

Fleming College

Policy Title:	Access to and Correction of Personal Health Information Procedure (PHIPA)
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Linked to Policy:	Information Practices Related to Personal Health Information
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Contacts for Policy Interpretation:	Policy and Privacy Coordinator Privacy Officer (to be hired) Manager of Operations - President's Office

1.0 – Purpose

The purpose of this procedure (the “**Procedure**”) is to set out instructions for members of the College Community on how to respond to access and correction requests for Personal Health Information as it relates to the health care provided to the requester from one or more of the College’s 3 health services: (1) Counselling Services (2) Health Services and, (3) the Massage Clinic (each a “**College Health Service**” and collectively the “**College Health Services**”) in accordance with #1-112 Information Practices Related to Personal Health Information and the *Personal Health Information Protection Act* (“**PHIPA**”). For the purpose of this Procedure, individual means the patient of one or more of the College Health Services. Capital terms not defined in this Procedure have the same meaning found in #1-112 Information Practices Related to Personal Health Information.

This procedure does not apply to a request for access to one’s own student Records or to other Records held by the College that do not relate to the health care services provided by the College Health Services. For such requests, please refer to #1-111A Access to and Correction of Personal Information Procedure.

Generally, access to a requester’s own Personal Health Information should be facilitated as much as possible and only limited if required or permitted by law.

2.0 – Who can make an Access Request and / or Correction Request?

Individuals may make a request for access to and correction of their own Personal Health Information. An access or correction request may be made directly to the applicable College Health Service(s). The Department Head of the applicable College Health Service may process and respond to all Access and Correction Requests. If the Department Head is uncertain or the request is complex, the Department Head may contact the Privacy Coordinator for assistance.

If the Privacy Coordinator receives a request for access to, or correction of, Personal Health Information held by the College Health Services, the Privacy Coordinator will direct the request to the applicable Department Head and the Department Head will be responsible for responding.

Where the request involves one more College Health Service, the recipient of the request shall notify the applicable Department Head and the Privacy Coordinator and the Department Head (s) and Privacy Coordinator shall work together to prepare a co-ordinated response to the requester.

In certain cases, a substitute decision-maker may make a request for access to or correction of Personal Health Information, on behalf of the individual to whom the Personal Health Information relates. Under PHIPA, there is a hierarchy of individuals (or agencies) that can act as substitute decision-makers and it is the Department Head's responsibility to determine if the substitute decision maker falls into the highest ranking category and therefore is entitled to request information on behalf of the individual to whom the PHI relates:

- a) The individual's guardian of the person or guardian of property, if the consent relates to the guardian's authority to make a decision on behalf of the individual;
- b) The individual's attorney for personal care or attorney for property, if the consent relates to the attorney's authority to make a decision on behalf of the individual;
- c) The individual's representative appointed by the Consent and Capacity Board, if the representative has authority to give the consent;
- d) The individual's spouse or partner;
- e) A child or parent of the individual, or a children's aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent [**Note: This does not include a parent who has only a right of access to the individual. If a children's aid society or other person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent.**];
- f) A parent of the individual with only a right of access to the individual;
- g) A brother or sister of the individual; or
- h) Any other relative of the individual.

3.0 – When the Right of Access does not Apply

Individuals do not have a right to receive access to:

- a) Records that contain quality of care information;
- b) Personal Health Information required for quality assurance programs;
- c) Raw data from psychological tests or assessments;
- d) Personal Health Information used solely for research purposes; or

- e) Personal Health Information that is in the custody or control of a laboratory for a test requested by a health care practitioner, where an individual has the right to access that information from the health care practitioner and the practitioner has not directed the lab to provide the information directly to the individual.

4.0 – Upon Receiving an Access Request

When an individual's request for access to his or her own Personal Health Information is received the first step is determining whether access can be provided informally, such as if the Personal Health Information is routinely disclosed by the College (for example, the requester requires a list of medications or copy of a particular test result). If disclosure is made informally, the Records of Personal Health Information at the College Health Services should be updated to reflect the information given to the individual, the date of access and if possible, identified as a copy given to the individual. Originals of the individual's Records are the property of the College and may not be given to requesters. This is the responsibility of the applicable Department Head and the Department Head shall develop and maintain procedures to operationalize this procedure and PHIPA.

If an access request is made verbally, the individual requester should be invited to submit the request in writing using the PHIPA Request Form, unless the request can be fulfilled informally, as described in the paragraph immediately preceding this one.

5.0 – Processing Access Requests

Individuals requesting their own Personal Health Information must provide the College with government issued identification prior to receiving the requested information.

