

|               |  |
|---------------|--|
| CATEGORY:     | <b>ORGANIZATIONAL: INFORMATION MANAGEMENT</b>  |
| SUB-CATEGORY: | <b>RELEASE OF INFORMATION</b>  |
| GROUP:        |  |
| DISTRIBUTION: | <b>ALL STAFF/PHYSICIANS</b>  |
| TITLE:        | <b>LIMITED CONSENT FOR THE COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION</b> |

**PURPOSE**

To outline employees’/physicians’ responsibilities in the event that a client/patient/resident places a condition or restriction on his/her consent to the collection, use or disclosure of his/her personal health information.

**POLICY**

**Description of Consent Directives and Limited Consent**

The withholding or withdrawal of consent or the express instructions that a client/patient/resident may make can take various forms, including communication from individuals to health information custodians:

- to not collect, use or disclose a particular **item** of information contained in his/her record of personal health information (e.g. a particular diagnosis);
- to not collect, use or disclose the contents of his/her **entire** record of personal health information;
- to not **disclose** his/her personal health information to a particular health information custodian, a particular agent of a health information custodian or a class of health information custodians or agents (e.g. physicians, nurses, or social workers); or
- to not permit a particular health information custodian, a particular agent of a health information custodian or a class of health information custodians or agents (physicians or nurses, for example) to **use** his/her personal health information.

---

Further, a client/patient/resident's restriction may not prevent Western Health from recording personal health information that is required by law (e.g. recording in the client record that a report was made to the Department of Child, Youth and Family Services concerning a child who is or may be in need of protective intervention) or by established standards of professional or institutional practice.

Once a client/patient/resident limits the collection, use or disclosure of his/her personal health information by withholding, withdrawing or limiting consent, employees/physicians of Western Health who are subject to the express instruction cannot collect, use or disclose that personal health information for health care purposes unless:

- the client/patient/resident changes his/her mind and informs Western Health in writing accordingly; or
- the collection, use or disclosure can be made without the client/patient/resident's consent (see below.) The Regional Manager, Information Access and Privacy or designate must be consulted in such cases.

### **Identifying the Most Responsible Physician/ Most Responsible Care Provider**

It is recognized that the identity of the most responsible physician or most responsible care provider and manager or director who are required to collaborate to comply with the client/patient/resident's request may vary depending on the nature of the request and the personal health information that is the subject of the request. Clinical staff (e.g. physicians, nurses) and/or administrative staff (e.g. health records, IT, senior executive) must participate in working through these requests as required.

Where an employee of Western Health discloses information to another custodian under the *Personal Health Information Act* (PHIA) for the purpose of providing health care and does not have the consent of the client/patient/resident to disclose all personal health information about him/her that the organization believes is reasonably necessary for the receiving custodian's purpose, the employee must inform the receiving custodian that restrictions have been placed on the disclosure by the client/patient/resident. **Note that this does not include identifying what information is restricted.**

**a.) Once an employee who has been designated as the Most Responsible Physician or Most Responsible Care Provider and Manager or Director receives a request to restrict collection, use and disclosure of personal health information as described above, he or she must participate in the following activities as required:**

1. Obtain the contact information of the client/patient/resident and provide to him/her the following information:
  - i) the form [Request to Restrict Collection, Use and Disclosure of Personal Health Information Form # 12-482](#) and
  - ii) Western Health brochure, titled *Protecting Your Privacy*.

2. Advise the client/patient/resident to prepare a signed and dated written request specifying the information that is the subject of the request to restrict collection, use and disclosure of personal health information using the form [Request to Restrict Collection, Use and Disclosure of Personal Health Information Form # 12-482](#) in advance of or during an in person meeting with the employee and other managers/leaders of Western Health as appropriate and required. (See next step for further information.)
3. Notify the client/patient/resident that further discussion (i.e. in person meeting[s]) will be required with respect to how limiting consent may affect the provision of his/her health care and the reasons that Western Health may require access to more personal health information than the client/patient/resident has allowed in order to provide the best possible care.
4. Immediately notify one's immediate manager/leader of the request to restrict collection, use and disclosure of personal health information..
5. Once the client/patient/resident has submitted the written request, submit it to the immediate manager/leader. In consultation with the manager/leader, Regional Manager, Information Access and Privacy or designate and other managers/leaders of Western Health as appropriate and required, where possible, arrange an appropriate time and place to meet with the client/patient/resident.
6. As outlined on the form [Request to Restrict Collection, Use and Disclosure of Personal Health Information Form #12-482](#), in an in person meeting discuss the following information with the client/patient/resident:
  - any potential risks that may exist in restricting the collection, use and disclosure of his/her personal health information;
  - the reasons that Western Health requires access to the entire client/patient/resident record to provide the best possible care;
  - that collection, use and disclosure of the personal health information will be restricted unless it is:
    - a) authorized by law;
    - b) to a person involved with my treatment or care in an emergency situation;
  - that restricting collection, use and disclosure of personal health information does not include the recording of personal health information where this is required by law or by established standards of professional practice;
  - the name of the site facility to which the restriction applies;
  - the effective date and also that the request can not apply to previous access to the record;
  - the personal health information that is the subject of the request will be removed from the record and placed in a file that will be stored in a secure location separately from the remainder of the record;

