

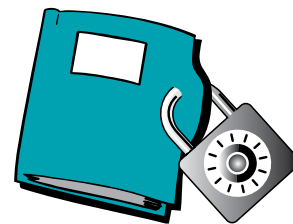
About the author...



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CONFIDENTIALITY, A SHARED RESPONSIBILITY



Contemporary living has made it easy to obtain all sorts of information. It is astonishing to see how people are open to talk about themselves, even to perfect strangers and then being surprised when finding out so much information about themselves is circulating freely. What should we say, to whom, when and where? This is the responsibility of each and every one of us!

Right to privacy. Professional secrecy. Protection of personal information. Confidential data... If for many of us these expressions are more or less synonymous, they all suggest the possibility that we may not be able to obtain answers to some of our questions. Furthermore, when these questions are related to the physical or mental health of a relative, the procedures and information access policies of health service providers may seem burdensome at times and difficult to accept. But what do they really mean?

RIGHT TO PRIVACY

Basically, all these concepts are founded on the fundamental right of each one of us to manage our lives as we best see fit and to reveal to others only the aspects of our lives we choose to share with them. I may not want my neighbour to know about my health situation; or that my present acquaintances learn about my wayward youth; or that my relatives become familiar with my sexual activities... On the other hand, in the pursuit of my well being, some details of my personal life may become necessary to certain people in order to serve my needs and, in such a case, in order to receive quality services, I may need to share the

required information. For example, my financial advisor needs to know the status of my revenues, my debts, as well as my future projects before he can provide me with judicious financial options most appropriate to my situation. Similarly, health and social services professionals need specific information about those they serve. But you may ask, what do they do with this confidential information unknown to others around me?



WHAT DOES THE LAW SAY?

The respect of the right to privacy and the confidentiality of personal information are protected under different articles of Quebec law. First, “*the Quebec Charter of Human Rights and Freedoms states that the respect of one’s private life is a fundamental right. The Charter recognises thus that a person has a right to the safeguard of his dignity, honour and reputation (article 4), a right to respect for his private life (article 5) and has a right to non-disclosure of confidential information (article 9)*” (Ménard, 2007). The **Quebec Civil Code** also specifies certain principles (articles 35 to 41). More specifically, the **Act on Health and Social Services** (Loi sur les services de santé et les services sociaux - LSSS) supervises the health and social services user’s right to confidentiality pertaining to personal information. Health care centres therefore have put in place policies and procedures that ensure the respect of the user’s right to privacy, namely concerning the sharing of information between health professionals, concerning access to medical files, as well as concerning the methods of transmitting information to third parties in accordance with the professional secrecy rules set forth in the **Professional Code**. Finally, the **act respecting access to documents held by public bodies and the protection of personal information** specifies particular rules to be followed when giving access to user files.

These laws provide the answer to the question: “What do health professionals do with the information they have concerning users?” The answer is quite simple: they are held to professional secrecy. “*Professional secrecy is the obligation imposed on a professional to keep secret the information he obtains from his client while carrying out his profession*” (Ménard, 2007). According to law, there are only two situations when a health care professional can divulge information about one of his clients:

1) if he has received the prior consent of the client involved, or 2) if an article of law specifically allows him to do so (for example, when a person who is a minor is involved, or when the security or the immediate personal integrity of the person is in peril).

WHAT IS CONSIDERED CONFIDENTIAL INFORMATION?

Generally, we can state that the information contained in medical and administrative files is confidential: diagnostics, medication, general state of health, medical test results, summaries of discussions with professionals such as social workers, psychologists or others, as well, any financial, marital, or family data, etc.

We must add however that the confidentiality rules prevailing in health care centres cannot in any way serve as a pretext to camouflage potential errors or hide mishaps. By virtue of law and as explained in a previous publication dealing with “Risk management” (*Between You and I*, Number 25, 2008), should an accident or error occur, and should third party access to confidential information be involved, the person directly concerned would be quickly informed.

WHO CAN HAVE ACCESS TO CONFIDENTIAL INFORMATION?

In order to offer the best services to residents, the law allows the professionals who are part of the interdisciplinary team (doctor, nurse, pharmacist, physiotherapist, occupational therapist, social worker, psychologist) to have access to the information in a resident’s file. As for all users of the health and social services network, residents in a CHSLD have the right to consult their personal file. The legal guardian of a resident who is inapt also has the right to access the information contained in the resident’s file, providing such consultation is necessary.



Finally, the resident or his representative can authorise that information concerning the said resident be given to a third party should they so desire.

