



## The College of Physicians and Surgeons of Prince Edward Island

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SECTION	
POLICY NAME	<b>The Application of the Principles of Privacy</b>
DESCRIPTION	<p style="text-align: center;"><b>Questions from CMA for Licensing Authorities:</b></p> <ul style="list-style-type: none"> <li>▪ Privacy policies for offices</li> <li>▪ Rules for retention and disposal of records</li> <li>▪ How to manage patient access to health information</li> <li>▪ Contracts signed with third parties should explicitly address the protection of privacy</li> <li>▪ On closing a practice, regulations for the storage or transfer of patient records</li> <li>▪ Ownership and control of records, and continued access.</li> </ul> <p><u>The CMA Code of Ethics:</u></p> <p style="text-align: center;"><b>“Confidentiality</b></p> <ol style="list-style-type: none"> <li>1. Respect the patient’s right to confidentiality except when this right conflicts with your responsibility to the law, or when the maintenance of confidentiality would result in a significant risk of substantial harm to others or to the patient if the patient is incompetent; in such cases, take all responsible steps to inform the patient that confidentiality will be breached.</li> <li>2. When acting on behalf of a third party, take reasonable steps to ensure that the patient understands the nature and extent of your responsibility to the third party.</li> <li>3. Upon a patient’s request, provide the patient of the third party with a copy of his or her medical record, unless there is a compelling reason to believe that information contained in the record will result in substantial harm to the patient or others.”<sup>1</sup></li> </ol>

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<sup>1</sup> CMA Code of Ethics

The Supreme Court of Canada:

“In the absence of legislation, a patient is entitled, upon request, to examine and copy all information in his/her medical records which the physician considered in administering advice or treatment, including records prepared by other doctors that the physician may have received. Access does not extend to information arising outside the doctor-patient relationship. The patient is not entitled to the records themselves. The physical medical records of the patient belong to the physician.”

“The physician-patient relationship is fiduciary in nature and certain duties arise from that special relationship of trust and confidence. These include the duties of the doctor to act with utmost good faith and loyalty, to hold information received from or about a patient in confidence, and to make proper disclosure of information to the patient. The doctor also has an obligation to grant access to the information used in administering treatment.”

“The patient’s general right of access to medical records is not absolute. If the physician reasonably believes it is not in the patient’s best interest to inspect the medical records, the physician may consider it necessary to deny access to the information.”<sup>2</sup>

Personal Information and Electronic Documents Act

It is understood that the PIPEDA applies to individually practising physicians. Medical Records have been listed as personal information for the purposes of the Act. How the Act will be interpreted in particular situations will ultimately be determined by case law.

- **Acquisition of Information:**

*Consent:*

The form of consent should take into consideration:

1. Reasonable expectations of the individual
2. Circumstances surrounding the collection
3. Sensitivity of the information involved.\*

“Your Privacy Responsibilities – A Guide for Business and Organization,” Office of the Privacy Commissioner, Dec. 2000

*Consent may be implied, e.g. if a person presents to a physician for help*

- **Storage of Information**

*Paper files:*

1. Secure location with limited access.
2. Reasonable protection against loss or destruction.

*Computer files:*

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<sup>2</sup> Release and Transfer of Medical Records, Page 4 of 10, College of Physicians and Surgeons of Alberta

1. Pass word protected and limited access
2. Virus protection and firewall protection
3. Reasonable protection against loss or destruction.

- **Transfer/Sharing of Information**

- Sharing information with other Health Professionals or institutions to the extent necessary to provide proper medical care.
- If possible in the circumstances, such a patient is understanding that this sharing of information is necessary for good medical care.
- Share information with third parties only after explicit written consent (unless required to do so for legal reasons)

*Telephone:*

1. In an area that cannot be overheard
2. To a person who has the authority to receive the information and who is positively identified.

*Fax:*

1. Only to a FAX machine that is known to be in a secure location.
2. With the consent of the patient.
3. With a cover sheet that emphasizes the Privacy of the Information.

*Computer:*

1. In a form that is encrypted to a secure computer
2. With have consent of patient
3. Anonymizing the message
4. Never send anything that is urgent as there may be a delay

*Paper:*

1. To an individual who is entitled to receive it.
2. Passed on in sealed envelopes marked private and confidential.

- **Preservation of Information**

- At least 10 years after the date of the patient's last attendance.
- At least 10 years after a child has reached the age of majority.
- Physician in a group practice or in an employee situation should have a written agreement with the group practice/clinic/or employer regarding the storage and retrieval of records.
- All physicians should inform the College of Physicians and Surgeons about the storage arrangements.

