



COMMUNICATING THE RISK OF VIOLENCE: What Healthcare Providers Should Know About Privacy

Under the Occupational Health and Safety Act (OHSA), employers are required to provide as much information as needed to keep workers safe. At the same time, the Personal Health Information Protection Act (PHIPA) sets requirements for healthcare providers and organizations for the collection, use and disclosure of such information.

Workers need to be safe; privacy must be respected. Can they co-exist?

This fact sheet was designed to answer common questions about communicating patient risk of violence without comprising obligations to protect privacy. It is intended for general use only. If you require specific advice on application of privacy law, healthcare providers are encouraged to contact their privacy officer, legal representative, or the [Information and Privacy Commissioner of Ontario](#).

Q: What information must an employer provide to employees to protect their health and safety?

A: In Ontario, employers must provide information, instruction, (e.g., training) and supervision to protect worker health and safety. If an employee can expect to encounter a person with a history of violent behaviour, and the risk of workplace violence is likely to expose the worker to physical injury, the employer must provide the employee with information, including personal information, related to the risk. The employer must not disclose any more information than is reasonably necessary to protect the worker from physical injury.

The OHSA also requires supervisors to advise employees of known dangers to worker health and safety. In a

healthcare context, this can include information about a patient who may not have a history of violent behaviour, but has an increased risk of engaging in such behaviour given existing medical and non-medical conditions and circumstances. Only information necessary to address the risk of violence should be disclosed. As the case study at the end of this fact sheet indicates, it usually is possible to provide workers with enough information to protect them without sharing personal health information.

Disclosures to address the risk of violence have some similarity to workplace accommodation disclosures made in respect to a person with a disability: usually, it is not necessary to disclose personal health information, in order to achieve the desired outcome. Rather, the focus of disclosure is on possible behaviours, and factors that may trigger or enable those behaviours.

Q: What privacy legislation applies to information about an individual with a history of or potential for violent, aggressive or responsive behaviour?

A: The collection, use, disclosure, and management of “personal health information” (PHI) by healthcare providers is governed by the Personal Health Information Protection Act (PHIPA). This includes information in healthcare records that identifies a patient as having a history of or potential for violent, aggressive or responsive

behaviour. In particular, care plans, flags on files, and warning markers – e.g., wristbands or notices on the door, related to a history of or potential for violent, aggressive or responsive behaviour are likely to be considered personal health information to which PHIPA applies.

For certain organizations in the healthcare sector – e.g., hospitals and municipally-owned long-term care facilities – the collection, use, and disclosure of “personal information” (PI) is governed by the Freedom of Information and Protection of Privacy Act (FIPPA) and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). However, where personal health information is subject to PHIPA, the provisions of PHIPA will apply and those of FIPPA or MFIPPA will not.

Q: What is personal health information?

A: Section 4 of PHIPA defines ‘personal health information’ as:

Information about an individual in oral or recorded form, if the information,

- a. relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family,
- b. relates to the provision of health care to the individual, including the identification of a person as a provider of health care to the individual,
- c. is a plan of service within the meaning of the Home Care and Community Services Act, 1994 for the individual,
- d. relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,
- e. relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,
- f. is the individual’s health number
- g. identifies an individual’s substitute decision-maker

This definition has been broadly interpreted, and can include a wide range of information about an individual’s healthcare, including:

- Information relating to a medical condition that may manifest itself in violent behaviour – for an example, see the case study at the end of this fact sheet
- Risk assessment findings (e.g. low, moderate or high risk); identifying flags and markers (e.g. wristbands;

warning signs); triggers (e.g., food, noise); and care plans designed to help healthcare workers safely treat/support individuals where such treatment or dealings may involve a risk of physical violence

Q: Does PHIPA limit an employer’s duty to warn employees under OHS?

A: PHIPA allows healthcare providers to use and disclose personal health information where permitted or required by another statute. Therefore, where the OHS requires an employer to provide an employee with personal information, PHIPA does not prohibit such use or disclosure.

However, the OHS restricts such disclosure to no more information than is necessary to protect worker safety.

Q: Can a healthcare provider disclose information about an individual with a history of violent behaviour to individuals a) other than workers, or b) outside the health-care facility?

A: In limited circumstances, yes.

PHIPA permits the disclosure of personal health information to prevent serious and imminent physical harm. More specifically, it allows healthcare providers to disclose personal health information where the provider reasonably believes that such disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm.

In such circumstances, PHIPA places no restrictions on the type of persons to whom the information may be disclosed. Practically speaking, for example, it may make sense to share this information with volunteers, visitors, and other individuals expected to come in contact with the patient.

Q: Does PHIPA allow healthcare providers to flag potential for violent behaviour to other healthcare providers where there is a transfer of accountability / transition of care?

Yes. PHIPA allows one healthcare provider to disclose personal health information to another provider if at least one of the following is true:

- the disclosure is to improve or maintain the quality of care provided by the receiving provider / organization; or
- there are reasonable grounds to conclude such disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm

Q: Is patient consent required to disclose to a worker information relating to a person with a history of violent behaviour?

A: No, though in some cases (e.g., where obtaining consent does not pose a risk to worker safety), healthcare providers may still wish to ask for it. Legally, consent is not required to allow an organization or its authorized agents to use or disclose to a worker information, including personal health information, relating to a risk of violence. However, it should be noted that patient consent may be required for information that does not pertain to the risk of violence.

Q: Do professional codes of conduct impose rules about information sharing for health and safety purposes that are inconsistent with PHIPA or OHS?

A: No. While healthcare workers must comply with their respective codes of professional conduct as established by the Regulated Health Professions Act, such codes must comply with and give precedence to statutory requirements, including the requirements established by the OHS. In any event, use or disclosure under the OHS normally is consistent with professional codes, and practice standards that typically impose a duty to take steps to eliminate or reduce a significant risk of serious bodily harm.

Q: Does the Resident's Bill of Rights establish different rules for long-term care homes?

A: No. Long-term care facilities are governed by the Long-Term Care Homes Act (2007), which contains a Bill of Rights protecting the residents of such facilities. This Bill of Rights provides that residents are entitled to have their personal health information treated in accordance with PHIPA. By incorporating PHIPA into its provisions, the Bill of Rights allows long-term care facilities to disclose personal health information where doing so is required to protect a worker from a person with a history of violent behaviour in accordance with the OHS. This also means that long-term care facilities must respect the rules set out in PHIPA, including establishing policies and principles to prevent misuse or over-disclosure of personal health information.

Respecting Both Patient Privacy with Worker Safety: A Case Study

Challenge

Patient X is known to become aggressive when exposed to significant noise. This stems from a medical condition whereby loud noise causes extreme inner ear pain. Because the patient is non-communicative, he cannot ask healthcare workers to keep noise down.

Solution

Patient X is flagged as having a history of/ potential for violence. A note on the patient's door asks anyone who enters the room to check with the nursing station before entering the room for important health and safety advice (without explaining specifically why). At the nursing station, workers and visitors are advised that the patient may become aggressive if exposed to loud noise. They are advised to work and visit quietly and avoid making loud noises in the patient's presence. If work is to be done that involves loud noise, provisions must be put in place to cover the patient's ears or remove him from the room.

Outcome

Without having to know the specifics of the medical condition causing the aggression, workers are able to comply with safety measures and keep themselves safe, while keeping the patient more comfortable.

REFERENCES

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