



Guidelines for Dental Hygienists in Alberta

Privacy and the Patient Record

October 2023



Guidelines for Privacy and the Patient Record

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The Alberta College of Dental Hygienists (the College) provides guidelines to support dental hygienists in understanding and meeting their legislated requirements, Standards of Practice, and Code of Ethics. Guidelines establish professionally accepted means by which dental hygienists can achieve compliance with the College's standards.

Failing to comply with a guideline may be considered unprofessional conduct if the dental hygienist did not achieve compliance with the standard, or if the departure from the guideline compromises the quality of dental hygiene services or the integrity and/or credibility of the dental hygiene profession.

A dental hygienist may only depart from a guideline if they can demonstrate their chosen conduct:

- Achieves compliance with the applicable standard;
- Maintains the safety, effectiveness, or appropriateness of care required by the standard; and
- Upholds the integrity of the dental hygiene profession.

While these guidelines reflect the requirements for dental hygienists at the time of development, these requirements may change from time to time. Dental hygienists remain responsible for ensuring their practice meets current legislative requirements, Standards of Practice, and Code of Ethics.



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Responsibilities Related to Privacy and the Patient Record

This document provides guidance to registrants in meeting the Standards of Practice set by the College but does not replace the expectation that dental hygienists are aware of and in compliance with the [Health Information Act](#).

- Please review the legislation and resources published by the [Government of Alberta](#) and the [Office of the Information and Privacy Commissioner](#).

Record Management Standard of Practice

- The dental hygienist manages patient records in compliance with applicable legislation and regulatory requirements intended to protect the privacy and confidentiality of health information.

Privacy and Confidentiality Standard of Practice

- The dental hygienist respects the patient's right to privacy, maintains confidentiality of information, and acts in compliance with privacy legislation.

Code of Ethics: Confidentiality and Patient's Privacy

- Confidentiality is the duty to safeguard information. Privacy concerns the patient's right to control who may have access to their information. This principle guides the dental hygienist to protect the information they acquire in the professional relationship.

Code of Ethics: Accountability

- Accountability is accepting responsibility for one's actions, including the failure to act. The dental hygienist is responsible for their behaviour and decisions. They are also responsible for practicing competently and professionally according to legislation, ethical principles, and standards. The dental hygienist is accountable to themselves, the patient, the College, the profession, and the public.

Purpose of the *Health Information Act*

The *Health Information Act* protects the privacy and confidentiality of an individual's health information by setting rules for collection, use, and disclosure, including but not limited to:

- Collect, use, and disclose only information that is necessary;
- Respect an individual's right to access their health information subject to exceptions identified by legislation (see below "[Patient's Access to Their Own Health Information: Exceptions to the Requirement to Provide Access](#)");



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- Respect an individual's right to request a correction of their health information to ensure accuracy.

These rules enable health professionals to access and share health information when it is appropriate for delivering health services while respecting a patient's privacy and confidentiality.

Please review the [Health Information Act](#) to ensure you are familiar with the rules that apply to health information.

Individuals Authorized to Exercise Rights by the *Health Information Act*

A dental hygienist's patient is considered to be an individual who is entitled to exercise the rights identified by the *Health Information Act* (e.g., right to access or correct information, right to give consent to collection or disclosure of information).

The *Health Information Act* identifies circumstances where someone other than the patient can exercise the patient's rights. Such circumstances include but are not limited to:

- If there is a guardian for a patient under 18 years of age;
- If there is a guardian or trustee under the *Adult Guardianship and Trusteeship Act*;
- If there is an agent under the *Personal Directives Act* and a personal directive authorizes them to do so;
- When the powers and duties conferred by a power of attorney granted by the individual allows an attorney to exercise the right; or
- Any person with the patient's written authorization to act on their behalf to exercise any of the patient's rights (e.g., to provide information to you for collection).

Custodians and Affiliates

A dental hygienist may either be a custodian or an affiliate under the *Health Information Act*.

- A custodian of health information is the health care professional or organization who is responsible for meeting the duties set out in the *Health Information Act*.
- An affiliate is an individual who is employed by a custodian or provides services on their behalf (e.g., contractor, volunteer, or student) and has responsibilities under the *Health Information Act* to comply with privacy policies and procedures for safeguarding health information.

You are either a custodian or an affiliate. You must be aware of which role you have while practicing dental hygiene to ensure that you are fulfilling the correct obligations under the *Health Information Act*.



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Custodians

Dental hygienists have been designated as health professionals who can be custodians by the [Health Information Regulation](#).

- You are likely the custodian for your patients' health information if you are a dental hygienist who owns or operates a dental hygiene practice.
 - You may be seen to be operating a dental hygiene practice if the owner of the business is not a custodian.

Custodians have responsibilities and duties under the *Health Information Act* for safeguarding patient's health information.

The duties of custodians include but are not limited to:



Duty to collect, use, and disclose health information with the highest degree of anonymity possible



Duty to collect, use, and disclose health information in a limited manner



Duty to protect health information by maintaining administrative, technical, and physical safeguards for the health information under their control



Duty to ensure accuracy of health information



Duty to give notice to the Office of the Information and Privacy Commissioner of any loss of, unauthorized access to, or unauthorized disclosure of individually identifying health information as soon as practicable if there is a risk of harm to an individual



Duty to identify responsible affiliates if the custodian decides to delegate the responsibility of ensuring compliance with the *Health Information Act*, Health Information Regulation, policies, and procedures



Duty to establish or adopt policies and procedures related to collecting, using, and disclosing health information



Duty to prepare privacy impact assessments



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Custodians must take reasonable steps to provide their patients notice of specific information related to collecting health information.

- Reasonable steps may include posting the information in the practice setting or distributing the information to patients.
- The information they must share includes:
 - The purpose for which the information is collected (e.g., providing health services);
 - The specific legal authority for the collection (e.g., *Health Information Act*); and
 - The contact information for an individual (e.g., Privacy Officer) who may answer the patient's questions about the collection.

If you do not wish to be the custodian of your patients' health information, you must ensure that there is someone acting as custodian who is designated by the Health Information Regulation (e.g., a dental hygienist, a dentist).

If your employer has not been designated as a custodian by the Health Information Regulation (e.g., school, private company), you must assume the role of custodian for your patients.

- In this scenario, you would be required to fulfill the custodian's duties while also communicating and collaborating with your employer to ensure the policies and procedures for the collection, use, disclosure, retention, security, and disposal of health information meet the requirements of the *Health Information Act*.

Information managers can assist a custodian in meeting their duties under the *Health Information Act*.

- Custodians can enter agreements with an information manager (e.g., IT service providers, practice management software, shredding service providers) to process, store, retrieve, or dispose of health information the custodian holds.
- The [Health Information Act](#) (section 66) and [Health Information Regulation](#) (section 7.2) expand on the role of information managers and the agreements you can make with them.

Affiliates of Custodians

Dental hygienists who are employed by custodians or provide services on their behalf (e.g., contractor, volunteer, or student) have obligations under the *Health Information Act* to safeguard patient information.

If you are an affiliate, the *Health Information Act* requires you to:

- Follow the privacy policies and procedures developed by the custodian;
- Only collect, use, and disclose health information in accordance with your duties to the custodian;
 - Affiliates cannot access patient information for any purpose that is unnecessary for their job (e.g., personal interest, finding contact information for a purpose unrelated to dental hygiene services, contacting former patients).



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- Notify the custodian as soon as possible if you suspect or know that there may be a privacy breach where there is a loss, unauthorized access, or unauthorized disclosure of individually identifying health information.

Health Information

The *Health Information Act* identifies that health information includes:

- Diagnostic, treatment, and care information. This includes but is not limited to any of the following:
 - The physical and mental health of an individual;
 - A health service provided to an individual, including information who has provided the health service to that individual.
- Registration information. This includes information relating to an individual that falls within the following general categories:
 - Demographic information, including the individual's personal health number;
 - Location information;
 - Telecommunications information;
 - Residency information;
 - Health service eligibility information; or
 - Billing information.

Health information does not include diagnostic, treatment, and care information or registration information that is not written, photographed, recorded or stored in some manner in a record.

Identifying and Non-Identifying Health Information

Health information may be identifying or non-identifying depending on whether the identity of the patient who is the subject of the information can be “readily ascertained” or not.

The [Health Information Act Guidelines and Practices 2011](#) explains that “‘readily ascertained’ means that the individual’s name or other identifiers or distinguishing characteristics associated with an individual can be determined or deduced without having to apply a sophisticated technical method or process, or without having the particular technical expertise to do so.”

Identifying health information means you can readily ascertain the patient’s identity from the information (e.g., patient’s name, address, birth date, full postal code, personal health number).

- This information is highly sensitive and can only be collected, used, and disclosed according to the *Health Information Act*.

Non-identifying health information means the patient’s identity cannot be readily ascertained.



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Identifying Information becomes non-identifying if you:

- Remove your patient's name and personal identifiers; and
- Keep private any other contextual information that may identify your patient.

Collecting Identifying and Non-Identifying Health Information

Collect any health information in a manner that respects the patient's privacy, prevents unintended disclosure of the information, and complies with the *Health Information Act*.

- Identifying health information must be collected directly from the individual or someone authorized by the *Health Information Act*.

If you plan to collect information using a recording device that may not be visible to the patient, you must obtain written consent from the individual to use the device before collecting health information.

- This includes audio and visual recordings.

Using Identifying Health Information

The *Health Information Act* identifies several purposes for which identifying health information may be used.

- These purposes include:
 - Providing health services; and
 - Determining eligibility of an individual to receive a health service.

Disclosing Identifying Health Information

If health information is disclosed, reasonable efforts must be made to ensure that the recipient is the intended person who is authorized to receive that information.

- Reasonable efforts may be demonstrated through policies and procedures that address common errors which could result in an unintended disclosure to an unauthorized person (e.g., implementing a process to verify mailing addresses before sending health information).

Your obligations around disclosing identifying health information depend on who you are disclosing the information to.

The following sections describe requirements if you are disclosing:

- To the patient;
- To others with consent; or
- To others without consent.

To the Patient

Health information may be disclosed to the individual who is the subject of the information, or to a person authorized under the *Health Information Act* section 104(1)(c)-(i).



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To Others with Consent

Dental hygienists can disclose individually identifying health information to other individuals with the consent of the patient. The written or electronic consent must include:

- An authorization for the custodian to disclose the health information specified in the consent;
- The purpose for which the health information may be disclosed;
- The identity of the person to whom the health information may be disclosed;
- An acknowledgment that the individual providing the consent has been made aware of:
 - The reasons why the health information is needed, and
 - The risks and benefits to the individual of consenting or refusing to consent;
- The date the consent is effective and the date, if any, on which the consent expires; and
- A statement that the consent may be revoked at any time by the individual providing it.

If electronic consent is given, it will only be considered valid if the level of authentication is sufficient to identify the individual who is granting or revoking the consent.

To Others Without Consent

It is best to obtain consent before disclosing any health information.

There are only specific circumstances that the *Health Information Act* lists where disclosure without consent can occur.

- It is the custodian's decision whether to disclose the patient's health information.
 - If the custodian decides to disclose information, ensure that only the least amount of information possible is disclosed.
 - Health information should only be disclosed without consent if it is in the best interests of the individual.

For detailed information about disclosing health information, please review Chapter 8 of the [Health Information Act Guidelines and Practices- 2011](#).

