

## Chapter 8 Confidentiality

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### Duty of Confidentiality

The Canadian Medical Association *Health Information Privacy Code* defines “confidentiality” to “mean that health information that is confided by a patient is to be kept a secret and not disclosed or made accessible to others unless authorized by patient consent. A breach of confidentiality occurs whenever a health professional discloses or makes health information available to others without or inconsistent with the patient’s consent.”<sup>48</sup> While this definition relates specifically to health information, it would also be applicable to any other type of client information.

As with all professionals, Registered Dietitians and Registered Nutritionists are obligated to maintain confidentiality of client information. Contravention of confidentiality obligations may constitute unprofessional conduct, as defined in the *Health Professions Act (HPA)*. Confidentiality requirements are reflected in Section 2.3 of the *Code of Ethics* of the College of Dietitians of Alberta (the College) which states the following:

<sup>48</sup> Canadian Medical Association. *Health Information Privacy Code*; 1998.

## “2.3 Confidentiality

- (1) The dietitian respects the confidentiality of information obtained in providing professional services.
- (2) The dietitian discloses confidential information only when the client consents to disclosure, when disclosure is required or permitted by law, or when disclosure is necessary to protect the client or another individual from harm. See Duty to Report.
- (3) The dietitian avoids indiscreet or public conversations about the client or their treatment.
- (4) The dietitian does not access information in databases or records about individuals who are not clients or information that is not required to provide professional services.
- (5) The dietitian limits access to professional records by others to preserve confidentiality of information.”<sup>49</sup>

Professional obligations for Registered Dietitians and Registered Nutritionists are also stated in the *Standards of Practice* and the *Standards of Practice: Sexual Abuse and Sexual Misconduct Prevention*. Standard 11. Privacy/Confidentiality states:

### “Standard

Registered Dietitians uphold and protect clients’ rights to privacy and confidentiality of information collected during the provision of professional services by complying with applicable legislative and regulatory requirements.

### Indicators

To demonstrate this standard, Registered Dietitians will:

- a) Ensure client consent is obtained prior to collecting or disclosing personal, organizational, and/or business information, unless duty to report obligations is required.
- b) Access and collect only the client information that is essential to carry out the provision of safe, competent, ethical services.
- c) Use physical, technical, and administrative safeguards (e.g., locked filing cabinets, passwords, encrypting documents, laptops, and PCs) to protect paper-based, audio, video, electronic or other client information.
- d) Avoid conversations about clients and/or professional services provided that can be overheard and/or breach privacy and confidentiality.”<sup>50</sup>

<sup>49</sup> College of Dietitians of Alberta. *Code of Ethics*; 2007.

<sup>50</sup> College of Dietitians of Alberta. *Standards of Practice*. 2018

For more information on obtaining client consent, please refer to Chapter 9 Consent to Treatment, and from the *Standards of Practice*, Standard 8. Consent.

Contravention of privacy and confidentiality obligations may constitute unprofessional conduct as defined in the *HPA* which states the following:

“1(1) In this Act,

(pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonorable:

(ii) contravention of this Act, a code of ethics or standards of practice;”<sup>51</sup>

Organizations providing health care services need to have access to information in order to treat clients, manage the health care system and conduct research. Most clients understand that numerous individuals require access to their health information in order to provide care and treatment. However, clients also expect that their privacy will be respected, and their information will be treated confidentially.

In 2020, during the COVID-19 pandemic, there was an increased need for virtual health care service provision in order to enhance patient safety. The protection of privacy, confidentiality and health information collected virtually was highlighted as a risk. The information in this chapter remains applicable to any client care service provision including in-person, via telephone or virtual platforms.

To ensure that confidentiality obligations are met, and that health information is handled correctly, Registered Dietitians and Registered Nutritionists require a good understanding of provincial and federal legislation that addresses the protection of personal information. This legislation outlines the specific rules regarding how information must be dealt with, balancing the need for privacy and confidentiality against the need for the collection, use and disclosure of information.

## Information Legislation

### *Provincial*

There are three key pieces of legislation that outline how information must be dealt with in Alberta, each of which may be found at the following web site: <https://www.alberta.ca/alberta-kings-printer.aspx>. Each of these laws sets rules for how information can be collected, used, and disclosed, as well as give individuals the rights to access information and to request a correction of information. These laws differ in regard to the types of information that they apply to (i.e. health information versus non-health information) and to which sector of people / organizations that they apply to (i.e. public versus private). A summary of each is as follows:

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<sup>51</sup> Province of Alberta. *Health Professions Act*, R.S.A. 2000, c. H-7.

