



College of
Midwives
of Ontario | Ordre des
sages-femmes
de l'Ontario

Guide on Compliance with Personal Health Information Protection Act

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Introduction

Ontario's *Personal Health Information Protection Act* (PHIPA) governs the collection, use and disclosure of personal health information by midwives and other health information custodians practicing within Ontario.

The purpose of this guide is to assist midwives in understanding their privacy obligations under PHIPA. Midwives are responsible for ensuring that they comply with the legislative requirements that apply to the personal health information of their clients.

If you have questions pertaining to the collection, use and disclosure of personal health information at your place of practice, you may contact the College for practice advice or seek legal advice. This Guide does not set all the requirements of PHIPA.

1. Personal Health Information, Health Information Custodians & Their Agents

PHIPA sets out rules for the collection, use and disclosure of personal health information. These rules are applicable to all "health information custodians" and their "agents" that operate within the province of Ontario.

"Personal health information" is defined in PHIPA as identifying information about an individual (i.e., a client) in oral or recorded form that includes, but is not limited to, the following:¹

- Information concerning the physical or mental health of the client, including family health history
- Information relating to the provision of health care to the client
- Information relating to payments or eligibility for health care
- Information that identifies the client's health number
- Any other information about an individual that is included in a record containing personal health information

A "health information custodian" includes a partnership that operates a midwifery practice, or a sole practitioner. For the purposes of this Guide, "health information custodians" will be referred to as "midwifery practices" and should be interpreted to include a sole practitioner. Health information custodians implement policies and procedures to meet requirements under PHIPA.

Individuals that act for or on behalf of the midwifery practice with respect to personal health information for the purposes of the midwifery practice are considered "agents" under the Act.² All associates and support staff at a midwifery practice would typically be agents. An agent must comply with the requirements and conditions that the custodian imposes on their use of personal health information.

¹ PHIPA, s. 4

² PHIPA, s. 17.

Practice owners in their capacity as individual practitioners are like agents, because they are accountable to the midwifery practice for following privacy policies and procedures while practising midwifery.

A midwife that rents space at the midwifery practice and carries their own caseload that is independent of the practice's caseload would not be an agent as they would not be acting on behalf of the practice.

Midwives that work outside of a traditional midwifery practice, such as at a community health center or a physician's practice, are considered agents.

2. Contact Person & Written Statement About Information Practices

PHIPA requires midwifery practices (but not sole practitioners) to designate a contact person, who is an agent of the midwifery practice and is authorized on behalf of the midwifery practice to perform the following functions:³

- Help the midwifery practice comply with PHIPA
- Ensure that all agents are informed of their duties under the Act
- Respond to inquiries from the public about the midwifery practice's information practices
- Respond to requests of an individual for access to or correction of a record of personal health information that is in the custody or control of the midwifery practice
- Receive complaints from the public about potential contraventions of PHIPA by the midwifery practice, practice partners, an associate midwife, or another agent of the midwifery practice

If the midwifery practice does not designate a contact person, then one of the practice owners must assume the role of a contact person and perform the functions noted above.⁴

A custodian who is a sole practitioner may designate a contact person, but is not required to do so, and may take on the role of a contact person themselves

While an agent such as an administrative staff member can act as a contact person, the College strongly recommends that a practice owner or associate midwife fulfill this role.

In addition, midwifery practices must make available to the public a written statement that describes the following:⁵

- the midwifery practice's information practices (e.g. how personal health information is protected at a midwifery practice);
- how to contact the person that is acting as the contact person

³ PHIPA, s. 15(3).

⁴ PHIPA, s. 15(4)

⁵ PHIPA, s. 16(1)

- how a client may obtain access to or request the correction of a record of personal health information that is in the custody of the midwifery practice; and
- how to make a complaint to the midwifery practice and the *Information and Privacy Commissioner of Ontario*

Midwifery practices may consider making this written statement available in client brochures, posting it on their website, or posting it in a visible place in their midwifery practice.