Diagnostic, treatment, and care information can only be disclosed without consent in compliance with the *Health Information Act*, including to:

- Another custodian if it is for the purposes defined in the *Health Information Act* sections 27(1)-(2);
 - Take steps to verify the identity of the other custodian to ensure the information is disclosed to the correct person.
- A person who is responsible for providing continuing treatment and care to the individual;
 - For example, if your patient has a caregiver who accompanies them to the appointment, you may assess what information is appropriate to share with them about the patient's needs to facilitate home care.



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- A police service or Minister of Justice and Solicitor General if the information relates to the possible commission of an offence or the disclosure will protect public health and safety;
 - Depending on the circumstances, a custodian may be required to disclose information.
- Family members of the patient or to another person with whom the patient is believed to have a close personal relationship, if:
 1. The information is given in general terms and concerns the presence, location, condition, diagnosis, progress, and prognosis of the patient on the day on which the information is disclosed; and
 2. The disclosure is not contrary to the express request of the patient.
 - For example, if your minor patient attends their appointment with a grandparent, you may provide general information about the appointment (e.g., whether additional appointments should be scheduled, home care recommendations) unless the patient or their guardian request that you do not disclose any information.
 - You may also choose not to provide information to the grandparent and contact the patient's guardian instead.

Registration Information may be disclosed without consent, but only in accordance with the *Health Information Act* and Regulation.

- The reasons for disclosing without consent are similar to those listed above for disclosing diagnostic, treatment, and care information.
- Review the *Health Information Act* and Regulation before disclosing registration information to ensure you meet the legislated requirements.

If you disclose any health information without consent, document the following in the patient record:

- The name of the person to whom the custodian disclosed the information;
- The date and purpose of the disclosure; and
- A description of the information disclosed.

Retain the documented information for 10 years following the date of disclosure.

Using and Disclosing Non-Identifying Health Information

The *Health Information Act* does not prohibit use or disclosure of non-identifying health information as long as the identity cannot be readily ascertained.

- Leaving out the name of the patient may not be enough to make health information non-identifiable.
- Sharing any information about an individual's circumstances, appearance, etc. may identify that individual.

If you share information for purposes beyond what the *Health Information Act* allows, there is a risk that someone will identify your patient and compromise their privacy.



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- You are responsible for mitigating any potential risks that may compromise the confidentiality of information acquired in your professional relationships with your patients.
- The safest way to protect patient privacy and uphold the duty of confidentiality is to hold all information confidential and obtain your patient's consent for any disclosure of information for a purpose not listed in the *Health Information Act*.
- If you are sharing a patient's health information with others for the purpose of education or discussion, you must ensure that no one can identify the patient based on what you have shared.

There is risk associated with sharing case studies or other health information in electronic format. Once it has been shared you no longer have control over it.

In the event of a complaint, a dental hygienist would be required to justify the reasons for sharing their patient's information without consent. The disclosure may be seen as unprofessional conduct.

Privacy Breaches

If you are aware of a privacy breach, please review the [Office of Information and Privacy Commissioner's resources for "Privacy Breach Response, Reporting, and Notification."](#)

A privacy breach occurs when there is a loss of identifying health information or any unauthorized access to or disclosure of identifying health information if there is a risk of harm to the patient.

If you are an affiliate, you must give notice to the custodian as soon as you become aware that there may be a loss of health information or unauthorized access to or disclosure of health information.

- Notice to the custodian should be given according to either:
 - The custodian's policies and procedures if they have developed specific requirements; or
 - The requirements set by the [Health Information Regulation](#) section 8.2.

The custodian is responsible for determining whether there is a risk of harm to the patient by considering all relevant factors.

