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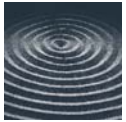
COFFEE TALK
Working With the Police



Jennifer White
May 10, 2007

This Presentation is provided as an information service to our clients and is a summary of current legal issues. The Presentation is not meant as legal opinions and readers are cautioned not to act on information provided in this document without seeking specific legal advice with respect to their unique circumstances.

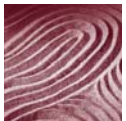
AGENDA



1. Police Enquiries



2. Police Assistance



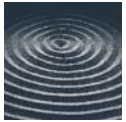
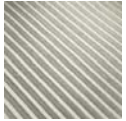
3. Police Responsibilities

4. Reporting Crime

5. Evidence

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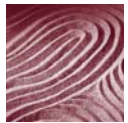
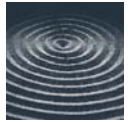
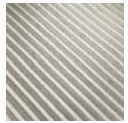
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POLICE ENQUIRIES

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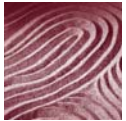
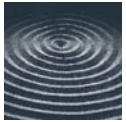
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What May I Tell The Police About A Patient?

- Anything the patient gives consent for you to say

- The principle is to disclose as little as is necessary and relevant for the purpose



➤ Without consent or exception under PHIPA, you may give nothing without a subpoena or warrant except

- confirm that the patient is/was in the hospital if the police give you the name of the person they are seeking
- where the patient is in the hospital
- the general condition of the patient

This is after the patient has been given to opportunity to object



Can I Tell The Police That An Accident Or Other Victim Is In Hospital?

- Not if the police do not give you a name
- Do not accept a physical description of a patient or of a type or location of an accident in lieu of a name



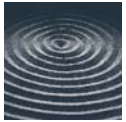
Does This Apply to Outpatients?

- It is not clear in PHIPA whether it covers outpatients but deals with residents and in patients
- Prudent not to release outpatient information s all PHI is protected



Can I Call The Police To Let Them Know A Patient Is About To Be Discharged?

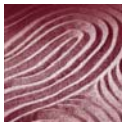
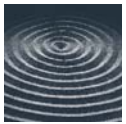
- No. This is PHI
- You can tell them that the patient is in the Hospital as long as you are given a name and as long as the patient has not refused consent for this to be disclosed



OBTAINING POLICE ASSISTANCE

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What Can I Tell the Police If We Need Help with a Patient?

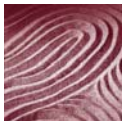
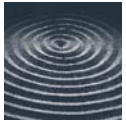
- S.40(1) PHIPA – may disclose PHI if the custodian believes on reasonable grounds that the disclosure is necessary to eliminate or reduce significant risk of serious bodily harm.
- That which is necessary for the purpose i.e. to obtain assistance with no/minimal harm to patient



If We Need Help From The Police With An HIV Positive Patient, Can We Tell Them He Or She Is HIV Positive?

- Not without the patient's consent
- Should rely on universal precautions

What Can I Tell the Police If We Need Help Finding an Incapable Patient?

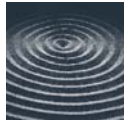


Non-Psychiatric Patients

- This is a serious harm issue and is covered as an exception under PHIPA
- You tell the police only the amount of information that is relevant to their needs when looking for the patient



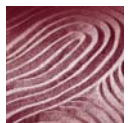
Psychiatric Patients



Voluntary Patients



➤ Same as other patients

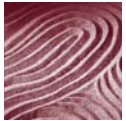
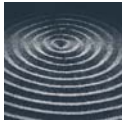


➤ Usually, it is not appropriate to give the complete Form 1 to the police

Involuntary Patients

➤ S.28 MHA – the legal status of the pt

➤ Anything necessary to recover the pt.

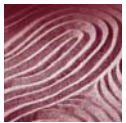
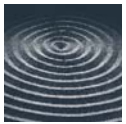


POLICE RESPONSIBILITIES

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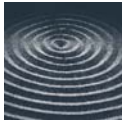
What Do I Do If A Police Officer Wants To Remain With The Patient During Examination Or Treatment?



- If the patient is in custody:
 - The officer may choose to stay and you cannot require him or her to leave
 - Remind the officer that there is an expectation of privacy regarding the PHI obtained
 - provide for the patient's personal dignity during examination



➤ If the patient is not in custody:



➤ Try to arrange for the officer to be near but out of ear shot



➤ If the Officer needs to be present:

➤ Remind the officer that there is an expectation of privacy regarding the PHI obtained

➤ provide for the patient's personal dignity during examination



Must I Assist With A Police Investigation?

