



# Coronavirus COVID-19

BC Centre for Disease Control | BC Ministry of Health



## COVID-19 Ethics Analysis: What is the Ethical Duty of Health-Care Workers to Provide Care During the COVID-19 Pandemic?

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Ministry of Health



BC Centre for Disease Control

If you have fever, a new cough, or are having difficulty breathing, call 8-1-1.



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## Introduction

The COVID-19 pandemic presents significant ethical issues regarding safety for health-care workers (HCWs). Some HCWs may be concerned that if they acquire COVID-19 themselves, they may pass the virus on to patients<sup>1</sup>, co-workers, and their family members. These HCWs are at a difficult intersection: navigating these concerns with their ethical sense of duty to patients and to society, and their sense of solidarity with fellow HCWs.

This document focuses on the HCW ethical duty of care in circumstances where there is a risk of harm to their own person. As such, a key ethical question related to duty of care during COVID-19 is: how should HCWs, local decision-makers, regional health authorities and the B.C. government approach the ethical duty to care in the context of the COVID-19 pandemic?

Because the degree of potential harm from COVID-19-related illness can include serious morbidity and death, it is necessary to consider the degree to which HCWs have an ethical duty to care and the circumstances under which such duty may be discharged. That is, the circumstances under which it is ethically defensible not to provide a specific activity of care in particular professional circumstances. This analysis does not, however, consider any legal or professional (i.e. regulatory and college) aspects.

## Background

HCWs are bound by an ethic of care which dictates that patients' well-being should be primary.<sup>2</sup> This ethic of care and the duty to care is foundational to health-care practice. It is the obligation of HCWs to provide safe, competent, compassionate, equitable, and ethical care to those who depend on their special skills and training.

Simultaneously, HCWs are also bound by competing duties of care and obligations toward self, family, and others. Tensions between these multiple realms of responsibility may be irreconcilable. The responsibility of duty to care arises from multiple sources including:

- The public investment in the education and training of HCWs through subsidized and supported opportunities for professional education and training,
- special status for governance and oversight of professional practice through health-care professional organizations, and
- the relative power differential between patients and HCWs, where patients must trust HCWs to meet their needs which, in turn, creates a fiduciary responsibility on the part of the HCWs.

The foundations of the duty to care are grounded in several ethical principles. For example, the principle of beneficence in this context means to act to benefit patients and the population more broadly. The ethical obligation also stems from three features:

- The ability of HCWs to provide effective care is greater than that of the population,
- HCWs are legitimized by society based on a social contract that expects they are available in times of emergency, such as the COVID-19 pandemic, and
- HCWs freely choose to enter their professions and, thus, inherently assume some degree of risk when they choose their profession.

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<sup>1</sup> In this document, the term 'patients' refers to patients, clients and residents who use health-care services.

<sup>2</sup> Ruderman, C., Tracy, C. S., Bensimon, C. M., Bernstein, M., Hawryluck, L., Shaul, R. Z., & Upshur, R. E. (2006). On pandemics and the duty to care: whose duty? who cares?. *BMC Medical Ethics*, 7(1), 5.

While an ethical duty to care exists, the degree to which it holds in the context of COVID-19, and the degree to which the duty extends to all health-care activities, exists in relation to the most recent evidence about COVID-19. Accurate assessment of the facts and assumptions based on the best available information is crucial in any analysis of the duties of HCW. The notion of discharging the duty of care illuminates the balance on which HCW should weigh any immediate benefits to an individual patient with their ability to care for patients in the future.<sup>3</sup>

The duty to care described here is only discharged when circumstances in the workplace are such that the risks are certain, significant, and unmitigable (e.g. working on COVID-19 positive units without adequate personal protective equipment (PPE)). Personal circumstances such as caregiving responsibilities or heightened risk as a result of a HCW's own health status may be such that the individual HCWs is not willing to accept the level of risk present in the workplace, when the threshold (e.g., of being certain, significant and unmitigable) is not met. These situations are not relevant factors when considering whether a HCW's duty to care has been discharged. Instead, such personal circumstances should be addressed via labour and employment processes—that is, HCWs who consider their risks of harm heightened as a result of their own health status and/or personal circumstances should use their usual process regarding access to labour and employment benefits and/or any related labour and employment agreements.

