



THE COLLEGE OF
VETERINARIANS
OF ONTARIO

OFFICE OF THE REGISTRAR

13 April, 2004

BY FAX AND MAIL
Fax No. (613) 947-6850

Ms. Jennifer Stoddart
Privacy Commissioner of Canada
112 Kent Street
Ottawa, ON K1A 1H3

Dear Ms. Stoddart:

RE: Interaction Between the *Personal Information Protection and Electronic Documents Act* to the *Veterinarians Act*

The College of Veterinarians of Ontario is the statutory body that regulates the veterinary profession in Ontario under the *Veterinarians Act*. The College has made a significant commitment to educate its members about the *Personal Information Protection and Electronic Documents Act* (PIPEDA). For example, it has conducted public education sessions for its members and has prepared detailed resources to help veterinarians bring themselves into compliance with PIPEDA. You might check our website for more information at: www.cvo.org.

However, we are having difficulties developing a consensus on how PIPEDA might affect a longstanding requirement on veterinarians to cooperate with each other when a client consults with a second veterinarian. The College has made a regulation (formally enacted by the Ontario Cabinet: see paragraph 17(1).40 of Ontario Regulation 1093) making the following professional misconduct:

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.

The purpose of this rule is to ensure that the care of the animal is coordinated and is based on the most current and complete information available. Prior to PIPEDA it was generally accepted within the profession that one had to provide this information to another veterinarian who indicated that he or she had an appointment with the first veterinarian's client. The information was generally provided promptly. While there might be some discomfort in the situation (especially if the client was in the process of changing veterinarians or obtaining a second opinion), veterinarians realized the client's and animal's interests came first.

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Since PIPEDA came fully into effect in Ontario, however, some veterinarians have been questioning whether they should continue to comply with this legal requirement. Some have suggested that it is contrary to PIPEDA. Others have indicated that they wish to have a signed consent form from the client before releasing the information. This latter option is not always practical because this means that for all practical purposes the first visit has to occur at the second veterinarian's clinic before the record can be requested from the first veterinarian. By that time significant treatment decisions will often have been made, without the previously available background information.

The College would like to notify its members that the disclosure of this information by the first veterinarian to the requesting second veterinarian is a "requirement of law" which does not require the written consent of the client. In addition, the College would like to advise its members that in the circumstances there is an implied consent for the first veterinarian to disclose the information to the second veterinarian and that requiring the signed consent of the client is not necessary. However, the College does not wish to publish a position only to later learn that your office might have a different position. Since this issue involves an interaction between the two statutes that we respectively administer we thought it prudent to obtain your views first.

Other definitions of professional misconduct which might provide some useful background on related issues include the following:

5. Failing to provide within a reasonable time and without cause any certificate or report requested by a client or his or her agent in respect to an examination or treatment performed by the member.
6. Revealing information concerning an animal, or any professional service performed for an animal, to any person other than the client or another member treating the animal except,
 - i. with the consent of the client,
 - ii. when required to do so by law,
 - iii. to prevent, or contribute information for the treatment of, a disease or physical injury of a person,
 - iv. when it appears that the animal has been abused, or
 - v. for the purpose of identifying, locating or notifying the apparent owner of the animal, protecting the rights of the apparent owner or enforcing applicable laws in respect of the animal, where it appears that the animal is not owned by the person presenting it for treatment.
16. Failing to issue a statement or receipt when a statement or receipt is requested by a client or his or her agent.

41. Treating an animal receiving veterinary services from another member who did not refer the animal without advising the client that such uncoordinated veterinary services may place the animal at risk.

We also believe that some of the information provided by Industry Canada in respect of human health care would have some application to this issue as well. For example the following questions and answers in that document (which is linked to your website) appear relevant:

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 (see 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.

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.

In our view this is an urgent matter and prompt clarification is needed to ensure that animals receive the best possible veterinary care. We look forward to your early response to this question.

Thank you.

Yours sincerely,
COLLEGE OF VETERINARIANS OF ONTARIO



Barbara E. Leslie, DVM MSc
Registrar
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May 28, 2004

Ms Barbara E. Leslie
Registrar
College of Veterinarians of Ontario
2106 Gordon Street
Guelph, Ontario
N1L 1G6

Dear Ms Leslie:

You recently wrote to Ms Stoddart, the Privacy Commissioner of Canada, inquiring about the impact of the *Personal Information Protection and Electronic Documents Act (PIPEDA)* on veterinarians, specifically the disclosure of information between veterinarians. I am replying on behalf of the Commissioner.

As I understand the situation, when an individual takes an animal to a new veterinarian, that professional has an obligation to notify the previous treating veterinarian and obtain the relevant treatment information. We assume, therefore, that the new veterinarian would only become aware that another veterinarian had provided prior treatment as a result of the individual disclosing this information. Since the individual is voluntarily providing this information to establish a treatment history, it would be reasonable to assume that this information has been provided with consent.

PIPEDA contains a reasonable person test. The Purpose clause in the Act refers to the "need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances." The disclosure of past treatment information to facilitate future treatment would presumably be considered reasonable by most people and certainly the College's regulation suggests this is a common and expected practice.

In addition, it is not readily apparent that the personal information in question would typically be considered sensitive. The information that the first veterinarian would be disclosing would relate primarily to the treatment of the animal. For example, we would assume that the first veterinarian would not be expected to disclose how much the individual has been billed.



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Given the above, we are inclined to agree that signed consent for the disclosure of treatment information between veterinarians would not be required.

One last point, in your letter you refer to a series of question and answers on Industry's Canada's web site relating to the application of *PIPEDA* to personal health information. Our Office was involved in the preparation of these questions and answers. We are not sure that they are directly relevant.

I hope this information is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carman Baggaley'.

Carman Baggaley
Office of the Privacy Commissioner of
Canada