

PATIENT ACCESS TO PERSONAL HEALTH INFORMATION POLICY

APPROVED BY COUNCIL:

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Council

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FOR MORE INFORMATION CONTACT:

College of Opticians of Ontario

WHAT IS THE PURPOSE OF THE POLICY?

The purpose of the policy is to outline the rights and responsibilities of members of the College of Opticians (the “College”) when presented with a request by a patient for access to his or her personal health information that is in the custody or control of an optician.

WHO IS AFFECTED?

Members of the College, including opticians, interns and students, patients and the general public.

BACKGROUND

In response to inquiries from opticians and from the public, the College investigated the need for a policy to assist members to understand their rights and obligations when providing patients with access to their personal health information. Research of policies at other health regulatory colleges, the Federation of Health Regulatory Colleges of Ontario and the Office of the Information Privacy Commissioner has provided valuable information for the drafting of this policy.

The general expectation is that members will comply with the *Personal Health Information Protection Act, 2004* and the College's Standards of Practice.

This policy deals strictly with access by patients to their own personal health information. A separate policy dealing with disclosure of personal health information to third parties is in development.

The drafting of this policy was tasked to the Patient Relations Committee in 2010. A draft policy will be brought to Council in May 2011.

POLICY

All members of the College, including opticians, interns and students, are required to comply with the *Personal Health Information Protection Act, 2004* (PHIPA) and the College's Standards of Practice. This policy is not intended to reduce or limit the responsibilities of members under PHIPA or the Standards of Practice.

Upon request by a patient, an optician must provide the patient with access to his or her personal health information that is in the custody or control of the optician. An optician may also provide a patient with access to his or her own personal health information even if the patient does not expressly request the access.

Except for the limited exceptions set out in section 54 of PHIPA, an optician must respond to a request for access *as soon as possible in the circumstances* but no later than 30 days after receiving the request.

Opticians may require a request from a patient for access to or a copy of his or her personal health information to be in writing. An optician may not, however, require a patient to explain why they want the information.

Opticians may charge a fee for providing a patient with access to his or her personal health information if the optician first provides an estimate of the fee to the patient. The fee must not exceed the optician's reasonable cost recovery. An optician may not charge a patient for providing ocular measurement information beyond the reasonable cost of providing access to that information unless the patient has been advised of the charge before the measurements were taken.

An optician may only refuse to provide a patient with access to his or her personal health information if the refusal is permitted under PHIPA. The optician *must* consult the accompanying Explanatory Document and section 52 of PHIPA for a comprehensive explanation of the exceptions to a patient's right of access.

It is the ultimate responsibility of the optician to ensure that a patient's right to access personal health information that is in the custody or control of the optician is complied with.

FOR MORE INFORMATION

For more comprehensive information regarding access to personal health information, please refer to the Explanatory Document accompanying this policy, as well as the *Personal Health Information Protection Act, 2004*.

PATIENT ACCESS TO PERSONAL HEALTH INFORMATION POLICY

Explanatory Document

Under the *Personal Health Information Protection Act, 2004* (PHIPA), a patient has a right of access to his or her own personal health information and the optician has a corresponding obligation to provide access in accordance with PHIPA. Requesting access to and a copy of their records is a patient's right.

The *physical record* of a patient's personal health information belongs to the optician, but the *personal health information* contained within the record belongs to the patient.

Who does this policy apply to?

This policy applies to members of the College who have custody or control of personal health information. Although opticians may permit students or interns to assist in providing access to a patient of their personal health information, the ultimate responsibility in ensuring that a patient's right of access is satisfied lies with the optician.

Students and interns must ensure that they do not provide access to a patient's health information that would directly or inadvertently violate the requirements of PHIPA and this Policy. Before responding to a request for access, a student or intern must consult with their supervising optician.

What is "Personal Health Information"?

Personal health information is defined in section 4(1) of PHIPA.¹ It relates to the health information collected by an optician during the course of the patient/practitioner relationship. Personal health information would include all of the information that is required to be recorded in the patient file according to the College's Professional Standards of Practice, Standard 6 (Records). Personal health information may also include information that is not required to be recorded in the patient file such as insurance information or a patient's health card number. Opticians should review the definition of personal health information to ensure that they are familiar with what information may be accessed by a patient.

