reassessment of their condition and the development of a care and treatment plan.
- Use of email, websites, and social media to conduct interventions with patients/clients and provide them with general information and information about available services.
- Use of secure platforms to perform interventions with remote clientele.
- Digital patient/client records.

Information transfer

- Sharing and transfer of x-rays, photographs, diagnostic test results, laboratory test results, and diverse documents among professionals for consultation and evaluation, to obtain a second opinion, to refer a patient/client to a colleague, to transfer records between professionals or between professionals and patients/clients.
- Transfer of analysis results between laboratory and professional.
- Use of and integration of data collected by patients/clients themselves by means of “general public” mobile applications for the reassessment of their condition and the development of a care and treatment plan.
- Teletransmission of prescriptions, pharmacological profiles, and prescription renewal requests.
- Transfer of data collected from patients/clients by professionals for the remote manufacture of prosthetics/orthotics.
- Billing and communication with third-party payers by means of teletransmission.
- Diverse forms to be completed and appointments made online, by email, and by means of applications.

Professional orders

- In their communications, use of the Internet, email, and mobile applications among professional orders and their members for registration, continuing education, and information sharing.
- Use of **ICT** by members and inspectors during professional inspections.
- Discussions are underway or to come within certain professional orders about revising regulations to adapt them to telepractice.
- Several professional orders are drafting or updating their ICT guides.

APPENDIX 2 – SUMMARY OF COMMON PRINCIPLES TO GUIDE PROFESSIONALS' ICT USE

| | |
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| Laws and regulations | <i>Professionals who engage in telepractice should, in addition to complying with the laws and regulations governing ICT use, comply with the laws and regulations governing their professional practice.</i> |
| Professional standards and norms | <i>Professionals who engage in telepractice should refer to the same standards and norms as those governing face-to-face intervention.</i> |
| Professionals' responsibilities and ethical obligations | <i>Professionals engaging in telepractice are entirely responsible and professionally liable for the acts they perform. Professionals engaging in telepractice must fulfill the same responsibilities and ethical obligations as they do for face-to-face interventions.</i> |
| Appropriateness of engaging in telepractice | <i>Professionals should exercise their professional judgment when it comes to engaging in telepractice to determine whether it is appropriate for their patient/client.</i> |
| Consent | <i>Professionals must always obtain free and informed consent, both for care/services and for the use of telepractice.</i> |
| Confidentiality of telepractice sessions | <i>Professionals must ensure confidentiality when providing remote services.</i> |
| Emergency protocol | <i>Professionals engaging in telepractice should have a plan for emergencies, whether technical or clinical, to ensure the physical and psychological security of persons requiring care/services via this method.</i> |
| Reliability of measuring instruments and other mobile applications | <i>Professionals should ensure the reliability of measuring instruments or mobile applications used for a distance service. Results and their interpretation must be valid and identical to those obtained face to face.</i> |
| Interoperability | <i>Professionals, in contexts where it applies, must make sure that the application or software they are using is interoperable with the systems in place.</i> |
| Initial and continuing education for professionals | <i>Professionals should possess all the knowledge and competencies necessary for the delivery of remote care/services by means of telepractice.</i> |
| Training of patients/clients – service quality | <i>Professionals should ensure that patients/clients are provided with training on the technology used prior to providing services by means of telepractice.</i> |
| Control of access to records - security | <i>Professionals are responsible for ensuring adequate means to maintain the security of records.</i> |