### ***Health Information Act***

The *Health Information Act (HLA)* governs health information used primarily in Alberta’s publicly funded health care system. This Act also applies to health information used by pharmacists and pharmacies in both the public and private sector. The Act primarily addresses the protection of individually identifying health information.

The *HLA* defines the people and organizations it applies to as either “custodians” or “affiliates”. Custodians include provincial health boards, regional health authorities, nursing home operators, licensed pharmacies, and the Ministry of Health. It is the responsibility of custodians to determine what information they will collect, what information they will share, and with whom. An affiliate is anyone who provides services on behalf of the custodian and includes employees, volunteers, and students. A Registered Dietitian or Registered Nutritionist who is employed by a regional health authority is an example of an affiliate. Both custodians and affiliates are responsible to ensure that they practice in compliance with the rules written in the *HLA* (1).

### ***Personal Information Protection Act***

The *Personal Information Protection Act (PIPA)* governs personal information (both health information and non-health information) held by private sector organizations in Alberta. The private sector organizations that *PIPA* applies to include businesses (including private practice businesses that provide dietetic services), non-profit organizations and professional regulatory organizations. *PIPA* does not apply to health information held by pharmacists and pharmacies, as this information is governed by the *HLA* (2).

### ***Freedom of Information and Protection of Privacy Act***

The *Freedom of Information and Protection of Privacy Act (FOIP)* addresses issues to ensure the following:

- That public bodies in Alberta are open and accountable to the public by providing a right of access to records;
- That the privacy of individuals will be protected by controlling the manner in which public bodies in Alberta collect, use and disclose personal information.

Accordingly, *FOIP* governs public bodies which include Government of Alberta ministries, boards, agencies and commissions, school boards, post-secondary educational institutions, municipalities, police services and commissions, health care bodies, Métis settlements, public libraries, drainage and irrigation districts and housing management bodies. The *FOIP* applies to non-health personal information,

as well as general information (i.e. non-personal information) such as budget information (3).

Key aspects of each of these Acts are summarized in Table 8.1 Summary of Information Protection Legislation in Alberta.

**Table 8.1 Summary of Information Protection Legislation in Alberta**

|                          | <b><i>Health Information Act (HIA)</i></b>   | <b><i>Personal Information Protection Act (PIPA)</i></b>                      | <b><i>Freedom of Information and Protection of Privacy Act (FOIP)</i></b>   |
|--------------------------|--|---|---|
| <b>Applicable Sector</b> | All segments of the publicly funded health care system and both public and private pharmacies / pharmacists. Applies to “custodians” and “affiliates” which include provincial health boards, regional health authorities, nursing home operators, licensed pharmacies and the Ministry of Health. | Private sector organizations, individuals and professional regulatory bodies. | Public bodies i.e. Government of Alberta ministries, boards, agencies and commissions, school boards, post-secondary educational institutions, municipalities, police services and commissions, health care bodies, Métis settlements, public libraries, drainage and irrigation districts and housing management bodies. |

|                                       |  |  |   |
|---------------------------------------|--|--|---|
| <b>Types of Information Protected</b> | <p><b>Health Information;</b> this consists of the following three categories:</p> <p><b>(i) <i>Diagnostic, treatment and care information</i></b></p> <ul style="list-style-type: none"> <li>• A person's physical or mental health</li> <li>• Treatment they are or have received</li> <li>• Drugs, health care aids or products they have received</li> <li>• Amount of health care benefits paid or payable for services they have received</li> </ul> <p><b>(ii) <i>Registration information</i></b></p> <ul style="list-style-type: none"> <li>• Demographic information</li> <li>• Location, residency and telecommunications information</li> <li>• Health service eligibility information</li> <li>• Billing information</li> </ul> <p><b>(iii) <i>Health Services Provider Information</i></b></p> <ul style="list-style-type: none"> <li>• Name, address, gender, education, competencies, job classification and employment status of the individual providing the health service</li> </ul> | <p><b>Personal Information (Health and Non-Health)</b></p> <ul style="list-style-type: none"> <li>• Name, home address, home telephone number, email address, ID numbers</li> <li>• Physical description, educational qualifications, blood type</li> <li>• Payment information</li> </ul> | <p><b>Personal Information (Non-Health)</b></p> <ul style="list-style-type: none"> <li>• Name, home or business address / telephone numbers / email address</li> <li>• Race, nationality / ethnic origin, colour, religious / political beliefs / associations</li> <li>• Age, sex, marital status, family status</li> <li>• Identifying number or symbol</li> <li>• Educational, financial, employment or criminal history</li> </ul> <p><b>General Information</b></p> <ul style="list-style-type: none"> <li>• Budget planning</li> <li>• Resource allocation</li> <li>• Survey information</li> </ul> |
|---------------------------------------|--|--|---|

