



# Corporate Administrative Procedure

**Procedure Name:** Disclosure to Police

**Number:** 6.3.1.7

**Directive Reference:** Health Information

**Date Approved:** November 19, 2001

**Date Revised** January 12, 2004



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This procedure deals with disclosure of individually identifying health information to police services. It applies to Edmonton Police Service and the RCMP as well as other municipal police services.

See also Procedure 6.3.1.4 "Disclosure With Consent" and Procedure 6.3.1.12 "notations of Certain Disclosures of Health Information."

## 1. General Procedures

- 1.1 Capital Health affiliates shall disclose the least amount of information needed for the police officer to carry out his or her purpose. In the case of a request by a police officer, this may involve asking the officer for the purpose of the disclosure request in order to make a determination of what to disclose.
- 1.2 In deciding how much health information should be disclosed, Capital Health affiliates shall consider as an important factor the expressed wishes of the individual the information is about, together with any other factors the affiliate and/or attending physician considers relevant.
- 1.3 Before making the disclosure, affiliates shall take reasonable steps to authenticate the identity of the police officer and his or her authority to request the information. If unsure of the identity or authority of the officer making the request, Capital Health affiliates may;
  - Ask for identifying information such as badge number and rank.
  - Call back to verify that the requestor is a police officer.
  - Verify the authority by asking for proof of an ongoing investigation such as a case number.

## 2. When Can Health Information be Disclosed

Authorized Capital Health affiliates may, but are not obliged to, disclose individually identifying health information to police officers in the following circumstances:

- 2.1 When the individual the information is about gives consent in writing. [Section 34]
- 2.2 Where an individual is injured, ill or deceased so that family members or another person with whom the individual is believed to have a close personal relationship or a friend can be contacted. This does not apply if the individual has expressly requested that a person or persons not be contacted. [Section 35(1)(d)]
- 2.3 To comply with a subpoena, warrant or order issued by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information. [Section 35(1)(i)] See Appendix for procedures to follow in dealing with these documents.
- 2.4 For the purpose of investigating an offence involving a life-threatening injury to the individual the information is about, unless the individual has expressly requested that disclosure not be made. [Section 35(1)(j)]
- 2.5 If the affiliate believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person. [Section 35(1)(m)]
- 2.6 If the disclosure is authorized or required by an enactment of Alberta or Canada (e.g. *Mental Health Act*, *Public Health Act*, *Fatality Inquiries Act*, *Child Welfare Act*, *Protection for Persons In Care Act*) [Section 35(1)(p)]

Examples:

- Formal patient under *Mental Health Act* discharges him/herself against medical advice.
- Recalcitrant patients need to be located for treatment under the *Public Health Act*.
- Police officers may be authorized as medical examiner investigators under the *Fatality Inquiries Act*.
- Abuse is suspected of either a child or a person in a hospital, group home, senior's housing or nursing home.

2.7 Proactive Disclosure to Police.

Capital Health affiliates may initiate disclosure of identifying health information about a patient/resident/client to a police service only when:

- (a) the patient/resident/client requests an affiliate to contact police;
- (b) the patient/resident/client poses a risk of imminent danger to the health and safety of any person either while on a CH site or when leaving CH property;
- or
- (c) when there is urgent need to contact the next-of-kin of the patient/resident/client.

If an affiliate believes a crime has been committed on Capital Health property and involves a patient/resident/client, security should be called. Security personnel can then investigate the alleged offense without using records containing health information. The police may be called but no health information about the individual should be disclosed unless the disclosure would avert or minimize an imminent danger to the health or safety of any person. The individual who the affiliate believes is involved in the crime can be pointed out to police on their arrival.

In all cases affiliates

- should consult with their manager prior to disclosure, or
- immediately notify their manager, if prior consultation is not possible, unless departmental/program policies authorize the affiliate to act without consultation.

When evidence needs to be secured for a criminal investigation, contact security.

### **3. Making the Disclosure**

3.1 After complying with section 1 of this procedure, Capital Health affiliates, who are authorized by their division, department or program area, may make disclosures in three ways:

- verbally
- by providing access to records (e.g. viewing of admitting record), or
- by providing copies of records.

3.2 Capital Health affiliates who are authorized may disclose an individual's health information records by fax or e-mail (with encryption) only if efforts are taken to protect the confidentiality of the health information, consistent with regional, site or program procedures and guidelines regarding the use of facsimile or internet communication.

3.3 Any time a record of individually identifying diagnostic, treatment and care information\* is disclosed, the affiliate must make a notation of the disclosure. The notation shall contain:

- The name of the police officer to whom the information was disclosed,
- The date and purpose of the disclosure, and
- A description of the health information disclosed.

