

Nurses interact with the police in a number of different ways. They may be asked to respond to inquiries from police or provide a copy of a patient's chart because they have assessed and treated patients who are alleged victims or suspected perpetrators of crimes. In some instances, a nurse's *own* conduct or the conduct of her colleagues may be the subject of a police investigation. In addition, there are times when a nurse may, in the interest of the patient or others, consider initiating contact with police to report information about a particular patient. In these situations, nurses find themselves balancing their obligation to maintain patient confidentiality with their commitment to the public good.

The criminal justice system is complex and its intersection with health care can lead to challenging legal, professional and ethical issues. Nurses should therefore understand their ongoing obligation of patient confidentiality, when they may disclose personal health information (PHI) to police, how much information to disclose, when they need to refer a police inquiry to higher authority and when it would be prudent to decline to respond to police inquiries.

Duty of Confidentiality

Nurses are well aware that they owe a duty of confidentiality to their patients. Disclosure of a patient's PHI without patient consent may lead to a civil action against the nurse, a complaint to his or her employer, or a complaint with the nurse's regulatory body or the privacy commissioner.

Nurses who provide professional services as employees of health care establishments may not be authorized to make decisions about disclosing PHI to police. Typically, privacy legislation deems health care professionals to be "custodians" or "trustees" of PHI, except when they are employees of other custodians/trustees, such as hospitals. The authority to disclose information to police normally rests with the custodian, which authority may be delegated to a privacy officer or specific employees (typically, managers). Nurses who practice as employees and who are not designated by their employer to respond to requests for access to PHI should consult with those individuals when considering a disclosure of PHI to police. Nurses who are custodians¹ of PHI or who have the authority to make decisions about access to PHI on behalf of a custodian should be satisfied that they clearly understand the circumstances in which information can be disclosed under privacy legislation, as well as any relevant employer policy or directive.

**When do I
talk to the
police?**



*More than
liability
protection*

Exceptions to Duty of Confidentiality

There are select exceptions that authorize the disclosure of PHI in the absence of express patient consent. Nurses who provide their services as employees should ensure they understand how these exceptions apply in their jurisdiction and that they have authority before relying on them. These exceptions include:

Court Orders (search warrants and subpoenas)

A search warrant is a written order issued by a judge or justice of the peace granting police the legal authority to enter a specified place during a specified timeframe to search for and seize evidence, which may include health records. A health care provider who has custody and control of the information covered by a search warrant is legally required to turn over the requested portions of the records. Only the specific information or records listed in the warrant should be disclosed and the custodian generally retains a copy of the PHI disclosed pursuant to a warrant so that a complete record remains available for treatment purposes.

A subpoena is a written command or summons requiring the attendance of someone as a witness at a legal proceeding. The subpoena document will specify a place and time when testimony on a certain matter will be required. Failure to obey a subpoena may result in legal consequences for the nurse, including arrest. A subpoena generally does not permit a nurse to disclose PHI without patient consent, before providing testimony in the legal proceeding.


Public Safety

In the course of carrying out their duties, nurses may gain access to information that they might consider relevant to law enforcement. There are limited circumstances in which it is permissible for health care professionals to act upon this information. For instance, health privacy legislation generally permits custodians/trustees to disclose PHI where there are reasonable grounds to believe that the disclosure is necessary to eliminate a risk of death or serious bodily harm. For example, in Alberta, the *Health Information Act* permits disclosure where there is a “clear and imminent threat of serious bodily harm or death”. This exception is also recognized at common law² and in professional codes of ethics for nurses.³ Although now well recognized, this exception is one that can be most difficult to apply. Disclosure beyond the strict circumstances set out in the governing act can lead to a complaint of breach of privacy and loss of a patient’s therapeutic trust. Failure to disclose can lead to a complaint that not enough was done to prevent a devastating event. When time permits, it is prudent to seek legal advice before deciding whether to disclose PHI to prevent harm to an individual. Employer policies may also provide guidance.

Legislative Duties

Legislation governing PHI includes provisions expressly permitting the disclosure of PHI when mandated by other legislation.⁴ The provisions contained in other legislation may require disclosure to police or lead to police involvement.

For instance, health care facilities in some jurisdictions also have a duty to report select information regarding patients presenting with gunshot wounds and/or stab wounds to the police. The obligation to report typically rests with the health care facility, not the individual health care provider. Nurses who are employees should ensure that they follow institutional policies with respect to these mandatory reporting obligations.⁵



**Know the
duty of
confidentiality
and its
exceptions.**

Most Canadian provinces and territories have also adopted legislation requiring health care professionals to report suspected cases of child abuse and neglect. This duty to report is personal to the health care professional. It is generally triggered when a person has a reasonable suspicion or belief that a child has suffered or may suffer abuse or neglect. Whether there is a duty to report also depends on the age of the child and what is considered abuse or neglect; criteria which are jurisdiction specific. While the report must typically be made to a governmental agency (e.g. Children's Aid Society), nurses should be prepared for an ensuing police investigation initiated by the governmental agency involved.⁶

