



Royal College of
Dental Surgeons of Ontario

Ensuring Continued Trust

COMPLIANCE WITH ONTARIO'S **PERSONAL HEALTH INFORMATION PROTECTION ACT**

Ontario's Personal Health Information Protection Act, 2004,¹ (PHIPA) came into force on November 1, 2004. PHIPA governs the collection, use and disclosure of personal health information by dentists and other health information custodians practising within Ontario. At its core, PHIPA balances the requirement that personal health information be maintained in a private and secure fashion with the need to make such information readily available for the delivery of effective health care.²

In Appendix A there is a checklist issued by the Ministry of Health and Long-Term Care that may be helpful to you in meeting the initial requirements to be in compliance. The information in this publication is an important support tool; however, it is not a substitute for either proper legal advice or a review of the legislation itself.

Staff in the College's Practice Advisory Service are always available to answer any general inquiries but, for specific questions, it is wise to seek legal advice or other assistance to address these particular issues relating to the collection, use and disclosure of personal health information.

Practice Advisory Service
416-934-5614
1-800-565-4591
practiceadvisory@rcdso.org

¹ S.O. 2004, C.3, Sch. A
² PHIPA, s. 1, "Purposes".



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1

PERSONAL HEALTH INFORMATION, HEALTH INFORMATION CUSTODIANS AND THEIR AGENTS

PHIPA establishes rules for the collection, use and disclosure of “personal health information” by “health information custodians.”

“Personal health information” includes any oral or written identifying information (i.e. information that identifies or can be used to identify an individual) that meets any of the following and other criteria:³

- It concerns the individual’s physical or mental health, including family health history.
- It relates to the provision of health care to the individual.
- It relates to payments or eligibility for health care for the individual.
- It identifies the individual’s health number.

Dentists and other health care practitioners are considered to be health information custodians under PHIPA.⁴ PHIPA anticipates that health information custodians may employ agents to act for or on their behalf with respect to the collection, use and disclosure of personal health information.⁵ Agents typically include office staff such as receptionists, office managers, dental

assistants and may also include accountants, lawyers and record management services. Agents have the same obligations with respect to personal health information as the custodians for whom they work.⁶ Therefore, it is important that custodians identify their agents and inform them of their responsibilities under PHIPA.

³ PHIPA, s.4.

⁴ PHIPA, s. 3.

⁵ See “Definitions”, PHIPA, s.2.

⁶ PHIPA, s. 17.



2

CONTACT PERSON AND WRITTEN STATEMENT ABOUT YOUR INFORMATION PRACTICES

PHIPA requires that custodians be open and accountable with respect to their information practices which includes: “when, how and the purposes for which [personal health information] is routinely collected, used, modified, disclosed, retained or disposed of and... the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information.”⁷ To that end, custodians must designate a contact person to:⁸

- help the custodian comply with PHIPA;
- ensure that all agents are appropriately informed of their duties under PHIPA;
- respond to inquiries about the custodian's information practices;
- respond to requests for access to or correction of a record of personal health information; and
- receive complaints about alleged PHIPA contraventions.

While an employee or other agent can act as a contact person, the College strongly recommends that a dentist fulfills this role within a dental practice.

In addition to the obligation to appoint a contact person, custodians must make available to the public a written statement that describes the following:⁹

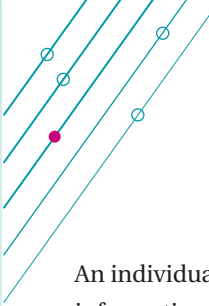
- the custodian's information practices;
- how to reach the contact person;
- how an individual may obtain access to or request correction of a record of personal health information;
- how to make a complaint to the custodian and the Information and Privacy Commissioner of Ontario.

The Act does not specify how the written statement should be made public. For dentists, one option would be to make the statement available as a patient brochure or post the statement in a public and visible area in your office. The College also recommends a periodic review and update of this written public statement. There is a sample *Written Statement of Information Practices* in Appendix B that may be helpful. This sample statement may also serve as a *Notice of Purposes* that is described in the following section.

⁷ See “Definitions”, PHIPA, s.2.

⁸ PHIPA, s. 15(3).

⁹ PHIPA, s. 16(1).



