



## Privacy Officer Bylaw and Interpretive Guidelines

*In this document, unless the context indicates otherwise, “member(s) include(s) licensed pharmacist(s) and pharmacy technician(s).*

### Background

Authorities expect pharmacists, pharmacy technicians and pharmacies to comply with *The Health Information Protection Act* (Saskatchewan) (“HIPA”) and the *Personal Information Protection and Electronic Documents Act* (Canada) (“PIPEDA”), Council has enacted amendments to the Saskatchewan of Pharmacy Professionals (“SCPP”) bylaws requiring each pharmacy to have a trained privacy officer. These amendments came into force on December 21, 2012.

Given the high volume of situations involving privacy of personal health information in pharmacy practice, the intent is to pro-actively minimize the potential for privacy breaches. While the text of the bylaws is attached, the following describes its features and application.

### Major Features

The bylaw requires that:

1. Each pharmacy have a properly trained privacy officer from within the pharmacy;
2. The privacy officer is either the pharmacy manager, or a licensed pharmacist on staff in the pharmacy, as may be designated by the pharmacy manager to act on behalf of the Trustee (explained in greater detail later herein);
3. Every privacy officer designated must undertake College-approved privacy officer training within one year of being so designated;
4. Every privacy officer must undertake re-certification training once every three years. This means that certification and re-certification is continuous while designated as a privacy officer. It also means re-certification must take place no later than three years from the date of the previous certification or re-certification training.
5. The onus is on the pharmacy manager to report to SCPP who the privacy officer is, the privacy training and re-certification training undertaken by the officer, and any changes that occur. In return, SCPP will record this information in the Pharmacy Register so that it becomes available to the public;
6. Non-compliance with these bylaws results in suspension or cancellation of the pharmacy permit until the requirements are met.

USask Continuing Pharmacy Education at the College of Pharmacy and Nutrition assists with certification and re-certification training to meet these requirements.

## Trusteeship

HIPA defines a Trustee as:

*“2(t)...any of the following that have custody or control of personal health information:  
(ix) a proprietor as defined in The Pharmacy and Pharmacy Disciplines Act.....  
(xii) a person, other than an employee of a trustee, who is:  
a health professional licensed or registered pursuant to an Act for which  
the Minister is responsible” ...*

The Minister of Health is responsible for *The Pharmacy and Pharmacy Disciplines Act*, which means that licensed pharmacists and pharmacy technicians can be trustees under HIPA. A “proprietor” is defined as “a person who controls the operation of a proprietary pharmacy”. In this context, “person” also includes a cooperative or a corporation to which a permit to operate a proprietary pharmacy is granted where “...the majority of directors of which are members, and that one of those directors is the manager of the pharmacy.”

Because *The Pharmacy and Pharmacy Disciplines Act* does not authorize SCPP to collect information on who employs licensed pharmacists or pharmacy technicians, we cannot determine who the trustee is according to the definition in HIPA. Therefore, we have taken the position that trusteeship over personal health information becomes the responsibility of the pharmacy manager because that person is a director of the corporate permit holder and in his/her capacity as pharmacy manager is accountable through the permit to SCPP for the professional aspects of the operation of the pharmacy. As this includes protection of the privacy of patients and their information, it is logical that this responsibility includes the role of privacy officer to oversee compliance with legal and ethical obligations respecting privacy and confidentiality.

Therefore, in this context, we interpret this to fundamentally mean the trustee accountable under HIPA is the pharmacy manager unless the corporation that holds the permit for the pharmacy is the same corporation that employs the pharmacy manager. **Where the pharmacy permit holder and employer are:**

1. The same corporation, then the pharmacy manager becomes the privacy officer, or s/he can designate some other person employed by that corporation, preferably another licensed pharmacist, to act as the privacy officer on behalf of the employer corporation who is the trustee; **OR**,
2. **NOT** the same corporation, then the pharmacy manager becomes the privacy officer, or s/he can designate any other person from within the pharmacy, preferably another licensed pharmacist, to act as the privacy officer on his/her behalf;

This interpretation is consistent with Ministry of Health policy dictating accountability for access to the Pharmaceutical Information Program (PIP).

However, although the above sets out SCPP’s position to determine the privacy officer, it is important to note that the privacy officer might not be ‘the’ trustee at law. In particular, simply because an individual or an organization qualifies as ‘a’ trustee, does not mean they would qualify as ‘the’ trustee of personal health information in every circumstance. In order to be *the* trustee, a person or organization must also have custody or control of the specific personal health information in question. “Custody” is the physical possession of a record, while “control” relates to authority. For example, a record is under the control of a trustee when the trustee has

the authority to manage, restrict, regulate, or administer the record's use, disclosure, or disposition. A trustee only needs either custody or control, not both, to be considered the person accountable under HIPA. In situations where a pharmacist is employed by a private entity, the private entity is often responsible for the control of personal health information and so the pharmacist often is *not* the trustee for purposes of HIPA. In such cases, pharmacists are still required to comply with HIPA on a best practices' basis.

For more information on who qualifies as the trustee in a given circumstance see the Office of the Saskatchewan Information and Privacy Commissioner's Blog Post "*A*" Trustee vs. "*The*" Trustee (<https://oipc.sk.ca/a-trustee-vs-the-trustee/>).

## Resources

Supportive resources including template policies and procedures for the pharmacy and privacy officer position description can be found in the Privacy Section of the Reference Manual on the [SCPP website](#).

## Section 8 of Part I of the SCPP Regulatory Bylaws

### **Privacy Officer**

*8(1) Every pharmacy must have a designated privacy officer.*

*(2) The pharmacy manager for each pharmacy, or any other licensed pharmacist employed at that pharmacy as may be appointed by the pharmacy manager, shall be designated as the privacy officer for that pharmacy.*

*(3) The pharmacy manager for each pharmacy must report to the College:*

*(a) the name of the designated privacy officer for that pharmacy;*

*(b) any changes to the privacy officer for that pharmacy; and*

*(c) the initial privacy training and re-certification training undertaken by the designated privacy officer for that pharmacy.*

*(4) Every privacy officer shall undertake privacy training approved by the College before the expiration of the subsisting permit, or until such other time as may be approved by the Registrar, but no longer than within one year of his designation.*

*(5) Every privacy officer shall participate in re-certification training once every three years.*

*(6) If the requirements set out in subsections 8(1), (2), (3), (4) and (5) of Part I are not met, the pharmacy permit for the applicable pharmacy may be suspended or cancelled by the Registrar. The pharmacy permit may be reinstated upon the provision of satisfactory evidence that the requirements set out in subsections 8(1), (2), (3), (4) and (5) of Part I have been met.*

*(7) The College shall record in the register for each pharmacy:*

*(a) the designated privacy officer, as identified by the pharmacy manager in accordance with subsection 8(3) of Part I; and*

*(b) the initial privacy training and re-certification training undertaken by the designated privacy officer.*

Questions?  
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