### Key Facts

- SARS-CoV-2, the virus that causes COVID-19, spreads to others by liquid droplets when an infected person coughs, sneezes, sings, shouts, or talks.
- For up-to-date information regarding the transmission of COVID-19, please refer to the B.C. Centre for Disease Control.<sup>4</sup>
- Appropriate PPE is considered an effective risk-mitigating strategy when used properly. In the absence of appropriate PPE, or improper PPE use, HCWs face heightened risks of harm to their person.
- Some HCWs deliver patient care that poses higher risks to their personal safety (e.g. HCWs working with confirmed COVID-19 patients, HCWs performing aerosol-generating medical procedures, or aerosol generating medical procedures).
- Some HCWs may face increased personal risks in relation to COVID-19 (e.g., those who are immunocompromised, older adults with comorbidities) and face greater risks of harm.
- There are key sectors of the health-care system (e.g., acute and critical care HCWs, specialty services, community health-care services and long-term care facilities), where losses of HCWs due to COVID-19 would substantially disrupt the ability of the health-care system to care for all patients' needs, in turn affecting the system's response to the COVID-19 pandemic.
- The probability of spread varies by community and setting. However, it remains high if not contained. Therefore, the risk of harm to society needs to be factored into any ethical response.<sup>5</sup>

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<sup>3</sup> Ruderman, C., Tracy, C. S., Bensimon, C. M., Bernstein, M., Hawryluck, L., Shaul, R. Z., & Upshur, R. E. (2006). On pandemics and the duty to care: whose duty? who cares?. *BMC Medical Ethics*, 7(1), 5.

<sup>4</sup> BC Centre for Disease Control. (2020). How it Spreads. Retrieved from <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/about-covid-19/how-it-spreads>.

<sup>5</sup> Government of Canada. (2020). Coronavirus disease (COVID-19): Prevention and risks. <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks.html>.

## Limits to Ethical Duty to Care

HCWs have an ethical duty to provide care, even when it involves potential exposure to some risk of harm.<sup>6</sup> However, that duty may be superseded when HCWs faces certain, significant and unmitigable risk of harm to their person, such as working without appropriate PPE<sup>7</sup>.

In the context of COVID-19, each individual HCW must justify whether their ethical duty to provide a particular aspect of care is superseded by personal health risks. This justification must be clear and robust in order to maintain the high regard that society holds for HCWs and continuation of the trust and respect of such relationships. HCWs must justify any discharge of their ethical duty to care in relation to:

- a. Their participation in a *specific* patient care activity (or activities) that pose intolerable and unmitigable risk of certain and significant harm; and,
- b. their own unique personal circumstances, experiences, and identities, as described above.

*Example #1* : Some HCWs may be at higher risk for COVID-19 infection harms and death due to a compromised immune system or age. This means they may face both certain and significant harms if they engage in particular health-care activities where the risks of harm cannot be mitigated (e.g., aerosol generating medical procedures for a person with known COVID-19 without adequate PPE). In this scenario the HCWs would have a solid basis for their position that their personal risk in the workplace supersedes their ethical duty to provide that *particular activity* of care.

*Example #2*: A HCW who provides direct care in their workplace, requests to work from home with pay due to personal caregiving duties (e.g., care for a child who is immuno-compromised, care of an elderly parent, pet care). In this case, provided the workplace risks are adequately mitigated (e.g., HCW is provided with adequate PPE for the duties required), the HCW's duty of care prevails. However, the HCW can access any benefits available (e.g. unpaid leave of absence, unused vacation days).

