Confidentiality of Personal Health Information: Online Survey Report

From the Preliminary Consultation on the Current Policy

May 31 – July 31, 2017

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

QUALITY PROFESSIONALS • HEALTHY SYSTEM • PUBLIC TRUST

Introduction

The College's current Confidentiality of Personal Health Information policy is under review. As part of this review, a public consultation was undertaken on the current policy from May 31 to July 31, 2017. The purpose of this consultation was to obtain stakeholders' feedback to help ensure that any updates made to the policy reflect current practice issues, embody the values and duties of medical professionalism, and are consistent with the College's mandate to protect the public.

Invitations to participate in the consultation were circulated via email to all physician members of the College and key stakeholder organizations, as well as individuals who had previously indicated a desire to be informed of College consultations.

Feedback was collected via regular mail, email, an online discussion forum, and an online survey. In accordance with the College's posting guidelines, all feedback received through the consultation has been posted online.

This report summarizes the stakeholder feedback that was received through the online survey only.

Caveats

108 respondents initiated the survey, however, 2 failed to provide responses to any substantive questions (see Table 1). For the purposes of this report, these two surveys are considered incomplete, and have not been included.

Note: *Participation in this survey was voluntary, and one of a few ways in which feedback could be provided. As such, no attempt has been made to ensure that the sample of participants is "representative" of any sub-population.*

Table 1: Survey status

Summary of surveys received	**n = 108**
Complete or partially complete	106
	98%
Incomplete	2
	2%

- The ***quantitative*** data captured in this report are complete, and the number of respondents who answered each question is provided.
- The ***qualitative*** data captured in this report are a summary of the general themes or ideas conveyed through the open-ended feedback. Where reported, stakeholder feedback to open-ended questions has been paraphrased.

Profile of respondents

7 out of 10 survey respondents were physicians *(Table 2)*.

The vast majority were residents of Ontario *(Table 3)*.

Table 2: Respondent demographics

Are you a…?	n = 106
Physician (incl. retired)	75
	71%
Medical Students	1
	1%
Member of the Public	15
	14%
Other health care professional (incl. retired)	8
	7%
Organization	5
	5%
Prefer not to say	2
	2%

Table 3: Respondent location

Do you live in…?	n = 106
Ontario	99
	93%
Rest of Canada	3
	3%
Outside Canada	2
	2%
Prefer not to say	2
	2%

Familiarity with the current policy

The vast majority of respondents (91%) indicated that they were very familiar or somewhat familiar with the current policy prior to starting the survey (see *Table 4).*

Table 4: Familiar with Policy

Have you read the current Confidentiality of Personal Health Information policy?	n = 106
Very Familiar	33
	31%
Somewhat Familiar	62
	58%
Not Familiar	11
	10%

Part 1: Questions for Physicians

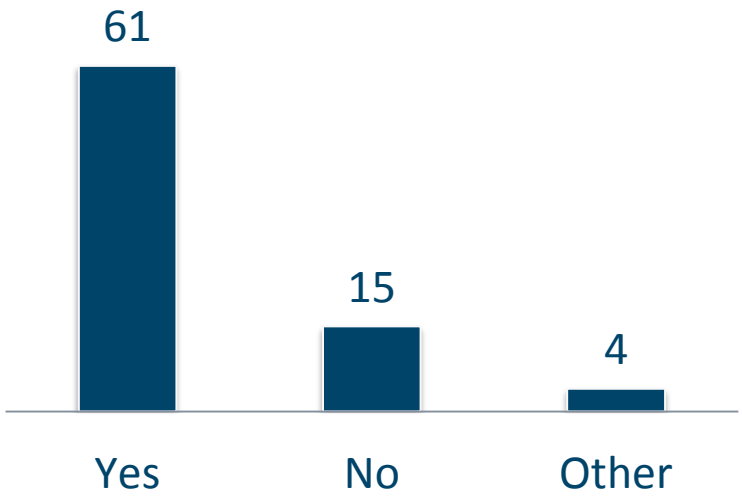
The following questions were posed to physicians-only, therefore anyone who identified as a member of the public, a medical student, another health professional or who preferred not to identify themselves were skipped over these questions.

Note: *In some cases, in order to provide respondents with relevant context, additional detail was provided in the survey. In the interest of length, this additional contextual detail is not always reproduced in this report.*

Q5. "Do you currently use an Electronic Medical Record (EMR) or Electronic Health Record (EHR) in your practice?"

The majority of respondents (76%) indicated that they used an EMR or an EHR in their practice, while 15% did not. The 4 respondents who indicated "other" noted that they use a combination of paper and electronic records or only used their EMR for billing and scheduling purposes *(Figure 1)*.

Figure 1: EMR/EHR Use

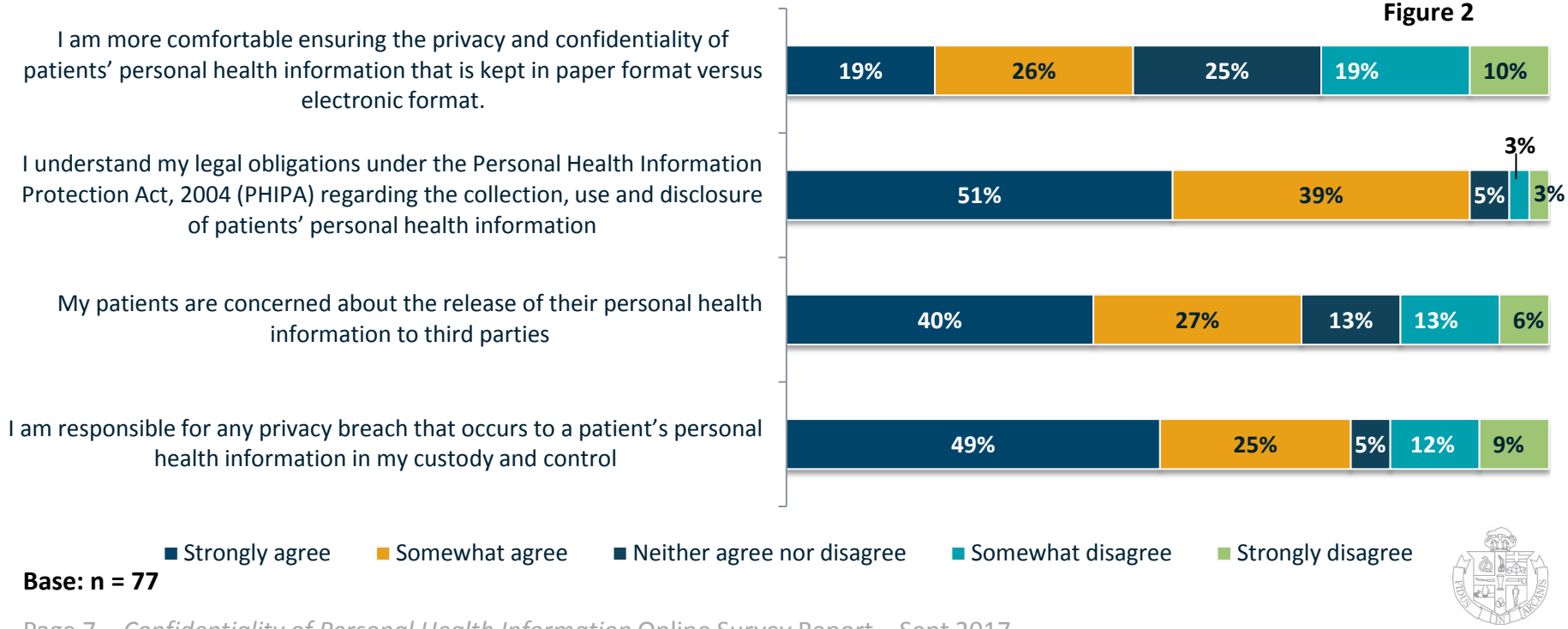


Base: n = 80

Q6. "Please indicate the extent to which you agree or disagree with the following statements about protecting the privacy and confidentiality of patients' personal health information."

