

 <p>Winnipeg Regional Health Authority Office régional de la santé de Winnipeg Caring for Health À l'écoute de notre santé</p> <p><b>POLICY</b></p>	<p><b>REGIONAL</b></p> <p>Applicable to all WRHA governed sites and facilities (including hospitals and personal care homes), and all funded hospitals and personal care homes. All other funded entities are excluded unless set out within a particular Service Purchase Agreement.</p>		<p>Level:</p> <p style="text-align: center;"><b>1</b></p>
	<p>Policy Name:</p> <p style="text-align: center;"><b>Access to, Disclosure of, and Corrections to the Clinical Record under <i>The Mental Health Act</i></b></p>	<p>Policy Number:</p> <p style="text-align: center;">10.40.050</p>	<p>Page</p> <p style="text-align: center;">1 of 7</p>
	<p>Approval Signature:</p> <p style="text-align: center;">Original signed by M. Sussman</p>	<p>Section:</p> <p style="text-align: center;"><b>GENERAL ADMINISTRATION</b></p>	
	<p>Date:</p> <p style="text-align: center;">May 2016</p>	<p>Supercedes:</p> <p style="text-align: center;">March 2009</p>	

## 1.0 PURPOSE:

- 1.1 The provisions of *The Mental Health Act*, C.C.S.M., c. M110 (Manitoba) take precedence over any conflicting provisions in *The Personal Health Information Act* (Manitoba) (“PHIA”).
- 1.2 To establish a consistent and controlled process, in compliance with *The Mental Health Act* to the extent it differs from PHIA, for patients to examine and receive copies of their clinical record maintained by any **designated Psychiatric Facility** within the Winnipeg Regional Health Authority (“WRHA”).
- 1.3 To protect patients against unauthorized use and disclosure of their clinical record.
- 1.4 To establish procedures to enable patients to request a correction to their clinical record.
- 1.5 To establish procedures to process requests for a correction of a patient’s clinical record.
- 1.6 To establish procedures to accept or reject requests for correction.
- 1.7 To maintain and protect the interests of the WRHA including its property rights to the clinical record.

## 2.0 DEFINITIONS:

- 2.1 Access: The right of an Individual, or a Person Permitted to Exercise the Rights of an Individual, to examine (view) and receive a copy of the Individual’s Personal Health Information Maintained by the Trustee in accordance with the Trustee’s established policies and procedures.

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- 2.2 Authorized Representative: The patient's guardian, if the patient is a minor who is not mentally competent, or the patient's Committee of both property and personal care.
- 2.3 Clinical Record: The clinical record compiled and maintained in a designated Psychiatric Facility for the observation, assessment, diagnosis and treatment of persons who suffer from mental disorders.
- 2.4 Disclosure: Means revealing personal health information outside the Trustee. For example, to other Trustees, to family and friends of the Individual, or to other persons legally entitled to have the Personal Health Information released to them. As an employee or agent of a Trustee, when authorized to disclose, you are only permitted to disclose the minimum amount of information required as authorized by the Act.
- 2.5 Medical Director: The medical director of a facility has responsibility for the provision and direction of psychiatric services for that facility, and may delegate to any suitably qualified person any of the medical director's powers, duties or functions under *The Mental Health Act 115(2)(d)*.
- 2.6 Patient: A person who is or has been admitted to a facility as an in-patient, or is/was attending as an outpatient for diagnosis or treatment.
- 2.7 Psychiatric Facility: A place designated in the regulations of *The Mental Health Act* as a facility for the observation, assessment, diagnosis and treatment of persons who suffer from mental disorders.
- 2.8 Review Board: The Review Board established pursuant to *The Mental Health Act*.
- 2.9 Use: Means any activity involving personal health information within the Trustee. Use includes accessing, looking at and sharing the information collected by the Trustee for the purpose of providing health care. Use also includes, but is not limited to, processing, reproduction, transmission and transportation of Personal Health Information. As an employee or agent of a Trustee, you should only be using the minimum amount of information required to do your job.

### **3.0 POLICY:**

#### **3.1 Patient Access to the Clinical Record**

- 3.1.1 The patient has the right, on request, to examine and receive a copy of his/her clinical record maintained by any designated Psychiatric Facility within the WRHA.
- 3.1.2 The request to examine and receive copies of the patient's information must be made in writing and approved by the Medical Director.

- 3.1.3 The Medical Director, or delegate, will respond to the request within seven days of the receipt of the request and advise the patient that his/her request has been approved, or referred to the Review Board.
- 3.1.4 If the Medical Director wishes to refuse access to all or part of the clinical record, he or she shall, within 7 days after receiving the request, apply to the Review Board for an order permitting all or part of the clinical record to be withheld.
- 3.1.5 After reviewing the clinical record the Review Board may order the Medical Director to permit the patient to examine and receive a copy of the entire record. The Review Board may order that certain information be severed from the chart permitting the patient to examine or copy the remainder of the clinical record.
- 3.1.6 The Health Information Services Department has the primary responsibility to release information approved by the Medical Director or ordered by the Review Board. A record of disclosure shall be retained, including what Personal Health Information was disclosed and to whom.).

### 3.2 **Correction of the Clinical Record**

A patient may make a request in writing to the Medical Director to correct personal health information recorded and maintained in the patient's clinical record.

