

SASKATCHEWAN COLLEGE OF PHARMACISTS

Disclosure of Personal Health Information to Law Enforcement Authorities

Background

These guidelines are intended to supplement the Saskatchewan College of Pharmacists guidelines entitled *Patient Confidentiality and the Release of Confidential Records*.

For the purpose of these guidelines, the term “law enforcement authority” means a member of the Royal Canadian Mounted Police or a city or municipal police service. Military police, conservation officers and bylaw enforcement officers, for example, are not considered law enforcement authorities for the purposes of these guidelines.

The Code of Ethics of the Saskatchewan College of Pharmacists states that “a pharmacist shall protect the patient's right of confidentiality”. During the course of practice, pharmacists acquire “personal health information”, including medication, medical and other personal information about their patients. A pharmacist is ethically obliged to respect the confidential nature of this information. However, from time to time pharmacists will be confronted with situations where patient information will be requested by law enforcement authorities, or where the pharmacist may feel compelled to disclose patient information to law enforcement authorities on his or her own initiative.

The purpose of this document is to provide general guidance to pharmacists as to when personal health information must or may be disclosed to law enforcement authorities.

Pharmacists should not presume that personal health information must be disclosed based merely on a simple request by a law enforcement authority or a perceived violation of the law. These guidelines are intended to assist pharmacists in understanding the limited circumstances where personal health information must or may be disclosed to law enforcement authorities.

A. SITUATIONS WHERE DISCLOSURE IS MANDATORY

1. Warrant, Subpoena or Court Order

Where a law enforcement authority or other authority presents an appropriate warrant, subpoena, production order or court order, the pharmacist is required to disclose personal health information. Consent of the client is not required.

If a warrant, subpoena, production order or court order is presented to a pharmacist on an urgent basis, the pharmacist should exercise his or her due diligence in verifying the legitimacy of the document to determine:

- (a) if the document is valid and makes sense on its face (i.e. is in the proper form, is thoroughly completed with specific reference to the precise information that is being requested, is signed/executed by the individual or judge/justice of the court who is authorizing/requesting the production

of information, and is authorized for execution during the time it is presented); and

- (b) if the document is from a legitimate source, such as a law enforcement authority (e.g. checking for a badge number and calling it in).

If the request is non-urgent; if the pharmacist is unable to verify the legitimacy of the document after following the above due diligence process; or if an unusual, non-court issued or non-law enforcement issued document is presented, the pharmacist should take reasonable steps to verify that the document is appropriate and valid and that the correct information is released before disclosing any personal health information.

2. Statutory Duty to Report

In some situations, a pharmacist may have a statutory duty to proactively report a matter to a law enforcement authority. These include the following:

- Where a pharmacist (or any other person) becomes aware that a child who is (or appears to be) under 18 years of age has been subjected to, or is likely to be subjected to, sexual abuse, the pharmacist has a duty to report the information to a child protection officer or police officer under *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act* (Saskatchewan).
- Where a pharmacist (or any other person) determines that a child who is (or appears to be) under 16 years of age is in need of protection, the pharmacist has a duty to report the information to a child protection officer or police officer under *The Child and Family Services Act* (Saskatchewan). A child is deemed to be in need of protection (among other circumstances) when a parent's act or omission, has caused, is causing or is likely to cause the child to
 - suffer physical harm or serious impairment of mental or emotional functioning; or
 - be exposed to harmful interaction for a sexual purpose, including prostitution or conduct specified within the meaning of the *Criminal Code*.

See also the Saskatchewan College of Pharmacists' guideline entitled *Emergency Post-Coital Contraception Standards and Guidelines for Pharmacists Prescribing* for further information on a pharmacist's duty to report under these statutes.

Where a legal duty to report exists, privacy legislation allows the pharmacist to disclose the pertinent personal health information to a law enforcement authority without patient consent. Disclosure must be limited to the relevant information collected during the normal course of providing service. Relevant means only the information that was collected and forms the grounds to believe that a legal duty to report exists.

The pharmacist should ensure that the reason for making the disclosure and the precise information disclosed by the pharmacist are recorded on the client record.

A pharmacist cannot take extraordinary measures to invade the privacy of an individual to determine if a duty to disclose exists, and must be careful about seeking information

beyond those questions which would normally be raised in the course of interacting with a client. Also, no other information about the patient or from the records in the pharmacy can be disclosed unless lawful authority exists (i.e. under a warrant or subpoena).

B. SITUATIONS WHERE DISCLOSURE IS DISCRETIONARY

In all cases of discretionary disclosure, consider obtaining the consent of the client prior to making a disclosure of personal health information to a law enforcement authority. It is always the preferred practice to disclose with the express consent of the client, and where possible, consent should be requested. An appropriate request for disclosure form should be signed by the client (i.e. Appendix "A" or a law enforcement authority's standard consent form). The following grounds for discretionary disclosure should only be considered in circumstances where consent cannot reasonably be obtained.

