



Team Name: Health Information Services Team Lead: Regional Officer, Privacy & Access Approved by: VP – Finance & Planning	Reference Number: ORG.1411.PL.505 Program Area: Health Information Services Policy Section: Privacy & Access
Issue Date: April 28, 2016 Review Date: Revision Date: February 4, 2020	Subject: Disclosure of Personal Health Information to Police

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POLICY SUBJECT:

Disclosure of Personal Health Information to Police

PURPOSE:

To ensure Disclosure of Personal Health Information to the Police is in accordance with *The Personal Health Information Act* (“PHIA”), Southern Health-Santé Sud policy and professional standards of practice.

BOARD POLICY REFERENCE:

Executive Limitation (EL-02) Treatment of Clients
 Executive Limitations (EL-07) Corporate Risk

POLICY:

Disclosure of Personal Health Information Maintained in a designated Psychiatric Facility or unit pursuant to *The Mental Health Act* is referred to the applicable Medical Director of the Psychiatric Facility and will be in accordance with the ORG.1411.PL.102 Access, Disclosure and Correction to the Clinical Record under *The Mental Health Act* policy.

Disclosure of Personal Health Information shall be limited only to the extent that the recipient needs to know the information (i.e. they may not be entitled to the entire chart, perhaps only the relevant notes from a specific visit).

Southern Health-Santé Sud may charge a fee for Disclosure of Personal Health Information in accordance with the Southern Health-Santé Sud ORG.1411.PL.502.SD.02 Access-Disclosure-Release of Personal Health Information Fee Schedule and policy ORG.1411.PL.502 Use and Disclosure of Personal Health Information.

Personal Health Information may be Disclosed to the Police with Consent from the Individual. Disclosure is permitted without the Consent of the Individual if it is in accordance with this policy.

Where an Individual's Consent to Disclose Personal Health Information is required, the Consent must meet the following requirements in addition to any expressed wishes of the Individual:

- the Consent relates to the purpose for which the information is to be Disclosed;
- the Consent must be knowledgeable (understood by the Individual);
- the Consent is voluntary; and
- the Consent is not obtained through misrepresentation.

DEFINITIONS:

Emergency Demand for Records: Provides for immediate access to records that may assist the police service in locating a missing person under *The Missing Persons Act*. An emergency demand must be in the form set out in the Regulations.

Production Order: An order issued by a Judicial Justice of the Peace requiring a person or entity to produce the record(s) to a peace officer or public office named in the order within the time, at the place and in the form specified in the order.

Record Access Order: An order issued by a Judicial Justice of the Peace requiring a person to give members of the police service access to, and if requested, copies of records in respect to a missing person under *The Missing Persons Act*.

Subpoena: A subpoena is a court order that is served for the purpose of having someone attend a proceeding as a witness and may require production of documents as evidence in court.

Warrant for Arrest: Is a document that authorizes a police officer to find someone, enter into their premises or premises where that person is located and place them under arrest.

Warrant to Search/Search & Seize: A document issued by a magistrate or justice of the peace that permits the Police to attend our premises, search it for the evidence set out in the warrant, and remove that evidence from our premises

IMPORTANT POINTS TO CONSIDER:

- An Individual who has given Consent to Disclose Personal Health Information to Police may withdraw it by notifying Southern Health-Santé Sud. A withdrawal does not have a retroactive effect.
- The Privacy Officer/Advisor or delegate shall review the request to determine the urgency of the request and will process accordingly.
- Police are not notified of an Individual's discharge, unless, the Individual Consents or the Disclosure is authorized within this policy.
- Staff may become aware of an event or incident involving an Individual that staff believes should be reported to the Police. Disclosure of such Information must be with the consent

of the Individual or authorized within this policy or another enactment of Manitoba or Canada (i.e. there is a serious risk of harm).

PROCEDURE:

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Section 1: Disclosure of Personal Health Information to Police With Consent

Requests for Disclosure of Personal Health Information to Police **with** Consent shall be forwarded to the Site Privacy Officer/Advisor or delegate for processing.

- 1.1. Obtain a signed ORG.1411.PL.505.FORM.02 Disclosure of Personal Health Information to Police **with** Consent form, if another valid consent has not been provided.
- 1.2. Where a written Consent has been provided by the Police, review the Consent to ensure it includes:
 - the name and date of birth of the Individual;
 - the name of the facility/department/program that is authorized to Disclose the information;
 - the purpose for the request;
 - the date(s) care provided and specific information required; and
 - the signature and date signed.
- 1.3. Where the above criteria for a valid consent have not been met, the Individual or the Police officer shall be contacted to verify the information.
- 1.4. Complete a Record of what information was Disclosed to the Police for inclusion in the Individual's health Record.
- 1.5. Include the Consent in the Individual's health Record.

Section 2: Disclosure of Personal Health Information to Police Without Consent

- 2.1. Requests for Disclosure of Personal Health Information to Police **without** Consent shall be forwarded to the Site Privacy Officer/Advisor or delegate for processing with the exception of a Blood Test, Child in Need of Protection, the Condition and/or Location of an Individual, Gunshot and Stab Wounds and Notification to a Third Party.