An individual may also limit the amount of personal information to be used, collected or disclosed. The ability to control the use and disclosure of one's personal health information is often referred to as a "lock box," but such a term is frequently misinterpreted to suggest an absolute level of control that exceeds that contemplated under PHIPA.¹⁹

In addition, if a custodian is expressly prohibited from disclosing to another custodian all the personal health information that s/he deems necessary for the provision of health care, the disclosing custodian has an obligation to notify the receiving custodian of this fact.²⁰ This can be done by using wording like: "While the patient has directed me to release the attached documentation to your attention, I have been prevented from disclosing some additional information in my possession which I believe to be reasonably necessary for the provision of health care to the patient."

As this section makes clear, there are many situations where dentists might reasonably rely on a patient's implied consent to collect, use or disclose personal health information. However, the College advises that

in non-emergency situations, such as where a patient's health or life is not imminently at risk, and so long as it is practical to do so, it would be prudent for members to obtain their patients' express consent prior to dealing with their personal health information.

While written consent is not a requirement under PHIPA, the College advises members that written consent is frequently more reliable and resistant to scrutiny than verbal consent. That is why it should be obtained where possible. At a minimum, where a member relies on a patient's verbal consent, s/he should clearly document this fact in his/her records.

A sample of a *Patient Consent Form: Collection, Use and Disclosure of Personal Health Information* can be found in Appendix C.

¹⁹ Halyna Perun, Michael Orr & Fannie, Dimitriadis, *Guide to the Ontario Personal Health Information Protection Act* (Toronto: Irwin Law Inc., 2005) at 284.

²⁰ PHIPA, s. 20(3).

4

ACCESS TO AND CORRECTION OF PERSONAL HEALTH INFORMATION ACCESS RIGHTS

Individuals have a right of access to records of their own personal health information in the custody or control of a custodian.²¹ Records include “a record of information in any form or in any medium, whether in written, printed, photographic or electronic form... .”²² This right of access extends to digital records, dental radiographs, impressions, etc.

PHIPA lists several exceptions to the right of access to one’s personal health information, such as a risk of serious harm to an individual and solicitor-client confidentiality.²³ When confronted with such an exception, a custodian must grant the individual access to that part of the record of personal health information that can be reasonably severed from the part of the record to which the individual does not have a right of access.²⁴

The following are some of the steps involved in processing an access request:

- A custodian must initially take reasonable steps to satisfy him/herself as to the identity of the individual making the request.²⁵
- While a written request is necessary to invoke an individual’s access rights under PHIPA, there is nothing to prevent a custodian from simply granting a patient access to his/her records following a verbal request.²⁶
- A custodian must respond to a written access request within 30 days, but this time may be extended by an additional 30 days if, for example, it is not reasonably practical to reply within that time and the custodian notifies the individual of the delay and

the reasons related thereto within the initial 30 day period.²⁷

- A custodian must do one of the following in response to the receipt of a written request:
 - › “Make the record available to the individual for examination and, at the request of the individual, provide a copy of the record and, if reasonably practical, provide an explanation of any term, code or abbreviation used in the record.”²⁸
 - › Provide written notice that after a reasonable search, the custodian has concluded that the record does not exist or cannot be found.²⁹

OR

- › Provide written notice that the custodian is refusing the request, in whole or in part, and include a reason for the refusal and state that the individual is entitled to make a complaint about the refusal to the Information and Privacy Commissioner.³⁰

If an individual wishes to complain about a refusal to access a record of personal health information with the Information and Privacy Commissioner, s/he must file a written complaint with the Commissioner within six months from the time that the custodian refuses or is deemed to have refused the individual’s request.³¹

²¹ PHIPA, s. 52(1).

²² See “definitions”, PHIPA, s. 2.

²³ PHIPA, s. 51-52.

²⁴ PHIPA, s. 52(2).

²⁵ PHIPA, s. 54(9).

²⁶ PHIPA, s. 52(6) and s. 53(1).

²⁷ PHIPA, s. 54(2),(3) and (4).

²⁸ PHIPA, s. 54(1)(a).

²⁹ PHIPA, s. 54(1)(b).

³⁰ PHIPA, s. 54(1)(c) and (d).

³¹ PHIPA, s. 56(3).



