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North Perth Family Health Team
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Subject:	Access, Correction & Release of Personal Health Information	Date Approved:	August 14, 2008
Approved by:	Board of Directors	Date Revised:	January 26, 2017 March 29, 2010
Specific to:	All Staff, Board of Directors, Student & Volunteers	Next Review Date:	September 2020

PRINCIPLE:
This policy is part of the Privacy Policy.

The individual physicians are the custodians of all patient health records (including the electronic health record) for their respective practices. However, the information in the health record belongs to the patient and the patient has a right of access to that information and the right to direct his/her physician to share that information or not share that information with others, subject to some exceptions.

POLICY:
This policy addresses five activities:

- Patient[1] requests for access to his/her own health records ("**access**")
- Patient requests to correct his/her own health record ("**correction**")
- Requests to share information with other organizations or health care providers with express consent or implied consent ("**circle of care**")
- Requests to transfer patient files to a new health care provider or organization ("**transfer**")
- Third party requests for a copy of a patient's health record ("**release of information**") such as from lawyers, insurance companies and police

Consent and "Authorized Persons"

When consent is required under this policy, the following authorized persons may give consent:

1. The patient, if the patient is capable
    a. **Please note for capable patients under the age of 16**: If a patient is capable and also under the age of 16, the patient may consent AND the patient's parent or person who has lawful custody may also consent. BUT the parent or person with lawful custody may <u>not</u> consent if the information to be disclosed relates to "treatment" (as defined under the *Health Care Consent Act, 1996*) about which the child has made his/her own decision or "counseling" (as defined under the *Child and Family Services Act*) about which the child participated on his or her own. (That means if a child consented to the care on his/her own – a parent cannot consent to the release of that information on behalf of the child). And if there is a disagreement between a capable child and the parent about the release

[1] We have used the term "patient" throughout the policy. It is possible that we hold personal health information about individuals who are not patients or who are former patients and this policy applies in those cases as well. Requests for access may also come from a patient's substitute decision-maker or "authorized person" as identified in this policy.

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of information, the capable child's wishes prevail. If staff have questions about consent for children, please ask the Privacy Officer.

2. A substitute decision-maker, if the patient is incapable. Please refer to section 26 of PHIPA which lists the hierarchy of individuals/agencies that can act as substitute decision-makers:
    - The individual's guardian or guardian of property, if the consent relates to the guardian's authority to make a decision on behalf of the individual.
    - The individual's attorney for personal care or attorney for property, if the consent relates to the attorney's authority to make a decision on behalf of the individual.
    - The individual's representative appointed by the Consent and Capacity Board, if the representative has authority to give the consent.
    - The individual's spouse or partner.
    - A child or parent of the individual, or a children's aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent [Note: This paragraph does not include a parent who has only a right of access to the individual. If a children's aid society or other person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent.]
    - A parent of the individual with only a right of access to the individual.
    - A brother or sister of the individual.
    - Any other relative of the individual.

3. The estate trustee, in the case of a deceased patient
    a. We verify the identity of the estate trustee by reviewing the notarized "Certificate of Appointment of Estate Trustee with a Will" or "Certificate of Appointment of Estate Trustee without a Will". A copy of this certificate of appointment must be kept. If the deceased patient does not have an estate trustee, consent can be obtained from the person who has assumed responsibility for the administration of the deceased person's estate – if documented in writing.

When consent is required, patients may withhold or withdraw consent. If patients decide to withhold or withdraw consent, that decision will be documented in their health record.

If the patient requests restrictions on the use of and disclosure of their health record, then the patient's physician meets with the patient to discuss what is restricted and how this can be done. Restricted information can be put in a "lockbox" and the physician needs to explain the repercussions of making this choice. See the *Lockbox Policy* for information about how patients may choose not to share information with other health care providers or organizations.

Copies versus Originals

Because individual physicians are the custodians of their patients' health record, originals of health records are not given to patients or released to other health care providers or third parties (except in rare

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situations if originals are required by law). In most situations, only copies are released. Patients may ask to view original documents as set out below.

PROCEDURES:
Please note, front line staff will not dispense any patient information themselves, unless directed to do so by the patient's physician.

