**Learner Privacy in Canadian Medical Schools**

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# CFMS Position Paper: Learner Privacy in Canadian Medical Schools

## Policy Area

Medical Student Affairs

## Problem History

The Canadian Resident Matching Service (CaRMS) has provided a third-party service to match medical students to residency spots. Recently, medical education organizations have stirred debate over the role of CaRMS in Canadian medical education and ownership of the information that learners provide to CaRMS.

Although the Ontario Freedom of Information and Protection of Privacy Act (FIPPA) - which has jurisdiction over the contract between CaRMS and the AFMC - states personal information disclosure is only permitted if there is consent or if the information collected is disclosed for the purpose for which it was obtained or collected, no Canadian case law directly guides medical schools or medical education organizations in their use of the personal information of Canadian medical students. It is unclear the degree to which students should be consulted and their consent given before information such as their academic performance, medical information, or professionalism concerns are shared. Without a clear framework to protect the privacy of medical students, personal data is often used without the knowledge of students in a way which could breach their privacy.

For example, information regarding students is often shared by CaRMS for research and knowledge-sharing purposes. Although this data is anonymized, with the relatively small number of students in specific applicant pools, it would often be feasible to extrapolate information from anonymized data to the individuals for which the data concerns. Another example pertains to the medical student performance record (MSPR) which constitutes the primary pathway for non-academic personal information to travel from medical schools to postgraduate programs. This information is often not collected for the purpose of informing post-graduate programs of professionalism concerns but is often used in this manner and thus the legality of sharing such information without student consent is questionable. However, due to the lack of case law on this topic, it is difficult to identify a clear legal boundary which can be held and therefore it is imperative the CFMS take a strong stand in support of learner privacy.

## Problem Definition

The lack of clarity around personal information ownership, stewardship, and use confuses agreements between medical students and the authorities to whom they report, such as universities, regulatory authorities; or users of the information the AFMC, CaRMS, and others. For example, unmatched students face resistance when attempting to understand why they may have gone unmatched when they request further data. Perhaps more importantly, the lack of explicit case law complicates data transfer agreements between CaRMS and the AFMC and gives universities and regulatory authorities significant control over learner information when it is unclear whether, due to potential student ownership of that data, such control should require consent from students. Furthermore, with creeping scope of practice of using student information, there is also the question of whether the use of said information is appropriate under current privacy regulations.

## Position Statement

Medical students must give explicit, informed, time-limited, consent each time personal information is transferred between medical education organizations. Current privacy legislation must be respected and each time personal information is requested to be shared, there must be a legitimate balance struck between learner privacy and public safety/legislated reporting. Personal information gathered by students should be no different than that collected of in-practice physicians.

## Recommendations

The CFMS makes the following recommendations to safeguard the privacy of Canadian Medical students (further information and rationale for these recommendations can be found in the supplementary material section below):

1. Medical schools should explicitly declare what types of information are available to postgraduate programs and outside parties/organizations, and they should be especially clear about that information as it pertains to the residency matching process
	1. The MSPR includes many subjective comments regarding a student’s professionalism and future aptitude. In the interests of a fair matching process, the CFMS holds that specific content of the MSPRs should be described to medical students at the outset of their education and then made available to medical students before beginning the matching process.
2. Aggregated and anonymized learner data should be available freely in highly-usable formats but the use of that data should always occur in consultation with representative medical student government. Data collected for the purpose of the CaRMs match should not be used for other purposes without explicit consent by the learner.
	1. Medical students have claim to ownership over their personal information. Medicine in Canada includes many specialties or practice locations that may not lend themselves to anonymization. While the aggregation and anonymization of that data for research purposes is important, it remains crucial for both CaRMS and the AFMC to request explicit consent from medical students and medical student government before releasing such data. Data which was collected by CaRMs with the sole purpose of being used in the match process should not be used for other purposes without explicit consent by the learner.
	2. The current format of residency match reports requires significant improvement. Medical students learn to make important decisions with as much high quality evidence as possible, and the availability of high quality match data in high-readable formats is still lacking. The CFMS calls on the AFMC and CaRMS to improve the usability of residency match reports including interactive graphs, multi-year analyses, and projections.
3. Canada’s medical students believe the third party data steward, CaRMS, is integral to fair and consensual use of student data during the matching process.
	1. The CFMS believes in the paramount importance of a fair and confidential resident match process. Postgraduate programs are interviewing prospective employees, not simply admitting students. Therefore, all the rights and protections afforded to prospective employees should be afforded to medical students. Postgraduate programs and medical schools should not know what other residency positions a medical student has applied to; postgraduate programs should not know in which order a medical student ranked their program; and postgraduate program should not know the sex, ethnic and racial status, marital status, or any other type of personal information without the medical students’ express consent. The CFMS believes that the surest way to uphold such significant confidentiality is to entrust medical students’ personal information to disinterested third party stewards. CaRMS has served this function admirably since 1969, and the CFMS endorses the role of CaRMS in the matching process.
4. The residency match process should conclude with shared goal-setting for postgraduate learning
	1. Timely and credible feedback promotes learning. One of the challenges of becoming a physician involves using experience and feedback to plan an approach to future learning. It may be possible that information about medical students’ strengths and areas for improvement from their time in undergraduate medical education could serve as a useful scaffold for learning. Learners have a right to access personal information about their learning and education.

## Accountability Statement

The Board of the CFMS is responsible for using these recommendations in their interactions with Canada’s medical education organizations.

# Appendix I: Background, Principles, & Recommendations

### Background

Medical students’ most significant concerns about privacy come from our attention to the residency matching process. The Canadian Resident Matching Service (CaRMS) has provided a third-party service to match medical students to residency spots since 1969. Before 1969, medical students were matched with residency positions using an internally-provided service by the Canadian Association of Interns & Medical Students. The development of CaRMS (which was initially called Canadian Interns Matching Service) was spearheaded by students, the Association of Faculties of Medicine of Canada (then called the Association of Canadian Medical Colleges), and other medical education organizations like the Canadian Medical Association (CMA). Today, the mission of CaRMS remains “to serve as an independent, arms-lengths provider of a client-centred, fair, transparent, and equitable matching service for medical education in Canada”.1 Recently, medical education organizations have stirred debate over the role of CaRMS in Canadian medical education and ownership of the information that learners provide to CaRMS. This position statement discusses the legal, ethical, and political aspects of that debate from the perspective of medical students.

#### Ownership of Personal Information

The CFMS holds the position that medical students’ personal information fundamentally belongs to medical students themselves. While the term ‘personal information’ intuitively includes information like name and address, determining what kinds of information are indeed personal may be more complicated in the medical education setting. Are academic transcripts ‘personal’? Are residency matching rank order lists ‘personal’? Answering these questions may help to clarify medical students’ legal rights to their own information as well as more complicated questions around learner privacy for medical schools, the AFMC, and CaRMS.

Post secondary education falls under provincial jurisdiction in Canada. Therefore, understanding ownership of medical students’ personal information requires a discussion of provincial laws. It is worth noting that information that is shared interprovincially continues to be protected by the legislation of the province in which the information was collected, regardless of the transmission destination. Only if there were legal action against a third party for having unlawfully collected and stored this information would the laws of other jurisdictions be involved.[[1]](#footnote-1)

This paper will largely use the privacy legislation from Ontario as its provincial law is used to guide the contract between the CaRMS and the AFMC. In the discussion of the paper, case law from other provinces will also be discussed. As defined in the Ontario Freedom of Information and Protection of Privacy Act (FIPPA), personal information includes the following:2

1. “information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
2. information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
3. any identifying number, symbol or other particular assigned to the individual,
4. the address, telephone number, fingerprints or blood type of the individual,
5. the personal opinions or views of the individual except where they relate to another individual,
6. correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
7. the views or opinions of another individual about the individual, and
8. the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.”