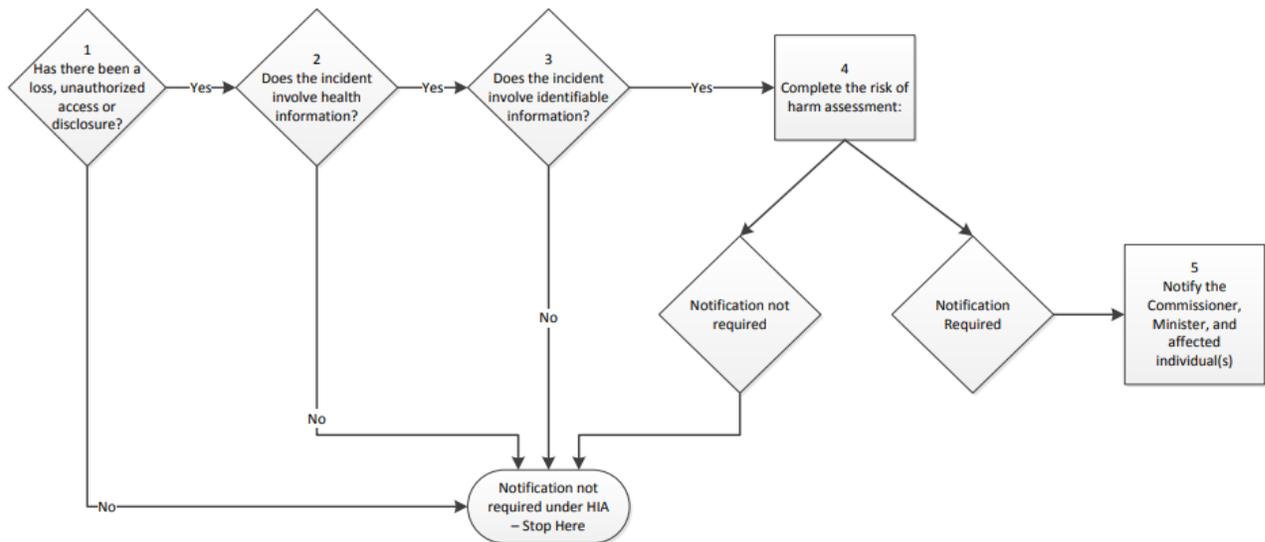
- See the [Health Information Regulation](#) section 8.1(1) for the factors to consider.
- Depending on the risk of harm, the custodian may be required to provide notice to the Privacy Commissioner, the Minister of Health, and the patient whose health information was affected.

This flowchart from the [Health Information Act Guidelines and Practices Manual \(Chapter 14 Duty to Notify\)](#) demonstrates the process for addressing a privacy breach:



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Assessment and Notification Process:



Patient's Access to Their Own Health Information

The *Health Information Act* gives individuals the right to access their own health information.

Request for Access

Requests for access to information are common and easily managed by custodians and their affiliates.

- For example, a patient may ask when they last received dental hygiene services or what their assessment results were from a previous visit.
 - You may provide this information to them.

There may be rare instances where the information requested requires review before a custodian can provide access (e.g., if another individual's information is included in the record).

- In these instances, the patient would have to apply to the custodian for access through a formal request outlined in the *Health Information Act*.

If you are the custodian, follow these steps before you provide access:

- 1) Verify that the individual requesting the information is authorized to make the request. This would involve ensuring they are the individual the health information is about, or they are authorized by the *Health Information Act* to access the information.
- 2) Find and review the information relevant to the request to determine if there is an applicable exception that prevents access to the information (see section for ["Exceptions to the Requirement to Provide Access"](#) below).
- 3) Provide a response to the individual requesting the information.



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Exceptions to the Requirement to Provide Access

There are limited exceptions to an individual's right to access their health information where custodians can refuse to share certain information. These exceptions may be mandatory or discretionary.