1. Informal Patient Access

From time to time, a physician will agree to give part of a patient's health record to a patient directly without engaging in a formal request for access under this policy. For example, sometimes a patient needs a list of medications or a copy of particular test results. A physician decides whether to release this information informally and who can do that on his/her behalf (e.g. another clinician, front line or administrative staff). Usually a chart note will be made to document what the patient received. Also, it is good practice to stamp "Patient Copy" to alert that a document has been released to the patient directly.

2. Patient Access to Information

With limited exceptions, the physician is required by law to give patients[2] access to their records of personal health information within 30 days (subject to a time extension of up to an additional 30 days if necessary and with notice to the person making the request).

a. ***Written Requests***

i. Patient requests for their own information should be made in writing. Staff should encourage patients to make the request in writing (See iv. Below for the required inclusions for the request).

ii. If a request for access is made to a Family Health Team health care provider, he/she should direct the patient to the patient's physician to begin the process for release of records. The Family Health Network may assist the patient with locating the desired information/document in the record. Because records may be difficult to read and interpret and may mislead or alarm a patient, patients will be encouraged to review the records with their physician or other health care provider (or delegate) so the information can be explained.

iii. If a patient wishes to read the original health record, someone must be present to ensure the records are not altered or removed. Patients may not make notes on the original health record or remove originals from the health record or otherwise alter their health records. If a patient requests a copy of a health record, copies may be given and fees may be applied as per College of Physicians and Surgeons of Ontario policy.

iv. The original of the written request for access shall be placed with the patient's records and must contain the following:

- A description of what information is requested

[2] Patients and "authorized persons" as defined in this policy may be given access to health records.

185 Inkerman Street East
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- Information sufficient to show that the person making the request for access is the patient or other authorized person
- The signature of the patient or other authorized person and a witness to the signature
- The date the written request was signed

v. A notation shall be made in the record (e.g. a handwritten note) stating:
- What information or records were disclosed
- When the information or records were disclosed
- By whom the information or records were disclosed

b. Telephone Requests

Only limited information should be given out over the telephone to a patient, as it may not be possible to verify that patient's identity.

c. Walk-in Requests

A signed consent is required for access to a patient's record. Patients may be requested to return at a later date to pick up authorized information.

d. Denying Patient Access to Health Records

In certain situations, the physician may choose not to provide a patient with access to all or part of a health record. Exceptions to the right of access requirement must be in accordance with law and professional standards. Reasons to deny access to a health record (or part of a health record) may include:

- The information is subject to a legal privilege that restricts disclosure to the individual
- The information was collected or created primarily in anticipation of or for use in a proceeding (and that proceeding and any appeals have not been concluded)
- The information was collected or created in the course of an inspection, investigation or similar procedure authorized by law or undertaken for the purpose of the detection, monitoring or prevention of a person's receiving or attempting to receive a benefit to which the person is not entitled under law (and the inspection or investigation have not been concluded)
- If granting access could reasonably be expected to:
  - Result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious bodily harm to the individual or another person
  - Lead to the identification of a person who was required by law to provide information in the record
  - Lead to the identification of a person who provided information explicitly or implicitly in confidence (if it is appropriate to keep that source confidential)

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Patients must be told if they are being denied access to their own health records. In such cases, patients have a right to complain to the Information and Privacy Commissioner of Ontario, and must be told of this right and how to reach the Commissioner's office.

3. Correction of Health Records

The physician has an obligation to correct personal health information if it is inaccurate or incomplete for the purposes it is to be used or disclosed.
Patients may request that their health information be corrected if it is inaccurate or incomplete. Such requests must be made in writing and must explain what information is to be corrected and why.
The physician must respond to requests for correction within 30 days (or seek an extension). Corrections are made in the following ways:

- Striking out the incorrect information in a manner that does not obliterate the record or
- If striking out is not possible:
    - Labelling the information as incorrect, severing it from the record, and storing it separately with a link to the record that enables the physician to trace the incorrect information, or
    - Ensuring there is a practical system to inform anyone who sees the record or receives a copy that the information is incorrect and directing that person to the correct information.

The record will not be corrected if:

- The record was not originally created by the physician or a member of the Family Health Team and the physician or Family Health Team members do not have the knowledge, expertise or authority to correct the record, or
- The record consists of a professional opinion which was made in good faith.

