**QUINTE HEALTHCARE CORPORATION**



# Police Investigations

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## 1. PURPOSE

The purpose of this policy is to provide procedural guidance when there is a police investigation involving a Quinte Health Care (QHC) patient.

## 2. SCOPE

This policy provides procedural guidance to QHC staff and physicians.

## 3. POLICY

During the provision of health care services, institutions and professionals can come into contact with law enforcement authorities. As a result of providing care to alleged offenders and victims, the health care team and subsequently QHC may have information that is relevant not only to the patient's health care but also relevant to an investigation of the facts and circumstances of the injury. QHC will cooperate with law enforcement agents during their investigation(s), while at the same time meeting the obligations to preserve patient confidentiality; and to advise and support staff with respect to their legal rights and responsibilities.

To be compliant with the Public Hospitals Act and the Personal Health Information Protection Act (PHIPA), law enforcement agents require one of the following to receive personal health information (PHI):

- Express consent (Release of Information Form – Appendix A) from the patient if capable;

- Express consent (Appendix A) from the patients Substitute Decision Maker (SDM) if the patient is incapable;
- A warrant; or
- An urgent demand for the production of records (Urgent Demand for Records – Form 5 – Appendix B) as stated by the Missing Person's Act (2018) if the officer believes there are reasonable grounds to believe the following:
    - The records are in the custody or under the control of the person or hospital;
    - The records will assist in locating the missing person; and
    - In the time required to obtain an order from a Justice,
        - The missing person may be seriously harmed, or
        - The records may be destroyed
- In cases where PHI is shared as a result of a warrant, the original signed copy of the warrant must be placed in the patient's health record. Only the information **identified in the warrant** may be released.

The following information may be disclosed without patient/SDM consent or warrant when asked for by a law enforcement agent unless the patient/SDM has requested restrictions on the disclosure:

- Confirmation about the presence or absence of the patient in the organization
- The general state of health of the patient (i.e. fair, poor, critical)
- Confirmation or denial that a patient has undergone a relevant diagnostic test, however, staff must not disclose the results of diagnostic tests without consent or a warrant

The situations wherein law enforcement agents have the right to very limited, specific information without patient/SDM consent or a search warrant includes:

- Presentation of a coroner's warrant that permits disclosure of that information listed in the warrant to the coroner or other individual authorized by a coroner under the Coroner's Act (i.e. a law enforcement officer on behalf of a coroner outside of the area)
- When a patient presents with a gunshot wound (see section 2.2.1)
- When a staff or the health record is subpoenaed to court

## 4. PROCEDURE

### **4.1.** Disclosure of Information

#### **4.1.1.** Requests from Law Enforcement

Law Enforcement agents who request a copy of any part of the health record or department specific records are to be directed to contact the Release of Information Officer in the Health Records department. If the request is urgent contact the Administrator On-Call to determine if Health Records staff need to be called in to process the request. It is essential that QHC's Release of Information (ROI) process be followed to ensure there is a clear record of what information was released.

**4.1.2.** Risk of Harm/Duty to Warn

QHC may disclose relevant information to law enforcement agents when there are **reasonable grounds** to believe that the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to a person or group of persons. Only that information that is necessary to eliminate or reduce the significant risk of serious bodily harm may be disclosed.

Staff **must** consult with their Manager or the Clinical Risk Specialist during regular business hours or the Administrator On-Call during off hours before disclosing information to law enforcement related to risk of harm. Examples of such situations include:

- Situations where a patient's health is in jeopardy, and the patient's identity cannot otherwise be identified, law enforcement may assist with determining the patient's identity
- A missing incapable patient
- When there is reason to believe that an intoxicated individual intends to operate a motor vehicle or other equipment capable of causing injury
- When a patient expresses threat of harm to another person (if the threat is made against a QHC staff member or physician, we will defer to their independent judgement on perceived threat)
- When a staff/physician/volunteer is threatened or injured
- To obtain assistance in the removal of illegal goods/substances from a patient, if necessary

If a patient discloses the intent to commit a crime that could cause serious harm to a person or group of persons, QHC staff may report this to law enforcement agents if there is:

- A clear risk to an identifiable person or group of persons
- A risk of serious bodily harm or death, and:
- A belief that the nature of the threat causes a sense of urgency

**4.1.3.** Disclosure of Information Related to a Deceased Patient

QHC may disclose information about a person who is deceased to law enforcement agents for the sole purposes of:

- Obtaining assistance in identifying the individual;
- Obtaining assistance to identify the deceased individual's next of kin or any other person who it would be reasonable to inform that the individual is deceased, and the circumstances of the death, where appropriate.

