



College of Respiratory  
Therapists of Ontario

Ordre des thérapeutes  
respiratoires de l'Ontario

# IMPLIED CONSENT AND THE CIRCLE OF CARE

Practice FAQs

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## QUESTION

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*Can I rely on implied consent when sending patient's PFT results to the Respiriologist for interpretation, or do I need to obtain written consent? For the most part, the Respiriologist is not the physician looking after these patients and I don't know if they are considered to be part of the patient's "Circle of Care"?*

## ANSWER

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The [Personal Health Information Protection Act, 2004](#) (PHIPA) sets out the rules for the collection, use and disclosure of personal health information, and provides the following definitions:

**Health Care Custodian:** Broadly, this can include persons and organizations involved in delivering health care services, such as health care practitioners (e.g., a member of a regulated health profession under the *Regulated Health Professions Act, 1991*), hospitals and other facilities.

**Agent (of a Health Care Custodian):** Under the *Act*, you are considered to be an **agent** with respect to personal health information if:

- you are authorized to act on behalf of a custodian; and
- you perform activities for the purposes of a custodian rather than your own purposes.<sup>1</sup>

**Personal Health Information:** This includes all oral or written information that relates to the provision of health care.

**Consent:** Under the *Act*, consent may be express or implied. "When a custodian discloses personal health information to another custodian for the purpose of providing health care, the consent of the individual may be **implied**, unless the individual has specifically withheld or withdrawn the consent".<sup>2</sup>

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<sup>1</sup> Cavoukian, A. (2004). *Guide to the Personal Health Information Protection Act*. Information and Privacy Commissioner. Ontario. Retrieved from <http://www.ipc.on.ca/images/Resources/hguide-e.pdf>.

<sup>2</sup> *Ibid.*, p. 11.



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“**Circle of Care**” is not defined in *PHIPA*, but has been interpreted by the *Ontario Office of the Information and Privacy Commissioner* as permitting health care custodians and their authorized agents to rely on **implied consent for the purpose of collecting, using or disclosing personal health information**, provided that<sup>3</sup>:

- It is done for the purpose of providing health care; and
- The disclosure of personal health information by the health care custodian is to another health care custodian.

The **circle of care** includes all physicians and members of the healthcare team (e.g., RRTs, RNs and other employees) who have a direct responsibility for providing care to the patient, as well as the patient, or his/her substitute decision maker. It also includes any health care custodian outside of the organization to whom the patient or their personal health information may be referred for the purpose of providing health care.

In a situation where the RRT works in a PFT lab within a hospital, both the hospital and the Respiriologist would be **health care custodians**, and therefore, are responsible for putting into place:

- Polices that set out when, how and the purposes for which personal health information is collected, used, modified, disclosed, retained or disposed of;
- The administrative, technical and physical safeguards and practices to ensure that all personal health information is kept confidential and secure; and
- ensure that all agents are informed of their duties under the *Act*;

The RRT in this scenario would be the **agent** for the hospital (health care custodian), and would be responsible for:

- abiding by the hospital’s polices regarding personal health information; and
- informing the health care custodian if the standards set out in these polices are not being met, or if there had been a theft, loss or unauthorized use of an individual’s personal health information.

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<sup>3</sup> Cavoukian, A. (2009). *Circle of Care: Sharing Personal Health Information for Health-Care Purposes*. Information and Privacy Commissioner. Ontario. Retrieved from <http://www.ipc.on.ca/images/Resources/circle-care.pdf>



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In a situation where the RRT is running their own outpatient PFT lab, they would be the **health care custodian**. Therefore, the RRT would then be required to ensure that they only collect, use or disclose personal health information as permitted by *PHIPA*. The RRT in this case must also ensure that all personal health information records in their custody are retained, transferred and disposed of in a secure manner.

Some employers may require expressed consent (oral or written). This is considered to be a higher standard than is required under *PHIPA*. However, as is the case in other circumstances, the RRT must adhere to the higher standard.