Correction Rights

With some exceptions, individuals may request that a custodian correct a record of their personal information if they believe that the record is inaccurate or incomplete. Similar to the right of access discussed above, while a written request is necessary to initiate the correction rights under PHIPA, there is nothing to prevent a custodian from simply correcting a patient's record of personal health information following a verbal request for the same.³²

The time periods for a correction request are identical to those involved with an access request as outlined in the preceding paragraphs.³³

The procedures that are unique to a correction request include:

- The individual has an obligation to demonstrate, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and s/he must provide the information necessary to enable the custodian to correct the record.³⁴
- The custodian must notify the individual in writing within the prescribed time periods that the request has been either granted or refused.³⁵

Correcting a Record of Personal Health Information

A custodian who is satisfied that a record is incomplete or inaccurate must make the requested correction by:

- “Recording the correct information in the record and (a) striking out the incorrect information in a manner that does not obliterate the record or (b) if that is not possible, labelling the information

as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information.”³⁶

OR

- “If it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information.”³⁷

AND

- The custodian must give the individual notice of those steps that were taken to correct the information.³⁸

AND

- At the request of the individual, the custodian must “give written notice of the requested correction, to the extent reasonably possible to the persons to whom the custodian has disclosed the information, except if the correction cannot reasonably be expected to have an effect on the ongoing provision of health care to the individual.”³⁹

Refusal to Correct a Record of Personal Health Information

A custodian does not have a duty to correct a record of personal health information if:

- The record was not originally created by the custodian and “the custodian does not have sufficient knowledge, expertise and authority to correct the record.”⁴⁰

³² PHIPA, s. 55(1).

³³ PHIPA, s. 55(3) and (4).

³⁴ PHIPA, s. 55(8).

³⁵ PHIPA, s. 55(3).

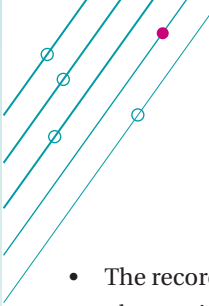
³⁶ PHIPA, s. 55(10)(a)(i).

³⁷ PHIPA, s. 55(10)(a)(ii).

³⁸ PHIPA, s. 55(10)(b).

³⁹ PHIPA, s. 55(10)(c).

⁴⁰ PHIPA, s. 59(9)(a).

- 
- The record consists of a professional opinion or observation that a custodian has made in good faith about the individual.⁴¹

OR

- The custodian believes on reasonable grounds that the request is frivolous, vexatious or made in bad faith.⁴²

A custodian who refuses to correct a record of personal health information must give the reasons for the refusal and inform the individual that s/he is entitled to:⁴³

- “Prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make.”

- “Require that the custodian attach the statement of disagreement to the patient’s record of personal health information and disclose the statement whenever the custodian discloses information to which the statement relates.”

- “Require that the health information custodian make all reasonable efforts to disclose the statement of disagreement to any person who would have received notice of the correction had the request been granted.”

- “Make a complaint about the refusal to the Information and Privacy Commissioner.”

⁴¹ *PHIPA*, s. 59(9)(b).

⁴² *PHIPA*, s. 55(6).

⁴³ *PHIPA*, s. 55(10).

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SECURING AND SAFEGUARDING PERSONAL HEALTH INFORMATION RECORDS

Custodians must take steps that are “reasonable in the circumstances” to protect personal health information under their custody or control against theft, loss and unauthorized use, disclosure, copying, modification or disposal.⁴⁴ Custodians must also ensure that the records of personal health information under their custody or control are retained, transferred and disposed of in a “secure manner” and in accordance with the prescribed requirements under the Act, if any.⁴⁵

“Reasonable in the circumstances” and “secure manner” are not defined further in the Act. However, it is generally understood that custodians should adopt the following forms of safeguards.

Physical safeguards

These include “... the physical measures, policies and procedures that a [custodian] follows to protect personal health information in the custodian’s custody or control, in addition to related premises and equipment, from natural and environmental hazards and unauthorized access.”⁴⁶

The following are examples of physical safeguards:⁴⁷

- Controlling and limiting access to areas where personal health information records are stored by locking doors and/or the use of access cards.
- Using lockable filing cabinets.
- Protecting areas where records are stored from fire, flooding and other natural hazards.

