

CATEGORY:	ORGANIZATIONAL: CLIENT/COMMUNITY RELATIONS
SUB-CATEGORY:	RISK MANAGEMENT
GROUP:	
DISTRIBUTION:	ALL EMPLOYEES
TITLE:	RESPONDING TO REQUESTS FROM LAW ENFORCEMENT AGENCIES

PURPOSE

To outline the process for preparing and responding to requests for client/patient/resident personal information/personal health information from law enforcement agencies while maintaining confidentiality and minimizing disruption in client/patient/resident care.

To ensure Western Health interactions with law enforcement agencies are consistent and compliant with federal and provincial statutes and the Charter of Rights and Freedoms, thus preserving the rights of clients/patients/residents.

POLICY

The privacy of all individuals who receive, or have received, services from Western Health must be maintained.

In those situations governed by the Western Health Duty to Report policy (6-02-11), employees must release information, property, photographs, and/or specimens (referred to as information throughout this policy) to law enforcement agencies, without client/patient/resident consent or a warrant. For the purpose of this policy, employees include all physicians.

This policy outlines the process that must be adhered to when requests are received from law enforcement agencies in relation to:

- A. Requests for interviews with employees;
- B. Requests for interviews with clients/patients/residents;
- C. Requests for client/patient/resident personal or health information, property, photographs, and/or specimens; and
- D. Preparing information from client/patient/resident record for disclosure.

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A. Requests for interviews with employees:

When an employee (s) receives a request for an interview from law enforcement agencies, a request to serve a subpoena, or is served a subpoena:

1. The employee must inform the immediate manager or next level of management on call outside of regular working hours who helps clarify the request, the information to be disclosed and the appropriate person to respond to the request. As required, the immediate manager must consult with the next level of management on call outside of regular working hours for further direction.
2. If the employee originally contacted is not the appropriate person to respond to the request, then the immediate manager must contact the appropriate employee.
3. As required, the immediate manager must arrange for a non-clinical location for the interview or the serving of the subpoena.

B. Requests for interviews with clients/patients/residents

When law enforcement agencies request interviews with clients/patients/residents:

1. Law enforcement agencies may interview individuals involved in a police-related investigation who are waiting for treatment/service in the public waiting area. In this situation, interviews or photographs are the choice of the individual.
2. When an individual moves into a treatment/service area (e.g., office or examination room) the following applies:
 - a. Before arranging an interview, the employee must ensure that there are no medical reasons to defer an interview.
 - b. The employee must consult with the immediate manager if there is any concern(s) with the request. The immediate manager consults with the next level of management on call outside of regular working hours for further direction, as required.
 - c. The employee must advise the client/patient/resident of the request and verify that the client/patient/resident agrees to be interviewed. The *Consent for Medical Intervention* policy (6-05-60) provides direction for issues related to the client/patient/resident's ability to consent and/or need for an appropriate substitute decision maker (i.e., mature minor, incompetent person).
 - d. The employee must arrange an appropriate location for the interview. If an employee remains present for the interview, he or she may be called as a witness in any court proceeding.
 - e. The employee must document the client/patient/resident's agreement to participate in the interview on the health record.

C. Requests for client/patient/resident personal or health information, property, photographs, and/or specimens

With the exception of situations where the Duty to Report policy (6-02-11) applies, when law enforcement agencies request personal health information from the client/patient/resident record, property, photographs and/or specimens, employees must:

1. Clarify the request, including the information and/or items requested, ensuring that:
 - a. the information is being sought to assist with an investigation of an ongoing or likely law enforcement proceeding and/or;
 - b. the investigation is being conducted under the authority of or for the purpose of enforcing a law and/or;
 - c. the investigation is one that leads or could lead to a penalty or sanction being imposed under the law.
2. Confirm with the requester that the client/patient/resident is aware of the request and that the requester has obtained appropriate consent. As necessary, please refer to the *Disclosure of Information – Obtaining Valid and Appropriate Consent* policy (9-02-45).
3. When consent is necessary, ensure that the client/patient/resident or substitute decision maker has consented to:
 - a. the release of information and/or;
 - b. the release of property and/or;
 - c. the obtaining of photographs and/or;
 - d. the collection of specimens.

Include the signed consent form on the client/patient/resident health record in keeping with the *Disclosure of Information: Obtaining Valid and Appropriate Consent* policy (9 - 02 – 45).