Where the physician chooses not to correct a record, the patient must be informed in writing. The patient will have the choice to submit a statement of disagreement. If the patient submits such a statement, it will be scanned onto the health record and released any time the information that was asked to be corrected is released.

Where the physician chooses not to correct a record, patients have a right to complain to the Information and Privacy Commissioner of Ontario.

4. Release of Information for Health Care Purposes

a. Express Consent

Should a patient wish his/her other health care providers working externally to the Family Health Team to have access to the patient health record, the patient can provide a written statement of consent to this effect (release of information):
The following is the process for releasing health records to a third party health care provider or organization relying on a patient's express consent:

1. Record the date of the request in the health record:
2. Advise the patient's primary health care provider of the request

185 Inkerman Street East
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3. If release of information to the third party organization is authorized by the physician/Family Health Organization:
    a. Select and photocopy/print requested specific information
    b. Do not photocopy/ print the entire health record unless required
    c. Prepare an official cover letter that will accompany the released information
    d. Send out/ mail-out requested information
    e. Scan the letter of request, patient's consent, and a copy of the covering letter and save in the patient's health record
    f. Costs associated with release of information will be invoiced by the physician's office/Family Health Organization
4. If the request is incomplete, unclear or contains an invalid consent or is otherwise not authorized by the physician/Family Health Network:
    a. Inform the patient who made the request of the problem in writing (or in person or by phone as appropriate), such as:
        - The request is not sufficient to identify the patient
        - The request is unclear or unspecific
        - The request does not have the required consent
        - The date the patient's consent was signed is greater than 90 days from the date the request was received.
    b. Document the date, time of the call, name of the person with who contact was made, a brief summary of the conversation and comments made by the requester.

b. Implied Consent – Circle of Care

The physician may also release information to a patient's other health care providers and organizations for health care purposes (within the "circle of care") without the express written consent of the patient as long as it is reasonable in the circumstances to believe that the patient wants the information shared with other health care providers and organizations. However, no information will be released to other health care providers and organizations if a patient has stated he/she does not want the information shared.
The following is the process for releasing health records to a third party health care provider relying on a patient's implied consent:

1. Record the date of the request in the health record
2. Advise the patient's health care provider of the request
3. If release of information to the third party health care provider is authorized by the physician:
    a. Select and photocopy/ print requested specific information
    b. Do not photocopy/print the entire health record unless required
    c. Prepare an official cover letter that will accompany the released information

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d. Send out/ mail-out requested information
e. Record the verbal request for information
f. Costs associated with release of information will be invoiced by the physician's office/Family Health Organization

4. If the request is incomplete, unclear or the Family Health Organization has been advised by the patient not to disclose relying on implied consent, or the request is otherwise not authorized by the Family Health Organization:
   a. Inform the patient who made the request of the problem in writing (or in person or by phone as appropriate), such as:
      - The request is not sufficient to identify the patient
      - The request is unclear or unspecific
      - The request does not have the required consent
   b. Document the date, time of the call, name of the person with whom contact was made, a brief summary of the conversation and comments made by the requester.

5. Transfer of Patient Records to a New Health Care Provider

If moving to another Family Health Team or physician and wishes physician's files to be transferred, the patient should be encouraged to see their new physician or health care provider and sign a consent form with them for the release of information. If this is not possible, however, the patient may sign a copy of the Release of Medical Information form. Clinical health records are transferred only with a written request signed by the patient (or patient's authorized person). A verbal request is not sufficient to transfer health records.

Originals of records are never sent as they are the property of the physician and must remain accessible to the physician and Family Health Team staff.

When a Release of Information form comes in to transfer patient records, staff should pull the patient's health care record, place the transfer request on the front and put it in the appropriate physician's box.

The physician is responsible for responding to the request as soon as possible by either:

- Writing a summary of the patient's pertinent medical history or
- Directing staff regarding the relevant information to copy from the patient's health care record.

A copy of the Request of Medical Information form should be filed in the patient's health care record with the date of transfer marked on this form.

When mailing the file, the envelope will be to the attention of the provider and marked "Confidential".

