

Provincial Guidelines for Retaining and Releasing Medical Laboratory Specimens for Law Enforcement Purposes

SITUATION

Laboratories periodically receive requests from law enforcement agencies to retain or release an individual's specimens, originally collected for medical purposes, as part of an investigation. However, laboratories would like further clarification regarding management of verbal requests from law enforcement officers for information on patients (i.e. that the person is or was recently a patient) or to sequester specimens before a search warrant is produced.

SCOPE

This guideline establishes the responsibilities of medical laboratories when receiving verbal requests from law enforcement for retaining (sequestering) and releasing a patient's medical specimens. It is intended to support, not supersede, each organization's individual policies. Where there are discrepancies, the organizational policies take precedent.

Responding to the Coroner's "Order to Seize" is a separate issue and is out of scope for this document.

DEFINITIONS

Production Order: a Court Order, signed by a judge or a justice of the peace, requiring the named person or organization to produce certain records or information within a specified period of time and to a specified person upon request.¹

Search Warrant: a document, signed by a judge or justice of the peace, granting a law enforcement agency representative broad legal authority to search for and seize evidence at a specified address. A search warrant is valid either for a specific date and number of hours, or until a specific date and time noted on the document.¹

BACKGROUND

In June 2018, Bill C-46 amended the *Criminal Code of Canada* regarding offences related to conveyances (modes of transport), with specific wording in Part 2, beginning in Section 320.28, regarding the collection of *non-medical* (i.e. legal) blood or bodily substance specimens. Bill C-46 places limits on the tests that can be performed and the timeframe for specimen collection after the individual in question operates a conveyance. It does not give law enforcement broad ability to request specimens for unspecified testing or for the laboratory to hold the specimens for an undefined period of time.

In November 2019, the Provincial Laboratory Medicine Services (PLMS) released a position statement outlining the laboratory's responsibility for the [collection of blood for non-medical purposes at the request of a law enforcement officer](#).² While the principles in the PLMS position statement remain relevant, this document goes further by addressing the handling of specimens obtained for *medical* purposes which could be requested by law enforcement at a time after the patient presents at the hospital or laboratory.

ASSESSMENT

Chain-of-Custody

Law enforcement personnel are fully responsible for maintaining the chain-of-custody of non-medical samples drawn under their authority.² Laboratory practices for medical blood draws do not meet the legal standard for chain-of-custody requirements.

Informed Consent

Laboratory personnel must adhere to their respective health authority policy which states a patient must give his/her informed consent for laboratory testing prior to submitting voluntarily to the collection of a medical blood, body fluid, or tissue sample. Laboratory staff are not to collect blood for medical purposes in the absence of valid informed consent.

At the time specimens are collected for medical purposes, the patient is consenting to the tests ordered. Bill C-46 (Subsection 258.1(1)) of the Criminal Code of Canada allows medical samples collected by consent to be subsequently seized under a warrant. Only those analytes specifically mentioned in the warrant may be tested (Subsection 320.28(4)).

Release of Information or Specimens

BC's [Freedom of Information and Protection of Privacy Act](#) (FOIPPA) affords all persons a right to confidentiality of personal information. Laboratory staff may be asked by law enforcement for certain pieces of information: confirmation that an individual is or was a patient at the facility, or that the laboratory continues to have specimens from the individual or has specific test results from that individual. Each of these pieces of information is protected under FOIPPA and should not be provided to law enforcement without a valid production order or a search warrant.^{1,3,4}

When law enforcement presents either a production order or a search warrant, it should be reviewed by someone with sufficient authority at the facility to determine its validity (i.e. correct address, authorized date and timeframe, signed by a judge or justice of the peace). Only the specifically requested information or evidence may be released.^{1,3,4} If the officer presents a production order requesting test results, laboratory personnel should direct the officer to the Medical Records department which will be responsible for properly documenting the release. Laboratory personnel will follow their existing health organization procedures for specimen release when a valid warrant is received.

Discretionary Disclosure

FOIPPA does, however, afford the health care organization with discretionary authority to release information to assist with an active investigation in the absence of a production order.

FOIPPA section 33.2(i-ii) specifically allows a public body to disclose personal information "to assist in a specific investigation undertaken with a view to a law enforcement proceeding, or from which a law enforcement proceeding is likely to result." If the laboratory is confronted with a situation where discretionary disclosure may apply, the laboratory site lead should consult with the organization's Risk Management department to provide the necessary expertise to determine the appropriate application of discretionary disclosure.

Sequestering Specimens and Retention Times

All persons have a reasonable expectation that the sample being tested meets existing best practice for sample stability for each analyte being tested. In the absence of a search warrant indicating the specific tests to be performed on the specimen, the laboratory cannot adequately evaluate the impact of prolonged specimen retention times on the quality of a specimen for possible testing. The laboratory should not hold any specimen longer than the time stated in its specimen retention policy based on a verbal request from law enforcement and without the patient's informed and written consent.

It is the responsibility of law enforcement to submit a search warrant to the laboratory in a timely manner. There is no legal justification for sequestering, retaining, or storing a medical laboratory specimen longer than the time stated in its specimen retention policy based on the verbal request of a law enforcement officer.