Only the information that is necessary and relevant for the purposes of determining the identity of the patient or the patient's next of kin can be disclosed to law enforcement agents.

**4.2.** Reporting a Crime

If a patient discloses that a crime has been committed to QHC staff/physicians, there is no legal obligation to report a crime to local law enforcement other than in the case of a gunshot wound.

If a crime is witnessed on QHC property, staff and physicians must notify Security and their Manager or the Administrator On-Call after hours. The hospital may report the incident to law enforcement agents.

**4.2.1.** Reporting Treatment of a Gunshot Wound

QHC has a legal obligation to report to local law enforcement agents when a patient presents for treatment of a gunshot wound. This obligation to report does not include treatment of stab wounds, but does include all gunshots including BB guns and pellet guns.

The Charge Nurse of the area must report to local law enforcement as soon as reasonably practical:

- The patient's name, if known
- That the patient is being treated for a gunshot wound
- The name and address of the hospital

Unless the patient/SDM has placed restrictions on the disclosure of information, the charge nurse may also indicate, if asked:

- The disposition of the patient (i.e. admitted, discharged, location within QHC)
- The general state of health (i.e. fair, poor, critical)

No other information can be disclosed to law enforcement agents without the express consent of the patient or a warrant, including the body area affected by the gunshot and treatment to be provided.

The Charge Nurse will document the local law enforcement notification on the QHC Gunshot Reporting form which is to be included in the patient's Emergency Department chart. (Appendix C)

**4.3.** Requests from Law Enforcement to:

**4.3.1.** Interview a Patient

Prior to interviewing a patient, the department/unit manager or the Administrator On-Call must obtain assurance form the patient's health care team that there are no medical grounds for deferral of such an interview. Unless the patient is under arrest, staff must obtain verbal consent from the patient, if capable, that they are willing to be interviewed by law enforcement agents. The patient is not obliged to speak to law enforcement agents. Staff will not permit law enforcement agents access to the patient until verbal

consent is obtained. Documentation of the consent (or refusal to consent) must be documented in the patient's health record.

**4.3.2.** Interview Staff

Direct requests from law enforcement agencies to interview staff must be directed to the department/unit manager, Clinical Risk Specialist, or the Administrator On-Call.

Participation in an interview by a law enforcement agent is voluntary, unless served by a summons, subpoena, or Coroner's warrant to appear in court. Support is available from the Clinical Risk Specialist and Department/Unit Manager to prepare staff and/or attend the interview with staff. If staff is contacted by law enforcement without prior notification, he/she should call the department/unit Manager, Clinical Risk Specialist, or the Administrator On-call for clarification and guidance.

Do not disclose information about staff to law enforcement agents (i.e telephone numbers, addresses, schedules). The department/unit Manager or the Clinical Risk Specialist will facilitate the arrangement of interviews with staff at QHC.

During the interview staff must not provide any PHI on a patient, but may provide factual information about what the staff saw, did and/or heard. Do not assume or speculate. Information (other than a general state of health) should not be given over the telephone to law enforcement agencies.

Law enforcement agencies requesting information should make an appointment to meet with staff in person to:

- Verify the identification of both the staff and law enforcement agent and,
- Allow the staff to review the health record or notes to enable them to respond appropriately

**4.3.3.** Photograph a Patient

Law enforcement agents who want to photograph a patient for police purposes must have consent from the patient/SDM or a warrant, unless the patient is under arrest. Written informed consent from the patient/SDM must be obtained by law enforcement agents with a staff member present unless the patient is in a clinical area not appropriate for the presence of law enforcement agents (i.e. Operating Room). Consent must be obtained using a consent form from the law enforcement agency.

