



## Accessing patient records

IF YOU'RE NOT IN THE PATIENT'S CIRCLE OF CARE, DON'T EVEN GO THERE.

KAREN\* WAS CURIOUS AND WANTED to know more about interesting diagnoses and treatment options. While working at an Ontario hospital, she reviewed thousands of patient files outside her circle of care. She thought she was acting within the law because the Personal Health Information Protection Act (PHIPA) allows access and use of personal health information for the purpose of risk and error management. Karen believed access to patient files was allowed if the action was meant to improve or maintain quality of care, quality of any related programs or services, or to educate professionals.

Do you think Karen was acting within the law? If you answer yes, think again. Karen was terminated for her actions.

While her union challenged the termination, the arbitrator found Karen violated her obligations and PHIPA, and her termination was upheld. In this case, the nurse accessed several thousand patient records, but in the eyes of labour arbitrators, employers, and the College of Nurses of Ontario (CNO), whether it's thousands or just one, it is a violation.

Compromising patient privacy is met with zero tolerance by most arbitrators, even if the number of breaches is minimal and for a short period of time. In another Ontario case, a nurse's termination was upheld after she accessed the records of four individuals

outside her circle of care, even though access on each lasted between two and six seconds.

Nurses are cautioned not to think access to personal information is okay if the person is a family member, and that implied or express consent is acceptable grounds to look at confidential files. One Ontario nurse was terminated for such a breach. The arbitrator found there were compelling mitigat-

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ing circumstances regarding the nature of care she provided, and she was reinstated. However, she did not receive back pay, which is a substantial penalty, as several months passed between the nurse's termination and the arbitrator's decision. It is not unusual for a grievance arbitration to take more than a year, sometimes several years, to complete.

CNO's *Therapeutic Nurse-Client Relationship* standard permits nurses to provide care for family members as an unregulated care provider in the home. A nurse is acting in a professional capacity at work. As such, the standards require

that nurses refrain from working in a nursing role for friends or family members, unless no other care provider is available. When it comes to the records of friends or family members, even if you have the express consent, politely direct them to their health-care provider. The same applies to your own records. You may not only risk termination, but also being reported to CNO by your employer.

CNO is concerned with ensuring nurses comply with the legislation and with its confidentiality and privacy standard. It takes compliance with the law very seriously and developed its standard to be in accord with Ontario's privacy legislation, which states nurses "access information for her/his clients only and not (access) information for which there is no professional purpose."

Another Ontario nurse accessed the records of four individuals who were not her clients, including the daughter of her common-law spouse. She later shared that patient information with her spouse. As a

result, she received a one-month suspension, was required to complete remediation activities, and had to meet with a regulatory expert. She also had to provide a copy of CNO's decision to her employer, who had to agree to advise the college of any breaches of CNO standards for 12 months.

Non-unionized nurses who inappropriately access patient records do not have the benefit of grieving a termination, and may find their employment terminated with cause. While you can challenge the dismissal through civil action or a complaint under the *Employment Standards Act*, such an action is unlikely to succeed when the termination is the result of a breach of both legislation and professional standards.

Employers know that mistakes happen. If you accidentally access a record that you should not have accessed, immediately notify a manager both verbally and in writing. Health-care providers regularly audit their systems and nurses are in a much better position if full disclosure is offered immediately, rather than trying to explain weeks, even months, down the road what happened, and why you didn't disclose. **RN**

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\* Pseudonyms have been used to protect privacy.