



PRACTICE ADVICE

DISCLOSING INFORMATION WITHOUT CONSENT: WHEN AND HOW: EFFECTIVE: 2015

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There are times in our professional lives where, for complex reasons, we have to consider disclosing personal health information (PHI) without the patient's consent.

The legislation that governs disclosure of health information is the [Personal Health Information Protection Act, 2004](#) (PHIPA). PHIPA provides us with the following:

- Rules for the collection, use, retention and disclosure of PHI that protect the confidentiality of that information, and the privacy of individuals, while facilitating effective health care.
- Information regarding individuals' right of access to their PHI and the right to require the correction or amendment of their PHI.

The term: "disclose" means to make PHI available or to release it to another health information custodian (HIC) or to another person. As a rule, consent is required to disclose an individual's PHI, unless *PHIPA* allows the disclosure without consent.

Members must consider the purpose of the disclosure. They should not disclose PHI if other information will serve the purpose, and may only disclose as much information as is necessary to meet the purpose.

Q: [What are the circumstances in which I can disclose PHI without consent?](#)

A: When any of the following apply:

- 1) Mandatory Reports to External Organizations:
 - Suspected child abuse ([Child and Family Services Act](#), 1990)
 - Harm or risk of harm to a long-term care resident ([Long-Term Care Homes Act, 2007](#))
 - Harm or risk of harm to a resident ([Retirement Homes Act, 2010](#))

- 2) Mandatory Reporting to CASLPO, or other Health Regulatory Colleges
 - Sexual abuse of a patient by a regulated health care provider (mandatory reporting to the College)
 - Peer Assessment by a peer assessor
- 3) Risk of harm
 - Elder abuse, or other abuse
 - When a patient presents a serious danger of physical harm to themselves or to another person
 - Emergency situations, e.g. medical emergency
- 4) Legal authority to disclose information (subpoena, warrant, court order)
- 5) Auditing and accreditation

For more information, please refer to Sections 37-50 of [PHIPA](#). These sections set out the circumstances in which PHI may be disclosed without consent, where it is reasonably necessary.

1) MANDATORY REPORTS TO EXTERNAL ORGANISATIONS:

Mandatory reporting refers to the members' legal obligations to report sexual abuse of a patient by a member and/or child abuse.

Q: I have some questions about mandatory reporting. A colleague of mine and I were in a discussion about what our roles are as SLPs (private) working in the home. What do we do if we suspect any form of child abuse? Does CASLPO have a stance on this?

A: According to the [Child and Family Services Act](#) 1990 (CFSA), a person who performs professional or official duties with respect to children, who has reasonable grounds to suspect some form of child abuse or neglect, must report the suspicion and the information on which it is based to an approved agency such as a Children's Aid Society. You do not have to get consent from the patient or family to disclose this information.

The CFSA states:

- Professionals who work with children must promptly report any suspicions that a child is or may be in need of protection directly to a children's aid society.
- People working closely with children have a special awareness of the signs of child abuse or neglect, and have a particular responsibility to report their suspicions.
- Under the Act, persons who perform professional or official duties with respect to children include health care professionals
- Professionals should never hesitate to report suspected child abuse or neglect.
- Any professional who fails to report is liable upon conviction to a fine of up to \$1,000.

The CFSA specifies that a person who acts in accordance with the "duty to report" will be protected from civil actions, unless the person acts maliciously or without reasonable grounds. The CFSA overrides any other provincial law that would normally prohibit the disclosure of information needed to make a report. In other words, the duty to report takes precedence over any other confidentiality provisions.

Q: Where do I document that I have filed a report to the College, or to Family and Children's Services / Children's Aid Society?

A: The circumstances that led you to file a report must be documented, and that documentation must be both accessible and retained. However, consider the risk of harm for the patient, family and yourself. You may choose to document in a separate section of the patient record, or in a separate location, so that it can be easily redacted (removed) without putting yourself or others at risk of harm.

