

Destroyed Health Records

Professional Practice Scenario

You were previously employed as a Registered Dietitian at a health centre that provides direct patient care. Generally, the health centre uses electronic documentation for their medical records except for the nutrition care program, where you keep a separate paper record because you do not have ready access to the electronic record. Standard practice is to make a note in the electronic record that the client was enrolled in the nutrition care program, and that a separate paper record exists. The nutrition care information contained in the paper record has never been entered into the electronic one.

Recently, you have discovered that the paper records were destroyed because the management team had understood that all information had been included in the electronic record, and that the paper record was simply duplicate information.

QUESTION 1. WHAT ARE THE MAJOR CONCERNS WITH RESPECT TO CLIENT ACCESS TO THEIR RECORDS?

QUESTION 2. WHO SHOULD BE NOTIFIED THAT THE RECORDS HAVE BEEN DESTROYED?

For answers, see page 11.

Three Strikes and We're In

Abandoned Health Records

By Dr. Ann Cavoukian

Information and Privacy Commissioner of Ontario

In May 2007, my office - the *Office of the Information and Privacy Commissioner of Ontario* (IPC) - received a letter from the *Royal College of Dental Surgeons of Ontario* (the College) stating that they had been contacted by a number of patients of a dentist in the Ottawa area with reports that the dentist's clinic (the Clinic) had closed, without notice. The patients had contacted the College to ask for assistance because of their inability to gain any access to their dental records.

Following these reports, the College made a number of attempts to contact the owner of the Clinic, but with no success. Not having the power or authority to enter the clinic premises in order to seize the records on behalf of the patients, the College contacted my office for assistance.

Based on the information provided by the College, and a personal visit to the Clinic by an IPC staff member, it was confirmed that the Clinic had been closed for some time and appeared to be abandoned. In the ensuing discussions between the IPC and College staff, it was agreed that it was of paramount importance to secure the abandoned patient files and to allow patients of the dental clinic access to their records.

As Commissioner, I decided that, in the absence of any response from the dentist at the Clinic, I would exercise my powers of seizure under the *Personal Health Information Protection Act* (PHIPA), and enter the Clinic premises to take possession of the files. The College agreed to take custody of the files from the IPC, provide secure storage and facilitate access for patients seeking to retrieve their personal health records.

In order to investigate this matter and lay the proper ground work for obtaining possession of the dental records, my office gave written notice - the first of three - to the owner of the Clinic. In the first notice, the owner was advised that: the IPC had initiated a complaint under PHIPA; that the matter was under review; and that a *Health Order* may be issued.

The notice elaborated on my decision to initiate a review because there were reasonable grounds to believe that the owner of the Clinic had not taken reasonable steps to protect the personal health information that he was responsible for against theft, loss and unauthorized use or disclosure, as required under PHIPA. Further, the owner was, in effect, denying his patients the right of access to their records. In order to ensure compliance with PHIPA and to facilitate access by patients to their dental records, the owner of the Clinic was requested to contact our office immediately to discuss how this matter could be resolved.

After receiving no response from the owner within a set time frame, a second notice was sent demanding that steps be taken to obtain the records and deliver them to my office immediately. With no response to the second notice, I issued a third, and final, notice notifying the owner of the Clinic that my office was intending to enter the Clinic premises and seize all patient records, pursuant to my powers as Commissioner under PHIPA. In my final notice, I provided the date that this would occur and indicated that the records would then be placed in the custody and control of a representative of the College.

Given the possibility that the owner of the Clinic may not have wished to cooperate, I contacted the Chief of the Ottawa Police Service (Ottawa Police) and requested their assistance in carrying out my duty as Commissioner in entering the Clinic. The Chief readily agreed to assist, including making arrangements for a locksmith to be present at the Clinic when entry was to occur and notifying neighbouring businesses of what was about to transpire, so as not to cause any alarm. My utmost gratitude goes out to the Chief, as the assistance and cooperation of the Ottawa Police was critical to achieving the goal of securing the patient records. Not only did the Chief kindly offer his

assistance, but he also ensured that a police officer was present at the time of entry, in the event that an alarm had to be disengaged or some other unforeseen circumstances that may have arisen.

