



# Standard of Practice:

## Privacy and Management of Patient Health Information

2015

## Introduction

The requirements for how registered members of the Alberta Dental Association and College (dentists) collect, use, manage, disclose and protect health information are governed by applicable privacy legislation, including Alberta's *Health Information Act* (HIA). The *Health Information Act* was amended to apply to dentists as of March 1, 2011. Until the most recent amendments, the *Health Information Act* applied only to health services paid for under the Alberta Health Care Insurance Plan. Under the amended *Health Information Act*, the Act applies to all health information collected, used and disclosed by “custodians” in relation to the provision of a health service, regardless of the source of payment. “Health information” and “health services” have specific, defined meanings under the *Health Information Act*.

All regulated members of the Alberta Dental Association and College will be custodians for the purposes of the *Health Information Act* unless they are an affiliate of another custodian. Individuals who are affiliates of another custodian are deemed not to be a custodian while acting in the capacity of an affiliate. Dentists who are practice owners will typically be custodians. Dentists who are associates or employees of a custodian will typically be affiliates of the custodian, as will be other non-dentist employees or contractors of the custodian.

Dentists may also be employed by other organizations such as corporations and educational institutions that are not custodians under the *Health Information Act*. Although the employer is not a custodian under the *Health Information Act*, the regulated member (dentist) are custodians subject to the *Health Information Act* for the health information that they collect for the purpose of providing a health service.

Dentists must continue to be aware of and follow all relevant privacy legislation. Members will still be governed by a variety of privacy legislation that applies to the personal information that they collect, use and disclose. Where the *Health Information Act* does not apply, Alberta's *Personal Information Protection Act* (PIPA) or the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) may apply.

The ethical obligations of dentists with respect to maintaining privacy and confidentiality are embodied in the Alberta Dental Association and College Code of Ethics. This document builds on the Code of Ethics and identifies standards for maintaining privacy and confidentiality of health information as well as the management of information in records and the management of electronic records, including the protection, privacy and security of electronic records.

For the purposes of the standards set out below, “health information” refers to health information collected, used or disclosed in relation to a health service, as defined in the *Health Information Act*.

## Privacy and Management of Patient Health Information

1. The dentist is responsible and accountable for ensuring that they understand, and comply with, the applicable legislated privacy requirements that apply to their practice.
2. The dentist must collect, use, and disclose only the amount of health information that is essential for the intended purpose and with the highest degree of anonymity possible.
3. Dentists are responsible for correctly and consistently identifying the patient and/or guardian at presentation for health services and at the outset of treatment by:
  - a) require that the patient present at least two pieces of supporting documentation to establish their unique identity, and
  - b) collecting demographic information that includes at a minimum the patient's last name, first name, date of birth, gender and Alberta Personal Health Number (PHN) if applicable.
4. The dentist must take reasonable steps to ensure the accuracy of health information before using or disclosing the information.
5. The dentist must access health information, including electronic health records, only for purposes that are consistent with their professional responsibilities and legislative requirements.
6. The dentist is responsible and accountable for identifying and confirming whether they are a custodian of health information or an affiliate of a custodian for the purposes of the *Alberta Health Information Act* and must advise the Alberta Dental Association and College of their status, when requested
7. The dentist who is a custodian is responsible and accountable for identifying the health information that they collect for the purposes of providing a health service. Affiliate of the dentist share the responsibility and accountability with the custodian for identifying the health information they collect for the purposes of providing a health service.
8. The dentist who is a custodian is responsible and accountable for ensuring that they and their affiliates are familiar with, and comply with, the legislated requirements specific to health information, including their obligations regarding collection, use, disclosure and security of health information.
9. Custodians can only disclose an individual's health information to a third party with expressed written consent or as specifically authorized in the HIA, Part 5. The consent referred to must be provided in writing or electronically and must include:

- a) an authorization for the custodian to disclose the health information specified in the consent,
  - b) the purpose for which the health information may be disclosed,
  - c) the identity of the person to whom the health information may be disclosed,
  - d) an acknowledgement that the individual providing the consent has been made aware of the reasons why the health information is needed and the risks and benefits to the individual of consenting or refusing consent,
  - e) the date the consent is effective and the date, if any, on which the consent expires, and
  - f) a statement that the consent may be revoked at any time by the individual providing it.
    - i. A disclosure of health information pursuant to this section must be carried out in accordance with the terms of the consent.
    - ii. A revocation of consent must be provided in writing or electronically.
    - iii. A consent or revocation of a consent that is provided in writing must be signed by the person providing it.
    - iv. A consent or revocation of a consent that is provided electronically is valid only if it complies with the requirements set out in the regulations.
10. The dentist who is a custodian must determine appropriate retention periods for patient records, and must comply with all relevant Alberta Dental Association and College Standards of Practice relating to retention of patient records.
11. The dentist who is a custodian must establish written policies and procedures relating to how they and their affiliates handle health information in their custody and control. These policies and procedures must include a written record of the administrative, technical and physical safeguards in place to protect the privacy and confidentiality of health information in their custody and control.
12. The dentist who is a custodian must, at a minimum, review all policies and procedures annually to ensure policies are kept up-to-date with all current Alberta Dental Association and College Standards of Practice and to ensure compliance with the Alberta *Health Information Act* or other applicable privacy legislation.
13. The dentist who is a custodian must, at a minimum, assess annually the administrative, technical and physical safeguards in respect of:

- a) the confidentiality of health information that is in their custody or under their control and the privacy of the individuals who are the subjects of that information,
  - b) any reasonably anticipated threat or hazard to the security or integrity of the health information or to the loss of the health information, and
  - c) any unauthorized use, disclosure or modification of the health information or unauthorized access to the health information.
14. The dentist who is a custodian who uses a computerized or electronic information system must ensure that the system has reasonable safeguards to protect the confidentiality and security of the information, including but not limited to, ensuring that:
- a) each authorized user can be uniquely identified,
  - b) each authorized user has a documented access level based on the user's role,
  - c) access to the system is password protected with procedures for password management and updates,
  - d) the need for encryption of records,
  - e) the system creates and maintains audit logs that meet legislated requirements,
  - f) identifiable health information is transmitted securely,
  - g) appropriate anti-virus systems, firewalls and intrusion detection systems are installed and monitored,
  - h) data is backed up securely,
  - i) data recovery protocols are in place and regularly tested,
  - j) protocols are in place to ensure continuity of care in the event that the information contained within the electronic information system cannot be accessed for a period of time,
  - k) secure disposal of hardware that contains identifiable health information such that all data is removed and cannot be reconstructed, and
  - l) in relation to the Alberta Electronic Health Record (EHR), additional requirements may be required as identified in the *Alberta Electronic Health Record Regulations*.
15. A dentist who engages the services of an information manager as defined under the *Health Information Act* to manage electronic health records under the custody or control of the

dentist must first enter into a written agreement with the information manager. The HIA defines an “information manager” as a person or body that:

- a) Processes, stores, retrieves or disposes of health information,
  - b) in accordance with the regulations, strips, encodes or otherwise transforms individually identifying health information to create non-identifying health information, or
  - c) provides information management or information technology services.
    - i. The agreement between the dentist and the information manager must comply with the requirements of an information manager agreement as specified under section 7.2 of the *Health Information Regulation*.
    - ii. The information manager may use or disclose information for the purposes authorized by the agreement, and must comply with the Act and regulations, and the agreements entered into with the dentist. The dentist continues to be responsible for compliance with the HIA and regulations, including protecting the records.
16. A dentist who discloses or contributes information to a shared electronic medical record operated by another custodian, which facilitates access to the information by multiple custodians, must first enter into an agreement with the custodians participating in the shared electronic health record that sets out how duties under the HIA will be met:
- a) determine when another custodian may use and disclose records the dentist has contributed to,
  - b) process for responding to disclosure requests,
  - c) shared responsibility for protecting the records.
17. The transfer of health information electronically must be done in a fashion that ensures its security. The use of email to transfer health information must occur through either a secured portal or with encryption.
18. The dentist who is a custodian must ensure that their affiliates are aware of, and adhere to, all of the custodian’s policies and procedures regarding the collection, use, disclosure and security of health information and establishes sanctions for any breach thereof.
19. The dentist who is an affiliate of a custodian is responsible and accountable for ensuring that they are familiar with and comply with the legislated requirements specific to health information, including their obligations regarding collection, use, disclosure and security of

health information, as well as their custodian's policies and procedures regarding the collection, use, disclosure and security of health information.

20. The dentist who is a custodian who is employed by a non-custodian must:
- a) inform the employer of the dentist's obligations as a custodian,
  - b) review the employer's policies and procedures relating to the collection, use, disclosure, retention and security of health information,
  - c) make recommendations to the employer regarding the collection, use, disclosure, retention and security of health information to ensure that legislated requirements specific to health information and their obligations as custodians are met and reflected in the employer's policies and procedures, and
  - d) when the custodian uses the electronic health information system of their non-custodian employer, the employer is providing them with information technology services. The employer is considered as an information manager to the custodian. The custodian must enter into an Information Manager Agreement with their employer that addresses their respective obligations regarding the collection, use, disclosure, retention and security of health information.
  - e) When a dentist places health information into an employer's electronic information system this relationship does not abdicate a custodian from his/her patient information responsibilities.
21. The dentist who is a custodian must comply with all legislative requirements relating to health information, including:
- a) the preparation and submission of a Privacy Impact Assessment to the Privacy Commissioner, before implementing any proposed new practice or system relating to the collection, use and disclosure of individually identifying health information, and
  - b) providing patients with access to their health information in compliance with legislation and subject to any statutory exceptions and fees, and allowing for the correction of health information, as required by law.
22. Dentists must determine and document custodianship arrangements of patient records to ensure:
- a) That if a dentist leaves the dental practice, custodianship of patient records will be clear to all parties and to the patients of the departing and remaining dentists, and
  - b) The departing dentist and his or her patients have reasonable access to the relevant patient records.

- c) In case of closure of a dental practice the dentist must ensure that ongoing custodianship arrangements are in place and that patients have continuing access to their patient records.
  - d) In the case of a dentist ceasing practice, they must advise the Alberta Dental Association and College of where the records are located and how patients can access copies of these records.
23. A dentist who uses or discloses patient information for research purposes must comply with the direction the Alberta Dental Association and College in relation to any applicable privacy legislation relating to use of personal or health information in research, including the *Health Information Act* (Alberta).
24. The dentist must comply with any written direction by the Alberta Dental Association and College to make specific health information accessible via the Alberta Electronic Health Record.
25. Dentists are eligible to obtain access to the Alberta Electronic Health Record (Alberta Netcare) as authorized custodians by complying with the obligations as outlined in the *Alberta Electronic Health Record Regulation* and Part 5.1 of the *Health Information Act*.
26. These Standards must be followed by dentists who are members of the Alberta Dental Association and College. Failure to do so constitutes unprofessional conduct and may result in disciplinary action by the Alberta Dental Association and College.