APPENDIX 3 – SUMMARY OF ELEMENTS REQUIRING PARTICULAR ATTENTION BY THOSE RESPONSIBLE IN THE PROFESSIONAL ORDERS

| | |
|--|--|
| Laws and Regulations | <ul style="list-style-type: none"> • Are the regulations governing professional practice adapted to ICT use? • Should some regulations be amended to reflect this new reality? |
| Professional standards and norms | <ul style="list-style-type: none"> • Do we need to establish standards or norms specific to particular aspects of telepractice? • Should we establish minimum required standards to ensure the reproduction of data obtained through telepractice? |
| Professionals' responsibilities and ethical obligations | <ul style="list-style-type: none"> • Does professional liability insurance cover telepractice? • Does the Ethics Code cover specific aspects related to remote professional interventions? • Should additional details be included to better reflect this dimension? |
| Appropriateness of engaging in telepractice | <ul style="list-style-type: none"> • Should we develop additional points, specific to a particular profession, that would be useful for guiding decisions about whether to engage in telepractice? |
| Consent | <ul style="list-style-type: none"> • Should written consent be required when using technological support? • Are there particular points that should be considered to assist professionals in obtaining consent? <p>Would it be wise to obtain consent specifically for ICT use in professional practice?</p> |
| Reliability of measuring instruments and other mobile applications | <ul style="list-style-type: none"> • Will the choice of mobile device or application affect the quality and security of the service to the point that provision should be made to control the use of such devices or applications? • Should further reflection be undertaken, together with INESSS, to decide on the norms or criteria to be applied when choosing devices and applications? |
| Initial and continuing education for professionals | <ul style="list-style-type: none"> • Should profession-related competencies for technology use be defined? • Should a minimum level of training be developed based on professionals' expressed needs? • Should the orders develop or provide continuing education opportunities related to telepractice? <p>Should training committees in every professional order consider the need for ICT training as part of professional practice?</p> |
| Digital records management | <ul style="list-style-type: none"> • Should regulations governing record-keeping be adapted to include aspects specific to digital records management? For example: traceability, documented rectifications. |

| | |
|---|--|
| Email | <ul style="list-style-type: none"> • Does the particular nature of teletransmission of information collected by professionals require the institution of specific guidelines? |
| Signature affixed by means of a technological process | <ul style="list-style-type: none"> • Do we need to plan for particular requirements concerning the level of reliability of the signature affixed on technology-based documents, based on parameters such as the nature of the document and the context in which the signature is being affixed? |

**APPENDIX 4 – ANALYTIC CHART
TELEPRACTICE IN AN INTERJURISDICTIONAL CONTEXT**

CONSEIL INTERPROFESSIONNEL DU QUÉBEC

TELEPRACTICE IN AN INTERJURISDICTIONAL CONTEXT

Analytic Chart

Prepared by the CIQ's Telepractice Working Group

In keeping with the CIQ's Action Plan, representatives of some 20 professional orders formed a working group on telepractice.

Telepractice refers to the use of information and community technologies (ICT) to practise a profession at a distance. Increasingly popular in many fields, telepractice is transforming the manner in which professional services are delivered to the public.

For professionals, telepractice raises the challenge of adapting their practices.

For professional orders, telepractice raises the challenge of adapting oversight mechanisms to protect the public.

This challenge is particularly evident in the interjurisdictional context, in other words, when the telepractice situation involves two or more jurisdictions. Consider, for instance, an act performed by a member of a Québec professional order for a client or patient located in another Canadian province; or, a service a professional located in the United States performs for a consumer living in Québec.

To clarify the matter, the working group has prepared an analytic chart, the first of its kind, to inform the orders and their partners about possible approaches and the real issues at stake in this matter.

