

**Title: Consent to Use or Disclose Personal Health Policy**

Effective Date: December 1, 2011

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1. **PURPOSE:**

- 1.1. To detail the conditions and restrictions on the trustee to obtain express or implied consent.
- 1.2. To ensure consent is obtained in accordance with *The Personal Health Information Act* (“PHIA”).

2. **DEFINITIONS:**

- 2.1. Access: The right of an individual (client) or a person permitted to exercise the rights of that individual to examine (view) and receive a copy of the individual’s personal health information maintained by the trustee.
- 2.2. Demographic Information: An individual’s name, address, telephone number, and email address.
- 2.3. Disclosure of Personal Health Information: Revealing the personal health information outside the trustee, such as to other trustees, to family and friends of the individual, or to other persons legally entitled to have personal health information released to them.
- 2.4. Express Consent: Consent given directly by an individual in oral, written or electronic form. For example, completion of a consent form by an individual that authorizes the disclosure of the individual’s own personal health information is a form of express consent.
- 2.5. Health Care: Any care, service or procedure provided to diagnose, treat or maintain an individual’s health; provided to prevent disease or injury or promote health care; or that affects the structure or a function of the body and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.
- 2.6. Health Care Facility: A hospital, personal care home, psychiatric facility, medical clinic, laboratory, CancerCare Manitoba and community health centre or other facility in which health care is provided and that is designated in the PHIA regulations.
- 2.7. Health Professional: A person who is licensed or registered to provide health care under an Act of the Legislature or who is a member of a class of persons designated as health professionals in the PHIA regulations.
- 2.8. Health Services Agency: An organization that provides health care such as community or home-based health care pursuant to an agreement with the trustee.
- 2.9. Implied Consent: In all circumstances, the purpose of the use or disclosure would become reasonably obvious to the individual the information is about (or another person permitted to exercise the right of an individual), it is reasonable to expect that they would consent and the information is used or disclosed only for the purpose it was collected.
- 2.10. Individual: A person receiving health care services. For the purpose of access, correction, use and disclosure of personal health information includes persons permitted to exercise

the rights of the individual. For clarity, health care services means occupational therapy services provided to clients in any setting.

- 2.11. Knowledgeable Consent: Consent is knowledgeable if the individual who gives it has been provided with the information that a reasonable person in the same circumstances would need in order to make a decision about the use or disclosure of the information.
- 2.12. Maintain: In relation to personal health information, to have custody or control of the information
- 2.13. Personal Health Information: Recorded information about an identifiable individual that relates to:
- the individual's health, or health care history, including genetic information about the individual;
  - the provision of health care to the individual; or
  - payment for health care provided to the individual;
- and includes:
- the PHIN (personal health identification number) and any other identification number, symbol or particular assigned to an individual; and
  - any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care.
- 2.14. PHIA: *The Personal Health Information Act* (Manitoba).
- 2.15. PHIN: The personal health identification number assigned to an individual by the minister to uniquely identify the individual for health care purposes.
- 2.16. Personal Representative:
- an executor/executrix or joint executor/executrix named in a deceased individual's will; or
  - court appointed administrator or joint administrator of a person's estate.
- 2.17. Persons Permitted to Exercise the Rights of an Individual includes:
- 2.17.1. (a) any person with written authorization from the individual to act on the individual's behalf;
- (b) a proxy appointed by the individual under *The Health Care Directives Act*;
- (c) committee appointed for the individual under *The Mental Health Act* if the committee has the power to make health care decisions on the individual's behalf;
- (d) a substitute decision maker for personal care appointed for the individual under *The Vulnerable Persons Living with a Mental Disability Act* if the exercise of the right relates to the powers and duties of the substitute decision maker;
- (e) the parent or guardian of an individual who is a minor, if the minor does not have the capacity to make health care decisions;
- (f) if the individual is deceased, his or her personal representative.

2.17.2. If it is reasonable to believe that no person listed in any clause of 2.15.1 exists or is available, the adult person listed first in the following who is readily available and willing to act may exercise the rights of an individual who lacks the capacity to do so:

- (a) the individual's spouse, or common-law partner, with whom the individual is cohabiting;
- (b) a son or daughter;
- (c) a parent, if the individual is an adult;
- (d) a brother or sister;
- (e) a person with whom the individual is known to have a close personal relationship;
- (f) a grandparent;
- (g) a grandchild;
- (h) an aunt or uncle;
- (i) a nephew or niece.