With limited exceptions, the College is required by law to give requesters access to their Records of Personal Health Information within 30 days after the request is made (subject to a time extension of up to an additional 30 days if necessary and with notice to the person making the request). If the College requires a time extension, the College should give the requester written notice of the extension setting out the length of the extension and the reasons for the extension. The College may extend the request deadline for an extra 30 days if:

- a) The requested information is of a high volume or locating the information would necessitate a lengthy search and meeting the 30 day time limit would unreasonably interfere with the operations of the College;
- b) More than 30 days are needed for the College to undertake the consultations necessary to reply.

If the individual requires expedited access, meaning a response from the College sooner than at the end of the initial 30 day response period, the College shall do so if the individual gives the College evidence that the College, acting reasonably, believes is satisfactory proof that the individual requires urgent access, but only if the College is reasonably able to respond within the shorter time period.

If the College does not respond to the access request before the time limit or extension expires, the College shall be deemed to refuse the requester's access request for Personal Health Information.

Generally, the College is responsible for providing individuals with access to their Records of Personal Health Information. If the requester did not provide sufficient detail to locate the Record(s) in question, then the College is required to assist the requester in reformulating the request. As a result, it is important for the Department Head(s) or Privacy Coordinator, as applicable, to dialogue or correspond with the requester as soon as possible after receiving a written request that may be vague, unclear or too broad to permit identification of Records, to narrow the scope of the request and to permit the College to respond within the required time period.

For access requests regarding Personal Health Information, the Department Head is responsible for processing the request in accordance with this procedure, the Information Practices Relating to Personal Health Information and PHIPA, which includes but is not limited to:

- a) Communicating with the requester on an ongoing basis, as needed;
- b) Identifying the scope of the request;
- c) Identifying any other College Health Services or Departments where responsive Records may be located, and so notifying the Privacy Coordinator if necessary;
- d) Ensuring that a reasonable search of the relevant College Health Service Records containing Personal Health Information is conducted and providing a written notice to the individual if the Personal Health Information does not exist or cannot be found;
- e) Ensuring the identification of responsive Records containing Personal Health Information, or if none, of same;
- f) Keeping a record of the search conducted and the time spent in conducting such search;
- g) Identifying any reasons for providing or not providing access to or correction of the requested Personal Health Information and providing written notice to the individual with the reasons(s) for refusal and notifying the requester that he or she is entitled to make a complaint to the Information and Privacy Commissioner of Ontario Commissioner (the "**Commissioner**");
- h) Consulting with the Privacy Coordinator and applicable College Health Service regarding the disclosure and withholding of Personal Health information, as applicable;
- i) Responding to the requester within the required timeframes; and
- j) Making the Record containing the Personal Health Information available for examination by the requester or providing a copy of the Record of Personal Health information and if reasonably practical, an explanation of the terms, codes or abbreviations used in that Record.

6.0 – Denying Access to Health Records

In certain situations, described below, the College may choose to deny the requester access to all or part of a health Record. It is important to understand that the College has discretion to disclose all or part of a health Record when one or more of the situations described below applies:

- a) the Personal Health Information is subject to legal privilege that restricts disclosure to the individual;
- b) applicable laws or court orders prohibit the disclosure to the requester in the circumstances;
- c) the Personal Health Information was collected or created primarily in anticipation of or for use in a proceeding, including all the appeals or processes resulting from it, which have not been concluded;
- d) the Personal Health Information was collected or created in the course of an inspection, investigation or similar procedure authorized by law or undertaken for the purpose of the detection, monitoring or prevention of a person's receiving or attempting to receive a service or benefit to which the person is not entitled under law (and the inspection or investigation or similar procedure, together with all proceedings, appeals or processes resulting from them, have not been concluded);
- e) granting access to the Personal Health Information or Record could reasonably be expected to:
 - result in a risk of serious harm to the treatment or recovery of the individual
 - result in a risk of serious bodily harm to the individual or another person;
 - lead to the identification of a person who was required by law to provide information in the Record; or
 - lead to the identification of a person who provided information explicitly or implicitly in confidence (if it is appropriate to keep that source confidential);
- f) if the request is made under the *Freedom of Information and Protection of Privacy Act* and FIPPA applied to the Personal Health Information or Record, and the College refused to grant access to the Personal Health Information under FIPPA.

The College may also deny the access request if there are reasonable grounds for the College to determine that an access request is frivolous or vexatious or made in bad faith.

Exceptions to the right of access that the College applies to withhold Records must comply with law and professional standards. Even if one of the above exceptions to the right of access applies, the individual still has a right of access to the part of the Record that can reasonably be severed

from the part containing the Personal Health Information to which the individual does not have a right of access.

If the College is entitled to refuse the request, in whole or in part, the College must give a written notice to the requester stating:

- a) That the request is being refused;
- b) The reasons for the refusal; and
- c) The individual is entitled to make a complaint to the Commissioner and how the individual may contact the Commissioner.

The College cannot refuse to grant the individual access to his or her plan of service within the meaning of the *Home Care and Community Services Act, 1994*.

