



Development of Criteria for Assessing the Potential Harm of Personal Health Information Privacy Breaches

This month's newsletter features an article by Dr. Jeff Kirby, Department of Bioethics, Dalhousie University, as a follow-up to the article by on PHIA by Maria Lasheras in our July newsletter.



As described by Maria Lasheras in NSHEN's June-July 2012 newsletter, new features of the provincial privacy and access framework for the management of personal health information were introduced in the Personal Health Information Act, 2010 (PHIA). It is anticipated that PHIA will be implemented across Nova Scotia in Winter 2012/13.

One element of the legislation addresses the obligations of custodians of personal health information, such as the Minister of Health and Wellness, the district health authorities, the IWK Health Centre and individual health care providers, in the event of identification of a privacy breach, i.e., when personal

health information is lost or subject to unauthorized access, disclosure and/or use. As specified in sections 69 and 70 of PHIA, in circumstances where a custodian "believes on a reasonable basis" that such a privacy breach has occurred, she/he is required to notify the individual who is the subject of the information if, as a result of the breach, "there is potential for harm or embarrassment to the individual."

The reading of this quote may cause some of you to pause and wonder about the intended meaning of this rather vaguely worded clause. What is the scope of the term harm in this context – is it inclusive of both physical and psychological forms of harm/distress, and, if so, what sorts of these? You may be able to think of some health care scenarios in which it could be significantly harmful if health information was disclosed without an individual's explicit consent, e.g., disclosure of positive HIV status or a mental health diagnosis. Some of you may be able to imagine circumstances of inadvertent disclosure of limited health information, e.g., the prescribing of a medication for a minor, common health condition, where the risk of harm or embarrassment to the individual as a result of such a breach may be minimal. In such circumstances, does the individual have 'the right to know' anyway?

The Department of Health and Wellness recognizes that the pragmatic implementation of sections 69 and 70 of PHIA is an important responsibility for custodians, and that it could be challenging for them to ascertain when the notification of an individual who is the subject of the breached information is indicated. With this in mind, Maria Lasheras, the DHW's Director of Health Privacy and Access, requested that NSHEN become engaged in the development of criteria to support a finding (and non-finding) of 'potential for harm and embarrassment to the individual' as the result of an identified privacy breach. After consultation with the NSHEN Operations Team, I met with Maria, one of her DHW colleagues and Brenda MacDonald, the IWK Health Centre's privacy officer, to collectively establish an optimal way to accomplish this.

It was decided that a privacy breach criteria development working group will be struck by the DHW and consist of relevant primary stakeholders and resource persons. Please take a moment before reading on to consider who you think the participating stakeholders and resource persons should be... The list the steering group came up with includes: a health care receiver (a person who has received care for a significant health condition within Nova Scotia), a member of the general public, a privacy officer from a provincial health district or the IWK Health Centre, the DHW's Director of Health Privacy and Access, a hospital-based social worker, a health lawyer, a health care ethicist, an infectious disease specialist and a mental health administrator.

The steering group recognizes the importance of ensuring that there are working group participants from across the province. Once the membership is finalized, the working group will meet once monthly until a draft set of criteria is generated. The development work will be informed by collaboratively-chosen substantive values and principles, which act as lenses for normative framing/interpretation and as criteria for decision making. The content of the criteria and related report with recommendations will be established through the facilitated deliberative-engagement of working group members. The NSHEN Advisory Council will be one of the key secondary stakeholders to review and provide comprehensive feedback to the working group on the draft criteria. Once approved by the Department of Health and Wellness, the final set of criteria will become an important part of a new 'toolkit' for personal health information custodians.

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Where can you find more information on PHIA?

<http://www.gov.ns.ca/health/phia/>

902.424.5419, or toll free at 1.855.640.4765

phia@gov.ns.ca

http://www.gov.ns.ca/health/phia/PHIA_FAQ.pdf

NSHEN currently has a library of books that may be of interest to you. Please contact the Administrator for the title listing or to arrange a book loan.

Questions?
Comments? Want to join the mail list?

Contact NSHEN!

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NSHEN 2012 Annual Conference Ethics of Efficiency? Working in a Moral Environment

Registration is now open for our NSHEN conference on **October 24, 2012** at the Best Western in Burnside, Dartmouth NS.

This will be a one-day conference. Registration is available online at www.nshen.ca

NSHEN: Coming Events...

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| Sept 19, 2012 | Ethics Committee 101 Workshop. Super 8 Hotel, Amherst. Details available on www.nshen.ca |
| Sept 26, 2012 | NSHEN Education Telehealth. Ethics in Long Term Care. 12pm-1pm. Contact your local telehealth provider for location information in your area. |
| Oct 24, 2012 | NSHEN Annual Conference. Ethics of Efficiency? Working in a Moral Environment. Best Western Hotel, Burnside, Dartmouth NS. Registration will be open soon. |

If there are any topics you would like to see discussed in our Newsletter or Telehealth Education sessions, please let us know!

What Makes NSHEN Unique?

While there are other ethics networks and centres across the country, there are a few features that make NSHEN unique within Canada.

- * Our collaborative structure facilitates dialogue between partners
- * Our strategic goals are collectively established by the collaborating partners
- * NSHEN involves academia, government, and health care organizations in a single network

This results in a network that is innovative, efficient, and responsive to ethics needs in Nova Scotia.