

THE COLLEGE OF  
FAMILY PHYSICIANS  
OF CANADA



LE COLLÈGE DES  
MÉDECINS DE FAMILLE  
DU CANADA



Canada Health  
Infoway Inforoute  
Santé du Canada



**BEST ADVICE**

# **Advanced and Meaningful Use of EMRs**

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MODULE 5

**Data Stewardship**

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Physicians have a legal and ethical obligation to maintain a set of medical records that facilitate providing medical care and serve as a legal record of events. This record should include a treatment plan along with the clinical justification and relevant information. Most family physicians in Canada meet this obligation by using an electronic medical record (EMR) in their clinical practice. Each provincial/territorial regulatory body provides standards that must be met regarding physicians' obligations for medical information or data stewardship.

**Data stewardship** is the legal and ethical responsibility for the collection, use, disclosure, management, and overall protection of data.<sup>1</sup> **Data ownership** is a patient's right to access and correct the information contained in their medical record. This right is recognized in both provincial and federal statutes. The Canadian Medical Protective Association (CMPA) is clear about this concept, noting:

"Physicians, institutions, or clinics own the medical or health record that they create for patients, whether paper or electronic, but the information remains the property of the patients and they control who can access it."<sup>2</sup>

Personal health information (PHI) is the data that family physicians are obligated to protect. It is the demographic information, medical history, test and laboratory results, insurance information, and other data that a health care professional collects to identify an individual patient and determine appropriate care.

## THREE DIMENSIONS OF DATA STEWARDSHIP

Stewardship has three essential dimensions: security, privacy, and confidentiality.

**Privacy:** The right to control access to one's person and information about one's self. The right to privacy means that individuals can decide what and how much information to give up, to whom it is given, and for what uses.<sup>3</sup>

**Security:** The mechanisms by which confidentiality policies are implemented in office policies including computer systems, including provisions for access control, integrity, and availability.<sup>4</sup>

**Confidentiality:** The assurance that information about identifiable persons, the release of which would constitute an invasion of privacy for any individual, will not be disclosed without consent except as allowed by law.<sup>4</sup> Confidentiality has been an obligation of the medical profession predating the Hippocratic Oath:

"Whatever, in connection with my professional service, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret."

## PRIVACY LAWS RELATING TO DATA STEWARDSHIP

Privacy law for medical practices is governed by the Personal Information Protection and Electronics Document Act (PIPEDA). For government institutions privacy is governed by the [Privacy Act](#). For a complete list of privacy laws in each province visit the [Office of the Privacy Commissioner of Canada](#) website.

The Canadian Standards Association (CSA) Model Code for the Protection of Personal Information (CAN/CSA-Q830-96 (R2002)) forms the basis of PIPEDA and is the basis of most provincial privacy legislation passed since 1996 (see Appendix 1).

Family physicians can meet standards by following guides published by their regional regulatory college or relevant provincial/territorial representative body, such as the [Privacy and Confidentiality](#) section in the British Columbia Divisions of Family Practice Toolkit. You can find some suggested provincial/territorial guides and websites, along with general resources, in Appendix 2.

## PRACTICAL CONSIDERATIONS FOR FAMILY PHYSICIANS

In practice, medical records are often maintained by the application service provider that hosts the physician's EMR.

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Physicians enter a data sharing agreement<sup>5</sup> (DSA) with the EMR vendor that describes how and what data will be shared, and often limits the vendor's liability ("hold blameless clauses") for breeches.

Physicians also enter DSAs as third parties to provincial/territorial and regional data sources for patient care (e.g., provincial pharmacy web services, hospital EHR portals, EHR-based diagnostic imaging repositories like picture archiving and communication systems). To establish who accessed data and when, such systems require a user-specific audit trail and oversight responsibility. Each user, including family physicians, typically has separate login credentials and signs a security agreement.

Increasingly questions arise about what uses of these health data are legitimate. Family physicians do not require explicit consent to share PHI with agents within the patient's circle of care—such as consultant or other specialist physicians, staff, and provincial bodies—provided it is for patient care or necessary business operations (such as billing).

The use of PHI includes sharing anonymized data with physician groups or government agencies for quality improvement or population health purposes. However, controversy arises when parties use PHI or anonymized data for marketing purposes or to profile individual providers or patients.

Finally, family physicians are also encountering charges from EMR vendors to access aspects of their data in meaningful ways, such as aggregate patient population level data, or intelligent data analysis.

The [CFPC's position](#) is that patient data should be freely available for quality improvement or public health measures without additional cost, and that EMR vendors should expose an application programming interface that allows physicians to use or transfer data for these purposes at little or no cost.

