Jurisprudence
Module 6 – Confidentiality & Privacy

In this module you will learn about

- The difference between confidentiality & privacy
- Registrants' confidentiality and privacy obligations
- Privacy legislation including,
    - *Personal Information and Electronic Documents Act* (PIPEDA)
    - *Personal Health Information Protection Act* (PHIPA) including
        - Health information custodians
        - Circle of care
- Privacy & social media

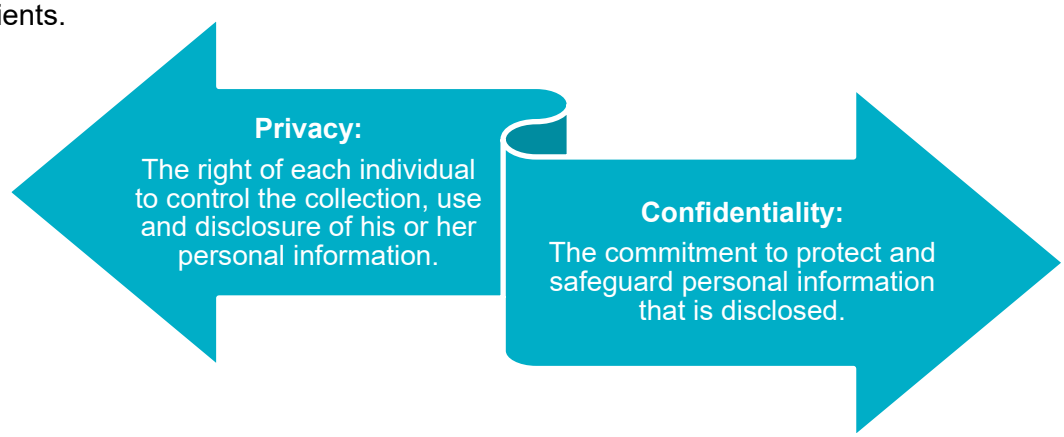
Resources to include with Module 6

- CMRITO Standards of Practice
  www.cmrito.org/pdfs/standards/standards-of-practice.pdf
- Information and Privacy Commissioner of Ontario
  https://www.ipc.on.ca/en
- *Personal Information Protection and Electronic Documents Act* (PIPEDA)
  http://laws-lois.justice.gc.ca/eng/acts/p-8.6/
- *Personal Health Information Protection Act* (PHIPA)
  www.ontario.ca/laws/statute/04p03

- *What you must know about … communicating with patients*
  https://www.cmrito.org/pdfs/wymkas/communicating-with-patients.pdf

Jurisprudence
Module 6 – Confidentiality & Privacy

The CMRITO's Standards of Practice require registrants to understand how to protect the confidentiality of all professionally acquired information about patients and the privacy of patients with respect to that information, while facilitating the effective delivery of health care. Registrants must keep all information confidential except when necessary to facilitate diagnosis or treatment of the patient, or when they are legally obliged or allowed to disclose such information. This obligation is contained within Practice Standard 5 – Relationships with Patients.



Registrants have ethical and legal responsibilities to maintain the confidentiality and privacy of patient health information obtained while engaging in the practice of medical radiation and imaging technology. While confidentiality and privacy both relate to a patient's personal health information, they are distinct concepts. Although registrants are required to maintain the confidentiality of patient information, this does not necessarily mean that they are compliant with privacy legislation.

Under privacy legislation, access to patient information is restricted to those who are involved in a patient's circle of care. Patient information should **never** be accessed by a registrant simply out of curiosity or interest as this would violate a patient's privacy.

Similarly, registrants must maintain the confidentiality of patient information and avoid discussing patient care in a public setting even if no names are used. Registrants must be sensitive to the fact that information other than a patient's name (age, gender, health condition) could be used to identify a patient.

Legislation

Both federal and provincial legislation governs the protection of personal information. All privacy legislation is based on the same ten principles

Principle 1 – Accountability

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

Principle 2 – Identifying purposes

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

Principle 3 – Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Principle 4 – Limiting collection

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

Principle 5 – Limiting use, disclosure, and retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.

Principle 6 – Accuracy

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

Principle 7 – Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

Principle 8 – Openness

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

Principle 9 – Individual access

Upon request, an individual shall be informed of the existence, use, and disclosure of their personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

Principle 10 – Challenging compliance

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

Personal Information Protection and Electronic Documents Act (PIPEDA)

- PIPEDA is federal legislation which requires organizations involved in commercial activities to have privacy policies in place and to appoint a privacy officer to deal with privacy matters of complaints. This information must be readily available. It also requires organizations to have consent for the way they use the personal information they collect and requires that they only collect personal information that is necessary for those purposes. It is important to note that consent can be withdrawn at any time. PIPEDA also requires organizations to allow individuals access to their personal information and an opportunity to challenge the accuracy and completeness of that information. Finally, it requires organizations to have appropriate security for the personal information they hold.

