



Winter Webinar Series
**Building capacity across our member organizations for
organizational and governance excellence!**

Our Vision

Provide equitable access
to excellent team-based
primary care for every
person in Ontario



Our Purpose

Empower primary care teams to be at the centre of a connected, comprehensive and effective health system

Advocacy

- Elevate AFHTO as trustworthy, credible and leading voice
- Engage members / build a movement
- Track progress and communicate

Support

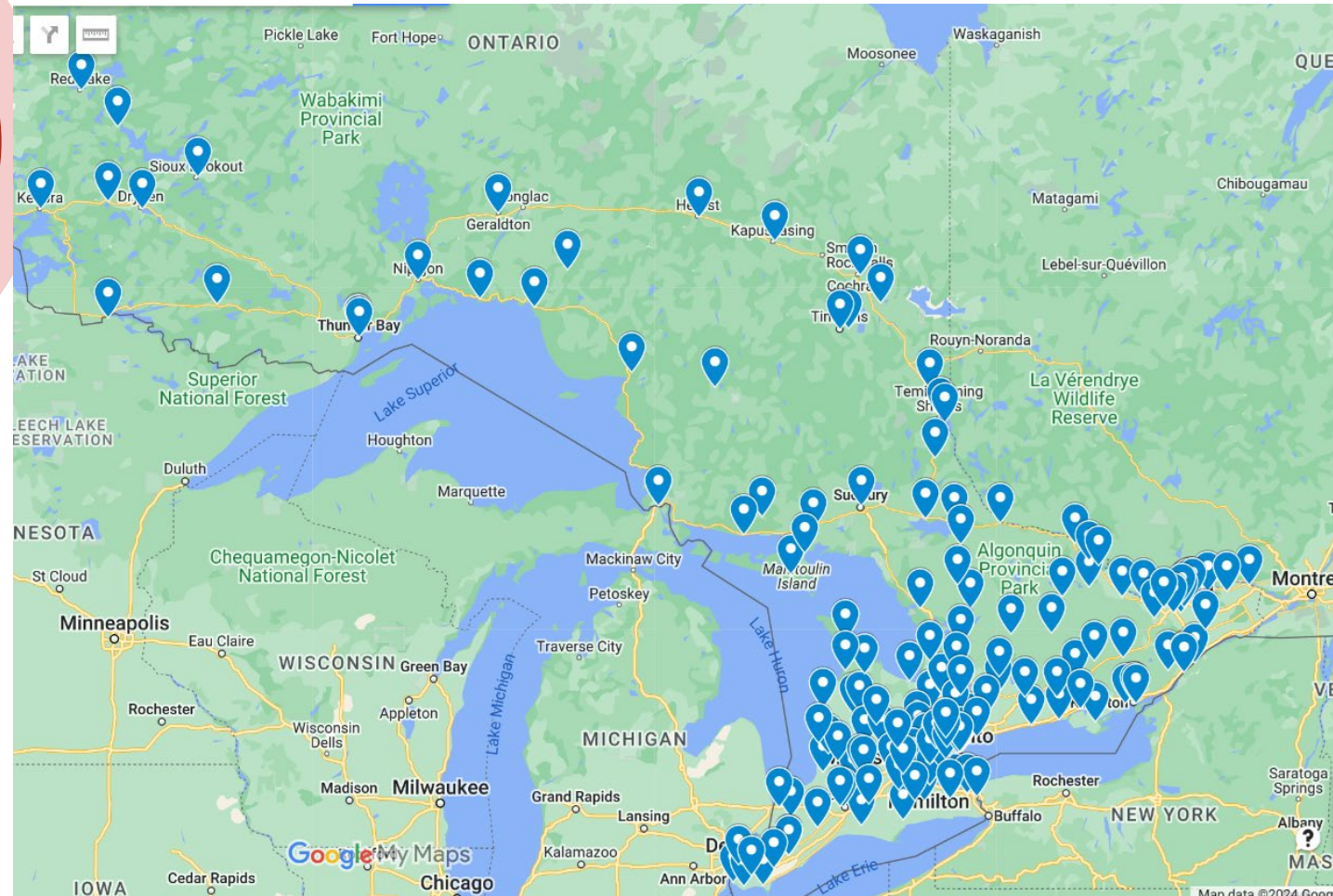
- Meaningfully engage members
- Improve timely and relevant communication
- Support teams through change
- Address needs through effective activities (tools, training, education)

Operational Excellence

- Achieve governance and operational excellence to demonstrate value to members and be better positioned to fulfill our purpose and drive toward our vision (governance model, staffing, resourcing, brand positioning, business model, mandate)

Member Engagement & Communications

189 members
in 2024



AFHTO & INQ LAW PRESENT

Lunch & Learn Webinar Series

Join AFHTO and INQ Law for an engaging webinar series designed to support and enhance your knowledge about information management and retention best practices.