## *Federal*

The *Personal Information Protection and Electronic Documents Act (PIPEDA)* sets out ground rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities. This legislation gives individuals the right to access and request correction of the personal information that organizations may have collected about them. The *PIPEDA* is applicable to personal information collected, used or disclosed by commercial organizations such as the retail sector, publishing companies, the service industry, manufacturers and other provincially regulated organizations. This legislation does not apply to the personal information of employees of these provincially regulated organizations.

Alberta is one of the provinces with laws that are recognized as substantially similar to *PIPEDA*. Therefore, Registered Dietitians and Registered Nutritionists who practice in compliance with provincial information laws will very likely (but not necessarily) meet the standards of federal information legislation (4). The *PIPEDA* may be found at <https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/>

In 2020, in response to the COVID-19 pandemic, the College saw an increase in virtual practice to help meet patient/client needs, while maintaining safe physical distance to minimize spread of the virus. The information in the following sections related to collecting, protecting, using and disclosing information also applies to virtual practices. Please also refer to *Virtual, electronic communications during the Pandemic* on the College website (5)

## **Collection of Information**

Collection of information is an important component of providing services to clients in the practice of many Registered Dietitians and Registered Nutritionists. Any information that is collected must be collected in accordance with the *Standards of Practice* and legislation. Legislation authorizes the collection of information for certain purposes only. The following rules should be applied when collecting information (6 -8):

### **KEY PRACTICE POINT**

**Collect only as much information as is essential to carry out the purpose for the collection.**

- Collect only the information that is essential to carry out the purpose for which the information is being collected
- Collect information maintaining the highest degree of anonymity
- Collect information directly from an individual unless an exception is applicable (refer to information that follows)

When collecting information directly from an individual, reasonable steps must be taken to inform the person of the purpose for which the information is being collected, and the

specific legal authority for collecting the information. Contact information for an appropriate individual who can answer questions about the collection of information should be provided. Organizations often appoint a Privacy Officer to carry out this responsibility.

In all situations, including virtual services, the client should be informed of what information will be collected, from whom and the purposes for which the information will be used. For more information on obtaining client consent, refer to Chapter 9 Consent to Treatment and from the *Standards of Practice*, Standard 8. Consent.

Under the *HLA*, clients under the age of 18 who are capable of making their own decisions related to their health care must be allowed to do so. Generally, they are considered capable when it is clear that they understand the nature and consequences of their decision making. Exceptions to when health information may be collected from someone other than the individual to whom the information pertains to include the following:

- If there are reasonable grounds to believe that direct collection would be detrimental to the client or another individual or may result in the collection of inaccurate information.
- In situations where direct collection is not reasonably practicable (i.e. emergency situations, if a client is unconscious or confused).

Written consent must be obtained from a client prior to collecting information through the use of a recording device, camera or any other device that may not be obvious to the individual (1). Verbal consent may be obtained prior to or at the time that virtual services are provided.

Under *PIPA*, organizations are required to obtain consent to collect personal information as stated below:

### **“Consent required**

- 7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,
- (a) collect that information unless the individual consents to the collection of that information
  - (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,<sup>52</sup>

Generally, consent is obtained at the time that the information is collected. Consent may be “expressed” in writing or verbally, or “implied” when a client volunteers information. In certain circumstances, clients may also provide “opt-out consent” which means that clients can specify those purposes for which their information may be collected and used (2).

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<sup>52</sup> Province of Alberta. *Personal Information Protection Act*, 2003, c. P-6.5.



The *FOIP* requires that personal information be collected directly from the person who the information is about, except in specific circumstances which are outlined in the legislation (3). Section 33 states the following:

**“Purpose of collection of information**

- 33) No personal information may be collected by or for a public body unless
- (a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,
  - (b) that information is collected for the purposes of law enforcement, or
  - (c) that information related directly to and is necessary for an operating program or activity of the public body.”<sup>53</sup>

Overall, health care settings, private sector organizations and public bodies must establish and implement policies and procedures that outline what information is routinely collected, who is allowed to collect it and mechanisms to ensure that they are not contravening rules of their applicable Act(s).