For the full text of the PIPEDA, please consult the Government of Ontario's website at: http://laws-lois.justice.gc.ca/eng/acts/p-8.6/.

Personal Health Information Protection Act (PHIPA)

- PHIPA is provincial legislation, enacted by the Ontario legislature, which requires health information custodians ("HICs") to have information practices in place covering the collection, use and disclosure of personal health information and to identify a privacy contact person. For example, in order to be compliant with PHIPA, a hospital may develop information management policies and appoint a Privacy Officer as the contact person for privacy questions or concerns. The legislation also requires that agents of a health information custodian (i.e. employees and others who act on behalf of the HIC) comply with PHIPA and recognize that this can be done by adopting the information practices of the HIC. Registrants employed by hospitals and independent health facilities

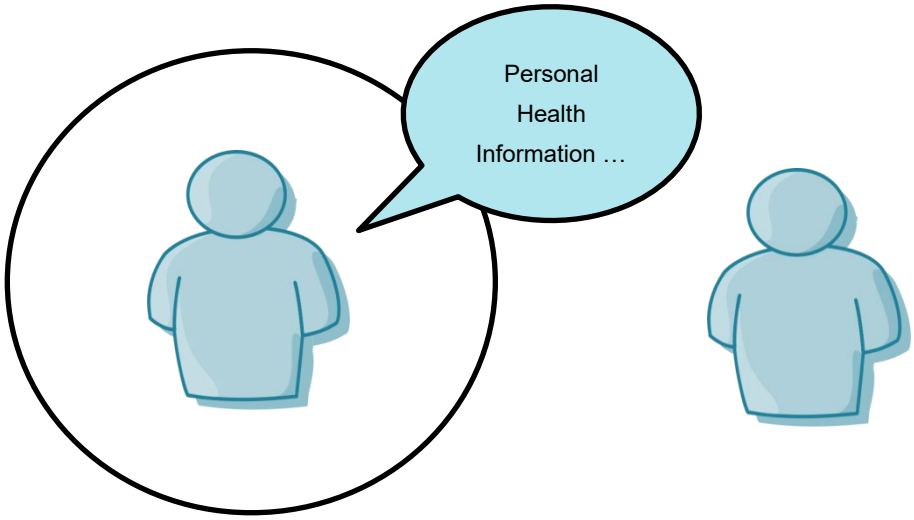
are required to comply with PHIPA by adhering to the information and privacy policies of their employer.

- PHIPA also requires HICs to have patient consent for the collection, use and disclosure of personal health information but allows for implied consent to satisfy this requirement in most cases. It also requires HICs to allow individuals to access their personal health information and an opportunity to challenge the accuracy and completeness of that information. PHIPA requires HICs to report privacy breaches by registrants to the CMRITO. Finally, it requires HICs to have appropriate security for the personal health information they hold.

For the full text of the PHIPA, please consult the Government of Ontario's website at: http://www.ontario.ca/laws/statute/04p03.

Circle of care

PHIPA permits the disclosure of personal health information within and amongst a patient's circle of care, which has been interpreted to mean those health professionals involved in the patient's care. If personal health information is shared beyond the circle of care, this would result in a privacy breach – which may have serious consequences for the breaching party.



This means that registrants cannot disclose confidential, personal health information to other registrants who are outside the circle of care. Furthermore, a registrant is not entitled to view patient records or images except in the course of practising and only if they are within the circle of care for that particular patient. This means that a registrant may not access results for any other reason or search out results of specific patients without need as this would be a breach of patient privacy.

Personal health information and social media

The term ‘social media’ refers to web and mobile technologies and practices that people use to share content, opinions, insights, experiences and perspectives online. Facebook, X, Instagram, YouTube, and LinkedIn are popular social media sites that registrants likely use on a regular basis, and many hospitals have policies about the appropriate use of these and other social media platforms. If registrants engage in the use of social media for either personal or professional reasons, they are expected to comply with facility policies with respect to the appropriate use of social media.

Because social media platforms are highly accessible and public, registrants should take steps to ensure that they uphold their professional obligations while on-line. Because of the public nature of social media, registrants are expected to comply with all legal and professional obligations to maintain patient privacy and confidentiality.

It is recommended that registrants assume that all content on the Internet is public and accessible to all. Because of this, registrants should exercise caution when posting information that relates to an actual patient online. Registrants should be mindful that an unnamed patient may still be identified through a range of other information. Even a photo taken in a registrant’s workplace or an opinion posted to an online forum could inadvertently disclose the personal health information of a patient.

Health information custodians

A health information custodian is an institution, facility or in some cases individual health care professionals who is the custodian of a patient’s personal health information. In a registrant’s practice, the facility would be a hospital or independent health facility.

What registrants need to know

Throughout the course of daily practice, registrants are constantly engaging with the personal health information of patients. Therefore, it is important for registrants to know:

- their confidentiality and privacy responsibilities;
- the privacy and confidentiality policies of their employers;
- to whom to release patient information and when; and
- the process for patients to access their personal health information