



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL

March 11, 2021

Policy Department
College of Physicians and Surgeons of Ontario
80 College Street
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) has reviewed the College of Physicians and Surgeons of Ontario's (CPSO) current Medical Assistance in Dying policy (the MAID Policy) and the Advice to the Profession: Medical Assistance in Dying companion document (the Advice Document). The IPC has the following recommendations:

A. The MAID Policy:

(1) Clarify the Need to Obtain Consent when Including Family or Caregivers in Discussions about Providing MAID

The *Personal Health Information Protection Act, 2004 (PHIPA)* generally requires express consent prior to disclosing personal health information to family members and caregivers. In a limited number of defined circumstances under the act, physicians are permitted to disclose personal health information without consent. However, discussions with regards to an individual's inquiry about MAID, the requirements and processes involved in witnessing the written request, and discussions around the administering of medications and other procedural issues would all necessitate the disclosure of personal health information. For example, the MAID Policy states that "Where the patient plans to self-administer the fatal dose of medication at home, physicians must help patients and caregivers assess whether this is a manageable option.", and "Further, physicians must ensure that patients and caregivers are educated and prepared for what to expect, and what to do when the patient is about to die or has just died." As such, where these discussions include a family member or caregiver, they would require the express consent of the individual to whom the information relates.

The IPC recommends that, as the CPSO has done with its policy entitled *Planning for and Providing Quality End-of-Life Care* (the EOL Policy), the CPSO clearly set out the requirement to obtain express consent from the individual prior to disclosing personal health information to family members and caregivers for such discussions.¹

¹ See, for example, paragraph 3 of the *Quality Care and Communication* section of the EOL Policy.



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B. The Advice Document:

(1) Include a Statement about Expectations and Requirements with Respect to Privacy and Information Security when Advising about the Use of Virtual Tools for Health Care

The Advice Document includes a section with respect to the use of virtual tools for health care in light of the pandemic, and in regards to assessments of patient eligibility or witnessing of patient requests for MAID. While the section advises physicians to contemplate the appropriateness of using virtual tools in this context and the need to meet legal and professional obligations, there is no reference to the requirements to maintain the privacy of the personal health information collected, used or disclosed by virtual means and to keep the information secure. Subsection 12 (1) of *PHIPA* requires a health information custodian to take reasonable steps to ensure that personal health information in their custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal. And subsection 13 (1) of the act requires health information custodians to ensure that records of personal health information are retained, transferred, and disposed of in a secure manner.

There are a number of other requirements and recommendations with respect to the use of virtual tools for health care, such as obtaining the individual's consent to provide care via virtual technologies and compliance with data minimization provisions under *PHIPA*. The IPC provided these comments in its prior submission on the CPSO's consultation on its *Telemedicine* policy in November 2020, which we recommend the CPSO consider for their applicability to this section as well.² In fact, the IPC notes that there is no reference to the expectations set out under the CPSO's own *Telemedicine* policy in this section, which would provide importance guidance. In addition, the CPSO may wish to reference the IPC's recently released guidance on protecting personal health information while providing virtual care, entitled *Privacy and Security Considerations for Virtual Health Care Visits*.³

Finally, as virtual care is likely to become a more permanent feature of health care provision, even after the pandemic has resolved, and as virtual tools for health care raise significant privacy and information security challenges, the IPC recommends that CPSO consider moving the section on virtual care into the main MAID Policy, as is currently done with expectations around keeping medical records.

Thank you for considering our recommendations.

² IPC [letter](#), dated November 16, 2020 to the CPSO re the *Telemedicine* policy consultation.

³ See the IPC's [guidance](#), *Privacy and Security Considerations for Virtual Health Care Visits: Guidelines for the Health Sector*, February 2021.