

Confidentiality

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INTRODUCTION

The College of Licensed Practical Nurses and Health Care Aides of Alberta (CLHA) has the **authority** under the Health Professions Act (HPA) to carry out its activities and **govern** its Health Care Aides (HCAs)* in a manner that protects and serves the public interest.

HCAs have legal and **ethical obligations** to keep clients' information private and confidential. **Privacy** means that people have the right to decide who they share their personal information with. **Confidentiality** means that HCAs have an ethical duty to protect the personal information they have access to or that is shared with them.

A health professional's obligation to protect client privacy is balanced against an obligation to **disclose** health information in certain situations.

Terms found in the definitions section are **bolded** where they appear for the first time in this document.

PURPOSE

The purpose of this practice guideline is to help HCAs understand their responsibility to **respect** client privacy and maintain the confidentiality of client information.

DISCUSSION OF EVIDENCE

A health professional must keep information about clients private and confidential, as required by law and their employer. The *Standards of Practice for Health Care Aides in Alberta* and the *Code of Ethics for Health Care Aides in Alberta* outline the rules for HCAs about privacy and confidentiality.

Standards of Practice

- 1.10 Only access health and personal information relevant to providing **professional services** for a client.
- 1.11 Use and disclose health and personal information as specified by privacy legislation.
- 4.5 Respect and protect clients' rights to **autonomy**, confidentiality, **dignity**, privacy, respect, and access to care.

* In this document, "HCA(s)" has the same meaning as "regulated member(s)" in the *Health Professions Act*.

Code of Ethics

3.4 Respect and protect a client's right to privacy during in-person interactions or when meeting through the use of technology.

3.5 Handle a client's personal information with confidentiality.

4.2 Be responsible for maintaining **professional boundaries**.

4.4 Avoid sharing confidential information about their client, employers, or work through social media or any other communication methods.

INFORMED PRACTICE

Practice Within Relevant Laws and Employer Policies

HCAs and employers must comply with legal requirements for collecting, using, and sharing health and other personal information. Employers or **supervising health professionals** who are considered "custodians" under the *Health Information Act* (HIA) are required to have policies and procedures to ensure these legal requirements are met.

HCAs are required to follow the policies and procedures established by their employer.ⁱ For information on whether an employer or a supervising health professional is a "custodian" under the HIA, refer to section 1(1)(f) of the HIA and section 2(2) of the *Health Information Regulation*.

Confidential client information may need to be shared with appropriate authorities in certain circumstances. Where a **breach** of health or personal information occurs, HCAs have a duty to report it, usually to their employer or a supervising health professional. For more information, refer to section 60.1 of the HIA.

Respect and Protect Client Privacy and Confidentiality

Client information obtained from a **therapeutic HCA-client relationship** is confidential during and after any interactions with the client. Sharing a client's information by accident or without permission with **colleagues**, healthcare providers, family, or friends may result in a finding of **unprofessional conduct**.

Client information should only be shared between colleagues or other healthcare providers if they provide care for that client. The shared information must be necessary and related to the other healthcare providers' duties and/or interactions with the client.

Client information should only be shared with the correct person. Be aware of who you are talking to and where the discussion is taking place. Be mindful of the physical or virtual space you are in and who may hear your private conversations.

A small amount of client-identifying information may be enough to discover a client's identity and health information, even if it has been **anonymized**. Always exercise caution when dealing with client-identifying information.

Technology

Unless security measures are taken (logging out immediately when leaving your workstation, using hard-to-guess passwords, etc.), using technology (e.g., cellphones, laptops, etc.) may result in client information being lost, stolen, or accessed without permission. Using a **telecommunication device**, social media, or other technology irresponsibly can make it easier for breaches of confidentiality to occur.

HCAs must be aware of and comply with any employer requirements related to technology use when sharing necessary client personal health information. Guidance related to the appropriate use of technology can be found in CLHA's *HCA Social Media Use Guideline*.

Personal Notes

All written client information not kept in a client's record, including personal observation notes or client assignment sheets, should be thrown out in a confidential shredding container. Physical records should be secured in a way that prevents **unauthorized access**.

Accessing Information

Accessing the information or records of family members, friends, colleagues, or unassigned clients is a violation of privacy. HCAs should only access the information of clients they are directly providing care to. HCAs should not access their own medical records using technological systems that are not for use by the public, as this may go against employer policy and can constitute unprofessional conduct.

Unauthorized access to information may be reported to the CLHA as unprofessional conduct and investigated by the Office of the Information and Privacy Commissioner of Alberta (OIPC), the police, or other relevant authorities. The OIPC has the authority to investigate the unauthorized access of information, which may lead to penalties.

Disclosing Information

Generally, client information can only be shared with people outside a client's healthcare team (including family and friends) after the client **consents**. A client's consent to share information should be documented. Before getting consent, the HCA must ensure the client understands the purpose for which the information may be disclosed and to who it may be disclosed. If the HCA is unsure, they are responsible for asking a supervisor or their employer.