Physician respondents showed a mixed level of comfort with the use of paper versus electronic formats for storing personal health information. The vast majority agreed (90%) that they understood their legal obligations regarding personal health information, and that they are responsible for any privacy breach of personal health information in their custody and control (74%). The majority (67%) indicated that their patients are concerned about the release of their personal health information to third parties.

Figure 2

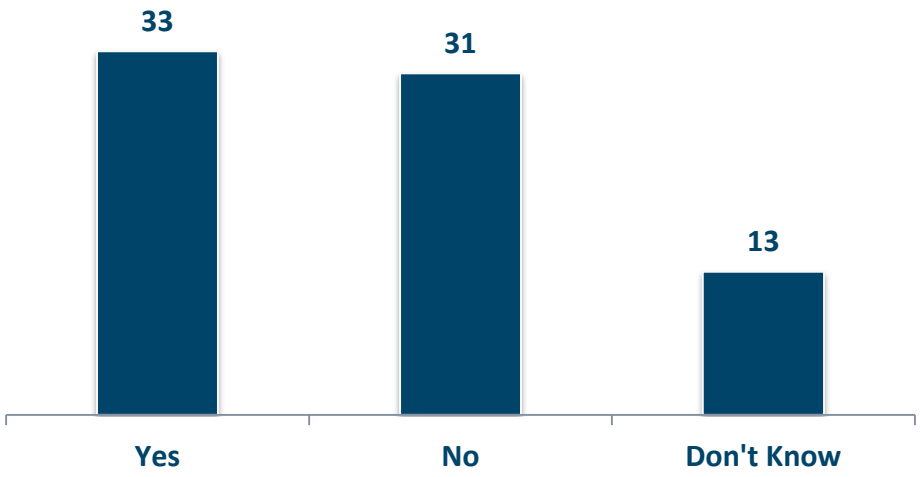


Base: n = 77

Q7. “Ontario’s PHIPA requires health information custodians to take *'reasonable steps*' to protect patients’ personal health information. Is it clear what is meant by *'reasonable steps*' in this context?”

Physician respondents were divided with respect to whether the use of ‘reasonable steps’ when referring to the protection of patients’ personal health information was clear *(Figure 3)*.

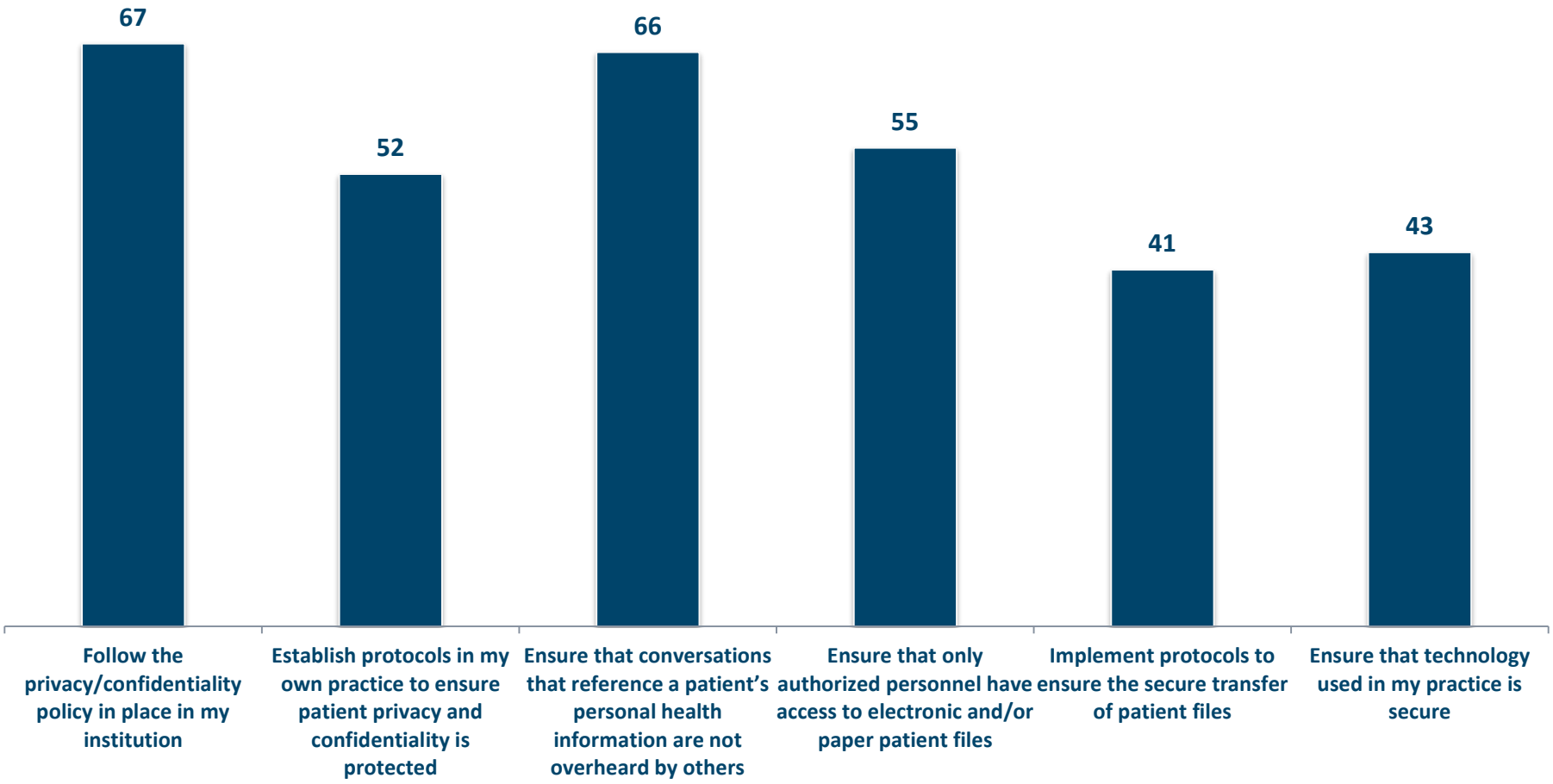
Figure 3 : Clarity of ‘reasonable steps’ use



Base: n = 77

Q8. What steps do you take to protect patients' personal health information?

Figure 4 : Steps taken to protect patient information



Base: n = 77

Q8. What steps do you take to protect patients' personal health information?

17 Respondents provided open-ended feedback about the steps they take to protect their patients' personal health information.

