

Top Privacy Issues for Executive Directors of Family Health Teams

Association of Family Health Teams of Ontario

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Overview

- What needs to be in a PHIPA Agency Agreement between a FHT and its affiliated physicians?
- Recent privacy developments
- The top 5 issues Privacy Officers need to manage
- The top 10 privacy questions FHT staff ask

PHIPA Agency Agreement

- See Template FHT/FHO* PHIPA Agency Agreement
- How to decide who is the “HIC”
 - Are you blended salary model?
 - To whom are the patients “rostered”?
 - What do your contracts say?
 - With MoHLTC?
 - With physicians?
 - Between FHT and FHO?
 - Other agreements? (Hospital? University?)
 - Who owns the eMR? Who paid for it? Who controls access to it?

Recent Privacy Developments



Bill 119



IPC directions



New court decisions



Proliferation of “cyber insurance”



Bill 119 – Main Highlights

- <http://ddohealthlaw.com/app/uploads/2015/09/Proposed-Changes-to-PHIPA-through-Bill-119-Blacklined-Not-Official-Copy.pdf>
- Changed definition of “use” to include “view”
- Added responsibility on HIC to ensure PHI not collected without authority
- Added responsibility to report privacy breaches to IPC (particulars to come in regulations)
- Must tell affected patients they have a right to complain to the IPC
- Updated rules for agents and responsibilities for HICs about agents



Bill 119 – Main Highlights

- Added responsibility to report disciplinary action for employees and privileged staff (termination, suspension or subject to disciplinary action) to Colleges
- Whole new “Part V.1” – Electronic Health Record s. 55
 - Creation of “a prescribed entity” for electronic health records
 - Consent directives
- Doubling of fines to \$100,000 for an individual and \$500,000 for a business
- Changes to prosecution sections
- What HICs must report to IPC (in regs)
- And other minor changes

IPC Orders and Decisions

2005-
2011

- 11 orders

2014-
2016

- 11 orders/
decisions

IPC Orders/Decisions Themes

Vendors

Orders 1, 6, 11

Snooping

Orders 2, 10, 13, 16

Mobile Devices and
New Technology

Orders 4, 5, 7, 8,

Access and
Correction

Orders 9, 12, 14, 15,
17, 18

Closing a
Practice

Order 3

Disclosing Records
of Deceased

Orders 19-22

Sale of PHI – a new low

Order #13

- Selling of information about new mothers and new babies to RESP providers
- Also linked to Securities Commission prosecution + class action (\$400+ million possibly 14,000 patients affected)
- Securities Commission fine: \$36K + \$9K to victims' fund
- Reminders:
 - Training
 - Audits
 - Policies
 - Confidentiality pledges

Recent Recommendations from IPC/O

- Annual confidentiality pledges
- Monthly random audits of electronic medical records to monitor for privacy breaches and inappropriate access to patient records
- Flag (to the extent that it is possible) likely targets of inappropriate access by staff (such as family members of FHT staff and high-profile individuals in the community)
- Privacy warning to the electronic medical record to pop up automatically upon log-in
- Privacy training should be repeated on a yearly basis to include IPC/O videos, in-house privacy training and different speakers

Important Court Cases

- Jones v. Tsiges, 2012
 - Bank employees
 - Tsiges has common law relationship with Jones' ex
 - Tsiges looked at Jones' financial information 174 times in 4 years
 - \$10,000 damages (but the Court said, up to \$20,000 for new tort of intrusion upon seclusion)

Hopkins v. Kay 2015

- The respondent, Erkenraadje Wensvoort, was one of 280 patients who had their health information improperly accessed and who were notified of the breach, as is required by *PHIPA*.
- The respondent had previously sought medical care for injuries inflicted by her ex-husband, whom she had subsequently left and hidden from. She feared that the breach was actually an attempt by him to locate her.
- Hospital admitted privacy breach and said it was intentional
- Individuals have a right to sue outside the scheme set out in *PHIPA*
 - *PHIPA* says plaintiffs can sue after the IPC/O issues an order and then only for “actual harm”
 - Court recognized *Jones v. Tsige* (not required to prove actual harm and quantum of damages is higher than allowed under *PHIPA*)
 - HICs now potentially exposed to greater damage awards (+280 plaintiffs!)
 - No good faith immunity
- Decision upheld by Court of Appeal in 2015 and SCC has refused to hear an appeal so the decision stands
- Class action free to proceed

Attorney General Prosecutions

- North Bay nurse looked at 5804 patient records – case dropped by Attorney General because of delay of process (16 months)
- 3 hospital staff members are being prosecuted for privacy breaches involving a high profile patient

Top 5 Issues for POs to Manage

1

- Snooping

2

- eMR access agreements with community partners

3

- Portable devices and working from home

4

- Vendor agreements

5

- Emailing and texting patients (and each other)

Top 10 Questions from FHT Staff

1

- Can I leave a message on a voice answering machine?

2

- At what age do kids make decisions about their information?

3

- Am I allowed to make appointments on the instruction of a spouse?

4

- Am I allowed to email or text patients?

5

- Can WSIB make us send them information?

Top 10 Questions from FHT Staff

6

- Why am I not allowed to look at my own record?

7

- Why am I not allowed to look at my child's record?

8

- What are insurance companies allowed to have?

9

- What do I have to do if I take work home?

10

- Who is in the circle of care?

Privacy Resources

- Association of Family Health Teams of Ontario
 - [Privacy Toolkit for the Quality Improvement Decision Support Program in Family Health Teams](#)
 - [Statutory Compliance Toolkit for Boards of Family Health Teams and Nurse Practitioner-Led Clinics](#)
 - Privacy training for FHT Boards (February 3)
 - Top 5 Privacy Questions Answered with 5 Privacy Tools

Privacy Resources

- Information and Privacy Commissioner of Ontario
 - [45 Minute PHIPA Training Video](#) for all health sector staff
 - [PHIPA Fact Sheets](#)
 - [PHIPA Orders](#)
- College of Physicians and Surgeons of Ontario
 - [Confidentiality of Personal Health Information](#)
 - [Medical Records](#)
 - [Appropriate Use of Social Media by Physicians](#)
- College of Nurses of Ontario
 - [Confidentiality and Privacy – Personal Health Information](#)
 - [Social Media](#)

Privacy Resources

- Canadian Medical Protective Association
 - [Privacy and Confidentiality](#)
 - [Documentation](#)
- Ontario Hospital Association and Ontario Medical Association
 - [Hospital Privacy Toolkit](#)
- OntarioMD
 - [Privacy & Encryption Online Tutorial](#)
- DDO Health Law
 - [3 day Privacy Officer Training for the Health Sector](#)
 - [3 hour Privacy Training for Family Health Teams](#)
 - 1 hour Privacy Training for the Health Sector (online streaming video) – Coming March 2016
 - [Legal Issues for Family Health Teams Monthly Teleconference](#)

Top Privacy Issues for EDs

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