

Personal Health Information Act: What Custodians Need to Know About Consent

This overview is presented for the convenience of reference only. Nothing in this overview should be construed as legal advice. You should consult the Act and your own solicitors for all purposes of interpretation.

The *Personal Health Information Act* is a provincial law that governs the collection, use and disclosure of personal health information. It also provides individuals with the right to access and request correction of their own health information.

The *Personal Health Information Act* applies to all custodians. A custodian is a person who has custody or control of personal health information as a result of, or in connection with, the person's powers, duties or work. Custodians include public and private health facilities, health care professionals, ambulance services, pharmacies, the Centre for Health Information, Schools of Nursing, Memorial University Faculty of Medicine, School of Pharmacy and School of Human Kinetics and Recreation, rights advisors under the Mental Health Care and Treatment Act and others.

The *Personal Health Information Act* provides for both express and implied consent for the collection, use and disclosure of personal health information by the custodian. It also allows for a limited consent.

The follows provides an overview of the various types of consent in the Act including appropriate use:

Knowledgeable Consent

Consent is considered knowledgeable if it is reasonable, in the circumstances to believe that when the individual gives consent (s)he is informed:

- of the purpose of the collection, use and disclosure of the information;
- that he or she may give or withhold consent; and
- that the information may only be collected, used or disclosed without his or her consent in accordance with the *Personal Health Information Act*. S 23(2).

Express Consent

Express consent that is knowledgeable and not obtained through deception or coercion is required for the custodian to:

- Disclose personal health information to a person who is not a custodian; or
- Disclose personal health information to another custodian for a purpose other than providing or assisting in the provision of health care, S 25(1), with the exception of disclosure to a third party that is required for payment of medications, goods or services. S 25(2).

Express consent can be written or verbal.

Implied Consent

Implied consent is permitted:

- When a health care provider, health care professional, or a person operating a health care facility, licensed pharmacy, ambulance service or community health service collects personal health information from an individual or receives it from a custodian for the purpose of providing health care or assisting in the provision of health care.

Circle of Care

The circle of care as defined in the Personal Health Information Act, Section 24(3) refers to “the persons participating in and activities related to the provision of health care to the individual who is the subject of the personal health information and includes necessarily incidental activities such as laboratory work and professional consultation.”

Limited Consent

The *Personal Health Information Act* provides for limited consent.

- Limited consent allows individuals to place conditions on the collection, use or disclosure of their personal health information.
- Limited consent does not prohibit or restrict required reporting by law or by standards of professional or institutional practice. S 27(2).

Withdrawal of Consent

- Consent may be withdrawn by providing notice to the custodian;
- Withdrawal of consent will not have a retroactive effect. S 28.

For more information on the *Personal Health Information Act* contact Legislative & Regulatory Affairs, Department of Health and Community Services at 729-7007.

The *Personal Health Information Act* is available on the Government of Newfoundland and Labrador website at <http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm>