

ADVISORY NO. CPR – 1

Date: December 9, 2015

Subject: **CUSTODIANSHIP OF PATIENT RECORDS**

The Guidelines to the ACO (Alberta College of Optometrists) Standards of Practice, the *Health Information Act* (HIA) and the *Health Information Regulation* (HIR) stipulate that optometrists must collect, protect, maintain, use, correct, amend and disclose health information in an appropriate, lawful and confidential manner. As such, the ACO mandates that:

- All optometrists have appropriate written agreements to deal with these requirements, and,
- All custodians and affiliates engage in regular education sessions to ensure they understand their responsibilities.

Health information is defined in the HIA as:

- Registration information, and,
- Diagnostic, treatment and care information.

According to the HIA, the HIR and the Guidelines to the ACO Standards of Practice:

- Optometrists may be custodians or affiliates. They are considered a custodian when they have assumed the responsibilities of custodianship. They are considered an affiliate when they are employed by, or providing a service to a custodian.
- Employees of optometrists are only considered affiliates.
- Student externs and interns are only considered affiliates.
- As Optometric Professional Corporations and Optometric Limited Liability Partnerships are not Regulated Members of the ACO, they cannot be considered custodians; however, they may be considered an affiliate if they provide specific services such as records management or appointment booking. If so, the optometrist must enter into an Information Management Agreement with the PC / LLP as the optometrist remains the custodian. These optometric PC / LLP's cannot become successor custodians.
- Select organizations that are listed in the HIA such as Alberta Health, Alberta Health Services, Covenant Health and the Health Quality Council of Alberta are exceptions to this rule as they can be considered custodians.
- Only optometrists and ophthalmologists licensed and practicing in Alberta may become successor custodians of optometric patient records.
- Opticians may not become successor custodians of optometric patient records.

Patient records are to be kept for a minimum of ten (10) years after the patient's last eye examination or two (2) years after the death of a patient.

In order to assist our members, the ACO offers the following checklist of components for the various custodian agreements required. These checklists do not constitute legal advice or set any precedent. The ACO recommends that all members get appropriate legal advice from a lawyer who is well versed in HIA requirements.

A. Information Manager Agreement

An Information Manager is defined in the ACO GL-1.2.21. This agreement is required if an optometric practice utilizes an outside entity for the provision of information management or information technology services such as their electronic health record (EHR) or the provision of paper or electronic record storage. A simple service agreement would suffice in the case of a billing service.

This agreement must meet the requirements of the HIA and the HIR, including to:

- Stipulate that the custodian optometrist retains ultimate responsibility for the records.
- Ensure that adequate safeguards are in place to protect the confidentiality of information.
- Protect against reasonably anticipated threats or hazards to the security, integrity, loss or unauthorized use, disclosure, modification or unauthorized access to health information.

A complete checklist for the required and recommended components of an Information Manager Agreement can be found in the HIA, the HIR and at

<http://www.health.alberta.ca/documents/HIA-Appx3-4-Responsibilities-Components.pdf>.

B. Successor Custodian Agreement

Custodian optometrists who retire, leave or close their practice must locate another optometrist or ophthalmologist (who are licensed to practice in Alberta) to become the successor custodian of their patient records.

This agreement must ensure that:

- The successor custodian understands their responsibilities and requirements for the safe and secure storage of the patient records transferred to them, as well as having processes in place for reasonable access to the records and the secure destruction of the records after the required retention period.
- Reasonable notification is given to patients with whom there is an expectation of ongoing care by that optometrist. This does not apply to those optometrists whose reasons for leaving a practice is due to circumstances beyond their control.
- The optometrist notifies the ACO office in advance of their retirement, closing or leaving a practice with information on the location, transfer and disposition of their patient records as well as the forwarding contact information for the OD.
- If the patient records are transferred to a medical file storage facility, the optometrist is still considered the custodian and is responsible for the safe and secure storage of the records as well as the secure destruction of the records at the end of their required retention period.