When a request for disclosure without consent is made by a law enforcement authority, the pharmacist should ensure that the appropriate request for disclosure form has been completed by the requesting Officer prior to disclosure (see Appendix "B"). If the pharmacist is disclosing the information other than in response to a request for disclosure by a law enforcement authority, the reason for making the disclosure and the precise information disclosed by the pharmacist must be recorded on the client record. In either case, the name and badge number of the law enforcement authority to whom the information was disclosed should be recorded.

1. Safety

Where, in the reasonable opinion of the pharmacist, the disclosure of personal health information is required in order to avoid or minimize a danger to the health or safety of the client, staff or any third party, the pharmacist may disclose the information without the consent of the client.

In these circumstances, the danger should be to an identifiable individual or group, the harm must constitute damage or detriment and not mere inconvenience, and the danger itself should be identifiable. For example, a general concern about public safety by reducing crime in general is not sufficient to justify disclosure of personal health information to a law enforcement authority without consent of the client. The pharmacist must consider on a case-by-case basis if there is:

- a) a reasonable expectation of probable harm;
- b) harm that constitutes damage or detriment and not mere inconvenience;
and
- c) a causal connection between disclosure and the anticipated harm.

2. Fraudulent, Abusive or Dangerous Use of Publicly Funded Health Services

Where, in the reasonable opinion of the pharmacist, the disclosure of personal health information is necessary in order to monitor, prevent or reveal fraudulent, abusive or dangerous use of publicly funded health services, the pharmacist may disclose the information without the consent of the client.

In these circumstances, the pharmacist must consider whether reasonable grounds (requiring concrete evidence beyond mere suspicion) exist to support a conclusion that some fraudulent, abusive or dangerous use of public health services is taking place. The pharmacist cannot take extraordinary measures to invade the privacy of an individual to determine if reasonable grounds exist, and must be careful about seeking information beyond those questions which would normally be raised in the course of interacting with a client. The pharmacist must then consider whether the disclosure of personal health information is necessary in order to prevent the misuse of public health services.

3. Enforcement of or Carrying Out an Investigation Pursuant to the Criminal Code or the *Controlled Drugs and Substances Act* (Canada)

A pharmacist may disclose personal health information when requested by a law enforcement authority on a without consent basis to assist with enforcement or investigation as long as the personal health information disclosed is **limited to registration information of the client (name, address, other information collected to register the client for health services) or information related to the nature and severity of an injury that was suffered by the client and that is connected with the enforcement or investigation.**

4. Health Services Received or Offered as a Direct Result of an Incident That is the Subject of an Investigation Pursuant to the Criminal Code or the *Controlled Drugs and Substances Act* (Canada)

A pharmacist may disclose personal health information when requested by a law enforcement authority on a without consent basis regarding health services received by a client due to its connection with the investigation of an incident as long as the personal health information disclosed is **limited to the facts surrounding the incident or the health services provided to the client and must not include information regarding the prior health history of the client.**

C. GENERAL PRINCIPLES

The above scenarios address the most common situations where personal health information may validly be disclosed to a law enforcement authority. Other disclosures of personal health information may be authorized by the *Health Information Protection Act* (Saskatchewan) and/or the *Personal Information Protection and Electronic Documents Act* (Canada). Please refer to the Saskatchewan College of Pharmacists' guideline entitled *Patient Confidentiality and the Release of Confidential Records* for more information.

In all cases of disclosure to a law enforcement authority, either the "Request for Disclosure of Personal Health Information to Law Enforcement Authority With Consent" or the "Request for Disclosure of Personal Health Information to Law Enforcement Authority Without Consent" form, as applicable, should be completed. These forms are attached to these Guidelines as Appendices "A" and "B". Please ensure that the appropriate form is completed in full (and that documentation of the reason for the request and, if applicable, the reason that the request is urgent are included on the form).

In all cases of disclosure to a law enforcement authority, personal health information should only be disclosed on a need-to-know basis, and only the minimum amount of personal health information that is reasonably necessary for the purpose for which it is being requested should be disclosed to the requesting law enforcement authority.

Please see Appendix "C" for a list of commonly investigated offences.

Members requiring assistance in interpreting these Guidelines are encouraged to contact the Saskatchewan College of Pharmacists at 306-584-2292.