Kathy O'Brien
INQ Law
Counsel



Simmie Palter
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BA, LLB



Information and Data Retention

Part 1: Corporate and
Financial Records



 Wednesday Jan. 22, 2025
 12-1pm EST

Information and Data Retention

Part 2: PHIPA and Patient
Records

 Wednesday Feb. 26, 2025
 12-1pm EST

Governance 101 Update and Refresh

 March 6, 2025
 12-1:30pm EST

 www.afhto.ca

Welcome, Simmie Palter

Simmie is a partner of INQ Law, and over the last two decades, has built a diverse health law practice that includes governance, health privacy, clinical and records issues, data sharing, corporate/commercial agreements, freedom of information and risk management.

Simmie strives to give practical and timely solutions to legal problems. She enjoys building positive long-term relationships with clients that include hospitals, long-term care homes, health profession associations, community mental health agencies, family health teams, physician groups, community health clinics, agencies and disease charities.



Association of Family Health Teams of Ontario

Information and Record Retention Webinar

Part 2: Patient Records

Simmie Palter
February 26, 2025

Agenda - Personal Health Information and Records

1. Key PHIPA Concepts
2. Record Retention
3. Custodianship Agreements
4. Data Sharing Agreements

Background

- information in the record belongs to the patient
- patient to have reasonable access upon request
- physician holds the record as a fiduciary for the patient (McInerney v. MacDonald 1992 CanLII 57 (SCC))
- Hospital records that contain notes made contemporaneously by individuals (nurses) with personal knowledge of the events in question, who have a duty to keep such notes, are reliable and trustworthy records and admissible in court (Ares v. Venner 1970 CanLII 5 (SCC))

Personal Health Information Protection Act (PHIPA)

Purposes:

- to establish rules for the collection, use and disclosure of personal health information (PHI)...
 - that protect the confidentiality of that information,
 - that protect the privacy of individuals with respect to that information,
 - while facilitating the effective provision of health care;
- to provide individuals with a right of access to, and correction of their PHI about themselves, subject to limited and specific exceptions set out in the Act;
- to provide for independent review and resolution of complaints about PHI;
- to provide effective remedies for contraventions of the Act

(PHIPA preamble, [Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A | ontario.ca](#))

PHIPA

- Personal Health Information
- Health Information Custodian
- Circle of Care, Lockbox, Mixed Records
- Information Practices
- Agents
- Electronic Service Providers

PHIPA: Personal Health Information

-information that identifies an individual

-or information for which it is reasonably foreseeable, in the circumstances, that it could be used to identify an individual, alone or in combination with other information

Information about an individual that relates to:

- physical health, mental health (including family health history)
- providing of health care
- payments or eligibility for funding for health care
- donation of a body part or bodily substance (or testing or examination of same)
- identity of health care provider or substitute decision-maker
- health card number
- a plan that sets out the home and community care services to be provided by a health service provider or Ontario Health Team (added 2019)

-oral or recorded

-recorded in any format – paper, electronic record, x-ray, microfilm

-identifying information that is not PHI but is contained in a record than contains PHI (mixed record)

Personal Health Information - Examples

- information in patient record held by primary care clinic
- medical record held by physician
- X-ray of an individual, held by a hospital
- registration information held by the Ministry of Health for health insurance purposes (name and date of birth)
- prescription records (filled by pharmacists)
- laboratory results and reports

Personal Health Information does not include...

