

Communicate personal information: Prevent violence-related injuries to health care and social services workers (non-public bodies*)

- This bulletin is about requirements related to resident and client privacy and worker health and safety that are set out by the *Workers Compensation Act* and the *Personal Information Protection Act*. This bulletin applies to organizations that are not considered public bodies, including most affiliate and private residential care facilities, and social service agencies.
- The information is for use by administrators, risk managers, and front-line supervisors, as well as for educators, health and safety professionals, worker representatives, and members of joint occupational health and safety committees.
- This bulletin does not contain legal advice. For additional guidance on resident and client privacy, consult your supervisor, your employer's policies, and any relevant professional codes of conduct.
- The terms *resident* and *client* are used to describe those receiving health care or social services; however, for the purposes of this bulletin, these terms are interchangeable with the term *patient*.

Violence is a leading cause of injury to B.C. care workers and results in over 1,000 time-loss claims each year. Care workers often report that violent behaviours happen “out of the blue” or “without warning.” However, incident investigations frequently reveal that the resident or client had a history, or a known risk, of violent behaviour that was not communicated to workers by way of charts, communication books, and care plans. While workers regularly share histories to facilitate care of residents and clients, they often don't share resident or client 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 from acts of violence.

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.

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.

* Another version of this bulletin exists for “public bodies” covered by the *Freedom of Information and Protection of Privacy Act*.

Privacy Law Requirements

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

In British Columbia, the *Personal Information Protection Act* (PIPA) governs the collection, use, and disclosure of personal information for non-public bodies. Section 14 of PIPA requires that "an organization may use personal information only for purposes that a reasonable person could consider appropriate in the circumstances." **Section 14 also requires the consent of the person whose information is being collected, and must include details of what information is being collected and why.** Care organizations are encouraged to seek legal advice to ensure that the consent they are obtaining from their residents or clients allows them to fulfill their legal obligations under the *Workers Compensation Act* to maintain safe workplaces.

Asking two important questions can help determine whether there is a need to collect and communicate resident or client 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 both of 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, including stressors that could trigger violent behaviour and the resident's history of violence against female caregivers was not communicated to those who needed that information to modify care plans. 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 resident or client privacy?

Codes of conduct for all care professionals include a requirement to use resident or client information appropriately and to follow all legislative requirements. For example, the *Code of Ethics and Standards of Practice* published by the BC College of Social Workers states that "Social workers do not disclose ... information about a person ... unless:

- disclosure is required by law or by a court, or
- the social worker has reasonable grounds to believe that the disclosure is necessary to prevent serious bodily harm to an identifiable person or group of persons, and in such circumstances, the social worker shall disclose only such information as is necessary to prevent the prospective harm."

All professional codes of practice, including those for physicians, psychologists, and nurses, support disclosure of resident or client 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.

Example: Information intentionally withheld

When a client was transferred from foster care to a group home, information about his violent behaviour was intentionally withheld because of fear that he wouldn't be accepted if his history was known. Shortly after his arrival at the facility, he assaulted a group home worker.

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 these potential conflicts. Professional regulatory colleges can assist their members in this regard.

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

Unlicensed care workers (e.g., Health Care Assistants) are still bound by the relevant legislation and by their employers' policies relating to protecting resident or client information.

The Resident or Clients' Rights

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

Yes. Section 14 of PIPA requires that employers obtain the resident or client's consent to share personal information. The consent must include what information will be shared and for what purposes. Organizations should seek legal advice about how to obtain informed consent (either written or "implied") when the resident or client is not competent and has no representation, or if they withdraw their consent.

Can an organization disclose a resident or client's personal information to another organization?

Yes. Section 18(2)(b) of PIPA allows organizations to disclose personal information to another organization if the resident or client gave consent and the information is used for the purposes that it was originally collected (e.g., informing safe care). Organizations are encouraged to develop procedures and policies on how this information is to be shared and how the disclosure should be documented.

Does labelling a resident or client (e.g., "risk factors for violence are present") contravene their right to privacy?

No. Residents or clients are regularly given medical and behavioural labels such as "diabetic,"

"wanderer," "allergic to penicillin," and "non-compliant." This information does not violate resident or client privacy if the information describes the risk the resident or client poses accurately using factual and non-judgmental 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 resident or client, not to assign blame or judge the resident or client. How the risk for violence is communicated will depend on the workplace and the organization, but may take the form of a purple dot on a physical file or a note in an electronic file. This indicator 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 housekeeper 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 resident or client 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 resident or client 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 resident(s) or client(s) involved.

Can a WorkSafeBC officer ask to see a resident or client'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.” The Act adds that an officer may “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 resident or client’s records that refers to issues that may put workers at risk. Information will continue to be treated as confidential while in the officer’s possession. A record of this disclosure should be made.

The Employer’s Responsibilities

Under Part 5 of PIPA, organizations are required to develop policies and practices to help them meet

their obligations to appropriately collect and use personal information. Employers are encouraged to seek legal advice to ensure that their collection and use of personal information is appropriate to help them meet their legal obligation under the *Workers Compensation Act* to protect their workers from the risk of violent behaviour.

Example: Information communicated to effectively minimize risk

A resident in a care facility expressed hostility and demonstrated violent behaviour towards staff at every step of his care routine. The Director of Care obtained the resident’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 resident after the care plan was updated.

Resources

WorkSafeBC Prevention Information Line

Contact the Prevention Information Line to:

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

Call 604 276-3100 in the Lower Mainland or 1 888 621-7233 toll-free in Canada.

WorkSafeBC.com – Health Care Industry

The Safety at Work centre for the Health Care industry provides information and resources on topics specific to health care and social services employers and workers.

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



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