



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

**VIA ELECTRONIC MAIL**

August 10, 2021

Policy Department  
College of Physicians and Surgeons of Ontario  
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Toronto, ON M5G 2E2

To Whom It May Concern:

**RE: Feedback from the Information and Privacy Commissioner of Ontario**

The Information and Privacy Commissioner of Ontario (IPC) oversees the province's access and privacy laws. These laws include the *Personal Health Information Protection Act, 2004 (PHIPA)*, which governs the responsibilities of health information custodians (custodians) with respect to individuals' personal health information.

The IPC has reviewed the College of Physicians and Surgeons of Ontario's (CPSO) draft policy on Social Media (the Draft Policy) and draft "Advice to the Profession: Social Media" document (the Draft Advice). According to the CPSO, the Draft Policy has been developed to replace the CPSO's "Social Media – Appropriate Use by Physicians" statement and set out professional expectations for physicians using social media, while the Draft Advice has been drafted to clarify and further explain the Draft Policy content.<sup>1</sup> The IPC has the following recommendations:

**A. The Draft Policy**

**(1) In the *Health-related information and clinical advice* portion, add a reference to *PHIPA* and to the IPC's guidance on virtual care**

Section 8.a of the Draft Policy states:

Unless they are able and willing to meet the professional obligations that apply to a physician-patient relationship and the requirements in the [Telemedicine](#) policy, physicians must not provide specific clinical advice to others on social media.

The provision of specific clinical advice would involve personal health information. Therefore in order to provide specific clinical advice on social media, physicians would have to be able and willing to meet the requirements in *PHIPA*. While we understand that the [Telemedicine](#) policy refers to *PHIPA*, the IPC recommends amending section 8.a of the Draft Policy so that it (1) refers directly to *PHIPA* and (2) suggests that physicians review the IPC's guidance on [Privacy and security considerations for virtual health care visits](#).

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<sup>1</sup> See CPSO's "Social Media – General Consultation" webpage at [http://policyconsult.cpsso.on.ca/?page\\_id=13475](http://policyconsult.cpsso.on.ca/?page_id=13475).



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**(2) Broaden the reference to *PHIPA* in the *Privacy and Confidentiality* portion**

Section 11 of the Draft Policy states:

Physicians must comply with the legislative requirements set out in the *Personal Health Information Protection Act, 2004* regarding the collection, use and disclosure of personal health information and the expectations set out in the College's [Protecting Personal Health Information](#) policy while using social media.

First, we note that this sentence refers to the Act but not the regulations made under the Act. Second, while many of the requirements in *PHIPA* and its regulations pertain to the collection, use or disclosure of personal health information, not all of the requirements do.<sup>2</sup> In order to avoid section 11 of the Draft Policy being too limited, the IPC recommends that it be amended to:

Physicians must comply with the requirements set out in the *Personal Health Information Protection Act, 2004* and its regulations and the expectations set out in the College's [Protecting Personal Health Information](#) policy while using social media.

**(3) Add a reference to *PHIPA*'s lawful purpose requirement in relation to consent as the authority for disclosure**

Section 12.b of the Draft Policy requires a physician who is posting personal health information about a patient on social media to "obtain and document express and valid consent from the patient or substitute decision-maker (SDM) for the publication of the content on social media..." Section 29(a) of *PHIPA*, which pertains to consent as an authority for a custodian's collection, use or disclosure of personal health information, requires not only that the custodian have the individual's consent under the Act but also that "the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose."

The IPC recommends that section 12.b of the Draft Policy be amended to explain that if the physician is relying on consent as the authority to disclose personal health information, the disclosure must, to the best of the physician's knowledge, be necessary for a lawful purpose.

**(4) Remind custodians of their obligations under s. 11 of *PHIPA* with respect to accuracy of personal health information**

Sections 14 through 16 of the Draft Policy discuss physicians who seek out a patient's health information online without the patient's consent.

