To: Pharmacy Managers, Pharmacists, Certified Dispensers, and Pharmacy Technicians

From: NSCP Council

Date: September 4, 2015

Re: Responsibilities of Pharmacies/Pharmacy Managers: Personal Health Information and Call Centers

Over the past few months, the NSCP has received requests from pharmacy managers for guidance with respect to their pharmacy’s involvement in centralized patient call-back services, in particular regarding whether or not the use of personal health information by a nationally centralized call center is authorized under the Nova Scotia Personal Health Information Act (PHIA).

The services in question consist of prescription refill reminders to patients; but rather than being provided by the patient’s home pharmacy, the reminders are provided by a nationally centralized call center staffed by pharmacists and pharmacy technicians.

In order to appropriately respond to these requests, the NSCP contacted the Nova Scotia Freedom of Information and Protection of Privacy (FOIPOP) Office. The comments provided by that Office are summarized as follows:

− The Nova Scotia Personal Health Information Act (PHIA) sets out the rules related to personal health information in the province.

− PHIA defines “custodian” as an individual or organization who has custody or control of personal health information as a result of or in connection with performing the individual’s or organization’s powers or duties; the definition of custodian includes pharmacies licensed under the Pharmacy Act of Nova Scotia.

− Section 28(1) of PHIA states that custodians may permit the custodian’s “agent” to use personal health information only if the use is in the course of the agent’s duties and not contrary to the limits imposed by the custodian, PHIA or another law.

− PHIA defines “agent” as a person who, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian and not the agent’s purposes. Based on this definition, it appears that a professional staff member
working at the call center could be acting as an agent of the custodian (pharmacy) when making the telephone calls to patients.

- Section 33(a) of PHIA authorizes personal health information to be used for the purpose for which it was collected and for all functions reasonably necessary for carrying out the purpose. Section 33(b) of PHIA authorizes use for the purpose that another Act of the Province permits or requires.

Therefore, it appears that the use of personal health information by agents to encourage patients to refill their prescriptions could be authorized under PHIA as long as:

- The use is for the original purpose it was collected or for a purpose reasonably necessary to carry out that purpose (i.e. providing refill reminders was an original purpose for which the information was collected)
- The use (i.e. reminding patients to refill their prescriptions) is authorized under another Act of the Province (s. 32 of the Pharmacy Act places a number of responsibilities on a pharmacist to follow-up with patients regarding their drug therapy, including monitoring)
- PHIA is followed

Pharmacies (and by extension Pharmacy Managers) need to be aware that, if the activities of the centralized call center are considered a “use” as defined by PHIA, the implication is that the call center is an agent of the pharmacy (the custodian). Under PHIA, custodians have significant legal responsibilities with respect to their agents and the employees of their agents, including ensuring that they have confidentiality policies and procedures in place and are adhering to them, that they are properly trained, etc.

Custodians (i.e. pharmacies/pharmacy managers) are responsible and will be held accountable for ensuring that the personal health information provided to the call center is used only for the purposes for which it was collected. They are also responsible for the security of personal health information. This includes, in part, the responsibility to ensure that the personal health information is secure during transit to the call center; the information is appropriately stored, retained and disposed of by the call center; access to the information at the call center is limited only to that required to carry out the purpose for which it was collected (i.e. to remind the patient of a Rx refill); and a process is in place to identify any instances of inappropriate access to personal health information.

PHIA requires that custodians (pharmacies/pharmacy managers) protect the confidentiality of personal health information by ensuring that it is protected against theft or loss and unauthorized access. Complying with this requirement involves the implementation of a series of security steps including technical, administrative and personnel related policies and procedures (for example, addressing where the servers and back-up servers for the call center are located, ensuring that a privacy impact statement been conducted by the call center that focusses on the call center’s business model, establishing a process to identify any instances of inappropriate access to patient files, etc.).

The Nova Scotia Freedom of Information and Protection of Privacy (FOIPOP) Office has suggested that pharmacy managers read and understand the document entitled Reasonable Security Checklist for
Personal Information, which is intended to be used as a high level check for custodians/pharmacy managers operating pharmacies to evaluate the adequacy of the security. According to the FOIPOP Office, it will give pharmacy managers a quick check to determine if further detailed review is required.

Note that the FOIPOP Office also advised that, as an independent agency mandated to oversee compliance with PHIA, they cannot approve, in advance, any proposal from a health custodian. They must maintain their ability to investigate any complaints and to provide recommendations in response to these complaints. Any of the above noted comments or suggestions provided by the FOIPOP Office should therefore not be viewed as an approval or endorsement by their Office. It remains the responsibility of the custodian (pharmacy/pharmacy manager) to ensure that they comply with their responsibilities under PHIA.

The Nova Scotia College of Pharmacists