Administrative safeguards

These include “... administrative actions, policies and procedures that a [custodian] takes and follows to protect personal health information in the custodian’s

custody or control and to manage the custodian’s agents in relation to the protection of that information.”⁴⁸

The following are examples of administrative safeguards:⁴⁹

- Creating policies and procedures to address patients’ requests for access and correction to records of personal health information.
- Reviewing information practices with newly-retained staff.
- Establishing procedures to address privacy breaches.
- Using confidentiality agreements with independent contractors and suppliers such as bookkeepers, landlords and cleaning staff. There is a sample *Confidentiality Agreement with Independent Contractors and Suppliers* in Appendix D.

Technical safeguards

These include “... the technology and the policies and procedures for its use that a [custodian] implements and follows to protect electronic records of personal health information and control access to them.”⁵⁰

The following are examples of technical safeguards:⁵¹

- Encrypting of electronic or digital records.
- Requiring unique user identification to access electronic records.
- Using and periodically changing passwords to protect documents and records.
- Installing virus protection software on office computers.

⁴⁴ PHIPA, s. 12(1).

⁴⁵ PHIPA, s. 13(1).

⁴⁶ *Supra*, note 19 at 166.

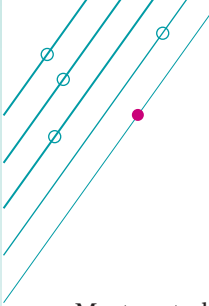
⁴⁷ *Ibid* at 166-167.

⁴⁸ *Ibid* at 166.

⁴⁹ *Ibid* at 167.

⁵⁰ *Ibid* at 166.

⁵¹ *Ibid* at 168-169.



Most custodians will keep records of personal health information at a place that is under their care and control, such as your office or home office. However, PHIPA permits custodians to store records in places that are not under their care or control, if the record is kept in a reasonable manner, the individual consents, and the custodian can access the records within a reasonable time.⁵²

MORE INFORMATION/QUESTIONS

Further information, questions and answers about the legislation, updates and Web links to the legislation, and the Office of the Information and Privacy Commissioner, Ontario are available on the College website at www.rcdso.org.

If you have any questions or concerns about the information contained in this manual, please do not hesitate to contact:

Practice Advisory Service
416-934-5614
1-800-565-4591
practiceadvisory@rcdso.org

⁵² PHIPA, s. 14(2).

The Personal Health Information Protection Act came into force on November 1, 2004. At that time, the Ministry of Health and Long-Term Care issued a helpful checklist to help you to meet the initial requirements to be in compliance. We have attached an ammended version of this checklist below.

HEALTH INFORMATION CUSTODIANS ARE REQUIRED TO:

- Put in place information practices, as defined in subsection 2(1), that comply with the Act and its regulations [s. 10(1)].
- Prepare and make available a written public statement about the custodian's information practices [s. 16 (1)].
- Designate a contact person to facilitate compliance with the Act [s. 15].
- Ensure that employees and all other agents are appropriately informed of their duties under the Act [s. 15(3)].
- Take reasonable steps to ensure personal health information in the custodian's custody or control is protected against theft, loss, unauthorized use, disclosure, copying, modification, and disposal [s. 12(1)].
- Ensure that personal health information records in the custodian's custody or control are retained, transferred, and disposed of in a secure manner and in accordance with the regulations, if any [s. 13(1)].

WRITTEN STATEMENT OF INFORMATION PRACTICES AND NOTICE OF PURPOSES

Our office understands the importance of protecting your personal health information. To help you understand how we are doing that, we have outlined below how our office is collecting, using and disclosing your personal health information.

This office will collect, use and disclose information about you for the following purposes:

- To assess your health needs and provide safe and efficient dental care.
- To enable us to contact and maintain communication with you to distribute health care information and to book and confirm appointments.
- To communicate with other treating health care providers, including other dentists, physicians, pharmacists and lab technicians.
- For teaching and demonstrating purposes on an anonymous basis.
- To complete and submit dental claims for third party adjudication and payment.
- To comply with legal and regulatory requirements.
- To deliver your charts and records to the dentist's insurance carrier to enable the insurance company to assess liability and quantify damages, as necessary.
- To invoice for goods and services.
- To process credit card payments.
- To collect unpaid accounts.

