

SCPT Practice Guideline #8 Release of Patient Information

Background

Three statutes that may have an impact on physical therapy practice are The Health Information Protection Act (HIPA), The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIPPA), and the Personal Information Protection and Electronic Documents Act (PIPEDA). HIPA and LAFOIPPA are Saskatchewan statutes; PIPEDA is a Canadian statute. These statutes all deal with protection of the privacy of personal information of individuals, but provide for a number of exceptions, most commonly when consent to release is obtained by the person to whom the information relates.

HIPA

HIPA applies directly to physical therapists working in their own clinics, as they personally would be defined as a "trustee" of personal health information. A physical therapist who is working as an employee is obligated to follow the rules and regulations of his or her employer, who is the "trustee" under HIPA. Who is a "trustee" is described in the attached Appendix.

HIPA defines personal health information as follows:

2(m) "personal health information" means, with respect to an individual, whether living or deceased:

- (i) information with respect to the physical or mental health of the individual;
- (ii) information with respect to any health service provided to the individual;
- (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
- (iv) information that is collected:
 - (A) in the course of providing health services to the individual; or
 - (B) incidentally to the provision of health services to the individual; or
- (v) registration information;

Section 23 of HIPA set out the general rule relating to collection, use and disclosure of personal health information as follows:

Collection, use and disclosure on need-to-know basis

23(1) A trustee shall collect, use or disclose only the personal health information that is reasonably necessary for the purpose for which it is being collected,

used or disclosed.

(2) A trustee must establish policies and procedures to restrict access by the trustee's employees to an individual's personal health information that is not required by the employee to carry out the purpose for which the information was collected or to carry out a purpose authorized pursuant to this Act.

...

(4) A trustee must, where practicable, use or disclose only de-identified personal health information if it will serve the purpose.

LAFOIPPA

LAFOIPPA applies broadly to personal information, including information related to health care, that is under the control of a "local authority." In practice, the provisions of LAFOIPPA would apply to a physical therapist working for a university, college, school division, or a municipality.

For those therapists working for a local authority, the requirements of LAFOIPPA are in addition to those governing personal health information under HIPA, although section 1.1. of LAFOIPPA provides that where the local authority is a "trustee" as defined by HIPA, "personal information" does not include personal health information as defined by HIPA. In other words, management of personal health information, as that term is defined in HIPA, will be governed by HIPA.

Under s. 23 of LAFOIPPA, "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

- (a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
- (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) information that relates to the health care that has been received by the individual or to the health history of the individual;
- (d) any identifying number, symbol or other particular assigned to the individual;
- (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
- (f) the personal opinions or views of the individual except where they are about another individual;

- (g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (k) the name of the individual where:
 - (i) it appears with other personal information that relates to the individual; or
 - (ii) the disclosure of the name itself would reveal personal information about the individual.

Disclosure of personal information without consent is prohibited. However, there are a number of exceptions listed in s. 29 of LAFOIPPA.

PIPEDA

PIPEDA applies to commercial activities, which would include a private physical therapy clinic.

For most practical purposes, compliance with HIPA will also be sufficient to constitute compliance with PIPEDA.

In addition, the SCPT Code of Ethics provides:

10. Physical therapists shall respect all client information as confidential and shall not communicate client information to any person without the consent of the client or surrogate except when required by law.

Workers` Compensation Board and Saskatchewan Government Insurance

However, the Workers Compensation Board (WCB) and Saskatchewan Government Insurance (SGI) are entitled to certain information without the consent of the person to whom the information relates.

Section 54 of The Workers Compensation Act provides as follows:

- 54 Any health care professional who attends to or is consulted with respect to an injury to a worker shall:

- (a) furnish, from time to time and in any form that the board may require, any reports with respect to the examination or treatment of the worker that are relevant to the injury for which compensation is claimed;

Section 72 of The Automobile Accident Insurance Act provides as follows:

72 Every ... physiotherapist ... treating or attending or consulted upon any case of injury to a person involved in a motor vehicle accident shall furnish a report in respect of the injury forthwith and from time to time to the insurer in such form as the insurer may prescribe.

Practice Guidelines

General

1. Physical therapists who obtain their own consent for disclosure of information from the client are thus able to ensure that the client is informed that treatment reports will be sent to the insurer or other third party and can avoid having to interpret the adequacy of the consent received from the insurer or other third party.
2. A physical therapist should only disclose their own physical therapy treatment records of the client to an insurer. They should not disclose the record of other health care professionals provided to the physical therapist, but should direct any such request to the originator of the documentation.

Disclosure of Information to WCB

3. A physical therapist must disclose all physical therapy assessment and treatment reports relating to treatment of a workplace injury of a specified body part to the WCB, including reports regarding treatment that occurred prior to the work injury if they relate to the same body part.