4. Obtain a written request that includes the following information:
 - a. the name and date of birth or MCP number of the client/patient/resident whose information is being requested;
 - b. the specific information (including the name of specific programs/services) being requested;
 - c. the contact information for the representative of the law enforcement agency who is requesting the information; and
 - d. note that if a delay in obtaining the information could result in the loss of evidence or a danger of bodily harm or death to a person, the request may be submitted orally. In such cases, employees must keep detailed notes as to the urgent circumstances that precluded a written request.
5. Obtain the name and section of the applicable legislation if the requester indicates entitlement to information without consent.
6. Notify the immediate manager who, as necessary, may consult with the next level of management on call outside of regular working hours for further direction, as required.
7. Ensure that the law enforcement agency has a valid warrant if the client/patient/resident or substitute decision maker does not provide consent. The employee must review the warrant, noting the specific date(s) and time(s) that it is valid and the specific information

and/or items requested, ensuring that the information disclosed matches and does not exceed the information described in the warrant. The employee must comply with the warrant and document the following information on the health record:

- a. the name, badge number and division of the police officer;
 - b. a photocopy of the warrant;
 - c. the information and/or items released;
 - d. the date and time of the release; and
 - e. the name of the employee releasing the information and/or items.
8. Specific to the obtaining of photographs and/or the collection of specimens, the employee and/or attending physician or nurse practitioner must ensure that there are no medical reasons to defer the procedure(s).
9. Disclose only the information and/or items to which the client/patient/resident consented, i.e., minimum amount of information necessary to accomplish the purpose for which it is disclosed, or only the information and/or items identified in the warrant. **Without valid consent or warrant, employees must not disclose:**
- a. the client/patient/resident birth date, phone number or address;
 - b. the location of a client/patient/resident based on the law enforcement agency's description of an injury, date or time;
 - c. client/patient/resident personal health information connected with a criminal investigation, including verification of blood alcohol analysis testing; and
 - d. personal property and/or specimens including clothing, bullet fragments or embedded foreign objects unless employees recognize a duty to report in keeping with the *Duty to Report* policy (6-02-11).
10. Document the transfer of property, photographs and/or specimens noting the following information:
- a. a brief description of the item(s);
 - b. the date and time of the transfer;
 - c. the name of person releasing the item(s); and
 - d. the name of the person receiving the item(s).

(Note: The above steps apply regardless of whether the client/patient/resident is the alleged victim or perpetrator, is under arrest or not under arrest, is conscious or unconscious or is remanded in the custody of a law enforcement agency.)

D. Preparing information from client/patient/resident record for disclosure

When preparing the information for disclosure, employees must:

1. Ensure that the written consent of the client/patient/resident has been obtained, using the *Western Health Consent to Disclose/Obtain Information form* (12-475). Alternatively, the requester may provide a disclosure of information form signed by the client (e.g., from the requester's agency.) This is acceptable provided that the form includes the following information:
 - a. name and date of birth or MCP number of the client/patient/resident whose information is being requested;

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- b. identity of the requester (name, title, law enforcement agency represented and contact information);
 - c. signature of client or his/her representative (see definition);
 - d. signature of requestor; and
 - e. the date the form was signed.
 2. Whenever possible, written consent must be obtained. Use verbal authorizations only in urgent or exceptional circumstances (e.g. time restrictions) with the reason for doing so outlined in the record. Whenever possible, follow up with written consent by forwarding the [Consent to Disclose / Obtain Information form](#) (12-475) for the client/patient/resident to sign and return to the service provider.
 3. Prior to disclosure, review the record to ensure that it does not contain information about another client/patient/resident. Redact any such information from the record before it is disclosed, taking care not to alter or inadvertently disclose the original information. Consult with the Regional Manager Information Access and Privacy or designate as needed in such instances.
 4. Document the following information in the client/patient/resident record:
 - a. the details of the request;
 - b. where applicable, the title and section(s) of the legislation under which the information may be disclosed without consent;
 - c. any direction that was sought;
 - d. to whom information was disclosed; and
 - e. the specific information that was disclosed to the law enforcement agency.

When a health record is subpoenaed:

1. The employee must take the original record, related documents, and one copy of the record. The court may ask for the original record to compare to the copy for accuracy purposes. Only copies of the original record must be provided. The original record must be retained by the employee at all times.
2. No information is to be redacted from the health record.
3. Refer to guideline [Removing Personal Health Information from the Site or Facility](#).

