

Advice to the Profession: Medical Records Stewardship

Advice to the Profession companion documents are intended to provide physicians with additional information and general advice in order to support their understanding and implementation of the expectations set out in policies. They may also identify some additional best practices regarding specific practice issues.

A number of aspects of healthcare have transformed over time including the increase in collaborative care models and the increased use of digital health. With respect to medical record-keeping, the widespread adoption of electronic medical records (EMRs) has particularly changed the way that medical records are used and managed. Navigating the stewardship of medical records can be a complex and daunting task for physicians, particularly in this era of digital health where there may be questions about ownership and accountabilities. This companion Advice document is intended to help physicians interpret their obligations as set out in the *Medical Records Stewardship* policy and provide guidance around how these expectations may be effectively discharged. This advice is also intended to help physicians navigate their roles and responsibilities and provide links to resources on best practices.

Roles and Obligations Regarding Medical Records

The Medical Records Stewardship policy sets out expectations for physicians with custody or control of their records (i.e., the custodian of the records) and expectations for physicians more broadly (all physicians). Aren't physicians always the custodians of their patient medical records? How do I determine what my role and responsibilities are regarding medical records?

Physicians are not always the custodians of their patient medical records. Physicians will either be the custodian of their medical records or an agent of the custodian. These roles and their corresponding obligations are set out in the *Personal Health Information Protection Act, 2004 (PHIPA)*.

A *health information custodian* (custodian) refers to a person or organization who has custody or control over personal health information (PHI) as a result of, or in connection with, their duties or work.¹ The custodian is generally the individual or organization responsible for maintaining patient medical records and ensuring obligations regarding medical records are met. Examples of scenarios where physicians may be the custodians of their records include physicians who are the owners of a clinic, or a physician who works as a sole practitioner in their own practice.

¹ "Health information custodian" is defined at s. 3(1) of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A (hereinafter *PHIPA*).

An *agent* refers to individuals granted permission by a custodian to act on their behalf and handle personal health information, as required by their duties.² Physicians working as employees or working in hospitals are examples of physicians who may be acting as agents. In these scenarios the custodian might be the hospital, clinic, or owner of a clinic, including someone who is not a health care professional.

Roles, responsibilities and rights to medical records are generally determined by *PHIPA* and the agreements physicians enter into upon employment or establishment of a practice. Written agreements help to ensure clarity regarding custodianship.

The Medical Records Stewardship policy requires physicians who work in settings where there are multiple contributors to a record-keeping system (e.g., a group or interdisciplinary practice, settings with a shared EMR) to have written agreements that address medical records custody and clear accountabilities regarding medical records stewardship. Why do I have to do this?

The move away from a sole practitioner model of care and increased use of electronic records has resulted in some ambiguity about physicians' roles and responsibilities regarding their patient medical records, particularly where there is a common or shared EMR system. Questions or conflicts related to ownership, responsibilities and rights of access often arise when a physician leaves a group practice or practice environment involving a shared EMR, and there is no written agreement in place regarding records. To avoid conflicts related to medical records and to ensure compliance with medical records obligations, physicians must have written agreements that address these issues, and ensure agreements are in place prior to the establishment of the group practice, business arrangement, or employment, or as soon as possible afterward.³

What if I am concerned that the custodian of my patient medical records is not acting in accordance with applicable legislation and the expectations of the Medical Records Stewardship policy?

Physicians who are not the custodians of their patient medical records may feel they have limited control over the record-keeping system or procedures where they practise. Where physicians are concerned that the facility's record-keeping practices do not meet the requirements of the *Medical Records Stewardship* policy, or there are disputes about records, physicians are advised to seek legal advice and may wish to consult the Canadian Medical

² "Agent" is defined at s. 2 of *PHIPA*.

³ The Canadian Medical Protective Association's [Electronic Records Handbook](#) has additional advice for establishing such agreements.

Protective Association (CMPA). As required by the *Medical Records Stewardship* policy, physicians must not allow disputes about records to impact patient care. Written agreements regarding medical records responsibilities can help physicians resolve conflicts that may arise and provide assurance that the expectations of the policy are being met.

Transitioning to an (other) electronic record-keeping system

What should I consider when deciding which EMR vendor to choose?

Choosing an EMR vendor is a crucial step in the process of transitioning to electronic records and warrants careful attention and due diligence. Physicians are not necessarily experts in technology and may need assistance in evaluating and choosing the appropriate vendor. Physicians are encouraged to seek support from OntarioMD to determine the appropriate system for their practice needs.

EMR systems vary in terms of capabilities, space requirements to accommodate hardware, data storage capacity, and degree of control over the data within the EMR and the functions it can perform. When making a choice about an EMR, it is important to consider the type of system that best meets a physician's unique practice needs, including the following:

- objectives they hope to achieve with an EMR,
- the functions they require within their EMR,
- requirements set out in policy and legislation,
- privacy and security functions of the software,
- advice from colleagues or experienced EMR users about the advantages and disadvantages of particular systems,
- the support and training offered by the EMR vendor,
- the stability of the company to provide continued support for the foreseeable future, and
- vendor policies about software upgrades and data access provisions in case of a departure from a physician group.

Physicians are encouraged to seek legal review of contracts with EMR vendors prior to entering into any agreements with vendors.

What are some resources to help me transition to an (other) EMR system?