Who can request access to Personal Health Information?

The patient may request access to his or her own personal health information that is in the custody or control of the optician. "Access" is different from "disclosure". The term "access" in PHIPA refers to the right of a patient to obtain his or her own personal health

information. The term “disclosure” in PHIPA is used in relation to providing personal health information about a patient to a third-party (i.e. someone other than the patient).

The optician must always remember that while patients have the right to access their own personal health information, they are under no obligation to explain why they want the information. It would therefore be inappropriate for the optician to ask the patient why they are making the request.

How is Personal Health Information released to the patient?

An optician *may* provide a patient with access to his or her personal health information if the patient orally requests the access. An optician *must* provide a patient with access if the request is in writing. An optician may also provide access to a patient even if they have not expressly requested access.

Opticians may require a patient to submit their request in writing. This can be typed or handwritten and does not have to be formal or follow any particular format so long as the optician can identify what information is being requested.

Before providing access, the optician must take reasonable steps to determine the patient’s identity. This would normally be satisfied by viewing photo identification to confirm the identity.

A fee may be charged by the optician to reflect the reasonable cost of providing access to the information, such as photocopy charges. In order to charge a fee, the optician must first provide the patient with an estimate of the fee.

The fee for reasonable cost recovery would not permit an optician to charge the patient for the provision of health care services such as the taking of ocular measurements. If an optician wants to be able to charge a patient for taking measurements, he or she must advise the patient before taking the measurements that there will be a fee for that service. If the optician does not inform a patient before taking measurements that there may be a separate charge for that service (e.g. in the event that the patient does not purchase from the optician), the optician may not ask the patient to pay a fee if a patient requests access to the measurement information other than the reasonable cost associated with providing access to that information.

Except for the limited exceptions set out in section 54 of PHIPA, an optician must respond to a request for access *as soon as possible in the circumstances* but no later than 30 days after receiving the request. An optician shall not unreasonably delay in responding to a request for access from a patient to his or her personal health information.

An optician may permit a student or intern who they are supervising to assist them with providing access to a patient’s personal health information. For example, a student or intern could make a copy of a prescription and give it to the patient on behalf of the

optician. Before doing so, however, the optician must consider the specific request for access and provide direction to the student or intern about what he or she may provide to the patient. It would not be appropriate for a student or intern to respond to a request for access by a patient without first consulting with the optician. Opticians are reminded that they are ultimately responsible for the patient record and all personal health information of their patients.

When to refuse access?

An optician may only refuse to permit access by a patient to their personal health information if the refusal is authorized by PHIPA. Please read section 52 of PHIPA for the list of exceptions.

It should be noted that there are very few exceptions to the patient’s right of access to their personal health information. It should also be noted that it would be very rare for any of the exceptions to arise in the context of practicing opticianry. For example, section 52(e)(i) of PHIPA provides that access can be refused if granting access could reasonably be expected to “result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious bodily harm to the individual or another person”. This clause is intended to be a very narrow exception. The exception would be applied to individual patients on a “case by case” basis after a full analysis of the circumstances has been completed. The exception would not, for example, permit an optician to refuse access to a patient to his or her ocular measurements on the basis that the information would be used to purchase prescription eyeglasses or contact lenses from someone who is not an optician, optometrist or physician. In any event, if an optician is of the opinion that access should be refused because of risk to the patient, PHIPA requires that he or she must first consult with a physician or psychologist about the risk.

Opticians are reminded that they are not to put up artificial barriers to their patients’ right to access their personal health information.

Where can I get more information?

To reference the complete provisions concerning a patient’s right to access their personal health information under PHIPA and the College’s Standards of Practice, please go to the College website at www.coptont.org and follow the links under “Resource Room”.

Members of the College and the public can also call the College at 416-368-3616 if they have questions about this policy.

ⁱ “personal health information”, subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

- (a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family,
- (b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,
- (c) is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the individual,
- (d) relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,
- (e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,
- (f) is the individual's health number, or
- (g) identifies an individual's substitute decision-maker.