Please note that any questions or concerns that you might have about your personal health information can be directed to our contact person _____ .
[Insert Name]

Dr. _____ can be reached at the following:
[Insert Name]

Telephone #

E-mail

Mailing Address

Any requests for access or correction to your personal health information should be directed,

in writing, to Dr. _____ .
[Insert Name]

If you are dissatisfied with the manner in which we have addressed your requests for access or correction to your personal health information or if you have general concerns about our privacy practices, you may contact the Office of the Privacy Commissioner of Ontario by:

SURFACE MAIL
Information and Privacy Commissioner/Ontario
2 Bloor Street East
Suite 1400
Toronto, Ontario M4W 1A8

E-mail: info@ipc.on.ca
Phone: Toronto Area (416/local 905): 416-326-3333
Long Distance: 1-800-387-0073 (within Ontario)
TDD/TTY: 416-325-7539
Fax: 416-325-9195

Thank you for your support and understanding in helping our office comply with all regulatory requirements and generally with the law.

PATIENT CONSENT FORM: COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

Instructions

This Patient Consent Form may facilitate your compliance with portions of the Personal Health Information Protection Act. You will need to adapt the form to suit the specific operations of your own office. Here is how we suggest that you use it.

For your new patients, attach the Patient Consent Form to the medical history questionnaire that you use in your office. Have your patients sign this consent form to indicate that they understand how their personal information will be collected, used and disclosed in your office. Then keep it with their charts and records.

For your existing patients, have your patients sign this Consent Form to indicate that they understand how their personal information will be collected, used and disclosed in your office. Then keep it with their charts and records.

PATIENT CONSENT FORM: COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

Privacy of your personal health information is an important part of our office providing you with quality dental care. We understand the importance of protecting your personal health information. We are committed to collecting, using and disclosing your personal health information responsibly. We also try to be as open and transparent as possible about the way we handle your personal health information. It is important to us to provide this service to our patients.

In this office, Dr. _____ is the contact
[Insert Name]

person for personal health information related matters.

All staff members who come in contact with your personal health information are aware of the sensitive nature of the information that you have disclosed to us. They are all trained in the appropriate uses and protection of your information.

Attached to this consent form, we have outlined what our office is doing to ensure that:

- only necessary information is collected about you;
- we only share your information with your consent;
- storage, retention and destruction of your personal health information complies with existing legislation, and privacy protection protocols;
- our privacy protocols comply with privacy legislation, standards of our regulatory body, the Royal College of Dental Surgeons of Ontario, and the law.

Do not hesitate to discuss our policies with me or any member of our office staff.

How Our Office Collects, Uses and Discloses Patients' Personal Health Information

Our office understands the importance of protecting your personal health information. To help you understand how we are doing that, we have outlined here how our office is using and disclosing your information.

This office will collect, use and disclose personal health information about you for the following purposes:

- to deliver safe and efficient patient care
- to identify and to ensure continuous high quality service
- to assess your health needs
- to provide health care
- to advise you of treatment options
- to enable us to contact you
- to establish and maintain communication with you
- to offer and provide treatment, care and services in relationship to the oral and maxillofacial complex and dental care generally
- to communicate with other treating health care providers, including specialists and general dentists who are the referring dentists and/or peripheral dentists
- to allow us to maintain communication and contact with you to distribute health care information and to book and confirm appointments
- to allow us to efficiently follow-up for treatment, care and billing
- for teaching and demonstrating purposes on an anonymous basis
- to complete and submit dental claims for third party adjudication and payment
- to comply with legal and regulatory requirements, including the delivery of patients' charts and records to the Royal College of Dental Surgeons of Ontario in a timely fashion, when required, according to the provisions of the Regulated Health Professions Act
- to comply with agreements/undertakings entered into voluntarily by the member with the Royal College of Dental Surgeons of Ontario, including the delivery and/or review of patients' charts and records to the College in a timely fashion for regulatory and monitoring purposes
- to permit potential purchasers, practice brokers or advisors to evaluate the dental practice
- to allow potential purchasers, practice brokers or advisors to conduct an audit in preparation for a practice sale
- to deliver your charts and records to the dentist's insurance carrier to enable the insurance company to assess liability and quantify damages, if any
- to prepare materials for the Health Professions Appeal and Review Board (HPARB)
- to invoice for goods and services
- to process credit card payments
- to collect unpaid accounts
- to assist this office to comply with all regulatory requirements
- to comply generally with the law

By signing the consent section of this Patient Consent Form, you have agreed that you have given your informed consent to the collection, use and/or disclosure of your personal health information for the purposes that are listed. If a new purpose arises for the use and/or disclosure of your personal health information, we will seek your approval in advance.