- 2.2. Review the request for Disclosure of Personal Health Information to Police to determine if disclosure without consent is in accordance with the following exceptions:
- **Authorized Under an Enactment** if the Disclosure is authorized or required by an enactment of Manitoba or Canada.
 - **Blood Test** where blood testing has been completed for the purpose of analysis for alcohol/drug content pursuant to *The Blood Test Act* the results of the analysis can be released to the police.
 - **Fatality Inquiries** Personal Health Information is Disclosed to the Police without the Consent of the Individual where the Police have been appointed by the Medical Examiner to assist in the investigation of a death.
 - **Missing Person** to assist the Police in locating an Individual reported as a missing person. The information Disclosed shall be limited to Demographic Information only.
 - **Notification to a third party** Personal Health Information may be Disclosed to the Police, without Consent, for the purpose of:
 - contacting a relative or friend of an individual who is injured, incapacitated or ill;
 - assisting in identifying a deceased Individual; or
 - informing the representative or a relative of a deceased Individual, or any other person it is reasonable to inform in the circumstances of the Individual's death.
 - **Prosecution of an Offense** Personal Health Information may be Disclosed without the Consent of the Individual where the Personal Health Information is required in anticipation of or for use in the prosecution of an offence and where the Police have confirmed that charges have been laid against the Individual or where charges are going to be laid against the Individual. The Regional Officer, Privacy and Access shall manage this type of request.
 - **Risk of Serious Harm** Personal Health Information may be Disclosed to Police without the Consent of the Individual where there is a reasonable belief that the disclosure is necessary to prevent or lessen a risk of harm to the health or safety of a minor; or a risk of serious harm to the health or safety of the individual the information is about; or another individual; or to public health or public safety. See policy Personal Health Information Disclosure Due to Risk of Serious Harm CLI.4110.PL.016.
- 2.3. Complete ORG.1411.PL.505.FORM.01 Disclosure of Personal Health Information to Police **without** Consent Form including documentation of what information was disclosed and the authority for the Disclosure.
- 2.4. Request the Police provide their badge number and sign the form prior to Disclosure.
- 2.5. Complete a Record of what information was disclosed to the Police for inclusion in the Individual's health Record.
- 2.6. Include the Disclosure of Personal Health Information to Police **without** Consent Form in the Individual's health Record.

Section 3: Child in Need of Protection

- 3.1. Disclose Personal Health Information to the Police, without the Consent of the Individual, where a child is in need of protection and Child & Family Services cannot be contacted to make the report.
- 3.2. Document in the child's health Record that a report was made to the Police and what information was disclosed.

Section 4: Condition and/or Location of an Individual

- 4.1. Where an Individual is a patient or a resident of a Health Care Facility, the following information may be Disclosed without the Consent of the Individual, unless the Individual has specifically said not to:
 - the Individual's name;
 - the Individual's general health status, described as critical, poor, fair, stable or satisfactory, or in terms indicating similar conditions; and
 - the Individual's location, unless Disclosure of the location would reveal specific information about the health of the Individual.

Section 5: Emergency Demand for Records

- 5.1. Notify direct Supervisor or Manager or Director where the Police produce an Emergency Demand for Records under *The Missing Persons Act* (see supporting document ORG.1411.PL.505.SD.01 Emergency Demand for Records).
- 5.2. Provide information about whether the missing person has recently been admitted to a hospital, including which hospital and the date, time, and the reason for admission.
- 5.3. Complete ORG.1411.PL.505.FORM.01 Disclosure of Personal Health Information to Police without Consent Form including documentation of what information was disclosed and the reason as authorized under *The Missing Persons Act*.
- 5.4. Forward the Emergency Demand for Records to the Privacy Officer/Advisor or designate for retention (i.e. not retained in the health record).

Section 6: Gunshot and Stab Wounds

- 6.1. Reporting of persons treated for a gunshot or stab wound shall be in accordance with the Gunshot and Stab Wounds Mandatory Reporting Policy CLI.5110.PL.004.

Section 7: Interview Request for Staff

- 7.1. Personal Information is not Disclosed to the Police without a Court Order, the consent of the Individual the information is about or where otherwise authorized within this policy or an enactment of Manitoba or Canada.
- 7.2. Staff who receive a request from the Police for an interview will contact their Supervisor or Manager or Director for direction according to ORG.1411.PL.505.SD.02 Statement Request from Police for Personal Health Information Flowchart.
- 7.3. The Supervisor or Manager or Director shall notify the Regional Director Quality, Patient Safety & Risk where there is a potential/known regional liability.

