

Lack of answers concerns MDs as privacy law deadline nears

What impact will Canada's new privacy legislation have on physicians? No one seems to know. The CMA has asked Canada's privacy commissioner for instructions to help doctors deal with the new law, but was told this is impossible. The 2 parties have been in a stalemate since 1999, the year the act was passed.

The Personal Information Protection and Electronic Documents Act (PIPEDA) is to regulate how the private sector handles personal information (see *CMAJ* 2003;169[1]:5). On Jan. 1, 2004, it will apply to all "commercial transactions" — the former privacy commissioner said these include MDs' dealings with patients — unless a province has its own "substantially similar" legislation.

The CMA questions whether PIPEDA even applies to doctors, since patients are already protected by stringent rules concerning confidentiality. Regardless, it says the onus is on Ottawa to tell MDs what the act will mean. "We're looking for leadership," says President Sunil Patel.

But Heather Black, the assistant privacy commissioner, says providing guidance is difficult. "We give as much guidance as we can, but ... we can't give advance rulings," she said, adding that

PIPEDA "is all based on theoreticals."

She says the act's final impact will not be known until complaints are mediated by the privacy office or settled in court.

"But what happens in the interim as we wait for these to go through court?" asks Dr. Pat Ceresia, managing director of corporate services at the Canadian Medical Protective Association (CMPA), which is trying to inform physicians about PIPEDA's impact. "We don't have the answers. It could really bring some chaos to the system."

Health professions should comply anyway, says Black. "Everybody could sit and wait until they're hit with complaints ... but that's not the ideal way to approach this. They should comply with the law and it shouldn't be that difficult. ... Doctors know what happens with the information [they collect]."

"We have to know what the legislation [means] to comply," counters Ceresia. "The logistical implications are mind-boggling."

PIPEDA is the private-sector equivalent of the 1983 Privacy Act, which placed limits on the way 150 federal departments and agencies collected, used and disclosed personal information. Essentially, it means that if

PIPEDA applies to MDs, it could require them to:

- obtain a patient's consent before collecting personal information;
- collect information by "fair and lawful" means;
- provide personal information policies that are clear, understandable and readily available.

According to the Privacy Commission's Web site, it also "gives you the right to obtain access to your personal information and ask for corrections."

The CMA says it is working with its divisions, affiliates, the CMPA and Federation of Medical Licensing Authorities to clarify these issues. It is also developing tools to help physicians enhance their privacy practices. PIPEDA raises 2 basic questions: What constitutes a commercial enterprise? And what consent is needed before sharing a patient's information?

For instance, hospitals are public institutions and therefore not commercial operations, but what if a physician operates a private practice in a hospital? Black says questions about which practice settings must meet PIPEDA requirements will have to be answered case by case. She says physicians' offices outside hospitals are "clearly covered by PIPEDA," while offices in a hospital — a public place — are not. Beyond that, "it's difficult to draw definite principles, that it applies here and not there."

PIPEDA raises many questions about consent. Currently, patient consent in the primary care setting has been implied. Some contend that PIPEDA makes informed consent mandatory. "What physicians do with the information [they gather] needs to be communicated to the patients," says Black. She says providing a 1-page information form that patients can read and sign offers physicians better protection than a poster on a wall.

The CMA maintains that existing confidentiality provisions make PIPEDA superfluous for medicine. "For millennia, physicians have been guarding patient information," says Patel.

"[PIPEDA] is the way of future," responds Black. "Doctors should get on with it." — *Barbara Sibbald, CMAJ*

Measles threat re-emerges

Declining vaccination rates in the UK mean that measles may re-emerge as an endemic disease there, *Science* reports (2003;301:804). Researchers say herd immunity is at risk because the vaccination rate in some parts of the country has fallen

below 80%. In the Irish Republic, where the vaccination rate has fallen to 72%, 1600 children recently developed measles and 3 died. A 2002 Health Canada survey found that 94.5% of children had at least 1 dose of MMR vaccine by age 2. Last year 7 cases of measles were reported nationally, and 13 have been reported this year. Dr. Varu Ghese, head of surveillance for vaccine preventable diseases at Health Canada, said all the cases were imported. About 745 000 children die annually of measles. It is the leading cause of vaccine-preventable death among children and ranks fifth overall as a cause of death among children under age 5. The Cape Town Measles Declaration, a World Health Organization program announced in October, aims to halve the number of deaths attributable to measles by 2005. The vaccine costs US\$0.26 per person. — *Barbara Sibbald, CMAJ*



Johns Hopkins University

In UK, rising concern over disappearing herd immunity