- 
- that a notice will be placed in bold letters at the front of the record. (Please refer to the form [#12-482 Request to Restrict Collection, Use and Disclosure of Personal Health Information](#) for the appropriate wording);
  - that should the client/patient/resident wish to revoke his/her request, that he or she must provide written notification to his/her service provider or the Regional Manager, Health Information or designate, as appropriate.
7. Where a decision is reached that the client/patient/resident's request can not be accommodated due to it not being authorized under PHIA, the client/patient/resident must be provided written notification as to the reason(s) that the request can not be accommodated.
  8. Where required, participate in the decision to override the patient's request to withhold or withdraw consent.
  9. Further to #3 above, in consultation with the most responsible physician or most responsible care provider and manager or director, other management personnel (as required) and the Regional Manager, Information Access and Privacy or designate, disclose personal health information in certain circumstances where the client/patient/resident has restricted collection, use and disclosure, including to a recipient custodian where, in his or her professional opinion, the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to an individual or to a group of persons.
  10. Ensure that the following information is filed on the client/patient/resident record:
    - a notice/information, prominently displayed at the front of the client/patient/resident paper record. (Please refer to the form [Request to Restrict Collection, Use and Disclosure of Personal Health Information Form # 12-482](#) for the prescribed wording to include on the notice),
    - where applicable, written notification from the client/patient/resident that he or she wishes to revoke his/her request to restrict the collection, use and disclosure of his/her personal health information.
  11. Ensure that the following information is filed on the client/patient/resident paper record and is stored separately in a secure location where it may be readily retrieved, if required:
    - the personal health information that is the subject of the request to restrict collection, use and disclosure of personal health information,
    - the completed form [Request to Restrict Collection, Use and Disclosure of Personal Health Information Form # 12-482](#).
    - details as to: the date the meeting took place, the discussion with the client/patient/resident concerning the risks and benefits associated with the request to restrict collection, use and disclosure of his/her personal health information as well as any other consultation (within and outside the organization) that occurred.
  12. Where the client/patient/resident has restricted the collection, use and disclosure of his/her personal health information, thereby preventing disclosure of all personal health information about him/her that Western Health believes is reasonably necessary for the receiving

---

custodian's purpose, inform the receiving custodian that the client/patient/resident has placed restrictions on collection, use and disclosure of his/her personal health information. **Again, note that this does not include identifying what information is restricted.**

**B. The Immediate Manager/Leader must:**

1. Immediately notify the Regional Manager, Information Access and Privacy or designate once he or she becomes aware of a client/patient/resident's request to restrict collection, use and disclosure of personal health information.
2. Cooperate with the Regional Manager, Information Access and Privacy or designate and most responsible physician or most responsible care provider and manager or director who are identified to work through and comply with the request to restrict collection, use and disclosure of personal health information.
3. Ensure that employees under their supervision comply with the steps as outlined in part "A" above.

**C. In addition to overseeing, coordinating and participating in all aspects of the process of the client/patient/resident's request to withhold or withdraw consent, the Regional Manager, Information Access and Privacy or designate must:**

1. Ensure that form [\*Request to Restrict Collection, Use and Disclosure of Personal Health Information Form # 12-482\*](#) is completed on all requests for consent directives and limited consent.
2. In the event that the requested restriction cannot be accomplished electronically, ensure that the client/patient/resident is informed with respect to the limitations preventing this and, if necessary, make arrangements to revert to a complete paper record.
3. Where step #2 applies, ensure that the client/patient/resident is informed with respect to the implications on timely health care.
4. After the record has been restricted, ensure that a letter is issued to the client/patient/resident confirming that the record has been restricted.

**D. Designated Information Management Staff must:**

1. Where the technological capability exists to do so, ensure that the personal health information that is the subject of the request to restrict collection, use and disclosure of personal health information is masked/hidden from the client/patient/resident electronic record as requested and appropriately stored in a secure location where it may be readily retrieved, if required.

- 
2. Ensure that a notice/information is prominently displayed in the client/patient/resident electronic record. (Please refer to the form [Request to Restrict Collection, Use and Disclosure of Personal Health Information Form # 12-482](#) for the prescribed wording to include on the notice).

