

# Privacy "Matters"

## Common Privacy Issues - Disclosure and Access to Personal Health Information

OHIMA Fall Conference - Data and Privacy "Matters"  
October 21, 2009

Mary Gavel  
Chief Privacy/Patient Affairs Officer  
Women's College Hospital



Women's College Hospital

new thinking

# 1. Review of PHIPA Principles

- **General Rule - s.29**
  - A health information custodian shall not collect, use or disclose personal health information about an individual unless,
    - (a) the individual consents and it is necessary for a lawful purpose; or
    - (b) the collection, use or disclosure, as the case may be, is permitted or required by the Act (PHIPA)

**(Hint - PHIPA has not changed the general rule)**

# Permitted vs. Mandatory

- If PHIPA permits disclosure, it does not mean that you have to - s.6
  - A provision of this Act that permits a HIC to disclose personal health information about an individual without the consent of the individual,
    - (a) does not require the custodian to disclose it unless required to do so by law;
    - (b) does not relieve the custodian from a legal requirement to disclose the information; and
    - (c) does not prevent the custodian from obtaining the individual's consent for the disclosure.

# The Balance

## Permitting Disclosure vs. Respecting Patient's Privacy



# The Balance

Right to Request Disclosure  
vs.  
Right to Receive Information



# PHIPA - Disclosure not mandatory

Unless required by law, disclosure that is permitted is not mandatory

For example:

- Disclosure to someone with a warrant is required by law (mandatory)
- Confirmation that someone is a patient is not required by law (discretionary)

# Disclosures related to provision of health care

## ■ PHIPA - s.38

- if reasonably necessary to provide health care and not reasonably possible to obtain consent in a timely manner, unless individual has expressly instructed custodian not to
- to obtain funding/payment for health care
- to contact a relative, etc. if individual unable to give consent
- to provide basic facts about individual (i.e. is a patient, general health status, where located in facility)
- to provide information about deceased persons to relatives

# Deceased Individual

- PHIPA s. 38(4)(c)

“A health information custodian may disclose personal health information about an individual who is deceased to the spouse, partner, sibling or child of the individual if the recipients of the information reasonably require the information to make decisions about their own health care or their children’s health care.”

# Estate Trustee of Deceased Patient

- Notarized Will
- Certificate of Appointment of Estate Trustee
- Letter confirming status as personal representative - no knowledge of other individual who is or may claim to be the personal representative

*(Consider circumstances with respect to risk and liability to hospital)*

# Disclosure to Medical Officer of Health

PHIPA - s. 39(2)(a)

- may have access for purpose of Health Protection and Promotion Act

(Much Broader - Permit More Disclosure)

# Disclosures Related to Care or Custody

- “A HIC may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained or to the officer in charge of a psychiatric facility within the meaning of the *Mental Health Act* in which the individual is being lawfully detained to assist an institution or facility in making a decision concerning arrangements for the provision of health care - s.40(2), PHIPA

# Disclosures for Proceedings

- “A HIC may disclose personal health information about an individual to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such” - s.41(1)(b), PHIPA

# Disclosures for Proceedings

- “A HIC may disclose personal health information about an individual to a litigation guardian or legal representative who is authorized under the Rules of Civil Procedure, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding” - s.41(1)(c), PHIPA

# Disclosures for Proceedings

- “A HIC may disclose personal health information about an individual for the purpose of complying with a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information” - s.41(1)(d), PHIPA

# Disclosures related to other Acts

A health information custodian may disclose...

PHIPA - s.43(1)(b)

- to a College within the meaning of the *Regulated Health Professions Act* for the purpose of the administration or enforcement of the *Regulated Health Professions Act*

# Disclosures related to other Acts

A health information custodian may disclose...

PHIPA - s.43(1)(d)

- to the Ontario College of Social Workers and Social Service Workers for the purpose of the administration or enforcement of the *Social Work and Social Service Work Act, 1998*

# Disclosures related to other Acts

A health information custodian may disclose...