2) MANDATORY REPORTING TO CASLPO, OR OTHER HEALTH REGULATORY COLLEGES:

Q: What are the repercussions when I file a mandatory report to the College about another member? If it involves a patient, do I have to get their consent?

A: The [Regulated Health Professions Act](#) 1991 (RHPA) provides that no action or other form of legal proceeding can be made against a person for filing required reports (under the RHPA) in good faith. Provisions in the Act also prevent retaliation against people who make the required reports.

It is mandatory for regulated health professionals to file a report if they have "...reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or a different College has sexually abused a patient." Operators of facilities where regulated health professionals practice are also required to report sexual abuse of a patient/client.

Reports must be made if you have reasonable grounds, obtained in the course of practising your profession, to believe that another Member of a College has sexually abused a patient. A report does not need to be made if you do not know the name of the alleged abuser. The report must be made, in writing, to the Registrar of the College of the Member who is the subject of the report within 30 days of learning of the alleged sexual abuse. The report must

be submitted immediately if you have reasonable grounds to believe that the sexual abuse is on-going or if sexual abuse of other patients could occur. Although you must discuss with the patient your intention to report, the patient's name cannot be revealed unless the patient agrees in writing to this disclosure. However, you are required to provide an explanation of the alleged sexual abuse, which might include other forms of PHI, even if the patient does not give you consent to reveal their name.

Failure to make a mandatory report is an offence punishable with a fine of up to \$25,000.00 for a first offence and not more than \$50,000.00 for a second or subsequent offence.

These obligations are described in the [Health Professions Procedural Code, Schedule 2](#) Section 85.1- 85.5 RHPA.

Q: I have been selected for peer assessment. I know that I have to provide evidence from my patient records for auditing purposes. My employer has concerns about disclosing personal health information to the peer assessor without consent. What should I do?

A: The RHPA outlines the authority of Colleges and the peer assessors to obtain PHI in the Quality Assurance process. The relevant provisions in the Act permit assessors to enter and inspect premises where a member practises, and to inspect records relating to a member's care of patients without consent.

All information collected by the peer assessor is confidential. The ability of the peer assessor to access confidential patient records applies "despite any provision in any Act relating to the confidentiality of health records" (RHPA, Schedule 2, Section 82 (5)). This means despite other privacy legislation, such as PHIPA, you are able to disclose PHI without consent to the peer assessor and the College.

The information collected by a peer assessor about you and your caseload cannot be shared with another committee of the College, apart from the Quality Assurance Committee (PHIPA Section 83) (Appendix II).

3) RISK OF HARM

Q: What are the requirements for reporting illegal and/or abusive situations to the police regarding adult patients? What happens if they confide in us about abuse they have suffered? Do we keep this information confidential unless they give us permission to report it?

A: You have to consider if the patient or anyone else is at risk of harm. You must assess the client and situation carefully. This may include some or all of the following:

- Review the relevant legislation
- Consult with appropriate personnel (supervisor, manager, colleagues, risk manager, social worker or the College)

- Consider the need for a legal opinion.

According to PHIPA, PHI may be disclosed, without consent, by a health information custodian (HIC), if the HIC:

“believes on reasonable grounds that the information is needed to eliminate or reduce a significant risk of serious bodily harm to the client, another individual or a group of persons.” PHIPA 36.1.i

If you believe that your patient or family member is at significant risk of serious bodily harm, you can make a report to the police or another agency involved with the care of the adult without the patient’s consent to disclose that information.

