

## Learner Information Sharing in Canadian Medical Education

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# CFMS POSITION PAPER: LEARNER PRIVACY IN CANADIAN MEDICAL SCHOOLS

## Policy Area

Medical Student Affairs

## Information Privacy Definitions

The terms below are the legal terms used to refer to the various activities which are relevant to student information. They are, throughout the paper, used for consistency with legislation. Although the definitions of these terms vary slightly from province to province, the background below should give the reader a generally applicable, if limited, overview of key terminology.

**Collect** - to gather, acquire, receive, or obtain personal information.

**Use** - to apply personal information for a purpose that includes reproducing the information, but does not include disclosing the information.

**Disclose** - to transfer personal information from one organization or body to another.

**Personal Information** - information about an identifiable individual. (See Appendix I for a more detailed overview).

**Learner Data** - information about an identifiable medical learner.

## Background: Personal Information and Student Rights

Although privacy legislation differs from province to province, some general principles apply across Canada. Although neither individuals nor organizations can own personal information about an individual, the law grants individuals a number of rights with regards to their personal information. Medical students, like all Canadians, have the following general rights (although these may differ slightly by province and are often subject to limited exceptions):

1. The right to know why their personal information is being collected including how it will be used and disclosed;
2. The right to request access to their personal information and view or receive a copy of it within a reasonable time frame;
3. The right to request a correction or amendment to their personal information and to know why the correction or amendment is refused if it is refused;
4. The right to have their personal information collected, used, and disclosed in accordance with the principles of need to know, highest degree of anonymity, and least amount of information;
5. The right to consent to the release of their information prior to its disclosure from one organization or body to another except where legislation permits or requires disclosure without consent (for example, to law enforcement); and
6. The right to request a review of any collection, use, or disclosure that they believe was illegal or inappropriate by the Information and Privacy Commissioner of the province in question or of Canada. The Information and Privacy Commissioner of each province is able to make legally binding orders respecting personal information and apply penalties to those who breach privacy legislation.

## **Problem History**

Many organizations, including universities, regulatory authorities, colleges, and the Canadian Resident Matching Service (CaRMS) collect, use, and disclose personal information pertaining to medical students. CaRMS has a special role in the collection, use, and disclosure of student information as it provides a third-party service to match medical students to residency positions.

CaRMS follows the Personal Information Protection and Electronic Documents Act (PIPEDA), which is the federal privacy law for private-sector organizations. It sets out the ground rules for how businesses must handle personal information in the course of commercial activity. PIPEDA provides strict rules for the collection, use, and disclosure of personal information, no Canadian case law directly guides medical schools or medical education organizations in their use of the personal information of Canadian medical students. Further complicating matters is the fact that each province has its own privacy legislation governing its public-sector institutions such as universities, and each university has its own policies and procedures to ensure compliance with its respective provincial legislation. While CaRMS shares student personal information for the purposes of facilitating the residency matching process, there is a risk that other institutions may in the future be able to access applicant information through various data sharing contracts. It is important that such disclosures be transparent, and that consent be obtained.

Related to the issue of sharing of information by CaRMS for the residency matching process is the sharing of information in an individual's Medical School Performance Record (MSPR) during the match. Universities collect a wide array of personal information including generating records regarding non-academic, health or mental health concerns. Unless consent is given by an individual learner, this personal information is not collected with purpose of being disclosed to other institutions or programs. As an example, should personal information of this nature make its way into a student's MSPR, this would likely constitute an inconsistent use of the information under privacy legislation if the consent of the student in question was not obtained prior to disclosure. Generally, privacy legislation requires collected information to be used solely for purposes which are consistent with the original purpose of collection and places additional protections on disclosure. However, due to the lack of case law on this topic, it is difficult to identify a clear legal boundary and therefore it is imperative that the CFMS take a strong stance in support of learner privacy.

After students are matched to residency positions, further information is sometimes shared between the school where a student conducted their studies and the program to which they matched. The CFMS is concerned about the potential for information regarding academic performance, medical information, or professionalism concerns being disclosed without student knowledge or consent during this process. While such disclosures may be done with the best of intentions, they have the potential to cause harm, breach privacy, and contravene provincial privacy legislation governing academic institutions. Although concerns about disclosures of this type have been raised by members of the student body, to the knowledge of the CFMS, no student has complained to a privacy commissioner or taken legal action.

In addition to the sharing of personal information for educational purposes, student data is often disclosed or 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 may be feasible to identify individuals from the anonymized data in some cases. Therefore, there is potentially risk to students even when anonymized data is disclosed for non-educational purposes.