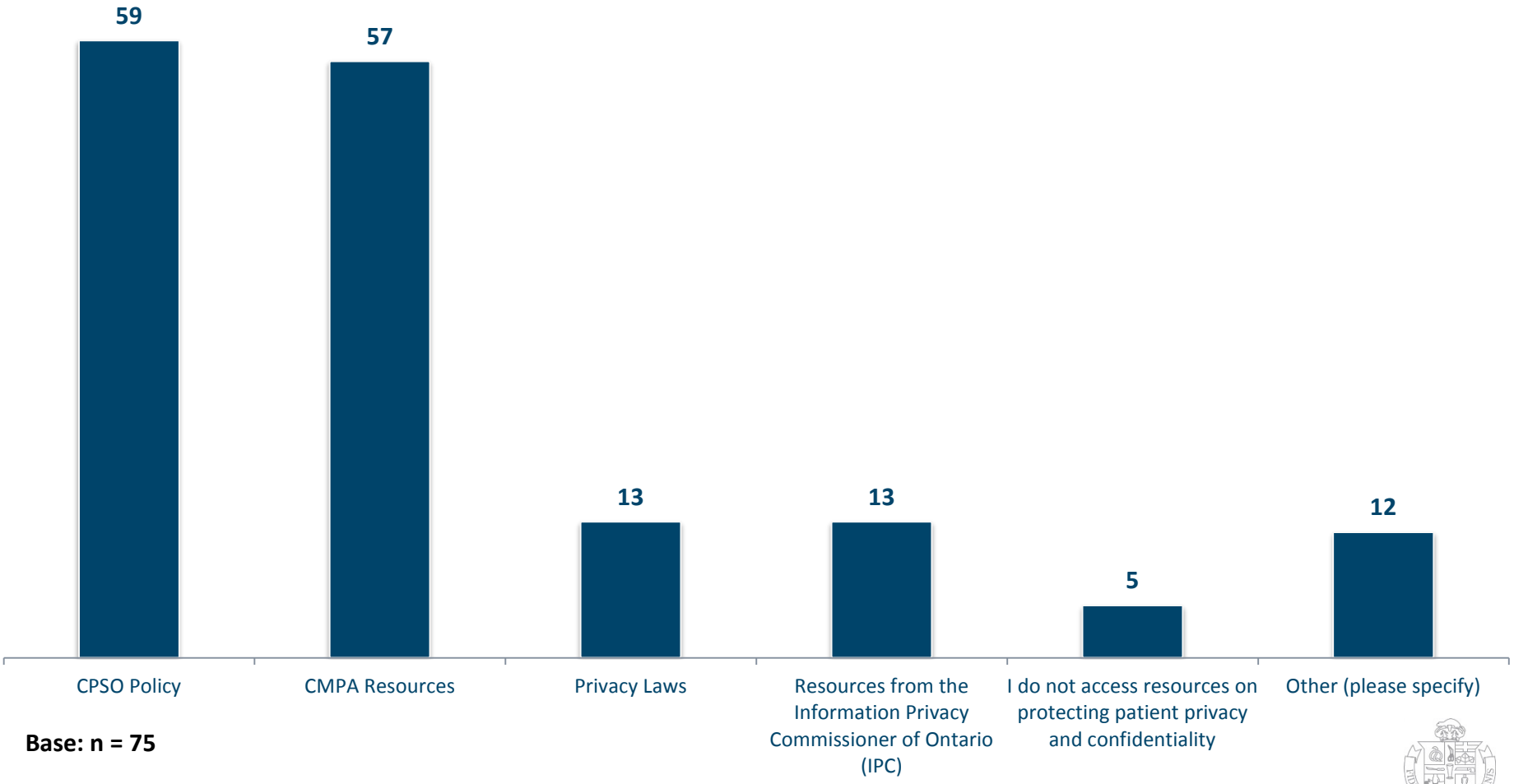
Below is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

- Reminding patients to protect the information they are given
- Following hospital policy
- Shredding documentation beyond 7 years
- Using secure file transfers within an institution
- Ensuring copies of signed consents to release information are on record prior to releasing the information

One respondent noted that as an older physician, they have concerns about their own understanding of how technology can be abused.

Q10. What sources of information do you access when you have questions regarding the protection of patient information?

Figure 5 : Accessed Sources of Information



Base: n = 75

Q10. What sources of information do you access when you have questions regarding the protection of patient information?

The 12 respondents who indicated they consult other sources of information specified the following sources:

- Colleagues
- Workplace policies/Hospital policies
- Management
- Institutional Privacy Officer
- Employment Standards Act
- Federal Guidelines

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Part 2: Questions for Non-Physicians

The following questions were posed to all respondents who indicated they were not a physician. This includes all respondents who identified as a member of the public, a medical student, another health professional or who preferred not to identify themselves.

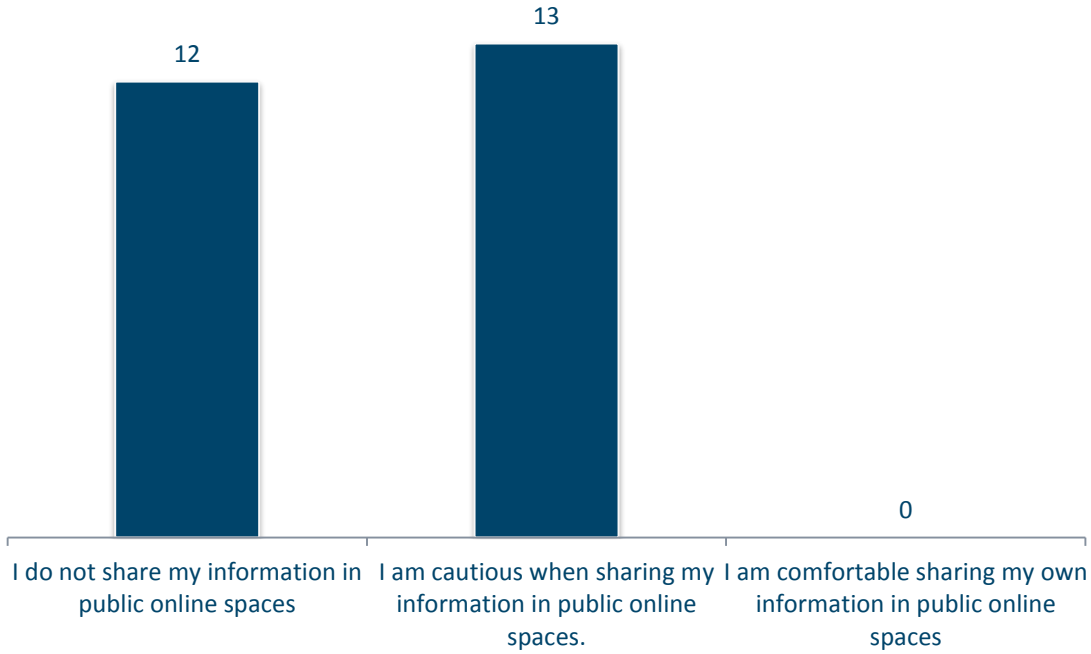
All physician respondents were skipped over these questions.

Note: *In some cases, in order to provide respondents with relevant context, additional detail was provided in the survey. In the interest of length, this additional contextual detail is not always reproduced in this report.*

Q11. How would you describe your level of comfort with sharing your own personal health information in public online spaces, such as through social media posts, online patient groups or forums?

All non-physician respondents indicated that they do not share their personal information, or are cautious when doing so, in public online spaces.

Figure 6: Level of comfort with sharing own information

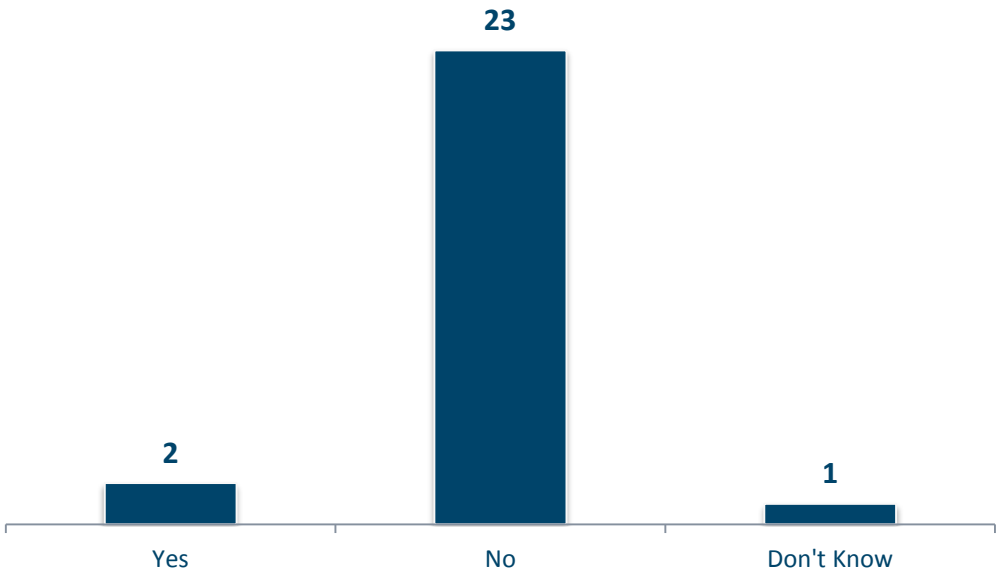


Base: n = 25

Q12. Do you currently have the option of communicating with your physician electronically?

