Policy Statement of Canadian Society of Transplantation and Canadian Society of Nephrology on Organ Trafficking and Transplant Tourism

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PREAMBLE

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (*1*) was developed after a directive from the World Health Assembly in 2004 (resolution 57.18), which urged member states: "to take measures to protect the poorest and vulnerable groups from transplant tourism and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs" (*2*). The Declaration of Istanbul (*1*) states that organ trafficking and transplant tourism should be prohibited, because they violate the principles of equity, justice, and respect for human dignity. The Declaration (*1*) aims to combat these activities that threaten the legacy of organ transplantation and the nobility of organ donation and calls for each country to develop a legal and professional framework to govern organ donation and transplantation activities. The Declaration (*1*) calls for increased oversight of donation and transplant activity in member states to ensure donor and recipient safety and prohibition of unethical practices.

In response to The Declaration (*1*), members of the Canadian Society of Transplantation and the Canadian Society of Nephrology developed this policy document that will help to establish a unified and consistent approach to deter transplant tourism by Canadian healthcare providers, and in so doing, will ensure the optimal care of Canadian patients with end organ failure. This policy document was produced with guidance of experts in Canadian medical law and bioethics. Where appropriate, the document refers directly to existing documents that are accepted in Canadian medical practice such as the Canadian Medical Association Code of Ethics (*3*). The document summarizes the official Policy of the Canadian Society of Transplantation and The Canadian Society of Nephrology and is intended to assist members of these professional societies in their interactions with patients. The recommendations provide healthcare professionals with a framework to approach the subject of transplant tourism and organ trafficking with patients. Healthcare providers should be aware of the legal and regulatory requirements that govern medical practice in their jurisdictions.

TARGET AUDIENCE

This document is relevant for Canadian healthcare providers involved in the care of patients who are candidates for solid organ transplantation or recipients of a solid organ transplant. Although kidneys are the most common organ involved in organ trafficking, the trafficking of livers and hearts is also known to occur (*4*). Therefore, the information in this document is also relevant for healthcare providers involved in the care of any patient with end organ failure.

DEFINITIONS

a. Organ trafficking is the recruitment, transport, transfer, harboring, or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments, or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation (*1*).
b. Transplant commercialism is a policy or practice in which an organ is treated as a commodity, including being bought or sold or used for material gain (*1*).
c. Travel for transplantation is the movement of organs, donors, recipients, or transplant professionals across jurisdictional borders for transplantation purposes.

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Travel for transplantation becomes transplant tourism if it involves organ trafficking and transplant commercialism or if the resources (organs, professionals, and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population (*1*).

BACKGROUND

The Canadian Society of Transplantation and the Canadian Society of Nephrology endorse the Declaration of Istanbul (*1*) and condemn the practices of transplant tourism, organ trafficking, and commercialization of organs that lead to the exploitation of the poor and the vulnerable both within Canada and throughout the world. These practices are not subject to regulatory oversight by a legislatively empowered organization and as such may expose patients and donors to significant risk.

Transplant tourism, organ trafficking, and commercialization are illegal activities in most countries, including Canada. Despite these laws, there is an international market that transplants organs from vendors, prisoners, or other vulnerable groups to recipients for money.

PURPOSE

This document summarizes Canadian healthcare providers' fiduciary and legal obligations to patients who participate in transplant tourism both before and after transplantation.

The document provides recommendations for pretransplant counseling, provides guidance regarding the pretransplant evaluation of transplant candidates, and summarizes healthcare provider obligations for posttransplant care.