DEFINITIONS

Law enforcement agencies: include, but are not limited to, the Royal Newfoundland Constabulary, the Royal Canadian Mounted Police, the Canadian Border Services Agency, the Chief Medical Examiner and officials acting under the direction of the Medical Examiner.

Redact: Censor or obscure (part of a text) for legal or security purpose, e.g. using a black permanent marker or dry line liquid paper.

Representative: In keeping with the *Personal Health Information Act (PHIA)*, a right or power of an individual may be exercised

(a) by a person with written authorization from the individual to act on the individual's behalf;

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- (b) where the individual lacks the competency to exercise the right or power or is unable to communicate, and where the collection, use or disclosure of his or her personal health information is necessary for or ancillary to a "health care decision", as defined in the *Advance Health Care Directives Act*, by a substitute decision maker appointed by the individual in accordance with that Act or, where a substitute decision maker has not been appointed, a substitute decision maker determined in accordance with section 10 of that Act;
- (c) by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian;
- (d) by the parent or guardian of a minor where, in the opinion of the custodian, the minor does not understand the nature of the right or power and the consequences of exercising the right or power;
- (e) where the individual is deceased, by the individual's personal representative or, where there is no personal representative, by the deceased's nearest relative, and for this purpose, the identity of the nearest relative may be determined by reference to section 10 of the *Advance Health Care Directives Act*;
- (f) where the individual is a neglected adult within the meaning of the *Neglected Adults Welfare Act*, by the Director of Neglected Adults appointed under that Act; or
- (g) where an individual has been certified as an involuntary patient under the *Mental Health Care and Treatment Act*, by a representative as defined in that Act, except as otherwise provided in this Act.

Subpoena: the process or writ issued by the court requiring the attendance of a witness at a certain time and place for testimony. It also may order the witness to bring books, records, or other relevant items as evidence.

Third party: For the purposes of this policy, third party includes:

- (a) An individual whose personal information/personal health information is included in the record of a client/patient/resident of Western Health.
- (b) An individual/organization that is requesting disclosure of information under this policy.

Warrant: an official authorization enabling the police to make an arrest or search premises.

LEGISLATIVE CONTEXT

Access to Information and Protection of Privacy Act. (2015). Available from <http://www.assembly.nl.ca/legislation/sr/statutes/a01-2.htm>

Personal Health Information Act. (2008). Available from <http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm>

Canada Border Services Agency Act. (2004). Available from <http://laws-lois.justice.gc.ca/eng/acts/c-1.4/>

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Fatalities Investigations Act. (2009). Available from
<http://www.assembly.nl.ca/Legislation/sr/statutes/f06-1.htm>.

Regional Integrated Health Authorities Order. (2005). Available from
<https://www.assembly.nl.ca/legislation/sr/annualregs/2005/Nr050018.htm>.

REFERENCES

Canadian Charter of Rights and Freedoms. (1982). Department of Justice Canada, Ottawa, ON

Office of the Information and Privacy Commissioner. (April 25, 2017). Disclosure of Personal Information to the Police or Public Bodies Conducting Investigations. St. John's, NL.

KEYWORDS

Canadian Border Services Agency
Health Information
Interview
Law Enforcement Agencies
Medical Examiner
Photographs
Police
RCMP
Requests
RNC
Royal Newfoundland Constabulary
Royal Canadian Mounted Police
Specimens
Subpoena
Warrant
Disclosure

FORMS

[Consent to Disclose/Obtain Information \(12-475\)](#)

TO BE COMPLETED BY STAFF IN QUALITY DEPARTMENT

Approved By: Chief Executive Officer	Maintained By: Regional Director, Quality and Risk Management
Effective Date: 26/October/2008	<input checked="" type="checkbox"/> Reviewed: 12/October/2011 <input checked="" type="checkbox"/> Revised: 09/October/2018; 03/June/2020
Review Date: 09/October/2021	<input checked="" type="checkbox"/> Replaces: <i>(Indicates name and number of policy being replaced)</i> Authorization for Release of Information – Standard/Form (RR-A-200), Release of Information from Clinical Records (AD-R-200), Consent to Release/Obtain Information (Form 12-390), Release of Information (Former HCSW policy 18-06-25), Disclosure of Information – Law Enforcement Agencies (9-02-30) <input type="checkbox"/> New