A strong majority (88%) of respondents indicated they did not have the option of communicating electronically with their physician.

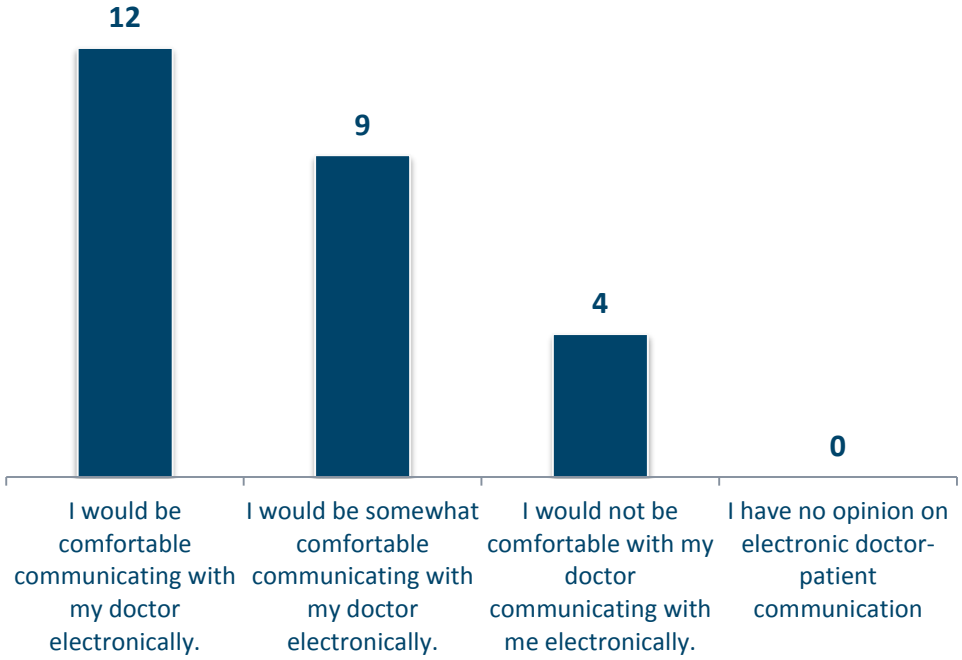
Figure 7: Electronic Communication with Physician



Base: n = 26

Q13. How would you describe your level of comfort with electronic doctor-patient communication?

Figure 8: Comfort with Doctor-Patient Communication



Base: n = 26

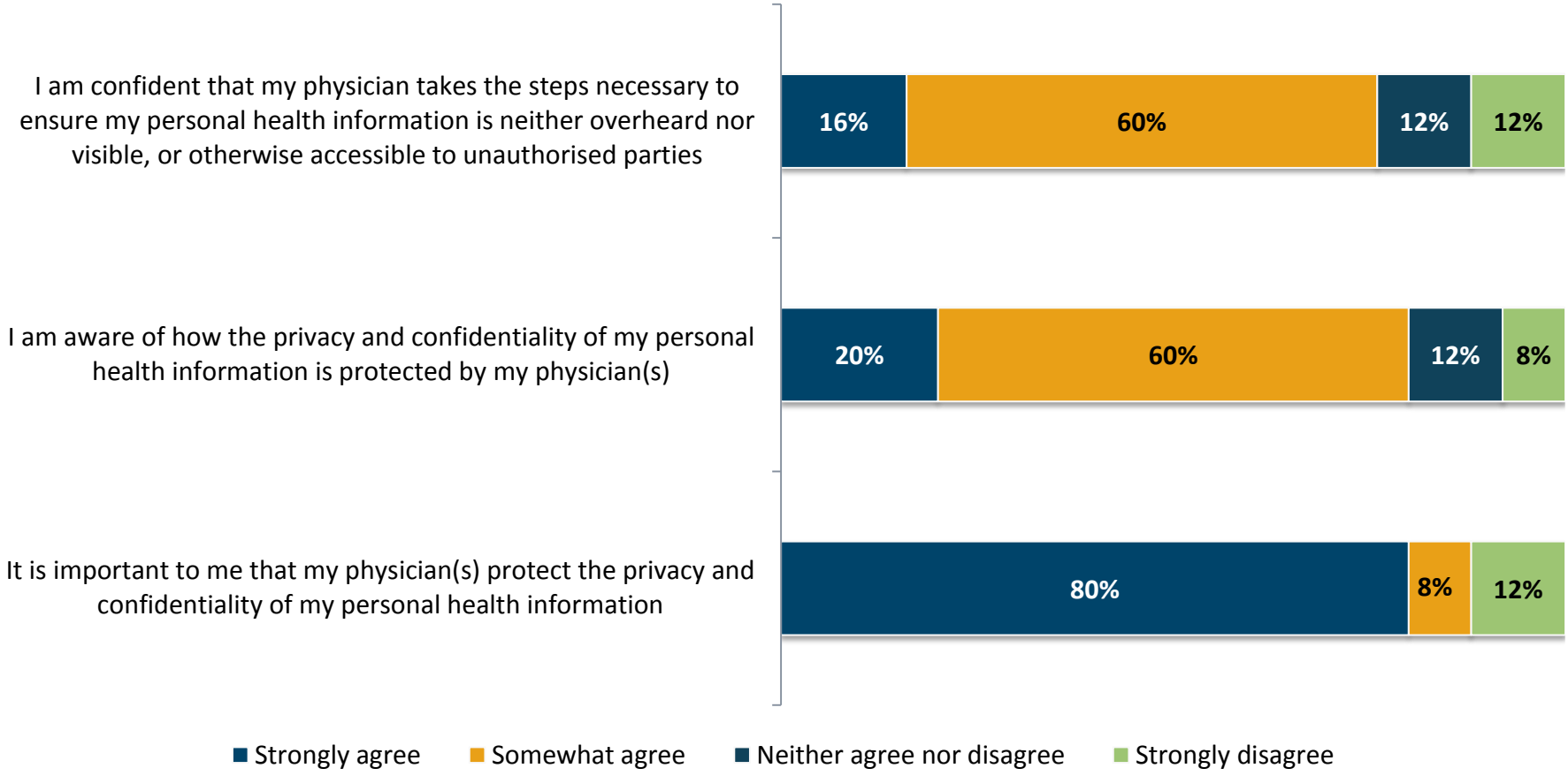
This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

5 respondents provided open-ended feedback. These responses are summarized below:

- Place limits on the type of information and the level of detail communicated
- Comfort level influenced by how the information is to be communicated, to whom it will be shared with, and how it will be stored
- Electronic communication can reduce the need for visits to the office
- General support for electronic doctor-patient communication

Q14. Please indicate the extent to which you agree or disagree with the following statements.

Figure 9: Application of the expectations to all physicians



Base: n = 25

Part 3: Policy-Specific Questions

The following questions were posed to respondents who indicated they had read the current *Confidentiality of Personal Health Information* policy.

