



Practice Scenario

Sharing Personal Health Information within the Circle of Care

Rita is a Registered Dietitian at the local General Hospital. Luna, her client, was discharged home after undergoing bowel resection surgery and recovering well. Three months later, Luna was admitted into a long-term care facility under the care of a new dietitian, Linda. The details of Luna's medical history are somewhat vague in the client health record and Linda decided to contact Rita at the General Hospital to clarify the details of the bowel surgery. The General Hospital uses an electronic medical record system and Rita has access to the discharged client's health record. Can Rita disclose Luna's health information to the RD at the long-term care facility?

In this scenario, both dietitians are members of the circle of care health team. The "circle of care" refers to health information custodians and their agents who can "assume an individual's implied consent to collect, use or disclose personal health information for the purpose of providing health care, in circumstances defined in *Personal Health Information Protection Act, 2004* (PHIPA)."¹ The circle of care crosses institutional boundaries and health care providers do not need to physically work in the same facility to be part of the circle of care health team.

THE HEALTH INFORMATION CUSTODIAN

A health information custodian (HIC) is an institution, facility or private practice health practitioner that has custody or control of personal health information. The HIC is responsible for collecting, using, disclosing, retaining and securely destroying personal health information on behalf of clients. HICs may designate agents to handle personal health information on their behalf for the purposes of providing health care. An agent can be an individual or a company that contracts with, is employed by, or volunteers for a HIC.¹

As a health care provider, Rita is designated as an agent of the hospital's HIC and would be authorized to rely on an individual's implied consent to disclose their personal health

information as long as the HIC meets the six conditions necessary to assume implied consent (see below).¹ Disclosure would be barred only if the client or their substitute-decision maker had expressly indicated that they did not want their personal health information to be shared.

SIX CONDITIONS FOR ASSUMING IMPLIED CONSENT

1. The HIC must fall within the category of HICs that are permitted to rely on assumed implied consent, including:

- health care practitioners
- long-term care homes
- community care access centres
- hospitals, including psychiatric facilities
- specimen collection centres, laboratories, independent health facilities
- pharmacies
- ambulance services
- Ontario Agency for Health Protection and Promotion

2. The personal health information to be collected, used or disclosed must have been received from the client to whom the personal health information relates, from their substitute decision-maker or from another HIC.

If the personal health information to be collected, used or disclosed was received from another third party (e.g., employer, insurer or educational institution) consent cannot be assumed to be implied.

3. The HIC must have received the personal health information that is being collected, used or disclosed for the purpose of providing or assisting in providing health care to the client.

A HIC may not rely on assumed implied consent if the personal health information was received for other purposes, such as research, fundraising and/or marketing.

4. The purpose of the collection, use or disclosure of personal health information by the HIC must be for providing or assisting in providing health care to the client.

A HIC may not rely on assumed implied consent if the collection, use or disclosure is for other purposes, such as research, fundraising and/or marketing.

5. Disclosure of personal health information by a HIC must be to another HIC.

A HIC may not assume a client's implied consent for disclosing personal health information to a person or organization that is not a HIC, regardless of the purpose of the disclosure.

6. The HIC that receives the personal health information must not be aware that the client/substitute decision-maker has expressly withheld or withdrawn their consent to the collection, use or disclosure.

In most circumstances, if a client or their substitute decision-maker has withheld or withdrawn consent to the collection, use or disclosure of personal health information, HICs must comply with these wishes unless legal requirements for mandatory disclosure under PHIPA apply.

BE AWARE OF ORGANIZATIONAL POLICIES & PROCESSES

RDs who are agents of their HIC should always be aware of the policies surrounding disclosure of personal health information in their organization and follow them accordingly. As an agent of the HIC at the hospital, Rita met all six conditions listed above for sharing client health information with the dietitian at the LTC facility. However, when she consulted with the hospital's health records department, she was informed that the LTC facility had to submit a written request to the hospital's health records custodian specifying client consent before the information was released. Once the written request was received, Rita was able to share the information about the surgery with Linda.

Need to Know

Within the circle of care, sharing personal health information can make health care delivery more efficient when implied consent can be assumed. An RD, who is a HIC or an agent of a HIC, may share client health information within the circle of care when all six conditions for assuming consent are met. Before sharing client health information, always refer to organizational policies surrounding the collection, use and disclosure of personal health information.

Whenever an RD requests or discloses personal health information to or from another HIC or an authorized agent, it must be for the sole purpose of providing or assisting in providing health care to a client, including: determining suitability to transfer a client to another facility; providing ongoing care; and/or improving or maintaining the quality of care.

DOCUMENTATION REQUIRED

In all cases where an RD requests or discloses personal health information about a client from another agent, it must be clearly documented in the client's health record. In this scenario, both RDs would document the reason for accessing the discharged client's hospital health records, the nature of the information requested, what was shared, from whom the information was requested and to whom it was disclosed.

The College of Dietitians of Ontario would like to thank Eric Poon, Dietetic Intern (MHSc in Nutrition Communications at Ryerson University), for his contribution to this article.

1. Information & Privacy Commissioner of Ontario. (2015). *Circle of Care Sharing Personal Health Information for Health-Care Purposes*. <https://www.ipc.on.ca/images/Resources/circle-of-care.pdf>