Staff must validate the identity of the law enforcement agent and document:

- The identity of the law enforcement agent(s) who obtained consent and who took the photo(s)
- Purpose of the photo(s)
- Disposition of the photo(s) (i.e. taken by the police)

**4.3.4.** Release of Photographs in a Code Yellow Situation

Photographs may be shared with local law enforcement agents, either in hard copy or sent in electronic format.

**4.3.5.** Release of Video Footage

Video footage may be shared with local law enforcement agents when a production order is provided as a result of a criminal investigation or a Coroner's warrant. QHC's Clinical Risk Specialist and Privacy Office must be notified of any footage that is released. The security manager will coordinate release of the video with law enforcement or with the Coroner's office. QHC staff will direct all requests for video footage release to the Security office.

**4.4.** Receipt of a Subpoena or a Warrant

**4.4.1.** When a Health Record is Subpoenaed

Refer to policy 2.23.6 – PHI (Personal Health Information) – Disclosure of Personal Health Information

**4.4.2.** If a Process Server/Bailiff Presents or Calls the Department to Deliver a Subpoena or a warrant to the Organization or to a Staff Member

The process server/bailiff will be directed to the Clinical Risk Specialist, Director of Quality and Interprofessional Practice or the Vice President and Chief Nursing Officer as only these individuals can accept a subpoena or warrant on behalf of QHC.

The Clinical Risk Specialist will facilitate the delivery of a subpoena or warrant to staff while the staff member is working on a date, time and place that is mutually convenient to the staff and leadership of the area. QHC does not accept subpoenas or warrants on behalf of physicians, as they are not employed with QHC, or former QHC staff members.

**4.4.3.** If Staff Receives a Subpoena or Warrant Directly

The staff member must inform their department/unit manager in addition to the Clinical Risk Specialist of the receipt of a subpoena or warrant. A copy of the subpoena/warrant should be retained by the staff member's manager and a copy be provided to the Clinical Risk Specialist.

The Clinical Risk Specialist and the department/unit manager are available to prepare staff to attend court. Staff do not have the authority to bring the original or a copy of the health record to court, even if it is listed in the subpoena. The health record is subpoenaed separately and a member of the Health Records department is delegated to deliver the health record to court.

Physicians should consult with their Department Chief and the Chief of Staff if they receive a subpoena or warrant.

**4.5.** Handling and Disclosure of Patient Samples, Belongings and other Evidence

**4.5.1.** Patient Samples

Staff may respond to inquiries from law enforcement agencies about whether a sample has been taken from the patient; however, the disclosure of the sample and/or results requires:

- An informed consent from the patient
  **OR**
- A warrant

Patient samples taken for clinical purposes must always be sent to the laboratory prior to disclosure to law enforcement agents to provide opportunity for interpretation of the sample.

Law enforcement agents may seal samples taken from patients in order to preserve evidence pending their disclosure, however these samples will be used for patient care, if necessitated.

Samples taken for clinical purposes are disclosed only when they are no longer required to provide patient care/treatment.

**4.5.2.** Patient Samples Taken at the Request of Law Enforcement

A warrant authorizes law enforcement agents to have a sample drawn/taken from a patient without his/her consent.

- The law expects individuals to comply with a warrant, but if a capable patient refuses, staff are under no legal obligation to force a patient to comply
- Staff must not obtain a sample until the warrant is obtained and produced

In the absence of a warrant, a written informed consent is required from the patient, if capable, for the taking of a sample for purposes other than health care/treatment (i.e. at the request of law enforcement agents)

- Staff must not obtain a sample until a written patient consent is obtained and produced
- An SDM is not authorized to consent on behalf of the incapable patient to the taking of samples for purposes other than patient care/treatment (Substitute Decisions Act). As such, a warrant must be obtained and produced before samples can be taken from an incapable patient.

No qualified medical practitioner or qualified technician shall be found guilty of an offence by reason only of their refusal to take a sample of blood from a person for the purposes of this Part if they have a reasonable excuse for refusing to do so (Criminal Code of Canada, 1985, 320.37(1))

No qualified medical practitioner, and no qualified technician, who takes a sample of blood from a person under this Part incurs any liability for doing anything necessary to take the sample that was done with reasonable care and skill (Criminal Code of Canada, 1985, 320.37(2))

Law enforcement agents are permitted to demand breath, oral fluid, and urine samples from drivers. If this demand is made at the hospital, staff should not be involved in obtaining these samples.