### 3.3 **Disclosure of the Clinical Record**

**Without Consent:** The Medical Director may disclose information maintained in a clinical record without the patient's consent or consent on the patient's behalf only if the disclosure is restricted to the following circumstances:

- (a) to a person on the staff of the facility or a student directly involved in the patient's care, for the purpose of assessing or treating the patient
- (b) to the medical director of another facility or other health facility currently involved in the patient's direct care, on that person's written request;
- (c) to a person who is providing health care to the patient, to the extent necessary to provide that care, unless the patient, while competent, has instructed the medical director not to make the disclosure;
- (d) to the person authorized to make treatment decisions on the patient's behalf under subsection 28(1), for the sole purpose of making treatment decisions on the patient's behalf;
- (e) to any person, if the medical director reasonably believes that the disclosure is necessary to prevent or lessen a serious and immediate threat to the mental or physical health or the safety of the patient or another person;

(f) to the review board for the purpose of a hearing under Part 7;

(g) to the director for the purpose of carrying out his or her duties under this Act;

(h) to a Review Board established or designated for Manitoba under Part XX.1 of the *Criminal Code* (Canada);

(i) to a person for research purposes, if the medical director determines that:

- the research is of sufficient importance to outweigh the intrusion into privacy that would result from the disclosure,
- the research purpose cannot reasonably be accomplished unless the information is provided in a form that identifies or may identify the patient,
- it is unreasonable or impractical for the person proposing the research to obtain the patient's consent,
- the research project contains reasonable safeguards to protect the confidentiality of the information and procedures to destroy the information or remove all identifying information at the earliest opportunity consistent with the purposes of the project,
- the research project has been approved by a research review committee acceptable to the medical director, and
- the person proposing the research project has entered into an agreement with the facility in which the person agrees not to publish the information requested in a form that could reasonably be expected to identify the patient, to use the information solely for the purposes of the project, and to ensure that the project complies with the safeguards described in subclause (iv);

(j) required for the planning, delivery, evaluation or monitoring of a program that relates to providing health care to the patient or the payment for health care;

(k) required for the purpose of peer review by the standards committee of the facility, or to a medical staff committee established to study or evaluate medical practice in the facility;

(k.1) required by a critical incident review committee established under Part 4.1 of *The Regional Health Authorities Act*;

(l) to a body with statutory responsibility for the discipline of members of a health profession or for the quality or standards of professional services provided by members of a health profession;

(m) if the patient has died;

- to the executor or administrator of the patient's estate, or
- to a relative of the patient if the medical director is of the opinion that disclosure would not be an unreasonable invasion of the deceased patient's privacy and would not endanger the mental

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or physical health of another person;

(n) to a lawyer acting on behalf of the facility or on behalf of a person on the staff of the facility.

### 3.4 **Limitation on Disclosure Without Consent**

Every disclosure made without consent pursuant to Section 3.3.1 must be limited to the minimum amount of information necessary to accomplish the purpose for which the information is disclosed.

## 4.0 **PROCEDURE:**

### 4.1 **Procedure for Request and Response**

- 4.1.1 Requests to examine and receive copies of the patient's clinical record must be made in writing by the patient or the patient's authorized representative and forwarded to the Medical Director of the Psychiatric Facility.
- 4.1.2 Following review of the clinical record, the Medical Director will determine and confirm what information may be released and will advise the WRHA site Privacy Officer or designate of the decision and, when applicable, of any Review Board orders or stipulations.
- 4.1.3 All requests for access to personal health information will be processed through the WRHA site Privacy Officer or designate within the Health Information Services Department.
- 4.1.4 The Privacy Officer or designate will advise the patient or patient's authorized representative of the estimated costs to examine and receive copies of the clinical record after a request for access has been granted.
- 4.1.5 The Health Information Services Department will make arrangements with the patient, or the patient's authorized representative, to examine the clinical record and the Health Information Services Department will make appropriate copies of the clinical record .
- 4.1.6 The Health Information Services Department will make arrangements for appropriate staff to be available to provide explanation of terms, codes, or abbreviations used in the clinical record.

### 4.2 **Procedure for Corrections**

- 4.2.1 To correct information in any part of the clinical record that the patient has a right to examine and copy, the patient must submit a request in writing.
- 4.2.2 The written request is to be addressed/directed to the Medical Director.
- 4.2.3 As promptly as required in the circumstances, but no later than 30 days

after receiving the request, the Medical Director will:

- make the correction by adding the information to the record in such a manner that it will be read with and form part of the record or be cross-referenced to it;
- inform the patient that the record no longer exists or cannot be found;
- inform the patient of the name and address of the facility that maintains the requested information;
- advise the patient of the refusal to correct the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement to the record.

4.2.4 If the Medical Director refuses to make a correction, he or she shall:

4.2.4.1 permit the patient to file a concise statement of disagreement stating the correction requested and the reason for the correction; and

4.2.4.2 add the statement to the clinical record in such a manner that it will be read with and form part of the clinical record or be adequately cross-referenced to it.

4.2.5 If practicable, the Medical Director will notify any other person or organization to whom the clinical record has been disclosed during the year before the correction was requested about the correction or statement of disagreement and provide a copy.

4.2.6 There will be no fee for making a correction, or adding a statement of disagreement to the clinical record.

### **4.3 Procedure for Disclosure With Consent**

4.3.1 With the appropriate consent from the patient or the patient's authorized representative of both property and personal care, the Medical Director may disclose information in the clinical record.

4.3.2 Where practicable, the consent should be in writing. If circumstances mandate a verbal consent, the circumstances and verbal consent should be recorded in the clinical record.

### **4.4 Procedure for Disclosure Without Consent**

4.4.1 The Medical Director or delegate may disclose the information in the clinical record without the patient's consent or without consent on the patient's behalf, as indicated in 3.3.2 above.

4.4.2 Upon the direction of the Medical Director, the Health Information Services Department shall process the disclosure of information.

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4.5 The Health Information Services Department shall keep a record of all disclosures of information in the clinical record made with or without the patient's consent.

## 5.0 **REFERENCES:**

*The Mental Health Act* Part 5 - Information and Records.

**Policy Contact: Christina Von Schindler, WRHA Chief Privacy Officer**