

## PART 9 - LICENSEE RECORDS

### Division 1 – Definition

#### Definition

- 9-1 In this Part, “**client’s representative**” means a person with legal authority to give, refuse or withdraw consent to health care on a client’s behalf, including, as appropriate
- (a) a “committee of the patient” under the *Patients Property Act*,
  - (b) the parent or guardian of a client under 19 years of age with parental responsibility to give, refuse or withdraw consent to health care for the child under section 41(f) of the *Family Law Act*,
  - (c) a representative authorized by a representation agreement under the *Representation Agreement Act* to make or help in making decisions on behalf of a client,
  - (d) a temporary substitute decision maker chosen under section 16 of the *Health Care (Consent) and Care Facility (Admission) Act*, or
  - (e) a substitute decision maker chosen under section 22 of the *Health Care (Consent) and Care Facility (Admission) Act*.

### Division 2 – Collection of Client Personal Information

#### Authority to collect client personal information

- 9-2 A licensee in the course of practising a designated health profession governed by the college must not collect personal information about a client without the consent of the client unless
- (a) the personal information relates directly to, and is necessary for, providing health care services to or for the client or for related administrative purposes, or
  - (b) the collection of the personal information is authorized under the bylaws, or otherwise authorized or required by law.

#### Source of client personal information

- 9-3
- (1) Subject to subsection (2), a licensee must collect personal information about a client directly from the client.
  - (2) A licensee may collect personal information about a client from a source other than the client if
    - (a) the client has been made aware of the matters set out in section 9-4 and has authorized collection of the personal information from another source,
    - (b) the client is unable to provide consent and the licensee, having made the client’s representative aware of the matters set out in section 9-4, collects the information from the client’s representative or the client’s representative authorizes collection from another source,
    - (c) collecting the personal information directly from the client would

- (i) prejudice the best interests of the client,
- (ii) defeat the purpose or prejudice the use for which the information is collected, or
- (iii) risk the safety of any person,
- (d) the collection is for the purpose of assembling a family or genetic history of a person and is collected directly from that person,
- (e) the information is publicly available,
- (f) the information will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the client, or
- (g) the collection of personal information from a source other than the client is authorized under section 12 of PIPA or section 27 of FIPPA, as applicable, or otherwise authorized or required by law.

#### **Notification of collection of client personal information**

- 9-4 (1) A licensee who collects personal information directly from a client or the client's representative must take reasonable steps to ensure that the client or client's representative is aware of
- (a) the fact that the personal information is being collected,
  - (b) the purpose for which the personal information is being collected,
  - (c) the intended recipients of the personal information,
  - (d) the legal authority for collecting the personal information if it has not been supplied voluntarily, and
  - (e) the consequences, if any, for the client if all or any part of the requested personal information is not provided.
- (2) The steps referred to in subsection (1) must be taken before the personal information is collected or, if that is not practicable, as soon as practicable after the personal information is collected.
- (3) A licensee is not required to take the steps referred to in subsection (1) if
- (a) the licensee has taken those steps in relation to the collection, from the client or client's representative, of the same information or information of the same kind for the same or a related purpose, on a recent previous occasion,
  - (b) non-compliance is authorized by the client, or
  - (c) compliance would prejudice the interests of the client or defeat the purpose or prejudice the use for which the information is collected.

### **Division 3 – Use or Disclosure of Client Personal Information**

#### **Use of client personal information**

- 9-5 A licensee may use personal information about a client only
- (a) for the purpose of providing health care services to or for the client, or for a related administrative purpose,
  - (b) for a use consistent with a purpose specified in paragraph (a),
  - (c) if the client or the client's representative has consented to the use,
  - (d) for a purpose for which that information may be disclosed under section 9-6, or
  - (e) if the use is authorized under section 14 or 15 of PIPA or section 32 of FIPPA, as applicable, or otherwise authorized by or required law.