C. Optometrists Working in Optometric Offices and/or Clinics

As optometrists may be considered custodians or affiliates, several options are available:

1. The office has one (or more) optometrist(s) who will act as the custodian and all other optometrists working at the clinic have an agreement with that custodian which makes them affiliates.
 - The custodian optometrist(s) assumes all responsibility for all patient records created in the office in order to satisfy the requirements of the HIA, the HIR and the Guidelines to the ACO Standards of Practice.
 - Patient records are shared by all optometrists working at the clinic.
 - All optometrists working at the clinic are allowed appropriate access to patient records in order to provide appropriate care to patients.
 - If an affiliate optometrist leaves the practice, custodianship of the patient record for those patients they examined remains with the custodian optometrist unless other arrangements have been made.
 - If multiple optometrists are designated as custodians in the practice; should one or more of the custodian optometrists retire or leave the practice, the practice has to decide whether custodianship of patient records are transferred to the remaining custodian optometrist(s) in the practice or whether custodianship stays with the custodian optometrist who has retired or left the practice.
2. All optometrists working at the clinic are considered custodians.
 - All optometrists working in the practice assume custodianship responsibility for patient records.
 - An agreement is in place to deal with the event of one or more optometrists retiring or leaving the practice. This agreement must detail what happens to custodianship of the patient records. The two options include: custodianship is transferred to the remaining optometrists still practicing at the clinic (successor custodian); or, custodianship remains with the custodian optometrist who is retiring or leaving the practice.

D. Optometrists Working in Ophthalmological Offices and/or Clinics

As noted in the previous section, optometrists may be considered custodians or affiliates. As such, the rules surrounding optometrists working in an ophthalmological office are exactly the same as working in an optometric office (Section C above).

According to the College of Physicians and Surgeons of Alberta, optometrists are allowed to assume custodianship of ophthalmological patient records. As such, the following options are available (with the same rules as noted above):

1. The office designates one (or more) optometrist or ophthalmologist to be the custodian and all other optometrists and ophthalmologists working at the clinic are considered affiliates.
2. All optometrists and ophthalmologists working at the clinic are considered custodians.

E. Optometrists Working in Optical Retail Settings

As opticians, other lay individuals, companies and organizations cannot be custodians of optometric patient records, the optometrist working in an optical retail setting must retain full responsibility for all patient records they create in that setting. As such, optometrists working in an optical retail setting have two choices:

1. The optometrist is the custodian of their patient files and has their own separate patient record system. The retail optical also has their own separate record system.
2. The optometrist is the custodian of their patient files; however, they place patient information into an electronic or paper record that is under the custody and control of the retail optical. The optometrist must guarantee that:
 - A written Information Management agreement is in place that manages issues related to access, security, maintenance, secondary use and disclosure of patient information in addition to addressing all of the requirements of ACO GL-1.2.2j.
 - Appropriate disclosure of this agreement is prominently posted in the Optometrists Office Privacy Policy.
 - All parties sign a written agreement that stipulates that the optometrist retains full and ultimate responsibility for custodianship of the records.

F. Optometrists Retiring, Closing or Leaving a Practice

Optometrists who retire, close or leave a practice:

- Must notify the Alberta College of Optometrists (ACO) in advance of their final day in practice.
- Must provide, and document, notification of the event to individual patients with whom there is an expectation of ongoing care by the optometrist. This stipulation does not apply to those optometrists whose reasons for closing or leaving a practice is due to circumstances beyond their control. In these cases, patients must be notified as soon as is reasonably possible given the circumstances.
- Are still responsible for the secure storage, access and disposition of the patient records from that practice until a successor custodian is appointed.

As noted above, only optometrists or ophthalmologists who are licensed to practice in Alberta may be appointed as successor custodians of optometric patient records. Opticians, lay individuals, medical file storage facilities, optometric PC / LLP's, other companies and other organizations are not permitted to be appointed as successor custodians for optometric patient records.

Optometrists, who cannot locate another optometrist or ophthalmologist to transfer custodianship of their patient records to when they retire, close or leave a practice, may utilize the services of a medical file storage facility. As the medical file storage facility cannot act as a custodian of optometric patient records, the optometrist is still considered the custodian and is responsible for the safe and secure storage of the records, access to the records as well as the secure destruction of the records at the end of their required retention period.