COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

PROFESSIONAL GUIDELINE

Disclosure of Patient Information to Law Enforcement Authorities

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Related topic(s):	Medical Records Documentation; Medical Records Management; Disclosure of Adverse or Harmful Events

A **professional guideline** reflects a recommended course of action established based on the values, principles and duties of the medical profession. Licensees may exercise reasonable discretion in their decision-making based on the guidance provided.

Preamble

This document is a professional guideline of the Board of the College of Physicians and Surgeons of British Columbia (CPSBC). It is intended to assist licensees in responding to requests for disclosure of information received from law enforcement authorities.

CPSBC's position

Patient confidentiality is a fundamental principle recognized by CPSBC, by the Canadian Medical Association's *Code of Ethics and Professionalism* (Patient privacy and the duty of confidentiality, sections 18 to 21), by the *Personal Information Protection Act* of British Columbia, by the Canadian Medical Protection Association (*Physician Interaction with Police*, P1101-3-E, November 2011) and by the courts (*Smith v. Jones,* [1999] 1 SCR 455).

When a patient consults a licensee in respect to their health care, they will disclose sensitive personal information. The patient has a right to expect that this information will not be disclosed without consent except in exceptional circumstances. Licensees should not assume that personal health information must be disclosed based on a mere request by a law enforcement authority. Instead, a licensee must be satisfied that a recognized exception to licensee-patient confidentiality applies.

There are four circumstances where patient information may be disclosed to law enforcement authorities.

1. **Express consent**

   Disclosure is permitted when the patient has expressly consented to the disclosure.

2. **Court order**

   A court order will generally either be a search warrant or a subpoena. A different response is required depending on what document the law enforcement officials produce.

   A search warrant grants the police broad legal authority to search for and seize evidence. Licensees should review the warrant and only release the information specified in it. They should take care not to disclose any other information.

   A subpoena is an order to appear in court, often including a direction to bring patient records along. A subpoena generally does not require the licensee to speak to anyone about the contents of the records or any aspect of a patient's health before being ordered to do so by the court. The patient's records should be placed in a sealed envelope and not released to law enforcement officials until ordered to do so by the court.

3. **Required by statute**

   A number of statutes require physicians and surgeons to disclose patient information to third parties (see the *Duty to Report Guide*)

   For example, in certain circumstances under sections 13 and 14 of the *Child, Family and Community Service Act*, RSBC 1996, c.96, any person who has reason to believe that a child is in need of protection under section 13 must promptly report the matter to a director or person designated by a director. However, once a report has been made the information actually contained in the licensee's file is still subject to licensee-

patient confidentiality and cannot be released without express consent of the patient, specific court order, or the information falls under the public safety exception.

Sections 2 through 5 of the *Gunshot and Stab Wound Disclosure Act*, SBC 2010, c.7, requires a health-care facility or an emergency medical assistant who treats a person for a gunshot or stab wound to disclose certain information to the local police (name of injured person, the fact that the injured person is or was treated, the name or location of the health-care facility, or the location where the treatment occurs, and any other information required by the regulations). Health-care facility is defined under the Act to include hospitals, as well as clinics and licensees' private offices. Licensees working at a health-care facility, such as a hospital, may also be required to disclose the information to a designated individual at the health-care facility in order to permit the health-care facility to comply with its statutory reporting obligation.

4. **Public safety exception**

   The Supreme Court of Canada has recognized that licensee-patient confidentiality is subject to a public safety exception. The Court has identified three factors to be considered in order for a licensee to provide patient information to law enforcement authorities under this category.

   The licensee must have reason to believe

   - that there is a clear risk to an identifiable person or group of persons,
   - that there is a risk of serious bodily harm or death (serious psychological harm is included in the term serious bodily harm), and
   - that the danger is imminent.

   The licensee should obtain sufficient information from the law enforcement authorities to have reason to believe that all three requirements have been met before releasing any information.

Unless it would undermine the reason for disclosure of patient information to law enforcement authorities, the licensee may, where practicable, inform their patient about the disclosure, even if the patient's consent is not required.

There may also be occasions when licensees may be contacted by law enforcement authorities seeking information that is not personal health information. For example, a licensee may be contacted in respect of the accuracy of prescriptions issued in the name of your patient. The licensee may be asked to verify whether the signature on a prescription is authentic. The licensee should not volunteer any patient information except to verify the information on the prescription (name, date, and drug amount).