Curbing transplant tourism: Canadian physicians and the law

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Organ transplants can be a life-saving option for individuals with organ failure, but access is often limited for various reasons, including an imbalance of supply and demand. Canadians are among those who travel abroad to obtain organs through commercial transactions.[1–3] This practice — often called transplant tourism — has been condemned by the international community,[4,5] including the World Health Organization, and is illegal in many countries, including Canada. Physicians can play a pivotal role in discouraging transplant tourism, particularly if they are supported by law and policy reform.

Concerns about the exploitation and harms donors experience through transplant tourism are considerable.[6] Data on the experiences of organ recipients who obtained kidneys via illegal commercial transactions similarly reflect a range of adverse results, including surgical complications, diverse and sometimes unconventional infections, increased risk of late allograft loss and poorer outcomes overall, as compared with domestic transplant recipients.[2,3] The implications of transplant tourism for domestic health care systems can also be serious. For example, a study of the clinical outcomes of patients treated at an Ontario transplant centre after receiving organs through commercial transactions abroad found that most of the patients needed follow-up care on an urgent basis and some required lengthy hospital stays.[3]

Many patients considering transplant tourism have ongoing health issues that are being managed by physicians in the Canadian health care system. In a study in British Columbia, the majority of patients who received a kidney graft through transplant tourism had been identified as potential transplant candidates in the domestic system.[1] Physicians faced with a patient contemplating transplant tourism may encounter various legal and ethical challenges in determining how much and what kind of care and support to provide, both pre- and postoperatively. However, these interactions also present opportunities for physicians to help discourage this practice.

Research suggests that individuals who obtain grafts through transplant tourism share certain characteristics that may facilitate early identification and deterrence efforts by physicians who are alert to particular risk factors among their patients.[1] If a physician knows or has reason to believe that a patient is considering transplant tourism, he or she should, as part of the informed consent process and the fiduciary obligations to the patient, disclose information about the risks, including a candid assessment of the potential health hazards outlined earlier and other risks such as the lack of continuity in clinical care, inadequate records and risks associated with premature postoperative travel.[3,5] Physicians may also consider discussing the potential harms to organ "donors" in commercial transactions[6] and the illegal nature of the activity. Although such information may fall beyond the usual disclosure process, it seems something a reasonable person in the patient's position would want to know (which is, broadly speaking, the standard for disclosure in Canada).[5]

A physician who is strongly opposed to transplant tourism should perhaps consider disclosing that to the patient as well. A clear conflict between a physician's strong objection to the practice and a patient's desire to obtain an organ may affect the physician–patient relationship[7] and thus should be disclosed as part of the consent process. Indeed, article 12 of the Canadian Medical Association's Code of Ethics requires the disclosure of personal values that may influence patient care. The hope is that the more patients know about the issues and risks associated with transplant tourism, the less likely they will be to pursue it. However, more research is needed to examine the impact of such disclosures. At a minimum, these legal and professional obligations support physicians to act in a

Key points

- Despite international condemnation, travel abroad to obtain transplant organs through commercial transactions (transplant tourism) continues.
- Transplant tourism presents considerable risks to both donors and recipients and can increase burdens on domestic health care systems.
- Physicians can play a pivotal role in discouraging transplant tourism through the care and information they provide to their patients.
- Law reform to expand physicians' options regarding disclosure of transplant-related information could allow for improved data collection, help disrupt transplant networks and inform policy aimed at curbing transplant tourism.

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manner consistent with the emerging national and international consensus that transplant tourism is problematic and should be discouraged.[4,8]

One area of tension that may emerge occurs when patients ask physicians for services to support their plans to procure an organ (e.g., prescriptions, medical summaries, pre-procedure testing, destination advice). In Canada, both case law and provincial health information legislation give patients the clear right to access and obtain copies of their medical records, regardless of how they will be used. Although physicians arguably have an obligation not to facilitate transplant tourism actively, for example by ordering tests or prescribing medications they would not otherwise provide, or by giving advice that could be construed as a referral, they must still respect patients' rights to their health information and provide treatment that falls within the existing standard of care for that patient.

In addition, physicians' duties to maintain patient confidentiality[5] preclude disclosure of information about a patient's transplant tourism activities to a third party without the patient's consent. Various commentators have suggested that requiring the reporting of this information, for example to a central public health authority, would help to combat transplant tourism by providing information about the nature and scope of the phenomenon and would potentially facilitate follow-up by regulators in the relevant jurisdiction.[6,9,10]

The potential merits of such a reporting scheme present an opportunity for modest, yet valuable, legal reform in Canada. Existing health information legislation could be amended to create a reporting system that permits or even requires physicians to provide basic information about suspected transplant tourism, including the location and any known details about the organ transplant network. Reporting requirements aimed at protecting the public already exist, for example with respect to gunshot and stab wounds, medically unfit drivers and child protection. The goal of a reporting system about transplant tourism would be twofold: first, to collect valuable data needed to improve the understanding of the scope of this phenomenon, and second, to help disrupt the transplant tourism industry through sharing of information with law enforcement in the jurisdictions implicated. Its purpose should not be to punish patients (or strain the physician–patient relationship). Accordingly, we suggest that the system not collect identifiable information about individual patients, thus balancing physicians' duty of confidentiality with the importance of curbing this illegal activity.

The global market for illegal organs endures despite international condemnation and legal prohibition at national levels. This persistence demands alternative forms of intervention. Legal reform that would allow physicians to play a more active role in data collection is one such option. Ideally, the development of such a system would involve coordination with physicians' groups (particularly transplant professionals), law enforcement, policy-makers, patient representatives and international partners. In a decentralized medical system such as Canada's, coordination between provinces and territories will be required, preferably with federal leadership. Continued research, especially into the potential benefits and impact of a reporting system, will be critical so that policy decisions are informed by the best available evidence. Physicians' contributions to ongoing efforts to strengthen domestic organ donation systems also remain important, as does continued international dialogue about organ trafficking and transplant tourism. Nonetheless, new strategies are required to assist international efforts to curtail the market for illegally obtained organs, and law reform allowing physicians to help fill current knowledge gaps would be a positive step forward.

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