RECOMMENDATIONS FOR PRETRANSPLANT COUNSELING

1. All patients with end-stage organ failure who are candidates for transplantation should receive information about the dangers and ethical concerns regarding transplant tourism and organ trafficking. Patients interested in purchasing a solid organ transplant should receive pretransplant counseling from a healthcare professional with expert knowledge of the pretransplant and posttransplant medical and surgical management of transplant recipients.
2. Pretransplant counseling should provide information regarding the safety of purchasing a solid organ transplant. Patients should be told that individuals who purchase transplants overseas are at an increased risk for complications, including death, organ failure, and serious infections (*5–18*).
3. Healthcare providers cannot speculate regarding the relative safety of commercial transplantation in different countries or institutions as reliable information regarding specific center or country outcomes are not available.
4. Patients should be told that those who obtain a transplant overseas may receive suboptimal care even when they return to Canada for the following reasons:
   a. Poor documentation and communication about the transplant procedure: Canadian healthcare providers often receive little or no advance notice or documentation of commercial transplantations making the posttransplant care of recipients of commercial transplantations more difficult. Without documentation of the surgical procedure, posttransplant course, and complications, Canadian healthcare providers may not have the necessary information to provide optimal care, diagnoses may be delayed, and the patient's well being may be compromised.
   Healthcare providers may make reasonable attempts to obtain clinical information through the use of professional document translation, use of interpreters, or even by attempting to contact the center that performed the transplantation. However, Canadian healthcare providers may not be able to obtain reliable clinical information from such centers. Such procedures are performed without regulatory authority, and the information obtained cannot be trusted or verified. Canadian healthcare providers have no ability to validate the accuracy of any documents that may be provided by individuals or centers engaging in transplant tourism and have no professional relationship with individuals who may be performing illegal activities in their countries. Uncertainty regarding the details of commercial transplantations may compromise individual patient care.
   b. Patients are transferred before they are clinically stable: healthcare providers do not normally transfer or accept the care of recently transplanted patients. Immediate posttransplant care is complicated and is best directed by the original transplant team. When a transfer of care is necessary, this is usually deferred until the patient is clinically stable, weeks or months after transplantation, and only with extensive documentation or direct discussion with the responsible transplanting physician.
5. Healthcare providers should inform patients that individual provinces or territories usually will not extend insurance coverage for medical or surgical expenses incurred by patients in jurisdictions outside Canada related to the transplantation of an organ obtained through transplant tourism for a variety of reasons including the fact that such procedures are illegal or performed without the oversight of a legislatively empowered organization.
6. Patients should be educated regarding the unethical treatment of individuals who sell their organs for money in unregulated systems in the developing world. Physicians have a duty to advocate for their patients; but as members of the medical community, they also have a duty to prevent harm to other individuals. Patients should be educated about the harms that may come to those who provide organs through transplant tourism. Organ vendors are often exploited and may be substantially harmed when they sell their organs (*4*, *19–22*). Further, organs have allegedly been taken by force, and individuals may even been killed to obtain their organs (*4*). Transplant tourism is illegal in most countries. The entire transplant tourism industry relies on secrecy, making it is impossible to determine whether donor information provided by organ brokers, who are motivated by financial gain, is accurate.
7. Physicians have a responsibility to inform patients when their personal values would influence the recommendation or practice of any medical procedure that the patient needs or wants (CMA Code of Ethics Item 12) (*3*). There-

fore, physicians should make patients aware of any personal objections they may have about transplant tourism and advise patients of their willingness to provide posttransplant care for patients who obtain transplants through transplant tourism (see *Posttransplant Obligations*).

GUIDANCE REGARDING THE PRETRANSPLANT EVALUATION OF TRANSPLANT CANDIDATES

1. Canadian physicians have a fiduciary responsibility to do what is in the best interest of their patients including performing investigations and prescribing medications that are necessary for current clinical management. However, this obligation likely does not include the performance of investigations in preparation for transplantation of a purchased organ. Physicians should not prescribe medications or otherwise facilitate obtainment of medications that will be used during the transplantation of a purchased organ. Prescribing medications for treatment that the prescriber is not supervising contravenes current Canadian medical standards of care. This statement is consistent with CMA Code of Ethics Item 44 (use health care resources prudently) and Canadian Medical Association Code of Ethics Article 9, which states that physicians have a fundamental responsibility to refuse to participate in or support practices that violate basic human rights (*3*).
2. Release of medical records related to the pretransplant evaluation: Article 37 of the CMA Code of ethics states that when requested physicians should provide patients with a copy of their medical record unless there is a compelling reason to believe that the information contained in the record will result in substantial harm to the patient or others. The Supreme Court of Canada has established that patients should have access to their medical records in all but a small number of circumstances. In most cases, health records should be disclosed on the request of the patient unless there is a significant likelihood of a substantial adverse effect on the physical, mental, or emotional health of the patient or harm to a third party. The Supreme Court of Canada has ruled that "Non-disclosure may be warranted if there is a real potential for harm either to the patient or to a third party" (*23*).

There is substantial evidence that the illegal transplantation of organs in an unregulated system poses significant risk to both recipients and organ vendors. Therefore, individual physicians may elect not to provide medical records to patients if they believe the information will be used in support of an illegal transplant performed in an unregulated system and that there is a significant risk of harm to the patient or organ vendor.

POSTTRANSPLANT OBLIGATIONS

Preamble

The following statements outline physicians' responsibilities to provide care and considerations related to physician refusal to provide care to any patient. The information is provided to ensure physicians to understand their obligations and is not intended to promote refusal of patient care.

1. Physicians are obligated to care for any patient in emergent need, including patients who may have obtained an organ through transplant tourism (refer to CMA Code of Ethics Article 18: Provide whatever appropriate assistance you can to any person with an urgent need for medical care).
2. In nonemergent situations, individual physicians may elect to defer care to another physician. Ideally, the physician would discuss their preference to defer posttransplant care to another physician before transplantation to avoid any expectation of posttransplant care by the patient. In such situations, the physician should ensure that the patient has reasonable access to the proposed alternative care provider and that the deferral is not discriminatory to any individual patient.
3. Having accepted professional responsibility for a patient, the physician must continue to provide services until they are no longer required or wanted, or until arrangements have been made for another suitable physician to assume care of the patient. In situations where a physician elects to transfer care to another physician, the patient must be provided with reasonable notice of the physicians decision to terminate the relationship and to transfer care to another physician (Art 19, CMA code of ethics).

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