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CHALLENGES AND STRATEGIES FOR HANDLING FORM 1 PATIENTS IN NON-SCHEDULED FACILITIES PENDING TRANSFER

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Part II - What can be communicated to non-medical staff engaged in surveillance or restraint of a patient?

This is the second in a series of *Communiqués* on the topic of challenges and strategies for handling Form 1 Patients in Non-Scheduled Facilities, pending transfer. Questions and responses from our clients demonstrate that there are province-wide issues, with common themes and challenges. This second instalment addresses concerns about patient confidentiality when non-medical staff are employed to detain or restrain Form 1 patients, pending transfer to a Schedule 1 psychiatric facility under the *Mental Health Act* ("MHA").

Sometimes in order to provide necessary protection for an individual, a non-scheduled facility may need to retain the services of security guards, either in-house or off-duty police officers from outside the facility, or unregulated "patient watchers". These situations can raise concerns about patient confidentiality in that there is uncertainty about what information can or should be conveyed to the individuals.

Personal health information, including information about diagnosis, is confidential and disclosure to a third party is prohibited without the consent of the patient or substitute decision-maker. Under the *Personal Health Information Protection Act, 2004*, a hospital may share information among its staff and agents for the purposes of providing health care or assisting in the provision of health care unless the patient objects. Sharing of personal health information within the organization is considered a "use", not a "disclosure" and consent can be implied in these circumstances. Consent may also be implied for disclosure of personal health information to other health professionals actively providing care to the individual.

Generally, personal health information cannot be shared with individuals for non-health care purposes. For example, if a police officer apprehends and brings a person to a hospital for assessment, that officer is not entitled to personal health information about the patient.

However, when an officer is contracted as a security guard to guard a patient, thereby carrying out the responsibilities of the hospital, that officer is an agent of the hospital under PHIPA and that officer may be provided with personal health information that is relevant to his or her task. That officer, whether a hospital employee or an independent contractor, is acting as an agent of the hospital and is entitled to information required for that purpose. Therefore, he or she can be given information on a "need to know" basis like any other hospital employee or agent.

ABOUT THE AUTHOR

Valerie Wise is an advocacy lawyer practising in our Health Industry Practice Group, focusing on civil and commercial litigation, College matters and Inquests.

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