**Protection of Information**

All professionals including Registered Dietitians and Registered Nutritionists are responsible to ensure that reasonable steps are taken to maintain physical, technical and administrative safeguards to protect health information (6 - 8). The intent of these safeguards is as follows:

- To protect the confidentiality of information
- To protect the privacy of individuals
- To protect against anticipated threats or hazards to the security or integrity of health information
- To protect against the loss, unauthorized use, disclosure or modification of health information
- To ensure compliance with the applicable Act(s)

Examples of practices that would facilitate maintaining safeguards are as follows:

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<sup>53</sup> Province of Alberta, *Freedom of Information and Protection of Privacy Act*; R.S.A. 2000, c. F-25.

### *Physical Safeguards*

- Lock filing cabinets and secure areas where health information is stored; restrict access to authorized individuals
- Ensure that devices (for example, computer terminals), white boards, etc. with client information are positioned where they cannot be seen or accessed by unauthorized users
- Avoid taking items such as files, disks, memory sticks, devices (computers, laptops, phones, etc.) that contain information away from the workplace; if these items must be taken to a virtual office setting, all necessary safeguards must be taken to protect client information.
- Ensure that when disposing of physical copies of client information, appropriate methods (i.e. shredding, burning) are used
- Ensure that devices have all client information completely removed prior to being sold or disposed of

#### **KEY PRACTICE POINT**

**Take all reasonable steps to maintain physical, technical, and administrative safeguards to protect information from unauthorized access.**

### *Technical Safeguards*

- Use regulated, secure, encrypted health-specific platforms or technologies for virtual practice when possible (5)
- If an unregulated platform is to be used, encrypted applications are recommended (including encrypted email).
- Transmit and store information in an encrypted format (5)
- Use approved devices when accessing client information; do not use personal devices
- Use passwords to restrict device access; change passwords frequently
- Use a document tracking system that indicates when a document is removed, who has it and when it was returned
- Ensure devices have virus scanners and firewalls in place
- Use screen savers / security screens to prevent those who are unauthorized from viewing devices

### *Administrative Safeguards*

- Ensure staff receive ongoing training on policies related to protection of health information, the importance of the policies and consequences of a contravention to the policies
- Implement security checks
- Have staff take an oath of confidentiality
- Control the types of information that can be transmitted by fax or e-mail
- Minimize the risk of errors by using pre-programmed addresses / phone numbers on faxes and e-mails that are regularly sent to certain places; on a regular basis, confirm that addresses / phone numbers have not changed

For more information on the security and confidentiality of records being transmitted by email and when communicating with clients via email, please refer to Chapter 10 Record Keeping.

### **Use of Information**

According to the *HLA* definition, “use” of health information means “to apply health information for a purpose and includes reproducing the information but does not include disclosing the information.”<sup>54</sup> The *HLA* allows the use of individually identifying health information for a number of authorized purposes. The most common purposes are for

#### **KEY PRACTICE POINT**

**Use only the amount of information necessary to carry out the authorized purposes for which the information was provided and at the highest degree of anonymity.**

providing a health service or determining / verifying a person’s eligibility to receive a health service. Health information may be used in other circumstances (i.e. when conducting investigations, discipline proceedings, practice reviews); while conducting research; in educating health services providers; and in managing internal operations.

Reasonable steps must be taken to ensure that the information is accurate and complete before using it. Specifically, this involves ensuring that the information is correct, up to date, complete, relevant and not misleading.

The *PIPA* and *FOIP* also outline similar rules for use of information. Regardless of practice setting, Registered Dietitians and Registered Nutritionists should use only the amount of

<sup>54</sup> Province of Alberta. *Health Information Act*, R.S.A. 2000, c. H-5.

information necessary to carry out the authorized purposes for which the information was provided and at the highest degree of anonymity.

## Disclosure of Information

Under the *HIA*, “disclosure occurs when a custodian provides health information to another custodian within the controlled arena (public health care system and both public and private pharmacy operations) or to other entities outside the controlled arena.”<sup>55</sup> The *HIA* outlines restrictions for the disclosure of individually identifying information. Custodians are responsible to ensure that they and their affiliates only disclose information when the Act allows them to and in the manner set out in the Act.

