

Communicate patient information: Prevent violence-related injuries to health care and social services workers

This bulletin concerns the requirements related to patient privacy and worker health and safety that are set out by the *Workers Compensation Act* and the *Freedom of Information and Protection of Privacy Act*. In addition, this bulletin

- Is for administrators, risk managers, and front-line supervisors employed by public bodies, as well as for educators, health and safety professionals, worker representatives, and members of joint occupational health and safety committees.
- Uses the term *patient* for those receiving health care or social services, whether they are patients, clients, or residents.
- Does not contain legal advice. For additional guidance on patient privacy, consult your supervisor, your employer's policies, your organization's freedom of information resources, and any relevant professional codes of conduct.

WorkSafeBC Requirements

Section 115 of the *Workers Compensation Act* requires that workers be informed about the risks of injury, including injury from violence. Section 4.27 of the Occupational Health and Safety Regulation defines violence as the "attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury." These behaviours do not need to have an "intent" to injure, and are often referred to as "aggression" within health care.

Violence is a leading cause of injury to B.C. care workers and results in over 1,000 injuries each year. Care workers often report that violent incidents happen "out of the blue" or "without warning." However, incident investigations frequently reveal that the patient involved had a history, or a known risk, of violent behaviour that was not communicated to workers by way of assessments, charts, and care plans.

While care workers regularly share medical histories to facilitate care when diagnosing, treating, and monitoring patients, they often don't share patient information relating to risks or triggers of violent behaviour. This is partly the result of confusion about privacy law, ethics, and professional practice guidelines in the health care and social services sector—confusion that has led to workers being put at unnecessary risk of injury.

Example: Information not provided

A worker in a group home was assaulted by a newly admitted client. Previously, the client had been assessed and found unsuitable for the kind of care offered by the group home, but this information was not passed on to the facility. If the assessment information had been provided, the client would have been placed in a more appropriate facility.

Privacy Law Requirements

Privacy law supports the sharing of patient information in a way that both respects an individual's privacy and yet protects worker safety.

In British Columbia, the *Freedom of Information and Protection of Privacy Act* (FIPPA) governs the collection, use, and disclosure of personal information by public bodies. Sections 33.1(1)(f) and 33.2(e) of FIPPA allow for disclosure of personal information within an organization "if the information is immediately necessary for the protection of the health or safety of the... employee." This is supported by the Office of the Information and Privacy Commissioner for British Columbia (OIPC), which recommends using the "need to know" rule to ensure that "the right information reaches the right person at the right time for the right purposes" (OIPC Investigation Report P96-006).

The part of FIPPA that has been widely misinterpreted is Section 22(3)(a). This section states that "disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if...the personal information relates to a medical, psychiatric or psychological history,

diagnosis, condition, treatment or evaluation." Section 22(3)(a) does not prevent the sharing of information that is necessary to protect workers from the risk of violence.

Asking two important questions can help determine whether to communicate patient information:

- Is disclosing this information necessary to protect this worker's (or anyone else's) safety?
- Will disclosing this information lead to changes in work practices to reduce the risk of injury?

If the answer to these questions is yes, then disclosure is required.

Example: Risk not communicated

Assessments by two different care professionals revealed that a resident of a care facility was at risk of acting violently towards the staff. This information was not communicated to those who "needed to know". There was subsequently a serious incident that could have been prevented by communicating this information.

The Care Professional's Responsibilities

What is a care professional's obligation to protect patient privacy?

Codes of conduct for all care professionals include a requirement to use patient information appropriately and to follow all legislative requirements. For example, the Privacy and Confidentiality Practice Standard published by the College of Registered Nurses of BC states that "Nurses have an ethical obligation to disclose in situations that involve a substantial risk of significant harm to the health or safety of the client or others." The complementing Professional Standards for Registered Nurses and Nurse Practitioners states that "When nurses are required to disclose information for a particular purpose, they disclose only the amount of information necessary for that purpose and inform only those necessary." All professional codes of practice, including those for physicians, psychologists, and social workers, support disclosure of patient

information to prevent harm. For example, disclosure is required when abuse of a child is suspected or when self-harm appears imminent. Disclosure is also required to protect workers from the risk of violence.

What if there is a conflict between a professional code of conduct and the *Workers Compensation Act*?

Legal requirements such as the *Workers Compensation Act* take precedence over professional codes. Care professionals are required to recognize where there are potential conflicts. Professional regulatory colleges can assist their members in this regard.

