



To whom it may concern:

Every year, the College of Kinesiologists of Ontario randomly selects kinesiologists to engage in peer and practice assessment (PPA), a key component of the College's Quality Assurance Program. The goal of the PPA is to assess whether the knowledge, skills, judgement and practice performance of a kinesiologist meet the established practice standards and essential competencies of the profession. It also provides feedback to the kinesiologist to encourage continuous practice improvement. The PPA involves a highly-trained peer assessor, who is also a registered kinesiologist, conducting a competency-based interview. All information collected is kept confidential and is not shared with employers.

The member is asked to bring 10 patient/client records to the assessment. This may include original copies of patient/client records or printed copies of electronic health records.

You may have concerns around confidentiality and whether the College has the right to access patient/client records for the purpose of carrying out a PPA. Please review the following information, which outlines legislated provisions that permit the College to access records and conduct the PPA, and addresses employers' obligations to comply.

Mandatory cooperation for employers

The right for the College to access a patient/client's personal health information is cited in the *Health Professions Procedural Code* (the Code) of the *Regulated Health Professions Act, 1991* (RHPA). The College has the authority to request access to personal information for the purpose of conducting an assessment and gathering information about a kinesiologist's care of patients/clients without a College representative signing a confidentiality agreement. Section 82(1) of the Code states:

- 82.** (1) Every member shall co-operate with the Quality Assurance Committee and with any assessor it appoints and in particular every member shall,
- (a) permit the assessor to enter and inspect the premises where the member practises;
 - (b) permit the assessor to inspect the member's records of the care of patients;
 - (c) give the Committee or the assessor the information in respect of the care of patients or in respect of the member's records of the care of patients the Committee or assessor requests in the form the Committee or assessor specifies;
 - (d) confer with the Committee or the assessor if requested to do so by either of them; and
 - (e) participate in a program designed to evaluate the knowledge, skill and judgment of the member, if requested to do so by the Committee.

Employers, facility operators and health information custodians are also required to provide access to premises and client charts. Sections 82(2), (3) and (4) of the Code state:

(2) Every person who controls premises where a member practises, other than a private dwelling, shall allow an assessor to enter and inspect the premises.

(3) Every person who controls records relating to a member's care of patients shall allow an assessor to inspect the records.

(4) Subsection (3) does not require a patient or his or her representative to allow an assessor to inspect records relating to the patient's care.

These sections apply despite any provision in any other act relating to confidentiality of health records [(Code), ss.82 (5)]. Further, the *Personal Health Information Protection Act, 2004* (PHIPA), clause.9(2)(e) supports the College's right of access and states that PHIPA is not to be construed to interfere with the regulatory activities of the College under the RHPA.

Time requirements

The PPA should be conducted during business hours and kinesiologists must book a quiet time to allow the assessment to take place. If the member's practice is non-clinical in nature (i.e. he/she does not provide direct patient/client care), the PPA will be conducted over the telephone and will be two and half (2.5) hours in length. If the member's practice is clinical or mixed in nature (i.e. he/she provides direct patient/client care), the PPA will occur at his/her place of work and will be four (4) hours in length to permit the peer assessor's review of patient/client records.

Benefits to employers of PPA

As a regulated health professional, it is a kinesiologist's obligation to participate in PPA, and there are many advantages to having an employee undergo the PPA process. The PPA:

- Enhances members' compliance with professional practice standards;
- Is an opportunity for members to consult with a highly-trained peer assessor on practice issues and benefit from their collective experience and expertise;
- Provides members with objective, external feedback and affirms excellent practice and identifies areas for improvement; and
- Gives members the ability to share PPA experience, new knowledge and insights with colleagues, resulting in improved organizational policies, processes and procedures.

For the above noted reasons, the College strongly encourages employers to support employees selected to participate.

Possible consequences for failing to cooperate

Employers, facility operators and health information custodians who fail to cooperate with the College could face prosecution under the *Provincial Offences Act, 1990*. Section 93(1) of the Code states:

93. (1) Every person who... contravenes... subsection... 82 (2) or (3), ...is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Confidentiality

College representatives are bound by strict confidentiality provisions outlined in Section 36 of the *RHPA*. Section 36(1) states:

Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the Drug and Pharmacies Regulation Act and every member of a... College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person...

The College's peer assessors are bound by section 36(1) to keep confidential any information obtained as part of the assessment process, and may only disclose it within the confines of the Quality Assurance program. Requiring the College's Peer Assessors to sign a confidentiality agreement is not necessary, and may even be inconsistent with their legislated obligations.

If you have any questions with respect to your duty to cooperate in facilitating access to patient/client health records for non-treatment purposes, I encourage you to seek legal advice and/or contact me directly at Lara.Thacker@coko.ca or 416-961-7000 ext. 103.

Sincerely,

A handwritten signature in cursive script, appearing to read 'L. Thacker'.

Lara Thacker

Director, Quality Assurance