



# Commissioner's *PHIPA* Highlights

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## Here's what health professionals are asking about Ontario's new health privacy legislation

Since the *Personal Health Information Protection Act (PHIPA)* came into effect on November 1, 2004, my office has received more than 3,000 calls and e-mails from professionals in the health sector with questions regarding the implications and implementation of *PHIPA*.

One of the most common questions over the past few months has been: “*Why is PHIPA necessary when we already have the federal Personal Information Protection and Electronic Documents Act (PIPEDA)?*”

While the federal *Act* was designed to regulate the collection, use and disclosure of personal information within the commercial sector, *PHIPA* establishes a comprehensive set of rules about the manner in which personal health information may be collected, used, or disclosed across Ontario's health care system. *PIPEDA* was never designed to address the intricacies of personal health information.

In the near future, I anticipate seeing a final exemption order recognizing the substantial similarity of Ontario's *PHIPA* to the federal *PIPEDA*, so that health information custodians covered by *PHIPA* will **not** also be subject to *PIPEDA*.

We have received queries that cover a wide range of scenarios under *PHIPA* – issues that range from the extent of patient information being shared between *health information custodians* to whether a parent can obtain information about what prescriptions his daughter is obtaining from a pharmacy. Here is a short sampling of the questions we have received since *PHIPA* came into effect.

One caller was a physiotherapist who works at a health club and who shares patient information with non-regulated health professionals. He wanted to know if staff, such as personal trainers and fitness instructors, would be considered *health information custodians* and if he would need to get written consent from patients to share their information with such staff members.

Our response was that, generally, the non-medical staff of a health club would not be considered to be *health information custodians*. This provincial *Act* requires that consent to the disclosure of personal information by a *health information custodian* to a *non-custodian* must be express, and



not implied. The physiotherapist would need express consent to pass on personal health information to staff such as personal trainers and fitness instructors. (As well, a *non-custodian* who receives personal health information from a *custodian* may, in general, only use that information for the purpose for which the *custodian* was authorized to disclose the information.) Obtaining consent at the beginning of the process would enable the physiotherapist to share information as needed, with his co-workers.

**The manager of a long-term health care facility wrote us to ask if physicians who have admission privileges and are contracted for medical services – but who are not staff – should be asked to sign confidentiality agreements the same as staff, volunteers and other agents.**

While *PHIPA* does not contain any provisions that relate specifically to a requirement to sign confidentiality agreements, it does state that *health information custodians* are required to take steps that are reasonable to protect the personal health information in their custody. Additionally, *PHIPA* also states that a *custodian* is required to handle records in a secure manner, so having confidentiality agreements in place is just one of the steps that *custodians* could take to help protect the information in their custody.

In this specific instance, the physicians that are contracted to provide services in the facility would likely be considered agents of the facility. Under *PHIPA*, the *custodian's* contact person is required to ensure that all agents of the *custodian* are appropriately informed of their duties under the law, which may include the signing of confidentiality forms.

**One of the more challenging questions was from a pharmacist who wanted to know what his responsibilities were in a case where the cardholder of a prescription drug plan wanted to know the details of drug usage by a family member covered under the drug plan. Would the family member need to give permission or sign a consent form?**

This would be a case of disclosure of personal health information by a *health information custodian* to a *non-health information custodian*, which, generally, can only be done on the basis of express consent. Accordingly, a best practice would be to seek consent from the other family member or members who are covered under the cardholder's health plan. This is definitely the case if the information to be disclosed is that of an adult, such as a spouse, or children 16 or older. In the case of children under 16, information may be released without consent to the custodial parent, with *certain exceptions*. For example if the child is capable and disagrees, then the child's decision prevails.

If you have a question regarding the *Personal Health Information Protection Act, 2004*, please do not hesitate to contact my office at [info@ipc.on.ca](mailto:info@ipc.on.ca). You can also find many useful publications about *PHIPA* on our website, [www.ipc.on.ca](http://www.ipc.on.ca).