## Ethical Analysis

The ethical analysis and recommendations in this document follow the B.C. COVID-19 Ethical Decision-Making Framework (EDMF). The EDMF reflects the core ethical principles of public health ethics, pertaining to both substantive and procedural considerations. As described in the EDMF, substantive considerations include: the harm principle, utility, distributive justice (fairness), respect, cultural safety, least coercive and restrictive means, reciprocity, and proportionality. Procedural considerations include efficiency and effectiveness, procedural justice (fair process, consistency, etc.), flexibility, integrity and solidarity. Further information on the foundational ethical principles that support this framework can be found in [Appendix A](#).

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<sup>6</sup>See: Damery, S., Draper, H., Wilson, S et al. (2010). Healthcare workers' perceptions of the duty to work during an influenza pandemic. *J Med Ethics*, 36: 12-18. doi:10.1136/jme.2009.032821.

<sup>7</sup> This is one example relevant to current knowledge of COVID risks but other examples may be pertinent if and when evidence of other relevant risks emerge.

## Recommendations

Recommendations have been provided for the following groups: Individual HCWs, health authorities and the Provincial Government.

### Individual HCW

1. HCWs should recognize their ethical duty to provide care and understand that this duty remains even when it involves potential exposure to some risk of harm.
2. Each individual HCW should determine their obligation and willingness to provide care in contexts where they are exposed to risk of COVID-19 infection based on:
  - (i) the HCW's participation in a *specific* patient care activity (or activities) that pose risk and,
  - (ii) their own unique personal circumstances, experiences, and identities.
3. When a HCW is at risk of harm, for example, when they are not provided with sufficient PPE, they may consider their usual duty to provide care met. Otherwise it would be reasonable to see any service that includes this risk as voluntary.
4. For HCWs who are at a higher risk if they contract COVID-19 and there is no available strategy to mitigate exposure to COVID-19, it would be reasonable for that provider not to provide that *particular activity of care*.
5. If a HCW is unwilling to accept the responsibility to provide care based on balancing of their value commitments and weighing their personal circumstances, they should:
  - a. Work with/support their colleagues to allow for further effort into balancing their needs, resulting in HCW being willing to provide care; and,
  - b. find alternatives to support patients and the system that allow them to balance their value commitments.

### Health Authorities

6. Organizations representing HCWs should give clear indication to what standard of care is expected of their members in the event of a pandemic.<sup>8</sup> Even where circumstances result in particular services not being able to be safely provided, HCWs and organizations are expected to take measures to continue to provide services to the extent possible. That is, it is only those specific aspects of care—where the risks of harm pose intolerable risk to the HCW and where those risks are certain, significant and cannot be adequately mitigated—that may justifiably not be provided. Organizations and HCWs should collaborate closely to examine activities that pose potential risks of harm. To the greatest extent possible, examinations of risk should consider all the available evidence and should be re-examined when new facts become available. In specific circumstances, organizations may collectively decide that a particular duty of care is not required. These decisions must be communicated transparently and openly in order to preserve trust in HCWs and to demonstrate respect for others.

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<sup>8</sup> Ruderman, C., Tracy, C. S., Bensimon, C. M., Bernstein, M., Hawryluck, L., Shaul, R. Z., & Upshur, R. E. (2006). On pandemics and the duty to care: whose duty? who cares?. *BMC Medical Ethics*, 7(1), 5.

