



# A Fine Balance

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**N**ew Year's Day 2004 - Did you suddenly feel that your privacy was now better protected? At midnight, while the champagne passed by your lips, several new laws took effect that obligate organizations to more rigorous control of the flow of health information.

If the HIPAA experience in the U.S. is any indicator, myths will abound for awhile about what actions do or don't comply with the new legislation. Especially at the coalface where patients and the health system connect. It is no easy task to find the right balance between patient confidentiality and health professional access to personal health information. It gets murkier when information is requested of non-clinical staff for non-care purposes. For example, if the police ask if John Doe has been admitted tonight, is the Emergency clerk allowed to comment?

There is also the balance needed between health professional confidentiality and patient access. A physician's notes to file or her referral form will undoubtedly be less candid if she knows the patient can ask to see these recorded observations at any time.

While enabling legislation is useful, indeed essential, there are three critical success factors that will ensure we get the balance right.

The first is compliance with plain common sense - like the set of Fair Information Practices of the OECD that form the basis for the CSA Model Code, PIPEDA, various provincial FOIPOP statutes, and more recently the Personal Information Protection Acts or 'PIPA's', freshly minted in some provinces to extend regulation to private sector organizations. Another excellent source of pragmatic advice is *COACH's Guidelines for the Protection of Health Information*.

The second factor that will help us get the balance right is listening to patients, not just health professionals and legal experts. I commend the approach being taken by the National Health Service in the UK. To help shape the future of the £ 2.3 billion NHS National Programme for Information Technology, two advisory groups have been set up - a National Clinical Advisory Board to represent healthcare professionals, and the Public Advisory Board (PAB) to represent patient interests. The PAB is no token gesture. As its Chair, Marlene Winfield, recently explained, "We have

brought together people from a range of patient, carer and public perspectives who will bring their different experiences to bear on key decisions. They are certainly not here just to rubber stamp our ideas."

A third vital ingredient in achieving quality care while respecting personal privacy is learning from each other's experience. There is a growing network of impressive leaders in this country in the health information privacy field. And they do indeed talk to each other. In early December many of them convened at a conference on the west coast, co-chaired by David Loukidelis and Frank Work, Information and Privacy Commissioners in BC and Alberta respectively. Several COACH members were presenters including Elaine Sawatsky, Linda Miller and John Swiniarski.

Elaine, Director, Privacy and Security for the Provincial Health Services Authority in BC, and current Chair of COACH's Privacy and Security Committee, presented BC's Privacy Codes of Practice proposed model for implied consent - sharing the stage with David Flaherty who presented his persuasive arguments for Express Consent.

Linda, Director of Information Management for Alberta Health and Wellness, and a COACH Board member, provided an update on her province's electronic health information network and EHR progress, in the context of the government of Alberta's Privacy Architecture.

John, Assistant Registrar of the College of Physicians and Surgeons in Alberta, and also a COACH Board member, explained the role of regulatory authorities like the CPSA in defining and promoting best practices in the collection, use, disclosure and retention of health information, whether in electronic, written or transmitted form. These practice standards go well beyond simply complying with the technicalities of privacy legislation.

I continue to be impressed with the contribution that COACH members are making to the national health informatics agenda, whether through presentations at conferences, participation in working groups, serving on the COACH Board and Committees, or simply being an active part of the experience sharing network. I am proud of all of you - our health system benefits greatly from your leadership.



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