

A Trustee's Guide to **The Pledge of Confidentiality** *Required by The Personal Health Information Act*

All organizations and persons designated as trustees under *The Personal Health Information Act* (PHIA) must comply with the Act and The Personal Health Information Regulation (the Regulation). Having your staff sign a Pledge of Confidentiality will help you to ensure that your organization's practices and policies reflect the principles outlined in PHIA.

There is no template for the Pledge, as it should be specific to each trustee organization. Staff who will be involved in drafting the Pledge document should refer to sections 2, 6, and 7 of the Regulation. You should consider including your lawyer in the drafting process.

It is important to note that signing the Pledge of Confidentiality is above all an acknowledgement of *internal* security policies and procedures for maintaining the confidentiality of personal health information. Section 7 of the Personal Health Information Regulation states that:

a trustee shall ensure that each employee and agent signs a pledge of confidentiality that includes an acknowledgement that he or she is bound by the policy and procedures referred to in section 2, and is aware of the consequences of breaching them.

The policies and procedures referred to in section 2 are the *trustee organization's own* written security policies. The trustee organization is required, under section 6 of the Regulation, to provide staff with orientation on the internal security policies and procedures before asking them to sign the Pledge. The security policies must exist in writing, as per section 2 of the Regulation, so that staff can review and reference them.

It is important for staff to be aware that the requirement to sign the Pledge exists even if they've signed another oath or pledge related to their employment or profession. This pledge is PHIA specific!

A refusal to sign the Pledge is not an offence under PHIA, but is an administrative issue to be addressed within the trustee organization. However, if trustees do not ensure all staff have signed a Pledge, there may be a greater risk of internal security and privacy violations. Failing to protect personal health information is a contravention of PHIA and, depending on the circumstances, a trustee or employee could be charged with an offence. For a complete list of offences under PHIA see section 63, subsections (1) and (3).

Trustees should also note that employees who refuse to sign a Pledge will not be granted access to Manitoba Health's information systems, which they may require for health care or administrative purposes.

This document should be viewed as a guide only. *It is not comprehensive, nor is it a substitute for the legislation.* Copies of PHIA and the Regulation are available via:

<http://www.gov.mb.ca/health/phia/index.html>.