

Providing Care in Long-Term Care Homes During the COVID-19 Pandemic

Considerations for physicians

The OMA developed this resource to help physicians who work in long-term care homes to better understand their rights and obligations as they relate to providing in-person care during the COVID-19 pandemic. This resource also provides an overview of the long-term care home's obligation to provide a safe work environment, and the correct process for physicians to follow if they feel unsafe at work.

Am I obligated to perform duties in-person at the long-term care home?

As an Attending Physician:

As an Attending Physician, you are obligated to provide care in-person at the home during the COVID-19 pandemic under the *Long-Term Care Homes Act (LTCHA)* and your contract with the home.

Your duties include but are not limited to:

- conducting physical examinations when a resident is first admitted to the home, and on an annual basis thereafter (*LTCHA*, O. Reg. 79/10, s. 82(1)(a))
- attending regularly at the home (*LTCHA*, O. Reg. 79/10, s. 82(1)(b))
- providing after-hours and on-call coverage (*LTCHA*, O. Reg. 79/10, s. 82(1)(c))
- additional responsibilities, as identified in your contract with the home (failure to fulfil the terms of a professional agreement is considered professional misconduct under the *Medicine Act* (O. Reg. 856/93, s. 1(para. 8))

According to the CPSO's *Public Health Emergencies* policy, the obligations described above still apply in the context of a public health emergency. You can defer some non-essential or elective care during the emergency, however you still have a legal duty to ensure that you meet the standard of care of a reasonably competent physician in similar circumstances.

Virtual Care During COVID-19

Virtual care can play an important role in reducing the spread of COVID-19 and should be offered when appropriate (e.g. medication reviews). Some long-term care homes may even request that you provide care virtually as much as possible, especially if you work in more than one home.

However, some care cannot be provided virtually, and some residents are not suitable candidates for virtual care. It is important to be available to provide in-person care when necessary, particularly during the COVID-19 pandemic. Speak with your Medical Director at each home where you work to discuss your responsibilities and concerns and to understand the home's policies and procedures related to virtual care.

As a Medical Director:

As a Medical Director, your duties under the *Long-Term Care Homes Act* include, but are not limited to overseeing and evaluating medical services and advising on clinical care matters in the home. During the pandemic, this work may involve developing and implementing strategies to manage outbreaks.

The *LTCHA* does not explicitly state that a Medical Director must be present in the home. However, it is reasonable to expect that you will need at least some level of in-person presence to properly fulfil the Medical Directors' duties identified in the *LTCHA*.

Your contract with the home may also outline additional responsibilities. Be sure to review your contract carefully to understand your obligations. Failure to fulfil the terms of a professional agreement is considered professional misconduct under the *Medicine Act*.

What is the long-term-care home's obligation to keep me safe?

The long-term care home is obligated under the *Occupational Health and Safety Act* to provide a safe workplace for all workers, whether they are employees or independent contractors (like most Attending Physicians and Medical Directors). Some of the home's key responsibilities under the *Act* are to:

- Assemble a Joint Health and Safety Committee (JHSC) that serves as a formal channel to report unsafe work and voice concerns
- Supply the personal protective equipment (PPE) that you need to do your job safely
- Provide training on how to use PPE effectively

Under the *Long-Term Care Homes Act*, the home is also obligated to:

- Have an up-to-date infection prevention and control plan that is implemented by an interdisciplinary team.

In response to the COVID-19 pandemic, the home also has additional obligations set out in Directive #5 under the *Health Protection and Promotion Act*. The Directive requires the home to provide you with the PPE that you, as a regulated healthcare professional, deem necessary to perform your duties based on your own point-of-care risk assessment. The home cannot unreasonably deny your request.

What are my rights if I don't feel safe entering the long-term-care home?

If you do not feel safe entering the long-term care home to perform your obligated duties during a COVID-19 outbreak, your options depend on whether the home is upholding its duties to keep you safe under the *Occupational Health and Safety Act* and/or relevant Directives under the *Health Protection and Promotion Act*.

If the home is **not** upholding its duties to keep you safe:

If there is a legitimate hazard that is not inherent to your ordinary work and you believe the home is not upholding its duty to keep you safe, then then you have the right to refuse work. For example, if there is a COVID-19 outbreak and the home does not have proper infection protection and control measures in place; or the home has not provided you with adequate PPE or training on how to use PPE safely and effectively — then you have the right to refuse work.

Before you refuse unsafe work, contact the CMPA. If you decide to move forward with your refusal after seeking advice from the CMPA, then you must follow the Two-Stage Process to Refuse Work under the *Occupational Health and Safety Act* ([see diagram on page 4](#)). It is important to seek legal advice from the CMPA to properly discharge your duties and address any potential liability if you intend to refuse unsafe work.

If the home is upholding its duties to keep you safe:

Even if the long-term care home is upholding its duties, you may feel unsafe entering the home during the COVID-19 pandemic for another reason — for example, you are immunocompromised, pregnant, or otherwise vulnerable due to a medical condition.