What are the responsibilities of unlicensed care givers who have no code of conduct?

Unlicensed caregivers are still bound by the relevant legislation, and by their employers' policies relating to protecting patient information.

The Patient's Rights

Can a public body disclose a patient's personal information to another public body?

Yes. Sections 33.1(1)(f) and 33.2(e) of FIPPA allow for disclosure of patient information by one public body to another "if the information is immediately necessary for the protection of the health or safety of the... employee." Organizations are encouraged to develop procedures and policies on how this information is to be shared and how the disclosure should be documented.

Example: Information intentionally withheld

When a patient was transferred from one facility to another, information about his violent behaviour was intentionally withheld because of fear that administrators at the receiving facility wouldn't accept him if they knew about his history. Shortly after his arrival at the receiving facility he assaulted a nurse.

Is a patient's consent required for organizations to share personal information related to worker safety?

No. Consent is not required when information is being disclosed for worker safety. There are situations where patient consent is required to share personal information, but this is not one of them.

Does labelling a patient (e.g. "risk factors for violence are present") contravene the patient's right to privacy?

No. Patients are regularly given medical and behavioural labels such as "diabetic," "wanderer," "allergic to penicillin," and "non-compliant." This information does not violate the patient's privacy. Identifying patients as having risk factors for violence and communicating the risk for violence is not unfair if the information describes the risk the patient poses accurately using factual and non-judgemental terms, and if the information is made available only to those who need to know. The purpose of identifying and communicating the potential risk for violence is to protect those interacting with the patient, not to assign blame or judge the patient. A warning indicator may take the form of a note in an electronic file or a

purple dot on a paper file. When a risk for violence is communicated it needs to be accompanied by details about the nature of the risk and the interventions that minimize the risk of injury to the worker.

Example: Some staff members not informed of risk

A care aide working casual shifts in a facility was hit by a resident. She had not been told about this particular resident's risk of striking out, nor the approaches required to avoid triggering the behaviour.

Can patient information be used for incident investigations and the work of joint occupational health and safety committees?

Yes. Employers are obligated to investigate incidents that caused or could have caused injury to their workers, in conjunction with a joint occupational health and safety committee. Investigators need access to all relevant information to determine the cause(s) of the incident, and to make recommendations to prevent recurrence. Certain types of information must be shared or posted at workplaces, including the results of incident investigations and inspection reports. If patient information is used to develop these documents, personal identifiers must be removed so that readers will understand the issue but not be able to identify the patient(s) involved.

Can a WorkSafeBC officer ask to see a patient's medical records?

Yes. Section 179 of the Workers Compensation Act, relating to a workplace inspection by a WorkSafeBC officer, states that an officer may "inspect records that may be relevant and, on giving a receipt for a record, temporarily remove the record to make copies or extracts" and to "require a person to produce within a reasonable time records in the person's possession or control that may be relevant." WorkSafeBC officers are only interested in seeing that part of the patient's records that refer to issues that may put workers at risk. Information will continue to be treated as confidential, while in the officer's possession. The employer should make a record of this disclosure.

The Employer's Responsibilities

Employers are encouraged to incorporate the “need to know” principle into their policies related to patient information disclosure, and encourage appropriate communication of information to protect their workers from the risk of violent behaviour.

Example: Information communicated to effectively minimize risk

A residential care patient expressed hostility and demonstrated violent behaviour towards staff at every step of his care routine. The director of care obtained the patient's complete history, talked to all workers who cared for him, and developed a behavioural care plan. Staff were told about the risks and the measures to take to minimize their risk. There were no further significant incidents with the patient after the care plan was updated and implemented.

Resources

Prevention Information Line

Contact the Prevention Information Line to:

- Report an unsafe condition or situation in a workplace
- Request a worksite consultation
- Get information about workplace health and safety issues
- Get information about the Occupational Health and Safety Regulation
- Report serious accident/incident or major chemical release

Call: 604 276-3100 in the Lower Mainland or 1 888 621-7233 toll-free within B.C.

WorkSafeBC.com – Health Care Industry

This site provides information and resources on topics specific to health care and social services employers and workers.

<http://www2.worksafebc.com/Portals/HealthCare/Home.asp>

Health Care E-News

Sign up for regular health and safety updates through the Health Care E-News. Subjects include regulation changes, new publications, upcoming conferences and any other news that could be of interest.

<http://www2.worksafebc.com/Portals/HealthCare/healthcarenews.asp?reportid=34681>



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