Provincial legislation is clear about who owns this kind of data as it pertains to medical education. Ownership of student information lies with students themselves. According to the legislation, “a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information…relates to employment or educational history” (F.31, s. 21 (3)).2 Legal precedent in Alberta extends this protection to the public sphere. Not only do students’ personal information and educational records belong to students themselves, but students’ public statements are protected by the right to freedom of expression.3

Parameters surrounding disclosure of personal information is further defined in Ontario’s Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31. Disclosure is only permitted if there is consent to the disclosure of a particular piece of information by the owner (42(1)b) or if the information collected is disclosed for purpose for which it was obtained or compiled, or for a consistent purpose (42(1)c). To be considered a “consistent purpose” under the FIPPA, the individual must reasonably have expected such a use or disclosure (43).

If an organization outsources or contracts for services, as the AFMC does with CaRMS, it remains the responsibility of the outsourcing organization to ensure that privacy compliance, with respect to personal information, is transferred to the service provider.[[2]](#footnote-2) Although this puts the burden on the AFMC to ensure that information is handled in compliance with PIPEDA, it is also generally the contracting organization’s responsibility to obtain consent from individuals for the use and disclosure of their personal information.

Individuals have the right to access a record of their personal information. Admittedly, some exceptions exist. For instance, an institution like CaRMS can refuse to disclose a record that might reveal technical information or trade secrets that would interfere their business workings. For that reason, medical students are not entitled to information about proprietary CaRMS information like software or algorithms. In addition, an educational institution like a medical school can refuse to disclose a personal information record if it is involved in litigation.

In summary, with few exceptions: i) medical students legally own their personal information, ii) their personal information can only be disclosed with their consent, iii) they have the right to access their records as they see fit, and iv) their records can only be disclosed to a third party if authorized by the students. **In short, personal demographic information, transcripts, and rank order lists all belong to medical students**.

#### Current Practices in Transition to Residency

Canada’s medical students and postgraduate training programs agree to enter into binding education agreements based on the results of the CaRMS match. In their final year of medical school, medical students travel the country meeting with postgraduate training programs. In those meetings, medical students evaluate their desire to be admitted to the program before submitting a list ranking the programs. The postgraduate training programs do the same evaluation of medical students and submit lists of their own. Before the match is completed, medical students sign contracts to work in the hospitals to which they’ve applied, universities provisionally admit the student, and hospitals commit to employ the student within the program upon their arrival. These formal agreements activate once the results of the match are revealed and residency spots are assigned.

#### Potential Threats to Learner Privacy

Many steps in this process test the limits of learner privacy and control of personal information. Medical students turn their transcripts, personal statements, curriculum vitae, and letters of recommendation over to CaRMS to distribute to the programs. And students provide CaRMS with a rank order list that is intended to remain confidential and only used for the purpose of matching to a program. Medical schools and their Faculties of Medicine turn over Medical Student Performance Records and other documents to be distributed to programs. Which of these documents require the individual consent of learners remains unclear, as do the consequences of learners withdrawing consent for disclosure of specific documents.

For example, although FIPPA states personal information disclosure is only permitted if there is consent or if the information collected is disclosed for the purpose for which it was obtained or collected, whether a university has the right to pass on mental health or professionalism information without someone's explicit consent would be dependant on the purpose with which information was collected and the original proposed use of it. **As there is inadequate case law that interprets “consistent purpose” as it pertains to undergraduate medical learners, it is imperative the CFMS take a strong stand in support of student privacy.**

The transition from medical school to residency remains a complicated and highly social process where the reputation of programs and learners themselves become highly important. As Canadian medical education begins to understand the lifelong nature of learning in the medical profession, the question of learning across the education spectrum from UME to CME continues to be discussed. Postgraduate training programs, medical education organizations, and regulatory organization have begun to consider the importance of feeding information about learners forward from the first days of their training process to the last days. However, medical students remain cautious about the wisdom of allowing training programs unfettered access to their personal information.

The expectation of fairness from the Canadian residency match process and the postgraduate training process relies on the good faith reputation established by CaRMS as an arms-length education institution. Medical students enter the match and residency believing that only the information they consent to be shared will be shared. This position paper outlines the CFMS’s position on the ownership of personal information and discusses how that information should be shared and used.