PHIPA - s.43(1)(e)

- Public Guardian and Trustee, the Children's Lawyer, a Children's Aid Society so that they can carry out their statutory functions

# Disclosure to a Children's Aid Society

## PHIPA - s.43(1)(e)

- When is consent of a CAS worker sufficient authority to disclose personal health information?
- What documentation must the CAS worker provide the hospital?

**(If in doubt, ask requestor to confirm authority or seek advice)**

# Children's Aid Society

1. Temporary Care Agreement - Subsection 29(1) CFSA
2. Special Needs Agreement - Subsection 30(1) CFSA
3. Society Wardship - Subsection 57(1) 2. CFSA
4. Crown Wardship - Subsection 57(1) 3. CFSA

## Disclosure where child is not officially a “ward” of the CAS

- Subsection 40(1) of the CFSA
- Subsection 41(1) of the CFSA
- Subsection 40(7) of the CFSA

# Information to be provided by CAS

1. A Warrant for Apprehension issued by a Justice of the Peace (Subsection 40(3) CFSA)
2. A Warrant issued by a Justice of the Peace (Subsection 40(7) CFSA)
3. Documentation from a Children's Aid Society where a child is apprehended without a warrant (Subsection 40(7) CFSA)

**(If in doubt, ask requestor to confirm authority or seek advice)**

# Mother's Record

- Consent of Mother
- Court Order

# Disclosure to Public Guardian and Trustee

## PHIPA - s.43(1)(c)

- Public Guardian and Trustee (PGT) may have access for the purpose of an investigation required by Section 27 or 62 of the *Substitute Decisions Act* (s.83(1))

**(If in doubt, ask requestor to confirm authority or seek advice)**

# Avoiding Conflict...

- Requestor asked to provide authority
- Privacy Officer/Risk Manager
- Legal Counsel where authority for disclosure unclear

# Case Study

I am the lawyer for the Applicant in the above captioned matter.

Enclosed please find an Amended Order Giving Directions in this matter. I refer you to paragraph 6(a). Please provide me with copies of all clinical notes and records in respect of patient for the period ...

I trust there will be no more than a nominal charge, if you charge at all for providing the information I request. If that is not the case, please call me in advance.

# Court Order...

6. THIS COURT ORDERS that the Parties are entitled to compel production from the persons or institutions in possession of:
- (a) medical notes, pharmacy records...
27. THIS COURT ORDERS that the Parties are hereby granted leave to move for further directions as may appear advisable or necessary.

A.B. Judge

# Lawyer's Response...

If you are still not satisfied that we have the authority to make this request, please send someone from your legal department down to the Court House at 330 University Avenue, Toronto, and have them search the file in order to satisfy yourselves that we do have such authority.

In the meantime you have been provided with a copy of a court order, and I will consider you in contempt of court if you do not provide the requested documents forthwith.

# Hospital Response...

The copy of the Amended Order you have sent to us is neither signed nor stamped.

We will be pleased to provide you with a copy of the Health Record upon receipt of a copy of the duly issued and signed Amended Order in addition to payment in the amount of \$



# Individual's Right of Access

## PHIPA - s.52(1)(e)(iii)

An individual has a right of access to a record of personal health information unless, granting the access could reasonably be expected to, lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the name of the person be kept confidential.

# Access to Adoption Records

- *Access to Adoption Records Act, 2008*
- Service Ontario - 1-800-461-2156

# Individual's Right of Access

## PHIPA - s.52(1)(e)(i)

An individual has a right of access to a record of personal health information unless, granting the access could reasonably be expected to, result in a risk of serious bodily harm to the individual or another person.

# Individual's Right of Access

- Personal health information from other health information custodians filed as part of the health record

# Questions?



# Thank You...

**Mary Gavel**  
**Chief Privacy/Patient Affairs Officer**  
**Women's College Hospital**  
**416-323-6004**  
**[mary.gavel@wchospital.ca](mailto:mary.gavel@wchospital.ca)**

