

 <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>	<h2 style="margin: 0;">REGIONAL</h2> <p style="margin: 0;">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>		Level:  <h1 style="margin: 0;">1</h1>
	Policy Name: <p style="text-align: center;"><b>Disclosure of Personal Health Information Requested for Legal Proceedings</b></p>	Policy Number: <p style="text-align: center;">10.40.142</p>	Page: <p style="text-align: center;">1 of 4</p>
	Approval Signature: <p style="text-align: center;"><i>Original signed by A. Wilgosh</i></p>	Section: <p style="text-align: center;">Governance &amp; General Administration</p>	
	Date: <p style="text-align: center;">April 2010</p>	Supersedes: <p style="text-align: center;">New</p>	

### 1.0 PURPOSE:

- 1.1 To establish a consistent and controlled process for Disclosure of Personal Health Information required in connection with Legal Proceedings.

### 2.0 DEFINITIONS:

- 2.1 Access: The right of an Individual, or a Person Permitted to Exercise the Rights of that Individual, to examine (view) and receive a copy of the Individual's Personal Health Information Maintained by the Trustee.
- 2.2 Disclosure of Personal Health Information: Revealing the Personal Health Information outside the Trustee, i.e. to other Trustees, to family and friends of the Individual, or to other persons legally entitled to have Personal Health Information released to them.
- 2.3 Health Care: Any care, service or procedure provided to diagnose, treat or maintain an Individual's health; provided to prevent disease or injury or promote Health Care; or that affects the structure or a function of the body and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.
- 2.4 Health Care Facility: A hospital, personal care home, Psychiatric Facility, medical clinic, laboratory, CancerCare Manitoba and community health centre or other facility in which Health Care is provided and that is designated in the PHIA regulations.
- 2.5 Health Professional: A person who is licensed or registered to provide Health Care under an Act of the Legislature or who is a member of a class of persons designated as Health Professionals in the PHIA regulations.
- 2.6 Individual: A patient, client or resident receiving Health Care services within the WRHA/Health Care Facility. For the purpose of Access, correction, Use and Disclosure of Personal Health Information includes Persons Permitted to Exercise the Rights of an Individual.
- 2.7 In-House Legal Counsel: A lawyer employed by the WRHA legal department.

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2.8 Legal Proceeding: Any proceeding in court or before a quasi-judicial tribunal that involves the WRHA, a Health Care Facility, a medical staff member or an employee who renders services at a Health Care Facility.

2.9 Maintain: In relation to personal health information, to have custody or control of the information.

2.10 Personal Health Information: Recorded information about an identifiable Individual that relates to:

- the Individual's health, or health care history, including genetic information about the Individual;
- the provision of health care to the Individual; or
- payment for health care provided to the Individual;

and includes:

- the PHIN (personal health identification number) and any other identification number, symbol or particular assigned to an Individual; and
- any identifying information about the Individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care;

and for further clarity includes:

- personal information such as financial position, home conditions, domestic difficulties or any other private matters relating to the Individual which have been disclosed to the Trustee;

and for the purpose of the Confidentiality policy:

- any Personal Health Information exchanged verbally about an identifiable Individual.

2.11 Persons Permitted to Exercise the Rights of an Individual means:

- 2.11.1 (a) any person with written authorization from the Individual to act on the Individual's behalf;
- (b) a proxy appointed by the Individual under *The Health Care Directives Act*;
- (c) a committee appointed for the Individual under *The Mental Health Act* if the committee has the power to make health care decisions on the Individual's behalf;
- (d) a substitute decision maker for personal care appointed for the Individual under *The Vulnerable Persons Living with a Mental Disability Act* if the exercise of the right relates to the powers and duties of the substitute decision maker;
- (e) the parent or guardian of an Individual who is a minor, if the minor does not have the capacity to make health care decisions;
- (f) if the Individual is deceased, his or her Personal Representative.