Section 8: Interview Request for Individual Receiving Care

- 8.1. Police are entitled to interview an Individual who agrees to an interview. Personal Health Information is not disclosed to Police who are in attendance to interview an Individual unless the Individual provides Consent or Disclosure is permitted within this policy or another enactment of Manitoba or Canada.
- 8.2. Advise the Individual that Police would like to interview them.
- 8.3. Inform the Police if the Individual does not agree to the interview.
- 8.4. Inform the Police when an Individual is unable to be interviewed due to their condition.
- 8.5. Document in the Individual's health Record the Individual's agreement or refusal to be interviewed.

Section 9: Observations, Request to Share

- 9.1. Observations may be shared with the Police, without the Consent of the Individual, upon request and only where the information is not Personal Health Information and is not information shared during the care relationship. General observations may include:
 - the location of the Individual in a vehicle involved in a motor vehicle accident (i.e. driver);
 - the smell of alcohol on the Individual's breath that is believed to be from the consumption of alcoholic beverages;
 - odors such as marijuana, gasoline, alcohol, etc. within a motor vehicle involved in an accident or at the location where care has been provided;
 - the presence of illegal drugs, alcohol or weapons observed to be in the Individual's possession.
- 9.2. Observations made about an Individual during the provision of care that describe their condition (i.e. lacerations to arm or behaviors such as agitated or staggering) are considered Personal Health Information and cannot be Disclosed without the Consent from the Individual unless authorized within this policy

Section 10: Record Access Order

- 10.1. Notify direct Supervisor or Manager or Direction where Police produce a Record Access Order under *The Missing Persons Act*.
- 10.2. Provide the Personal Health Information to the Police as required.
- 10.3. Complete ORG.1411.PL.505.FORM.01 Disclosure of Personal Health Information to Police **without** Consent Form including documentation of what information was disclosed and the reason as authorized under *The Missing Persons Act*.
- 10.4. Forward the Record Access Order to the Privacy Officer/Advisor or designate for retention (i.e. not retained in the health Record).

Section 11: Search Warrant/Production Order/Subpoena

- 11.1. Upon proof of a valid Subpoena, Warrant, Court Order or Court Rule, Information specifically requested shall be disclosed.
- 11.2. Forward to the Site Privacy Officer/Advisor or delegate to manage the request. See *Legal Proceedings policy. (In Development)*.

- 11.3. Review the Subpoena, Warrant, Production Order or Court Rule, to determine if it is in relation to a statement of claim against the organization or staff or health care provider. *See Legal Proceedings policy (In Development)*. If it is in relation to a statement of claim, notify Quality, Patient Safety & Risk.
- 11.4. **Do not** complete ORG.1411.PL.505.FORM.01 Disclosure of Personal Health Information to Police without Consent Form.
- 11.5. If applicable, request that the Police provide their badge number for inclusion on the Record of release.
- 11.6. Complete a Record of what information was Disclosed to the Police and forward with the Subpoena, Warrant, Production Order or Court Rule to the Privacy Officer/Advisor or designate for retention in a secure location separate from the health Record of the Individual the Information is about.

Section 12: Warrant for an Individual’s Arrest

- 12.1. Personal Health Information is not Disclosed to Police who are in attendance for the purpose of enforcing a Warrant for Arrest unless the Individual provides consent or disclosure is authorized within this policy.
- 12.2. Facilitate Police in attendance to carry out the enforcement of the Warrant for Arrest.
- 12.3. Ask the Police to wait for the Individual’s condition to improve before enforcing the warrant if the Individual is medically unstable.
- 12.4. Permit the Police to search the Individual, their surroundings and take property which is reasonably believed to be connected to the offence (i.e. clothing);
- 12.5. Permit the Police to guard the Individual who is under arrest provided the Police do not interfere with the safe and efficient operation of the organization (i.e. entering an operating room without protective clothing).
- 12.6. Ask the Police to leave the immediate area if the Individual requires urgent treatment.

SUPPORTING DOCUMENTS:

- [ORG.1411.PL.502.SD.06](#) Access-Disclosure-Release of Personal Health Information Fee Schedule
- [ORG.1411.PL.505.FORM.01](#) Disclosure of Personal Health Information to Police without Consent Form
- [ORG.1411.PL.505.FORM 02](#) Disclosure of Personal Health Information to Police with Consent Form
- [ORG.1411.PL.505.SD.01](#) Emergency Demand for Records – (Sample only)
- [ORG.1411.PL.505.SD.02](#) Statement Request from Police for Personal Health Information Flowchart
- [ORG.1411.PL.505.SD.03](#) Request for Personal Health Information from Police, MPI, WCB, or Chief Medical Examiner Office Flowchart

REFERENCES:

The Personal Health Information Act

The Child & Family Services Act

The Fatality Inquiries Act

The Gunshot and Stab Wound Mandatory Reporting Act

The Missing Persons Act

Prairie Mountain Health Policy *Disclosure of Personal Health Information to Police*

WRHA Policy *Disclosure of Personal Health Information to Police*

Southern Health-Santé Sud *Gunshot and Stab Wounds Mandatory Reporting Policy CLI.5110.PL.001*

Southern Health-Santé Sud *Personal Health Information Disclosure Due to Risk of Serious Harm
CLI.4110.PL.016*