## **Problem Definition**

The CFMS recognizes the need for a number of organizations to collect, use, and potentially disclose the personal information of medical students. Nonetheless, the lack of clarity around how medical students'

personal information is being collected, used and disclosed by various bodies including universities, regulatory authorities, the Association of Faculties of Medicine of Canada (AFMC), CaRMS, and others presents a significant problem. Student information may be used for purposes which students did not fully understand upon consent or be disclosed in a manner which may, even inadvertently, cause a student harm. The CFMS has also received reports from students indicating that their requests to access their personal information have been denied and proper legal procedure is not always followed. The lack of explicit case law on all of these topics further increases the difficulty students and the CFMS have in determining whether information is being collected, used, and disclosed appropriately and in accordance with the law.

## Position Statement

It is imperative that the collection, use, and disclosure of learner personal information be conducted in accordance with the law and in consultation with the CFMS, which represents and advocates for students across the country. Additionally, students should be made aware of what information is being collected, how it will be used, and the circumstances under which it will be disclosed. Where possible, consent should be obtained for these activities, especially where information will be disclosed from one medical education organization to another. Where professionalism concerns exist, these should be dealt with at the university or professional college level, as appropriate, and should not be wantonly given to the residency program to which a student matches. With respect to the R1 residency match, the CFMS supports continued handling of student information by an independent third-party organization.

## Recommendations

The CFMS makes the below eight recommendations to safeguard the privacy of Canadian medical students. Each recommendation is subsequently explained in more detail. The recommendations here are intended for the multiple stakeholders whose work raises questions about medical students' privacy. The stakeholders include but are not limited to: the CFMS, the 17 Faculties of Medicine, the Association of Faculties of Medicine of Canada (AFMC), the Canadian Resident Matching Service (CaRMS), the College of Family Physicians of Canada, the Royal College of Physicians and Surgeons of Canada, Medical Regulatory Authorities (MRAs), as well as other national and provincial medical and medical education organizations.

Principle	Examples of Implication
<p><b>1. Aggregated, anonymized and de-identified learner data should be available freely in highly-usable formats to allow for career planning, research, and the improvement of medical education provided that all research intended for publication has ethics approval, is done with student consent, and individual identifiers are removed.</b></p>	<p>Medicine in Canada includes many specialties or practice locations that may not lend themselves to anonymization. The CFMS recognizes the importance of research and quality improvement projects in medical education and supports such efforts as long as student privacy is respected. 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. The CFMS expects that significant safeguards be installed to aggregate and</p>

	<p>anonymize data appropriately to reduce the risk of re-identification. 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. Furthermore, all research intended for publication should have ethics board approval to ensure the data analysis is being conducted in a way which protects the privacy and rights of learners. Personal information, which is 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.</p>
<p><b>2. Students should be informed of their rights regarding their personal information and potential support mechanisms should they believe that their rights have not been honoured.</b></p>	<p>Students should be informed of the rights explained in the section titled: Background: Personal Information and Student Rights. CFMS may consider developing a process for aiding students who are refused access to their information.</p>
<p><b>3. Medical schools and any other organizations handling medical student personal information should take care to ensure that collection, use, and disclosure of all personal information is in accordance with the privacy legislation in their region.</b></p>	<p>Since privacy legislation differs from region to region, it is imperative that any organization handling student information ensure that it is doing so in an appropriate and legal manner.</p>
<p><b>4. Disclosure and use of medical student personal information (academic and non-academic) should be conducted with the informed and explicit consent of the student who is the subject of the information wherever possible.</b></p>	<p>By engaging in consultation with the CFMS regarding the disclosure of information, medical schools will help to improve transparency. The personal information of learners should be disclosed with their consent wherever possible and in a spirit of collaboration between faculties of medicine and medical students. For example, this would include, but not limited to, sharing of MINC#s and learner academic accommodations.</p>

<p><b>5. Medical schools should explicitly declare what types of information are available to postgraduate programs and outside parties/organizations, and appropriate consent processes in place.</b></p>	<p>The MSPR and Learner Handover Information are the primary pathways for non-academic personal information to travel from medical schools to postgraduate programs. It includes many subjective comments regarding a student’s professionalism and future aptitude. In the interest of a fair matching process, the CFMS holds that specific content of the MSPRs and Learner Handover information should be described to medical students at the outset of their education. The MSPR should be made available to medical students before beginning the match process so that they are aware of any content which may affect their application or success in residency. Students should have a right to contest information they believe to be factually incorrect or maliciously documented.</p>
<p><b>6. The decision to share non-academic information should be transparent and voluntary.</b></p>	<p>If students wish certain information (for example, non-academic achievements, health or mental health concerns) to be shared with their postgraduate program, they should have the option to consent to this. The information should not be released involuntarily.</p>
<p><b>7. Canada’s medical students believe the third-party data steward is integral to fair and consensual use of student data during the matching process.</b></p>	<p>The residency match process constitutes one of the highest stakes endeavors a physician will encounter in their career. The pressure of health human resource planning; shifts in the number and location of residency positions; the monopoly on residency positions 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.</p> <p>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.</p>