### KEY PRACTICE POINT

**Ensure that where appropriate, written consent to disclose information has been received; disclose only as much information as is essential to carry out the purpose for the disclosure.**

In general, custodians may disclose individually identifying information to the person who is the subject of the information or to authorized persons acting on their behalf (i.e. a Guardian under a Guardianship Order, or Agent under a Personal Directive). Clients under 18 years of age who understand their rights as outlined in the *HIA* and the consequences of exercising those rights must be treated as any other competent person. In the case of a client who does not have the mental capacity to consent to disclosure, a custodian may disclose information about that individual without their consent if it is in the best interest of that client. Unless an exception applies, an individual must provide consent prior to disclosure of information to a third party. Consent must be given in writing or electronically and must include the following:

- The information to be disclosed
- The purpose for which the information is to be used
- The person who will be receiving the information
- An acknowledgement of awareness as to why the information is needed and the risks / benefits of giving / refusing the consent
- The date that the consent is effective and expires
- A statement advising the individual of their right to revoke the consent at any time (1, 6)

The following sets out some of the exceptions under *HIA* of when consent to release information is not required (1, 6):

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<sup>55</sup> Office of the Information and Privacy Commissioner. *Health Information: A Personal Matter – A Practical Guide to the Health Information Act*; 2003, p. 31.

***“Have To Disclose”***

In certain situations, custodians must disclose health information in order to comply with legislation or court orders that require disclosure. For example, the *Public Health Act* requires disclosure about individuals who have or may have a notifiable infectious disease.

***“Want To or Have Been Requested To Disclose Without Consent”***

Disclosure without consent may be necessary in certain circumstances either because of a desire to respond to a request of a Third Party or because the health care provider desires to disclose on their own initiative. Examples of disclosures that fall under this category where the *HLA* allows for disclosure without consent include the following:

**Disclosure to Other Custodians:** A custodian may disclose information to another custodian, without consent, for the purpose of providing health services to a client.

**Disclosure to Continuing Care Providers:** Disclosure is allowed to persons who are responsible for the provision of continuing care and treatment to an individual client. This may include other custodians as well as family members or parents.

**Disclosure Due to Family / Close Personal Relationship:** A limited amount of health information may be disclosed to advise family members and / or persons whom the client has a close personal relationship with about the client’s general condition and prognosis, as long as the client has not expressly requested that disclosure not be made.

**Disclosure in Judicial or Quasi-Judicial Proceedings:** Custodians may disclose health information to comply with a court order, subpoena or warrant and may provide information required in court or other quasi-judicial proceedings, but should be cautious to only disclose the information that they are required to disclose.

**Disclosure to Prevent Fraud, Abuse of the System or Offences:** A custodian may disclose information to another custodian if they have a reasonable expectation that the disclosure will detect or prevent fraud, limit abuse of health services or prevent an offence.

**Disclosure to Police:** Disclosure of information may be made to the police for the purpose of investigating an offence that involves a life-threatening personal injury to a client. However, this disclosure may only take place providing it is not against the express wishes of the client. Disclosure of information may also be made to the police for the purpose of avoiding an imminent danger to the health or safety of any person.

**Disclosure to Preserve Health / Safety:** A custodian may disclose information to any person in the event that they have reasonable grounds to

believe that the disclosure would prevent or minimize an imminent danger to the health or safety of any person.

**Disclosure for Research Purposes:** The *HIA* outlines rules governing the disclosure of health information for research purposes, which includes approval by an approved research ethics committee. Even with committee approval, disclosure of information is at the discretion of the custodian. If the custodian does agree to disclose the information, an agreement outlining the conditions of the ethics committee and procedures for protecting the information and identities of the persons involved in the research must be signed.

Generally, disclosure of health information is at the discretion of the custodian. When disclosing information, disclose only that information that is essential to allow the recipient to carry out the purpose for which the information is being disclosed. The *HIA* also requires that custodians make reasonable effort to ensure that disclosure is made to the correct person who is authorized and designated to receive the information.

When a custodian discloses individually identifying health information, the custodian must inform the recipient in writing of the purpose for the disclosure and the authority under which the disclosure is made. (This is not required if the disclosure is to another custodian for the purpose of providing a health service.) Custodians are also required to create a log of disclosures of records containing health information that includes the name of the person to whom the information was disclosed, the date and purpose of the disclosure and a description of the information that was disclosed; the log must be retained for a period of ten years. The obligation to create a log does not apply to disclosures between custodians where an electronic log is already created (1).

The *PIPA* and *FOIP* also outline similar rules for the use and disclosure of personal information. Regardless of practice setting, Registered Dietitians and Registered Nutritionists should disclose only as much information as is essential to carry out the purpose for the disclosure, and ensure that written consent, where appropriate, has been received.