Analytic Chart

TELEPRACTICE IN AN INTERJURISDICTIONAL CONTEXT

| | |
|--|--|
| <p style="text-align: center;">1. DEFINITION</p> <p>Telepractice refers to the use of information and communication technologies (ICT) to practise a profession at a distance. It includes the use of the mobile telephone and the Internet.</p> <p>Telepractice encompasses teleconsultation, tele-expertise, telesurveillance, and tele-assistance. Training and supervisory activities may also be performed via telepractice.</p> <p>Activities associated with telepractice: informing the public via the use of ICT; delivering professional services to clients/patients; communicating with clients/patients; managing confidential information and electronic records on clients/patients; conducting electronic transactions related to the payment of professional services.</p> | <p style="text-align: center;">2. CHARACTERISTICS</p> <p><i>Dematerialization</i></p> <p>Communications and information concerning professional services performed are preserved, either entirely or in part, in electronic format and stored in diverse sites.</p> <p><i>Delocalization</i></p> <p>The professional and his or her client/patient are not in the same location at the time of the professional activity.</p> |
| <p style="text-align: center;">3. OVERSIGHT BY THE ORDER</p> <p>The usual response is to adopt guidelines, but the scope of such instruments will not necessarily be effective if they do not converge with the formal legal provisions in effect.</p> <p>In terms of regulations, we could envision changes to the code of ethics through the addition of provisions regarding the use of ICT and social media. The regulation on record-keeping might also be adapted to take into account the use of electronic records.</p> <p>The <i>Professional Code</i> and specific laws do not contain provisions on telepractice, but certain associated rules apply, to a greater or lesser extent, to this mode of practice (see additional explanations in part 4).</p> | <p style="text-align: center;">4. PROBLEM</p> <p>A situation involving telepractice may occur, in whole or in part, in a territory affected by the Order's jurisdictional framework or outside of this territory.</p> <p>In the latter case, the Order's capacity to supervise the relationship between the professional and client/patient becomes problematic, particularly in terms of determining the applicable rules, and obstacles related to the dematerialization or delocalization of services (difficulties with inquiries, recourse, etc.)</p> <p>While the <i>Professional Code</i> and specific laws have no particular rules on telepractice, we can nonetheless conclude, in keeping with the usual interpretation, that:</p> <ul style="list-style-type: none"> • Anyone who performs reserved activities or acts in Québec that correspond to the practice of a profession with exclusivity of practice must be a member of the corresponding professional order (the same applies to the use of a reserved professional title); • An Order has personal jurisdiction over its members and thus maintains jurisdiction over them with respect to acts they might perform outside Québec (<i>Paquette</i> judgment). |

To address the problem raised in section 4, regulatory agencies employ two approaches:

- *Applicable regulatory framework is determined by the location of the professional*
- *Applicable regulatory framework is determined by the location of the client/patient*

5. FIRST APPROACH: PRIMACY OF THE PROFESSIONAL'S LOCATION

The client travels by virtual means to the professional

Professional's Status

Professionals must be members of the Order that has jurisdiction over the territory in which they practice (perform professional activities).

Practical Argument

Enables the regulatory authority with jurisdiction over the territory in which the professional practices to perform professional oversight.

Legal Argument

In addition to having personal jurisdiction over its members that extends to their professional activities wherever they are performed (*Paquette* judgment), the Order generally has jurisdiction over individuals who practice the profession (exclusive practice or reserved activity) and use reserved professional titles when they are in its territory. This approach is the one that most closely corresponds to the current state of professional law, in accordance with the jurisprudence.

Perceived Benefits

Orders in Québec control the telepractice activities of professionals in their territory, regardless of the location of the client/patient.

The "public" in the other territory is indirectly protected by Québec legislation.

Professionals are not required to hold a permit in more than one territory; they are subject only to the legal structure in their own jurisdiction.

Orders are not required to investigate the unlawful practices of professionals outside Québec who deliver services to clients/patients in Québec.

Perceived Disadvantages

The public in Québec who have dealings with a professional located outside Québec might be unprotected (if the profession is not regulated in the other jurisdiction). If the profession is regulated, the protection might not be equivalent to that usually provided under Québec's professional system, or might be more difficult to attain (distance, language barrier, etc.).

This approach, while applied in Québec, is rarely applied in other jurisdictions, with the ensuing probability of a conflict of laws. What's more, professionals might have to obtain an additional permit and become subject to new obligations that are potentially contradictory with their initial permit.

Clients/patients outside Québec might be less well protected, because the Order in question might be less motivated to dedicate resources to the investigation of a non-resident client.

Unlawful Practice and Misuse of Title

Orders generally have jurisdiction over the individuals in their territory who practise the profession and use its titles.

Non-professionals will be deemed to be conducting an unlawful practice if they practise a profession with exclusive right to practise or a reserved activity in the Order's territory, regardless of the location of clients/patients.

6. SECOND APPROACH: PRIMACY OF THE LOCATION OF CLIENTS/PATIENTS

The professional travels by virtual means to the client

Professional's Status

A professional must belong to the Order that has jurisdiction over the territory in which their client/patient resides.

Practical Argument

Protection of the public is best ensured by the authorities in the immediate environment of the public concerned.

Legal Argument

Certain Québec laws determine the applicable rules based on the user's location, or leave open the possibility of Québec authorities having jurisdiction over professionals who provide products/services to Québec residents. Several North American jurisdictions seem to favour this approach.

Also, if a member of a Québec Order delivers services to a Québec resident from outside the province, the Order has jurisdiction by virtue of its personal jurisdiction (*Paquette* case).