3. The Collection, Use & Disclosure of Personal Health Information

Responsibilities of Midwifery Practices & Agents

A midwifery practice is responsible for the personal health information that is in their custody or control and may permit their agents to collect, use and disclose the information on the midwifery practice's behalf if:

- The midwifery practice is permitted or required to collect, use, or disclose the information;
- The collection, use, or disclosure is necessary in the course of the agent's duties and not contrary to PHIPA or another law; and
- Meets any prescribed requirements under the legislation⁶

Agents may collect, use, or disclose personal health information only if:

- It is permitted by the midwifery practice;
- It is necessary for the purpose of carrying out their duties as agent of the midwifery practice;
- Is not contrary to PHIPA or any other legislation;
- Complies with any conditions or restrictions that the midwifery practice may impose; and
- Meets any prescribed requirements under legislation⁷

Consent Requirements

A midwifery practice or agent may only collect, use or disclose personal health information if their client consents or the collection, use or disclosure is permitted or required by the Act.

Consent may be express or implied.⁸ Express consent may be required in certain instances under the Act. For example, if a midwifery practice or agent wishes to disclose information about a client to a person who is not a health care information custodian, express consent must be obtained.⁹

⁶ PHIPA, s. 17(1).

⁷ PHIPA, s. 17(2).

⁸ PHIPA, s. 18(2).

⁹ PHIPA, s. 18(3)(a).

Implied consent exists where a midwifery practice or agent receives personal health information about a client from the client and collects, uses or discloses that information for the purpose of providing or assisting in providing health care to the client, unless the client has expressly withheld or withdrawn the consent.¹⁰

Under PHIPA, consent must meet the following requirements:¹¹

- Must be a consent of the client
- Must be knowledgeable
- Must relate to the information; and
- Must not be obtained through deception or coercion

Consent is considered to be that of the client if the client understands the information that is relevant to deciding whether to consent to the collection, use or disclosure and can appreciate the reasonably foreseeable consequences of either providing or not providing consent.¹²

Consent is considered to be “knowledgeable” if it is reasonable in the circumstances to believe that the client knows the purposes of the collection, use or disclosure and that the client may give or withhold consent.¹³ For example, under the Act, it is reasonable to believe that a client knows the purposes of the collection, use or disclosure of personal health information about the client if a midwife posts or makes available a notice describing the purpose in the midwifery practice, if that is the place where it is likely to come to the client’s attention.¹⁴

It should be noted that if a client consents either through express or implied consent, to have a midwifery practice or agent collect, use, or disclose their personal health information, the client may withdraw their consent by providing notice to the midwifery practice or agent. However, the withdrawal will not have a retroactive effect.¹⁵ For example, if a midwifery practice provided client records to other health care professionals prior to the client withdrawing their consent, the midwife does not need to request that those records be returned.

While PHIPA does not require consent to be written, the College strongly encourages midwifery practices and agents to obtain written consent where possible, as it is more reliable and provides a higher standard of proof in the event there is a dispute about the nature of the client’s consent in the future.

¹⁰ PHIPA, s. 20(2).

¹¹ PHIPA, s. 18(1).

¹² PHIPA, s. 21(1).

¹³ PHIPA, s. 18(5).

¹⁴ PHIPA, s. 18(6).

¹⁵ PHIPA, s. 19(1).

4. Disclosure of Personal Health Information

Generally, midwifery practices should only disclose personal health information with the consent of individuals. However, there are instances where PHIPA permits disclosure without consent. As the language of PHIPA suggests that these disclosures are not mandatory, the College recommends that midwifery practices use their best judgment when deciding whether to disclose personal health information in the following instances. In addition, the College recommends midwifery practices to consider these permissible disclosures when developing policies and information practices to assist agents in understanding when they can disclose information in these regards:

- **Disclosures relating to providing health care.** The following conditions must be satisfied:¹⁶
 - The disclosure is reasonably necessary for the provision of health care;
 - It is not reasonably possible to obtain consent in a timely way; and
 - The individual has not instructed the custodian not to make the disclosure
- **Disclosures by facilities that provide health care.** For example, a midwifery practice or birth centre can disclose personal health information, unless a client specifically requests otherwise. In particular, these facilities can:¹⁷
 - Confirm that an individual is a client
 - The client's general health status
 - The location of the client in the practice or birth centreFor example, a midwife can provide the above information to EMS when a client is being transferred to a hospital from a birth centre.
- **Disclosures about a deceased individual.** This is for the purpose of identifying the individual and informing persons that the individual is deceased.¹⁸
- **Disclosures for health or other programs.** For example, PHIPA allows disclosure of personal health information:¹⁹
 - For the purpose of determining or verifying eligibility to receive health care²⁰
 - To a person conducting an audit or reviewing an application for accreditation, if the audit review relates to services provided by a midwife and the auditor does not remove any records of personal health information from the premises.²¹
- **Disclosures to Identify Personal Health Information.** A client's personal health number can be disclosed with the consent of the client for the purpose of accurately identifying the client's records of personal health information, verifying their identity or linking their records of personal health information.²²

¹⁶ PHIPA, s. 38(1)(a).