APPENDIX "A"

**REQUEST FOR DISCLOSURE OF PERSONAL HEALTH INFORMATION TO LAW ENFORCEMENT
AUTHORITY WITH CONSENT**

CONSENT BY CLIENT FOR DISCLOSURE OF PERSONAL HEALTH INFORMATION

I, _____, born _____, give my consent to the disclosure of the following
(print name of client) (dd/mm/yyyy)
personal health information to the Law Enforcement Authority described below [describe information to be disclosed (e.g. registration information, injury being treated, facts/circumstances surrounding injury, treatment provided, name and location of facility at which administered, etc.)]:

Client Signature: _____ Date: _____

Prescribed Law Enforcement Authority Requesting Disclosure: _____

Printed Name of Officer (requesting disclosure on behalf of the Police Service): _____

Signature of Officer (requesting disclosure on behalf of the Police Service): _____

Badge Number: _____

CONSENT FOR DISCLOSURE OF PERSONAL HEALTH INFORMATION ON BEHALF OF THE CLIENT

On behalf of the client, _____, born _____, I, _____
(print name of client) (dd/mm/yyyy) (print name of person providing consent)
give my consent to the disclosure of the following personal health information [describe information to be disclosed (e.g. registration information, injury being treated, facts/circumstances surrounding injury, treatment provided, name and location of facility at which administered, etc.)]:

I am providing consent on behalf of the client in my capacity as the personal representative/personal guardian/legal custodian/substitute decision-maker (circle one) of the client, pursuant to section 56 of *The Health Information Protection Act* (Saskatchewan).

Signature of Person Providing Consent: _____ Date: _____

Printed Name of Witness: _____ Signature of Witness: _____

Prescribed Law Enforcement Authority Requesting Disclosure: _____

Printed Name of Officer (requesting disclosure on behalf of the Police Service): _____

Signature of Officer (requesting disclosure on behalf of the Police Service): _____

Badge Number: _____

APPENDIX "B"

**REQUEST FOR DISCLOSURE OF PERSONAL HEALTH INFORMATION TO LAW ENFORCEMENT
AUTHORITY WITHOUT CONSENT**

Name and Address of Prescribed Law Enforcement Authority:

Name, Title and Contact Information of Officer Making Request for Disclosure of Personal Health Information on Behalf of Law Enforcement Authority:

Personal Health Information Requested [describe information requested (e.g. registration information, injury being treated, facts/circumstances surrounding injury, treatment provided, name and location of facility at which administered, etc.)]:

I advise _____ (name of pharmacist/pharmacy) on _____ (dd/mm/yyyy) that personal health information regarding (Client Name) _____, born _____ (dd/mm/yyyy), is required for the following reasons (must check at least one):

- Avoiding or minimizing a danger to the health or safety of an identifiable individual or group of individuals.
If information is being requested on the above grounds, please confirm the following:
 - That there is a reasonable expectation of probable harm (i.e. it can reasonably expected that harm will occur).
AND
 - The danger presented is serious (i.e. constitutes damage or detriment, not merely inconvenience).
AND
 - There is a causal connection between the disclosure requested and the anticipated harm (i.e. it is necessary to know this information in order to prevent the harm from occurring).

Further details regarding the danger are as follows _____

- Enforcement of or carrying out a lawful investigation pursuant to the *Criminal Code* or the *Controlled Drugs and Substances Act* (Canada) (Specify applicable section(s) and/or offence being investigated or enforced at the time of the request):

- Registration information is being requested
OR
- Information regarding the nature and severity of an injury connected to the enforcement or lawful investigation is being requested.

The above information is needed to assist with the enforcement or lawful investigation/ is connected to the above offence because

_____.

*Required

The client received or was offered health services as a direct result of an incident that is the subject of a lawful investigation pursuant to the *Criminal Code* or the *Controlled Drugs and Substances Act* (Canada) (Specify applicable section(s) and offence being investigated): _____.

Information regarding the factual circumstances surrounding the incident is being requested.

OR

Information regarding the factual circumstances surrounding the provision of health services is being requested.

The above information is needed to assist with the lawful investigation/is connected to the above investigation because

_____.

*Required

Printed Name of Officer: _____

Signature of Officer: _____

Badge Number: _____ Date: _____

This request is:

Urgent/Required Immediately

[Please specify reason(s) for urgency: _____.]

Non-urgent (required within 72 hours).

The above request was:

Granted on: _____ (dd/mm/yyyy)

Please specify any modifications made to the request (i.e. any information requested that was not disclosed): _____

_____.

Denied on: _____ (dd/mm/yyyy)

Please specify reason for denial of request: _____.

APPENDIX "C"

COMMONLY INVESTIGATED OFFENCES

Common offences under the Criminal Code or the *Controlled Drugs and Substances Act* (Canada) which may be enforced or investigated by a law enforcement authority include:

- (a) Assault (Criminal Code, section 265);
- (b) Assault with a weapon or causing bodily harm (Criminal Code, section 267);
- (c) Aggravated assault (Criminal Code, section 268);
- (d) Sexual assault/aggravated sexual assault (Criminal Code, sections 271 and 273);
- (e) Homicide (Criminal Code, section 222);
- (f) Murder (Criminal Code, section 229);
- (g) Attempted murder (Criminal Code, section 239);
- (h) Operation of a motor vehicle while impaired (Criminal Code, section 253);
- (i) Possession of a controlled substance (*Controlled Drugs and Substances Act*, section 4); and
- (j) Trafficking of a controlled substance (*Controlled Drugs and Substances Act*, section 5).