Perceived Benefits

The Québec public is fully protected: the norms of the *Professional Code* apply to professionals outside Québec who perform activities for clients/patients in Québec.

Recourse is facilitated for clients/patients, because they will have access to the remedies provided by the Order with jurisdiction over the location in which they reside.

This Order is best placed to ensure the protection of clients/patients.

Professional regulations are particularly well developed and established in Québec; it is better for Québec clients/patients that the professional act is deemed as having been performed in Québec.

Perceived Disadvantages

Professionals must obtain additional permits if they plan to practise their profession with clients/patients in other jurisdictions. Will they do this?

Professionals outside Québec must be subject to controls that differ from those to which they are accustomed. Problems of compliance might ensue at the expense of protecting the Québec public.

How do we reconcile different standards—those of the Order in the territory in which services are delivered, and those of the Order in which the concerned professional is located?

How do we ensure the quality of a professional outside Québec who practises for a public in Québec? How do we inspect and ensure compliance with continuing education and professional liability insurance requirements when services available in the professional's immediate environment may be different?

How do we oversee Québec professionals who provide services to clients/patients located outside of Québec?

Unlawful Practice and Misuse of Title

Non-professionals will be deemed to be practising unlawfully or misusing a title if they practise a profession with exclusivity of practice or a reserved activity and are not members of the regulatory agency having jurisdiction in the territory in which their clients/patients are located.

This will also apply to professionals who do not comply with the rules of the agency with jurisdiction over the territory in which their clients/patients are located. To prevent this situation, it would be reasonable for an Order to charge a member with misconduct if they practise their profession in another territory without possessing the permit issued by the concerned regulatory agency.

The Québec Order would not have the capacity to institute proceedings for unlawful practice or misuse of title.

7. ANOTHER APPROACH: E-PASSPORT

Psychology Interjurisdictional Compact, United States

Foundation

Regardless of the approach, the best practice is to first establish an interjurisdictional agreement on telepractice.

Feasibility Condition

The professional regulatory frameworks of the concerned jurisdictions must be substantially equivalent.

Terms

- E-Passport issued by a State's regulatory agency to its member, enabling him or her to practise at a distance in another State, on the condition that said State adheres to the formula.
- Inspired by the first approach (location of the professional), where the regulatory agency (home jurisdiction) continues to be responsible for overseeing its member and is thus capable of processing any complaints filed against said member.
- Inspired by the second approach (location of client/patient), in that by adhering to the E-Passport, the Order in the jurisdiction in which the service is delivered also becomes actively involved in overseeing the professional acts performed by the concerned professional.
- The E-Passport can therefore solve some of the problems raised by the other two approaches

8. ETHICAL STANDARDS CONCERNING TELEPRACTICE ADAPTED TO AN INTERJURISDICTIONAL CONTEXT

Association of Social Work Boards

Excerpts: *Model Regulatory Standards for Technology and Social Work Practice*, ASWB International Technology Task Force, 2013-2014

1.03. When delivering services, be aware of cultural differences among *clients* and in *clients'* use of digital and other electronic technology. Social workers shall assess cultural, environmental, and linguistic issues that may affect the delivery of services. . . .

1.09. Comply with the regulations governing the use of this technology both in the *jurisdiction* in which they are *regulated* and in the *jurisdiction* in which the *client* is located. . . .

2.03 Provide information in a manner that is understandable and culturally appropriate for the *client*. . . .

3.03. Adhere to statutes and regulations regarding the secure use of digital and other electronic technology both within their *jurisdictions* and within the *jurisdiction* where the *client* is located. . . .

4.08. Be aware that cultural factors may influence the likelihood of discovering shared friend networks on websites, blogs, and other forms of social media. . . .

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9. ANOTHER APPROACH: CROSS-BORDER SERVICES

Protocol agreement between physiotherapists across Canada (Memorandum of Understanding – “MOU”)

Foundation

Under this approach, professionals exercising their profession in one province can provide their professional services to a client/patient who is physically located in another province of Canada (“cross-border services”). Professionals are strongly encouraged to establish a memorandum of understanding (MOU) concerning telepractice in different jurisdictions/provinces.

Feasibility Conditions

Substantial equivalence in terms of professional regulations and laws in different Canadian jurisdictions/provinces.