*Collecting personal health information online*

Section 14 of the Draft Policy prohibits physicians from seeking out a patient's health information online without consent unless specific requirements are met. These requirements seem consistent with *PHIPA*'s requirements for indirect collection of personal health information without consent.<sup>3</sup>

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<sup>2</sup> For example, section 11.2 of *PHIPA* pertains to the use of de-identified information.

<sup>3</sup> See s. 36(1) of *PHIPA*.

*Disclosure of personal health information found online:*

Section 15 of the Draft Policy requires physicians to “document the rationale for conducting the search and any other relevant information (for example, search findings and the nature of search) in the patient’s record.” The act of documenting something in the patient’s record is potentially a disclosure, given that *PHIPA*’s definition of “disclose” includes “to make the information available to ... another health information custodian or to another person”. Because the physician who searched online cannot be sure that the information found is correct or is about the correct person, the physician should proceed with caution when disclosing the found information. The physician must comply with s. 11(2) of *PHIPA*, which requires a custodian that discloses personal health information to (a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the custodian at the time of the disclosure; or (b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

*Use of personal health information found online*

Section 16 of the Draft Policy requires physicians relying on patient health information found online for clinical decision-making to “take reasonable steps to confirm the accuracy of the information prior to using the information.” This is similar to s. 11(1) of *PHIPA*, which requires a custodian that uses personal health information about an individual to take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.

Given our above comments about use and disclosure of personal health information found online, the IPC recommends that a footnote be added to section 15 of the Draft Policy reminding physicians of their obligations under s. 11(2) of *PHIPA*, and that a footnote be added to section 16 of the Draft Policy reminding physicians of their obligations under s. 11(1) of *PHIPA*.

**B. The Draft Advice**

**(5) Amend the definition of “de-identify”**

The first paragraph in the *Privacy and Confidentiality* portion of the Draft Advice states:

De-identified information is information that cannot be used to identify an individual, either directly or indirectly. De-identification involves removing any information that identifies an individual, or for which there is a reasonable expectation that the information could be used, either alone or with other information, to identify an individual.

The IPC recommends replacing this paragraph with the following, which reflects the *PHIPA* definition of “de-identify” that is currently in force:

To de-identify the personal health information of an individual means to remove any information that identifies the individual, or for which it is reasonably foreseeable in the

circumstances that it could be utilized, either alone or with other information, to identify the individual.

**(6) Amend and move the sentence about “obligations around protecting patient privacy and confidentiality”**

Under the question “Are forms of electronic communications such as emails, text messaging, video conferencing, and messaging applications considered social media?” the Draft Advice’s answer includes this sentence:

Physicians must also continue to meet their obligations around protecting patient privacy and confidentiality, as outlined in the College’s [Protecting Personal Health Information](#) policy.

Physicians must meet the obligations found in *PHIPA* pertaining to protecting patient privacy and confidentiality. The IPC recommends (1) amending the sentence so that it refers to *PHIPA*, and (2) moving the sentence from its current location to a more relevant location within the Draft Advice, such as the *Privacy and Confidentiality* portion starting on page 5.

**(7) Correct and add to the list of resources**

At the end of the Draft Advice, there is a “Resources” heading, with four resources listed under the subheading “*Office of the Privacy Commissioner of Canada.*” However, the fourth resource (“[De-identification Centre](#),” which is the webpage on which we have posted our [De-identification Guidelines for Structured Data](#)) is from the Office of the Information and Privacy Commissioner of Ontario, not the Office of the Privacy Commissioner of Canada. The IPC recommends that a subheading of “*Office of the Information and Privacy Commissioner of Ontario*” be added directly above the “[De-identification Centre](#)” line. Additionally, we suggest adding links to these other resources from our office:

- [Privacy and Security Considerations for Virtual Health Care Visits](#); and
- [Frequently Asked Questions: Personal Health Information Protection Act](#).

Thank you for considering our recommendations.