If law enforcement cannot produce the search warrant within the laboratory's specimen retention timeframe, or the officer applies undue pressure to comply with the verbal request, the laboratory should consult with its organizational Risk Management department.¹ The laboratory may sequester a specimen if directed by Risk Management.²

RECOMMENDATIONS

- 1 – Laboratory staff must not release any information or specimens to law enforcement without presentation of a legally valid search warrant or production order.^{1,2,4}
- 2 – Verbal requests for information or specimens should not be considered.^{1,3}
- 3 – Direct law enforcement officers with a production order for a patient's laboratory test results to the Medical Records department. They are responsible for documenting the release.
- 4 – Upon presentation of a search warrant, the laboratory medical director or site lead should review the warrant closely to determine its validity. If valid, and the specimens are still present in the laboratory and are no longer needed for medical purposes, the laboratory staff should only release the requested items. The laboratory is responsible for recording the details of the request and the release, including the officer's name, badge number, and the file or investigation number, in the patient's health record.
- 5 – If there are any difficulties or extenuating circumstances, laboratory personnel should contact the organization's Risk Management or Information Access & Privacy Office to determine the appropriate response. After hours, contact the Site Responsible Person or the Administrator On-Call.

LAWS

BC Laws. [Freedom of Information and Protection of Privacy Act](#). RSBC 1996, Chapter 165. Accessed June 15, 2020, current to June 10, 2020.

Government of Canada. [Bill C-46 Statutes of Canada 2018, Chapter 21](#), Part 2: Offences relating to conveyances – Alcohol and Drugs. Assented June 21, 2018.

REFERENCES

- 1 Provincial Health Services Authority. Companion Guide book to the PHSA Policy RM110: Release of Patient or Client Personal Information and Personal Effects to Law Enforcement (currently in DRAFT).
- 2 Provincial Laboratory Medicine Services. [Laboratory Bulletin: Non-medical blood draw requests from police enforcement agencies under the amended Criminal Code of Canada](#). Accessed from <http://www.bccss.org/clinical-services/bcaplm>
- 3 College of Physicians and Surgeons of British Columbia. Professional guideline: Disclosure of patient information to law enforcement authorities. Version 2.2, revised 2019 Jun 21. Accessed from <https://www.cpsbc.ca/files/pdf/PSG-Disclosure-of-Patient-Information.pdf>
- 4 Provincial Health Services Authority. Release of Client Personal Information or Belongings to Law Enforcement, Policy, RM 110 (revision currently in DRAFT).

APPENDIX

Appendix A: Frequently Asked Questions

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- 1) *Should the laboratory personnel sequester specimens when presented with a production order?*

No. A production order applies only to the release of information specifically listed on the document. Specimens should not be sequestered based on a verbal request and must only be released upon presentation of a valid search warrant.

- 2) *What should laboratory personnel do if presented with a production order that does not specifically request laboratory reports or other items from the patient's health record?*

Laboratory staff who are presented with a production order should direct the law enforcement officer to the Medical Records department. Medical Records is responsible for releasing the information specified in the production order.

- 3) *Canada's Bill C-46 mentions that a blood specimen can be released after six months from the collection date. Does this mean the laboratory must retain all specimens requested by law enforcement at least up to six months?*

Bill C-46 specifically instructs the qualified healthcare professional to collect two blood specimen with "one of the samples to be retained for the purpose of analysis by or on behalf of the person from whom the blood samples were taken" (BC Laws, Part VIII.1 Section 328.28 (8)). It does not specify who will hold onto the specimen although it can be inferred that it would be held by law enforcement as they are responsible for ensuring the sample "is safeguarded and preserved for use in any proceedings in respect of which it was taken" (BC Laws, Part VIII.1 Section 328.28 (10)). The six month limit applies to that legally safeguarded second specimen. Any specimen collected for medical purposes does not meet the standard of being safeguarded and preserved for use in legal proceedings. The laboratory has no legal obligation to hold the specimen beyond its normal retention time.

- 4) *What are the laboratory's responsibilities when it comes to discretionary disclosure?*

The application of discretionary disclosure is a very fine distinction within the law and something that can only be determined by the organization's Risk Management department as laboratory personnel are not in a position to make a legal interpretation of the law. Laboratory staff should never engage in a conversation with law enforcement over the application of discretionary disclosure. This document is meant to support laboratory personnel so that they are not placed into this position. Each laboratory service provider can support this by establishing these recommendations as organizational policy. Make sure front-line staff are aware of your laboratory's position and are clear that they are not to engage in any discussion regarding a patient, even with law enforcement. Make the contact information for the site manager and the Risk Management department readily available so that staff immediately direct the conversation to occur between law enforcement and the people who are authorized to make these decisions. The organization should enforce this policy consistently across its jurisdiction so there are no inconsistencies with other areas. If all laboratory organizations support these recommendations, practice across BC should be in alignment.

Remember, discretionary disclosure applies only to information; it does not apply to specimens and therefore should not alter specimen retention. Discretionary disclosure is mentioned in this document only so that laboratory staff are aware that the law considers extenuating circumstances.