6. Third Party Requests for Release of Information

Should a patient wish his/her lawyer, insurance company, employer, landlord or other such persons or agencies to have access to the patient health record, the patient must provide a written statement of consent to this effect, which will be directed to the patient's physician. We will not process verbal third party requests for release of information to anyone who is not a health care provider. These requests must be in writing. No information will be released without the express consent from the patient or the authorized person (unless permitted or required by law. See below "Permitted or Mandatory Release of

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F: (519) 291-6028

Information"). Third party requests not accompanied by appropriate consent will be returned with an official letter, outlining proper and complete consent requirements.
Any third party request for release of information shall include:

1. The name, address and telephone number of person/agency requesting the information
2. The full name, address and date of birth of the person about whom the information relates
3. A specific description about the type and amount of information to be released
4. A consent for release of information form signed by the patient (or patient's authorized person) and this consent form must not be older than 90 days from the date of the request.

The following is the process for releasing health records to a third party with consent of the individual patient :

1. Record the date of the request in the health record
2. Advise the patient's physician of the request
3. If release of information to the third party is authorized by the physician:
    a. Select and photocopy/print requested specific information
    b. Do not photocopy/ print the entire health record unless required
    c. Prepare an official cover letter that will accompany the released information
    d. Send out/ mail-out requested information
    e. Scan the letter of request, consent, and a copy of the covering letter and save in the patient's health record
    f. Costs associated with release of information will be invoiced by the physician's office/Family Health Organization
4. If the request is incomplete, unclear or contains an invalid consent or is otherwise not authorized by the physician:
    a. Inform requester of the problem in writing (or in person or by phone as appropriate), such as:
        - The request is not sufficient to identify the patient
        - The request is unclear or unspecific
        - The request does not have the required consent
        - The date the patient's consent was signed is not recent; while legally still accurate, you may ask why it has taken a length of time for it to be provided.
    b. Document the date, time of the call, name of the person with who contact was made, a brief summary of the conversation and comments made by the requester.

Permitted or Mandatory Release of Information
The Family Health Network physicians may release personal health information to a third party if "permitted or required by law". A list of mandatory disclosures is included at the end of this policy.
Any time a mandatory disclosure is considered, the patient's physician (and as necessary, the Privacy Officer) is to be informed PRIOR to reporting. Legal advice may be sought.

Police/OPP/RCMP

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There is a natural tendency to want to cooperate with the police and assist them in their investigations. However this must be balanced against patients' right to privacy and the right to confidentiality of their personal health information.
The fact that a patient is suspected of being a victim of a crime or suspected of having committed a crime is not a recognized reason for breaching the patient's right to confidentiality. However, there is a recognized exception ("discretion to warn") to patient confidentiality where there is a significant risk of serious bodily harm to someone (either the patient or someone else) **and if it is genuinely believed that disclosing information to police could eliminate or reduce that risk.**
Personal health information will only be released to police upon the presentation of one of the following documents:

- A consent for release of information form signed by the patient or authorized person
- A valid court order (or other legal document) requiring the release of information to the police
- A coroner's writ requiring the release of information to the police

Each document must be reviewed carefully before information may be disclosed to police (to ensure the disclosure is **permitted or required** by law). This review should be done by appropriate staff such as the patient's physician and/or the Privacy Officer before any information is released. The documentation from the patient, police, court or coroner will be scanned into the chart. Legal advice should be sought as necessary.

Children's Aid Society (CAS)

Health professionals have a mandatory duty to report a "child in need of protection" to the CAS under the *Child and Family Services Act*. Information may be sent to the CAS to explain the reason for the report. Where the CAS is the legal guardian of a child, the CAS should be treated as any other parent or guardian would be in response to a request for access to or disclosure of the health records.
Any documentation from CAS claiming authority to release information to the CAS must be reviewed carefully before information may be disclosed (for the section of the legislation giving the legal authority that the release of information is **permitted or required** by law). This review should be done by the patient's physician and/or the Privacy Officer before any information is released. The documentation from CAS will be scanned into the chart. Seek legal advice as appropriate.

