



Consent and Disclosure Directives in BC

This section will:

- Define physician responsibilities regarding patient implied and expressed consent.
- Define disclosure directives and their implementation in BC.

Under the BC Personal Information Protection Act (PIPA), consent for collection, use, and disclosure of personal information for direct health care purposes in the province operates primarily on an implied consent model. Individuals who form part of a patient's "circle of care" (e.g., specialists, referring physicians, lab technologists) can access, use, disclose, and retain patient information for the purposes of ongoing care and treatment.

Implied consent must be informed, and physicians should provide adequate information to patients on how they manage the privacy of patient information (see the section [Ten Steps to Help Physicians Comply with PIPA](#) and the handout [Privacy of Your Personal Health Information](#)). Implied consent is signified by the acceptance by a reasonable individual for the collection, use, and disclosure of information for an obvious purpose where it is understood that the individual will indicate if he or she does not accept ("opt-out" model). For implied consent to be meaningful, the individual has to know that he or she has the right to expressly withhold or withdraw consent at any time without fear of retribution.

Expressed consent from a patient is required when identifiable personal information is intended to be collected, used, or disclosed outside of the circle of care or for secondary purposes such as research (see the section [Secondary Use of Personal Information for Research](#)). Expressed consent is signified by the willing agreement of an individual for the collection, use, and disclosure of personal information for a defined purpose ("opt-in" model). The consent can be given verbally or in writing.

Consent is **not** required in circumstances permitted or required by law, such as:

- Statutory duty to report
- Court order
- Coroners investigation
- College investigation.



Disclosure Directives in the Provincial Electronic Health Record (EHR)

Under the provincial e-Health Act (see the section [Privacy and Security in the BC Health Care System Today](#)) the Minister of Health must, in a designation order for a provincial health information bank (HIB), authorize the making of disclosure directives by a person whose personal health information is stored in the HIB—one of several data repositories underlying the EHR.

Disclosure directives are optional statements made by an individual or his or her authorized personal representative that request all or portions of personal health information in his or her EHR be “masked” so that it cannot be disclosed without the individual’s expressed consent. This expressed consent must be provided to an authorized user with the appropriate permissions to access the information with consent. A disclosure directive remains in effect until it is revoked in writing by the individual who created it. As there is no choice to opt in or consent to the personal information being uploaded to an HIB, disclosure directives provide individuals with the ability to restrict access to their information. Disclosure directives can be overridden in an emergency by authorized users who have the permission to do so, and where the individual is unable to give consent. The override is recorded in an audit trail and is expected to generate an alert for follow-up by an individual responsible for privacy compliance.

It is important to note that disclosure directives legally apply only to HIBs as specified in the designation order under the provincial e-Health Act. The idea of masking sensitive health information, however, is a feature that many Electronic Medical Record (EMR) applications have explored and implemented at varying levels. The ability to mask and unmask personal information in the EMR is often considered when a single EMR application is shared in a group practice setting. This provides patients with the ability to control who in the group practice may or may not have access to portions or all of their personal information.

Physicians should inform patients of the risks related to placing disclosure directives or masking on their record. If a competent patient decides to maintain the disclosure directives, physicians must:

- Honor the patient's decision.
- Document in the patient's medical record the discussion and the patient's decision.
- Provide the best care possible working with the information at their disposal.



For a physician who is treating a patient, whether or not the disclosure directive is in place, the obligation to obtain a proper history from the patients remains. Taking a proper history may elicit relevant information, even if that information is the subject of the disclosure directive. To the extent that it is apparent that a patient refuses to discuss relevant information, this refusal should also be adequately documented.