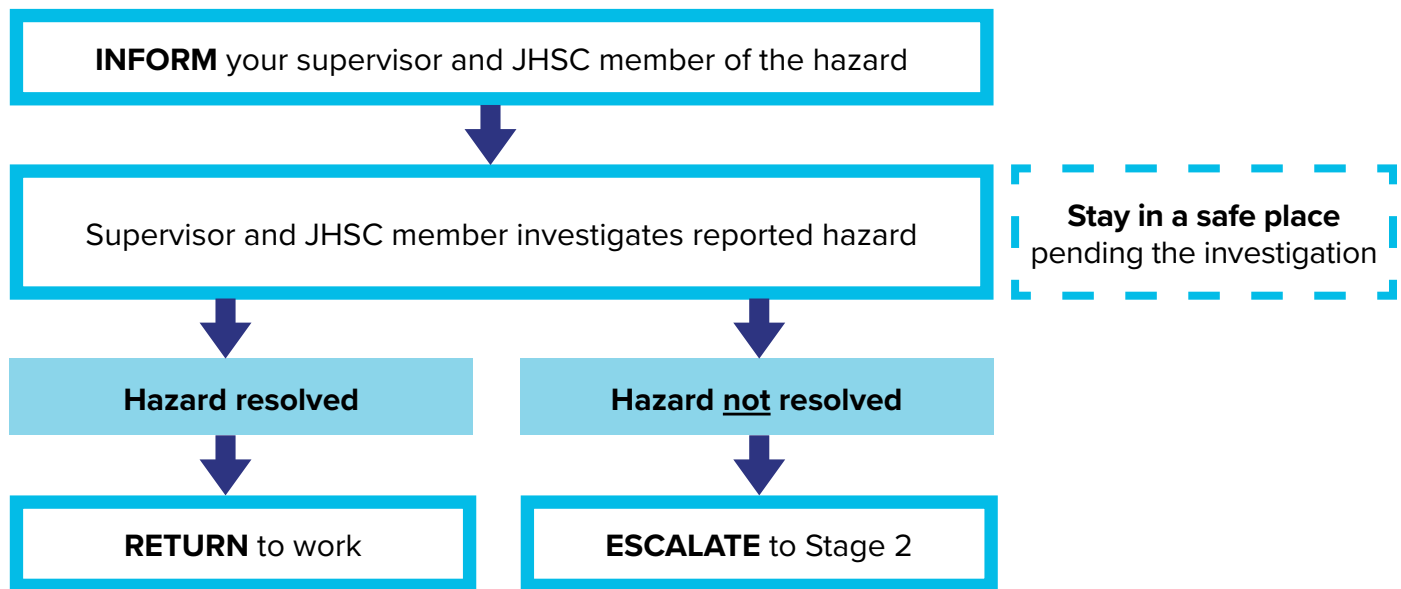
The long-term care home has a duty under the *Ontario Human Rights Code* to try to accommodate workers with particular susceptibilities. If the home refuses to accommodate you (e.g. modified work duties, working remotely, etc.) it could be found to be discriminating based on sex (in cases of pregnancy), or disability (in cases of an underlying medical condition). What is considered appropriate accommodation depends on each case. Human rights law requires accommodation to the point of undue hardship.

Should you need to stop work in the home for these reasons, your obligation to find patient care coverage during your absence still applies under the CPSO's *Availability and Coverage* policy.