Regulatory Colleges

Under the *Regulated Health Professions Act, 1991* and other health profession specific legislation, regulatory Colleges may have the authority to review patient records as part of investigations or quality assurance practices. Any documentation from a regulatory College claiming legal authority to release information to the College must be reviewed carefully before information may be disclosed (for the section of the legislation giving the legal authority that the release of information is **permitted or required** by law). This review should be done by the patient's physician and/or the Privacy Officer before any information is released. The documentation from the regulatory College will be scanned into the chart.

Other Authorities

Certain legislation gives government agencies and others authority to review patient records (such as immigration, the Ministry of Health and Long-Term Care, workplace safety and insurance and others). Any documentation from an agency claiming legal authority to release information to the agency must be reviewed carefully before information may be disclosed (for the section of the legislation giving the legal

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authority that the release of information is **permitted or required** by law). This review should be done by the patient's physician and/or Privacy Officer before any information is released. The documentation from the agency will be scanned into the chart.

Lawyers

Most lawyers' letters require patient consent for the release of information to a lawyer. **Do not release information to a lawyer without patient consent unless you have some other documentation to state that the patient's physician and/or the Family Health Team and/or the Family Health Network are required by law to disclose the information.** Any documentation from a lawyer claiming legal authority to release information to the lawyer must be reviewed carefully before information may be disclosed (in most cases the lawyer is asking for the record – not advising the patient's physician or the Family Health Team or the Family Health Network that he/she/it is required by law to release the record). This review should be done by the patient's physician and/or Privacy Officer before any information is released. The documentation from the lawyer will be scanned into the chart.

Communicable Disease

The *Health Protection and Promotion Act* requires certain health care providers and organizations to report all communicable diseases to the local Public Health Unit. Reporting is done by the patient's physician or nurse practitioner or delegate as soon as possible after the diagnosis is made.

MANDATORY DICLOSURES:

Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
Child in need of protection	Information about a "child in need of protection" (e.g. suffering, abuse or neglect). Only information that is reasonably necessary to make the report should be shared. Ongoing information sharing after the report has been made should only be done with express consent or as permitted or required by law (such as a court order for the patient health record)	Any person including a person who performs professional or official duties with children	Relevant Children's Aid Society	*Child and Family Services Act*, ss. 72(1) and 72(2).

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Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
Sexual abuse	Where there are reasonable grounds to believe a health care professional has sexually abused a patient, details of the allegation, name of the health care professional and name of the allegedly abused patient • The patient's name can only be provided with consent • You must include your name as the individual filing the report	All regulated health providers	Registrar of the suspected health care professional's regulatory College	*Regulated Health Professions Act*, Schedule 2, ss. 85.1, 85.3. See also, *Social Work and Social Service Work Act*, ss. 43 and 44
Safe driving	Name, address and condition of a person (over the age of 16) who has a condition that may make it unsafe for them to drive	Physicians	Registrar of Motor Vehicles	*Highway Traffic Act*, s. 203(1).
Air crew	Information about flight crew members, air traffic controllers or other aviation license holders who have a condition that may impact their ability to perform their job in a safe manner (likely to constitute a hazard to aviation safety)	Physicians and optometrists	Medical advisor designated by the Minister of Transport	*Aeronautics Act*, s. 6.5(1)
Seaman	Information about a seaman	Physicians, surgeons, hospital official	If requested by the seaman's employer	*Merchant Seamen Compensation Act*, s. 48
Railway workers	Information about patients who work in the railway industry who have a condition that may put the safety of rail travel at	Physicians and optometrists	A railway designated Organization	*Railway Safety Act*, s. 35(2)

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Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
	risk			
Fraud	Information about health care fraud (including an ineligible person receiving or attempting to receive an insured service; an ineligible person obtaining or attempting to obtain reimbursement by OHIP for money paid for an insured service; or an ineligible person in an application, return or statement made to OHIP or the General Manager giving false information regarding his or her residency	Physicians and registered nurses in the extended class, podiatrist, chiropractor, midwife, optometrist, dentist, dental surgeon, operator of a physiotherapy facility, hospital, facility whose primary function is the provision of insured services, laboratory, specimen collection centre	General Manager of OHIP	*Health Insurance Act*, s.43.1(1) and Health Fraud Regulation, s.1
Queue jumping	Information about an individual offering to pay, confer, charge or accepting a benefit in exchange for improved access to health care	Physicians, registered nurses in the extended class, podiatrists, midwives, optometrists, dentists, dental surgeons, licensees under the Independent Health Facilities Act, hospital or private hospital	General Manager of OHIP	*Commitment to the Future of Medicare Act*, ss. 17(1) and 17(2) and General Regulation, s 7(1)
Reportable or communicable disease	Information about a patient who has (or may have) either a "reportable" or	Physicians and registered nurses in the extended class	Medical Officer of Health of the appropriate health unit	*Health Protection and Promotion Act*, s. 26 and Reporting

