



**BY FAX**

May 2, 2007

Hon. George Abbott  
Minister of Health  
Room 337, Parliament Buildings  
Victoria BC V8V 1X4

Dear Minister:

**Bill 26-2007 (Health Statutes Amendment Act, 2007)—proposed amendments to the *Pharmacists, Pharmacy Operations and Drug Scheduling Act* (“PPODSA”) and *Pharmacy Operations and Drug Scheduling Act* (“PODSA”)  
OIPC File F07-31479**

I write to comment on Bill 26-2007, which contains provisions that widen the scope of collection, use and disclosure of personal health information in the PharmaNet system.

PPODSA is legislation that establishes the College of Pharmacists of British Columbia and provides the College with the statutory authority to regulate the practice of pharmacy and the licensing of pharmacies in B.C. PPODSA also establishes PharmaNet as a “computerized pharmacy network and database”. PPODSA provides legislative authority to access PharmaNet, to record personal health information on PharmaNet, to use the information on PharmaNet and to disclose personal health information from PharmaNet. The amendments in Bill 26-2207 appear generally to make PharmaNet legislation consistent with legislation authorizing health information banks and the e-health system being developed in B.C. PODSA has been passed but not proclaimed.

PharmaNet is a province-wide drug information system, a network linking all British Columbia pharmacies to a central health information data bank. Implemented by the Ministry of Health in 1995, PharmaNet contains information about patient drug profiles, including drugs dispensed, drug allergies, patient demographics and billing information. PharmaNet also contains drug information for pharmacists. Currently, all prescription medications dispensed by pharmacies in British Columbia must be recorded on PharmaNet. According to the Ministry of Health, access to medication information on PharmaNet is permitted by pharmacists and British Columbia physicians when prescriptions are dispensed or medication information is required by emergency physicians or by physicians in private practice. Medication information can also be accessed by the College of Pharmacists of B.C. and the College of Physicians and Surgeons of B.C. for the purposes of monitoring and regulating their respective professions.

While I continue to support implementation of electronic health records, it is critical that privacy be protected. A key principle of privacy is that a public body should collect only the minimum amount of personal information necessary for the public body’s purposes. Another core privacy

principle is that uses and disclosures of personal information should be as tightly defined and controlled as possible. Certain aspects of Bill 26-2007 are of concern because, as indicated below, they expand authority to record information on PharmaNet, provide for broader use of personal health information in PharmaNet and expand authority to disclose personal health information in PharmaNet.

**1. Exceptions to privacy must be narrow and as limited as possible**—Amendments to s. 36 of PPODSA and s. 12 of PODSA restrict the collection, use and disclosure of personal health information on PharmaNet and set out exceptions to the restrictions. These amendments give the force of law to what are accepted practice standards and are welcome. However, when exceptions to restrictions are legislated, the exceptions must be as limited and narrow as possible. I suggest the more restrictive language proposed for s. 12(2) of PODSA is preferable to the broader language proposed for s. 36(2) of PPODSA.

**2. Scope of personal health information recorded on PharmaNet is expanded**—The effect of two proposed new sections, s. 37.1(1) of PPODSA and s. 13.1(1) of PODSA, is to broaden the scope of personal health information that is recorded on PharmaNet. Rather than pharmacists being limited to recording information relevant to the dispensing of drugs or devices, the amendments will permit pharmacists, physicians and patients themselves to record personal health information and “other information” about the prescription and dispensing of drugs and devices and also over-the-counter drugs and devices. These amendments also permit physicians to e-prescribe drugs using PharmaNet. While this additional information may be necessary to enable physicians to prescribe drugs on-line, I suggest that the language of this amendment be much more specific, to restrict the type of information recorded to only that which prescribing physicians or dispensing pharmacists require.

**3. Consistent use of the term “patient”**—The proposed new sections s. 38.1(1.1) of PPODSA and s. 15(1.1) of PODSA permit a “person” or the person’s representative to have access to the person’s personal health information on PharmaNet. Given that the section also refers to patients and another class of “persons” as those who also have access to PharmaNet, it may be preferable to use the term “patient” consistently or to alter the language so the provisions affecting patients can be differentiated from those affecting other persons.

**4. Permitting information sharing between PharmaNet and other health information data banks**—Section 39.1(2) and (3) of PPODSA and s. 16.1(2) and (3) of PODSA authorize, under some restrictions, the sharing of information between PharmaNet and other health information data banks. The effect is to increase the number of individuals who may record personal health information on PharmaNet or who may have PharmaNet information disclosed to them, well beyond those individuals who are providing medical care to patients. Despite the Ministry’s efforts to restrict collection, access or disclosure by imposing two layers of authorization, I am still concerned that this amendment does not clearly state the purposes for which collection, access and disclosure (information sharing) can occur. The protection of privacy is essential to providing quality health care and fostering trust among B.C. health care consumers. Access to PharmaNet records must be limited, as much as is possible, to those individuals involved in providing medical care, and then on a need-to-know basis.

**5. Electronic auditing an important privacy protection tool**—Given the scope of access, collection, use and disclosure of sensitive personal health information contemplated by these amendments and the electronic health record program in general, it is vital that the electronic data systems be equipped with strong audit capabilities. It is not enough to expect patients to monitor access to their own records. The Ministry should ensure that all personal health information banks are protected by “proactive” audit software or mechanisms that monitor and report on access to personal health information. Policies and procedures should also be in

place to conduct “reactive” audits in response to incidents of inappropriate access or disclosure. I welcome the opportunity to discuss the Ministry’s efforts in this regard.

**6. Penalties for privacy abuse send a message**—I believe appropriate penalties for unauthorized collection, use, disclosure and access to personal health information are an important component of a privacy protection regime. Accompanied by an educational program, both auditing and penalties will not only deter privacy breaches but will also send a message to both the system users and the public that abuse of the public’s trust will not be tolerated.

I would be happy to discuss this letter with you.

Consistent with our longstanding practice when commenting on a Bill tabled in the Legislative Assembly, a copy of this letter is being sent to the opposition critic for your Ministry.

Yours sincerely,

**ORIGINAL SIGNED BY**

David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

cc: Adrian Dix  
Opposition Critic

Gordon Macatee  
Deputy Minister  
Ministry of Health

Ron Danderfer  
Assistant Deputy Minister  
Ministry of Health

Deb McGinnis  
Director, Information, Privacy & Records Branch  
Ministry of Health