The first and second conditions must be met:

Professionals must be members of the professional order where they reside and/or where most of their clients/patients are physically located (primary jurisdiction)

Professionals who wish to provide cross-border services must also be members of the orders in all the jurisdictions/provinces in which clients/patients who will receive such services are physically located (secondary jurisdiction)

Terms

- Professionals may be registered as members of the order in the secondary jurisdiction by providing proof that they are members in good standing of the order that regulates their profession in the primary jurisdiction. Proof must be provided annually to the order in the secondary jurisdiction to renew the permit.
- In the event that requirements governing the maintenance of professional qualifications differ in the two jurisdictions, compliance with the requirements of the primary jurisdiction order will be sufficient for the purpose of renewing registration in the order of the secondary jurisdiction.
- Professionals who wish to provide cross-border services must take out personal liability insurance.
- Professionals must comply with the legislation, codes of ethics, and professional standards in force in both jurisdictions. They may therefore be the subject of a disciplinary complaint for acts performed in the territories of both the primary and secondary jurisdictions. The orders of both jurisdictions therefore have jurisdiction with respect to the disciplinary process.
- In the event that a complaint is filed with the order in only one of the two jurisdictions, that order may process the complaint in accordance with its own legislation. It is nonetheless responsible for informing the order in the other jurisdiction of the complaint and the decision it renders.
- When a complaint is filed with the orders in both jurisdictions, the order in the primary jurisdiction will, if possible, have priority over the initial inquiry. It must then inform the order of the secondary jurisdiction of the outcome of its inquiry. The orders in each jurisdiction may then determine the appropriate measures to adopt with regard to the professional at fault, and this, in accordance with their respective laws.
- Need to create professional standards or guidelines (consent of client/patient, aspects that differ in the practices of the primary and secondary jurisdictions, etc.)

10. RELEVANT LEGISLATION AND JURISPRUDENCE

Approach 1

Act Respecting Health and Social Services, CQLR c. S-4.2, section 108.2: “The health or social services provided by an institution in the form of telehealth services are considered provided at the place where the health or social services professional who was consulted practises.”

Paquette c. Collège des médecins: an Order has personal jurisdiction over its members, even when they practise outside Québec. 1995 CanLII 5215 (QC CA)

Ordre des optométristes c. Coastal, 2014 QCCS 5886 (CanLII)

Ontario College of Pharmacists v. 1724665 Ontario Inc. (Global Pharmacy Canada), 2013 ONCA 381

Ordre des pharmaciens du Québec c. Meditrust Pharmacy Services Inc., C.A. Montréal, No. 500-09-000198-945 (500-05-014550-931), 3 November 1994

Thorpe v. B.C. (College of Pharmacists of), 1992 CanLII 895 (BC CA)

Association pharmaceutique de la province de Québec c. T. Eaton Company Limited, [1931] B.R. 482

Ordre des pharmaciens du Québec c. Prescriptions 4US inc., C.Q. Montréal, No. 500-61-176333- 038, 3 June 2005.

Approach 2

Civil Code of Québec, art. 3126: “The obligation to make reparation for injury caused to another is governed by the law of the country where the injurious act occurred. However, if the injury appeared in another country, the law of the latter country is applicable if the person who committed the injurious act should have foreseen that the damage would occur.”

Consumer Protection Act, CQLR, c. P-40.1, section 54.2: “A distance contract is deemed to be entered into at the address of the consumer.”

Act Respecting the Distribution of Financial Products and Services, CQLR, c. D-9.2, section 205: “The Authority may, for each sector, allow representatives of a given sector to pursue activities in Québec from a base in another province or another country, and fix the professional requirements for the pursuit of such activities.”

Paquette c. Comité de discipline de la corporation professionnelle des médecins du Québec, 1995 CanLII 5215 (QC CA)

Quality Plus Tickets inc. c. Québec (Procureur général), 2013 QCCS 3780 (CanLII)

Arseneault c. Turcotte, 2006 QCCS 6160

E-Passport

Act Respecting the Distribution of Financial Products and Services, CQLR, c. D-9.2, section 205: “The Authority may, for each sector, allow representatives of a given sector to pursue activities in Québec from a base in another province or another country, and fix the professional requirements for the pursuit of such activities.”