

## Privacy and Disclosure - Guidelines For Use And Disclosure Of Personal Health Information For Secondary Purposes

In this document, unless the context indicates otherwise, “member(s) include(s) licensed pharmacist(s) and pharmacy technician(s).

### BACKGROUND

These guidelines are intended to supplement the Saskatchewan College of Pharmacy Professionals guidelines entitled [Patient Confidentiality and the Release of Confidential Records](#).

The Code of Ethics of the Saskatchewan College of Pharmacy Professionals states that “a member shall protect the patient's right of confidentiality.” During the course of practice, members collect personal health information (PHI), including medication, medical and other personal information about their patients. A member is ethically obliged to respect the confidential nature of this information.

In addition, the trustee responsible for PHI (either the proprietor of a pharmacy, the Saskatchewan Health Authority or other public body who employs a pharmacy professional, or a pharmacy professional employed by a non-trustee) is bound by *The Health Information Protection Act* (Saskatchewan) (“HIPA”) in collecting, using and disclosing that PHI. See the Saskatchewan College of Pharmacy Professionals’ guideline *Pharmacy Privacy Officer Bylaw and Interpretive Guidelines* for further information on who is considered the “trustee” under HIPA.

The primary purpose for the collection, use and disclosure of PHI is to provide or support health care for the subject individual. All other purposes for the use and disclosure of PHI are considered to be secondary purposes.

The purpose of this document is to provide general guidance to members as to when personal health information may be used and disclosed for secondary purposes. Before using or disclosing PHI, a member should consider whether the purpose can be met by using or disclosing de-identified information instead.

### A. PATIENT CONSENT

Under HIPA, PHI may not be collected, used or disclosed without patient consent except:

- where it is for the primary purpose, in which case consent is deemed to exist, or
- in a closed list of circumstances where without-consent collection, use or disclosure is permitted.

PHI may be used or disclosed for any purpose where the patient has consented to such use or disclosure for that purpose. A member relying on patient consent should document the

consent received and should ensure that any use or disclosure takes place only on a need-to-know basis within the scope of the consent granted.

## **B. GENERAL DUTIES**

In order to rely on HIPA's without-consent provisions to support the collection, use or disclosure of PHI, a trustee is required to satisfy the following general duties:

- to inform patients of anticipated uses and disclosures in advance;
- to be able to inform patients of without-consent disclosures;
- to have in place appropriate policies, procedures and other safeguards to protect personal health information;
- to take reasonable steps to ensure that personal health information is accurate and complete; and
- to collect, use and disclose only personal health information reasonably necessary for the purpose for which it is collected, used or disclosed.

The secondary purposes described in part C herein are listed under section 27(4) of HIPA as purposes for which PHI may be used and disclosed without consent.

However, this authorization is subject to a member's professional ethics, as well as the "need-to-know" principle under which the least information possible should be used or disclosed to meet the purpose.

**Before using or disclosing PHI for any secondary purpose, a member must:**

- determine that the use or disclosure is actually required to meet the secondary purpose, **minimizing the amount of PHI used or disclosed including by de-identifying information where possible**; and
- in the case of a use or disclosure that is merely authorized rather than required by law, **exercise professional judgment as to whether or not the use or disclosure should be made**.

**When using or disclosing PHI, a member must document:**

- **which PHI has been disclosed** in order to be able to meet the general duty to be able to inform the patient of such disclosures;
- why the member has concluded that use or disclosure is permitted under a secondary purpose listed below; and
- in the case of disclosure to a non-trustee, what steps have been taken to verify the identity of the recipient and inform the recipient that the PHI is not to be used or disclosed for any further purpose as required by HIPA section 21.

## C. VALID SECONDARY PURPOSES

### 1. Information Management Services [S. 18(1)]

A member may provide PHI to an information management service provider (IMSP) for the purpose of having the information processed, stored, archived or destroyed, or for the purpose of other information management or information technology services. **The information provided to the IMSP must remain under the pharmacy's control**, and the IMSP is under a duty not to use or disclose the PHI for any purpose other than the one for which it was provided.

The member should ensure that a written agreement is in place with the IMSP which confirms the pharmacy's continued control over the information, and that the IMSP has appropriate privacy safeguards in place to protect the information.

For further information, see the Office of the Saskatchewan Information and Privacy Commissioner's resource *Best Practices for Information Sharing Agreements* available at: <https://oipc.sk.ca/assets/best-practices-for-information-sharing-agreements.pdf> and the *Data Sharing Agreement Precedent* in the Reference Manual.

