

## **FNIHB-OR Nursing Policy and Procedure**

Section: **Professional Nursing Practice**

Policy Number: **II - 22**

Subject: **Release of Information: Law  
Enforcement Investigations**

Issued: **March 31, 2015**  
Revised:

Distribution: **All Nursing Facilities**

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### **1. POLICY:**

- 1.1 First Nations and Inuit Health Branch – Ontario Region (FNIHB-OR) staff shall not disclose client information to law enforcement officers without the consent of the client, unless required by law to do so.
- 1.2 Under the *Personal Health Information Protection Act*, FNIHB-OR staff is authorized to release client information to law enforcement personnel without the client's consent when:
  - 1.2.1 A search warrant or subpoena, requesting specific client information, has been issued to the health care facility; OR
  - 1.2.2 Law enforcement personnel present a signed *Disclosure Form* (RCMP commonly use disclosure forms); OR
  - 1.2.3 The head of penal or custodial institution or an officer in charge of a psychiatric facility where the patient is being lawfully detained requests the information to assist with health care or placement decisions; OR
  - 1.2.4 Where there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing significant risk of serious bodily harm; OR
  - 1.2.5 The nurse is compelled through another legislative act to disclose the client information (e.g. the duty to report clause under the *Child and Family Services Act*).
- 1.3 Ontario health care facilities are required to report the name of any patient being treated for a gunshot wound to the police, in accordance with the *Mandatory Gunshot Wounds Reporting Act*, 2005, S.O. 2005, c. 9, s. 2(1).

### **2. PRINCIPLES:**

- 2.1 Personal Health Information Protection Act (PHIPA), 2004, governs health care information privacy in Ontario. It sets out rules for the management of personal health information and outlines the client's rights with regard to that information.
- 2.2 Personal Information protected by the Privacy Act is information recorded in any form, about an identifiable individual or for which there is a serious possibility of re-identification of that individual.

2.3 FNIHB-OR staff must maintain client confidentiality under existing legislation, policies and pursuant to the College of Nurses of Ontario. Cooperating and assisting law enforcement personnel in their investigations must be balanced against the clients` right to privacy and the right to confidentiality of their health information.

2.4 Inappropriate disclosure of client health information may expose FNIHB-OR and its staff to civil liability for breach of confidentiality, and may result in charges of professional misconduct for the health care professional.

### 3. DEFINITIONS:

3.1 **Information Privacy:** The client's right to control how his/her personal health information is controlled, used and disclosed (CNO, 2009).

3.2 **Nurse:** A registered nurse or nurse practitioner.

3.3 **Personal Health Information:** Any identifying information about clients that is verbal, written, or electronic form. (CNO, 2009).

3.4 **Subpoena or Summons to Witness** is a legal document that compels a named individual to attend a court of law to give evidence in a civil or criminal proceeding.

3.5 **Search Warrant** is a legal document that provides authorization for law enforcement personnel to obtain evidence, such as clients` health records, belongings and specimen samples, as part of an investigation.

### 4. PROCEDURE:

**The provisions outlined in this policy are based on the FNIHB flowchart “Privacy Standard Operating Procedures – Third Party Requests for the Disclosure of Personal Information”, which is included as Appendix A.**

4.1 When a FNIHB-OR staff member is approached by law enforcement personnel to disclose client information, he/she must respond to a search warrant, subpoena, summons to witness, or other court process. The nurse shall consult with the Nurse in Charge (NIC) regarding the request before disclosing any client information.

4.2 Before releasing information or permitting the law enforcement officer access to any personal information, the nurse must ask to inspect the warrant or other legal document to verify the legal request and confirm the scope of information and/or objects being requested.

4.3 All requests for release of a client`s health record shall be directed to the ATIP office, unless extenuating circumstances require immediate release of personal information. In such cases, the NIC is to be advised before the information is released and the ATIP office is to be notified as soon as possible thereafter.

- 4.4 The FNIHB Privacy Standard Operating Procedure (Appendix A) identifies that extenuating circumstances may exist and therefore the personal information may be released without prior ATIP approval. The nurse shall ask the following questions to determine if the information should be released:
- i. Is it an emergency situation whereby an immediate, urgent and critical health situation of a temporary nature, regardless of its cause, may seriously endanger or threaten the life, health or safety of the individual?
  - ii. Would a reasonable person agree that an immediate release of this personal information was necessary?
  - iii. Does the disclosure avert or minimize an imminent danger to the health or safety of any person?
  - iv. Is the disclosure to occur within a timeframe that makes it impossible to receive concurrence from the ATIP coordinator?
- 4.5 If the nurse must release the requested information and/or objects, he/she must be vigilant to provide only the information that is stated in the subpoena, search warrant, or disclosure form.
- 4.6 If the nurse is presented with a subpoena to appear in a criminal / legal proceeding, he/she should not disclose any client information prior to these proceedings, without client consent. Disclosure of client health information should only be released when ordered by the judicial body (e.g. judge) at the time of the court hearing. The nurse shall contact the ATIP office upon receipt of such subpoena, as the coordinator may consult with the legal services unit as required.
- 4.7 The nurse should never perform medical tests or treatments solely at the request of a law enforcement officer, unless required by law (including a legislative provision, search warrant, or other court order) or when client consent has been obtained. When specimens are collected, it is important to clearly document in the client's health record the process of how the specimens were handled and labeled.
- 4.8 The nurse or other staff at the health care facility must not interfere with or obstruct a law enforcement officer in the exercise of his/her duties. However, if the law enforcement officer's activities interfere with the safety of clients or the efficient operation of the health centre, the NIC must be notified and he/she may insist that the law enforcement officer's activities be reasonably modified.
- 4.9 If a client is under arrest, the property or belongings that are in his/her possession, including any foreign bodies removed, can be taken by the Law enforcement officer without client's consent. Staff should obtain written confirmation of the arrest, including the officer's name and badge number. Client information (e.g. the health record and test results) remains confidential despite the client being under arrest.
- 4.10 Detailed documentation of all interactions with Law enforcement personnel must be entered in the client's health record, including what property/information has been released and the authority (e.g., search warrant) by which it was released.

**5. RELATED POLICIES AND LEGISLATION:**

FNIHB-OR Policy: Confidentiality

FNIHB-OR Policy: Release of Information

Personal Health Information Protection Act

College of Nurses of Ontario (2009). Practice Standard: Confidentiality and Privacy – Personal Health Information.

Restraints

**6. REFERENCES:**

College of Nurses of Ontario (2009). Practice Standard: Confidentiality and Privacy - Personal Health information.

Canadian Nurses Protective Society (2008). InfoLAW: Occupational Health Nursing (Vol. 17, No. 2, October 2008).

*Personal Health Information Protection Act*

*Child and Family Services Act*

*Mandatory Gun Shot Wounds Reporting Act*

<b>Approved by:</b>		<b>Effective Date:</b>  <b>March 31, 2015</b>
<b>Director of Nursing, Ontario Region</b>	<b>Date:</b>	
<b>Regional Executive, Ontario Region</b>	<b>Date:</b>	

## Appendix A: Privacy Standard Operating Procedures – Third Party Requests for the Disclosure of Personal Information

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See Attached Appendix A: Privacy Standard Operating Procedures – Third Party Requests for the Disclosure of Personal Information