- Mandatory exceptions are where the custodian must not disclose the information to the patient requesting access.
 - For example, section 11(2)(a) identifies that a custodian must refuse to disclose health information to someone requesting access if the health information is about a different individual.
- Discretionary exceptions require the custodian to decide whether to disclose the information or not.
 - For example, if the custodian believes disclosing the information could reasonably be expected to result in immediate and grave harm to the individual's mental or physical health or safety, they may choose to refuse to disclose that information.

If a custodian decides they cannot provide certain information requested, they may edit out the information that cannot be shared. The information that cannot be disclosed may be blacked out or removed from a document so it cannot be discerned.

If you are the custodian and you refuse access, ensure you are acting in accordance with the *Health Information Act* section 12(2) by informing the individual:

- The reasons for your refusal;
- Who they may contact to ask questions (e.g., the Privacy Officer who is either the custodian or an affiliate of the custodian); and
- That they can ask the Office of the Information and Privacy Commissioner to review the custodian's decision.

For more information, review:

- Part 2 of the *Health Information Act* (e.g., section 11 lists the exceptions to the right to access);
- Chapter 3 of the [Health Information Act Guidelines and Practices Manual](#)- 2011

Responding to a Request for Access

Requests for access are expected to be addressed in a timely manner.

- The *Health Information Act* requires custodians to make "every reasonable effort" to respond to a request for access within 30 days.
- The custodian's response informs the individual whether access to the record will be granted and where, when, and how the access will be given.
- An individual's right to access may be subject to a fee that complies with the Health Information Regulation.



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Correction or Amendment of Health Information

If a patient believes there is an error or omission in their health record, they may request in writing that the information be corrected or amended by the custodian.

- The custodian then has 30 days to respond with written notice that they have either made the correction or refuse to do so.

As the custodian, you may refuse to make a correction:

- When the information is a professional opinion or observation made by a health care provider about the patient; or
- If the record was not originally created by you.

If you choose not to correct the record, you must inform the patient that they may do one of the following (but not both):

- Ask for the Privacy Commissioner to review the custodian's decision; or
- Submit a statement of disagreement to the custodian that meets the *Health Information Act* requirements.

If a statement of disagreement is submitted, you must include the statement in the patient record (e.g., attach it, insert it) and provide a copy to anyone who has received the record in the previous year.

Retention of Patient Records

Custodians are responsible for retaining patient records, ensuring safeguards are in place to protect the records, and allowing access when appropriate.

The College requires custodians to retain patient records for a minimum of 10 years following the date of the last health service provided. In the case of minor patients, this retention period is either until the patient is 20 years of age or for 10 years, whichever is longer.

Safeguards to Protect Patient Records

Custodians are obligated to develop policies and procedures for the administrative, technical, and physical safeguards to protect patient records, including during the period of retention.

- Training should be provided to any affiliates who need to follow these policies and procedures.

Dental hygienists who are affiliates are obligated to follow the policies and procedures to safeguard health information.

- If you feel the policies and procedures are inadequate for safeguarding health information, take reasonable steps to ensure the custodian is aware of their responsibilities under the *Health Information Act*.
 - Reasonable steps may include a discussion with the custodian about the safeguarding practices or collaborating with the custodian to develop policies.



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The safeguards required will be unique to your practice setting and may include some or all the following (not an exhaustive list):

Administrative Safeguards	Technical Safeguards	Physical Safeguards
<ul style="list-style-type: none">• Identifying a Privacy Officer• Staff training on privacy-related issues, policies, and practices• Privacy and confidentiality agreements• Organizational policies and practices such as requiring unique user logins and strong passwords for electronic systems• Organizational policies and practices that define if paper records can be removed from the business location and how those files must be secured when in transit or out of the office• Having defined employee termination procedures to ensure that access to records is rescinded when employment is terminated	<ul style="list-style-type: none">• Unique user logins and strong, secure passwords• Preventing access to patient records under another person's unique user login• Encryption of personal information while in storage and when transmitted• Programs to prevent unintended disclosure during transmission (e.g., preventing you from sending without checking any files attached to an email)• Data access rules based on defined user roles• Routine updates to IT systems and software• Auditing systems to monitor access and changes to information• Logging off electronic documentation systems when finished	<ul style="list-style-type: none">• Locked offices and file cabinets• Keyed or key card access to file rooms and office spaces• Locking cables to secure electronic devices to workstations• Precautions to prevent loss in event of an unexpected event (e.g., fire, flood, other hazards)• Removing anything with health information from the area that will be on camera if you are in an online meeting

