



Summary of Legal Responsibilities/Liabilities for Goodwill Representatives

A Guide for any RTOERO member wishing to visit fellow members in a hospital, retirement or long-term care facility

The following protocol is based upon legal advice. While legislation and case law does not generally focus on duties or liabilities applying to visiting members of the public, information contained in the *Long-Term Care Homes Act, 2007* (LTCHA) and the *Retirement Homes Act, 2010* (RHA) provides guidance on how RTOERO members should behave when visiting patients/residents of various facilities.

Issues

- Should the families of patients/residents in such facilities be informed before a fellow RTOERO member visits?
- If patients/residents share information about the personnel in their facility, do visiting RTOERO members have a duty to report that information?
- If patients/residents share information about family members, especially in a derogatory way, or makes requests about legal matters such as estates or wills, what should the visiting RTOERO members do?
- If patients/residents lacking legal capacity make false comments about visiting RTOERO members (e.g., that the RTOERO members tried to harm them), what should the visiting RTOERO members do?
- If patients/residents make false claims against visiting RTOERO members, what actions should the RTOERO members take?

Visiting Members

- Residents of facilities such as long-term care homes and retirement homes have the right to meet with visitors of their choice, as well as do patients in hospitals.
- If desirous of visiting members in hospitals, long-term care homes, retirement homes, and hospitals, Goodwill Representatives and other members must call ahead to determine the status of the patients/residents prior to visiting them to ensure a visit on the planned day is appropriate.
- Members visiting fellow members should make clear the purpose of their visit – of a “goodwill nature”, to bring greetings on behalf of RTOERO and District, cheer up, etc., and, if warranted, to state that they are not available/qualified to provide advice on financial, medical or legal matters.
- It is advisable that members visiting fellow members in one of these settings should do so in pairs. In the event that the member being visited accuses the Goodwill Representatives/other members of inappropriate behaviour, there is a fellow RTOERO member present to corroborate that proper decorum was followed.
- In order to avoid complaints from residents, visiting RTOERO members should ensure that the needs and wishes of the patients/residents are respected.
- Accordingly, RTOERO members normally would not need to inform the family of patients/residents before going to visit, provided that the patients/residents are agreeable to meeting with RTOERO members.

- If RTOERO members are meeting with patients/residents in private and an individual patient/resident starts behaving erratically or disruptively, RTOERO members should immediately seek facility staff for assistance rather than attempting to control the situation on their own.

Visiting Members Lacking Legal Capacity

- Different considerations may apply in circumstances where patients/residents lack legal capacity. Such patients/residents may have a substitute decision-maker who oversees all aspects of the individual's treatment and care.
- In cases where patients/residents are incapable, RTOERO members may wish to notify family members in advance in order to ensure that such visits are consistent with the individual patient's/resident's needs and abilities.
- Both the LTCHA and the RHA define "incapable" as meaning "unable to understand the information that is relevant to making a decision concerning the subject matter or unable to appreciate the reasonably foreseeable consequences of a decision or a lack of decision".
- It is important to note that capacity is determined with respect to the subject matter or decision at issue, and is not an all-or-nothing concept. For example, a person who lacks the capacity to appreciate the reasonably foreseeable consequences of a particular medical procedure or medication may still have the capacity to decide whether or not he/she wants to meet with certain visitors.
- When meeting with incapable patients/residents in particular, it is advisable to meet in public areas of the facility where staff members are able to oversee the interaction (provided that the patients/residents are comfortable and able to do so).
- Visiting RTOERO members may also consider having an individual incapable patient's/resident's family member or other trusted person attend the meeting as well.

Harm/Abuse of Patients/Residents who are Members

- There are legislative duties to report that apply in circumstances where a person has reasonable grounds to suspect that harm or abuse of patients/residents has occurred or may occur.
- If patients/residents tell a visiting RTOERO member derogatory information about a family member that does not raise any concerns regarding abuse or other misconduct, then the RTOERO member does not need to respond to this information at all and should instead remain focused on the matters that the member is there to discuss.
- If, however, patients/residents tell a visiting RTOERO member that family members or facility personnel are abusing them, attempting to misuse or misappropriate their money, or otherwise causing harm or a risk of harm to the patients/residents, then this may trigger the duty to report under the LTCHA or the RHA, even though the family member is not a staff member of the facility.

Requests about Legal Matters

- If patients/residents ask or make requests about legal matters, the visiting RTOERO members should make it clear that they do not have the authority to assist with these matters.
- RTOERO members should not attempt to provide legal advice or claim to be able to assist patients/residents with legal matters. Instead, members should direct the patients/residents to discuss these issues with their attorney, or substitute decision-maker if they are incapable.

False Allegations Made by Patients/Residents

- Though unlikely that patients/residents would knowingly or maliciously make false allegations, other than perhaps a member lacking legal capacity, (e.g., dealing with dementia), this may occur.
- If patients/residents began to behave erratically or disruptively, RTOERO members immediately should seek out facility personnel for assistance rather than trying to control the situation alone.
- When meeting with patients/residents who are lacking legal capacity, it is best to notify their family in advance so a family representative can be present. As well, the meeting should be in a public area of the facility so staff are able to oversee the interaction that occurs in a visit.
- In the event that patients/residents, likely one lacking legal capacity, make false allegations which lead to an investigation, RTOERO members should cooperate fully with the investigating body. This may involve meeting with investigators and providing documents or information regarding the alleged incident and the reasons for the visit.