In most cases, a person under the age of 18 (a “minor”) cannot give their own consent, and the consent of their parent or legal guardian is required. Under the **mature minor doctrine**, a minor may be able to give their consent if they have a certain level of intelligence, understanding, and awareness as determined by the **most responsible healthcare practitioner**. A mature minor must consent before their information can be shared with people outside the healthcare team, including their parent(s) or legal guardian.

Disclosure of Information After a Client’s Death

Client information is confidential during and after care. HCAs are still required to keep information confidential after a client’s death. A deceased client’s personal health information should only be disclosed to others when there is a legal responsibility to do so. In some cases, proof of the legal responsibility that explains why the disclosure is necessary is required. HCAs must follow employer requirements related to disclosure of information after a death.

Exceptions to Requiring Consent for Disclosure

HCAs must only use and disclose health and personal information as specified by privacy legislation and their employer’s policies and procedures and are responsible for asking a supervisor or their employer before disclosing client information.

CONCLUSION

HCAs have a professional, legal, and ethical responsibility to uphold a client’s privacy and confidentiality. A breach of these may be considered unprofessional conduct and may lead to legal and/or disciplinary action.

Documents are updated frequently. For the most current version and access to related documents and resources, please visit the Knowledge Hub on clha.com.

If after reading this document you have questions, please contact the CLHA’s Professional Practice Team via practice@clha.com or 780-484-8886 or 1-800-661-5877 (toll free in Alberta).

DEFINITIONS

Anonymized: to remove any information that connects a person to something else. For example, telling a story about a person without using their real name, location, or profession.

Authority: refers to the power or right to give orders, make decisions, and enforce obedience. It can also mean the appropriate person to give orders or make decisions. This could include supervisors, managers, employers, charge nurses, or educators.

Autonomy: the ability to make choices and decisions according to one's own values and preferences. These choices can be made with support if necessary.ⁱⁱ

Breach: breaking or failing to follow a law, agreement, contract, policy, or code of ethics. For example, if an HCA discusses their client's medical history with another HCA that is not on the healthcare team, this would be a breach of confidentiality.

Colleague: anyone who works with a registrant.ⁱⁱⁱ This includes other workers, volunteers, students, contractors, or people from a different site.

Confidentiality: the ethical duty to protect personal and health information about a client.

Consent: agreement to what is being done by another person such as, the client approves of the proposed actions of the HCA and the healthcare team. Consent also means an agreement to do something.

Dignity: the right of a person to be valued and respected.

Disclose: to make personal health information available to others or to release it to another person.

Ethical: the principle of something being right or wrong.

Govern: to lead, control, or manage an organization or group, often by creating rules and making decisions that guide their actions.

Mature minor doctrine: allows mature children to make their own treatment decisions.

Most responsible health care practitioner: the health practitioner/professional with ultimate responsibility and accountability for the specific treatment/procedure(s) provided to a client.

Obligation/duty: something that you must do because of a law, rule, promise, etc. or because it is morally right.

Privacy: the right of a client to have some control over how their personal information or personal health information is collected, used, accessed or disclosed.

Professional boundaries: the behavioural expectations of an HCA that create and maintain a safe relationship between the HCA and clients, or other healthcare providers.

Professional service: defined in the *Health Professions Act* as a service that falls within the practice of an HCA. This includes one or more of the following:

- assist and support activities of daily living to provide basic personal care and health services,
- assist in teaching a Health Care Aide certificate program approved by the council,
- participate in client education and promotion of client wellness across the lifespan,
- teach health care aide techniques and practices to practitioners in the workplace, and
- provide restricted activities provided by the regulation.

Respect: means treating clients and their families with dignity, considering their personal choices, and ensuring they have control over their own care while keeping their private information safe.

Supervising health professional: a regulated health professional (other than an HCA) who assigns a task to the HCA and is responsible for providing supervision to the HCA for that task.

Telecommunication device: a device such as a mobile device, laptop, or computer that communicates information electronically.

Therapeutic HCA-client relationship: a trusting relationship between a client and an HCA that respects and maintains professional boundaries and contributes to health-related treatment goals. A therapeutic relationship exists for a defined period of time.^{iv}

Unauthorized access: a person uses something without permission.

Unprofessional conduct: according to the HPA, unprofessional conduct includes actions and behaviours that reflect poorly on the HCA profession. Unprofessional conduct includes displaying a lack of knowledge, skill or judgment to provide professional services, not following the HCA standards of practice and code of ethics, or any other behaviour that is defined as unprofessional conduct under section 1(1) of the HPA.

REFERENCES

ⁱ *Health Information Act*, sections 63(1) and 62(4)

ⁱⁱ Autonomy, independence, long-term care and palliative care: A discussion paper for the 9th Open-ended Working Group on Ageing. (2018). https://social.un.org/ageing-working-group/documents/ninth/Joint_Discussion_paper.pdf

ⁱⁱⁱ Definition of COLLEAGUE. (n.d.). www.merriam-webster.com/dictionary/colleague

^{iv} CLPNA, *Practice Guideline on Professional Boundaries* (2019), [Knowledge Hub - College of Licensed Practical Nurses of Alberta \(clpna.com\)](https://www.clpna.com/).