Access to Facilities and Charts

Practice assessments have been in place, as part of the Quality Assurance Program, at the College of Physiotherapists of Ontario.

One of the questions that physiotherapists or employers may have about the practice assessment relates to the College’s authority to enter premises and review charts. This does have implications regarding confidentiality and privacy of patient information. This document is intended to provide information on these issues and clarify the College’s right to access premises and view patient records.

Must a physiotherapist or employer permit the assessment, including access to business premises and client records?

The answer is yes. Both physios and their employers are legally required to cooperate with

the practice assessment. This cooperation includes allowing access to the premises upon which you work to a College assessor and providing access to records, including client records, and information

from those records, to the assessor. For a physiotherapist, the duty of cooperation also includes answering questions posed by an Assessor to evaluate the physiotherapist’s knowledge, skill and judgment. The consent of the client is NOT required for the College to obtain this access and information.

Please be assured that the Quality Assurance program will keep this information strictly confidential.

The information cannot be shared with other staff at the College (the only exception being if you

give false information). The Regulated Health Professions Act makes it quite clear that the College right of access overrides all other confidentiality provisions. This duty to cooperate includes facilities and records maintained under any other legislation or authority including public hospitals, CCACs, long-term care facilities and the private sector.

The Personal Health Information Protection Act, 2004, supports the Assessor’s and Committee’s right of access and that custodians of personal health information can share information with the College without patient consent.

Attached is a copy of the relevant excerpts of the legislation.

If you are unclear as to your duty to cooperate, please review the attached provisions or speak with an appropriate lawyer or contact Shelley Martin, Manager, Quality Assurance,

at 416-591-3828 ext. 224 or 1-800-583-5885 ext. 224 at the College.

# Relevant Excerpts of Legislation

*Health Professions Procedural Code*

# Which is Schedule 2 of the Regulated Health Professions Act

## Co-operation with Committee and assessors

1. (1) Every member shall co-operate with the Quality Assurance Committee and with any assessor it appoints and in particular every member shall,
	1. permit the assessor to enter and inspect the premises where the member practises;
	2. permit the assessor to inspect the member’s records of the care of patients;
	3. give the Committee or the assessor the information in respect of the care of patients or in respect of the member’s records of the care of patients the Committee or assessor requests in the form the Committee or assessor specifies;
	4. confer with the Committee or the assessor if requested to do so by either of them; and
	5. participate in a program designed to evaluate the knowledge, skill and judgment of the member, if requested to do so by the Committee.

Inspection of premises

* + 1. Every person who controls premises where a member practises, other than a private dwelling, shall allow an assessor to enter and inspect the premises.

Inspection of records

* + 1. Every person who controls records relating to a member’s care of patients shall allow an assessor to inspect the records….

Conflict

(5) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 82.

# Physiotherapy Act, 1991 ONTARIO REGULATION 532/98

1. (3) The assessment may include,
	1. inspecting and reviewing the member’s premises, records and portfolio;
	2. interviewing the member and his or her staff;
	3. requiring the member to answer, orally or in writing, questions that relate to the member’s type of practice; and
	4. requiring the member to examine simulations that relate to the member’s type of practice. O. Reg. 532/98, s. 5 (3).
2. The Committee shall appoint an assessor to carry out the practice assessment but the assessor may obtain any assistance he or she considers appropriate in carrying out the assessment. O. Reg. 532/98, s. 5 (4).
3. The assessor shall prepare a report on the assessment and submit it to the Committee, with a copy to the member. O. Reg. 532/98, s. 5 (5).

# Personal Health Information Protection Act, 2004

## Other rights and Acts

9. (2) Nothing in this Act shall be construed to interfere with,...

* 1. the regulatory activities of a College under the Regulated Heath Professions Act, 1991, the College under the Social Work and Social Service Work Act, 1998 or the Board under the Drugless Practitioners Act;

## Disclosures related to this or other Acts

43. (1) A health information custodian may disclose personal health information about an individual,...

b. to a College within the meaning of the Regulated Health Professions Act, 1991 for the purpose of the administration or enforcement of the Drug and Pharmacies Regulation Act, the Regulated Health Professions Act, 1991 or an Act named in Schedule 1 to that Act;

# Regulated Health Professions Act, 1991

1. (1) Every person employed, retained or appointed for the purpose of the administration of this Act, a health professional Act or the Drug and Pharmacies Regulation Act and every member of a Council or committee of a College shall preserve secrecy with respect to all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,
	1. to the extent that the information is available to the public under this Act, a health professional Act or the Drug and Pharmacies Regulation Act
	2. in connection with the administration of this Act, a health professional Act or the Drug and Pharmacies Regulation Act, including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members’ incapacity, incompetence or acts of professional misconduct or the governing of the profession;
	3. body that governs a health profession in a jurisdiction other than Ontario;
	4. as may be required for the administration of the Drug Interchangeability and Dispensing Fee Act, the Health Insurance Act, the Independent Health Facilities Act, the Ontario Drug Benefit Act, the Narcotic Control Act (Canada) and the Food and Drugs Act (Canada);
	5. to the counsel of the person who is required to preserve secrecy; or

6. with the written consent of the person to whom the information relates. 1991,c. 18, s. 36(1); 1996, c.1, sched. G, s. 27(1).

(1.1) clauses (1) (c) and (d) do not apply with respect to reports required under section 85.1 or 85.2 of the Code. 1993, c. 37, s. 1.

(2) No person or member described in subsection (1) shall be compelled to give testimony in a civil proceeding with regard to matters that come to his or her knowledge in the course of his or her duties. 1991, c. 18, s. 36 (2).

40. (4) Every person who contravenes subsection 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than $25,000. 1993, c. 37, s. 2.

January 2009