This position aligns with and supports key pillars of the [Patient's Medical Home \(PMH\)](#), as these relate to measurement and continuous quality improvement; that is, harnessing EMRs to improve patient care. As a place of trusted provision of care, the PMH should foster the assurance that the PHI patients entrust to the practice is kept safe and secure, and used for its intended purpose.



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## Appendix 1

### **RULES OF STEWARDSHIP: 10 CSA STANDARDS FOR LAWFUL PROTECTION OF PERSONAL HEALTH INFORMATION**

1. **Accountability:** An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.
2. **Identifying Purposes:** The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.
3. **Consent:** The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.
4. **Limiting Collection:** The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.
5. **Limiting Use, Disclosure and Retention:** Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.
6. **Accuracy:** Personal information shall be as accurate, complete and up-to-date as is necessary for the purpose for which it is used.
7. **Safeguards:** Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.
8. **Openness:** An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.
9. **Individual Access:** Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information, and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
10. **Challenging Compliance:** An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

Source: *Principles in Summary*, page ix, **CAN/CSA-Q830-96 (R2002) Model Code for the Protection of Personal Information**. © 1996 Canadian Standards Association. Reproduced with permission.



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## Appendix 2

### RESOURCES: PROVINCIAL AND TERRITORIAL RESOURCES—STANDARDS FOR DATA STEWARDSHIP

#### Alberta

##### College of Physicians and Surgeons of Alberta

- [Standard of Practice – Patient Record Content](#)
- [Data Stewardship Principles Information Sharing Agreements](#)
- [Data Stewardship: Secondary Use of Health Information](#)
- [EMR Security Checklist](#)

##### Alberta Medical Association

- [Guidelines for Data Sharing in Primary Care](#)
- [What you need to know about privacy agreements](#)

#### British Columbia

##### College of Physicians and Surgeons of British Columbia

- [Practice Standard – Medical Records](#)

##### Doctors of BC

- [Physician Office IT Security Guide 2015](#)
- [Doctors of BC, College of Physicians and Surgeons BC, Office of the Information and Privacy Commissioner for BC. \*BC Physician Privacy Toolkit: A guide for physicians in private practice, 3rd edition\*. Vancouver, BC: authors; 2017.](#)

#### Manitoba

##### Government of Manitoba (privacy obligations under The Personal Health Information Act (PHIA))

- [Privacy Toolkit for Health Professionals](#)

##### Manitoba eHealth

- [Privacy and Security](#)

#### New Brunswick

##### Office of the Integrity Commissioner for New Brunswick

- [Personal Health Information Privacy and Access Act](#)

##### Service New Brunswick

- [Privacy and Security Information](#)

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## Newfoundland and Labrador

### College of Physicians and Surgeons of Newfoundland and Labrador

- [Personal Health Information Act](#)

### Health and Community Services

- [The Personal Health Information Act](#) (see Resources for Custodians)

## Northwest Territories

### Office of the Information and Privacy Commissioner Northwest Territories

- [Legislation](#) (Health Information Act, Access to Information and Protection of Privacy Act, etc.)

## Nova Scotia

- [Personal Health Information Act](#)

### College of Physicians & Surgeons of Nova Scotia

- [Professional Standard Regarding Medical Records](#)
- [Privacy Policy](#)

### Doctors Nova Scotia

- [EMRs and privacy](#)

## Nunavut

### Office of the Information and Privacy Commissioner of Nunavut

- [Legislation](#) (including Consolidation Of Access to Information and Protection of Privacy Act)
- [Access and Privacy Resources](#)

## Ontario

### College of Physicians and Surgeons of Ontario

- [Policy: Medical Records](#)
- [Policy: Confidentiality of Personal Health Information](#)
- [Privacy Code](#)

## Prince Edward Island

### College of Physicians and Surgeons of Prince Edward Island

- [Policy: The Application of the Principles of Privacy](#)
- [Policy: Retention, Access and Transfer of Medical Records](#)

## Québec

### Collège des médecins du Québec

- Collège des médecins du Québec. *Record keeping by physicians in non-hospital settings*. Montreal, QC: author; 2013.
- [Regulation respecting records, places of practice and the cessation of practice by a physician](#)

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## Commission d'accès à l'information du Québec

Québec's privacy laws relating to health records

- [Act Respecting Health Services and Social Services](#)
- [Health Insurance Act](#)
- [Act respecting the Régie de l'assurance maladie du Québec](#)

## Saskatchewan

### Saskatchewan Medical Association

- [Saskatchewan EMR program – Privacy and Security](#)
- [EMR Privacy Resources](#)

### Office of the Saskatchewan Information and Privacy Commissioner

- [The Health Information Protection Act](#)

## Yukon

### Yukon Information and Privacy Commissioner

- [Health Information Privacy and Management Act](#)
- [Resources for Custodians](#)

### Yukon Medical Council

- Standards of Practice – Administration of Practice: [Records Management](#)

## RESOURCES: GENERAL

Arricale C, Barthold M, Brady JW, Eilenfield V, Gensinger RA, Houston SM, et al. *CPHIMS Review Guide, Third Edition: Preparing for Success in Healthcare Information and Management Systems*. Chicago, IL: Healthcare Information and Management Systems Society; 2013.