Blood samples can also be demanded by law enforcement agents. In situations where cannabis intoxication is suspected, there may be greater urgency as THC dissipates quickly in blood. Blood samples can be taken by, or under the direction of, a qualified medical practitioner/technician at the demand of police provided:

a) The taking of samples would not endanger the life/health of the patient and;
b) The patient has consented

Specimens for blood alcohol levels drawn for non-clinical purposes must be drawn using Blood Alcohol Kits provided by Ontario Ministry of Solicitor General. These kits must be supplied by the officer.

**4.5.3.** Other Evidence

Any non-tissue foreign object (knives, bullets, glass shards, etc.) found in the human body should be treated as potential evidence. All such objects or materials must be treated with the utmost care and attention (minimize handling). Any damage during handling should be documented in the health record (i.e. forceps damaging a bullet during excision in the Operating Room).

Non-tissue foreign objects can be disclosed directly to a law enforcement agent, if the law enforcement agent provides a warrant or a patient gives consent. It is not necessary to forward these items to Pathology prior to disclosure.

**4.5.4.** Patient Belongings and Valuables

The release of patient belongings or valuables to law enforcement agents requires informed patient consent or a warrant. The patient must be informed of the request for the belongings and/or valuables and the reason for the request.

A summary of the informed consent discussion and verbal consent or refusal must be documented in the patient's health record.

If a warrant is received, the warrant (or a photocopy) must be placed on the hospital health record.

If the patient is involved in a criminal investigation, law enforcement agents are authorized, without a warrant, to seize evidence if it is in plain view.

If the patient is under arrest, law enforcement agents are authorized to search the patient and seize the patient's belongings or valuables.

**4.5.5.** Initial Collection of Specimens/Items

When handling potential evidence, staff must:

- Always wear gloves
- Be cautious for needles and other sharps in pockets
- When it is necessary to cut clothing to effect its removal, when possible, cut along seams. Do NOT cut along holes or punctures, as feasible, because this may disturb evidence
- If the patient was transferred by ambulance, any transfer sheet from the ambulance may be treated as evidence

**4.5.6.** Handling Debris

- Avoid cleaning the patient's hands more than necessary
- Use tape to collect debris such as glass fragments, dirt, hairs or fibres found on the patient
- If surgical skin prep will remove evidence, document such things as blood stain patterns or bloody fingerprints as able

**4.5.7.** Handling Bullets

- Do not handle bullets with uncovered metal instruments (i.e. use forceps with rubber shods if available)
- Wrap the bullet in dry gauze and put it into a specimen container labelled with the patient's full name and date and time of removal. Do not drop the bullet into a metal container

**4.5.8.** Handling a Stab Weapon

- Package in cardboard

**4.6.** Coroner's Warrants and Investigations

**4.6.1.** The Coroner or Delegate of the Coroner may, by means of a Coroner's Warrant

- View, take photographs or take possession of any deceased individual
- Ask questions of staff for clarification
- Take statements from staff
- Ask the identity of involved staff
- Seize evidence (i.e. belongings, valuables)
- Obtain a copy of or view the patient's health record

**4.6.2.** On Receipt of a Coroner's Warrant

- Place a copy of the coroner's warrant on the patient's health record
- Validate the identity of the law enforcement agent acting on behalf of the coroner by asking and documenting the agents name, rank, badge number, unit and agency that they work in
- Document the information or other evidence disclosed
- Notify the Clinical Risk Specialist or Administrator On-Call to make them aware of the receipt of the coroner's warrant

**4.7.** Documentation of Disclosure of Information, Samples, and Belongings

Place the following in the patient's health record when/if received:

- signed patient/SDM consent
- warrant/photocopy of the warrant

Document in the health record:

- the identity of the law enforcement agent (name, badge number, police force and detachment)
- a summary of the consent discussion with the patient/SDM and consent/refusal, if applicable
- date, time, and name of staff releasing the information, patient samples and/or belongings
- a list of all information and documents disclosed and the disposition of all specimens, belongings and valuables provided

**4.8.** A Patient Who is Under Arrest

A patient who is under arrest is under the authority and custody of the law enforcement agent. A law enforcement agent will remain with the patient. Staff does have the right to request that the law enforcement agent(s) step outside the room if personal care is being

provided to a patient however staff should always consider staff safety when making these requests and consider consultation with the law enforcement agents.