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	"communicable" disease. The report should include the patient's: • Name and address in full, • Date of birth in full, • Sex, and • Date of onset of symptoms	and hospital, children's residence, child care centre, home for special care, long-term care home, psychiatric facility (and others)		Regulation, s.1(1)
Communicable disease	Name, address of a patient receiving care and treatment for a communicable disease but who is neglecting or refusing to comply with the treatment regime	Physicians and registered nurses in the extended class	Medical Officer of Health	*Health Protection and Promotion Act*, s. 34(1)
Rabies	Animal bites or animal contact that may result in humans contracting rabies	Physicians and registered nurses in the extended class (and other persons with information about animal bites)	Medical Officer of Health	*Health Protection and Promotion Act* and Communicable Diseases Regulation, s. 2(1)
Immunizations	Instances of adverse reactions to immunizations	Physicians, nurses, and pharmacists	Medical Officer of Health of the appropriate health unit	*Health Protection and Promotion Act*, s.38(3)
Immunizations	Information about a child whose eye have become reddened, inflamed or swollen within two weeks of birth possibly due to a communicable disease. Report must be in writing and include: • The name, age and home address of child (or if not at home, where the child can	Physicians or other health care professionals who have attended the birth of a child	Medical Officer of Health	*Health Protection and Promotion Act*, s. 33(1) and Communicable Diseases Regulation, s. 1 para. 2)

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	be located) • The conditions of the eye that were observed			
Birth	Births	Physicians and midwives (or nurses if neither of the above are present at birth)	Registrar General	*Vital Statistics Act*, ss. 8, 9.1 and General Regulation, ss. 1(1) and 19(1)
Death	Facts surrounding the death of an individual in prescribed circumstances (e.g. violence, negligence or malpractice). Information requested for the purpose of an investigation	Any person with information about the circumstances of the death	Coroner or designated Police Officer	*Coroners Act*, s. 10(1)
Death	Deaths	Physicians and registered nurses in the extended class		*Vital Statistics Act*, s. 21(1) and General Regulation, ss. 35(2) and 35(3) Health Protection and Promotion Act, s. 30.
Occupational assessments	Reasonable conclusions of an occupational illness	Physicians who conduct medical examinations or supervise clinical tests for workplace safety	The worker's employer, the joint health and safety committee and the Provincial Organization	*Occupational Health and Safety Act* and the Designated Substances Regulation, ss. 29(2), 29(3), 29(6) and 29(7).
WSIB	Information requested by the WSIB about workers claiming benefits under the Workplace Safety and Insurance Act	All health care providers	Workplace Safety and Insurance Board (WSIB)	*Workplace Safety and Insurance Act*, s. 37(1)

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Self-report of offence	Information if you yourself are found guilty of an offence to include • Your name • The nature and description of the offense • The date you were found guilty of the offense • The name and location of the court where you were found guilty of the offence • The status of any appeals	All regulated health care providers	Registrar of your regulatory College	*Regulated Health Professions Act*, Schedule 2, ss. 85.6.1(1) – (3)
Self-report of professional negligence or malpractice	Information if you yourself are found guilty of professional negligence or malpractice to include • Your name • The nature and description of the finding • The date the finding was made • The status of any appeals	All regulated health care providers	Registrar of your regulatory College	*Regulated Health Professions Act*, Schedule 2, ss. 85.6.2(1) – (3)
Employer report if end of professional relationship	A written report, within 30 days, regarding revocation, suspension, termination or dissolution of a health care professionals' privileges, employment or practice for reasons of professional misconduct, incapacity or incompetence	Employer or person who offers privileges to a member	Registrar of the college of the regulated health care professional	*Regulated Health Professions Act*, Schedule 2, s. 85.5(1), 85.5(3)

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