

CLPNA RESOURCE DOCUMENT

PERSONAL INFORMATION & INVESTIGATIONS

BACKGROUND & PURPOSE

This resource document explains the legal rules that require personal information to be collected and disclosed for College of Licensed Practical Nurses of Alberta (CLPNA) investigations. CLPNA is dedicated to protect the privacy interests of all individuals involved in its investigations while ensuring personal information needed to conduct investigations flows effectively. CLPNA therefore uses this resource document (in a 3 part format) to help create and exchange an understanding among all individuals involved about: CLPNA's legal authority to collect personal information; *and* the respective legal authorities of the investigated member's employer and other witnesses to disclose personal information. In this resource document the term 'personal information' means any individually identifying information, including health information.

PART 1: CLPNA'S LEGAL AUTHORITY TO COLLECT PERSONAL INFORMATION

- The legal authority for CLPNA to collect personal information (from the member, his/her employer or any other witness) is set out under s. 63 of the *Health Professions Act* ("HPA"):
 - 63(1) An investigator
 - (a) may, at any reasonable time,
 - (i) require any person to answer any relevant questions and direct the person to answer the questions under oath, and
 - (ii) require any person to give to the investigator any document, substance or thing relevant to the investigation that the person possesses or that is under the control of the person,
 - (b) may require any person to give up possession of any document described in clause (a) to allow the investigator to take it away to copy it, in which case the investigator must return it within a reasonable time of being given it but must return it no later than after a hearing is completed,
 - (c) may require any person to give up possession of any substance and thing described in clause (a) to allow the investigator to take it away to examine it and perform tests on it, in which case the investigator must return it, if appropriate and possible, within a reasonable time of being given it but must return it, if appropriate and possible, no later than after a hearing is completed, and
 - (2) The investigator may copy and keep copies of anything given under subsection (1).

PART 2: EMPLOYER’S LEGAL AUTHORITY TO DISCLOSE PERSONAL INFORMATION

- ❑ The legal authority for an employer to disclose personal information to CLPNA will be set out under the following laws: the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”), the *Personal Information Protection Act* (“PIPA”), and/or the *Health Information Act* (“HIA”). The HIA is the relevant law if the employer is a ‘custodian’ and the information in question is health information under that Act. If the information is not health information under the HIA and the employer is a hospital or other public body, the FOIPPA is the relevant law. The PIPA is the relevant law if the information is not health information under the HIA and the employer is not a public body. In essence, the FOIPPA applies to employers operating in the public sector while the PIPA applies to employers operating in the private sector.
- ❑ The legal authority that permits an employer to disclose personal information is set out under each of the HIA, the FOIPPA and the PIPA, where each allows disclosure without consent if the disclosure is authorized or required by another enactment or statute. The other enactment or statute referenced in these sections is s. 63 of the HPA. Further, in certain circumstances, the FOIPPA and the PIPA permit disclosure for purposes relating to particular investigations and proceedings. In addition to these authorities, the HIA sets out legal authorities (to allow disclosure without consent) specific to health professional bodies (i.e. CLPNA). These various legal authorities are reproduced below with the key words bolded:

<i>under HIA</i>	<i>under FOIPPA ▼</i>	<i>under PIPA ▼</i>
<p>For personal information that is <i>diagnostic, treatment and care information</i> (e.g. patient care information or health service provider information) s. 35(1)(p) and s. 35(4):</p> <p>35(1) A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information</p> <p>...</p> <p>(p) if the disclosure is authorized or</p>	<p>For <i>all</i> personal information s. 40(1)(f) and (q):</p> <p>40(1) A public body may disclose personal information only</p> <p>...</p> <p>(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or</p>	<p>For <i>all</i> personal information s. 20(b) and (m):</p> <p>20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:</p> <p>...</p>

<p>required by an enactment of Alberta or Canada</p> <p>(4) A custodian may disclose individually identifying diagnostic, treatment and care information to a health professional body for the purpose of an investigation, a discipline proceeding, a practice review or an inspection if</p> <p>(a) the custodian has complied with any other enactment authorizing or requiring the custodian to disclose that information for that purpose, and</p> <p>(b) the health professional body agrees in writing</p> <p>(i) not to disclose the information to any other person except as authorized by or under the Act governing the health professional body</p> <p>For personal information that is <i>registration information</i> (e.g. patient contact information or billing information) s. 36:</p> <p>36 A custodian may disclose individually identifying registration information without the consent of the individual who is the subject of the information</p> <p>(a) for any of the purposes for which diagnostic, treatment and care information may be disclosed under section 35(1) or (4)</p>	<p>requires the disclosure</p> <p>...</p> <p>(q) to a public body or a law enforcement agency in Canada to assist in an investigation</p> <p>(i) undertaken with a view to a law enforcement proceeding, or</p> <p>(ii) from which a law enforcement proceeding is likely to result</p>	<p>(b) the disclosure of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure</p> <p>...</p> <p>(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding</p>
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- ❑ Note, if an employer does not use their discretion to comply with CLPNA’s request for records, an order from the Court can sought to require compliance. The legal authority for this is set out in s. 63(3) of the HPA.
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PART 3: WITNESSES’ AUTHORITY TO DISCLOSE PERSONAL INFORMATION

- ❑ If a witness is called in a personal capacity (that is, not through an employment relationship in which case the legal authority set out under Part 2 would apply), it may be that no privacy legislation governs or restricts the witness’ disclosure of personal information.
- ❑ The legal authority to request records or attendance of such a witness is, in the case of CLPNA calling the witness, set out under s.63 of the HPA (as reproduced in Part 1); and, in the case of the investigated member calling the witness, set out under s. 73 of the HPA, as reproduced below:

73 The investigated person may call any person, including the complainant, as a witness and give to any person, including the complainant, a notice to attend or a notice to attend and a notice to produce at the hearing any document, substance or thing related to the subject-matter of the hearing

- ❑ Note, as with a failure of an employer to comply with a request to attend or produce records and the related legal authority to seek a court order compelling compliance (s. 63(3) of the HPA as noted in Part 2), if a witness does not use their discretion to comply with the investigated member’s request to attend or produce records, a order from the Court can also be sought to require compliance. The legal authority for this is set out in s. 76(4) of the HPA.
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FINAL PART: CLPNA’S NEED FOR AND LIMITED USE OF UPDATED CONTACT INFORMATION

Having up to date contact information for all individuals involved in CLPNA investigations is critical. To encourage individuals to provide all relevant updated contact information as soon as possible, CLPNA uses this resource document to remind employers and other witnesses that their contact information (and updates thereof) is collected and used only for the purpose of making contact and ensuring the investigation (of the investigated member) proceeds in a procedurally fair and effective manner.

CLPNA thanks all individuals involved in its investigations for their assistance and cooperation in this regard.
