

**Policy and Procedure**

Title:	<b>Disclosure Of Personal Health Information Requested For Legal Proceedings</b>
Policy Number:	06.020
Effective Date:	June 19, 2014
Revised Date:	March 11, 2019
Approving Body:	President and CEO
Authority:	CancerCare Manitoba Act
Responsible Officer:	President and CEO
Delegate:	Director, Cancer Clinical Information Management and Privacy Officer
Contact:	Cancer Clinical Information Management and CCMB Privacy Officer
Applicable to:	CCMB Staff and Physicians

1.0 **BACKGROUND:**  
Not Applicable

2.0 **PURPOSE:**

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

3.0 **DEFINITIONS:**

3.1 **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.

3.2 **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.

3.3 **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.

3.4 **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.

3.5 **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.

3.6 **Individual:** A patient, client or resident receiving Health Care services within the health care facility. For the purpose of Access, Correction, Use and Disclosure of

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Personal Health Information includes Persons Permitted to Exercise the Rights of an Individual.

- 3.7 **Legal Counsel:** A lawyer employed by or contracted by CancerCare Manitoba.
- 3.8 **Legal Proceeding:** Any proceeding in court or before a quasi-judicial tribunal that involves CCMB, a Health Care Facility, a medical staff member or an employee who renders services at a Health Care Facility.
- 3.9 **Maintain:** In relation to personal health information, to have custody or control of the information.
- 3.10 **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 health 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 policy:

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

3.11 **Persons Permitted to Exercise the Rights of an Individual:**

- 3.11.1 (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;

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- (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.

3.11.2 If it is reasonable to believe that no person listed in any clause of 3.11.1 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 cohabitating;
- (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 3.11.2 is to be preferred to another of those relatives.

- 3.12 **Privacy Officer:** An employee designated by CCMB 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.
- 3.13 **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.
- 3.14 **Trustee:** A Health Professional, Health Care Facility, public body, or health services agency that collects or Maintains Personal Health Information.
- 3.15 **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.

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4.0 **POLICY:**

- 4.1 The Record or Recorded Information containing an Individual's Personal Health Information is the property of the Trustee.
- 4.2 The original Record or Recorded Information cannot be removed from the Health Care Facility unless approved by the Privacy Officer.
- 4.3 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 through the Privacy Officer or a member of the Executive Office.
- 4.4 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 CCMB fee schedule.
- 4.5 The Privacy Officer or CCMB Legal Counsel are the only persons permitted to make copies of personal health information required or requested as part of a legal proceeding.
- 4.6 The Privacy Officer or CCMB 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.
- 4.7 The Privacy Officer shall respond as promptly as possible to the request for personal health information required for a legal proceeding including a request from CCMB Legal Counsel.
- 4.8 The Privacy Officer or CCMB 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.
- 4.9 The Personal Health Information may be faxed to the Crown attorney upon request and in accordance with the Transmittal of Personal Health Information Via Facsimile policy.
- 4.10 The Privacy Officer may contact the CCMB Legal Counsel if the Trustee has concerns about disclosing the Personal Health Information requested in the course of legal proceeding.

5.0 **PROCEDURE:**  
Not Applicable

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6.0 **REFERENCES:**

- 6.1 *The Personal Health Information Act (Manitoba)*
- 6.2 *The Personal Health Information Act Regulations*
- 6.3 WRHA - Disclosure of Personal Health Information Requested for Legal Proceedings, Policy #10.40.142
- 6.4 CCMB - Transmittal of Personal Health Information Via Facsimile, Policy #06.021

**Policy Contact:**

All enquiries relating to this policy should be directed to:

Name:	
Title/Position:	Director, Cancer Clinical Information Management and Privacy Officer
Phone:	204-792-2535
E-mail:	
Address: (if required):	

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**DOCUMENTATION**

**Policy Location:**

This policy is located (hard and e-copy formats):

1. The original signed and approved policy is on file in the Executive Office, CCMB
2. The e-copy is on file in the CCMB Governing Documents Library, SharePoint
- 3.

**Revision History:**

Date	Version	Status	Author	Summary of Changes
dd/mm/yyyy	#	Initial, Draft Final Minor/Major revision		
19/06/2014	1	Initial	L Costa Policy Team	New CCMB policy adapted from WRHA policy.
29/03/2018	1	Minor revision	S.Friedenberger	Reformatted to new template
11/03/2019	2	Minor revision	CCIM Manager	Change of Dept. name and Privacy Officer

**Approvals Record:**

This Policy requires approval by:

Approval Date	Name / Title	Signature
	Not required.	

**FINAL APPROVAL:**

Date	Name / Title	Signature
11/03/2019	Dr. S. Navaratnam President and CEO, CCMB	<i>Original signed by Dr. S. Navaratnam</i>