

# DIRECTIONS

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## PATIENT PRIVACY CLINICIAN DISCLOSURE & THE LAW



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**Physiotherapists, like medical doctors, are required to maintain health care provider/patient confidentiality. Notable exceptions include: express authorization by a patient to release their information to a third party; and a legislation, statute, Court Order, or Subpoena, mandating the release or production of specific and clearly defined confidential patient records.**

This is a complex subject that comes up frequently in practice, and an area of the law that continues to develop. Courts must weigh an individual's right to privacy versus the interests of justice when disclosing documents and information for a legal claim related to compensation for injuries.

Physiotherapists treating patients for injuries in the context of an ICBC or WorkSafe BC claim need to have a clear understanding of the law of patient privacy and how the Courts approach this in the context of bodily injury claims. Lack of understanding and simple errors regarding disclosure of patient records could jeopardize the physiotherapist/patient relationship and lead to patient complaints. In rare cases, disciplinary proceedings for failing to maintain patient confidentiality can arise.

For bodily injury legal proceedings (ICBC claims, WorkSafe BC claims, and/or disability insurance matters) standard practice is for patients to provide health care providers with written authorization to release applicable records to a specified third party. A written signed patient authorization is given to release the requested information to a designated party (most often the patient's legal representative).

But what if a physiotherapist receives a request from a third party or a public body about a patient's status or treatment progress or similar? This often happens with an ICBC bodily injury claim where ICBC is funding the patient's therapy under Part 7\* accident benefits. Where is the line when disclosing confidential patient information to a party funding the patient's treatment?

Best practice suggests any disclosure of information should be discussed with the patient. This includes explaining right to privacy and obligations within the legislative framework, and when and where progress reports are sent.

In these situations, the patient should give the physiotherapy clinic written authorization outlining what information will be released, who is getting it, and why the information is being provided. In addition, both the patient and their legal representative (if applicable) should receive a copy of treatment reports and a copy of what was created or disclosed. The physiotherapist should also specifically address the patient's treatment progress, response to treatment, duration and frequency. Avoid unrelated commentary and personal anecdotes.

The right to clinical privacy and the legitimate need for third parties or public bodies to receive this information are sometimes in opposition. To minimize potential conflicts, unintended disclosure of confidential patient information and records, or potential violation of a patient's privacy rights, physiotherapists should strive to create a well-established, documented, and transparent disclosure protocol within their practice.

\*Section 98(1) of Part 7 of the *Insurance (Vehicle) Act* B.C. Reg. 447/83, expressly provides that ICBC can compel a patient receiving accident benefits under Part 7 to provide a medical certificate or report as to the nature and prognosis of the patient's injuries.

Section 99(1) of Part 7 of the *Insurance (Vehicle) Act*, expressly provides that ICBC can compel a patient receiving accident benefits under Part 7 to undergo an examination of the patient by a "medical practitioner, dentist, physiotherapist or chiropractor" selected by ICBC.

However, s. 26(d) of the *Freedom of Information and Protection of Privacy Act* R.S.B.C 1996 Ch. 165 provides that with respect to personal information collected for a prescribed purpose, ICBC may collect personal information only if "the individual the information is about has consented in the prescribed manner to that collection" and that "a reasonable person would consider that collection appropriate in the circumstances".

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