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SPEAKING NOTES

PIPEDA and PHARMACY

Briefing to the House of Commons Standing Committee on
Access to Information, Privacy and Ethics

on the Statutory Review of the

Personal Information Protection and Electronic Documents Act
(PIPEDA)

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Ottawa, Ontario
December 13, 2006

Good afternoon. The Canadian Pharmacists Association welcomes this opportunity to present to you today during your review of PIPEDA. My name is Jeff Poston, and I am the Executive Director of CPhA.

For those of you unfamiliar with our organization, the Canadian Pharmacists Association is the national voluntary organization of pharmacists, committed to providing leadership for the profession of pharmacy and improving the health of Canadians. Our members include pharmacists in all areas of practice: community pharmacies, hospitals, universities, governments and industry.

Pharmaceuticals are a vital part of the Canadian healthcare system. Retail spending on drugs is forecast at just over \$25 billion this year, or 17% of total health care spending¹. However there is a recognized need to improve both the safety and outcomes of drugs. Pharmacists' scope of practice is changing so that they can better help their patients achieve optimal outcomes from their drug therapy.

We would like to state the pharmacy professions' strong commitment to the protection of patient confidentiality and privacy. This is evident from our professional code of ethics, legal provincial standards of practice, and CPhA's privacy code for pharmacists. Pharmacists have demonstrated their capacity to do this using technologies such as electronic patient files and the on-line transfer of prescriptions for payment to public and private drug plans for over 15 years. Every day across Canada, pharmacists dispense over a million prescriptions – many of these are for patients with mental illness, HIV/AIDS, infections and serious illness – health information that is entrusted to us and kept confidential by us.

Pharmacists strongly believe that Canadians' right to privacy protection of health information is fundamental.

At the time the legislation was drafted, we had three primary concerns:

1. It did not make a distinction between the therapeutic purposes for which personal health information is used – even when it is paid through private plans – and the commercial purposes for which personal information resulting from commercial transactions is normally used.
2. Two levels of privacy protection rights for Canadians were being created – one for people covered by public plans and one for those covered by private plans.
3. The impact on the health care system of the proposed changes was unanticipated – the impact on patients and providers time and the ensuing financial burden.

We originally proposed amending the legislation so that it would not apply to the health care sector for a period of five years to allow for the development of specific health privacy protection legislation by the provinces. After this five year period, we proposed that the Act would apply to the health care sector if provincial health privacy legislation was not in place.

Before PIPEDA came into effect, there were major concerns that PIPEDA could impede care — there was a lot of confusion about what it meant for everyday practice. Due to the pre-PIPEDA work done by the Privacy Working Group² of health provider and consumers associations, the development by CPhA of the *Pharmacist's Personal Information Privacy Code*³, and the overriding provincial privacy legislation, PIPEDA has not had the negative effect on pharmacy practice, as first anticipated.

However, there are three specific areas of concern that CPhA would like to raise during the review of the Act:

1. The PARTs guidelines need to be given legal status.
2. The use of health information needs to be considered.
3. The future implications of the Act.

The lack of legal status given to PARTs guidelines

The PIPEDA Awareness Raising Tools Initiative⁴, or PARTs, was particularly important in interpreting the effect of PIPEDA on the health sector and clarifying when the legislation was applicable. CPhA's development of the pharmacist's privacy code and other practice tools such as guidelines, brochures and pharmacy posters⁵, helped pharmacists prepare for the PIPEDA. The questions and answers of the PARTs initiative have served as the primary guideline for how this legislation effects the provision of health care.

CPhA is concerned that PARTs still does not have legal standing. These guidelines are fundamental to the application of PIPEDA in the health sector. CPhA would like to see the PARTs guidelines specifically referenced in the Act so that they have official legal status. In particular, the principle of implied consent in the direct care and treatment of a patient, as defined in a circle of care, needs to be recognized under PIPEDA (i.e., questions 19 & 21 of PARTs). This is recognized as a core concept in the Pan-Canadian Health Information Privacy and Confidentiality Framework⁶.

The use of health information

There are a number of privacy issues that arise when patient information is being used for research purposes. Health information for research is produced and created by all sorts of health care professionals and we have to allow appropriate exchange and use of such information. This data is particularly useful in helping to assure the appropriate use of health care services, to measure outcomes and to develop health policy. We believe health information data should not identify individual patients and should not be used for purposes outside of appropriate statistical, scholarly study or health care research⁷.

CPhA supports the appropriate collection, exchange and use of health information, including prescribing data, for health care research. Specific to pharmaceuticals, this data could be used to support optimal prescribing and utilization — this is for quality assurance purposes and needs to occur within a peer-reviewed process. However, we do have concerns that sometimes this

information is used inappropriately.

Future implications of the Act

We must look to a future with electronic prescribing and electronic health records (EHR). Having patients' health information directly at the point of care will enable the appropriate health care provider to make better, more informed decisions concerning patient care. These electronic information systems will enhance patient health outcomes, patient safety and maximize the efficient use of health care resources. In an e-health environment, pharmacists will need to read and write to the EHR, in order to communicate and work collaboratively with other providers, and to make better informed patient-care decisions.

The Canadian Pharmacists Association has collaborated with the Canadian Association of Chain Drug Stores (CACDS) and the Canadian Society of Hospital Pharmacists (CSHP) to develop principles and elements to guide the development and use of these electronic drug information systems⁸. One of the key principles we identified is as follows:

“Health information systems, including pharmacy information networks, must employ rigorous, stringent security measures and comply with privacy legislation to protect the confidentiality of patient information, while not constraining the ability of health care providers to access information and to practice in a patient-focused and efficient manner.”

The PARTs guidelines play an important role in clarifying PIPEDA for the health care sector; this will be even more significant in the future with the evolution of electronic patient records. It is important that the current interpretation of the legislation as it applies to health care is also extended to the future electronic transmission of health information. The Pan-Canadian Health Information Privacy and Confidentiality Framework is an important step to supporting such developments.

Conclusion

In conclusion, the protection of personal health information has and always will continue to be of paramount importance to pharmacists. The relationship of trust between patients and pharmacists is fundamental to the delivery of care.

Thank you again for allowing CPhA the opportunity to participate in your PIPEDA review. I would be pleased to answer any questions you might have.

References

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- ⁸ Principles and Elements for Optimal Pharmacy Participation in the Development of Pharmacy Information Networks; Canadian Association of Chain Drug Stores, Canadian Pharmacists Association, Canadian Society of Hospital Pharmacists; January 2006. http://www.pharmacists.ca/content/about_cpha/who_we_are/policy_position/pdf/e-pharmacy%20PIN%20principles-elements%20CACDS-CPhA-CSHP%20Jan06.pdf