#### **Disclosure of client personal information**

- 9-6 A licensee must maintain confidentiality of a client's personal information, and may disclose that personal information only
- (a) for the purpose of providing health care services to or for the client, or for a related administrative purpose,
  - (b) for a disclosure consistent with a purpose specified in paragraph (a),
  - (c) if the client or the client's representative has consented to the disclosure,
  - (d) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with legal authority to compel the production of information,
  - (e) to an employee of, or contractor providing services to, the licensee, if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the employee or contractor,
  - (f) to the licensee's legal counsel if necessary for use in civil, criminal or regulatory proceedings involving the licensee,
  - (g) to the college, a quality assurance assessor, an investigator, or any other person or body authorized by law to conduct audits, assessment, evaluations or investigations on behalf of the college, including without limitation an audit or required submission under section 11-6,
  - (h) for the purpose of responding to a complaint or other matter under investigation by the college, a discipline hearing, or a proceeding before the Health Professions Review Board,
  - (i) if the licensee has reasonable grounds to believe that there is a risk of significant harm to the health or safety of any person and that the disclosure of the information would reduce that risk,
  - (j) for the purpose of making a report to a regulatory college or another regulatory body, government agency or officer to which the licensee has a duty to report under the laws of British Columbia or another jurisdiction,
  - (k) for the purpose of providing notification to the next of kin or a friend of an injured, ill or deceased client, or

- (l) if the disclosure is authorized under sections 17 to 22 of PIPA or sections 33 to 36 of FIPPA, as applicable, or otherwise authorized or required by law.

### **College access to records**

- 9-7 Without limiting section 9-6(g), a licensee must make all records created or obtained in the course of providing health services, and any written or electronic records, available at reasonable hours for inspection by the college and must permit the college to make copies of records or to remove records temporarily for the purpose of making copies of them.

### **Definition of consistent purpose**

- 9-8 A use or disclosure of personal information about a client is consistent with the purpose of providing health care services to or for the client, or a related administrative purpose, under section 9-5(b) or 9-6(b) if the use or disclosure has a reasonable and direct connection to either of those purposes.

## **Division 4 – Retention, Storage and Disposal of Client Care Records**

### **Retention of client care records**

- 9-9 (1) Except as otherwise required by law, a licensee must ensure that all records in their custody or control containing information describing the care provided to a client are retained for a minimum period of 16 years following the later of
  - (a) the date of last entry, or
  - (b) the date the client reaches 19 years of age.
- (2) A licensee who receives records containing information describing the care provided to a client that are transferred in accordance with section 9-11(1)(a) or 9-12(3) must retain those records in accordance with subsection (1).

### **Storage of client care records**

- 9-10 (1) A licensee must ensure that records in their custody and control containing personal information about a client are stored in a safe and secure environment to ensure confidentiality regardless of the format in which they are stored.
- (2) A licensee who has custody and control of records described in subsection (1) must have record management processes in place to regulate access to those records, and to ensure that individuals having access to those records are subject to written confidentiality requirements.

### **Transfer or disposal of client care records**

- 9-11 (1) A licensee must ensure that records in their custody and control containing personal information about a client are disposed of only
  - (a) by transferring the record safely and securely
    - (i) to another licensee with a practising licence or a multijurisdictional licence in the same designated health profession,

- (ii) with the consent of the client or the client's representative, to another health care practitioner or a health care agency,
    - (iii) to a person or organization retained by the transferring licensee to store records on their behalf in a manner that is secure and provides reasonable access for the duration of the minimum retention period required by section 9-9(1), or
    - (iv) to the client or the client's representative,
  - (b) in the case of information recorded electronically, by erasing or destroying the information securely and in a manner that ensures it cannot be reconstructed, or
  - (c) in the case of information contained in a physical record, by effectively destroying the record by use of a shredding device or in another manner that ensures the record cannot be reconstructed.
- (2) A licensee must ensure that, if personal information is transferred to any person for processing, storage or disposal, a contract is made with that person that includes an undertaking by the recipient to maintain legally required access to, and the confidentiality and physical security of, the personal information.

#### **Licensee ceasing to practise**

- 9-12 (1) A licensee who ceases to practise for any reason must ensure that records in their custody and control containing personal information about clients are transferred or disposed of in accordance with section 9-11.
- (2) Despite subsection (1), if records described in that subsection are subject to continued retention under section 9-9(1) at the time the licensee ceases to practise, those records must be transferred in accordance with section 9-11(1)(a).
- (3) A licensee must make appropriate arrangements to ensure that, in the event that the licensee is unable to transfer or dispose of records described in subsection (1) due to the licensee's death or incapacity, those records will be transferred safely and securely to another licensee with a practising licence or multijurisdictional licence in the same designated health profession.

