



## Part 2: Are you a Health Information Custodian?

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This article is a follow-up to the College’s article titled, [Are You a Health Information Custodian? \(2013\)](#). It includes additional scenarios that Registered Dietitians (RDs) have encountered as Health Information Custodians (HICs) and agents within dietetic practice.

Before we dive into the scenarios, here is a refresher of HICs, agents and their respective responsibilities under the *Personal Health Information Protection Act, 2004* (PHIPA).

### HICS, AGENTS AND THEIR RESPONSIBILITIES

#### Health Information Custodians

PHIPA sets out the requirements of HICs and their authorized agents for handling personal health information. Generally, a HIC is a health care practitioner or person who operates an organization listed under PHIPA that provides health care to an individual and has custody or control of their personal health information. A more explicit definition of a HIC can be found in [Section 3](#) of PHIPA. Most organizations which are classified as HICs have a designated privacy or information officer whose role is to ensure the requirements of HICs have been fulfilled in accordance with PHIPA. An RD who works in solo private practice would be the HIC for their dietetic practice.

#### Responsibilities of Health Information Custodians

RDs who act as HICs are responsible for collecting, using, disclosing, retaining and securely destroying personal health information on behalf of clients. Personal health information remains the responsibility of the HIC at all times, even when that information is used by an agent on behalf of the HIC. HICs are responsible for setting the privacy standards for handling personal health information

in their organization and for making sure that their agents are appropriately informed of their specific duties as well as limitations under the law.

#### Agents

In a health care context, RDs who are not HICs are often termed “agents” with certain obligations under PHIPA. PHIPA defines an agent as any person who is authorized by a HIC to perform services or activities on the HIC’s behalf and for the purposes of that HIC. HICs may designate agents to collect, use, disclose, retain or dispose of personal health information on their behalf. Agents are only permitted to engage in the above-mentioned activities as required to carry out their duties.

An agent may include an individual RD or company that contracts with, is employed by, or volunteers for a HIC and, may have access to personal health information. This may include employees, independent contractors or consultants, researchers, volunteers and students.

#### Responsibilities of Agents

RDs who are designated by a HIC as an agent must comply with PHIPA as well as policies developed by the HIC for whom they work. Given that agents collect, use, disclose and dispose personal health information on behalf of the HIC, RDs who act as agents must comply with the HIC’s obligation to collect only the personal health information required for the provision of healthcare. Agents must also protect personal health information from being lost, stolen or inappropriately accessed. They must inform the HIC, as soon as possible, of any privacy breaches.

## SCENARIOS/FREQUENTLY-ASKED QUESTIONS

### **An RD in solo private practice has decided to close their practice. What are their responsibilities as a HIC regarding client files?**

If an RD who is a HIC closes their practice, and no other practitioner is taking over, they remain the HIC and must retain the client health records confidentially and securely for the remaining retention period as specified in the [College's Professional Practice Standards for Record Keeping](#). The HIC must also inform clients about how to access and obtain copies of their records, should they wish to do so.

### **What are the record keeping responsibilities of an RD in solo private practice who transfers their practice?**

The RD has a responsibility to notify clients within a reasonable period of time, ideally before the transfer, that the practice will be transferred to another RD. Clients should also be provided with the contact information of the RD who is taking over the dietetic practice. Clients can then decide whether to seek dietetic services with the new RD or to find alternate services. For the latter, clients should be directed on how to seek out alternate dietetic services.

When records are being transferred, inform clients of where their health records will be kept and how they can access them, should they wish to do so. The transferring RD should also ensure that the RD taking over the dietetic practice is aware of their responsibilities as the new HIC. A written agreement should also specify that the departing RD will have ongoing access to fulfill their professional obligations (e.g. responding to a complaint).

The Office of the Information & Privacy Commissioner of Ontario has developed a [Checklist for Health Information Custodians in the Event of a Planned or Unforeseen Change in Practice](#).

### **Two RDs open up a private practice and decide to act as joint HICs. After a few years in practice, one of the RDs decides to leave the dietetic practice. What happens to the client health records?**

Joint HICs should establish policies for how to handle the departure of one of the HICs from the dietetic practice. The HICs can consider whether they each keep the records for

the clients they treated or whether they stay with the remaining RD in the dietetic practice. Above all, clients should be well informed of where their client health records will be kept, should they ever wish to access them or transfer care.



### **How should RDs who act as HICs manage client requests for access to or copies of their client health records?**

Establish clear policies for dealing with client requests for access or copies of their records. Specify in the policies whether client requests should be made directly to the HIC or whether agents can also be designated to provide clients with access or copies of their records.