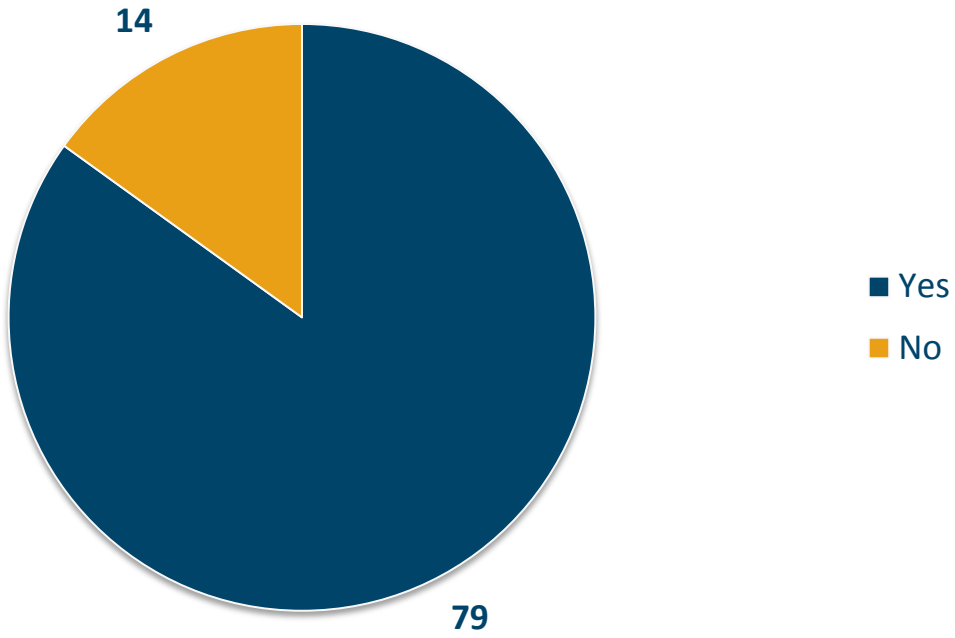
Respondents who indicated they had not read the current policy were skipped over these questions.

Note: *In some cases, in order to provide respondents with relevant context, additional detail was provided in the survey. In the interest of length, this additional contextual detail is not always reproduced in this report.*

Q15. Have you read the *Confidentiality of Personal Health Information* policy?

79% of respondents have read the current policy. Respondents that indicated they had not read the current policy have been skipped over the subsequent questions specific to the current policy.

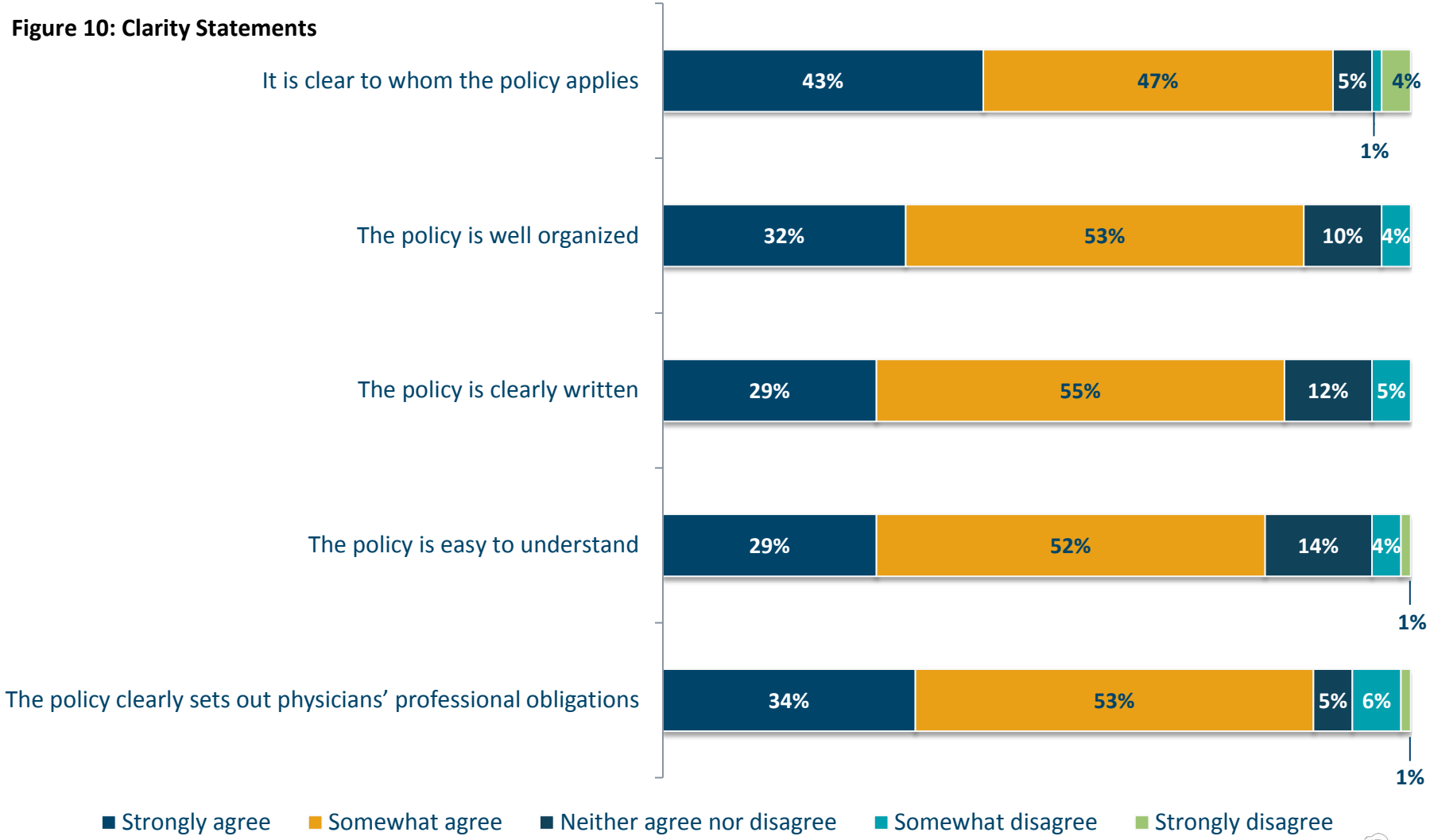
Figure 9: Read Policy



Base: n = 93

Q16. Please indicate the extent to which you agree or disagree with each of the following statements regarding the clarity of the policy.

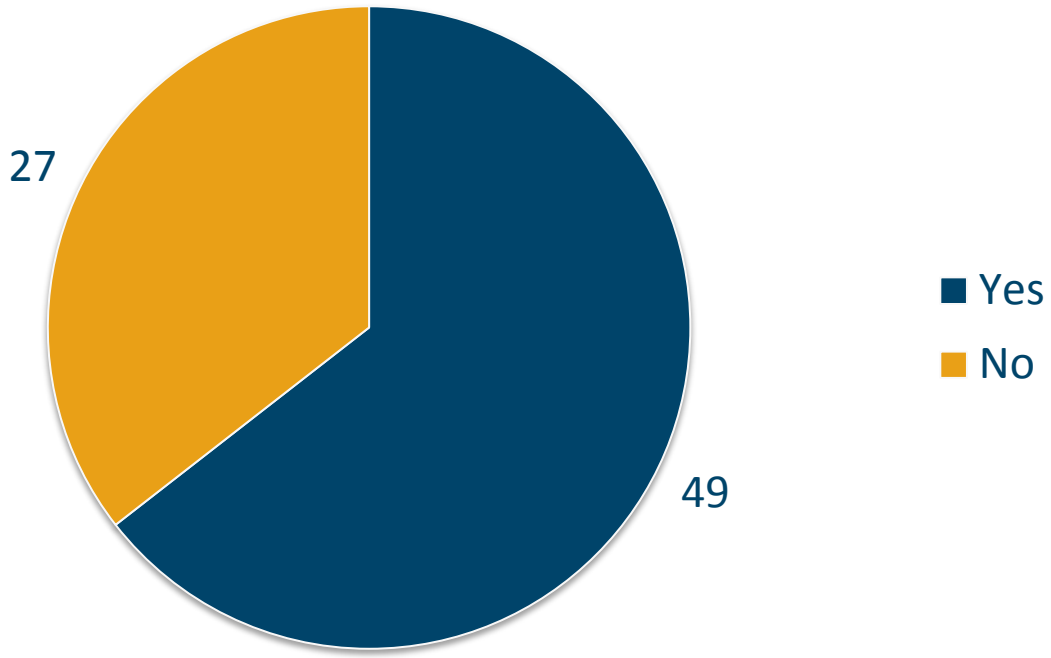
Figure 10: Clarity Statements



Base: n = 77

Q17. The current policy indicates that physicians need a patient's express or implied consent before disclosing personal health information. Is the distinction between express and implied consent clearly articulated?