### **Where Disclosure is Permitted / Breaking the ‘Lock’**

Where a Western Health employee/physician involved in a client/patient/resident’s circle of care believes that:

- 1) the disclosure of personal health information about the person is necessary to prevent or reduce a risk of serious harm to the mental or physical health or safety of the client/patient/resident or another individual; or
- 2) the disclosure is required for public health or public safety; or
- 3) the life of the person is in immediate danger and any delay in administering treatment would add to that danger

the employee/physician involved in the person’s circle of care may ‘break the lock’ and obtain access to the restricted information. In such cases, consultation with the most responsible physician, most responsible care provider and manager or director, other management personnel as appropriate, and the Regional Manager, Information Access and Privacy or designate is required.

The employee/physician must notify the Regional Manager, Information Access and Privacy or designate that restricted information is required for patient safety reasons and arrangements will be made for access to the paper file or electronic access. In the event of an Emergency Room (ER) visit after hours, ER staff must be provided with a mechanism to override the restriction to a client’s/patient’s/resident’s electronic record, where applicable. The employee/physician must record in the client/patient/resident record the date and time that the lock was broken and the rationale for doing so, and must notify the Regional Manager Information Access and Privacy or designate. The Regional Manager, Information Access and Privacy or designate must communicate with the employee about re-securing the file.

The restriction remains intact unless the patient has, by written consent, permitted the permanent removal of the restriction.

Please also refer to Western Health policies including [Duty to Report \(#6-02-11\)](#), [Occurrence Reporting \(#6-02-15\)](#), [Disclosure of Occurrences \(#6-02-16\)](#), [Child Protection Protocol: Suspected Need for Protective Intervention \(#6-02-20\)](#), [Reportable Death \(#6-02-25\)](#), and other related policies for further direction as appropriate and required.

## DEFINITIONS

**Collection:** In relation to personal health information, means to gather, acquire, receive or obtain the information by any means from any source.

**Consent directive:** For the purpose of this policy is an instruction by an individual or by his/her representative to a custodian or the representative as to how their personal health information may be collected, used or disclosed.

**Custodian:** In the context of the *Personal Health Information Act*, means a person who has custody or control of personal health information as a result of or in connection with the performance of the person's powers or duties or the work described in the *Act*. (Please refer to section 4 of the *Personal Health Information Act* for additional information.

**Disclosure:** In relation to personal health information in the custody or control of a custodian, means to make the information available or to release it, but does not include a use of the information.

**Institutional standards:** Clearly articulated statements that guide institutional behavior and identify expected levels of performance.

**Limited consent:** Describes a situation wherein an individual places a condition or restriction on his/her consent to the collection, use or disclosure of his/her personal health information by a custodian. Such limitations may include:

- Controlling the collection, use or disclosure of a particular item of information;
- Controlling the use or disclosure of his/her personal health information to a particular health professional or class of health professionals;
- Controlling the use or disclosure of his/her entire personal health information record that is in the control of the custodian.

**Professional standards:** Authoritative statements that set out the legal and professional basis for practice. The primary purpose of professional standards is to identify for the profession, the public, government, and other stakeholders the desired and achievable level of performance expected of the professional in their practice, against which actual performance can be measured.

**Use:** In relation to personal health information in the custody or control of a custodian, means to handle or deal with the information or to apply the information for a purpose and includes reproducing the information, but does not include a disclosure of the information.

**LEGISLATIVE CONTEXT**

*Access to Information and Protection of Privacy Act* (2004). Available at:  
<http://www.assembly.nl.ca/legislation/sr/statutes/a01-1.htm>

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

**REFERENCES**

Government of Newfoundland and Labrador, Department of Health and Community Services. (September 2010). *The Personal Health Information Act Policy Development Manual, Appendix “G” Limited Consent under PHIA*. Available:  
<http://www.health.gov.nl.ca/health/PHIA>

Access and Privacy Office (April 2011). *Eastern Health Policy: Limited Consent for the Collection, Use and Disclosure of Personal Health Information, ACP-125, Policy Manual*, St. John’s, NL: Eastern Regional Integrated Health Authority.

**KEYWORDS**

Consent directive, limited consent, restriction on consent, withholding consent, withdrawing consent

**FORMS**

[\*Request to Restrict Collection, Use and Disclosure of Personal Health Information Form #12-482\*](#)

TO BE COMPLETED BY QUALITY MANAGEMENT & RESEARCH STAFF ONLY

|   |  |
|---|--|
| Approved By:<br>Chief Executive Officer | Maintained By:<br>Regional Manager, Information Access & Privacy   |
| Effective Date:<br>27/April/2012        | <input type="checkbox"/> Reviewed:<br><input type="checkbox"/> Revised: <i>(Date of most recent changes to the policy)</i>                   |
| Review Date:<br>27/April/2015           | <input type="checkbox"/> Replaces: <i>(Indicates name and number of policy being replaced)</i> OR<br><input checked="" type="checkbox"/> New |