¹⁷ PHIPA, s. 38(3).

¹⁸ PHIPA, s. 38(4).

¹⁹ PHIPA, s. 39(1)

²⁰ PHIPA, s. 39(1)(a)

²¹ PHIPA, s. 39(1)(b)

²² PHIPA, s. 34(6)

It should be noted that if a midwife is subject to an assessment by the College, the midwifery practice is permitted to disclose personal health information, including client records for the purpose of the assessment. The College's authority to conduct such an assessment is derived from the Regulated Health Professionals Act,²³ Midwifery Act²⁴ and its Regulations and does not contravene PHIPA.

- **Disclosures relating to risk of bodily harm.** Personal health information can be disclosed if there are reasonable grounds to believe that disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to a person or group of persons.²⁵ Disclosure is warranted if the following conditions are satisfied:
 - The nature of the potential is grievous;
 - The risk of harm is high;
 - There are reasonable grounds to believe that disclosure is necessary to eliminate or reduce the risk of harm; and
 - The risk of harm must relate to the client or another person or persons²⁶

In addition, PHIPA provides protection from liability, such as being sued, when a midwife acts reasonably and in good faith in such circumstances, including when they decide to make a report.²⁷

- **Disclosure for proceedings.** Personal health information for a proceeding can be disclosed in which the midwifery practice or agent of the midwifery practice is a party or witness. Midwifery practices may also disclose to comply with a summons, order or other similar requirement issued in a proceeding.²⁸

It should be noted that the College may appoint an investigator to issue a summons for accessing midwifery records that may contain personal health information of clients, as part of a complaint, report, or registrar's investigation process. Disclosure may also be required as part of a disciplinary proceeding at the College. The College's authority to order such disclosure is derived from the *Regulated Health Professionals Act*,²⁹ *Midwifery Act*³⁰ and its regulations and does not contravene PHIPA.

- **Disclosure related to care or custody.** A midwifery practice may disclose personal health information to the head of a penal or other custodial institution where a client is being held, for the purpose of arranging health care for the client or making other decisions about the client.³¹

²³ 1991, S.O. 1991, c. 18.

²⁴ 1991, S.O. 1991, c. 31.

²⁵ PHIPA, s. 40(1).

²⁶ *Smith v Jones* [1999] S.C.C.

²⁷ PHIPA, s. 71(1).

²⁸ PHIPA, s. 41(1).

²⁹ *Supra* note 23.

³⁰ *Supra* note 24.

³¹ PHIPA, s. 40(2).

- **Disclosure to successor.** A midwifery practice may disclose personal health information to a potential successor of the midwifery practice for the purpose of allowing the potential successor to assess and evaluate the operations of the midwifery practice. However, the potential successor must first enter into an agreement with the midwifery practice to keep the information confidential and secure and not retain any information longer than is necessary for the purpose of the assessment or evaluation.³²
- **Disclosure related to this and other Acts.** Midwifery practices may disclose personal health information if the disclosure is permitted or required by other legislation, such as the *Regulated Health Professionals Act* and the *Child & Family Services Act*, with respect to certain children's aid matters.³³
- **Disclosure for research.** Midwifery practices may disclose personal health information as long as the researcher submits an application, research plan, and a copy of approval of the research plan by a research board.³⁴
- **Disclosure for planning and management of health system.** Midwifery practices may disclose personal health information for purposes relating to the planning and management of the health system to entities that are specified in the regulations of PHIPA. However, before the disclosure is made, the recipient of the information must have in place practices and procedures to protect privacy and maintain confidentiality.³⁵
- **Disclosure for monitoring health care payments.** Upon request of the Ministry of Health and Long-Term Care, a midwifery practice must disclose personal health information for the purpose of monitoring or verifying claims for payment for health care or goods used for health care that are publicly funded.³⁶
- **Disclosure for analysis of health system.** Upon request of the Minister of Health and Long-Term Care, a midwifery practice must disclose personal health information to a health data institute approved by the minister for analysis of the health system. However, the minister has to first submit a proposal to the Commissioner for review or comment.³⁷
- **Disclosure with Commissioner's approval.** A health data institute to which a midwifery practice has disclosed personal health information must, upon request of the Minister, disclose information to the Minister or another Minister-approved person if the Minister is of the opinion that disclosure is in the public interest and the Commissioner approves the disclosure.³⁸

³² PHIPA, s. 42(1).