The *Medical Records Stewardship* policy sets out expectations for physicians when transitioning to a new record-keeping system to ensure security and integrity of records, and that quality care is maintained during the transition. Transitioning to an EMR, or to a new EMR, can be a daunting, time consuming, and expensive process for physicians but is ultimately intended to

enhance the physician's practice. Physicians seeking additional guidance related to transitioning systems are encouraged to refer to the following resources:

- 1) Information and Privacy Commissioner of Ontario's (IPC's) [A Practical Tool for Physicians Transitioning from Paper-Based Records to Electronic Health Records](#)
- 2) CMPA's [Electronic Records Handbook](#)
- 3) OntarioMD's [EMR Data Migration Guide for Community Care Practices](#)
- 4) OntarioMD's [Transition Support Guide](#)

Using Certified EMRs

I am required by the Medical Records Stewardship policy to only use electronic record-keeping systems (e.g., EMRs) that are certified unless I can independently verify that an unaccredited system meets the privacy and security standards required by PHIPA and the standards set out in the Regulation.⁴ Why is this necessary and how can I determine which EMRs are certified?

Physicians may not be experts in information technology or security and thus they may rely on vendors to ensure their EMRs are secure. Certification of EMRs offers assurances to physicians that their systems meet privacy and security standards that they would otherwise have to verify independently (i.e., logging user activity, role-based access controls).

There are two certification processes that can ensure privacy and security standards are met. The provincial program is run by OntarioMD and the national program is run by Canada Health Infoway. Physicians may wish to consult these organizations for a list of certified EMRs.

Maintaining Privacy and Security Standards

I am required to maintain privacy and security standards. Are there resources to help me navigate my obligations? What are some best practices when it comes to ensuring privacy and security of medical records?

To ensure maintenance of privacy and security standards, physicians are advised to remain up-to-date about evolving industry standards and to be aware of orders of the Information and Privacy Commissioner of Ontario.⁵

Physicians with custody or control of their medical records are additionally advised to routinely conduct privacy assessments, or audits, of all processes to maintain an understanding of the privacy risks of their practice, particularly those related to their medical record-keeping practices. The CMPA suggests that completing this process is especially prudent when

⁴ Ontario Regulation 114/94, General, Section 20, made under the *Medicine Act, 1991*, S.O. 1991, c.30.

⁵ Orders of the IPC can be found on the Commission's website at www.ipc.on.ca.

transitioning medical record-keeping systems as it can help physicians identify and minimize the risks associated with the implementation, or change, of an EMR system. For guidance on how to conduct a privacy assessment, physicians may wish to consult the IPC's [Planning for Success: Privacy Impact Assessment Guide](#).

Is it appropriate to stay logged into an EMR?

No. Physicians are required by the *Medical Records Stewardship* policy to ensure their electronic record-keeping systems are equipped with user identification and passwords for logging on and are prohibited from sharing their credentials or passwords. Physicians are also required by the *Medical Records Documentation* policy to have identifiable entries. As such, physicians are reminded of the importance of logging out after they are finished documenting in an electronic medical records system.

The College requires that I be proficient with my electronic record-keeping system but I have just switched from paper records to an EMR and am still learning how to use my new system. Are there resources that can assist me in gaining proficiency?

The College recognizes that becoming skilled with a new system may depend on a number of factors and that it may take some physicians longer than others to do so. As such, physicians are advised that there are resources that can assist them in gaining proficiency with their system. For example, OntarioMD's Peer Leader program provides consulting services that can help physicians become more efficient with their EMR, optimize their existing EMR functions, and improve clinical decision support. For more information on the Peer Leader program physicians may wish to consult OntarioMD's [website](#).

Use of Commercial Services

What are my responsibilities when I engage commercial services to assist with managing my patient medical records?

Physicians who are the custodians of their medical records are ultimately responsible for ensuring that medical records are stored and maintained according to legal requirements and the principles set out in the *Medical Records Stewardship* policy. It is important to know that the same standards apply when physicians engage commercial providers for services such as storage, maintenance, scanning, destruction, and other medical record-keeping related tasks. As such, it is generally good practice to:

- 1) Use due diligence when selecting and engaging service providers;
- 2) Make any agreements with such providers in writing;

- 3) Ensure agreements reflect the same legal and regulatory requirements that apply to physicians who have custody or control of records;
- 4) Seek legal counsel or contact the CMPA for advice in these circumstances.

Fees for Medical Records Review

Am I allowed to charge patients or third parties requesting copies of records for a review of records prior to transfer?

Yes. Physicians are entitled to charge a reasonable fee for copying and transferring patient medical records, which may require a review of the records prior to transfer. The *Medical Records Stewardship* policy sets out a number of considerations for determining a reasonable fee.

In keeping with the requirements set out in the policy, a charge for the review of records prior to provision must also be reasonable and commensurate with the professional service provided. Where records meet the requirements in the *Medical Records Stewardship* and *Medical Records Documentation* policies, an extensive review would rarely be necessary. When charging for a review of records prior to transfer, the fees should be justifiable and reflect the nature and reason for the review.

Medical Records Retention

Should I maintain my medical records for longer than the period required by the Regulation?

A provision in the *Limitations Act, 2002* allows for some legal proceedings against physicians to be brought forward 15 years after the act or omission on which the claim is based took place. As a result, notwithstanding the 10 year retention requirements set out in regulation and reflected in the College's *Medical Records Stewardship* policy⁶, physicians are advised to consider maintaining medical records for a minimum of 15 years from the date of the last entry in the record in order to ensure that physicians will be able to provide evidence should it be required in any future legal proceedings brought against them.

⁶ Section 19(1) of the General, O. Reg., 114/94, enacted under the *Medicine Act, 1991*, S.O. 1991, c. 30 requires medical records to be retained for 10 years from the date of the last entry in the record for adult patients and 10 years after the day on which the patient reached or would have reached 18 years of age, for patients who are children.