Your personal health information may be accessed by regulatory authorities under the terms of the Regulated Health Professions Act (RHPA) for the purposes of the Royal College of Dental Surgeons of Ontario fulfilling its mandate under the RHPA.

You may withdraw your consent for use or disclosure of your personal health information at any time.

Patient Consent

I have reviewed the above information that explains how your office will use my personal health information, and the steps your office is taking to protect my information.

I agree that _____ can collect, use and disclose
[Insert Name Of Dentist/Health Profession Corporation]

personal health information about _____ as
[Patient Name]

set out above in the information about the office's privacy policies.

Signature

Date

Print name

Signature of witness

CONFIDENTIALITY AGREEMENT WITH INDEPENDENT CONTRACTORS AND SUPPLIERS

Instructions

This confidentiality agreement can be used as a stand-alone agreement or as a clause added to your current contract with contractors/consultants/suppliers who may have access to personal health information or otherwise confidential information. This includes, but is not limited to, cleaners and information technology services, legal, bookkeeping and accounting, file storage, credit card companies, website manager, office security, building maintenance, hazardous waste disposal, landlord, and temporary workers.

DISCLAIMER

THIS SUGGESTED CONTRACT IS NOT INTENDED AS LEGAL ADVICE. IT PROVIDES SOME PRACTICAL SUGGESTIONS THAT YOU MAY CHOOSE TO USE. THIS TEMPLATE FORM WILL REQUIRE CUSTOMIZATION TO FIT YOUR UNIQUE SITUATION. FOR LEGAL ADVICE, PLEASE SPEAK TO YOUR OWN LAWYER.

CONFIDENTIALITY AGREEMENT WITH INDEPENDENT CONTRACTORS AND SUPPLIERS

CONFIDENTIALITY AGREEMENT BETWEEN

Dr. _____
[Insert Name Of Dentist Or Health Profession Corporation]

AND

[Insert Name Of Contractor/Consultant/Supplier]

_____ provides services
[Insert Name Of Contractor/Consultant/Supplier]

Describe nature of services provided:

to the dental office of Dr. _____
[Insert Name Of Dentist Or Health Profession Corporation]

_____ undertakes and agrees that in the
[Insert Name Of Contractor/Consultant/Supplier]
course of providing the above services, I will not access personal health information and/or other confidential information held in the office of Dr. _____,
[Insert Name Of Dentist Or Health Profession Corporation]
except as required in the course of specified duties and as specifically enunciated by contract or agreement with Dr. _____
[Insert Name Of Dentist Or Health Profession Corporation]

If accessing personal health information and/or otherwise confidential information held in the office of

Dr. _____ is required in the course of my
[Insert Name Of Dentist Or Health Profession Corporation]

duties, _____ undertakes and agrees not to
[Insert Name Of Contractor/Consultant/Supplier]

collect, use or disclose said information for any other purpose without consent.

In performing said services, _____
[Insert Name Of Contractor/Consultant/Supplier]
undertakes to make best efforts to safeguard the personal and/or confidential information held in all
mediums in the office of Dr. _____
[Insert Name Of Dentist Or Health Profession Corporation]

This agreement applies to the undersigned and to all of his/her agents and employees who may have access to
the office of Dr. _____ either regularly
[Insert Name Of Dentist Or Health Profession Corporation]
or from time to time.

The undersigned agrees to communicate the confidentiality/privacy obligations undertaken and agrees to
herein to all of the agent/employees of _____
[Insert Name Of Contractor/Consultant/Supplier]
who may have access to the office of Dr. _____
[Insert Name Of Dentist Or Health Profession Corporation]
either regularly or from time to time, and to make best efforts in ensuring their compliance with this
confidentiality agreement.

I have authority to bind the corporation/organization.

Signature

Date

Print name

Signature of witness