

## Obesity, legal duties, and the family physician

Timothy Caulfield LL.M.

The rising level of obesity has been called the most urgent challenge to public health for the 21st century.<sup>1</sup> While many social institutions should be involved in addressing this problem, family physicians have an important role in identifying and managing obesity.<sup>2</sup> Research tells us that advice from physicians can have a profound effect on patients' actions toward weight loss.<sup>1,3</sup> Physicians are also conduits to community resources, such as dietary and physical activity counseling, which can assist children, adults, and families in their efforts to tackle this growing challenge to public health.

This article examines physicians' legal obligations to their patients in the context of managing care for obese patients. The law has been important in shaping physician-patient relationships in Canada. As such, it is worth exploring how basic legal duties intersect with what emerging evidence tells us about the preparedness and attitudes of family physicians in relation to the treatment of obese patients. The law is just one of many social forces relevant to this complex public health phenomenon. Although liability concern is not always the most constructive motivator of social change, given the rise of obesity, addressing weight-management issues is likely to be increasingly relevant to the day-to-day practice of family physicians and to their legal obligations to patients.

### Standard of care

Physicians have a legal obligation to provide their patients with a reasonable standard of care. In the case of *ter Neuzen v. Korn*, the Supreme Court of Canada affirmed this rule by stating that doctors "have a duty to conduct their practice in accordance with the conduct of a prudent and diligent doctor in the same circumstances."<sup>4</sup> Obviously, overweight and obese patients are entitled to this same standard of care; however, there are reasons to believe this patient population is not, in some circumstances, receiving optimal care and advice.

Commentators have speculated that "anti-fat attitudes among health care professionals... could potentially affect clinical judgments and deter obese persons from seeking care."<sup>5</sup> Some evidence supports this speculation. A study by Schwartz et al<sup>6</sup> found that health professionals, even those knowledgeable in the complex causes of obesity, "associated the stereotypes lazy, stupid, and worthless with obese people." Moreover, most physicians (83%) were less likely to perform physical examinations

on reluctant obese patients and 17% admitted "reluctance themselves to perform pelvic exams."<sup>6</sup>

Studies also suggest that many physicians believe they lack knowledge of and training in treatment of obesity.<sup>1,7</sup> One study found that "one fourth of physicians think that they are not at all or only slightly competent, while 20% report feeling not at all or only slightly comfortable" recommending treatment for obese patients.<sup>8</sup> An Israeli study concluded that most physicians (72%) considered themselves not well prepared for handling obese patients; 60% of physicians felt they had insufficient knowledge on the topic.<sup>7</sup> There is also evidence that physicians are doing a less than adequate job identifying and evaluating obese patients.<sup>9</sup> For example, a chart review study by O'Brien et al revealed that "providers failed to identify obesity in one-half of their health supervision visits with obese patients."<sup>10</sup>

Available data indicate that many physicians do not have the skills and knowledge to address obesity. This could contribute to substandard care in the way obesity is handled and in the way obese patients are treated.

### Fiduciary obligations

In Canada, physicians (and, perhaps, other health care providers) are in fiduciary relationships with their patients. The Supreme Court of Canada has held that the physician-patient relationship is fiduciary in nature and that "[c]ertain duties do arise from the special relationship of trust and confidence between doctor and patient."<sup>11</sup>

How are fiduciary obligations relevant in this context? They emphasize the need for health care providers to place the health interests of obese patients at the fore, and to ensure that an inadvertent bias or stereotyping does not compromise care. If, as some research has shown, "many physicians avoid the treatment of obesity,"<sup>12</sup> fiduciary law compels physicians to remind themselves that the well-being of patients should not be obscured by lack of comfort with obesity.

In addition, because fiduciary law requires physicians to avoid conflicts that blur their focus on patient well-being, personal financial considerations are not a rationale for substandard care. Several authors note that "marginal reimbursement for weight management"<sup>12</sup> is a barrier to appropriate care.<sup>1,2</sup> Explaining the ramifications of obesity and providing weight-management care is often time-consuming, especially when behaviour-change ambivalence, mental health complications, and the high degree of recidivism in weight management are considered. A busy family practitioner will have little

Cet article se trouve aussi en français à la page 1133.

financial motivation to take the time to handle obesity issues in a comprehensive manner. Fiduciary law, however, tells us that such conflicts must be resolved in favour of the patient. Inadequate financial compensation, while hardly ideal, is not a defence for failing to satisfy fiduciary duties owed to the patient. Rather than penalizing patients, medical associations should seek to negotiate with provincial governments for improved compensation for weight-management consultations.

### Informed consent

To obtain informed consent to treatment, Canadian physicians have an obligation to provide patients with all material information that a reasonable person in the patient's position would want to know.<sup>13</sup> In *Ciarlariello v. Schacter*, the Supreme Court of Canada declared that "the concept of individual autonomy is fundamental to the common law and is the basis for the requirement that disclosure be made to a patient."<sup>14</sup> In the context of obesity, law requires physicians to be frank, yet respectful, with patients when discussing obesity and weight management. Patients must be told of the risks and implications of obesity, particularly relating to future health care interventions (eg, they affect success of treatment or influence recovery time from surgery).<sup>15</sup> Discomfort with obesity should not interfere with proper disclosure.

Even withholding information for the welfare of the patient—a practice known as "therapeutic privilege"—has been largely overwhelmed by judicial respect for autonomy.<sup>11</sup> A physician can only rarely use concern for how a patient will react to information as an excuse for nondisclosure. This is not to say that physicians should be callous when discussing obesity—on the contrary. However, barring concern for a severe psychological reaction, consent law compels physicians to find a way to provide required information and advice. Given that some patients, particularly parents of obese children,<sup>16</sup> might resist the categorization of obese or overweight, a forthright discussion will, at times, be a challenge.

### Contributory negligence

Discussing the ramifications of obesity, and its possible effect on health outcomes, can also serve as an important risk-management strategy. A carefully charted disclosure will assist physicians in defending negligence claims where the obesity of the patient or plaintiff might be a relevant factor. For example, in several malpractice cases courts have ruled that a patients' failure to follow medical advice contributed to the patients' injuries. As a result, the courts found the patients guilty of contributory negligence, thereby reducing the damages owed by the physician defendants.<sup>17,18</sup> If a patient fails to follow weight-management advice, and this inaction contributes to an adverse outcome following medical treatment, this consideration could be important for assessing damages in a malpractice action against a physician.

### Conclusion

As obesity becomes ever more prevalent,<sup>19</sup> it will inevitably have growing relevance to malpractice law. Awareness of potential issues can reduce liability and improve care. Identifying legal issues should also motivate institutional changes that will make it easier for family physicians to address weight management. A lack of resources and training was identified as an issue in many studies. Steps should be taken to ensure that family physicians have the skills, tools, and resources necessary to satisfy their legal duties and to optimize their role in managing this complex public health concern. ✪

**Mr Caulfield** is Canada Research Chair in Health Law and Policy, a Professor in the Faculty of Law and School of Public Health, and Research Director of the Health Law Institute at the University of Alberta in Edmonton.

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### Competing interests

None declared

**Correspondence to:** Mr Timothy Caulfield, 461 Law Centre, University of Alberta, Edmonton, AB T6G 2H5; e-mail [tcaulfd@law.ualberta.ca](mailto:tcaulfd@law.ualberta.ca)

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