- identifying information in record in a HIC's custody or control that:
 - relates primarily to one or more employees or agents of the HIC; and
 - the record is maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents

PHIPA ss. 4(3) and 4(4)

Health Information Custodians (PHIPA)

-person or organization who has custody or control of personal health information as a result of or in connection with performing their powers or duties or the work described (PHIPA s. 3)

-includes:

- health care practitioner (including a social worker) or a person who operates a group practice of health care practitioners
- centre, program or service for community health or mental health whose primary purpose is the provision of health care.
- health service provider or person or entity that is part of an Ontario Health Team and that provides a home and community care service
- hospital (public, private, psychiatric)
- integrated community health services centre
- LTC home, LTC placement coordinator, retirement home, or care home under the Residential Tenancies Act
- pharmacy
- laboratory or specimen collection centre
- ambulance service (including municipally-operated dispatch services and air ambulance (Ornge))
- home for special care within the meaning of the Homes for Special Care Act.
- evaluator within the meaning of the Health Care Consent Act, 1996 or an assessor within the meaning of the Substitute Decisions Act, 1992.
- medical officer of health of a board of health within the meaning of the Health Protection and Promotion Act
- HICs prescribed by regulation: Public Health Ontario, Canadian Blood Services, Ontario Health atHome

Health Information Custodians & Information Practices

HIC providing health care that has custody or control of PHI must have in place PHIPA compliant information practices (PHIPA s.10(1))

“information practices”, in relation to a HIC, means the policy of the custodian for actions in relation to personal health information, including,

- (a) when, how and the purposes for which the custodian routinely collects, uses, modifies, discloses, retains or disposes of personal health information, and
- (b) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information (PHIPA s. 2)

privacy policy, written public statement (privacy notice), procedures, safeguards

Health Information Custodians & Privacy Notice

- HIC to make privacy notice available to the public
- in a manner practical in the circumstances (e.g. brochure, website posting)
- notice to include:
 - a general description of the HIC's information practices
 - how to contact the HIC or the HIC's privacy officer
 - how to request access to, or correction of, a record of PHI in the HIC's custody or control
 - how to complain to the HIC or the Information and Privacy Commissioner of Ontario

PHIPA s. 16(1)

Funding Agreement

“The FHT shall keep and maintain all non-financial records and documents relating to... the health records of each patient of the FHT, but excluding all patient records in the care and control of an Affiliated Physician,

- in a confidential manner
- consistent with all applicable federal, provincial, and municipal laws and regulations, and orders, rules and by-laws having the force of law” [s. 11.6]

FHT “shall adopt and implement information management protocols including but not limited to appropriate PHI protocols, that give due regard to patient confidentiality and are consistent with the Agreement and applicable law” [s. 11.7]

- ensure its personnel are aware of their legal obligations under PHIPA.
- implement tools and practices to protect patient PHI, to educate staff, including notification obligations of custodians where PHI is unlawfully collected, disclosed or accessed, or where PHI is stolen or lost
- obtain patient consent for electronic communications

Record Retention Standards

HIC to ensure its records of PHI under its custody or control are retained, transferred and disposed of in a secure and PHIPA-compliant manner (s.13(1))

HIC to take steps that are reasonable in the circumstances to ensure:

- PHI in its custody or control is protected against theft, loss and unauthorized use or disclosure; and
- records containing PHI are protected against unauthorized copying, modification or disposal. (s.12(1))

HIC to notify individual of breach (PHI stolen, lost or used without authority)

- at first R opportunity
- with notice of entitlement to contact IPC

HIC to report instances of unauthorized access to IPC, in prescribed circumstances

Trustworthy Electronic Records...

...are reliable, authentic, accurate and made in the course of business.

“reliability” is the quality of record, the content of which can be trusted as a full and accurate representation of the transactions, activities, or facts to which it attests.

An **authentic record** is what it purports to be and is free from tampering or corruption.

“accuracy” is the degree to which recorded information is precise, correct, truthful, free of error or distortion.

Electronic records that are authentic and made in the course of business may be used as evidence in legal proceedings.

Canadian General Standards Board, “Electronic Records as Documentary Evidence”, 2005; updated 2024
[P29-072-034-2024-eng.pdf](#)

Standards

How do we ensure trustworthiness of electronic records?