#### **Notice to clients**

- 9-13 A licensee who receives records containing personal information about a client transferred in accordance with section 9-11(1)(a) or 9-12(3) must notify the client of the transfer as soon as practicable.

### **Division 5 – Protection of Personal Information**

#### **Protection of personal information**

- 9-14 A licensee who has custody and control of records containing personal information about clients

- (a) must protect that personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, and
- (b) must take reasonable steps to ensure that a third party, including an employee or contractor of the licensee, does not access, collect, use, disclose, store or dispose of that personal information except in accordance with the requirements of this Part.

#### **Unauthorized access, use, disclosure or disposal of personal information**

- 9-15 A licensee who has custody and control of records containing personal information about clients must take steps to remedy any unauthorized access, use, disclosure or disposal of that personal information as soon as the breach is discovered, including but not limited to
- (a) ensuring compliance with any applicable privacy breach requirements under the PIPA or FIPPA,
  - (b) taking steps to recover the personal information or to ensure its disposal if it cannot be recovered,
  - (c) taking steps to ensure that any remaining personal information is secure,
  - (d) investigating how the breach occurred and modifying existing security arrangements to prevent a re-occurrence of the breach, and
  - (e) providing notification of the breach to
    - (i) any individual affected by the breach, including any affected clients and any other affected health care professionals,
    - (ii) the Office of the Information and Privacy Commissioner for British Columbia, and
    - (iii) law enforcement officials if there is reason to believe that criminal action may have caused or contributed to the breach.

### **Division 6 – Client Access**

#### **Client access to client care records**

- 9-16 (1) This section applies if
- (a) a client of a licensee or the client's representative makes a written request for access to personal information about the client that is contained in records within the licensee's custody and control, and
  - (b) Part 2 of FIPPA does not apply to request.
- (2) Subject to subsections (3) to (7) and (12), a licensee who receives a request described in subsection (1) must as soon as practicable and, in any event, within 30 business days after receiving the request, give the client or client's representative access to the records within the licensee's custody and control that contain the requested personal information by giving the client or client's representative the opportunity to examine or make copies of the records.

- (3) A licensee may extend the time to respond to a request described in subsection (1) in accordance with section 31(2) of PIPA.
- (4) If it is reasonably practicable to do so, a licensee must sever a record before giving the client or client's representative access to it under subsection (2) to remove information the disclosure of which would
  - (a) in the licensee's opinion, give rise to a significant likelihood of
    - (i) a substantial adverse effect on the physical, mental or emotional health of the client, or
    - (ii) harm to another individual,
  - (b) reveal personal information about another individual, without that individual's consent,
  - (c) contravene subsection (9), or
  - (d) be otherwise prohibited by section 23(4) of PIPA.
- (5) A licensee may sever a record before giving the client or client's representative access to it under subsection (2) to remove
  - (a) information described in section 23(3) of PIPA, or
  - (b) other information that does not constitute personal information about the client and is unrelated to the provision of health care services to the client.
- (6) If it is not reasonably practicable to sever a record to remove information described in subsection (4)(a), (b) or (d), the licensee must refuse to give the client or client's representative access to the record.
- (7) If it is not reasonably practicable to sever a record to remove information described in section 23(3) of PIPA, the licensee may refuse to give the client or client's representative access to the record.
- (8) Subject to subsections (4) to (7), a client under 19 years of age may be given access to a record under subsection (2) if, in the licensee's opinion, the client is capable of understanding the subject matter of the record.
- (9) Unless authorized by the client, a licensee must not give a parent or guardian of a client who is under 19 years of age access to any record containing information about health care services provided to the client without the consent of the parent or guardian in accordance with section 17 of the *Infants Act*.
- (10) If, in accordance with this section, a licensee refuses to give a client or the client's representative access to a record or information contained in a record, the licensee must give the client or client's representative a written explanation of the reason for that refusal.
- (11) Subject to subsection (12), if a licensee gives a client or the client's representative access to a record under subsection (2) and the client or client's representative requests a copy of the record, a copy must be provided if it can reasonably be reproduced.

- (12) A licensee may charge a client or the client's representative a reasonable fee for giving them access to records under this section that must be limited to reasonable photocopying charges to reproduce copies of the record and any other additional costs actually and reasonably incurred by the licensee to provide access to the record.