7. Organizational leaders have an obligation to consider and recognize the power differentials and vulnerabilities that impact HCWs differently across the range of personnel who make up the health-care workforce. The ethical duty to care that arises out of the special characteristics of health professions may justify greater expectations for certain HCWs.
8. Provide HCWs with the following guidance:
  - a. HCWs have an ethical duty to provide care, even when it involves potential exposure to some risk of harm.
  - b. When a HCW faces certain, significant and unmitigatable harm to their person, for example, when the appropriate amount of PPE is not available, the HCW may decline to provide a particular care activity.
    - The notion of declining to provide a particular activity of care, particularly in the context of risks to HCWs' personal safety, is important. Such importance illuminates the balance on which HCWs should consider immediate benefits to an individual patient with *their ability to care for patients in the future*. As such, health authorities working with the provincial government should consider whether there are particular care activities and/or specific services that will be temporarily suspended in the context of COVID-19 on the basis that they pose too great of a risk to HCWs broadly and thus may threaten their ability to provide care in the future.
  - c. Willingness to work despite personal risk to themselves is a largely contextual and personal decision (e.g., competing duties of care and obligations toward self, family, and others). Leaders should proactively and transparently explore this context by strategizing their workforce and seeking to identify those who face both the least and greatest risk from COVID-19.
  - d. Health authorities should re-deploy HCWs who are available and willing to work despite personal risk to areas of greater need, or to relieve higher risk individuals from exposure. If additional compensation or incentives for HCWs are being considered, these should be offered equally.
  - e. Any individual HCW who decides to continue to work, despite personal risks to themselves, should do so in a fully informed manner, and should not be pressured or coerced to do so.
9. Respect for privacy and confidentiality is essential. As such, personal health or social information that may be disclosed during discussions must be confidential.
10. Health authorities and the provincial government should develop human resource strategies for communicable disease outbreaks that cover the diverse occupational roles, that are transparent in how individuals are assigned to roles in the management of an outbreak, and that are equal with respect to the distribution of risk among individuals and occupational categories.<sup>9</sup>

### Provincial Government

11. Specific criteria should be developed to guide the determination of what constitutes an acceptable basis to decline to provide a particular duty of care. These criteria should be

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<sup>9</sup> Upshur, R., Faith, K., Gibson, J., Thompson, A., Tracy, C., Wilson, K., Singer, P. (2005). Stand on Guard for Thee. Ethical Considerations in Preparedness Planning for Pandemic Influenza. A report of the University of Toronto's Joint Centre for Bioethics, Pandemic Influenza Working Group.

consistently and transparently applied across the province, with special attention paid to the harms resulting if exceptions are allowed.

12. The risks to HCWs may extend beyond physical harms to their personal safety. Harms may also include psychological, mental, and emotional harms.<sup>10</sup> Health authorities will have to make difficult decisions about staff assignment and should be supported in their decision-making with input of the provincial government.
13. Recognition should be given to the need for additional benefits and protections for those HCWs who are more vulnerable in the health-care system. For example, disability insurance and death benefits should be available to HCWs and their families adversely affected while performing their duties.
14. All decisions related to duty to care should be communicated openly and transparently.

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<sup>10</sup> Upshur, R., Faith, K., Gibson, J., Thompson, A., Tracy, C., Wilson, K., Singer, P. (2005). Stand on Guard for Thee. Ethical Considerations in Preparedness Planning for Pandemic Influenza. A report of the University of Toronto's Joint Centre for Bioethics, Pandemic Influenza Working Group.



## Appendix A: Foundational Ethical Principles

This framework is underpinned by the following ethical principles:

### Procedural considerations

- Reciprocity
- Respect
- Efficiency and Effectiveness:
  - Stewardship and sustainability
- Procedural Justice (fair process):
  - Openness and transparency
  - Inclusiveness
  - Accountability
  - Reasonableness
  - Consistency

### Substantive considerations

- The harm principle
- Distributive justice:
  - Equitable distribution (fairness)
    - Equality
    - Equity
  - Just distribution of benefits and harms risks and burdens
- Proportionality
- Least Coercive and Restrictive means

Further information on these principles and their intent can be found in the [here](#).<sup>11</sup>

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<sup>11</sup> Government of BC. (2020) COVID-19 Ethical Decision Making Framework. Retrieved December 2, 2020 from [https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/ethics\\_framework\\_for\\_covid\\_march\\_28\\_2020.pdf](https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/ethics_framework_for_covid_march_28_2020.pdf).

## Appendix B: Contributors

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