

## HEALTHe NL - Privacy Frequently Asked Questions

The confidentiality of medical information has been at the forefront of legislative changes in Newfoundland and Labrador with the introduction of the *Personal Health Information Act (PHIA)* in 2011.

Health professionals have ethical and legal responsibilities to maintain the confidentiality and privacy of patient health information. Many institutions, including hospitals, clinics, nursing homes and community health centres, have amended their policies and procedures to address these responsibilities.

Each HEALTHe NL user is accountable for using the information in an appropriate manner. Users should avoid improper access to medical information or risk sanctions for such breaches.

The **NL Centre for Health Information** (Centre) is responsible for creating a network of eHealth Systems. These eHealth Systems include, but are not limited to, **HEALTHe NL**, **TELEHEALTH**, and **TELEPATHOLOGY**, and includes the technology and infrastructure used to provide these products and services.

What follows are sample questions and answers based on scenarios involving HEALTHe NL users.

**1. My son is in the hospital. Can I access his medical information on HEALTHe NL as I have legal consent to access his records?**

No. Unless you are a member of your son's health care team, you are not entitled to access his medical file on HEALTHe NL. If you have legal consent to receive his medical file, you should do so following established and approved processes for obtaining that information. This may involve contacting the hospital's medical records department or the Centre. Accessing the information directly could result in discipline.<sup>1</sup>

**2. I work in the Janeway Children's Health and Rehabilitation Centre. My neighbour's daughter is a patient in a program at this Centre. My neighbour called me the other day asking whether her daughter had been regularly attending and actively participating in the program. Can I respond to her?**

No. The patient's attendance and participation in the program is potentially health information as defined under *PHIA* and cannot be disclosed without the client's consent. The fact that the

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<sup>1</sup> Acceptable Use of eHealth Systems (Newfoundland and Labrador Centre for Health Information, July 2016)

program itself may take place in a public setting with other patients present does not negate the obligation owed under the statute.

**3. I heard that regular audits are conducted to see who is accessing patient records. Can they do this? Is this not a violation of my privacy rights as it tracks when I am logging on and off the system?**

The Centre is defined as a health information custodian under *PHIA*. Health information custodians have a legal obligation to maintain the confidentiality of patient's health records by ensuring safeguards are in place. This may include regular audits of HEALTHe NL to ensure that users are not improperly accessing patient information. A user does not have a right to privacy with respect to this type of monitoring.

**4. I accidentally logged into the medical records of patients who are not under my care. Should I report this to my manager?**

Yes. Users can be disciplined for even minor breaches of patient confidentiality. Audits are commonly conducted on HEALTHe NL to detect potential breaches. An error of this type must be reported to your manager. Keep a record that you have informed your manager.

**5. My employer has no policies or procedures in place to address access to patient records. Can I get in trouble for accessing patient records when there are no policies in place?**

Yes. The obligation to maintain patient confidentiality is established both under statute (*PHIA*) and through professional standards. A user who breaches those standards and statutory obligation may be disciplined regardless of the absence of any internal policies or procedures.

**6. Out of curiosity, I accessed numerous patient files that were not my own patients but were people in the community that I know. Does the Centre have an obligation to notify those clients of the potential breach?**

Yes. *PHIA* specifically provides that health information custodians have an obligation to advise patients of any breach of their privacy rights.

**7. Can I be sued for improperly accessing patient information?**

Yes. The legislation (*PHIA*) has an offences and penalties provision. Individuals found guilty can be fined up to \$10,000, receive a sentence up to six months in prison, or both.<sup>2</sup>

Additionally, Newfoundland has the *Privacy Act* which makes it unlawful for anyone to violate the privacy of another. Damages for breaching the *Privacy Act* is dependent on the level of the violation.<sup>3</sup>

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<sup>2</sup> Personal Health Information Act, SNL 2008,C P-7.01, s 88.

<sup>3</sup> [Privacy Act](#), RSNL 1990, c P-22

## **8. Can I access patient records for strictly learning purposes?**

The answer will depend on whether you are part of the health care team for these patients, or have authorization through a research study or through some other means. If you are part of the health care team, your right to access patient records is implied. If you are working as part of a research study, ensure that you have expressed written consent that confirms authorization to access patient records. If none of these apply, you cannot take it upon yourself to access patient records for learning purposes. Those who do so risk discipline.

## **9. Can I access my own medical records (e.g. blood results) through HEALTHe NL?**

No. Accessing your own records is not a breach of privacy under *PHIA*; however, it is a breach of HEALTHe NL terms and conditions, which can result in discipline.<sup>4</sup>

## **10. One of my coworkers was recently admitted to the hospital. I want to access her information on HEALTHe NL just to see if she has been discharged or is still in the hospital. Can I access HEALTHe NL for this purpose only?**

No. This is unauthorized access that could result in discipline. The fact that you had no intent to access any medical information is irrelevant to the breach.

## **11. I sometimes forget to log off the computer system after reviewing my patient's files. Can I get in trouble for this?**

A HEALTHe NL user is responsible for logging on and off the system. If you do not log off, any other person can get onto the system and access other patient files. If the system is open under your name, it will appear as if you are the one improperly accessing files. The Acceptable Use of eHealth Systems expressly states: *"It is unacceptable to not properly safeguard and safely dispose Personal Health Information when no longer in use. For example, printed material should be shredded" and "it is unacceptable to leave a computer unlocked when your device is unattended while logged on HEALTHe NL."*

## **12. A physician in the clinic where I work can never remember his password. He is always asking the users to log into HEALTHe NL for him. Can users get in trouble for this practice?**

For the same reasons as stated above, a user should not be allowing other users to go into the system under her or his name. HEALTHe NL cannot differentiate who is on the system, and the assumption will be it is the individual who initially logged on.

## **13. I just found out that my son-in-law was admitted to the emergency department. I am currently at work on a different unit and do not have time to go down to emergency. My son-in-law is allergic to certain medications. Can I go on HEALTHe NL to ensure that staff has documented this?**

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<sup>4</sup> Acceptable Use of eHealth Systems (Newfoundland and Labrador Centre for Health Information, July 2016)

No. You do not have authorization to access his records as you are not part of his health care team. You must follow the proper procedure and call the emergency department and advise them directly.

**14. A patient requested a copy of his/her medical information. Can I print a copy and give it to the patient?**

The patient information available in HEALTHe NL comes from a variety of sources. Some of the results may be from tests you ordered for the patient, and it is at your discretion to provide these results to the patient.

HEALTHe NL also contains results from other custodians for a variety of health care reasons. You should direct the patient back to the original custodian to follow established and approved processes for obtaining that information.

**15. If I have questions about HEALTHe NL privacy or security or one of my patients have questions, where do we go?**

Specific questions about HEALTHe NL privacy and security features not found on the Centre's website ([www.nlchi.nl.ca](http://www.nlchi.nl.ca)) should be followed up by calling the Centre's Service Desk at **709-752-6006** or **1-877-752-6066**. The Service Desk will ensure the caller is forwarded to the privacy and security team for a response.