³³ PHIPA, s. 43(1). Also see the College's Guide On Mandatory and Permissive Reporting (Nov 2019) for instances where personal health information may have to be disclosed to the College when making a mandatory report. Available Online: <https://www.cmo.on.ca/wp-content/uploads/2019/11/Guide-on-Mandatory-and-Permissive-Reporting-FINAL.pdf>

³⁴ PHIPA, s. 44.

³⁵ PHIPA, s. 45.

³⁶ PHIPA, s. 46(1).

³⁷ PHIPA, s. 47.

³⁸ PHIPA, s. 48.

- **Disclosure of health care payments.** A midwifery practice can disclose personal health information to the Minister of Health or other prescribed ministers upon their request for the purpose of determining, providing, monitoring or verifying payment or funding for health care funded wholly or in part by the Ministry.³⁹

5. Access to and Correction of Personal Health Information

A client generally has a right of access to a record of their personal health information that is in the custody or control of a midwifery practice.⁴⁰ A record is defined under PHIPA as “a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise...”⁴¹ The right to access a record of personal health information includes the right to access the record in an electronic format.⁴²

PHIPA lists exceptions to a client’s right of access to a record of their personal health information. Examples include if granting access would result in risk of serious harm to the client or another individual⁴³ or another Act or court order prohibits disclosure to the client of the record or the information in the record.⁴⁴ Other examples include information in the record that might be subject to legal privilege⁴⁵ or if the midwifery practice believes on reasonable grounds that the client’s request to access the record is frivolous, vexatious or made in bad faith.⁴⁶ It is recommended that midwifery practices review the exceptions listed in the Act so they are aware of those instances in which they are justified in refusing a client’s access to a record of their personal health information.⁴⁷

Processing Personal Health Information Access Requests

While there are many considerations that a midwifery practice should be aware of in processing personal health information access requests,⁴⁸ the following are some steps they must take upon receipt of an access request from a client:

- A midwifery practice must first be satisfied of the identity of the client making the request.⁴⁹
- A midwifery practice must respond to the client’s written access request within 30 days. This timeline may be extended if it is not reasonably practical to reply within that time.⁵⁰ In this case, a midwifery practice must notify the client of the delay and

³⁹ PHIPA, s. 46(1)

⁴⁰ PHIPA, s. 52(1).

⁴¹ PHIPA, s. 3(1).

⁴² PHIPA, s. 52(1.1).

⁴³ PHIPA, s. 52(1)(e).

⁴⁴ PHIPA, s. 52(1)(b).

⁴⁵ PHIPA, s. 52(1)(a).

⁴⁶ PHIPA, s. 52(6).

⁴⁷ The PHIPA exceptions are listed in s. 51, 52 and 54(6).

⁴⁸ See PHIPA, s. 52.

⁴⁹ PHIPA, s. 52(9).

⁵⁰ PHIPA, s. 55(3).

the reasons for the delay, within the initial 30 day time period.⁵¹ It should be noted that a midwifery practice can grant a client access to his/her records following a verbal request.⁵²

- In responding to the written request, a midwifery practice must do one of the following:
 - Make the record available to the client for examination and at the request of the client, provide a copy of the record of their personal health information and if reasonably practicable, provide an explanation of any term, code or abbreviation used in the record.⁵³
 - In the event the record cannot be found or does not exist, a midwifery practice must provide written notice to the client of this fact.⁵⁴
 - Provide written notice that the request is being refused,⁵⁵ including the reason for the refusal and inform the client of their right to make a complaint about the refusal to the *Information and Privacy Commissioner*.⁵⁶

Processing Personal Health Information Correction Requests

i) Correction Requests

A client generally has the right to request a midwifery practice to correct a record of their personal information if they believe the record is inaccurate or incomplete.⁵⁷

The time period for a correction request is the same as the 30 day period described in the preceding section.⁵⁸

The client has an obligation to demonstrate to the satisfaction of the midwifery practice, that the record is incomplete or inaccurate for the purposes for which the midwifery practice uses the information and must provide the information necessary that will enable a midwifery practice to make a correction.⁵⁹

ii) Correcting Record of Personal Health Information

If a midwifery practice is satisfied that the record is inaccurate or incomplete, the midwifery practice must:

- Make the requested correction by either striking out the incorrect information in a manner that does not obliterate the record or if that is not possible, labelling the

⁵¹ PHIPA, s. 55(4)(a).