The agent is authorized to search a patient who is under arrest and seize his/her belongings, however, a warrant is required to obtain health information and samples. Staff must document that the patient is under arrest and any seizure of belongings.

**4.8.1.** Arrests Being conducted Within the Hospital

Upon presentation of an arrest warrant, law enforcement agents may perform arrest duties in any location of the hospital. Staff must not hinder law enforcement agents from carrying out arrest duties (with or without presentation of a warrant). Staff should assist law enforcement agents in performing arrests discreetly and with a minimum of disruption.

If law enforcement agents insist on the removal of the patient from the hospital (i.e. for purposes of a court appearance):

- Notify the most responsible practitioner (MRP) and the Director or Administrator On-Call
- The MRP should:
    - Assess the physical and/or mental health of the patient and,
    - Inform the law enforcement agent(s) of the risks to the patient's physical or mental health and the monitoring requirements, if applicable
- If leaving the hospital may be detrimental to the patient's physical and/or mental health, the MRP should:
    - Inform the law enforcement agents of the risks and ensure discussion of the risks is documented on the patient's health record
    - Explore all potential options with law enforcement agents and the health care team prior to the removal of the patient from the hospital
- If the law enforcement agent insists on the removal of a patient against medical advice, the MRP should consult with the Vice President/Chief Nursing Officer or Administrator On-Call about notifying the agents' superior officer regarding the health concerns of the patient. The Vice President/Chief Nursing Officer Administrator On-Call will request that the law enforcement agent provide contact information of the superior officer and then consult with the agent's superior officer and address the health concerns communicated by the MRP. If release to police is authorized by the superior officer, this must be clearly documented in the patient's health record. In this circumstance the law enforcement agent agrees to accept full responsibility for the patient during the leave of absence. Staff must also immediately notify the Clinical Risk Specialist during administrative hours or the Administrator On-Call after hours should this situation arise.

**4.9.** A Patient Who is Involved in a Criminal Investigation

Law enforcement agents are responsible to inform staff if a patient is the subject of a criminal investigation and they do not have a warrant. This discussion must be documented in the health record.

Without a warrant, law enforcement agents are authorized to search the patient if they believe the patient has a weapon and seize:

- Physical evidence
- The belongings of the patient that are viewable (clothing, purse, duffle bag)
- A bullet (whole or fragment)
- A shard of glass
- A knife (whole or part of)

No other patient information is to be disclosed to the law enforcement agent other than the patient's general condition.

Staff must:

- Inform the patient/SDM that the agent has seized the physical evidence
- Validate the identity of law enforcement agent by asking and documenting the agent's name, rank, badge number, unit, and agency that they work in
- Document in the patient's health record all physical evidence seized by law enforcement agents

## APPENDICES AND REFERENCES

**Appendices:** Appendix A – QHC Form #845 Authorization for Release of Patient Information Consent Form
Appendix B – Urgent Demand for Records – Form 5
Appendix C – QHC Form # 872 Gunshot Reporting Form

**References:**

Child and Family Services Act (R.S.O. 1990 c.C.11 s.72)

Coroners Act (R.S.O. 1990 c.C.37 s.10)

Headwaters Health Care Centre (2014). Disclosure of Patient Information, Samples and/or Belongings to Law Enforcement Agents Policy & Procedure

Health Insurance Act (R.S.O. 1990 c.H.6 s.43.1)

Highway Traffic Act (R.S.O. 1990 c.H.8 ss.203-4)

Mandatory Gunshot Wounds Reporting Act (S.O. 2005, c.9)

Marrison, A., Deakon, K (November 2, 2018). Impaired driving and bodily fluid samples: what hospitals and health-care providers should know. http://blg.com/en/News-And-Publications/Publication_5457

Personal Health Information Protection Act (S.O. 2004, c.3 schedule A s.38-50)

**Cross References:**

2.23.6 – PHI (Personal Health Information) – Disclosure of Personal Health Information
2.13.5 – Emergency Preparedness – Code Amber/Yellow: Missing Infant/Child/Adult
3.2.13 – Child Abuse and Neglect Reporting