To ensure that the spirit of the law is respected, access to confidential information is controlled by strict policies and procedures. Therefore, any person (including the resident himself) who wishes to review a medical file must make an official request to the health care facility. The facility management will analyse the request according to procedures in effect and will provide, if necessary, explanations to enable the understanding of the information contained in the file (for example, the presence of the nurse, the coordinator or the doctor at the time of the file being reviewed may be required).

HOW IS THE RIGHT TO PRIVACY IMPLEMENTED AT THE CHSLD ON A DAILY BASIS?

Most CHSLDs integrate into their code of ethics the respect of privacy and the obligation of the staff to abide by confidentiality rules. *“According to regulations stipulated in the Quebec Civil Code, the obligation to confidentiality is binding on all people working in a health care facility and applies not only for the duration of their employment in such facilities but for the entire life of the employee since the information to which he has had access pertains to the reputation and to the privacy of another.”* (Ménard, 2007).



Let's remember that CHSLDs are “home environments”. They are the resident's home, where they receive care and services, 24 hours a day, 7 days a week. Since residents are at home in the CHSLD, the concepts of privacy and confidentiality necessarily take on a different meaning,

a meaning stretching well beyond the information contained in the medical records. Residents develop bonds with the staff at the CHSLD, often confiding in the caregivers, trusting them to respond to various needs. This allows CHSLD employees, such as the nursing, administrative, care giving and housekeeping staff, to share in the intimacy of residents' daily living. Even families confide information, as do residents among themselves.

The constant respect of privacy represents a challenge for all. *“Violations to professional secrecy are easy trivialized. (...) The triviality of the day to day routine is the biggest threat to professional secrecy”* (Garnier, 2010). For the care giving staff, the fact that Mrs. X is constipated or that Mr. Y ate two deserts in spite of his diabetes may seem of little importance. For the social worker, that Mrs. Z's daughter is a drug addict and hasn't visited her in over a year might also seem a simple anecdote. But to Mrs. X, Mr. Y and Mrs. Z, this information takes on quite a different level of importance.

Unfortunately there are many occasions when we are called upon to answer questions involving elements of a confidential nature and we respond spontaneously without taking into account our surroundings. Be assured that discussions among professionals and residents, or visitors and relatives, may be overheard if taking place in hallways or in open areas. While the sharing of information between work colleagues is essential to quality care and services to residents, and if information from the family is often equally very useful, the location where this information is shared is also vitally important. Who among us would not feel great discomfort if at the pharmacy, or at the clinic or anywhere else, very personal information concerning us were publicly disclosed? That is why we need to continue our efforts to maintain and increase our awareness of the respect of the right to privacy of residents.



HOW CAN RESIDENTS AND THEIR FAMILIES CONTRIBUTE TO THE RESPECT OF PRIVACY?



Sometimes the layout of the facility makes private conversations difficult, however if everyone becomes more vigilant, we can improve our practices and avoid indiscretions that occur when using improper locations to talk about private or confidential matters.

Certain regulations favor the respect of confidentiality and the right to privacy of residents. In this respect, the contribution of the resident and his relatives is essential:

- When a resident is inapt or for contact information in urgent situations, each resident must identify a representative. This information is noted in the resident's file upon admission and updated as the situation evolves during his stay. The staff is therefore always able to know who to consult in the decision making process concerning a resident (be it a relative or the resident himself). The staff will communicate the necessary information to this person, who elects, as the case may be, to relate it to the other members of the family or not.
- We must avoid inquiring about a situation or the condition of another resident: the staff cannot provide information of a confidential nature without the prior consent of the resident or his representative. Obviously the resident or his representative may share information themselves, if they so desire.

- If a resident or his representative wishes to have more privacy for confidential conversations, the request can be addressed to the staff who will suggest a more discrete location.
- Any observed breach of confidentiality should be reported directly to the management, to the coordinator of care or to your Residents' Committee. Certain measures can then be taken to ensure the respect of the residents' rights.

CHSLDs are home environments where concepts of life and care are mutually present and where the exchange of information on private issues occurs frequently. Seemingly unimportant information or questions are often, in reality, confidential. The respect of the right to privacy and confidentiality of information is a challenge which requires constant attention on the part of all those present in the CHSLD: the staff, the residents, their relatives, the volunteers and the visitors...

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The series of documents "Between you & I" are published by a group of Residents' Committees from various Vigi Santé residential and long-term care centers (CHSLD). Former issues are available at www.vigisante.com.

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