

CDSS VIDEO CAMERA AND/OR AUDIO RECORDING IN DENTAL FACILITIES POSITION STATEMENT

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USE OF VIDEO CAMERA AND/OR AUDIO RECORDING IN DENTAL FACILITIES

The College has received inquiries from patients, dental auxiliary staff, and dentists about the use of video camera and/or audio recording in dental facilities.

Often dentists justify the use of video and audio surveillance as a means to protect themselves against unwanted activity (such as theft), to improve facility security for staff and patients, and to provide a record of staff and/or patient interactions.

Video camera and/or audio recordings may help increase the safety of staff and equipment; however, dentists must always remember their obligations to protect the personal health information of their patients. The Health Information Protection Act (HIPA) sets out rules for the collection, use, and disclosure of personal health information by dentists. These rules also apply to personal health information gathered through video camera and/or audio recording.

If you decide to use video camera and/or audio recording in your facility, there are a number of important factors to consider.

USE OF VIDEO CAMERA AND/OR AUDIO RECORDING IN PUBLIC NON-TREATMENT AREAS

Dentists often use cameras only in the public non-treatment areas of their facility, such as at the reception desk, in hallways, or near exterior doors. This is an acceptable business practice provided that patients and staff are properly informed about the use of cameras in the facility. The College recommends that, as a best practice, dentists should obtain consent to these recordings from those entering the facility.

1. For video and/or audio recording in public non-treatment areas, implied consent would be sufficient. In order to obtain implied consent, dentists should display prominent detailed notices in common areas of the facility and place stickers on windows and doors of the facility indicating that the area is under video and/or audio surveillance.

USE OF VIDEO CAMERA AND/OR AUDIO RECORDING IN EXAMINATION AND TREATMENT OPERATORY AREAS

Some dentists would prefer to have video camera and/or audio recording in their examination and treatment operatory areas. In these patient treatment spaces, patients are at their most vulnerable and consequently there is a higher expectation of privacy. That means specific, detailed, and meaningful informed or express patient consent is required in order to comply with your obligations under HIPA, which accords the highest standards for the protection of a patient's personal health information.

If video camera and/or audio recording is used in examination and treatment areas, such as a dental operatory or a treatment coordinator's office, dentists should obtain meaningful informed or express consent from the patient to record health care services as the devices will record personal health information, even if there is no audio component.

This informed or express consent should include at a minimum:

- the type of recording;
- the anticipated uses and disclosures of the information in the recording;
- who can access the recording;
- the patient's right to access the recording;
- how the recording is stored and for how long;
- the security protections put in place to ensure the privacy of the recordings.

As a best practice, dentists who have video camera and/or audio recording in dental operatories should consider using a detailed consent form which would be reviewed with the patient prior to treatment. It is not enough to assume the patient's consent to the recording of personal health information based on the patient's observation of signs posted in the facility.

Also, the HIPA recommends that a dental facility have the following safeguards to protect personal health information.

- Administrative safeguards (written policies and procedures, annual training for staff, confidentiality agreements, agreements with information management service providers, auditing programs, records retention and destruction schedules, and access restrictions).
- Technical safeguards (separate user identifications, passwords, firewalls, identification and authentication controls, virus scanners, and audit capabilities in digital systems).
- Physical safeguards (locked file cabinets, offices, and storage rooms; alarm systems; and clean desk approaches).

ACCESS TO VIDEO CAMERA AND/OR AUDIO RECORDING

Patients who see video cameras in a dental facility may have questions about who has access to the video camera and/or audio recordings. If personal health information is recorded, dentists should make sure that they have the necessary security provisions and safeguards in place to protect unauthorized access to the recordings.

Specifically, dentists need to ensure that access to the recordings is password-protected and that they cannot be accessed by anyone outside the facility. That means all in-office computers, cell phones, and tablets which have access to the recordings should be password-protected with strong encryption.

RETENTION OF VIDEO CAMERA AND/OR AUDIO RECORDING

Dentists understand that they are required to maintain patient records for a specified period of time as per the Health Information Protection Regulations (Section 6). Given that video and/or audio recordings made in an operatory or other treatment areas are considered a health record, these recordings should be:

- stored individually with the patient chart;
 - retained for the appropriate period of time
 - retained for the appropriate period of time as required for all health records;
 - included along with other clinical records when a copy of a patient record is transferred to the patient, the subsequent treating practitioner, or the College in the event of a complaint.
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VIDEO CAMERA AND/OR AUDIO RECORDING AND STAFF EMPLOYEE PRIVACY

The Freedom of Information and Protection of Privacy Act (FOIP) and The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP) provides employees with a right to informational privacy in the workplace.

Technology has enhanced how workplaces can organize themselves and how to complete tasks. However, technology can have a significant impact upon employee privacy.

Prior to conducting employee monitoring activities: dentists must know the purpose for which they are collecting, using, and disclosing employee personal information; and employees must be informed of the purpose prior to or at the time of the collection.

Employee monitoring activities often occur as a result of “function creep”. Function creep occurs when information is used for a purpose that is not the original specified purpose. Function creep often is a privacy breach where organizations use and/or disclose personal information without proper authority.

Again, dentists justify the use of video and audio surveillance as a means to protect themselves against unwanted activity (such as theft), to improve facility security for staff and patients, and to provide a record of staff and/or patient interactions. However, such surveillance means employee activities are constantly being recorded.

If dentists are contemplating surveillance that involves employee personal information, dentists should be prepared to do the following:

- Identify the purpose for the collection, use, and disclosure of employee personal information,
 - The legal authority for the collection, use, and disclosure of employee personal information,
 - Establish written policies and procedures that addresses the collection, use, disclosure, safeguards, access, retention, destruction, and a process to respond to questions, complaints, requests of employee personal information.
 - Provide training on the above policies and procedures to employees on an annual basis so that employees are aware of how their personal information is being collected, used, and disclosed.
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VIDEO CAMERA AND/OR AUDIO RECORDING LEGAL ADVICE

With regard to video camera and audio recording of personal health information of patients and personal information of employees, the College recommends consulting with legal counsel to minimize the risk of regulatory problems and civil liabilities.

VIDEO CAMERA AND/OR AUDIO RECORDING RESOURCES

Video Surveillance Guidelines for Public Bodies, Office of the Saskatchewan Information and Privacy Commissioner
Technology's Impact Upon Employee Privacy, Office of the Saskatchewan Information and Privacy Commissioner
Health Information Protection Act
Health Information Protection Regulations
The Freedom of Information and Protection of Privacy Act (FOIP)
The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP)
PHIPA Decision 98 HI18-00037 – Information and Privacy Commissioner, Ontario, Canada

ACKNOWLEDGMENTS

The College acknowledges that this statement has been adapted, in many parts with no changes, from the respective statements of the Royal College of Dental Surgeons of Ontario. - Advice on the use of video camera in dental offices (2016).

The College recognizes, with thanks, the contributions of this organization to the development of this revised position statement.