

## Professional Practice Scenario

### What is the "lock-box provision"?

The *Personal Health Information Protection Act* (PHIPA) gives Ontarians control over their personal health information. The law says that clients must give their consent to the collection, use, or the disclosure of their personal health information. It also says that they have the right to withdraw or withhold their consent. Generally, disclosure of personal health information can be made without express consent to others in the circle of care<sup>1</sup>, but under the lock-box provision<sup>2</sup>, a client can withhold or withdraw consent or may prohibit or place conditions on this disclosure.

The lock-box provision means that a client is locking all or part of their health information from access by other health care providers. They are expressly withholding or withdrawing their consent to the collection, use, or the disclosure of their personal health information for health care. According to Anne Cavoukian, *Information and Privacy Commissioner of Ontario*, this request from clients may be one of the following:

- not to collect or use or disclose a particular item of information contained in the record;
- not to collect use or disclose the contents of the entire record;
- not to disclose their personal health information to a particular *Health Information Custodian*

(HIC), an agent of an HIC, or a class of health information custodians or agents e.g. physicians, nurses, social workers;

- not to enable an HIC or their agent or a class of HICs or agents to use personal health information.<sup>3</sup>

Given this information, what would you do in the scenario below?

You are seeing Elaine about her iron deficiency anemia and she shares with you that she recently had an abortion. She is adamant that you do not share this information with her physician who is also her partner's doctor. Her partner is unaware of the pregnancy. You are sure that the abortion is an important contributor to her anemia and that nutrition is not the main concern. You have heard that there are provisions in the privacy laws about a client's right to withhold information and are unsure of how to report what you found in your nutrition assessment.

See answer on page 6

<sup>1</sup> Richard Steinecke LLP, *résumé*, Fall 2004. For information about the circle of care see *résumé*, Winter 2005.

<sup>2</sup> Ann Cavoukian, PH.D. *Information and Privacy Commissioner of Ontario*. *Lock-Box Fact Sheet Number 8*, July 2005.

<sup>3</sup> *Ibid.*

## Dysphagia Scope of Practice

Thank You

for Your Feedback

Thank you to the 78 RDs who responded to our request for input about Dysphagia Scope of Practice. Your responses are extremely informative for the CDO Dysphagia Working Group. Your input will help shape a policy or standard and provide direction to RDs working in this high-risk area of practice. It will also help define scope of practice parameters for:

- limits and conditions;
- knowledge and skills

- required to practice; and
- opportunities to develop competency in the area of dysphagia screening, assessment, treatment and management.

Our next step is to work with the CDO Council in the development of the policy or standards. We expect to have a publication ready for you by early Fall 2006.

This has been a wonderful experience for CDO in collaborating with members.

## Proposed Record Keeping Regulation — a CDO Standard for All RDs

The College has submitted its proposed regulation, *Records Relating to Members' Practices*, to the Ministry of Health and Long-term Care for Cabinet approval. This regulation is in keeping with the *Record Keeping Guidelines for Registered Dietitians* published in 2004.

The provisions in the proposed regulation now constitute a College standard for record keeping by RDs. All College members will be held to this practice standard. The standard will be applied to complaints and reports involving record keeping practices.

To view the proposed regulation, consult our website at: [www.cdo.on.ca](http://www.cdo.on.ca) > Resource Room > CDO By-laws and Regulations > Records Relating to Members' Practices

## Professional Practice Scenario

### *The Lock-Box Provision*

Answer to Quiz on page 3.

PHIPA makes it clear that clients have a right to decide who has access to their personal health information. Elaine's request that her information not be shared with her physician must be respected according to law. However, to ensure that she is making an informed decision, you may explain to her how the locking of this information might affect her health care. It is an important element of your professional obligation that clients make informed decisions about their health care.

According to PHIPA, once a client has instructed you to not share their health information, the information must be kept locked unless:

1. The individual changes his or her mind and informs the health information custodian accordingly; or
2. The health information custodian believes on reasonable and probable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons, subject to any applicable constitutional restrictions.<sup>4</sup>

#### Should the locked information be documented in Elaine's health record?

Obligations about keeping records do not change for information that has been locked. Health information must be documented in the medical record in accordance with professional standards now expressed in the College's proposed regulation, *Records Relating to Members' Practices*. In Elaine's case, how would you respect her privacy and meet your professional obligation to keep accurate client health records, too?

The health record itself must be complete in keeping with the record keeping standards established for RDs.<sup>5</sup> If using paper files, the information can be kept separately and securely away from the main chart, along with clear indications that part of the medical record has been removed under the lock-box provision. Electronic medical records can be designed to add additional checks and balances such as password protection to certain sections within the health record in order to maintain information together but effectively locked from unauthorized use or disclosure. If you are in private practice, where others are less likely to see the record, locked information can be clearly identified in a separate section of the chart as requiring consent from the client to share its contents with other members of the circle of care.

It is recommended that all health care providers set policies and procedures ahead of time. If you work within

4. Ann Cavoukian, Op. Cit.

5. *Record Keeping Guidelines for Dietitians in Ontario* (CDO, 2004) and the proposed regulation *Records Relating to Members' Practices* at [www.cdo.on.ca](http://www.cdo.on.ca) > Resource Room

an organization, you should meet with your institution's privacy officer to review its lock-box provisions. In large organizations, this person will most often be someone in the Health Records Department. You might also want to contact similar organizations to see how they have implemented the lock-box provision.

#### What do I do if the client permits me to give some, but not all of the information to another practitioner?

If a client directs you that the locked information must not be given to another practitioner, but that the other information in the record can be provided, other practitioners could be misled by believing that they have received the complete record unless they are told that part of the record is locked. If you believe that the missing information is relevant to your client's care, you can warn the recipient that the record contains locked information and that they are receiving only part of the file. It would then be the responsibility of the new health information custodian to seek consent to access the locked information.

#### What happens to the locked information when I leave or retire?

You must always make reasonable efforts to contact your clients to let them know that you are handing their record to someone else and to verify if they still want their health information to be kept locked. The client should be informed that their 'locked' record will be changing hands. Obviously this can lead to challenges if the client is reluctant to permit any transfer of the file. Thus, if you practice in a setting where it is contemplated that the HIC may shut down or transfer records to another HIC (e.g., in solo private practice), you should deal with this issue at the time the information is locked by the client.

#### For More information

##### Website Links

- CDO Privacy Tool Kit available on line at [www.cdo.on.ca](http://www.cdo.on.ca) > Resource Room > Publications > Professional Practice.
- PHIPA at <http://www.e-laws.gov.on.ca/>
- Office of the Information and Privacy Commissioner where you will find valuable fact sheets and brochures about PHIPA in your practice at [www.ipc.on.ca](http://www.ipc.on.ca)

#### Upcoming Conference in Toronto

##### **The Canadian Institute — May 8-10, 2006**

*Reducing Legal Risk & Overcoming the Obstacles in Implementing the Personal Health Information Protection Act: Concrete Tools & Proven Strategies for Avoiding Serious Error.* For more information see: <http://www.canadianinstitute.com/Legal/PHIPA.htm>