



College of Veterinarians of Ontario

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Despite the fact that the College had no role in developing the legislation, it has tried to be pro-active in providing timely and practical information for members. It has obtained a Guide and Checklist for members to adapt for their own practices. The Members' Forum on January 29, 2004, which was very well attended, involved a major presentation on the legislation for members. The College continues to receive many calls about the implications of the new federal privacy legislation for veterinarians in Ontario. The following FAQ's may assist members.

Q Where can I get a copy of the consent form for our clinic to use?

There is no specific form that you have to use. Indeed, consent does not have to be in writing (although having it in writing can be useful if a question arises later). A sample consent form that can be adapted to your particular needs is found on page 16 of the PIPEDA Guide on the CVO website by clicking on "[Federal Privacy Legislation \(PIPEDA\) - Guide and Checklist](#)" on the CVO home page.

Q A new client has just presented their pet to our clinic. When I contacted the client's previous clinic they refused to transfer the records until the client attended their clinic to sign a consent allowing them to transfer the information.

- a) Can they do this?
- b) Is it acceptable for the client to sign the consent form via facsimile?
- c) Is a verbal consent acceptable?
- d) What if the client has moved to another city?

The purpose of privacy legislation was to give the client more control over their personal information, not less. Neither the College nor the federal Information and Privacy Commissioner will look kindly on a veterinarian who creates hurdles for their clients or former clients wishing to consult with another veterinarian. Requiring a client to attend one's clinic to sign a form before the information will be shared is an unnecessary barrier. In most circumstances, the verbal statement from the requesting veterinarian that he or she has the client's consent for the request should be sufficient for the disclosing veterinarian (the disclosing veterinarian should make a note of this request in the medical record). Where there are reasonable grounds to doubt the accuracy of the requesting veterinarian's statement, the disclosing veterinarian should confirm the instructions of the client in a simple and accessible manner (e.g., a verbal consent, a faxed form). Both veterinarians have a duty to ensure that they accommodate the client so that continuity of care, based on the most accurate information, is promptly available.

Q A new client presented their pet where immediate treatment was required. The client left the clinic and was unavailable for contact. When I contacted the previous clinic, they refused to release the required information, even verbally, until they were able to speak to the client personally to receive consent. Are they allowed to do this?

This question is similar to the previous one. The disclosing veterinarian is not permitted to raise artificial barriers to thwart the client's obvious intent. Unless there are special circumstances, the disclosing veterinarian should be able to rely on the statement by the requesting veterinarian that the client attended and consented to the disclosure. In respect of human health, Industry Canada (the Minister overseeing federal privacy legislation) has published the following information, which is posted on their website as a series of questions and answers. The website address is: <http://e-com.ic.gc.ca>.

Q 40. Can consent be implied for the use and disclosure of personal health information under PIPEDA?

Yes, once patients are made aware of their privacy rights (refer to answer #38), consent is implied if the patient continues to seek care and treatment. Thus current practice of implied consent for the primary use of personal information in the direct care and treatment of an individual patient, as defined in a circle of care, will continue under PIPEDA. For example, a lab may infer consent because the individual would reasonably expect that the results be sent to the provider who ordered the lab work.

Q 56. If a health professional receives a request from another health professional, can patient information for circle of care purposes be disclosed to the requesting party without the patient's express consent?

Yes, under PIPEDA, express consent of the patient is not required if the information is disclosed for the care and treatment of the patient within the circle of care.

Not only should these same principles apply to veterinary services, veterinarians have a legal duty to obtain and share information with subsequently treating practitioners.

Q A new patient was presented and I required vaccination information only. When I contacted the previous clinic and requested the information verbally they refused to release it to me unless (a) the client physically attended their clinic to sign a consent form and (b) the client paid a fee for the transfer of records. The client even spoke with them on the telephone and they still refused. Is this appropriate?

