

Disclosure of personal health information to police

OVERVIEW OF COVERAGE

In the healthcare setting, there will be times when staff may be asked to disclose personal health information to police. When this occurs, follow your organization's policies and procedures regarding disclosure of personal health information. If your organization does not have policies or procedures regarding disclosure of personal health information to police, contact the appropriate administrator for direction.

KEY POINTS

- Patients/substitute decision makers (SDMs) have a right to their privacy and healthcare staff have a duty to keep personal health information confidential.
- Healthcare staff must not disclose personal health information to police unless there is patient/SDM consent or the disclosure is required by law (refer to "Disclosure" section below).
- Develop a policy for disclosure of personal health information (including specimens/ blood tests) to facilitate appropriate disclosure of personal health information to police.

THINGS TO CONSIDER

Disclosure

Disclosure of personal health information is permitted when the patient/SDM has provided consent to the disclosure. There are a few exceptions when the disclosure of personal health information to police is permitted without patient consent. These exceptions can include:

1. Court order - a court order will generally either be a search warrant or a subpoena. A different response is required depending on what document police produces (refer to "Search Warrants" and "Subpoenas" sections below).
2. Mandatory duty to report - a number of statutes require disclosure of personal health information (refer to "Mandatory Disclosure" section below).
3. Public safety exception - the Supreme Court of Canada has recognized that personal health information may be disclosed to police when there is a reason to believe there is an imminent risk of serious bodily harm (serious psychological harm is included in the term serious bodily harm) or death to an identifiable person or group of persons.

Search Warrants and Subpoenas

Search Warrants

- A search warrant provides police with legal authority to search for and seize evidence.
- It is important to comply with the search warrant when presented.
- A request should be made to inspect the warrant to determine its parameters. Only the personal health information listed in the warrant must be disclosed.
- Secure the search warrant as per organizational policy.
- Document personal health information disclosed in the health record.

Subpoenas

- In most jurisdictions, a subpoena is an order to appear in court, often including a direction to attend with the health record. It is good practice to copy the health record before taking the original health record off-site.
- A subpoena generally does not require healthcare staff to speak to anyone, even police,

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about the contents of the health record or any aspect of a patient's treatment or diagnosis before being ordered to do so by the court.

- The health record should be placed in a sealed envelope and be released only when the court so orders.

Mandatory Disclosure

Gunshot wounds

- Legislation in some provinces/territories require healthcare organizations to report gunshot wounds and disclose certain personal health information to police (e.g. name of injured person, the fact that the injured person is or was treated, the name and location of the healthcare organization).

Abuse

- Legislation in some provinces/territories require healthcare organizations to report abuse to police (e.g. when a person has reasonable grounds to believe a child or an elder is being abused/neglected).
- Note that in some cases the report is to be made to a different entity, such as a children's aid society, but this may ultimately still result in the involvement of police.

Possible Consequences of Improper Disclosure

For the healthcare staff:

- A complaint under provincial legislation;
- A lawsuit by the patient (e.g. claiming "intrusion upon seclusion");
- An investigation by a regulatory body and a discipline proceeding.

For the police:

- In the criminal action, evidence could be excluded at trial.



REFERENCES

- Canadian Nurses Protective Society. (2008). [Confidentiality of health information](#).
- CMPA. (2016). [Physician interactions with police](#).
- Hawkins P J. (2013). When the police come knocking. Borden Ladner Gervais. [HIROC Webinar].