2.11.2 If it is reasonable to believe that no person listed in any clause of 2.11.1 exists or is available, the adult person listed first in the following who is readily available and willing to act may exercise the rights of an Individual who lacks the capacity to do so:

- (a) the Individual's spouse, or common-law partner, with whom the Individual is cohabiting;

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- (b) a son or daughter;
- (c) a parent, if the Individual is an adult;
- (d) a brother or sister;
- (e) a person with whom the Individual is known to have a close personal relationship;
- (f) a grandparent;
- (g) a grandchild;
- (h) an aunt or uncle;
- (i) a nephew or niece.

**Ranking:** The older or oldest of two or more relatives described in any clause of 2.11.2 is to be preferred to another of those relatives.

- 2.12 Privacy Officer: An employee designated by the WRHA or the Health Care Facility whose responsibilities include dealing with requests from Individuals who wish to examine and copy or to correct Personal Health Information collected and Maintained by the Trustee and facilitating the Trustee's compliance with PHIA. The definition is intended to mean the Privacy Officer and/or their delegate.
- 2.13 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.
- 2.14 Record or Recorded Information: A record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records.
- 2.15 Site: A Health Care Facility, community health centre, community office within the WRHA.
- 2.16 Trustee: A Health Professional, Health Care Facility, public body, or health services agency that collects or Maintains Personal Health Information. For clarity, the WRHA as a public body is the Trustee of the Personal Health Information collected and Maintained within Health Care Facilities and Sites owned and/or operated by the WRHA and includes Community Health Services. The other hospitals and personal care homes within the region are Trustees of the Personal Health Information collected and maintained at each Health Care Facility.
- 2.17 Use: Involves revealing Personal Health Information to someone within the Trustee's own organization who needs to know the information to do their job. Use includes processing, reproduction, transmission and transportation of Personal Health Information.

### 3.0 **POLICY:**

- 3.1 The Record or Recorded Information containing an Individual's Personal Health Information is the property of the Trustee.

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- 3.2 The original Record or Recorded Information cannot be removed from the Health Care Facility unless approved by the Site Privacy Officer.
- 3.3 All requests for Personal Health Information required as part of a legal proceeding, including requests from solicitors representing the Trustee, medical staff or other disciplines, must be coordinated by the Site Privacy Officer or WRHA In-House Legal Counsel.
- 3.4 The Trustee has the right to charge a fee for providing a copy of Personal Health Information requested. The person making the request must be informed of any charges associated with the request as set out in the WRHA fee schedule.
- 3.5 The Health Care Facility Privacy Officer or WRHA In-House Legal Counsel are the only persons permitted to make copies of Personal Health Information required or requested as part of a legal proceeding.
- 3.6 The Health Care Facility Privacy Officer or WRHA In-House Legal Counsel are responsible for providing the Personal Health Information to the court in response to a subpoena or court order or to counsel in response to a request, even if the subpoena or request is addressed to a medical staff member or employee.
- 3.7 The Health Care Facility Privacy Officer shall respond as promptly as possible to the request for Personal Health Information required for a legal proceeding including a request from WRHA In-House Legal Counsel.
- 3.8 The Health Care Facility Privacy Officer or WRHA In-House Legal Counsel may provide Personal Health Information to Crown attorneys in advance of court only when required in anticipation of or for use in the prosecution of an offence. This does not apply to Inquests or other civil proceedings.
- 3.9 The Personal Health Information may be faxed to the Crown attorney upon request and in accordance with the Transmission of Personal Health Information Via Facsimile policy.
- 3.10 The Health Care Facility Privacy Officer may contact the WRHA In-House Legal Counsel if the Trustee has concerns about disclosing the Personal Health Information requested in the course of a legal proceeding.

**4.0 PROCEDURE: N/A**

**5.0 REFERENCES:**

- 5.1. *The Personal Health Information Act (Manitoba)*
- 5.2. *The Personal Health Information Act Regulations*
- 5.3. Transmission of Personal Health Information Via Facsimile Policy #10.40.130

***Policy Contact: Landis Esposito, WRHA Chief Privacy Officer***