Doctors Nova Scotia

Personal Health Information:
Physicians' roles & obligations

It's the law

The *Personal Health Information Act (PHIA)* governs the collection, use and disclosure of patient's personal health information (PHI).

What's your role?

All physicians have a role and responsibilities in protecting patients' PHI, but your role is different depending on whether you are deemed a custodian or an agent.

A community-based physician is deemed a custodian under *PHIA* because they have custody or control of the PHI within their office or practice. That physician may authorize others in the practice to access PHI; those people are referred to as agents.

Physicians working in health authority facilities are deemed agents under *PHIA* because the health authorities are the custodians of the PHI, and physicians have been granted authorization to access it.

Custodian responsibilities

Section 67 of *PHIA* requires community-based physicians to appoint a contact person within their practice to be **responsible for ensuring policies and procedures are created to ensure the practice complies with *PHIA***. This includes training staff and other providers (agents), making information available to patients and responding to patient requests about PHI.

Agent responsibilities

Agents may collect, use and disclose patients' PHI as authorized by the custodian and may act on behalf of the custodian regarding PHI. Agents must sign confidentiality agreements, inform the custodian of breaches, and follow retention and destruction policies.

What is personal health information?

Personal health information is **any identifying information about a person's:**

- Physical and mental health
- Care
- Bodily donations
- Health card number
- Substitute decision-maker

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Consent

Custodians must obtain patient's implied or express consent to collect, use or disclose their PHI. Physicians can do this by documenting consent conversations with patients or by posting a Notice of Purpose poster in the waiting room. Find a poster template in the *E-health Privacy and Security Guide*.

A patient may notify the custodian that they wish to limit or revoke their consent. Physicians must comply with the patient's request and advise them of any consequences.

Disclosure

Custodians may disclose PHI to another custodian within the patient's circle of care. The patient's loved ones may receive general information about their present condition if disclosure is not against their wishes.

Personal health information can also be disclosed to substitute decision-makers, to prevent abuse, to regulatory bodies, to prevent harm to another person, to a correctional facility, to another custodian to maintain standards of care or for insurance eligibility, and to maintain patient safety within the practice.

When a patient is or may be deceased, PHI may be disclosed to their loved ones to identify the individual, to inform the necessary people of their death, to inform the health care of the individual's immediate family members, and to execute their organ and tissue donation wishes.

Retention and Destruction

The CMPA recommends that **custodians retain health records for at least 10 years** from the last date of entry or, for minors, for 10 years after they have reached the age of majority (age 19). After that, the records can be securely destroyed (shredding papers, wiping hard drives).

Access and Correction

All patients have the right to access their health record. Requests must be made in writing to you and the patient may have to pay a fee for access; see *PHIA Regulations* sections 14 and 15 for the fee schedule. Custodians may refuse access only in very specific instances.

If requests for PHI are denied, the custodian must provide the patient a written explanation of why their request was refused and information in case they wish to make a complaint.

Checklists and templates

The full Doctors Nova Scotia *E-health Privacy and Security Guide* **includes checklists and templates for helping physicians manage PHI**, including documents for managing patient requests, template policies, a consent poster and more. See pages 27, 28 and 29.

Privacy breaches

Privacy laws require a prompt and well-organized response to breaches. Breaches include misdirected faxes, lost hard drives, individuals inappropriately accessing personal information, stolen or lost equipment, unlocked cabinets, a cyberattack, not logging off computers and medical files disposed in the trash. Step-by-step information is included in the *E-health Privacy and Security Guide*.

By implementing proper practices, physicians can meet their obligations to keep patient information safe and secure.

Note: This guide is not intended as legal or professional advice or opinion. It is recommended that physicians and staff members seek legal or professional advice should concerns arise.

What is a privacy breach?

Breaches include:

- misdirected faxes
- lost hard drives
- individuals inappropriately accessing personal information
- stolen or lost equipment
- unlocked cabinets
- a cyberattack
- not logging off computers
- medical files disposed in the trash

MORE INFO

This guide is excerpted from the Doctors Nova Scotia *E-health Privacy and Security Guide*. For comprehensive information, please refer to the guide.