

## The Role of Technology in the Production, Consumption and Use of Health Information

**The Problem:** New technologies are being incorporated into healthcare delivery at a rapid pace. Electronic health records, electronic assessment tools, computer-based consultation and the like are obvious ways in which computer technology has been brought in to the health care setting. In addition, increasing amounts of health information is posted on websites by governments, industry, and grass roots/community groups and the internet is becoming an important source of health information. Clearly there are great benefits to using computer-based technology in health care but there are also risks involved and in this part of the larger project, we examine the legal issues that arise. The design of the project as a whole is such that the legal team will be responding to questions that arise in the course of the other teams research. Issues that have been identified include:

### Electronic Health Records:

- Privacy and Security Issues
  - How do the uses and potential uses of EHRs cohere with the laws regarding consent to the release of the information?
  - What will the standard of care for protecting confidential information be?
- Intellectual Property Issues:
  - Who owns the electronic health record?
  - What copyright interest does the health care provider have vis-à-vis their contribution to an electronic patient record?
- Employment Law Issues:
  - Electronic records enable employers to monitor their employees access to and use of the records. What does the ability to surveil employees do to their privacy rights?
- Jurisdictional Issues:
  - EHR systems are sometimes purchased from companies outside of Canada. Are there any liability issues that follow from that?
  - Do EHR systems meet provincially mandated requirements for record keeping?

### Electronic Assessment Tools:

- Wireless hand held computers make it easier for health care providers to keep track of patient information and, thus, add to the efficacy of EPR but breaches of confidentiality remain a concern.
- Are there any liability issues that arise out of using or not using order entry systems for drug dispensing? Given that the current evidence suggests that order entry systems lower the possibility of medication errors will institutions not meet their duties if they fail to implement such a system?

### Computer-based Consultation:

- Licensing Issues:
  - Is a health care provider who offers advice regarding a patient in a different province practicing medicine without a license in that province?
- Liability Issues:
  - What is the scope of liability for health care providers who offer advice at a distance?

- What is the liability for companies who provide the technical services that remote consultation requires?
- Will there be any liability for failure to resort to computer-based consultation in a medical case?
- What is the standard of care for a computer consultation?

### Internet health information:

- Liability Issues
  - What is the scope of liability for those who post online health information when a person has been injured by relying on the information?
  - Is there any liability for information intermediaries who assist people in finding online health information?
  - Are some providers of online health information practicing medicine without a license?
  - What are the liabilities of public health services, nurse practitioners, educators and school boards if web-based health interventions to reach young people are undertaken in a school setting?
- Privacy Issues
  - Do web-based e-health initiatives for the public expose the users to surveillance by health systems/education systems?
  - Do information intermediaries who are not centrally involved in healthcare have a duty of confidentiality?

The issues raised above are matters that have already been identified. It is expected that further issues will be raised during the life of this project.

**Our research will address these issues by analyzing case law, statutes, policy papers, and academic commentary.** Where necessary, we will offer suggestions of where the law may go on novel issue. **Our work to date** has focussed on identifying legal issues that emerge in the settings our team members are studying, and we have begun research on some of these issues. **Our goal** is to answer questions that arise out of the other parts of the larger project, and specifically to shed light on legal issues arising in the applications of information technology in the health sector that our team members and partners are studying. In this respect, we hope to be able to provide information that will be of assistance to the groups who are the focus of the projects. Obviously, not all of the legal issues can be understood or fully addressed in advance of the technology becoming more common.

Our team members' partners include a range of organizations from small non-profit health care organizations to government departments, who are attempting to use information technology in a variety of ways. Partners include AIDS Committee of Newfoundland and Labrador, BC Cancer Agency, Canadian AIDS Treatment Information Exchange, Canadian Health Network, Canadian Policy Research Networks, Community Access Program, Industry Canada, Grey Bruce Huron Perth District Health Council, MacMorran Community Centre (Newfoundland), Mid-Main Community Health Centre (B.C.), National Research Council of Canada, Planned Parenthood (Newfoundland and Labrador), Smart Choices Society of British Columbia, Vancouver Coastal Health Authority, Vancouver Public Library, Victoria Hospice Society, Ministry of Health Services, Prevention and Wellness Planning Division (British Columbia), Coventry & Warwickshire GP Research Consortium (UK), Hanusch Krankenhaus Hospital (Austria), Lifeline Brisbane (Australia), Northern Primary Care Research Network (UK).

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