- **Destruction of records**

- Paper records no longer needing to be maintained should be destroyed by burning or shredding. It is prudent to keep a list of names of charts destroyed.
- If feasible, notification of patients regarding the imminent destruction of records would be described, particularly if the physician possesses the only copy

- Electronic records are to be erased and physically destroyed
- **Access of Information**
  - Staff should have a complete understanding of the necessity for confidentiality
  - A confidentiality agreement should be signed by a non-professional staff member
  - Non-Professional Staff – There should be “A documented assurance from each of them that should state that they will not access personal information except as required in the course of their duties and that personal information shall not be collected, used or disclosed for any other purpose without consent. These consultants may include temporary workers, cleaners, information technology experts, bookkeepers, accountants, lawyers, marketers, security officers, and building maintenance staff.”<sup>3</sup>
- **Release of Information to a 3<sup>rd</sup> party**
  - Request for information should be accompanied by a signed consent of the patient, which is dated and outlines the material to be released.
  - Consent forms may be considered valid for 1 year from the date signed.
  - Request for information beyond the immediate concern (e.g. requests for whole charts) should be honoured only after the patient has been consulted and has provided written confirmation to the physician, and only after the physician has advised the patient what information will be released.
- **Correction of Information**
  - Correct without destroying original record or making it illegible.
- **Administration of Information**
  - Appoint a privacy officer whose responsibility it is to develop and monitor privacy policy and who will respond to any public inquiry or concern.

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**The following has been prepared by the College of Family**

<sup>3</sup> Privacy Act an opportunity to review practice policies, Page 13 College of Physicians and Surgeons of Ontario

**Physicians of Canada for the benefit of its members. It is equally applicable to all physicians.**

**“Are you Ready for 2004 and the New Privacy Legislation (PIPEDA)?”**

*In anticipation, the CFPC has prepared a reference document, Privacy Legislation – A Critical Review for Family Physicians, and a Checklist (below) that highlights information found in much more detail in the documents available at the web site.*

***A Checklist for your practice should bring your attention for the following items:***

- 1. Processes are in place to ensure the privacy and confidentiality of Personal Health Information (PHI).*
- 2. Staff has been trained in PHI management and has signed confidentiality agreements.*
- 3. Staff understands what types of information may be provided and to whom.*
- 4. An individual may be designed to oversee the use of PHI in the office.*
- 5. All medical records are safe and secure.*
- 6. Patients consent to the collection of their PHI.*
- 7. Patients are kept informed through posters, brochures, etc. about the reasons for collecting their PHI.*
- 8. A process is in place to allow patients to access their own PHI.*
- 9. Mechanisms are in place for updating and correcting PHI in charts.*
- 10. Guidelines are being followed for the retention and destruction of PHI in records.*
- 11. A process is in place for dealing with complaints related to the collections and use of PHI.<sup>4</sup>”*

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<sup>4</sup> Privacy Legislation, A Critical Review for Family Physicians, The College of Family Physicians of Canada Page 1

	<p style="text-align: center;"><b><u>Bibliography</u></b></p> <ul style="list-style-type: none"> <li>– CMA Code of Ethics, 1996</li> <li>– Critical Review for Family Physicians, The College of Family Physicians of Canada, December 2003</li> <li>– Freedom of Information and Protection of Privacy Act (No. 2) Bill #47, Gov. of PEI, 2001</li> <li>– Personal Information Protections and Electronic Documents Act, Gov. of Canada, Jan. 1, 2004</li> <li>– Physicians' Office Medical Records, The Messenger, Policy Practices, College of Physicians and Surgeons of AB Nov 2003 Issue 106</li> <li>– Privacy Act an Opportunity to Review Practice Policies, Dialogue, College of Physicians and Surgeons of ON Nov/Dec 2003</li> <li>– Privacy in Practice: A Handbook for Canadian Physicians, 2004</li> <li>– Privacy Legislation – A critical review for family physicians, www.cfpc.ca , December 2003</li> <li>– Privacy Poster, Canadian Medical Association 2004</li> <li>– Protecting Patients Personal Information, Dialogue, College of Physicians and Surgeons of ON Nov/Dec 2003</li> <li>– Some Legal and Ethical Consideration when leaving a Medical Practice, Policy, College of Physicians and Surgeons of PEI June 1995</li> <li>– The Challenge of Electronic Medical Records: Protecting Privacy in an increasingly paperless world, ed. Crulla, D.A, et. al, Telehealth Law Vol. 3 No. 3 March 2003</li> <li>– Your Privacy Responsibilities, A Guide for Business and Organizations, Part I PIPEDA, Office of the Privacy Commissioner, Dec. 2000</li> </ul>
APPLICABLE LEGISLATION	
APPROVED BY:	<p><b>Council of the College of Physicians &amp; Surgeons of PEI</b> Approved for circulation, April 7, 2004</p>
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