For more information on Consent, please refer to Chapter 9 Consent to Treatment, and from the *Standards of Practice*, Standard 8. Consent.

## Client Access to Their Information

A client has the legal right under the *HIA*, *PIPA* and *FOIP* to request access to any record that contains information about that person that is in the custody or control of a health care setting, private sector organization or public body (1 - 3). The *HIA* requires that access to information be refused in situations where the request is for access to information about a person other than the applicant, where disclosure is prohibited by another law or where the information outlines procedures or contains results of an investigation, discipline hearing, practice review or an inspection related to a service provider. Other circumstances in which access to information may be refused include situations where the disclosure could

reasonably be expected to result in harm to the health and safety of the individual requesting the information, or where the disclosure might compromise a case where information was supplied in confidence. When appropriate, partial access of information may be provided by severing information that should not be disclosed to the applicant (1).

Custodians in health care settings, private sector organizations and public bodies must make every reasonable effort to respond within legislated time frames and assist the applicant with their request (1 - 3). Under the *HLA*, a custodian is required to inform an applicant of whether they will receive access to all or part of the information as well as where, when, and how the access will be given, if applicable. If access to all or part of the record is refused, the applicant must be informed of the reason for the refusal, the provisions of the legislation that support refusal to access, a contact person who can answer questions about the refusal and the applicants right to ask the Information and Privacy Commissioner to review the decision to refuse access (1). The legislation permits health care settings, private sector organizations and public bodies to charge certain fees for providing access to information records (1 - 3).

## Duty to Report

While professionals have an obligation to treat information confidentially, there are certain circumstances where there is a duty to report information to the proper authority. Disclosing information to fulfill a duty to report is usually permitted under one of the exceptions to consent, as outlined earlier in this chapter, most commonly where another law requires or authorizes the disclosure. The duty to report obligations of Registered Dietitians and Registered Nutritionists are reflected in section 1.4 of the *Code of Ethics* of the College which states the following:

### “Duty to Report

- (1) The dietitian reports to the College with respect to any actions they are subject to including: any legal actions and any actions taken by professional regulatory bodies or employers with respect to their practice and also reports the outcome of any action taken to the College.
- (2) The dietitian communicates confidential information to prevent harm if the dietitian becomes aware that an individual poses a serious risk of harm to themselves or others. The disclosure of information should be limited to individuals who reasonably need to know and to the extent necessary in the circumstances.
- (3) The dietitian must be familiar with the laws concerning the reporting of abuse of children and vulnerable adults and must comply with those laws.
- (4) The dietitian discloses adverse events and takes all necessary actions according to established guidelines to minimize harm arising from an adverse event and to prevent recurrence.

- (5) The dietitian takes appropriate precautions and follows established guidelines with respect to communicable or infectious diseases including hepatitis, AIDS, blood-borne infections, influenza.
- (6) If the dietitian believes they may have been in contact with an individual who has a communicable or infectious disease or has contracted a communicable or infectious disease that involves a risk to the health or safety of clients or the public, the dietitian discloses the information to the appropriate individuals (may include the employer, the medical officer of health) and takes all required precautions (may include protective gear, testing, monitoring, isolation).
- (7) If the dietitian believes that institutional, facility or workplace policies, procedures or practices involve a risk to the health or safety of clients or the public, the dietitian discloses the information to the appropriate individuals (may include the employer, the medical officer of health) and takes all required precautions.”<sup>56</sup>

Registered Dietitians and Registered Nutritionists should be aware of legislation that addresses the specific circumstances in which there is a duty to report. These are summarized below.

### *Health Professions Act (HPA)*

In 2007 the *HPA* was amended to include the following:

#### **“Public health threat**

1.1(1) Despite this Act, the bylaws and any enactment that governs practice of a regulated member or health practitioner, college or regulatory organization, if any of the following persons knows of or has reason to suspect the existence of a nuisance or a threat that is or may be injurious or dangerous to the public health, that person must immediately notify the medical officer of health of the appropriate regional health authority by the fastest means possible:

- (a) a regulated member;
- (b) a health practitioner who provides health services described in a Schedule;
- (c) a member of a council of, or an officer, employee or agent of, a college

#### **KEY PRACTICE POINT**

**Registered Dietitians and Registered Nutritionists have a duty to report the following:**

- **The existence of a threat that may be injurious or dangerous to public health**
- **Situations of abuse or neglect as described in the *Protection for Persons in Care Act* and the *Child, Youth and Family Enactment Act***

<sup>56</sup> College of Dietitians of Alberta. *Code of Ethics*; 2007.



- (d) a member of a board or council of, or an officer, employee or agent of, a regulatory organization that governs the practice of a health practitioner who provides health services described in a Schedule.”<sup>57</sup>

Under the *HPA*, any finding of unprofessional conduct made in another jurisdiction must be reported by the regulated member to any other regulator(s). This also includes findings of professional negligence. Additionally, a regulated member must report any conduct believed to be sexual abuse or sexual misconduct to the Complaints Director, even if the conduct occurs by a regulated member of another regulatory college.<sup>58</sup>

Under the *HPA*, employers have a legal obligation to inform the Complaints Director as soon as reasonably possible if the employment of a regulated member is terminated, suspended, or if the regulated member has resigned for reasons related to unprofessional conduct. Additionally, a mandatory report must be submitted to the College as soon as possible where an employer suspects sexual abuse or sexual misconduct.<sup>59</sup>

### ***Protection for Persons in Care Act (PPCA)***

The *PPCA* promotes the safety of adults in care by requiring all Albertans to report incidents where they have reasonable and probable grounds to suspect that there is or has been abuse against a client. The *PPCA* is applicable to all adult clients in publicly funded care facilities which include hospitals, long term care centres and group homes. Section 2(1) of the *PPCA* states the following:

“2(1) Every individual or service provider who has reasonable and probable grounds to believe and believes that there is or has been abuse against a client shall report that abuse to the Minister of Community Development or a police service or a committee, body or person authorized under another enactment to investigate such an abuse.”<sup>60</sup>

According to the *PPCA*, “abuse” is defined as follows:

“(a) “abuse” means:

- (i) intentionally causing bodily harm,
- (ii) intentionally causing emotional harm, including, but not limited to, threatening, intimidating, humiliating, harassing, coercing or restricting from appropriate social contact,
- (iii) intentionally administering or prescribing medication for an inappropriate purpose,

<sup>57</sup> Province of Alberta. *Health Professions Act – Amendments*; 2007.

<sup>58</sup> Province of Alberta. *Health Professions Act*. s. 127.

<sup>59</sup> Province of Alberta. *Health Professions Act*. s. 57

<sup>60</sup> Province of Alberta. *Protection for Persons in Care Act*; R.S.A. 2000, c. P-29.

- (iv) subjecting to non-consensual sexual contact, activity or behaviour,
- (v) intentionally misappropriating or improperly or illegally converting money or other valuable possessions, or
- (vi) intentionally failing to provide adequate nutrition, adequate medical attention or other necessity of life without a valid consent”<sup>61</sup>

### ***Child, Youth & Family Enhancement Act (CYFEA)***

The *CYFEA* protects children and teens under the age of 18 years who are in need of intervention due to physical, emotional, sexual abuse and neglect. Section 4(1) of the *CYFEA* states the following:

“4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.”<sup>61</sup>

The Interpretation Section of the *CYFEA* states the following:

“(2) For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:

- (a) the child has been abandoned or lost;
- (b) the guardian of the child is dead and the child has no other guardian;
- (c) the child is neglected by the guardian;
- (d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;
- (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;
- (f) the child has been emotionally injured by the guardian of the child;
- (g) the guardian of the child is unable or unwilling to protect the child from emotional injury;
- (h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment.”<sup>62</sup>

<sup>61</sup> Province of Alberta, *Child, Youth & Family Enhancement Act*, R.S.A. 2000, c. C-12.

<sup>62</sup> Province of Alberta, *Child, Youth & Family Enhancement Act*, R.S.A. 2000, c. C-12.

If a complaint is made, the report is reviewed to determine if the appropriate legislation provides the legal authority to investigate the complaint. If so, an investigator will be appointed to collect information and prepare a report. The report is then submitted to the appropriate Minister who will make a decision regarding the matter.

Reporting situations of abuse or need of intervention as described in the *HPA*, *PPCA* or *CYFEA* is not considered a breach of confidentiality. In fact, failing to make a report would constitute unprofessional conduct. Under the *PPCA* and *CYFEA*, no legal action can be taken against a complainant unless the report is made with no grounds or is done in a malicious manner. Failure to report situations of abuse or need of intervention could result in a fine, imprisonment or both (9, 10).