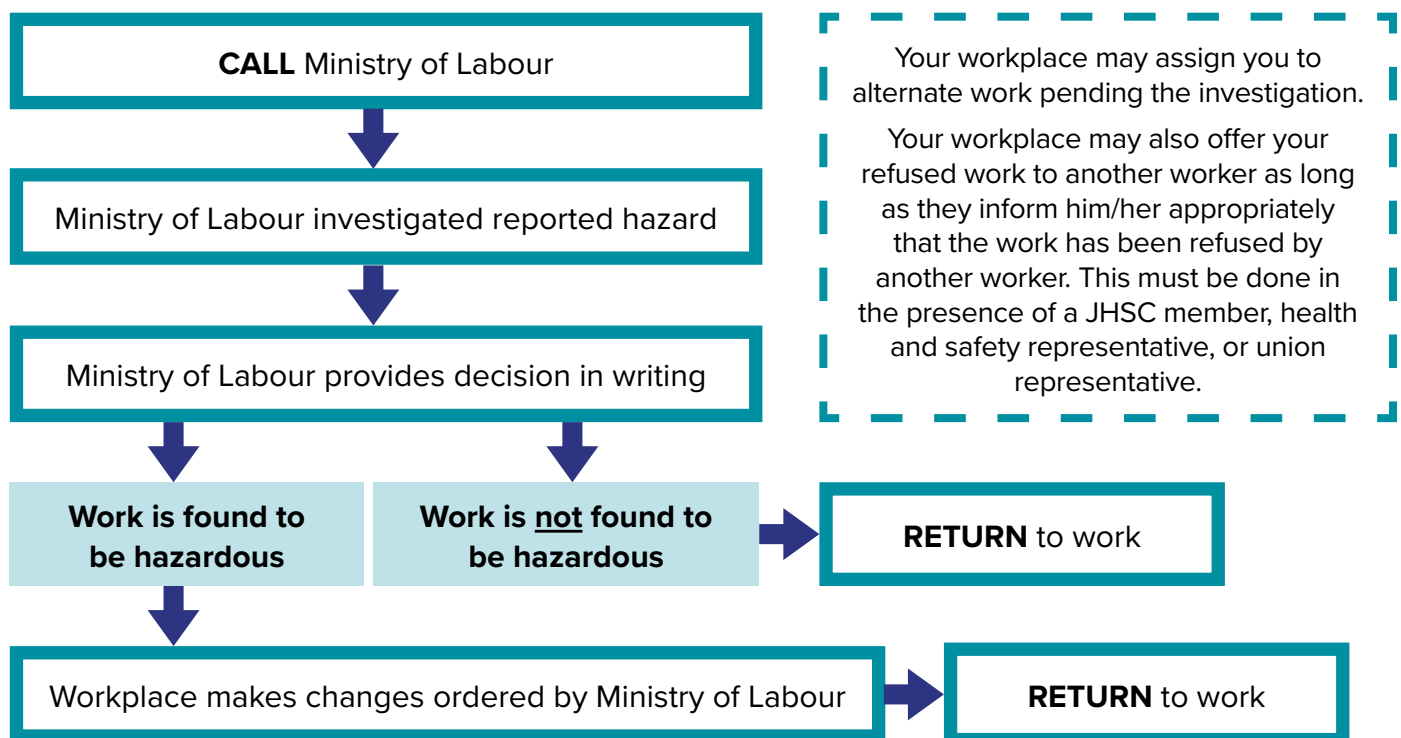
Process to Refuse Unsafe Work

ALWAYS CALL THE CMPA before you refuse work.

Stage 1: You consider work to be unsafe



Stage 2:



Relevant Legislation, Policy & Agreements

Your duties:

Long-Term Care Homes Act

The *Long-Term Care Homes Act* and its regulations set out requirements for the operation of long-term care homes in Ontario. The *Act* identifies the basic responsibilities of Medical Directors and Attending Physicians.

Your Individual Contract Agreement

As an Attending Physician or Medical Director working in a long-term care home you must have a contract agreement with the home that describes the responsibilities associated with your role. Your contract may identify additional responsibilities beyond those outlined in the *Long-Term Care Homes Act*.

Medicine Act, Professional Misconduct Regulation

The *Professional Misconduct Regulation* under the *Medicine Act* defines acts of professional misconduct that may be subject to investigation by the CPSO. Under the regulation, failure to fulfill the terms of a professional contract agreement is considered professional misconduct.

CPSO Public Health Emergencies Policy

The CPSO's *Public Health Emergencies* policy outlines your professional responsibilities during a public health emergency. According to the policy, you can defer some non-essential or elective care during the emergency, however you still have a legal duty to ensure that you meet the standard of care of a reasonably competent physician in similar circumstances.

CPSO Availability and Coverage Policy

The CPSO's *Availability and Coverage* Policy sets out expectations for availability, after-hours coverage, and coverage during temporary absences from practice. Should you need to stop work in the long-term care home, you are obligated under this policy to find patient care coverage for your absence. Note that this obligation does not apply if you refuse work because it is unsafe.

Relevant Legislation, Policy & Agreements

The Long-Term Care Home's Responsibilities:

Long-Term Care Homes Act

The *Long-Term Care Homes Act* and its regulations set out requirements for the operation of long-term care homes in Ontario. Under the *Act*, homes are required to have an infection prevention and control program that is implemented by an interdisciplinary team.

Occupational Health and Safety Act

The *Occupational Health and Safety Act* outlines standards for all employers and workers in every workplace in Ontario. Its main purpose is to protect workers (including physicians) from health and safety hazards. Long-term care homes have a duty under the *Act* to protect you from workplace hazards, including COVID-19.

Health Protection and Promotion Act, Directive #5

In response to COVID-19, Ontario's Chief Medical Officer of Health issued Directive #5 under the *Health Protection and Promotion Act* on April 1, 2020. The Directive requires the home to provide regulated healthcare professionals with the PPE that they deem necessary to perform their duties based on their own point-of-care risk assessment. Directives are active for six months and may be extended for subsequent six-month periods.

Ontario Human Rights Code

The *Ontario Human Rights Code* affords Ontarians equal rights and opportunities without discrimination across many domains, including the workplace. Under the Code, long-term care homes must reasonably accommodate you if you have susceptibilities that make you vulnerable to COVID-19.