

# Personal Health Information Protection Act

## Q & A

### **Q** *What is the Personal Health Information Protection Act?*

The *Personal Health Information Protection Act, 2004* (PHIPA) is Ontario's new health-specific privacy legislation. Like the *Federal Personal Information and Protection of Electronics Documents Act* (PIPEDA), PHIPA was created to protect personal information. PHIPA comes into force on November 1, 2004.

### **Q** *As a dentist, will I have to comply with PIPEDA, PHIPA or both?*

Great question. As you know, the PIPEDA legislation covers commercial transactions, including the provision of health care. However, PHIPA was designed to address the unique issues in health care. PIPEDA will not apply to personal information in provinces that have substantially similar privacy legislation in place. The federal government is expected to deem the provisions of Ontario's PHIPA to be substantially similar to PIPEDA in order to exempt health-care providers that will be covered under PHIPA also having to comply with the provisions of PIPEDA. As far as the provision of health care is

considered, dentists are defined by PHIPA as health information custodians (HICs) and will be subject to all of the rules about collection, use, and disclosure of personal health information. It is important to note that even if such an exemption is made, PIPEDA will continue to apply to all commercial activities that dentists engage in outside of the provision of health care.

### **Q** *I followed the College's compliance kit for PIPEDA. Am I going to have to change all of my privacy policies again?*

The great news is that if you are PIPEDA compliant, and have followed the College's directions about collection, use, and disclosure of personal information, you are in excellent shape and ready for PHIPA. There may be a few minor changes you wish to make as detailed in the enclosed PHIPA insert. The second piece of good news is that any changes in the Ontario legislation are ones that will make obtaining consent easier for dentists.

### **Q** *What is consent under PHIPA?*

The general rule is that health information custodians need to obtain knowledgeable consent to collect, use, and disclose personal health information. An individual's consent may be implied or expressed. There are very limited circumstances where a custodian may collect, use or disclose personal health information without the consent of the individual.

PHIPA provides that health information custodians may include a posting or conspicuous notice or distribute brochures to the public (patients), describing the purpose for the collection, use, and disclosure of personal health information. If dentists do this, they can rely on patients implied consent for all exchange of information having to do with the provision of health care. However, it is important to note that you will need to obtain express consent from patients for any non-health care related activities, including communication with insurance providers.

**Q Can the individual place a condition or restriction on his/her consent?**

Yes. In a provision that does not exist in the federal legislation, in Ontario an individual may restrict the HIC from sharing his/her personal information with another HIC. In doing so, an individual can be said to have placed his/her personal information in a lock box. If a patient has done this, when the dentist discloses the patient's health information to another HIC, the dentist will be obliged to tell the other HIC that the dentist is not disclosing all of the relevant health information, at the request of the patient.

However, an individual's restriction may not impede the collection, use or disclosure of personal health information that is required by law or professional institutional practice.

**Q What happens when an individual is incapable of providing consent?**

If a HIC believes that an individual is incapable of providing consent, PHIPA permits a substitute decision-maker to make the decision on the individual's behalf. This person would qualify as a substitute decision-maker as set out in the Act. For example, a substitute decision-maker is authorized to provide personal health information on behalf of a child under the age of 16 who is unable to provide an answer to a medical question.

**Q As a dentist, can I provide the patient's personal health information to the Royal College of Dental Surgeons of Ontario without the patient's consent?**

PHIPA specifically provides that HICs may disclose personal health information without an individual's consent, for the purpose of administration and enforcement of various acts by professional colleges or other regulatory bodies. This includes the Royal College of Dental Surgeons of Ontario for the purpose of administering the *Regulated Health Professions Act* and the *Dentistry Act*. The patient's consent is not required.

**Q Under PHIPA, does the patient have the right to seek to correct the dentist chart or record?**

Like PIPEDA, PHIPA gives an individual the right to seek correction of errors or omissions in their personal health information. However, another piece of good news is that PHIPA provides that a HIC may refuse to correct personal health information on the basis that it is "professional opinion or observation" of the health-care provider. If a correction is refused on such a basis, the custodian is required to inform the individual of the refusal, their reasons for their refusal, and the individual's right to file a complaint with the Information and Privacy Commissioner.

**Q What do I do if a patient's information is inadvertently lost, stolen or accessed without authorization?**

Similar to PIPIDA, HICs must take steps that are reasonable in the circumstances to ensure that personal health information in their custody or control is adequately safeguarded. A new requirement in PHIPA is that if the personal health information is stolen, lost or accessed by unauthorized persons, the HIC, with some exceptions, must inform the patient of the occurrence.

**Q I am a dentist looking to sell my practice. What agreement do I need in place with the potential successor?**

More good news! PHIPA provides that a HIC may disclose personal health information about an individual to a potential successor of the custodian for the purpose of allowing the potential successor to assess and evaluate the operations of the HIC. In order to do so, the custodian must first have the potential successor enter into a confidentiality agreement.

When the time comes to transfer the practice to a successor, PHIPA provides that the HIC may transfer the records of personal health information to the custodian's successor, if the custodian makes reasonable efforts to give notice to the individuals before transferring the records, or if that is not possible, as soon as can be after the transfer.

**FOR MORE QUESTIONS AND ANSWERS VISIT:**

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