⁵² PHIPA, s. 52(6).

⁵³ PHIPA, s. 54(1)(a).

⁵⁴ PHIPA, s. 54(1)(b).

⁵⁵ See page 11 for instances where refusal is justified.

⁵⁶ PHIPA, s. 54(1)(c) and (d).

⁵⁷ PHIPA, s. 55(1).

⁵⁸ PHIPA, s. 55(3) and (4).

⁵⁹ PHIPA, s. 55(8).

information as incorrect, severing the incorrect information from the record and storing it separately from the record while maintaining a link in the record to enable a person to tract the incorrect information⁶⁰

- In the event the above is not possible, the midwifery practice must ensure that there is a practical system in place to inform a person who accesses the record that the information is incorrect and to direct the person to the correct information⁶¹
- In either case noted above, give the client notice about the steps that were taken to correct the information⁶²
- In either case noted above, give written notice of the requested correction, to the extent reasonably possible, to the persons whom the midwifery practice has disclosed the information, except if the correction cannot reasonably be expected to have an effect on the ongoing provision of health care to the client⁶³

iii) Refusing to Correct the Record

A midwifery practice does not have a duty to correct a record of personal health information if any of the following factors are present:

- The record was not originally created by the midwifery practice and the midwifery practice does not have “sufficient knowledge, expertise and authority to correct the record”⁶⁴
- The record consists of a professional opinion or observation that the midwifery practice has made in good faith about the client⁶⁵
- The midwifery practice believes on reasonable grounds that the request is frivolous, vexatious or made in bad faith.⁶⁶

A midwifery practice that refuses to correct a record of personal health information must give the reasons for the refusal and inform the client that they are entitled to:⁶⁷

- Prepare a concise statement of disagreement that sets out the correction that the midwifery practice has refused to make;
- Attach the statement of disagreement as part of the records that it holds of the client’s personal health information and disclose the statement of disagreement

⁶⁰ PHIPA, s. 55(10)(a)(i)

⁶¹ PHIPA, s. 55(10)(a)(ii).

⁶² PHIPA, s. 55(10)(b).

⁶³ PHIPA, s. 55(10)(c).

⁶⁴ PHIPA, s. 55(9)(a).

⁶⁵ PHIPA, s. 55(9)(b).

⁶⁶ PHIPA s. 55(6).

⁶⁷ PHIPA, s. 55(11).

anytime the midwife discloses information to which the statement relates;

- Make all reasonable efforts to disclose the statement of disagreement to any person that would have received notice of the correction, had the request been granted
- Make a complaint about the refusal to the Information and Privacy Commissioner

6. Securing and Safeguarding Personal Health Records

Under PHIPA, a midwifery practice must take steps that are reasonable in the circumstances to ensure that personal health information in the midwifery practice's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.⁶⁸ In addition, a midwifery practice must take steps that are reasonable in the circumstances to ensure that personal health information is not collected without authority.⁶⁹

Midwifery practices must also ensure that records of personal health information that they have in their custody or control are retained, transferred and disposed of in a secure manner.⁷⁰

Reporting Requirements to Clients & College

In the event personal health information is stolen or lost or if it is used or disclosed without authority, a midwifery practice that has custody or control over that information must notify the client at the first reasonable opportunity and include in the notice that the client is entitled to make a complaint to the Privacy Commissioner.⁷¹

Furthermore, midwifery practices must give notice to the College if a member of the College employed by them, who holds privileges with them, or who is affiliated with them has committed or is suspected of having committed an unauthorized collection, use, disclosure, retention or disposal of personal health information and if, as a result of such unauthorized action, disciplinary action is taken with respect to the member's employment, privileges or affiliation.⁷² This also applies to cases where a member voluntarily relinquishes their privileges or resigns.⁷³

Notice must also be given to the College if a midwife acting as health information custodian (i.e. a practice owner) is a medical officer of health of a board of health and circumstances similar to those described above arise involving a member of the College who is employed to provide health care for the board of health and is an agent of the midwifery practice.⁷⁴

⁶⁸ PHIPA, s. 12(1).

