

College of Physiotherapists of New Brunswick
ADVISORY NOTES # 3

**PRIVACY and HEALTH INFORMATION
GOVERNMENT LEGISLATION**

This background information is intended as an overview of external legislation and is not to be construed as legal advice. It serves to remind PTs of relevant privacy legislation and PTs' obligations as "custodians" of health information.

The College assumes that Physiotherapists review both federal and provincial legislation and take steps to ensure they remain compliant.

Background

Since 2004, organizations in New Brunswick that collect, use or disclose personal information, including personal health information in the course of "commercial activities" such as private physicians' offices, private health-care clinics and laboratories and pharmacies have been subject to the federal **Personal Information Protection and Electronic Documents Act (PIPEDA)**.

PIPEDA has been identified by health-sector stakeholders as especially problematic for the organizations that collect, use or disclose personal health information for health-care purposes since it was not developed with the special needs of health care in mind.

In 2010, New Brunswick introduced its legislation titled **Personal Health Information Privacy and Access Act (PHIPAA)** so "custodians" (e.g. PTs) engaged in commercial activities (e.g. private practice PTs) will continue to be bound by PIPEDA. However, they will now also be required to comply with PHIPAA with respect to the personal health information that they collect, use, disclose and maintain.

PHIPAA provides more detailed rules than PIPEDA and also provides some additional flexibility in privacy practices for the health sector. While there is generally more flexibility under PHIPAA with respect to the use and sharing of personal health information with other health-care practitioners, there are additional obligations imposed on custodians under the Act.

Members are urged to understand and adopt relevant measures to ensure compliance with applicable legislation

I FEDERAL - GOVERNMENT OF CANADA

Privacy and Personal Information Protection and Electronic Documents Act (PIPEDA)

Has it Changed Your Practice as a PT? If you're in a public setting, you should have been informed and are working within the practices established there.

If you're in a **private setting**, **here are a few of the most important things you must have put in place** – either yourself directly or via your employer (so discuss this with them if you're unsure):

1. Appoint a Privacy Officer
2. Establish a Privacy Policy
3. Obtain Consent (it is *advisable* to always have written, express consent – ask CPTNB for more detail)
4. Adopt Physical Safeguards for Personal Information (e.g., locked, authorized access only; passwords; limited view of computer screens; privacy in conversations.)
5. Facilitate Rightful Access to Personal Information (i.e. clear written policies and procedures)

To comply with the legislation you should:

1. Review PIPEDA
2. Take an Inventory of Personal Information in Your Practice (e.g., info about patients, employees, contractors, etc. – to learn what is personal, or health, or financial.
3. **Display and Discuss Your Privacy Policy with Patients, Employees, Others.**
4. Limit Your Personal Information Collection.
5. Keep Your Information, Forms and Policies Current.
6. Correctly Destroy and/or Discard “E” and other kinds of Information.

There are some good online resources you may wish to check out at the Privacy Commissioner of Canada at: **www.privcom.gc.ca**.

II PROVINCIAL – GOVERNMENT OF NEW BRUNSWICK

Personal Health Information Privacy and Access Act (PHIPAA)

PHIPAA provides a set of rules that:

- protects the confidentiality of personal health information and the privacy of the individual to whom that information relates

CPTNB Advisory 3 – Privacy Legislation

- ensures that information is available, as needed, to provide health services to monitor, evaluate and improve the health system in New Brunswick
- applies to personal health information in the health system regardless of form, including but not limited to, paper records, microfilm, X-ray film and electronic records
- identifies a series of rights that individuals have in regard to their personal health information (e.g. right to consent to the collection, use and disclosure and the rights to request the correction of, and access to, their personal health information)
- establishes a legal framework for the handling of personal health information to ensure that individuals' rights are respected.

Here's a partial checklist for PTs as custodians to comply with PHIPAA – as a guide only....consult the legislation! Recall – the custodian is also responsible for ensuring compliance by all those who collect, use or discloses the information so have written agreements with them to comply with the act (e.g. employees, contractors, etc.)

1. Designate someone to oversee your PHIPAA compliance
2. Review and assess information-handling practices and address risks
3. Assess whether the information-handling practices meet PHIPAA obligations and identify and assess privacy risks presented by current information practices.
4. Address a plan to close gaps, starting with the highest-risk areas;
5. Develop or update your information policies (privacy, disclosure, access, security, retention, disposal, etc.)
6. Promote and monitor compliance of staff and third parties with policies
7. Develop or revise the privacy notice, forms and communications materials
8. Review and revise contracts and agreements to comply with PHIPAA
9. Create an effective process for handling privacy incidents and breaches
10. Develop procedures for notifying individuals whose privacy has been breached, including time, and method
11. Develop and document a consent management process
12. Review PHIPAA to identify other provisions that may apply (e.g. restrictions on collection and use of the Medicare number) **Et cetera.....**

Similar to the federal government, PNB has a web site with **resources** (e.g. a sample **Privacy Notice**) so visit their site for other help and tools –
<http://www.gnb.ca/0062/PDF-acts/p-07-05.pdf>