On the designated day of entry, an investigator from my office, a representative of the College and a police officer entered the Clinic. The investigator, with the assistance of the police officer and the locksmith, successfully entered and seized the dental records in question. In addition, five computer hard drives, that could have potentially contained additional health information of patients, were also seized, along with a number of dental moulds. Custody of the records, hard drives and dental moulds were immediately turned over to the representative of the College as agreed, who transported them to secure storage at the College's offices in Toronto.

The first step undertaken by the College, following the seizure of the records, was to notify the patients who had initially contacted the College wishing to obtain their dental records. Then, the College created an inventory of files and began notifying patients of the Clinic as to the whereabouts of their files and how to gain access to them.

While this is not the first case in Ontario concerning abandoned health records, it is nonetheless a noteworthy incident for my office. This case marked the first time that I exercised my powers as Commissioner under PHIPA to enter the premises of a health professional in order to seize patient files. Although it is highly unlikely that I will need to use these powers on anything but an exceptional basis, the exercise proved to be extremely effective in ensuring that abandoned patient files were secure and that patients could exercise their rights of access to their health records.

This investigation is also an excellent example of how different organizations with varying mandates, can work together successfully to achieve a positive outcome. The coordinated efforts of the Ottawa Police, the College, and the IPC were critical to the successful recovery of the dental records of the patients involved in this complaint. I was delighted with the outcome.

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Answers to scenario questions (page 9)

QUESTION 1. WHAT ARE THE MAJOR CONCERNS WITH RESPECT TO CLIENT ACCESS TO THEIR RECORDS?

Answer

There are two concerns in this scenario. The major concern is that, because the records have been destroyed, clients will not have access to their complete medical record, should they request it. Whether the record is reviewed for the purposes of ongoing care, an audit, or in response to a complaint, what remains is an electronic record with an incomplete picture of the assessment and care provided.

Also at the heart of this issue, is a concern about the different record-keeping practices compromising client access to health records in this organization. When it is necessary to keep "private" health records outside of the "official record", the health information custodian, (in this case, the organization) needs to ensure that policies and procedures reflect the existence of the "private" notes, and that the management team is fully aware of this practice.

QUESTION 2. WHO SHOULD BE NOTIFIED THAT THE RECORDS HAVE BEEN DESTROYED?

Answer

You should notify both the College and the organization's privacy officer. It would be a good idea for you to inform the College of this situation, so that if the College had to review the records of any of the patients involved (e.g. for an audit, or to investigate a complaint), the reviewer would be aware that the information in the record is incomplete.

Ultimately, however, this is an organizational issue and you should also notify the organization's privacy officer. As the health information custodian, the facility has a legal obligation to ensure that its practices protect the integrity of health records. The privacy officer will have to do an internal investigation from a risk management point of view. Depending on the sensitivity of the information in the

records, the organization should let their patients know that some records have been destroyed and that they may receive an incomplete record should they request a copy of their medical record in the future.

This would be a good opportunity for a dietitian to help the organization to review its record-keeping policies to prevent this situation from happening again. The policy should address the issue of the private notes, ensuring that:

- both the private notes and the electronic record are cross-referenced to indicate that they are not the complete record;
- the location of the other record is noted in each record;
- proper safeguards for security and retention exist; and
- there is an appropriate process established for the destruction of records.

RECORD KEEPING RESOURCES

College of Dietitians of Ontario. *Record Keeping Guidelines for Registered Dietitians* (2004), pp. 28-29.

CDO Proposed Regulation: *Records Relating to Members' Practice*, www.cdo.on.ca > Resources > CDO Bylaws & Regulations.

résumé (www.cdo.on.ca > Resources > Publications)
Spring 2007: *A Systematic Approach To Record Keeping In Public Health.*

Fall 2005: *Records Relating to Members' Practice: Answers to your questions.*

Richard Steinecke & CDO. *Jurisprudence Handbook for Registered Dietitians in Ontario* (2003), "Record Keeping", Chapter 6, p. 71.

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(<http://www.ipc.on.ca>)

> *Retaining and Disposing Information*
(<http://www.ipc.on.ca/index.asp?navid=20>)

> *Electronic Records: Maximizing Best Practices*
(<http://www.ipc.on.ca/images/Resources/elecrec.pdf>)