Follow National Standard CAN/CGSB-72.34-2017:

“Electronic Records as Documentary Evidence”

Canadian General Standards Board in 2005; **updated 2024**
[P29-072-034-2024-eng.pdf](https://publications.gc.ca/collections/collection_2024/ongc-cgsb/P29-072-034-2024-eng.pdf)

or see https://publications.gc.ca/collections/collection_2024/ongc-cgsb/P29-072-034-2024-eng.pdf

Applies to:

- all record-keepers whether for-profit or not-for-profit, public or private sector
- digital records
- analogue records transmitted electronically
- reflects best practices
- informs record management, and related policies and procedures
- developed in reference to the *Canada Evidence Act* and PIPEDA

PHIPA and Accuracy

HIC that uses PHI about an individual “shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.”
(s.11(1) PHIPA))

HIC that discloses PHI about an individual shall,

- “(a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the custodian at the time of the disclosure; or
- (b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.” (s.11(2) PHIPA))

Reasonable Precautions: National Standard

There is a legal assumption that organizations use record management (RM) systems that ensure the **reliability** of their recorded information.

10 Factors to determine reliability of a RM system

Electronic Records as Documentary Evidence
Canadian General Standards Board in 2005; updated 2017; updated 2024
[P29-072-034-2024-eng.pdf](https://publications.gc.ca/collections/collection_2024/ongc-cgsb/P29-072-034-2024-eng.pdf)

Or https://publications.gc.ca/collections/collection_2024/ongc-cgsb/P29-072-034-2024-eng.pdf

Authenticity and Reliability of a RM System - 10 factors

1. data comes from legitimate and known source
2. contemporaneous- records made or stored within a reasonable time after the events to which they relate
3. routine business data – expected, typical, usually created by or supplied to the corporation
4. data entry procedures – part of ordinary course of business & align with corporation's RM policies
5. complies with applicable electronic RM standards
6. relied on by the corporation for making decisions. Trusted.
7. software used by corporation must reliably operate the RM system and accurately process data
8. system changes are logged and do not affect record integrity
9. complies with relevant privacy statutes
10. security protocols protect records from unauthorized access and allow for disaster recovery ensuring long-term preservation and integrity of RM system

[The National Standard CAN/CGSB-72.34-2024
[P29-072-034-2024-eng.pdf](#)]

Policy & Procedure

Information and Records Management system policy & procedures to address:

- Collection, use, disclosure – purposes

- Modification?

- Patient Access and Correction Procedures

- Breach management

- Breach notification

- Annual reporting to IPC of breaches, by HICs

- Secure destruction/disposal

- Complaints process

- Contact information for Privacy Officer

Health Profession Specific Acts (e.g. Medicine Act; Nursing Act; Physiotherapy Act)

CPSO: Policy statement on Medical Records Management

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Management>

Ontario Hospital Association: Record Retention Toolkit (2022) [Records Retention Toolkit, September 2022.pdf](#)

Electronic Records (PHIPA)

Electronic audit log (proposed PHIPA amendment)

- maintain
- regularly monitor and audit

For every record, or part of a record of PHI that is viewed, handled, modified or “otherwise dealt with”, the log must include:

- type of information viewed, handled, modified or otherwise dealt with;
- the date and time on which the information was viewed, handled, modified or otherwise dealt with;
- the identity of all persons who viewed, handled, modified or otherwise dealt with the PHI
- the identity of the individual to whom the PHI relates

PHIPA proposed s. 10.1

Electronic Records

System to:

- Provide visual display of recorded information
- Provide means to access to records by patient name and HCN
- Capable of printing promptly
- Capable of displaying and printing the recorded information for each patient in chronological order
- Password protected (or other protection against unauthorized access)
- Maintain audit trail of who accesses the record – date and time of each data entry; records changes to the record; records views of the record (w/o changes); preserves original content of records when updated; can be printed separately from patient record
- Back up files and allow recovery of backed-up information

[CPSO policy Medical Records Management, 2022]

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Management>

Storage & Security of Electronic Records

Physical/ Technological Storage for records:

- ensure safe and secure environment
- keep in restricted areas, in locked filing cabinets
- routinely back-up electronic records
- securely store back-up copies, separate from where original data is stored
- separately store patient information not relevant to current care

Security for Records:

- confidentiality agreements for those with access to patient records
- RM protocols defining authorized users and limits on their authority
- provide each authorized user with a unique ID and password
- require monthly password updates
- maintain audit trail for all accesses of PHI, even if record is not changed or updated (i.e. log all views)
- no sharing of credentials or passwords
- no snooping

[CPSO policy Medical Records Management, 2022]

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Man>

Security Safeguards (Administrative)

Culture of privacy – privacy policy, information practices review

Confidentiality agreements

Privacy training and refreshers

Restricted access to records

Remove dormant accounts promptly

Regularly review access privileges

PHIPA Decision 260 - HICs to provide clear guidance on use of PHI, on expectations and requirements, and training. HICs to implement tracking systems/monitoring to ensure completion of signing of confidentiality agreement upon hire, annually and annual refresher training.