Disclosure of Information to SGI

4. A physical therapist must disclose all physical therapy assessment and treatment reports relating to treatment of injuries arising out of a motor vehicle accident to SGI
5. A physical therapist must disclose all physical therapy assessment and treatment reports relating to treatment relating to a body part not originally involved in the motor vehicle accident or regarding past history, where SGI provides a consent from the client/claimant, which consent may be part of the SGI application form.

Disclosure of Information to Other Third Party Payers

6. Because third party payers are not trustees under HIPA, a physical therapist can only disclose physical therapy assessment and treatment reports to them where a consent is obtained from the client/claimant.

7. A physical therapist who is a trustee under HIPA is required under section 21 of that Act to verify the identity of the recipient and, if there is no consent, to take reasonable steps to ensure that the third party payer to whom the information is disclosed is aware that the information must not be used or disclosed for any purpose other than the purpose for which it was disclosed, unless otherwise authorized pursuant to HIPA.

Appendix to Practice Guideline #8
Persons and Entities that are “Trustees” under HIPA

1. The office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan;

2. Prescribed boards, commissions, Crown corporations and other government bodies, including:
 - Agricultural Credit Corporation of Saskatchewan
 - Agricultural Implements Board
 - Agricultural Operations Review Board
 - Automobile Injury Appeal Commission
 - Board of Revenue Commissioners
 - Crown Investments Corporation of Saskatchewan
 - Enterprise Saskatchewan
 - Farm Land Security Board
 - Government House Foundation
 - Highway Traffic Board
 - Human Rights Tribunal Panel
 - Information Services Corporation of Saskatchewan
 - Innovation Saskatchewan
 - Labour Relations Board
 - Law Reform Commission of Saskatchewan
 - Liquor and Gaming Authority
 - Meewasin Valley Authority
 - Minimum Wage Board
 - Multitype Library Board
 - Municipal Financing Corporation of Saskatchewan
 - Office of Residential Tenancies
 - Oil and Gas Conservation Board
 - Prairie Agricultural Machinery Institute
 - Provincial Court Commission
 - Provincial Mediation Board
 - Public and Private Rights Board
 - Public Complaints Commission
 - Public Disclosure Committee
 - Public Employees Pension Board
 - Public Guardian and Trustee of Saskatchewan
 - Public Service Commission
 - Public Service Superannuation Board
 - Saskatchewan Apprenticeship and Trade Certification Commission
 - Saskatchewan Archives Board
 - Saskatchewan Arts Board
 - Saskatchewan Centre of the Arts

Saskatchewan Communications Network
Corporation Saskatchewan Crop Insurance
Corporation Saskatchewan Development Fund
Corporation Saskatchewan Financial Services
Commission Saskatchewan Gaming Corporation
Saskatchewan Government Insurance
Saskatchewan Grain Car Corporation
Saskatchewan Health Information Network
Saskatchewan Housing Corporation
Saskatchewan Human Rights Commission
Saskatchewan Lands Appeal Board
Saskatchewan Legal Aid Commission
Saskatchewan Municipal Board
Saskatchewan Opportunities Corporation
Saskatchewan Pension Plan Board of
Trustees Saskatchewan Police Commission
Saskatchewan Power Corporation
Saskatchewan Power Corporation Superannuation
Commission Saskatchewan Research Council
Saskatchewan Telecommunications
Saskatchewan Telecommunications Holding Corporation
Saskatchewan Transportation Company
Saskatchewan Water Corporation
Saskatchewan Watershed Authority
Saskatchewan Wetlands Conservation Corporation
SaskEnergy Incorporated
Surface Rights Arbitration Board
Teachers' Superannuation Commission
Technical Safety Authority of Saskatchewan
Wakamow Valley Authority
Wanuskewin Heritage Park Corporation
Wascana Centre Authority
Water Appeal Board
Western Development Museum
Workers' Compensation Board
Workers' Compensation Superannuation Board

3. A regional health authority or a health care organization;
4. A licensee as defined in The Personal Care Homes Act;
5. A person who operates a facility as defined in The Mental Health Services Act;

6. A licensee as defined in The Health Facilities Licensing Act;
7. An operator as defined in The Ambulance Act;
8. A licensee as defined in The Medical Laboratory Licensing Act, 1994;
9. A proprietor as defined in The Pharmacy Act, 1996;
10. A community clinic:
 - (a) as defined in section 263 of The Co-operatives Act, 1996;
 - (b) within the meaning of section 9 of The Mutual Medical and Hospital Benefit Associations Act; or
 - (c) incorporated or continued pursuant to The Non-profit Corporations Act, 1995;
11. The Saskatchewan Cancer Foundation;
12. A person, other than an employee of a trustee, who is a health professional licensed or registered pursuant to a health professions Act;
13. A health professional body that regulates members of a health profession pursuant to an Act;
14. A person, other than an employee of a trustee, who or body that provides a health service pursuant to an agreement with another trustee;
15. The Health Quality Council established pursuant to The Health Quality Council Act;