British Columbia Divisions of Family Practice. Practice Toolkit: Chapter 4. Privacy and Confidentiality website. [www.divisionsbc.ca/provincial/ptprivacyconfident](http://www.divisionsbc.ca/provincial/ptprivacyconfident). Accessed 2018 June 25.

College of Family Physicians of Canada. *Position Statement: Supporting access to data in electronic medical records for quality improvement and research*. Available from: [www.cfpc.ca/uploadedFiles/Health\\_Policy/CFPC\\_Policy\\_Papers\\_and\\_Endorsements/CFPC\\_Policy\\_Papers/CFPC-Position-Statement-Supporting-access-data-electronic-medical-records-EN.pdf](http://www.cfpc.ca/uploadedFiles/Health_Policy/CFPC_Policy_Papers_and_Endorsements/CFPC_Policy_Papers/CFPC-Position-Statement-Supporting-access-data-electronic-medical-records-EN.pdf). Accessed 2018 June 25.

Government of Canada Justice Laws. Personal Information Protection and Electronic Documents Act (PIPEDA) website. [laws-lois.justice.gc.ca/eng/acts/P-8.6/index.html](http://laws-lois.justice.gc.ca/eng/acts/P-8.6/index.html). Accessed 2018 June 25.

Government of Canada Justice Laws. Privacy Act website. [laws-lois.justice.gc.ca/eng/acts/P-21](http://laws-lois.justice.gc.ca/eng/acts/P-21). Accessed 2018 June 25.

Office of the Privacy Commissioner of Canada. Provincial and territorial privacy laws and oversight website. [www.priv.gc.ca/en/about-the-opc/what-we-do/provincial-and-territorial-collaboration/provincial-and-territorial-privacy-laws-and-oversight](http://www.priv.gc.ca/en/about-the-opc/what-we-do/provincial-and-territorial-collaboration/provincial-and-territorial-privacy-laws-and-oversight). Accessed 2018 June 25.

Patient's Medical Home website. [patientsmedicalhome.ca](http://patientsmedicalhome.ca). Accessed 2018 June 25.

Prater VS. Confidentiality, privacy and security of health information: Balancing Interests website. [healthinformatics.uic.edu/resources/articles/confidentiality-privacy-and-security-of-health-information-balancing-interests](http://healthinformatics.uic.edu/resources/articles/confidentiality-privacy-and-security-of-health-information-balancing-interests). Accessed 2018 June 19.

Standards Council of Canada. Model Code for the Protection of Personal Information (CAN/CSA-Q830-96 (R2002)) website. [www.scc.ca/en/standardsdb/standards/6176](http://www.scc.ca/en/standardsdb/standards/6176). Accessed 2018 June 25.



## References

1. Certified Professional in Healthcare Information and Management Systems-Canada (CPHIMS-CA). *CPHIMS-CA Canadian Health Informatics Review and Reference Guide*. Toronto, ON: CPHIMS-CA; 2013. Available from: [digitalhealthcanada.com/product/2013-cphims-ca-canadian-health-informatics-review-reference-guide](http://digitalhealthcanada.com/product/2013-cphims-ca-canadian-health-informatics-review-reference-guide). Accessed 2018 June 19.
2. Canadian Medical Protective Association. *Did you know? Patients can restrict access to their health information*. Ottawa, ON: CMPA; 2017. Available from: [www.cmpa-acpm.ca/en/advice-publications/browse-articles/2017/did-you-know-patients-can-restrict-access-to-their-health-information](http://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2017/did-you-know-patients-can-restrict-access-to-their-health-information). Accessed 2018 June 19.
3. Cavoukian A. *Privacy by Design: From Rhetoric to Reality*. Toronto, ON: Information and Privacy Commissioner of Ontario; 2012.
4. O'Carroll P, Yasnoff W, Ward M, Ripp L, Martin E, eds. *Public Health Informatics and Information Systems*. New York, NY: Springer Science & Business Media; 2006.
5. Canadian Medical Association. *Data Sharing Agreements: Principles for Electronic Medical Records/Electronic Health Records*. Ottawa, ON: Canadian Medical Association; 2009. Available from: [policybase.cma.ca/dbtw-wpd/Policypdf/PD09-01.pdf](http://policybase.cma.ca/dbtw-wpd/Policypdf/PD09-01.pdf). Accessed 2018 June 21.