### 2. Public Safety [s. 27(4)(a)]

A member may use or disclose PHI where the member believes, on reasonable grounds, that the disclosure will avoid or minimize a danger to the health or safety of any person. The member should document the basis for concluding that a real danger exists to an identifiable individual or individuals, as well as the reason why the use or disclosure is necessary to avoid or minimize it.

### 3. Prevention of Fraud [s. 27(4)(b)]

A member may use or disclose PHI where, in the opinion of the member, the use or disclosure is necessary for monitoring, preventing or revealing fraudulent, abusive or dangerous use of publicly funded health services. The member should document the evidence that leads to reasonable suspicion that fraudulent, abusive or dangerous use of health services is taking place, as well as the reason why the PHI used or disclosed is necessary to address the concern.

### 4. Billing / Payment for Services [s. 27(4)(k)(i)]

A member may use or disclose PHI for the purpose of obtaining payment for the provision of services to the subject individual.

### 5. Evaluation and Quality Control [s. 27(4)(k)(ii)]

A member may use or disclose PHI for the purpose of planning, delivering, evaluating or monitoring a program of a pharmacy. The member should document and communicate

the program being evaluated or planned, as well as document the reason why de-identified information would not be sufficient to meet the purpose.

#### **6. Professional Bodies [s. 27(4)(h), 27(5)]**

A member may disclose PHI to a health professional regulatory body such as the Saskatchewan College of Pharmacy Professionals:

- where required by an order, demand or subpoena; or
- where requested by the health professional regulatory body, if the member has reasonable grounds to believe that the PHI is relevant to the ability of the subject individual to practice his or her profession. The member should document the request and the reason why the PHI is relevant to the health professional regulatory body's assessment.

#### **7. Court Proceedings [s. 27(4)(i)]**

A member may use or disclose PHI:

- for the purpose of commencing or conducting a proceeding before a court or tribunal;
- in response to an order, demand, subpoena or warrant issued by a court or other body with the authority to compel the production of the information. Please see the Saskatchewan College of Pharmacy Professionals' [Disclosure of Personal Health Information to Law Enforcement Authorities Guidelines for further information](#); or
- for the purpose of complying with rules of court related to the production of information.

#### **8. Legal Services [s. 27(4)(m)]**

A member may disclose PHI to the pharmacy's legal counsel for the purpose of having legal services provided.

#### **9. Substitute Decision-Maker [s. 27(4)(d)]**

A member may disclose PHI to a person entitled to make a health care decision on behalf of the subject individual under *The Health Care Directives and Substitute Health Care Decision Makers Act* (Saskatchewan) where the PHI is required to make a health care decision with respect to the subject individual. The member should document the appointment of the decision-maker as well as the reasons why the PHI is required in support of the decision.

Please note that this type of directive is separate from an individual's authority to designate a person to exercise the individual's rights and powers with respect to PHI under HIPA. Where a member can verify that an individual has made such a designation

under HIPA, the designate should be treated as fully entitled to exercise the patient's HIPA rights in accordance with the designation.

For further information consult the SPP "Powers of Attorney, Health Care Directives and Substitute Decision Makers Guidelines for Pharmacists and Pharmacy Technicians."

#### **10. Benefit to the Subject Individual [s. 27(4)(j)]**

A member may use or disclose PHI where doing so will clearly benefit the health or well-being of the subject individual in circumstances where it is not reasonably practicable to obtain consent. The member should document the anticipated benefit to the health or well-being of the individual, as well as the reason why consent cannot practicably be obtained.

#### **11. Deceased Individuals [s. 27(4)(e)]**

Where the subject individual is deceased, a member may disclose:

- PHI to the personal representative of the subject individual for a purpose related to the administration of the individual's estate. The member should document the reason for which the PHI is required.
- PHI related to the circumstances of the subject individual's death or services recently received by the individual, where the disclosure is made to a member of the subject individual's family or other person with whom the subject individual had a close personal relationship. The member should document the basis for believing that the recipient had a close personal relationship with the deceased individual.

#### **12. Otherwise Required or Permitted By Law [s. 27(4)(l)]**

A member may use or disclose PHI where required or authorized to do so by law. For example, the disclosure of PHI to a coroner for the purposes of an investigation pursuant to section 13 of *The Coroners Act, 1999* (Saskatchewan). Also see, the Saskatchewan College of Pharmacy Professionals' [Disclosure of Personal Health Information to Law Enforcement Authorities Guidelines](#).

The member should document the source of the authority to use or disclose the PHI.

Members requiring assistance in interpreting these guidelines are encouraged to contact the Saskatchewan College of Pharmacy Professionals at [info@saskpharm.ca](mailto:info@saskpharm.ca).