⁶⁹ PHIPA, s. 11.1

⁷⁰ PHIPA, s. 13(1).

⁷¹ PHIPA, s.12(2).

⁷² PHIPA, s. 17.1.

⁷³ PHIPA, s. 17.1(2.2) and 17.1(5.2)

⁷⁴ PHIPA, s. 17.1(3).

Location of Records

Pursuant to PHIPA, a midwifery practice may keep a record of personal health information about a client in the client's home in any reasonable manner to which the client consents, subject to any restrictions set out in a regulation, by-law or published guideline under the Regulated Health Professionals Act.⁷⁵

In addition, a midwifery practice can keep a record of personal health information about a client in a place other than the client's home if:

- The record is kept in a reasonable manner;
- The client consents;
- The midwifery practice is permitted to keep the record in the place in accordance with a regulation, by-law, or published guideline under the *Regulated Health Professionals Act*;
- And the prescribed conditions, if any, are satisfied⁷⁶

Please note that the College has a *Record-Keeping Standard*, which midwifery practices must adhere to.⁷⁷

There are certain physical, administrative and technical safeguards that midwifery practices may use to safeguard records of personal health information.

Physical Safeguards

These involve implementing physical measures to protect and safeguard personal health information.

- Ensuring that the places used to store personal health information are secure – such as keeping records in locked filing cabinets
- Protecting places in which personal health information is stored from natural hazards such as floods or fire
- Disabling USB ports to prevent the removal of personal health information
- Locking a computer that has personal health information displayed, when a midwife or an agent permitted to view such information is not physically present by the computer
- Ensuring that personal devices (laptop, tablet, phone) used to view personal health information are password protected, encrypted, capable of being traced if lost/stolen and can be erased remotely in the event they are lost or stolen

Administrative Safeguards

⁷⁵ PHIPA, s. 14(1).

⁷⁶ PHIPA, s. 14(2).

⁷⁷ (January 11, 2013) Available Online: http://www.cmo.on.ca/wp-content/uploads/2015/07/Record-Keeping-Standard-for-Midwives_JANUARY-2013.pdf

These include policies and procedures followed by midwifery practices and their agents to safeguard and protect personal health information.

Examples include:

- Establishing a privacy breach protocol to minimize risk in the event a breach occurs
- Using confidentiality agreements with other persons who might come into contact with personal health information, such as independent contractors, bookkeepers, and cleaning staff
- Creating policies regarding who is permitted to have access to personal health information
- Creating policies about circumstances in which personal health information can be removed off-site
- Obtaining permission from clients if they will be communicated with via text or e-mail and explaining the risks associated with these methods of communication

Technical Safeguards

This pertains to the use of technology to protect electronic information, including electronic health records and access to them.

Examples include:

- Encrypting electronic records
- Setting up appropriate usernames and passwords to access electronic records
- Ensuring a safe firewall
- Implementing anti-virus and other anti-malware software
- Ensuring that information is not shared over an open network, such as public WI-FI
- Not using personal e-mail accounts, such as gmail and hotmail to send client health information

For more information on protecting the privacy of personal health information in electronic communication, please see the College's webpage: *Midwives and the Use of Electronic Communications*.⁷⁸

Succession Planning

A midwifery practice's obligation to ensure that personal health information in their custody or control is protected against privacy breaches does not end until a legally authorized successor has custody and control of the records. As a result, midwifery practices should create a succession plan to refer to in the event of a change in practice group ownership or dissolution of the midwifery practice, to prevent health records from being abandoned.⁷⁹

⁷⁸ Available Online: <http://www.cmo.on.ca/professional-conduct/client-relations/midwives-using-electronic-communications/>

⁷⁹ Please refer to "Succession Planning to Help Prevent Abandoned Records" (April 2019) by the Information and Privacy Commissioner for best practices. Available Online: https://www.ipc.on.ca/wp-content/uploads/2019/04/fs-health-abandoned_rec.pdf

In the situation of a change of ownership, a midwifery practice may transfer personal health information of its clients to the new practice owners if the midwifery practice makes reasonable efforts to give notice to the clients before transferring the records, or if that is not reasonably possible, as soon as possible after transferring the records.⁸⁰ The processes and responsibilities pertaining to such a circumstance can be detailed in a succession plan.