Figure 11: Distinction between express and implied consent



Base: n = 76

Q17. The current policy indicates that physicians need a patient's express or implied consent before disclosing personal health information. Is the distinction between express and implied consent clearly articulated? If no, Please elaborate.

The 13 respondents who indicated that the distinction between express and implied consent was not clearly articulated expanded on their answers by providing open-ended feedback, as summarized below:

- Requiring express consent to discuss the patient's situation with friends/family creates a challenge when the patient will not consent and the friend/family member has additional information that will aide the clinician.
- Physicians not knowing the difference between express and implied consent in practice.
- Physicians not knowing whether all information can be shared, or only relevant information for the purposes of referral.
- The language used in drafting the policy and the terms used within it are legal in nature, and is difficult for patients to understand and interpret.
- Lack of clarity around when implied consent is relied upon from the patient perspective. Preference for express consent.
- Lack of clarity around application of these terms in the Canadian Armed Forces context.
- Confusion over whether implied consent to disclose includes disclosure to only relevant Health Information Custodians. How it currently reads appears broader than this.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q18. In your view is the term 'circle of care' clear?

Of 71 respondents, 53 (75%) indicated that the term was clear, 11 (15%) indicated it was not clear, and 7 (10%) respondents indicated 'other', and provided open-ended feedback. This feedback is summarized below.

- The context is important when determining who is within the circle of care for a patient, and who is not. The current policy uses organizations like public hospitals as examples rather than focusing on the personnel within these organizations whose role would involve the provision of care.
- Being a health professional or a Health Information Custodian in one context does not result in automatic inclusion in a patient's circle of care.
- Lack of clarity around who determines the criteria for inclusion in one's circle or care, and whether this includes all health professionals (ie. Naturopaths or other allied health professionals), clergy, or family and friends. Examples would be helpful.
- Institution based training results in a varying level of familiarity with privacy concepts and requirements. It is offered that to overcome this, CPSO should provide mandatory training to all members.
- For doctors working in Ontario within a federally regulated context, such as the Canadian Armed Forces, it is not clear how provincial regulations and policies are to be applied and followed.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q19. Please provide any further comments that may assist us in clarifying what is meant by the term 'circle of care'.

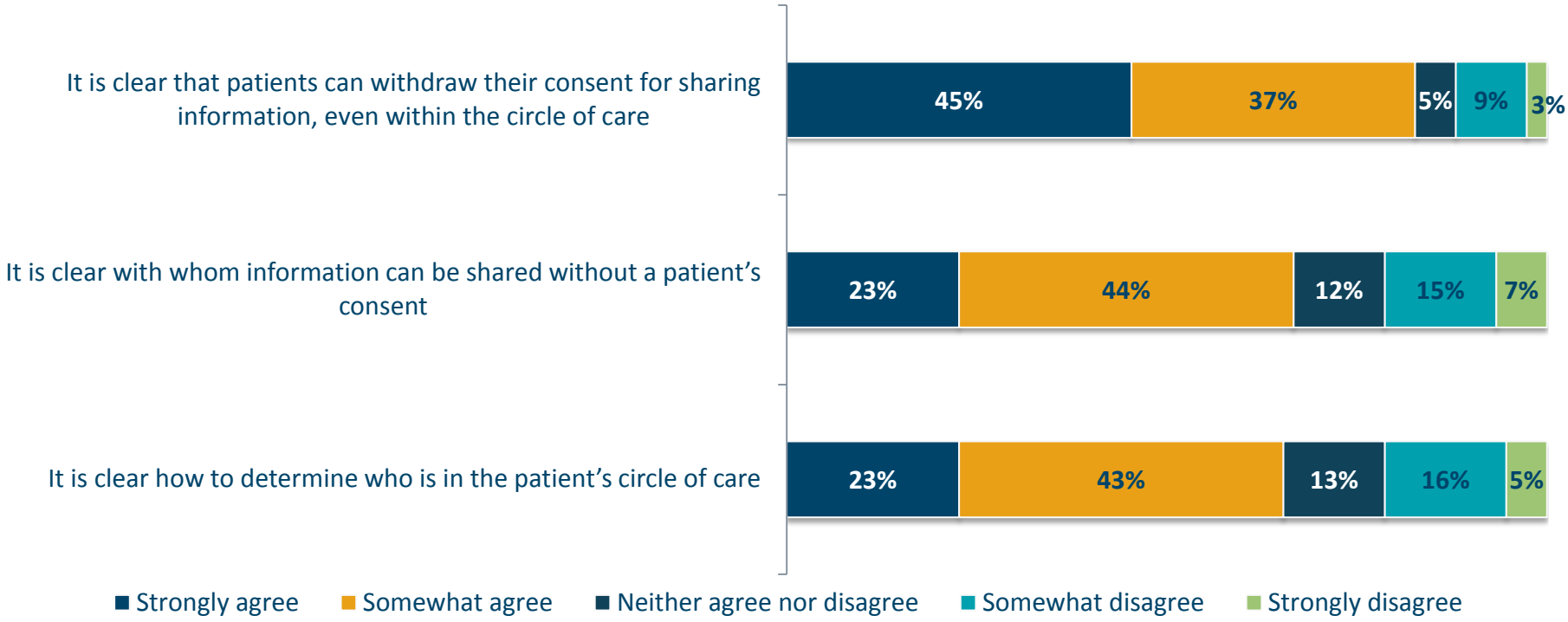
Open ended feedback regarding the term 'circle of care' was received from 14 respondents. Of those respondents who provided open-ended feedback, the following statements are representative:

- From the perspective of a psychiatrist, privacy issues that involve mental illness in hospital appear to be managed different from physical illness and this has created challenges with determining the state of the patient and the care being received.
- The current policy relies on an implied definition of the term 'circle of care'. It would be helpful to have a clear definition.
- Unclear whether natural health practitioners are to be included in the circle of care.
- Concern that there is increasing interest in access to patient information by government planning bodies, namely the LHINs.
- In settings with large health professional teams like hospitals and family health teams, it is noted that the circle of care extends to all allied health professionals regardless of whether they are involved in direct care for the patient.
- Unclear who defines the circle of care. Is the physician ultimately responsible, and if so how are they to navigate systems that allow access for others in the institution/practice that are not directly involved in the patient's care?

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q20. Please indicate the extent to which you agree or disagree with the following statements regarding consent.