### Principles

The CFMS holds four principles to guide agenda-setting and policy-making in learner privacy. These principles build on the background information developed above and are focused on educational innovations currently being proposed by medical schools in Canada

#### 1) Support for student centred information transfer for educational design.

Canada’s medical education community has turned its focus toward lifelong learning.4 One of competency-based medical education’s key premises holds that competence is not a state that is achieved and then remains static but rather a process in constant evolution. It follows, then, that a physician learns to practice medicine from their first day of medical school to their last day of practice. Sound educational principles underlie the desire to build and refine a learning portfolio that helps a learner to frame their studies from medical school into independent practice. The CFMS supports efforts to develop feed forward of learner strengths and weakness as long as consent is iteratively requested for each piece of information.

#### 2) Decision-making about academic and non-academic information sharing must be collaborative

Two statements guide the CFMS’s belief that any decision about information shared about a learner must be shared with their consent and in a spirit of collaboration between faculties of medicine and medical students. Those two statements are as follows: i) learners own their personal information, and ii) learners’ right to freedom of expression cannot be sanctioned by institutional policies on professionalism. While identifying professionalism concerns early in the educational process may improve intervention and discipline, the matter of how information about professionalism violations transferred remains controversial. The CFMS suggests that, to protect the matching process, Canadian medical educators consider the model where medical students sit as members of their provincial regulatory authorities and that professionalism concerns are managed centrally rather than locally.

#### 3) Utility of responsible education research and evidence-informed decision making

While learners have a right to privacy, the importance of conducting education research to improve the medical education system permits researchers, medical schools, governments, and medical education organizations to conduct research using medical students’ personal information. However, medical students demand that all parties recognize students themselves as owners of their personal information and expect significant safeguards be installed to aggregate and anonymize such data. All interested parties should be consulted in the process of designing education research and medical students reserve the right to opt out of research performed using their personal information. The system of safeguards and the means of accessing student data should be transparent and publicly available.

#### 4) Value of a fair and protected residency match process

The residency match process constitutes one of the highest stakes endeavours a physician will encounter in their career. The pressure of health human resources planning; shifts in the number and location of residency spots; the monopoly on residency spots held by agreements between governments and medical schools; and the great personal costs invested in the match combine to make it one of the most important facets of medical student advocacy. For these reasons, the CFMS demands that the residency match process be both fair and free from breaches of confidence. The greatest safeguard against lack of confidentiality remains the use of third party stewards such as CaRMS to both hold the sensitive personal information of learners and to conduct the matching process.

### Recommendations

The CFMS recommends four courses of action based on the above principles. The recommendations here are intended for the multiple stakeholders whose work raises questions of medical students privacy. The stakeholders include: the CFMS, the Association of Faculties of Medicine of Canada (AFMC), the Canadian Residency Matching Service (CaRMS), the College of Family Physicians Canada, the Royal College of Physicians and Surgeons of Canada, as well as other national and provincial medical and medical education organizations.

#### The decision to share non-academic information with postgraduate programs should be transparent and voluntary

The medical student performance record (MSPR) constitutes the primary pathway for non-academic personal information to travel from medical schools to postgraduate programs. This includes many subjective comments on professionalism and aptitude. In the interests of a fair matching process, the CFMS holds that specific content of the MSPRs should be described to medical students in detail at the outset of their education and then made available to medical students before beginning the matching process.10 The threat of a non-standardized MSPR offers significant power to the Faculties of Medicine over medical students with little recourse. Medical students have concerns over the way faculties can both explicitly state or implicitly suggest that specific behaviors that may not be relevant to future medical practice may find their way into the current unstandardized and opaque process of MSPR writing.

The current use of the MSPR appears to suggest that its purpose may be to forewarn postgraduate programs about unprofessional behavior. However, the CFMS contends that major concerns about professionalism and discipline belong to the domain of provincial regulatory colleges. Therefore, to protect the matching process, the CFMS encourages provincial regulatory colleges to offer to collaborate with medical students and faculties of medicine to develop new approaches to concerns about unprofessional behavior that take them from the academic realm to the regulatory realm.