PHIPA Decision 249 - HIC to limit privileged access to electronic systems; promptly remove dormant accounts; use two back-up systems

Inter-professional teams

- Consider applicable regulatory rules for regulated health professionals
- Record Retention Rules for:
 - nurses
 - dietitians
 - social workers
 - psychotherapists
 - physiotherapists
 - kinesiologists
- Consider whether each professional requires access to the entire record, or only parts
- Lockbox capability

Record Retention Periods - Patient Care/Clinical

- 10 years from date of last encounter with patient, for patients 18 years of age and older
- from date of last encounter with patient, plus an additional 10 years, for children and youth under the age of 18 years
- if records are the source of an access request – retain long enough to address legal proceedings related to the request

Patient Records = Records of PHI

- Financial
 - OHIP (per *Health Insurance Act* keep records as necessary to establish and verify that an insured service was provided, and was medically or therapeutically necessary) – retain for same time period as related clinical record
 - Other patient related financial information - retain for at least 15 years from date of patient's last visit or death; in case of litigation or other legal proceedings against the corporation
- Patient care
 - Clinical record with each health care provider's notes
 - Diagnostic imaging records
 - Lab records
 - Prescriptions
 - Retain for at least 10 years from date of last visit, but for children, for 10 years from the date the child/youth reaches the age of 18 years
- Funding Agreement (7 years after termination of agreement)

See OHA Toolkit

Mixed Records - Retention Periods

- Contain PHI and non-PHI
- Consider:
 - content
 - primary use
- Patient Care Records - for diagnosis, treatment and care of patient
- Quality of Care records -mixed - patient care records with policies, risk management decisions, critical incident reports - including minutes of quality committees
- Keep records long enough to defend corporation, in the event of legal proceedings (at least 15 years)

Electronic Service Providers (PHIPA)

- ESP = a person who supplies services to enable a HIC to use electronic means to collect, use, modify, disclose, retain or dispose of PHI (PHIPA, O. Reg. 329/04 s.6 [O. Reg. 329/04 GENERAL | ontario.ca](#))
- ESP: shall not use PHI accessed when providing the services except as necessary to provide the services; shall not disclose PHI accessed when providing the services to the HIC; and shall not permit its employees or any person acting on its behalf to have access to the PHI unless the employee or person acting on its behalf agrees to comply with these restrictions (PHIPA, O. Reg 329/04 s.6 [O. Reg. 329/04 GENERAL | ontario.ca](#))
- Contract with ESP to bind ESP to corporation's policies and procedures and protect the corporation from breach of confidentiality or privacy
- Corporation retains ultimate responsibility for maintenance of the books and records even if part or all of the record management is contracted out to a third party

Electronic Service Providers (CPSO)

EMR service providers contractually bound to:

- Comply with ITA, PHIPA, Medicine Act requirements
- Comply with corporation's privacy policies
- Comply with CPSO policy
- Make medical records accessible for regulatory/CRA processes
- Comply with funder's requirements, if any
- Ultimate responsibility rests with the corporation/physician keeping the records, not a third party service provider

[CPSO policy Medical Records Management, 2022]

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Management>

Connecting Care Act, 2019

- HSP = “A person or entity that provides primary care nursing services, maternal care or inter-professional primary care programs and services.”
- Health service provider includes:
 - NFP entities that operate:
 - Nurse practitioner-led clinic
 - FHT
 - Aboriginal health access centre
 - Community health centre

Connecting Care Act, 2019

Ontario Health may review, investigate and remove records of any person or entity funded under the Act.

