



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

VIA ELECTRONIC MAIL

April 4, 2018

Policy Department
College of Physicians and Surgeons of Ontario
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Dear Policy Department:

Re: Review of the College of Physicians and Surgeons of Ontario's *Closing a Medical Practice* policy

The Office of the Information and Privacy Commissioner of Ontario (IPC) has reviewed the College of Physicians and Surgeons of Ontario's (CPSO) policy on *Closing a Medical Practice*, upon which the CPSO has sought comment from the public. Given that the policy discusses privacy, security, and access to personal health information, we have identified ways in which the policy could more clearly articulate obligations under the *Personal Health Information Protection Act (PHIPA)*. We also propose that the policy take a stronger position on the need to plan for changes in medical practice to address the issue of abandoned records.

The *Closing a Medical Practice* policy does not completely describe, or make explicit reference to other documents that describe, the obligations under *PHIPA* that are relevant to changes in a custodian's practice. The policy primarily refers to *PHIPA* in the context of ensuring that individuals can continue to exercise their rights to access and correct records of their personal health information despite changes in a custodian's practice.

The policy could be improved by also describing the obligations of custodians to take steps to prevent privacy breaches during a change in practice, and to ensure that records of personal health information in their custody or control are retained, transferred, and disposed of in a secure manner.¹ A change in practice increases the probability of a privacy breach, especially if it involves, among other things, the insecure transfer of personal health information, unclear roles and responsibilities for successors or agents, or the absence of a succession plan. The policy should provide guidance on or explicitly refer to supplementary policies that discuss the need to mitigate risks to privacy. For example, reference could be made to relevant sections of CPSO's *Confidentiality of Personal Health Information* and *Medical Records* policies and guidance issued by the IPC, such as *The Secure Transfer of Personal Health Information* and *How to Avoid Abandoned Records*.

¹ *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sched. A at ss. 12 & 13.



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At lines 59 to 60 of the *Closing a Medical Practice* policy, the CPSO advises physicians to “take steps to ensure their medical practice is appropriately managed in the event of an unexpected illness or death.” Physicians are similarly urged to “think proactively about how they will continue to meet their obligations under *PHIPA*” on page 8 of CPSO’s *Medical Records* policy. The IPC agrees that custodians of personal health information should develop succession plans in advance of a change of practice. Advanced planning will help to ensure privacy, security, and access obligations under *PHIPA* are fulfilled despite an unexpected change. However, the IPC notes that the issue of abandoned records is ongoing, and the IPC is currently developing updated guidance to curtail the issue. The IPC encourages the CPSO to strengthen their policy by requiring physicians to develop succession plans, and routinely review and update those plans. The IPC is willing to consult with the CPSO to assist in the development of those and any further measures.

Lastly, there is ambiguity in the *Closing a Medical Practice* policy that should be clarified. At lines 74 to 76 of the policy, it states that a “physician is only expected to notify patients to whom they are actively providing care [of a planned practice closure].” This appears to be inconsistent with obligations under *PHIPA*, which require custodians to provide notice to all individuals whose personal health information is in their custody or control.² As described on page 4 of the IPC’s *How to Avoid Abandoned Records*, custodians have a duty to notify any individual to whom personal health information relates prior to transferring records to a potential successor, regardless of when the individual last received health care from the custodian. The policy should be amended to clarify this obligation.

We hope you find these comments helpful in the review of the *Closing a Medical Practice* policy. As noted above, the IPC invites the CPSO to collaborate on developing policies that can effectively curtail the growing issue of abandoned records. If you have any questions about this letter, please do not hesitate to contact us.

² *Ibid* at s. 42(2).