Police Investigation Involving a Patient

Health privacy legislation in some provinces/territories may *require* or *allow* custodians to disclose PHI related to a police investigation. It is generally a condition that the investigation be *authorized by legislation*, which would limit the type of police investigations in which disclosure is permissible or required. However, general information such as whether a patient is in the facility, the location of the patient in the facility and the general status of the patient (fair, poor, critical, etc.) can generally be disclosed, provided the patient does not object. Reporting the discharge of a patient to police is not contemplated or specifically permitted in the health privacy legislation. If employed, nurses who are approached during the course of a police investigation are encouraged to consult a privacy officer or manager who has authority to make such decisions on behalf of the health care establishment. Legal advice or intervention may be necessary to ascertain if the particular investigation is authorized by legislation or if the police request appears to be overreaching. Where disclosure is permitted but not required, employer policies generally provide guidance as to when and how disclosure is made.

Police Investigation of the Nurse

Examples of criminal charges laid against nurses include theft of narcotics, theft of patient or institutional property, assisted suicide, criminal negligence, threatening harm, physical assault, sexual assault and homicide. Typically, a nurse would be the subject of a police investigation prior to the laying of charges. This, however, may not always be apparent. During an investigation, the police may seek to interview nurses about their conduct, the conduct of their colleagues or the circumstances surrounding a particular incident. They may also request a statement. It can often be difficult to delineate this information from patient information which can only be disclosed without patient consent in specific circumstances. Moreover, information given to the police by an individual may be introduced as evidence against that individual at a subsequent trial. It is therefore prudent to seek legal advice before answering questions or providing statements to police and it is appropriate to request that inquiries be deferred for that purpose.

Limiting Disclosure

Even when nurses consider it in the public interest to disclose PHI in these circumstances, confidentiality should be preserved to the maximum possible extent. Both the amount of information disclosed and the number of people to whom disclosure is made should be restricted to the minimum amount necessary to prevent the feared harm.

**Canadian
Nurses
Protective
Society:**

**Professional
Legal Support
for Nurses**



Consider the Following When Interacting With Police

- The confidentiality of PHI must be maintained, unless disclosure is expressly authorized by patient consent or legislation;
- Police may ask questions or seek evidence; however, they may not have the right to receive the requested information;
- Police are not likely, nor are they qualified, to provide you with legal advice regarding your obligations or ability to disclose PHI;
- Consider asking police to obtain a search warrant or to identify the legal authority allowing the disclosure of PHI;
- If employed, nurses should know who at their health care establishment has the authority to make disclosure decisions, including after hours;
- Consider whether a court order, warrant or subpoena provides sufficient authority for the information being sought and consult with legal counsel, if necessary;
- When required to release PHI to police, provide a copy of the information rather than the original; if disclosure of the original is required in a search warrant or subpoena, retain a copy for health care purposes;
- Document any oral or written disclosure in accordance with the requirements contained in the applicable provincial or territorial health privacy legislation;
- Where a nurse has been charged with a crime or is the subject of an investigation, refrain from making any statement to police before obtaining legal advice; and
- Be polite and professional at all times.

CNPS beneficiaries with questions about disclosing PHI to police are encouraged to contact CNPS for advice.

-
1. Nurses may be custodians, for instance, if they are self-employed, if they operate a clinic or if they provide occupational health services.
 2. *Wenden v Trikha* (1991), 116 AR 81 (QB), aff'd (1993), 135 AR 382 (CA).
 3. Canadian Nurses Association, *Code of Ethics for Registered Nurses*, Ottawa: Canadian Nurses Association, June 2008.
 4. For example, Ontario's *Personal Health Information Protection Act, 2004*, SO 2004, c 3, ss 43(1)(e) and (h), Nova Scotia's *Personal Health Information Act*, SNS 2010, c 41, s 38(1)(l) and Manitoba's *The Personal Health Information Act*, SM 2008, c 41, CCSM c P33., s 22(2)(o).
 5. For example, Ontario's *Mandatory Gunshot Wounds Reporting Act, 2005*, SO 2005, c 9 and Manitoba's *The Gunshot and Stab Wounds Mandatory Reporting Act*, SM 2008, c 21, CCSM C G125.
 6. For example, Ontario's *Child and Family Services Act*, RSO 1990, c C.11, s 72 and Nova Scotia's *Children and Family Services Act*, SNS 1990, c 5, s 24.

Related *infoLAW*[®] of interest: The Nurse as a Witness. Available at www.cnps.ca

THIS PUBLICATION IS FOR INFORMATION PURPOSES ONLY. NOTHING IN THIS PUBLICATION SHOULD BE CONSTRUED AS LEGAL ADVICE FROM ANY LAWYER, CONTRIBUTOR OR THE CNPS[®]. READERS SHOULD CONSULT LEGAL COUNSEL FOR SPECIFIC ADVICE.

