

SECTION 1 – Privacy

1.09 Challenging TC Physicians' Compliance with Privacy Policies and Practices

Policy

Taddle Creek Physicians will comply with the Personal Health Information Privacy Act, 2004 (PHIPA).

Procedure

1. All complaints about TC Physicians not complying with TC Physicians Privacy Policies and Procedures must be brought to the attention of the clinic's Privacy Contact Person (e.g. complaints regarding access to personal health information, corrections to PHI or a privacy breach)
2. All complaints must be in writing
3. The Privacy Contact Person will respond to the complaint by consulting with individuals involved including the complainant, clinicians and TC FHT Executive/Board and decide whether the complaint has merit
4. If the complaint does not have merit, the Privacy Contact Person will respond, in writing, to the complainant providing the reason why the complaint does not have merit
5. If the complaint has merit, the clinic's Privacy Contact Person will conduct an internal investigation, the following steps must occur,
 - Identify the unauthorized collection, use or disclosure
 - If a privacy breach
 - Contain the breach
 - Determine if other personal health information is vulnerable to the breach, if so, take steps to avoid further breach
 - Review and address policies and procedures to mitigate future occurrences
 - Notify affected individual(s), in writing, and explain steps performed to rectify the complaint
 - Inform complainant of their right to refer their complaint to the Privacy Commissioner of Ontario, if not satisfied with the internal response
 - Maintain a record of findings and investigation notes
 - Consider advising the Commissioner

Approved By: Executive
Approved On: June 2009
To be Reviewed: June 2010

1.09 CHALLENGING TC Physicians' Compliance with Privacy Policies and Practices

Information & Privacy Commissioner/Ontario - Key Points

- Oversees compliance with Personal Health Information Privacy Act and responds to complaints it receives and may initiate a review
- Patients have the right to file a complaint against TC physicians with the Commissioner (for example, if they believe you have breached their privacy, or if they are not satisfied with your response to their access or correction request).
- Have the power to make a range of orders, where appropriate.
- A breach of privacy may entitle affected individuals to sue TC physicians for damages.
- If TC physicians are found guilty of an offence, a fine could result.
- Implementing Privacy Policies & Procedures can avoid privacy breaches.
- Procedures to manage privacy breaches should be implemented and must cover, at the very least, containment and notification procedures.
- Procedures to resolve privacy complaints internally should be implemented
- Procedures implemented, as well as TC physicians response to a privacy breach or complaint, may positively affect the final outcome of any Commissioner's review.

Possible Review Outcomes

Depending upon the nature of the complaint and the result of its review, the Commissioner may order Taddle Creek Physicians to:

- Give access to the requested record to the person who complained,
- Make the correction that the person who complained asked for,
- Perform a duty imposed by the Act,
- Stop collecting, using or disclosing personal health information in breach of the Act or a contract,
- Dispose of records of personal health information collected, used or disclosed in breach of the Act or a contract (so long as doing so would not negatively affect any individual's health care),
- Change, stop or never start a particular information practice that breaches the law, or
- Put an information practice in place to comply with the law.

The Commissioner may also order those acting on Taddle Creek Physicians behalf or with you (your agents) to take action to ensure you comply with its order against you. The Commissioner may make recommendations on how anything subject to the review affects privacy. The Commissioner will provide a copy of any comments, recommendations or an order made, together with the terms and reasons, to:

- Taddle Creek Physicians,
- The complainant (if there is one),
- Other persons to whom the order is directed,
- The College of Physicians & Surgeons
- Any person whom the Commissioner considers appropriate.

If the Commissioner makes no order after its review, the Commissioner will tell both Taddle Creek Physicians and the person who complained why. The complainant or Taddle Creek Physicians may

1.09 CHALLENGING TC Physicians' Compliance with Privacy Policies and Practices

appeal the Commissioner's orders (except access and correction orders) to the court on questions of law. The court may order the Commissioner to take actions that the Commissioner is authorized to take under the Act, confirm the Commissioner's order or, if necessary, vary or set the order aside. Once all avenues of appeal have been exhausted, or if no appeal is made, an order may be filed with the court, making it an enforceable judgment of the court. If new facts come to light following the Commissioner's order, the Commissioner may cancel or change its order or make a further order, even if the original order has been filed with the court. All affected parties will receive notice of the new order. Taddle Creek Physicians or other parties may appeal the new order. Taddle Creek Physicians may ask the court to review an order concerning access or correction by way of an application for judicial review.

Offence and Sanctions

If Taddle Creek Physicians violate the law, Taddle Creek Physicians may face a Commissioner's order, a fine for an offence, and/or a lawsuit for damages.

Note: Not all privacy breaches are subject to fines.

It is an offence for Taddle Creek physicians to:

- Willfully collect, use or disclose personal health information in breach of the law,
- Dispose of a personal health record to evade an access request,
- Dispose of a personal health record in a manner that is not secure,
- Willfully obstruct or mislead the Commissioner in performing its duties under the Act,
- Willfully fail to comply with a Commissioner's order, or
- Discipline or disadvantage an employee for trying to comply with the Act.

If prosecuted and convicted of an offence a Taddle Creek Physician could be fined up to \$50,000. A breach of privacy may entitle affected individuals to sue you for damages for:

- Actual harm a privacy breach caused, or
- Mental anguish (up to \$10,000) where willful or reckless behavior caused the breach.