- **OH** may review:
 - quality of care and patient services provided
 - quality of management
 - any other related matter
- **OH** may appoint investigator, who may:
 - enter entity's premises without a warrant
 - inspect relevant records
 - examine, copy or remove records
 - require production of records using the entity's system
 - question a person about matters relevant to the investigation, who must comply
- Entity must produce requested records in readable form and assist with interpretation

Connecting Care Act, 2019 s.26

OH/Ministry Oversight and PHI

- Investigators (appointed by OH) and Supervisors (appointed by MOH) may access PHI but OH
 - (a) shall not collect, use or disclose the personal health information if other information will serve the purpose;
 - (b) shall not collect, use or disclose more personal health information than is reasonably necessary for the purpose; and
 - (c) shall comply with any conditions or requirements that may be prescribed.
- s. 26(12)Connecting Care Act
- Investigator has confidentiality obligations re information learned and may disclose only as required by law or to OH (s.26(13))
 - Investigator's report to OH must ensure all PHI is deidentified
 - Minister must de-identify all PHI in the supervisor's report before publicizing it

Connecting Care Act - Minister's collection of PHI

Permitted re home and community care

Minister may collect PHI from HSP or OHT that is funded to provide home and community care services, to enable the Minister to:

- monitor & evaluate the home and community care services provided by funded entity (OHT, HSP) "and their provider of hccs"
- monitor & assess health, safety and well-being of persons applying for or receiving home and community care services [s. 45.1]

Custodianship Agreements

- Who handles access requests?
- What is the breach notification procedure? (theft, loss unauthorized access)
- Who pays for the costs of a data/privacy breach?
- What happens to the records upon termination of the association? RHPs will require access for regulatory or legal proceedings
- FHT-FHO Agreement

Data Sharing Agreements 1/2

- purpose
- authority for collection of PHI
- data elements to be shared and timeframes
- data flow: clarify roles (agent, electronic service provider, health information network provider)
- authorized users
- data transfer method
- permitted uses of the shared data
- modification? de-identification?

Consult legal counsel

Data Sharing Agreements 2/2

- breach procedure and notifications – who notifies whom? (IPC, regulatory college, patient and when) and breach reporting
- safeguards: technical, administrative, physical
- Who is responsible for maintenance and accuracy of the shared data?
- timelines - for how long will data sharing occur between the parties?
- What happens to data at end of agreement?
- audit, indemnification, insurance, dispute resolution
- confidentiality obligations

Scanning Paper Patient Records - Migration or File Conversion

- No interruptions to patient care
- QA process - procedure for scanning and method to verify that record has remained intact upon conversion (comparison after scan or transfer)
- Ensure reliability of digital copies before destroying paper records
- Save scanned copies in "read-only" format so they cannot be altered
- If records are converted into editable, searchable files - also retain original record or scanned copy of original record in read only format
- Set date where new system becomes the official system and ensure all physicians and care providers use only the new system on and after the "go-live" date

<https://www.cpsso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Management>

See also National Standard CAN/CGSB-72.34-2017:
"Electronic Records as Documentary Evidence" and
ITA Regulation Part LVIII, and the CRA Information Circular IC78-10R5

Resources

PHIPA [Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A | ontario.ca](#)

PHIPA regulation O. Reg. 329/04 [Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A | ontario.ca](#)

McInerney v. MacDonald [1992 CanLII 57 \(SCC\) | McInerney v. MacDonald | CanLII](#)

Ares v. Venner [1970 CanLII 5 \(SCC\) | Ares v. Venner | CanLII](#)

PHIPA Decision 249 [PHIPA DECISION 249 | Information and Privacy Commissioner of Ontario](#)

PHIPA Decision 260 [PHIPA DECISION 260 | Information and Privacy Commissioner of Ontario](#)

National Standard CAN/CGSB-72.34-2017: “Electronic Records as Documentary Evidence” [P29-072-034-2024-eng.pdf](#)

Canada Revenue Agency Information Circular IC78-10R5 [Income Tax Information Circular - Canada.ca](#)

CPSO: Policy statement on Medical Records Management <https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Management>

Ontario Hospital Association Toolkit (2022) [Records Retention Toolkit, September 2022.pdf](#)

Thank you

Association of Family Health Teams of Ontario

February 26, 2025

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*This deck is intended for education and information purposes only. For legal advice specific to your situation, please consult legal counsel.

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Thank you!



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info@afhto.ca



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