## Chapter Summary

Registered Dietitians and Registered Nutritionists have an obligation to maintain confidentiality of all client information. The key pieces of legislation that outline how information must be dealt with are the *Health Information Act (HIA)*, *Personal Information Protection Act (PIPA)*, the *Freedom of Information and Protection of Privacy Act (FOIP)* and the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. While each of these Acts are unique in their focus, they each contain similar underlying directives, all relating to the collection, use, disclosure and protection of information. Registered Dietitians and Registered Nutritionists should apply the following general rules in their practice:

- Collect only as much information as is essential to carry out the purpose for the collection.
- Take all reasonable steps to maintain physical, technical and administrative safeguards to protect information from unauthorized access.
- Use only the amount of information necessary to carry out the authorized purposes for which information was provided and at the highest degree of anonymity.
- Ensure that where appropriate, written consent to disclose information has been received; disclose only as much information as is essential to carry out the purpose for the disclosure.

A client has the legal right to request access to any record that contains information about themselves; such requests may be accommodated, depending on circumstances as outlined in legislation. Registered Dietitians and Registered Nutritionists have a duty to report situations of possible threat to public safety as described in the *Health Professions Act*, and abuse or need of intervention as described in the *HPA*, the *Protection for Persons in Care Act* and the *Child, Youth and Family Enhancement Act*; reporting such situations is not considered a breach of confidentiality.

## Case Scenario 8.1

DD is an elderly widow who lives by herself; she has a son who lives nearby with his family. She has insulin dependent diabetes who has been a regular client at the Diabetes Centre for approximately 6 years. During her most recent follow up visit to the Diabetes Centre, a dietitian completed a nutrition assessment on DD. The dietitian was quite concerned with the results of the assessment. Specifically, DD's blood glucose levels were often high, but sometimes she had extreme lows. She indicated she often skipped meals / snacks and could not always remember if she had taken her insulin. The dietitian suspected that DD was no longer able to manage her diabetes effectively on her own.

### Case Scenario 8.1 Questions

1. Does the dietitian have legal authorization to inform DD's physician at the Diabetes Centre of her concerns?
2. Does the dietitian have the legal authorization to inform DD's son of her concerns?
3. Does the dietitian have the legal authorization to inform DD's son of her concerns in the event that DD requests that her family not be made aware of her health situation?

## Chapter Quiz

1. The \_\_\_\_\_ is legislation that addresses issues related to the collection, use, disclosure and protection of information in Alberta:
  - a) *Health Information Act*
  - b) *Personal Information Protection Act*
  - c) *Freedom of Information and Protection of Privacy Act*
  - d) All of the above
  - e) Answers a and b only
  
2. All of the following statements are true *except* for the following:
  - a) It is not necessary to have client consent to release information as long as the information remains within the province.
  - b) One should only use the amount of information necessary to carry out the authorized purposes for which information is provided.
  - c) Information should be used at the highest degree of anonymity.
  - d) One should collect only as much information as is essential to carry out the purpose for the collection.
  
3. An elderly client in a long-term facility is in tears as she tells you of abusive behaviours directed towards her by a certain staff member. You have reasonable grounds to believe what you have been told. Being aware of this information, you are obligated to:
  - a) report the situation in compliance with the *Health Information Act*.
  - b) report the situation in compliance with the *Protection for Persons in Care Act*.
  - c) approach the staff member to discuss what you have been told.
  - d) All of the above
  - e) Answers a and b only
  
4. All of the following statements are true *except* for the following:
  - a) One should take all reasonable steps to maintain physical, technical, and administrative safeguards to protect information from unauthorized access.
  - b) Decisions related to the collection and disclosure of information for clients under the age of 18 must be made by the parents or guardian of the client.
  - c) The Canadian Medical Association *Health Information Privacy Code* defines “confidentiality” to mean that “health information that is confided by a client is to be kept a secret and not disclosed or made accessible to others unless authorized by client consent”.
  - d) One should disclose only as much information as is essential to carry out the purpose for the disclosure, providing that appropriate written consent to disclose information has been received.

## References

1. Province of Alberta. *Health Information Act*, R.S.A. 2000, c. H-5.
2. Province of Alberta. *Personal Information Protection Act*, 2003, c. P-6.5.
3. Province of Alberta. *Freedom of Information and Protection of Privacy Act*, R.S.A.2000, c. F-25.
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7. Alberta Government Services and Office of the Information and Privacy Commissioner. *A Guide for Businesses and Organizations on the Personal Information Protection Act*, 2007.
8. Government of Alberta. *Freedom of Information and Protection of Practice Act – Guidelines and Practices*, 2005.
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10. Province of Alberta. *Child, Youth & Family Enhancement Act*, R.S.A. 2000, c. C-12.