One has difficulty seeing how the verbal consent of the client in these circumstances would not be sufficient for the disclosing veterinarian. In addition, the charging of fees should not become a barrier to ensuring there is prompt continuation of care. The council policy on the transfer of medical records is posted at www.cvo.org.

Q When I contacted a client's previous clinic to request the pertinent history on the pet, they informed me that when the client signed the privacy consent form they indicated that they did not wish the information to be released. What do I do now?

There are a few options. One is to ask the client to contact the previous clinic to obtain a copy of the privacy consent form. The client can rescind the previous instructions if in fact that is what the form says. Later instructions supersede earlier ones. If a problem remains the client can contact the office of the federal Information and Privacy Commissioner.

The previous clinic has a duty to provide the information to the subsequently treating veterinarian. The College would take a dim view of any veterinarian who tried to use the privacy consent process to initiate instructions in an attempt to circumvent that duty.

Q Veterinary Clinic A is requiring all other clinics in the area to sign a privacy form and has indicated they will not release any information unless the form is signed. Do we have to do this?

No, you do not have to sign Clinic A's consent form. Clinic A misunderstands the privacy requirements. Privacy assurances apply to situations in which Clinic A transfers information to one of its own agents (e.g., its lawyer or accountant) for Clinic A's purpose. In that situation Clinic A is accountable for how its own agents handle personal information. However, where a client asks for information to be disclosed to a third party for the client's benefit, Clinic A need not and should not ask for a privacy assurance. It is as if Clinic A is giving the information to the client directly.

Q What is the College's role in enforcing privacy legislation?

The College does not enforce privacy legislation directly. The federal Information and Privacy Commissioner has primary enforcement jurisdiction and the College will forward most concerns to the Commissioner. However, certain breaches of privacy obligations would also be a breach of a veterinarian's professional duties to his or her client including the duty of confidentiality. The College can and does enforce those duties. In addition, a serious breach of any law can reflect on a veterinarian's suitability to be a member of the profession and is professional misconduct. Thus, a significant breach of the Criminal Code of Canada, drug legislation, animal welfare legislation or privacy legislation could, depending on the circumstances, also be professional misconduct and result in discipline by the College.

Q Who enforces the privacy legislation?

The federal privacy legislation is enforced by the Information and Privacy Commissioner in Ottawa. The Commissioner has the authority to investigate complaints about a breach of the legislation and to mediate resolutions. Where a resolution is not possible, the Commissioner can make a report finding that a veterinarian has breached the legislation. Such a report can then be taken to the Federal Court of Canada for an enforcement order.

The Commissioner's website has much useful information on it and also has a copy of previous decisions by the Commissioner. The Commissioner can be contacted as follows:

112 Kent Street | Ottawa, Ontario | K1A 1H3
Phone (613) 995-8210 | Toll-free 1-800-282-1376
Fax (613) 947-6850 | TTY (613) 992-9190
www.privcom.gc.ca

Q A number of veterinary hospitals/clinics offer ancillary services i.e. grooming and/or boarding. Some call the regular veterinarian to request information regarding the vaccination status of the animal. A few even want to know the date of the vaccination and a make and serial number of the vaccine used. Common sense dictates that only the vaccination status of the animal should be provided to a non-professional establishment if that establishment is located on the same premises of a hospital or not. I would ask CVO to give practicing veterinarians a definite guideline for handling this request.

An ancillary service, such as grooming, is not considered the practice of veterinary medicine. If the only service being provided by a veterinarian's office is ancillary, the veterinarian was not treating the animal within the meaning of paragraph 17.(1) 40. which states:

17.(1) For the purposes of the Act, professional misconduct includes the following:

40. Treating an animal receiving veterinary services from another member without notifying the other member and obtaining the relevant historical information as soon as practicable.

Therefore, there is no requirement for the groomer to attain this historical information from the regular veterinarian. As well, the regular veterinarian is not required to release this information and is entitled to request the express consent of the client to do so.

Once appropriate consent to release the information is obtained, it can be provided to the requesting party and may include all information to which the consent applies.