#### Aggregated and anonymized learner data should be available freely in highly-usable formats for research purposes

The current format of residency match reports requires significant improvement. Medical students learn to make important decisions with as much high quality evidence as possible, and the availability of high quality match data in readable formats is still lacking. The CFMS calls on CaRMS and the AFMC to improve the usability of residency match reports including interactive graphs, multi-year analyses, and projections.

That said, the CFMS also wishes to clarify that medical students have claim to ownership over their personal information. Medicine in Canada includes many specialties or practice locations that may not lend themselves to anonymization. While the aggregation and anonymization of that data for research purposes is important, it remains crucial for both CaRMS and the AFMC to request explicit consent from medical students and medical student government before releasing such data. Data which was collected by CaRMs with the sole purpose of being used in the match process should not be used for other purposes without explicit consent by the learner. Furthermore, all research intended for publication must have ethics board approval to ensure the data analysis is being conducted in a way which protects the privacy and rights of learners.

Making this data free takes some strides toward evening a research field that is tilted in favor of the AFMC. The CFMS contends that while the AFMC Graduate Questionnaire provides clinicians and researchers with useful information,11 that data is not singularly sufficient for the improvement of Canadian medical education. Therefore, the opportunity to collect students’ personal information does not lie solely with the AFMC nor with CaRMS but, rather, remains subject to the approval of students themselves.

#### Learners’ personal information should continue to be held by third party stewards

The CFMS believes in the paramount importance of a fair and confidential resident match process. Postgraduate programs are interviewing prospective employees, not simply admitting students. Therefore, all the rights and protections afforded to prospective employees should be afforded to medical students. Postgraduate programs and medical schools should not know what other residency positions a medical student has applied to. Postgraduate programs should not know in which order a medical student ranked their program. A postgraduate program should not know the sex, ethnic and racial status, marital status, or any other type of personal information without the medical students’ express consent. The CFMS believes that the surest way to uphold such significant confidentiality is to entrust medical students’ personal information to disinterested third party stewards. CaRMS has served this function admirably since 1969, and the CFMS endorses the role of CaRMS in the matching process. Ultimately, though, it bears remembering that no decisions about learner data—aggregated or otherwise—should be made without collaboration and consent from medical students themselves.

#### The residency match process should conclude with shared goal-setting for postgraduate learning

Timely and credible feedback promotes learning.5,6 One of the challenges of becoming a physician involves using experience and feedback to plan an approach to future learning.7 The transition to residency offers many new learning opportunities, and the CFMS recognizes the importance of medical students arriving to those opportunities as informed and active learners. Therefore, it may be possible that information about medical students’ strengths and areas for improvement from their time undergraduate medical education could serve as a useful scaffold for learning. A ‘learning portfolio’ has been suggested as a possible tool for ‘feedforward’ of learner weaknesses and strengths.8 While the CFMS recognizes the potential value of this tool, that recognition comes with multiple caveats:

1. Learning portfolios should be learner-centred and learner-facing. The design of portfolios should be focused on helping residents to guide their learning rather than as tool for postgraduate assessment.
2. Disclosure of learning portfolios should be voluntary and the program-facing elements of the portfolio should summarize areas for improvement rather than highlight weaknesses
3. The development of learner portfolios should be accompanied by a strong statement from the AFMC that learner portfolios are intended to be confidential tools to assist learning

Multiple frameworks exist upon which a useful and efficient feedforward learning tool might be developed. Summaries of the entrustable professional activities for Canadian medical students, topic-specific summaries of LMCC exam performance, new workplace-based assessment reports, or, more simply, feedforward learning goal interviews may be useful in the effort to guide learning.9 Most importantly, though, the Canadian medical education community must remain aware that the degree of, content of, and consent for feedforward of information on academic performance from medical school to postgraduate learning remains the purview of the medical students themselves.

## Conclusions

The CFMS supports well designed, innovative, and student-centred means of transferring medical students’ information. Medical education organizations who wish to share medical students’ personal information should follow the above recommendations and ensure that clear and iterative consent is requested before any personal information is transferred.

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