**Ranking:** The older or oldest of two or more relatives described in any clause of 2.15.2 is to be preferred to another of those relatives.

2.18. **Record or Recorded Information:** A record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records.

For clarity, a record means information, however recorded (e.g. written, audio, video, computer disk), generated by the occupational therapist or an person supervised by the occupational therapist. This includes but is not limited to assessments and evaluations, therapy goals, progress toward goals, attendance and remuneration records. When the record belongs to the occupational therapist it may also include items not generated by the occupational therapist such as, but not limited to, a referral, correspondence, and reports prepared by others.

2.19. **Representative:** In relation to an individual, means persons permitted to exercise the rights of an individual.

2.20. **Trustee:** A health professional, health care facility, public body, or health services agency that collects or maintains personal health information. For clarity, an occupational therapist is a trustee under the PHIA if he or she is a registered occupational therapist and is self employed or employed by a non-trustee. Health professionals employed by a trustee, such as a hospital government agency, etc are not considered trustees; however as employees of these facilities, occupational trustees must comply with the PHIA.

2.21. **Use:** Involves revealing personal health information to someone within the trustee's own organization who needs to know the information to do their job. Use includes processing, reproduction, transmission and transportation of personal health information.

### 3. **POLICY:**

- 3.1. A trustee shall obtain an individual's consent, for the use or disclosure of personal health information including demographic information, when required under *The Personal Health Information Act*. [Section 19.1\(1\)](#)
- 3.2. When PHIA requires an individual's consent to use or disclose personal health information, the consent must: [Section 19.1\(1\)](#)
  - relate to the purpose for which the information is used or disclosed;
  - be knowledgeable and understood by the individual;
  - be voluntary; and
  - not be obtained through misrepresentation.
- 3.3. Consent may be express or implied and need not be in writing. [Sections 19.1\(3\) and 19.1\(5\)](#)
- 3.4. Consent must be express, and not implied, if the trustee: [Section 19.1\(4\)](#)
  - makes a disclosure to a person who is not a trustee; or
  - makes a disclosure to another trustee, but the disclosure is not for the purpose of providing health care or assisting in providing health care.
- 3.5. The trustee may act in accordance with an express written consent or a record of an express consent having been given and obtained by another trustee, without verifying that the consent meets the requirements stated in section 3.2, unless the trustee has reason to believe that the requirements have not been met. [Section 19.1\(6\)](#)
- 3.6. An individual may give consent subject to conditions as long as the conditions do not restrict or prohibit the trustee from recording personal health information that is required by law, or by established standards, or by professional or institutional practice. [Section 19.1\(7\)](#)
- 3.7. An individual who has given consent, whether express or implied, to the use or disclosure of personal health information may withdraw it by notifying the trustee. A withdrawal does not have a retroactive effect. [Section 19.2](#)

#### **4. PROCEDURE:**

- 4.1. An individual who has given consent, whether express or implied, to the use or disclosure of personal health information may withdraw it by notifying the trustee. A withdrawal does not have a retroactive effect. [Section 19.2](#)
- 4.2. When a trustee determines that the personal health information can be used or disclosed in accordance with the implied consent model, the personal health information used or disclosed and the reason for use or disclosure shall be documented in the individual's health record.
- 4.3. When a trustee determines that express consent is required for use or disclosure of the personal health information, the trustee must obtain consent from the individual the information is about by:
  - completing a Consent to Use or Disclose Personal Health Information Form; or

- document in the individuals health record that verbal consent was obtained and the reason for the use or disclosure.

## 5. **REFERENCES:**

- 5.1. *The Personal Health Information Act.*
- 5.2. The Personal Health Information Regulations.

### **Consent to Use or Disclose Personal Health Information Policy –Guidelines**

The standard operating procedure for reporting of security breaches related to personal health information at this company is:

1. Consent is obtained for the use or disclosure of personal health information when required under PHIA.
2. The consent meets the requirements as set out under PHIA and maybe express or implied.
3. Express consent is obtained when personal health information is disclosed to a person who is not a trustee; or to another trustee, but the disclosure is not for the purpose of providing health care or assisting in providing health care.
4. Consent may be withdrawn, but not with a retroactive effect.

For further clarification on any point, please refer to the full policy.