The theme of this issue of HIM-Interchange (HIM-I) is 'Health information management law and ethics'. This theme is an intrinsic part of the day-to-day workings of professional Health Information Managers (HIMs), whether it involves releasing health information, complying with subpoenas for medical records, disposal of medical records, or security of electronic health records. As Andrew Took, National Manager, Medico Legal Advisory Services, Avant Law, has highlighted in his review of Health Law in Australia (Took 2011), the 'number one issue' for members of his organisation is privacy and access to health records.

My own interest in health law was tweaked in the early 1980s by my involvement when the New South Wales (NSW) Medical Record Association of Australia (MRAA), as it was then called, was making a submission to the Privacy Commission under the former Justice Michael Kirby. The Commission was extremely interested in the Association's evidence and impressed with the documentation provided in the form of policies and procedures that hospitals had in place to ensure that patient privacy and confidentiality was protected. From that time onwards, the workings of the judicial system has fascinated me. At that time, I was also undertaking study towards a Bachelor of Health Administration degree and my favourite units were the law subjects. As one of the only 'working members' of my university class (I was a Medical Record Administrator [MRA] at Prince of Wales Hospital), I was able to call on 'real life' examples and situations to illustrate many of the issues we were studying.

Knowledge of law and ethics was becoming an increasingly bigger part of the work of MRAs. While laws relating to health issues had existed previously, there was increasing legislation in regard to medical record retention and destruction, privacy and confidentiality of medical records, release of medical information, production of and complying with subpoenas, as well as the advent of computerised health information, however primitive it was at that stage. As a result, within a few years I embarked on a law degree. I never intended to practise as a lawyer but knowledge of the law helped me to think in different ways. It made me look at situations from the viewpoint of the other party and to come up with solutions to problems that would be mutually beneficial. I ended up teaching health law at the University of Technology, Sydney (UTS) while still a student, along with Andrew Took (a contributor to the current issue of the Health Information Management Journal [HIMJ]), who graduated the year ahead of me.

It is important that HIMs have a good working knowledge of the legal system and the legislation relevant to their state in the areas mentioned above. The law is constantly changing and our journals (HIMJ and HIM-I) provide a good vehicle for keeping up with changes and developments. As HIMs typically deal with these types of legal issues every day, they have the practical knowledge needed to advise governments and health departments when they are reviewing legislation and regulations in the health arena. However, knowledge of the law is not confined to health issues, a point thoroughly covered by Ross Buchanan in his editorial in the March 2011 issue of HIM-I (Buchanan 2011), where he wrote that at the very least, HIMs need knowledge of industrial relations and employment law as well as occupational health and safety legislation.

Since its inception, HIMJ has been keeping HIMs up-to-date with current developments in health law, including regular articles by Judith Mair. The current issue is no exception. Mair (2011) explores the important issue of copyright of medical records content. This topic has not previously been covered so thoroughly in HIMJ, and is possibly one that not many of us would have thought deeply about in the past..

Gregory de Moore’s (de Moor 2011) article (Burning medical records. The mentally ill: in the bin...again), takes me back to the wonder and joy I felt in examining beautifully crafted medical records from the early part of the last century to the 1950s at Sydney and Royal Prince Alfred Hospital (RPA). These medical records presented an insight into how medicine was practised in years gone by and also ‘brought to life’ the patients who were treated at the time and the conditions and circumstances of their lives. Many of these volumes of records were stored in our teaching classrooms at RPA as historical examples of medical documentation. The greater proportion of these medical records had been destined for destruction as there was no space to store them. As well as appearing visually beautiful with their copperplate writing, their value in providing insight into understanding family members’ current medical and psychiatric problems would have been invaluable. This would definitely include their value for research. To many in 2011, what happened in the 1960s, 1970s and 1980s is history and many of today’s patients needing to look back at their family’s medical history will come up against a
blank wall as the medical records no longer exist. While a patient-held record may provide some remedy in the future, it is debatable whether medical records prior to the ‘electronic’ era will be incorporated into the personally-controlled electronic healthcare record (PCEHR) framework. It would prove extremely costly to input the paper-held data and thus there will be huge gaps in information, which may undermine the usefulness of the PCEHR at least for quite some years yet. Patients would, no doubt, be able to select what information should be included in the PCEHR, and therefore their medical record may not provide a complete dossier of their medical history.

Terry Letizia and Kate Wendt (Letizia & Wendt 2011) have provided an informative overview in their report Privacy and security of patient information in an electronic environment, regarding the adoption of e-health and the PCEHR. Their report alarmingly points out that the NEHTA website states that ‘there are no national security standards or accountabilities for access to systems in place’, a situation which should concern us all. While the report acknowledges that breaches to privacy and confidentiality do occur, the authors also address those security and monitoring procedures that should be put in place to ensure that information in the EHR is used for legitimate purposes.

On a similar theme, it was only the recent riots in the UK that pushed the News of the World phone-hacking scandal off the front pages of papers, not only in the UK but also in Australia. One of the reports coming out at the time was that The Sun, a News Limited publication, had illegally obtained information from medical records that the then Chancellor Gordon Brown’s infant son, Fraser, had been diagnosed with cystic fibrosis, an allegation denied by The Sun. This report of the invasion of the privacy of both a former Prime Minister and his son shocked Britain. As it turned out, the information in an electronic environment. The media are exempt from privacy laws in connection with their news activities … [and] … [w]hile the media are exempt from privacy laws they have a corresponding ethical obligation to treat people’s health information sensitively. The media are not exempt from receiving information unlawfully. Privacy is a legal concept whereas confidentiality is an ethical obligation which involves making moral judgements.

Wilson argues that health information is different from other types of information ‘because it can be extremely sensitive, intimate and prone to misuse for discriminatory purposes’. This is why hospitals and HIMs take the responsibility for security and safeguarding patient privacy and confidentiality so seriously. Wilson details the Victorian legislation that governs information privacy, as does John McAteer, Acting Privacy Commissioner in NSW in his article in this Issue on privacy and information laws in NSW (McAteer & Jenner 2011).

Health legislation is ever evolving but it often lags behind changes in practice because of the lengthy process it has to go through to finally become law. I would urge all HIMs to help set the legislative direction of the issues that involve the health information management profession by submitting responses to discussion papers on new laws and regulations whenever they are released for public comment.

**References**


**JoAnne Fisher** AssocDipMRA, BHA, LLB
Associate Dean, Sydney School of Medicine
University of Notre Dame Australia
160 Oxford St Darlington NSW 2010 AUSTRALIA
email: jo.fisher@nd.edu.au