See chapter 5 of the [Health Information Act Guidelines and Practices-2011](#) for more information (section 5.2.3 addresses the duty to protect health information).

Custodianship After Closing a Dental Hygiene Practice

A patient's right to access their own records exists even after a dental hygienist custodian closes their practice or leaves the profession.

- If you close a practice, you must safeguard the records for the retention period and facilitate access to the records on request.



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No matter how dental hygienist custodians choose to address storing their patient records, a patient needs to know:

- How they can access their information for the retention period; and
- Who is the ongoing custodian of their information.

Information Managers

One option that meets the requirement to safeguard records is to enter a contract with an Information Manager for the retention period.

- You would continue to be the custodian of the records and responsible for ensuring the appropriate safeguards are in place, but the Information Manager would store the records and facilitate access when you request.
- A written agreement that is compliant with the *Health Information Act* must be completed.
- Information Managers are required by the *Health Information Act* to comply with the Act, regulations, and the agreement.

Transferring Custodianship

If you no longer want the responsibilities associated with being a custodian, there may be circumstances where you can transfer the custodianship of the health records to another custodian designated by the Health Information Regulation.

- See the *Health Information Act* and the Health Information Regulation for more details.

Successor Custodians

As part of safeguarding your patient records, you should have another custodian named to take on the custodianship duties in case of an unexpected event that prevents you from fulfilling your legislated duties (e.g., accidents, death).

- The individual who agrees to be the succeeding custodian must be a health professional designated as a custodian by the Health Information Regulation.
- Ensure there are processes in place to inform your patients if custodianship is transferred to a successor custodian.

Disposal of Patient Records

Custodians have a duty to ensure that there are appropriate measures in place for the proper disposal of patient records once the retention period has expired.

- These safeguards must prevent any reasonably anticipated unauthorized access that could lead to unauthorized use or disclosure of the information following its disposal.
 - One way to safeguard the disposal of paper containing health information is to shred it so it cannot be pieced together.



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- To dispose of electronic records, files from computer hard drives need to be completely erased.

There is no requirement to dispose of the information after the retention period has passed; however, choosing to retain health information beyond the retention period has its risks.

- For example, if there is a privacy breach resulting in unauthorized access to your patient records, a greater number of patients would be exposed to the breach and potentially harmed.

You should limit the amount of information you retain to only what is required for the period it is required to be retained.

Confidentiality of Information That Is Not Health Information

Dental hygienists may acquire information in their professional relationship with their patients that is not health information (e.g., through conversations between you and your patient that reveal personal details, interests, non-health related goals).

- Information that is collected but not written, recorded, or stored in any manner may only be used or disclosed for the purpose for which the information was provided to the custodian or affiliate.
 - For example, if a patient reveals their vacation plans for the purpose of scheduling an appointment, this information can only be used to schedule the appointment and cannot be shared for other purposes.

Dental hygienists have a duty to hold information acquired in the professional relationship confidential and not share identifiable information without the consent of the individual.

- You are responsible for being aware of and following privacy policies in your practice setting.

Only health information (diagnostic, treatment, care, or registration) relevant to the patient encounter and health services provided should be included in the patient record.

- Details about the patient's personal life that are unrelated to their health services are unnecessary for continuity of care and should not be included in the patient record.
- Documenting personal information unrelated to health services can be perceived as unprofessional or may create bias for future care providers who access the information. Limit your collection of information to what is necessary.

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