3.4 When the information is disclosed from the patient record, the notation is made in the patient record. In other cases the notation must be made in such a way that it is retrievable by patient/client/resident name or other identifier such as personal health number. (Refer to Procedure 6.3.1.12, "Notation of Certain Disclosures of Health Information").

3.5 In addition to the notation required in 3.3 above, CH affiliates must inform the police officer in writing of the purpose of the disclosure and the authority under

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\* Term defined in Appendix B of Directive

which the disclosure is made. **This must be done whether the information is disclosed verbally or in record format.**

#### **4. Role of Information Access and Privacy Office**

- 4.1 The Office will assist affiliates in determining whether health information should be disclosed or refused under Section 2 of this Procedure.
- 4.2 If the police service is not satisfied with the handling of the request for health information, affiliates shall inform the police officer that he or she may discuss their concern with Capital Health's Information Access and Privacy Office.

## Appendix

### **Procedure for dealing with subpoenas, warrants and court orders**

1. All search warrants, subpoenas, and court orders requesting the production of patient/resident/client records shall be referred to the Health Records Department or program area for processing.
2. The Security Services Department co-ordinates activities involved in the receipt of search warrants, subpoenas and court orders as they apply to patient care units, outpatient clinics and all other departments (e.g. Community Care, Laboratory, Diagnostic Imaging, Mental Health).
3. **Search Warrants** –A search warrant is issued by a judge and directs the hospital or program area to produce patient information and provide to City Police or RCMP for delivery to the court.
  - 3.1 Verify identification of police officer presenting the search warrant. Also obtain the officer's name, badge number and telephone number.
  - 3.2 Ensure that the search warrant is signed before permitting access to patient information. Read the search warrant and provide only the requested information.
  - 3.3 Provide a photocopy of the requested information unless the requester insists on receiving the original. (Retain a photocopy in this instance.)
  - 3.4 Retain a photocopy of the search warrant.
  - 3.5 In case of any dispute or doubt in response to a search warrant, place the requested information in a sealed envelope addressed to the Clerk of the Court.
4. **Subpoenas** – A subpoena is issued to secure the attendance of a witness in criminal proceedings. The witness may be required to bring documents to court.
  - 4.1 Read the subpoena carefully and take only the information requested to court. When health records are required in court, it is the responsibility of the Health Records Department to produce the chart in court.
  - 4.2 Take the original and a photocopy of the patient information to court and request that only the photocopy be retained by the court as ordered by the judge.

4.3 Physicians or other health care providers directly involved in patient care can review charts and make notes prior to attendance at court but cannot make copies of the records to take to court without a court order.

**5. Notice to Attend** – A Notice to Attend is issued to secure a witness in civil proceedings or under provincial statutes. The witness may be required to bring documents to court.

5.1 Read the Notice to Attend carefully and take only the information requested to court. When health records are required in court, it is the responsibility of the Health Records Department to produce the chart in court.

5.2 Take the original and a photocopy of the patient information to court and request that only the photocopy be retained by the court as ordered by the judge. (See note at 4.2 above.)

5.3 Physicians and other health services providers directly involved in patient care can review charts and make notes prior to attendance at court but cannot make copies of the records to take to court without a court order.

**6. Court Orders** - A Court Order is issued by a judge and directs the hospital or program area to produce patient information.

6.1 Ensure that the Court Order is signed. Read the Court Order carefully and provide only the requested information at the appropriate time.

6.2 Retain a copy of the Court Order.

6.3 If Court Order required that information be produced immediately, provide only a photocopy of patient information unless specifically required to provide original documentation (retain a photocopy in this instance).

6.4 Take the original and photocopy of patient information to court and request that only the photocopy be retained by the court as ordered by the judge.

**7. Objections to Search Warrants**

7.1 There are occasions when legal objections to search warrants are appropriate. These occasions can arise when either the patient has not been notified that such information is being sought or, if the patient is notified, he or she refuses to consent to the release of the information. If the information is appropriate and required for a trial process, then a subpoena may be issued at the time of trial. At this time, the patient will be made aware that the information is being sought. Appropriate arguments can be made as to whether the value of the information gained outweighs the value of preserving patient confidentiality.

7.2 If the police officer insists upon immediate enforcement of the Search Warrant, to which there are legal objections, a sealed box containing a photocopy of the documents (unless originals are required, keep a photocopy) shall be delivered to the officer. A formal letter of protest shall be placed on the sealed box. Capital Health's legal counsel shall then attend the Court of Queen's Bench to attempt to have the Search Warrant quashed.