Midwifery practices can also detail in their succession plan where midwifery records would be stored and how they can be accessed in the event of a dissolution of the midwifery practice, and associated responsibilities pertaining to transferring them and ensuring agent compliance (e.g., compliance of an external storage company) with PHIPA requirements.

7. Notice of Theft or Loss & Report to Commissioner

A midwifery practice must notify an individual if personal health information about them that is in the custody of the midwifery practice is stolen, lost, used or disclosed without authority.⁸¹ The notice must include a statement that the individual is entitled to make a complaint to the Commissioner.⁸² The midwifery practice must also notify the Commissioner of the theft or loss or unauthorized use or disclosure if it meets the circumstances set out in section 6.3 (1) of Regulation 329/04 under PHIPA⁸³

A midwifery practice is required to notify the Information & Privacy Commissioner in the following instances:

- The midwifery practice has reasonable grounds to believe that the personal health information in their custody or control was used or disclosed without authority by a person who knew or ought to have known that they were using or disclosing the information without authority
- The midwifery practice has reasonable grounds to believe that the personal health information in their custody or control was stolen
- The midwifery practice has reasonable grounds to believe that after an initial loss or unauthorized use or disclosure of personal health information in their custody or control, the personal health information was or will be further used or disclosed without authority
- The loss or unauthorized use or disclosure of the personal health information is part of a pattern of similar losses or unauthorized uses or disclosure of personal health information in the custody or control of the midwifery practice
- The midwifery practice is required to give notice to the College of an event described on page 12 of this document,⁸⁴ including those events involving an agent of the midwifery practice that is a member of the College, in relation to a loss or unauthorized use or disclosure of personal health information

⁸⁰ PHIPA, s. 42(2).

⁸¹ PHIPA, s. 12(2)(a).

⁸² PHIPA, s. 12(2)(b).

⁸³ PHIPA, s. 12(3).

⁸⁴ Also see PHIPA, s. 17.1 for reporting obligations to College.

- The midwifery practice has determined that the loss or unauthorized use or disclosure of personal health information is significant after considering all relevant circumstances, including:
 - Whether the personal health information is sensitive
 - Whether the loss or unauthorized use or disclosure involved many individuals' personal health information
 - Whether more than one health information custodian or agent was responsible for the loss or unauthorized use or disclosure⁸⁵

Annual Report to Commissioner

On or before March 1st of each year, a midwifery practice is required to provide the Commissioner an electronic report that sets out the number of times in the previous calendar year that each of the following occurred:

- Personal health information in the midwifery practice's custody or control was stolen
 - Personal health information in the midwifery practice's custody or control was lost
 - Personal health information in the midwifery practice's custody or control was used without authority
- Personal health information in the midwifery practice's custody or control was disclosed without authority⁸⁶

8. Privacy Breaches

Breaches of obligations under PHIPA can result in prosecution by the Attorney General. On conviction for an offence of contravention of PHIPA, an agent may be liable for a fine of up to \$200,000 and a midwifery practice up to \$1,000,000⁸⁷

In addition, the Commissioner may make an order requiring a midwifery practice or agent to pay an administrative penalty if after conducting a review, the Commissioner is of the view that the midwifery practice or agent has contravened the Act or its regulations.⁸⁸

There can be other consequences for privacy breaches outside of that which is prescribed by PHIPA. These include but are not limited to:

- A midwife becoming the subject of a complaint or report made to the College. Depending on the severity of the breach, a midwife may become the subject of a disciplinary proceeding at the College.
- Discipline by employers

⁸⁵ s. 6.3(1) of the General Regulation (O.Reg. 329/04) under PHIPA.

⁸⁶ *Ibid*, s. 6.4(1). This has been a requirement since 2019.

⁸⁷ PHIPA, s. 72(2).

⁸⁸ PHIPA, s. 61(1)(h.1)

- Review or investigation by a privacy regulatory body, such as the *Information and Privacy Commissioner of Ontario*
- Civil Litigation – a person affected by a privacy breach may sue a midwifery practice or midwife for invasion of privacy⁸⁹
 - Wilful or reckless conduct may include an award of up to \$10,000 for mental anguish⁹⁰

⁸⁹ PHIPA, s. 65(1).

⁹⁰ PHIPA, s. 65(3).