	<p>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.</p>
<p><b>8. The CFMS shall work collaboratively with the medical education community to create a student-centred information transfer process grounded in individual learner consent.</b></p>	<p>Canada's medical education community has turned its focus toward lifelong learning. 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 help a learner to frame their studies from medical school into independent practice. The CFMS supports efforts to develop feedforward of learner strengths and areas of improvement as long as consent is appropriately applied, and student government is consulted on what types of information should be forwarded.</p>

**Conclusions**

The CFMS supports well designed, innovative, and student-centred, constructive, educationally focused, non-punitive 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 consent is requested wherever possible before any personal information is transferred.

**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 INFORMATION

### **Background**

Medical students' most significant concerns about privacy come from our attention to transition points in medical education, such as from undergraduate to postgraduate training. 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".<sup>1</sup> This position statement discusses the legal, ethical, and political aspects learner privacy from the perspective of medical students, and medical residents (whom also utilize CaRMS for subspecialty matches).

#### *Canada's Privacy Legislation*

Canada's privacy legislation is complex, with the federal government having two different pieces of privacy legislation. These pieces of legislation are the *Privacy Act*, which governs the collection, use, and disclosure of personal information by the federal government and the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which governs personal information held in Canada's private sector. Each province also has its own privacy legislation which lays out how its public bodies may handle personal information. For example, Ontario's public sector is governed by the Ontario Freedom of Information and Protection of Privacy Act (FIPPA). Additionally, many provinces have opted to write their own privacy legislation to govern their private sectors; where such legislation is deemed substantially similar to PIPEDA, it applies instead of PIPEDA within that province's jurisdiction.

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.<sup>1</sup>

As defined in the Ontario Freedom of Information and Protection of Privacy Act (FIPPA), personal information includes the following:<sup>2</sup>

- (a) "information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) 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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private

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<sup>1</sup> FMRQ Legal Implications of Managing Learners' Personal Information: An Overview of challenges for organizations involved in medical education; May 30 2016 page 9



or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (h) 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."

In addition to the protections which the law places on personal information, recent legal proceedings have shown that students are also afforded freedom of speech rights under the Charter of Rights and Freedoms.<sup>3</sup> Thus, the statements of students on campuses are protected by law. No student's career or residency match should be in any way jeopardized by statements they make which fall in the realm of freedom of speech. The CFMS recognizes that as young medical professionals, medical students are required to behave in a professional manner in accordance with their provincial College of Physicians and Surgeons or other regulatory body. However, the time and place to deal with professionalism issues is not during the residency matching process. Such problems should be dealt with via the appropriate channels within respective universities or regulatory bodies.

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 with 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 university can refuse to disclose personal information if it is involved in litigation. Generally speaking, however, medical students should be able to access their personal information which is held by CaRMS, as they could their personal information held by any other organization.

In summary: (1) medical students' personal information is protected by federal and provincial law and may only be disclosed under specified circumstances; (2) students' statements are protected under the Charter of Rights and Freedoms as free speech; (3) there are appropriate avenues for dealing with professionalism concerns, and the residency match should not be used as a substitute for such avenues; and (4) medical students have a right of access to their personal information under the law.

#### *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 to meet 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 the process of medical education 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. They also provide CaRMS with a rank order list that is intended to remain confidential and only be 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. It is unclear whether learners may withhold consent for the release of certain documents, and whether their application would be able to

proceed should they decide to do so. Often, whether information may be disclosed might depend on the original purpose for which the information was collected, and this might be ambiguous. Unfortunately, there is no case law that interprets what would be considered disclosure for a consistent purpose as it pertains to undergraduate medical learners. For example, should a university collect mental health or professionalism information from or regarding a student, it is unclear whether sharing such information with another program would be considered disclosure for a consistent purpose.

The transition from medical school to residency remains a complicated and highly social process where the reputation of programs and learners themselves is highly important - not only in the transition to residency, but also in their future careers. Postgraduate training programs, medical education organizations, and regulatory bodies often feed information about learners forward from the first days of their training process to the last days. It is important however, that such information sharing be conducted in accordance with the law and in consultation with student government to ensure that learners are not unfairly harmed, even inadvertently.

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 expecting a fair and impartial process based upon their merit; thus, information should be shared in a manner which is transparent.

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