There are other situations in which the College has discretion to disclose Personal Health Information on a case by case basis. The College should consult with the Privacy Coordinator when withholding Personal Health Information.

7.0 – Upon Receiving a Request to Correct PHI

The College has an obligation to correct Personal Health Information if it is inaccurate or incomplete for the purposes it is to be used or disclosed.

Individuals may request that their Personal Health Information be corrected if it is inaccurate or incomplete. Such requests must be made in writing and must explain what the information is to be corrected and why. Such correction requests should be made using the PHIPA Request Form.

Individuals asking to correct their own Personal Health Information must provide the College with government issued identification prior to receiving the requested information.

Requests for correction of PHI should be made to applicable College Health Service Department Head. The Department Head is responsible for responding to the requester, and for developing and maintaining departmental procedures that are consistent with this procedure and PHIPA, but the Department Head may also consult with the Privacy Coordinator if needed.

If the correction request is made verbally, the College Community may require the individual requester to submit the correction request using the PHIPA Request Form.

7.1 – How the College Processes Correction Requests

With limited exceptions, the College is required by law to reply to a correction request not later than 30 days after receiving a correction request (subject to a time extension of up to an additional 30 days if necessary and with notice to the person making the request). If the College requires a time extension, the College should give the requester written notice of the extension setting out the length of the extension and the reasons for the extension. The College A Custodian may extend if:

- Replying to the request within 30 days would unreasonably interfere with the activities of the College; or
- Time required to undertake the consultations necessary to reply within 30 days would make it not reasonably practical to reply within that time.

If the College does not respond to the correction request with the time period required, the College shall be deemed to refuse the requester's correction request for Personal Health Information. The College may also deny correction request if there are reasonable grounds that a correct request is frivolous or vexatious or made in bad faith.

The College shall grant a request for correction if the individual demonstrates to the satisfaction of the college, that the Record containing Personal Health is incomplete or inaccurate for the purposes for which the College uses the Personal Health Information and gives the College the Personal Health Information necessary to enable the College to correct the Record.

If granting a correction request, the College shall make the corrections as follows:

- a) Record the correct Personal Health Information in the Record; and
- b) Strike out the incorrect the Record in a manner that does not obliterate the Personal Health Information or if striking out is not possible:
 - label the Personal Health Information as incorrect, sever it from the Record, and store it separately with a link to the Record that enables the College to trace the incorrect Personal Health Information, or
 - ensure there is a practical system in place to inform anyone who sees the Record or receives a copy that the Personal Health Information is incorrect and direct that person to the correct Personal Health Information; and
- c) Give notice to the requester that the Record has been corrected.

The Record will not be corrected if:

- a) The Record was not originally created by the College Health Services and the College Health Services does not have the sufficient knowledge, expertise or authority to correct the Record, or
- b) The Record consists of a professional opinion or observation which was made in good faith.

Where the College chooses not to correct a Record in whole or in part or is deemed to refuse the correction request, the requester must be informed in writing that the requester is entitled to:

- a) Prepare a concise statement of disagreement that sets out the correction that the College has refused to make;

- b) Require the College to attach the statement of disagreement as part of its Records of the individual's Personal Health Information and disclose the statement of disagreement whenever the College discloses PHI to which the statement relates;
- c) Require the College to make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified if the College had granted the requested correction; and
- d) Make a complaint about the refusal to the Commissioner.

8.0 – Fees

An administration fee may be charged for any request for access or correction but only if the requester is first given an estimate. The College has discretion to waive all or part of the required fee if it is fair and equitable to do so. Fees shall be determined by the Department Head in consultation with the health care providers and the Privacy Coordinator.

The College may refuse access to or correction of Personal Health Information if the required fees are not paid. The College also has discretion to waive required payments in certain circumstances.

9.0 – Related Documents

Compliance with the College's policies and procedures is subject to audit and review. Suspected violations should be reported to the appropriate Department Head. The information resulting from an audit or review will be reviewed by the College, including Human Resources, and possibly other College departments, as may be required. Violations due to human error or operational procedure gaps or deficiencies may be addressed by the College through training or modifications to procedures or policies, or both, as required. All other violations may be subject to a range of disciplinary actions, including warning, temporary or permanent loss of access privileges, legal sanctions and termination of employment or contract with the College, subject to any applicable collective agreement.

10.0 – Related Documents

- Information Practices Related to Personal Health Information
- PHIPA Request Form
- *Personal Health Information Protection Act, 2004* S.O. 2004, chapter 3, Schedule A
<https://www.ontario.ca/laws/statute/04p03>
- Information and Privacy Commissioner of Ontario:
- <https://www.ipc.on.ca/health-individuals/accessing-or-correcting-your-personal-health-information/>
- <https://www.ipc.on.ca/wp-content/uploads/2015/11/hipa-faq.pdf>

11.0 – History of Amendments & Reviews

Section(s)	
Date / Creator	