According to PHIPA, the HIC or agent must respond to a request for access to their record as soon as possible and no later than 30 days after receiving the request. If a HIC requires additional time to meet the client's request for access, sections 53-54 of PHIPA permit the HIC to extend the time for a response by another 30 days. The HIC or agent may require a client to submit their request in writing, but should not do so to delay providing the record.

A reasonable fee may be charged to recover costs (e.g. time/resources involved in making copies). The Information and Privacy Commissioner of Ontario has held ([Order HO-009](#)) that a reasonable fee is \$30.00 for the first 20 pages and 25-50 cents (depending on the format) for every additional page.

### **Are HICs able to give information to a third party without client consent?**

A HIC is able to give information to a third party without client consent in cases where PHIPA or another law allows

or requires this disclosure (e.g. mandatory reports, police warrants during an investigation or College proceeding). In addition, as per section 40(1) of PHIPA, HICs may also disclose information without consent when they have reasonable grounds to believe 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.

When RDs who work as agents receive third party requests to disclose a client's personal health information, they need to consult with their HIC or organization's privacy officer for specific protocols on how such information may be shared.

Outside of permitted legislative disclosures, client consent is always required to disclose personal health information about a client to a third party.

**An insurance company calls a private practice RD (who is the HIC) to confirm that a client attended an appointment on a particular date. Can the RD disclose such information to the insurer?**

Confirming that a client received nutrition services from an RD on a particular date is permitted under section 37(1)(i) of the PHIPA. HICs can use personal health information for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services.

For any additional detailed information about the nature of the services that were provided and/or copies of all or part of the client health record, the RD would need to ensure that

the client consents to such disclosure to the insurance company. The consent can be obtained by the insurance company providing written client consent or by the RD contacting the client to obtain express (oral or written) consent.

**Are clients permitted to request corrections to their records?**

If a client believes that their personal health information is incomplete or inaccurate for the intended collection, use and disclosure purposes, section 55 of PHIPA states they can request a correction to their record. Where a request relates to a factual entry and the HIC or authorized agent agrees that the record is inaccurate, then a change should be made. For audit trail purposes, the original entry should remain legible: indicate that the original entry was in error, striking it out with one line so that it is still legible (or equivalent for electronic records). Insert the corrected entry along with the date and the name of the person making the correction.

Where possible, corrections should be made by the practitioner who originally made the entry. As necessary, the HIC or authorized agent may send the corrected entry to those who have had access to the inaccurate information within the past year.

If the HIC or authorized agent does not believe that the entry is wrong, then no correction should be made. This is particularly true where the entry contains an evaluative component or an expression of professional opinion. However, if the client continues to dispute the entry after the

HIC's or authorized agent's explanation, the client may file a statement of disagreement in the chart. Depending on the nature of the issue, the RD might also send the statement of disagreement to those (e.g. other health care providers) who have had access to the entry in the past year, as applicable. Clients also have the right to file a complaint with the Information and Privacy





Commissioner of Ontario if their correction request was denied.

RDs who act as HICs should implement a process to manage client requests for corrections that complies with PHIPA. For more information, refer to the information and Privacy Commissioner of Ontario's resource entitled, *Correction* at <https://www.ipc.on.ca/health/access-and-correction/correction/>

### **What is the role of the HIC and agent of a HIC in a situation where there is a security breach of personal health information?**

In the event of a breach, the HIC or their designated agent must notify the individual(s) as soon as possible that the privacy of their personal health information has been compromised. HICs must also ensure that their agents know that they must notify the HIC or the HIC's privacy or information officer within the organization as soon as possible when a privacy breach occurs.

To effectively manage a breach, it is important for HICs to have privacy breach protocols. The Information and Privacy Commissioner of Ontario has developed a helpful resource to assist HICs in establishing privacy breach protocols and to manage privacy breaches: [What to do When Faced with a Privacy Breach: Guidelines for the Health Sector.](#)

Changes to PHIPA, which took effect in June 2016, require HICs to report certain actions taken in response to privacy breaches. For more information, refer to the College's article, [New Obligations for Reporting Privacy Breaches \(2016\)](#). There are also additional reporting obligations for HICs that will take effect under PHIPA in October 2017. We will provide an overview of these obligations in the next issue of *résumé*.

### **RESOURCES**

- [CDO's Professional Practice Standards for Record Keeping \(2017\)](#)
- [CDO's Professional Practice Standard: Consent to Treatment and for the Collection, Use and Disclosure of Personal Health Information \(2017\)](#)
- [CDO's Privacy of Personal Information Dietetic Practice Tool Kit \(2016\)](#)
- [Office of the Information and Privacy Commissioner, Ontario](#)

