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The Law Amendment Committee

Meeting Date: March 25, 2024

Time: 11:45 am

Re: Bill #419 – Financial Measures (2024) Act

Thank you for the opportunity to address this committee regarding Bill 419, the *Financial Measures Act*.

My name is Doctor Gus Grant. I am the Registrar and CEO of the College of Physicians and Surgeons of Nova Scotia.

I am accompanied by David Fraser, a partner at McInnes Cooper who works in the field of privacy. David is available to assist in responding to any questions the Committee may have. My submissions will relate solely to section 110, which proposes new language to the *Personal Health Information Act*.

If passed, section 110 will fundamentally change the nature of the patient-doctor relationship and the professional duties of physicians. Going forward, this law requires all physicians to enable access to their medical records to the Minister. For physicians, this creates a new professional, legal duty. For patients, it means that the entirety of their medical records will be accessible to government.

In addition to the reasons stated in the section itself, the Premier has advised the College that section 110 is required to empower patients with data regarding their personal interaction with the health care system, through such mechanisms as the YOURHEALTHNS app. As well, this language is needed to empower the health system with aggregate data to enable efficiencies and system learning. The College strongly supports the importance of both principles.

The College, however, also supports the rights of patients to privacy and the duty of physicians to maintain confidentiality, which is a cornerstone of medicine. The obligation set out in section 110 runs contrary to these rights and duties, or is, at the very least, in tension with them.

As set out in the *Medical Act*, the object of the College is to regulate the practice of medicine “in the public interest”. To meet that mandate of acting “in the public interest”, I see it as the responsibility of the College to speak on behalf of the public, which I would expect is largely unaware of this seemingly innocuous amendment and its potential consequences. The *Financial Measures Act*, by name and substance, would seem to have little to do with the private matters members of the public have discussed with their physician.

The College submits it is in the public interest to ask, and in the interest of the Law Amendments Committee to consider, the following questions:

1. Why the urgency?

Yes, urgent steps need to be taken in our health care system and the legislature and government are embracing that urgency. Will urgently changing PHIA address our urgent needs?

Just a few weeks ago, the government launched the YOURHEALTHNS app, an innovation the College supports and applauds. There are pilot projects ongoing, again which the College has supported. Pilot projects are done to gather data for the purposes of learning, to prove concepts, to flag unintended consequences. The unavoidable irony is that section 110 aspires to help our system learn through evidence and data but does so without considering the best evidence and data available. There has been no time and therefore no analysis of the results of the pilot project – at most we know that a certain number of physicians and a certain number of patients have adopted the App. The pilot projects give us an opportunity to improve and inform our legislation with learning, an opportunity which we are leaving behind in our urgency.

2. What could we learn? What might be some of the unintended consequences?

We could learn that different patients place different values on their privacy. I would not be surprised if the results of the pilot project indicate younger patients will be thrilled with the App, untroubled that their health information sits in government’s hands. I would also not be surprised to learn older folks feel differently. The importance of privacy may vary according to age, or other factors.

From my years in practice as a family physician, I can say with confidence that many of our most vulnerable patients are also among our most mistrusting of large institutions and government. This generalization might extend to members of many disadvantaged communities. The analogy could be drawn to our vaccination experience, where our most vulnerable and most disadvantaged were most disinclined to be vaccinated. I hope that there has been consultation with groups, such as the mental health association, groups representing our trans and LGBTQ patients, let alone our indigenous and African NS communities.

Let's face it – very few patients are following the lively debate on the merits of section 110 of the *Financial Measures Act*. When this becomes law, how will those groups respond to the surprise of hearing their medical records are now accessible to government? How will they respond to hearing their physicians and other health care providers are required to give their personal health information to government? Will they protest that their private lives have been disclosed to government without their consent? Will this break their trust in their physicians? Will those most in need of care turn away from care?

3. How is a physician to respond to a patient who asks: "Can you tell me what will be done with my personal health information and who will have access to it, now that you are required to disclose my information to the Minister?"

That question goes to the heart of the therapeutic relationship between the physician and their patient. That relationship is built on trust and confidentiality. As matters presently stand, a physician can do no more than say government is committed to working on developing answers to these questions. This answer puts that trusting relationship at risk. For planning and management of the healthcare system, we've heard that government needs aggregate data, but section 110 empowers the Minister to compel **individual**, personally-identifiable health records and to use it as the Minister deems "necessary".

4. How might we mitigate? Could we achieve the goals of section 110 with less intrusion on patient privacy?

As written, section 110 requires custodians such as physicians to disclose personal health information to the Minister for the purposes of planning and management of the health system, resource allocation and creating or maintaining electronic health record programs and services. The specifics of disclosure are undefined, subject only to other provisions of *PHIA* that require the collection, use and disclosure of personal health information to be limited to the minimum amount of personal health information necessary to achieve the purpose for which it is collected, used and disclosed. But how will this be known until the pilot is complete? Could the language be modified to perhaps limit the extent of disclosure, the depth of the scrape, to only that information that is required to advance the present pilot project, such that the learnings from that pilot can then be applied to amend *PHIA* in an informed way?

If the pilot or other evidence, perhaps through consultation, confirms there are certain vulnerable or equity deserving groups who may be negatively impacted by the implementation of the YOURHEALTHNS app, would those groups find comfort if the depth of the scrape was defined in the Act? Or mandatorily set out in the regulations?

We can also look to other jurisdictions to learn how concerns about greater access to personal health information can be mitigated. Alberta, for example, requires a privacy impact assessment related to the provincial electronic health record system that is submitted to the Information and Privacy Commissioner. The entire electronic record system is overseen by a multi-disciplinary data stewardship committee.

Ontario utilizes an advisory committee to engage in a review, and also creates the ability for patients to limit Ministerial access to information through the use of consent directives – a form of lock box to protect designated information. Will such approaches be considered here?

The text of section 110 does not require any of these important things.

5. Has government consulted the Privacy Commissioner about this significant legislative amendment in Bill 419 that will require the release of patients' personal health information to the Minister? Have any recommendations from the Privacy Commissioner been considered in the form of safeguards that should accompany this legislation?

We also know that in instances where large amounts of confidential data are collected, used and disclosed, it is common to have data sharing agreements in place to create safeguards around the information. What does that look like here? Section 110 is silent.

Conclusion

The College wants to be clear in its support for the YOURHEALTHNS pilot, the empowerment of patients through the ability to access their data, and the betterment of the health care system by arming it with data. We would be remiss in our obligation to protect the public interest in the practice of medicine if we did not raise our concerns about the lack of transparency of this legislative change, the need for its breadth in advance of understanding the learnings of the pilot project, the lack of identified safeguards around how the collection, use and disclosure will be governed and administered, and the potential for adverse impacts on the therapeutic relationship that is foundational to the provision of good health care.

We understand that the Nova Scotia Regulated Health Professions Network, comprised of the regulators for all health professions in Nova Scotia, has submitted a letter to the Law Amendments Committee raising similar concerns to those I have expressed today. While they are not here in person, they have asked me to note their support for the position I have outlined today, as the same concerns apply to the registrants of other regulated health professions who act as custodians of personal health information. This proposed legislative change will impact all regulated health professionals as well as all members of the public.

Thank you for hearing my submission. Both David and I would be pleased to respond to any comments or questions.

Respectfully submitted,



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Registrar & CEO

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