If the adult is a resident of a long term care home or a retirement home, the [Long-Term Care Homes Act, 2007](#) (LTCHA) and the [Retirement Homes Act, 2010](#) (RHA) will guide you. A member must file a report with the director appointed by the Minister of Health and Long-term Care or with the Registrar of the Retirement Homes Regulatory Authority where any of the following result in harm to a resident:

- improper care or incompetent treatment or care
- abuse of a resident by anyone
- neglect of a resident by a staff member or licensee
- unlawful conduct
- misuse or misappropriation of a resident’s money

Q: [Can personal health information be disclosed in an emergency or other urgent circumstances?](#)

A: Although another health care professional may view the situation as urgent, you as the treating SLP/Audiologist should determine if it is an emergency as it relates to your services. If you determine it is an emergency, there should be documented rationale for proceeding to disclose PHI without consent.

PHIPA allows for disclosure of PHI without consent in emergency or urgent situations. The Information and Privacy Commission developed a Fact Sheet issued in 2005 entitled, [Disclosure of Information Permitted in Emergency or other Urgent Circumstances](#).

Q: [I am carrying out some audiology research about ethical dilemmas and would like to know about duty to report? Are the rules different when it involves research and confidentiality?](#)

A: In your capacity as a regulated health professional, you still have to abide by the legislation, regulations and requirements of the College regardless of the situation. If there is significant risk of harm to a research participant that you become aware of, then there is a duty to report. If you become aware of child abuse or neglect in your capacity as a researcher, you must report. If you are conducting research in a long-term care facility or retirement home, you have a duty to report.

4) LEGAL AUTHORITY TO DISCLOSE INFORMATION:

Q: A physiotherapist at work has had a complaint filed against them. The Physiotherapy College's investigator has asked to look at my section of the client's file. Can I disclose this information without getting consent from my patients?

A: Yes, you can disclose this information without your patients' consent. PHIPA has a section entitled "Disclosures related to this or other Acts"

43. (1) A health information custodian may disclose personal health information about an individual,

(b) to a College within the meaning of the Regulated Health Professions Act, 1991

You have the right to ask the investigator for proof that they work for the College of Physiotherapists of Ontario. Once you are satisfied, you may disclose your patient records without patient consent.

There are other legal proceedings that may require the disclosure of PHI. PHIPA permits disclosure for a proceeding in which the HIC or an agent of the HIC is a party or witness. HICs may also disclose to comply with a summons, order or similar requirement issued in a proceeding or a procedural rule relating to the production of information in a proceeding. (2004, c. 3, Schedule A, s. 41 (1).)

5) AUDITING AND ACCREDITATION:

Q: My administration supervisor at our school board has requested an audit of our SLP files. What if this person is not a health information custodian? Can he have access to the records without consent?

A: A HIC may disclose PHI about an individual without that individual's consent to a person conducting an audit or reviewing an application for accreditation or reviewing an accreditation. However, the audit or review must relate to services provided by the custodian and the person does not remove any records of PHI from the custodian's premises. (PHIPA, part IV, 39, (1) (b)).

Q: ANY OTHER PRACTICE ADVICE QUESTIONS?

Members of the public and the College are welcome to contact any of the practice advice team if there are additional questions that need to be addressed. Practice Advice is an important service CASLPO provides to the membership. Members benefit from the one on one conversations and advice to help meet standards of practice thereby protecting the public. Dedicated staff are available to answer questions in English and French about legislation, regulations, standards of practice and College expectations and how they apply to different areas of professional practice.

CASLPO does not provide legal advice. Practice Advice is provided in response to specific inquiries and may not be relevant in all circumstances. Finally, the Practice Advice Program is intended to support but not replace professional judgment.

LINKS AND REFERENCES:

[*Personal Health Information Protection Act 2004,*](#)

[*Regulated Health Professions Act 1991,*](#)

[*Child and Family Services Act, 1990,*](#)

[*Long-Term Care Homes Act, 2007,*](#)

[*Retirement Homes Act, 2010,*](#)

[*Health Care Consent Act, 1996*](#)

[www.ipc.on.ca,](http://www.ipc.on.ca)

[Disclosure of Information Permitted in Emergency or other Urgent Circumstances.](#)

[CASLPO's Sexual Abuse Prevention Program](#)