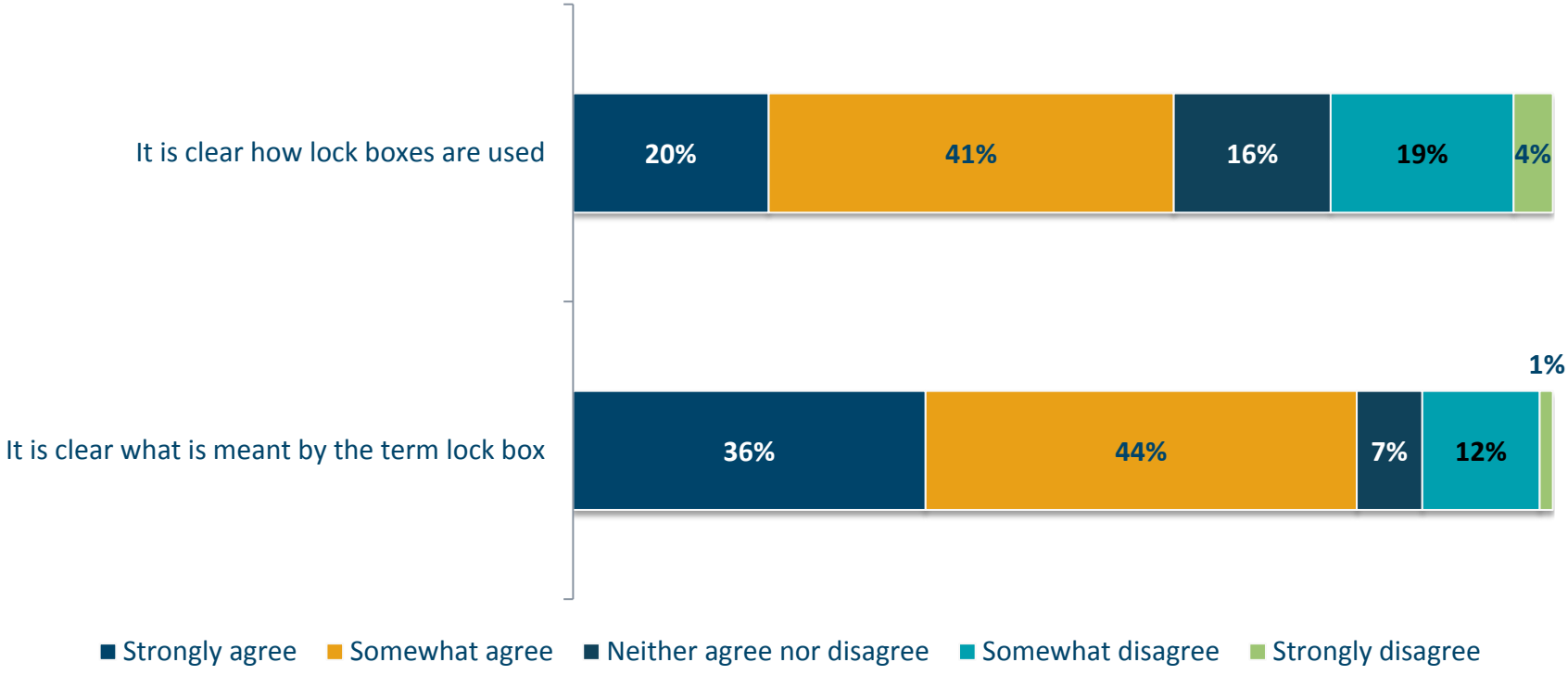
Figure 12: Opinions on consent



Base: n = 75

Q21. Please indicate the extent to which you agree or disagree with the following statements regarding the explanation of the term ‘lock box’.

Figure 12: Opinions on the term ‘lock box’



Base: n = 75

Q22. Please provide any comments that may assist us in clarifying the term 'lock box' in the next iteration of this policy.

16 respondents provided open-ended feedback on the term 'lock box'. A representative sample of the feedback is summarized below:

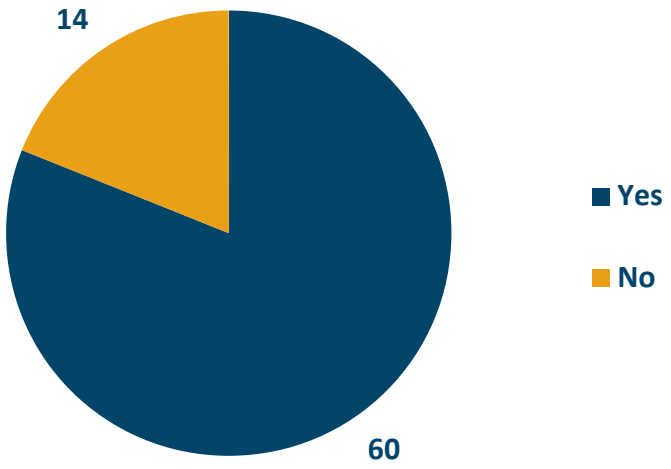
- Lock boxes as an administrative burden
- Observation that they are a good concept, but implementation can be challenging for care provision if information isn't available to clinicians for decision-making.
- Practical examples would be helpful to provide guidance for common issues that arise
- Contextual scenarios present a challenge:
  - Military: movement of people through the province results in several physicians and non-medical personnel being involved in a patient's care. How to navigate this with CPSO policy and lock boxes specifically is unclear.
  - Regional physician population: Using a lock box to limit a physician from accessing part or all of a patient's record may have consequences for that patient receiving care if there are a limited number of physicians available in the region.
- Use of lock boxes complicates the functioning of team-based care environments and has the potential to negatively impact emergent care provision.
- Unclear whether the lock box applies to sharing with non-medical organizations or their representatives (i.e. lawyers and insurance companies).

One respondent noted that the use of a lock box suggests to them that there is a loss of trust between the patient and the provider/health system.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q23. Are the circumstances where disclosure of personal health information without the patient's consent is *required* versus *permitted* clear in the current policy?

Figure 13: Required versus Permitted Disclosure



Base: n = 74

60 respondents (81%) indicated that the circumstances were clear. 10 respondents provided open-ended feedback that is summarized below:

- Examples would help distinguish between required and permitted disclosure scenarios
- Unclear whether the police act as part of the legal system in the current policy and the role of the courts in requiring disclosure
- With infinite scenarios and issues that can arise, the policy relies on physicians offering the utmost consideration for the patient's well-being.
- For physicians with Ontario licensure practicing in a military context, it is unclear how to understand disclosure when it comes to Veteran Affairs requests, chain of command/employer requests, boards of inquiry, summary investigations, administrative investigations, Military Police investigations.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q24. In what other ways can we improve the policy's clarity?

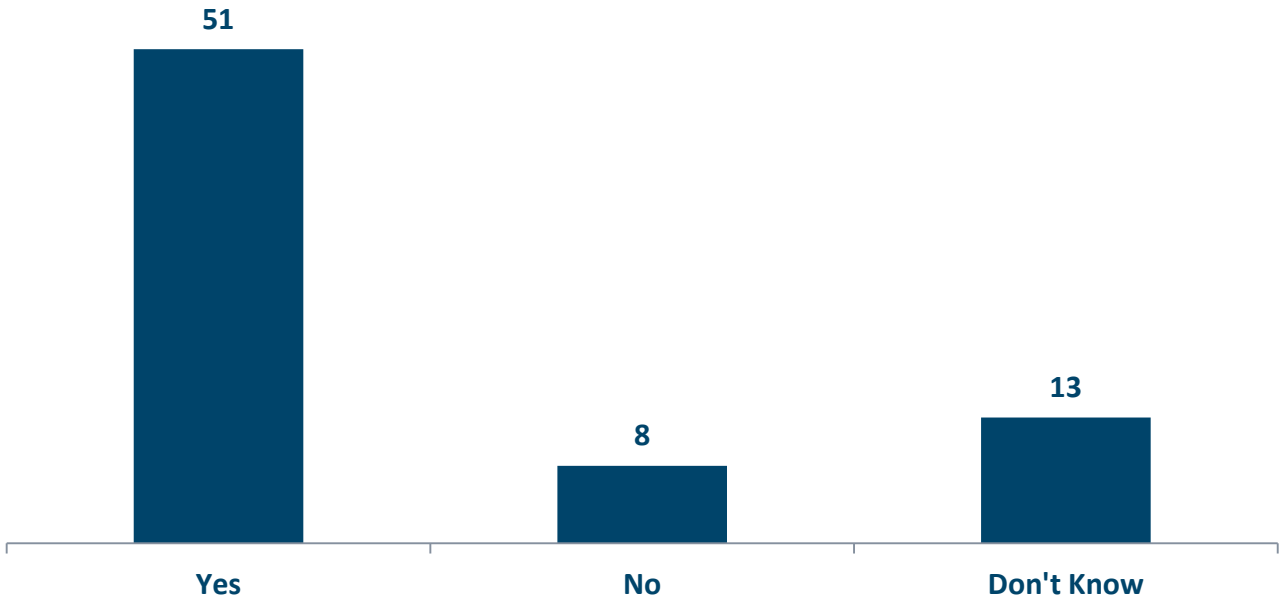
30 respondents provided additional comments on the clarity of the current policy and ways it could be improved:

- Physicians assume they have implied consent, but it is recommended that physicians should require written permission at the onset of the treating relationship to disclose their personal information when necessary.
- The high turnover of reception staff increases the risk of information being stolen, misused or misinterpreted.
- Current policy reflects paper information systems. Need for guidance on technology use and safeguards for privacy.
- Better definition of circle of care and situation related doctor-patient examples using accessible language.
- Integrate a section that specifically addresses the application of this policy for federally employed physicians providing care to federal patients within the province.
- Provide clarity for the physician on how to manage confidentiality of patient information if it is the patient that loses the requisition form.
- Clarify why physicians are not able to access their own personal health information using an electronic system where they have privileges.
- Sharing information with the patient/designated representative appears to be missing.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q25. The current policy focuses on physicians' legal obligations to protect patient privacy and confidentiality. The obligation to maintain confidentiality, however, is also an ethical duty. Would you find it helpful to have information included in the next iteration of the policy regarding the ethical duty to maintain confidentiality?

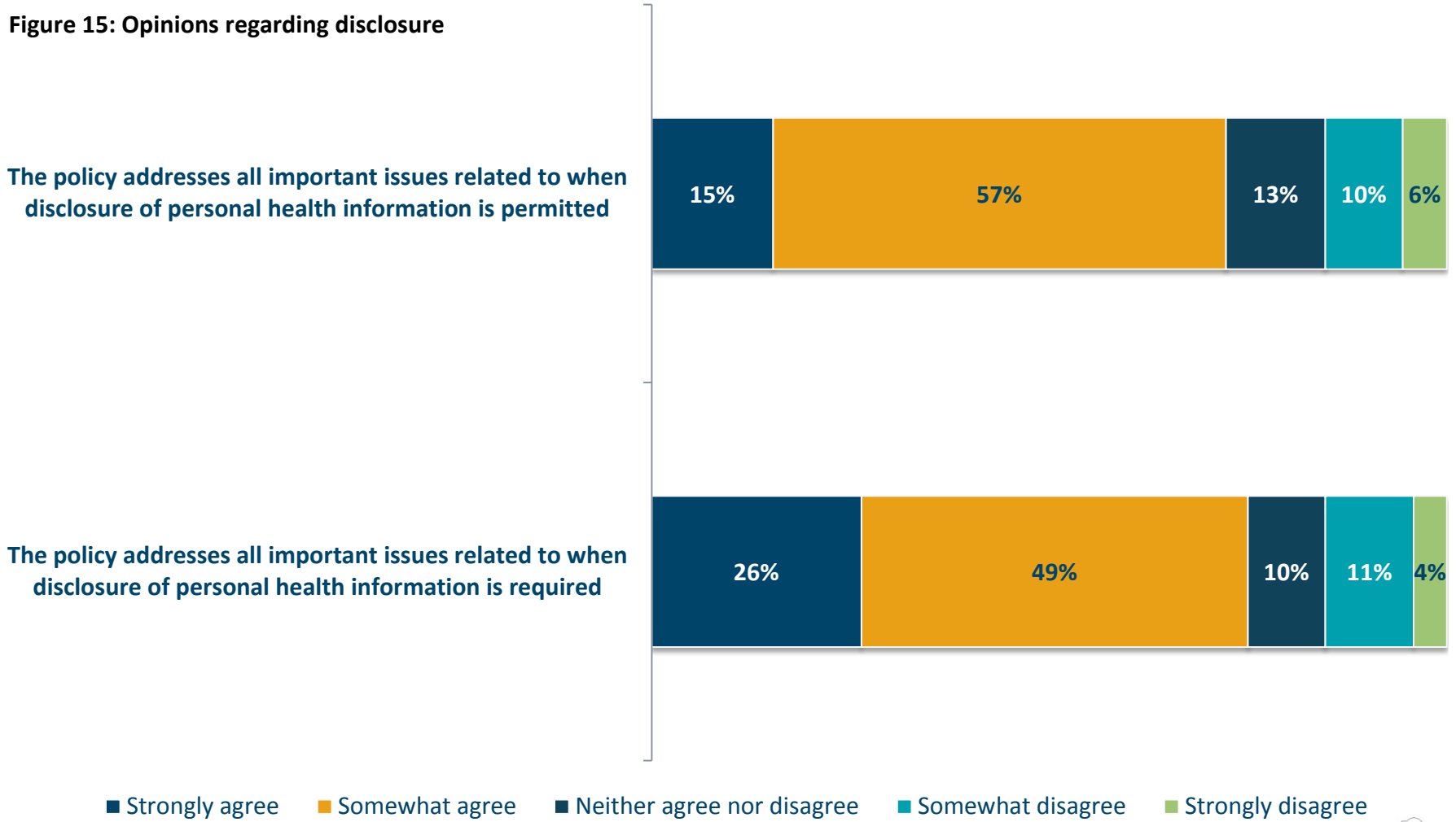
Figure 14: Include ethical duty in next iteration



Base: n = 72

Q26. Please indicate the extent to which you agree or disagree with the following statements regarding the disclosure of personal health information.

Figure 15: Opinions regarding disclosure



Base: n = 72

Q27. Are there any specific issues regarding protecting privacy and confidentiality that we don't cover in the current policy, but should be in the next iteration?

Of the 69 respondents who provided open-ended feedback regarding the protection of privacy and confidentiality that isn't covered in the current policy, the following statements are representative of the feedback received:

- Many respondents indicated that they did not have suggestions on specific issues that haven't been addressed.
- Guidance on what to do when the patient is unable to give permission and the designated power of attorney is unavailable
- Risks related to privacy/security breaches beyond CPSO investigations.
- Privacy and uses of patient information for research purposes.
- Ethics of maintaining privacy and confidentiality
- Management of security when patients use unsecure methods of communication, such as personal email accounts
- Information on protecting electronic medical records and the use of technology.
- Managing confidentiality among staff at clinics
- Physician ability to access record of deceased patient if it pertains to the treatment of a current patient (e.g. hereditary conditions).
- Direction on the safe transmission of information electronically, including emails to patients.
- Guidance on the design of office space to enhance privacy.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q28. Please feel free to elaborate on any of your answers given above with regards to the comprehensiveness of the policy.

15 respondents provided additional open-ended feedback to elaborate on the comprehensiveness of the current policy. The following statements are representative of the feedback received:

- Information sharing is important for the functioning of multidisciplinary teams, and a respondent expressed concern that the focus on easy flow of information is resulting in important information not being fully shared with team members (i.e. conditions that could pose a risk for care providers).
- Guidance needed on how to navigate court orders for the release of information when the patient is competent and does not provide consent to release their information.
- Suggestion that CPSO policy follow hospital policies on release of information as these provide detail on what information can be disclosed, to whom and why.
- Direct more attention to the distinction between required disclosure and permitted disclosure.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.

Q29. If you have any additional comments that you have not yet had the opportunity to share, please feel free to provide them below, by email or through our online discussion forum.

7 respondents provided additional open-ended feedback. The following statements are representative of the feedback received:

- The policy needs to be fine tuned and refined for clarity. Suggestion to lay out actions for physicians to take, and for walk-in clinics to have in place to implement confidentiality practices in their daily work.
- Concern over the confidentiality of physician personal information and access to this by the government.
- Observation that policy development process is top-down and does not adequately involve patients.

This is a representative sample of the key feedback received. Comments have not been reproduced verbatim.