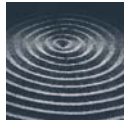
➤ No

➤ Assisting an investigation is a personal decision. The police cannot insist and neither can the Hospital

➤ However, the spirit of co-operation is important for mutual reliance



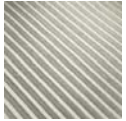
➤ S.43(1)(g) PHIPA – A HIC may disclose for carrying out an investigation



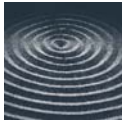
➤ Permissive for the Hospital: we suggest requiring consent or warrant



➤ The police cannot insist under *Freedom of Information Act* because the Hospital is not an Institution for the purposes of that Act



What May I Do if I Wish to Assist?

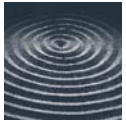


- You may request a warrant/consent to release record
- You may give a written statement to the police

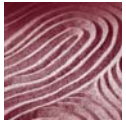
- We suggest having the statement reviewed by legal counsel before submitting



➤ You may agree to be interviewed by the police



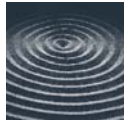
➤ If you agree, we suggest not permitting any audio or video taping



➤ We suggest a hospital representative be with you to watch for disclosure of PHI



➤ Stick to facts



➤ What you saw



➤ What you did



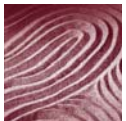
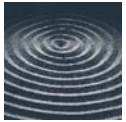
➤ What you heard

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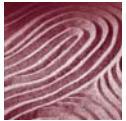
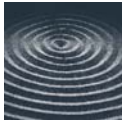
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What May I Not Do?



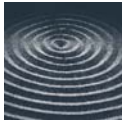
- You may not reveal PHI except with consent or under subpoena
- Do not pass personal opinion



- We suggest you do not assume or speculate on something you have forgotten or do not know
- You may not obstruct an investigation. This is unlawful under the *Criminal Code* s.129

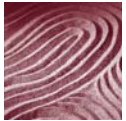
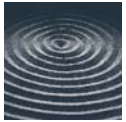


Can the Police Arrest My Patient?



- Yes. If they have the appropriate reasons and paperwork they may perform their arrest duties in any place

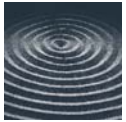
- To prevent disruption of other patients, they may agree to perform this duty discreetly, in a secluded area



- If you wish to have the police arrest the patient in a secluded area, you can bring the patient to that area but you cannot force him or her to go there



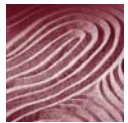
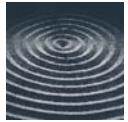
Must I Assist in the Arrest?



➤ You may not obstruct



➤ You do not have to assist unless the police request assistance under the *Criminal Code*. As in most situations, the police would rather you not become involved

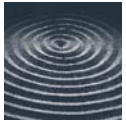


What Do I Do if the Police Wish to Remove the Patient from the Hospital?

- Inform Hospital authorities of the impending arrest and let them deal with the situation



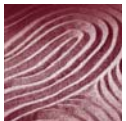
➤ If it is dangerous to the patient's health for the patient leave the Hospital:

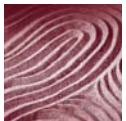
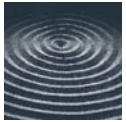


➤ Inform the Officer(s)



➤ If they insist, discuss with their Superior Officer

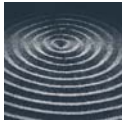




REPORTING CRIME

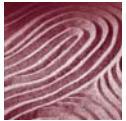
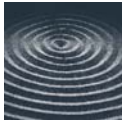
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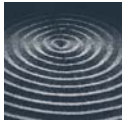


Reporting a Crime

- What do I do if my patient tells me about a crime?
 - There is no statutory obligation to report a crime with some exceptions:
 - Reporting child abuse/neglect
 - Reporting a health professional for sexual abuse



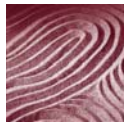
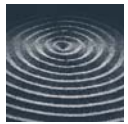
- If the patient says he will or intends to commit a crime that will seriously hurt another person:
 - The Hospital/health professional may have an obligation to warn the individual. This can be through the police
 - There has to be a belief that the crime will be carried out (*Smith v Jones*)
 - Clarity of intent
 - Seriousness of intent
 - Imminence of crime



- What do I do if I witness a Crime on Hospital Property?
 - You have an obligation to protect the interests of your employer
 - If it involves theft of Hospital or someone's property or assault to someone, inform hospital authorities
 - The hospital may report it to the police



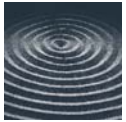
Can I Lay Charges if I am Assaulted by a Patient?



- You can certainly contact the police
- The police usually determine whether to lay charges
- A private information may be laid through a JP



Can the Hospital Lay Charges?

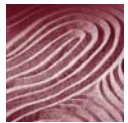
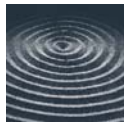


➤ Again, usually police lay charges.



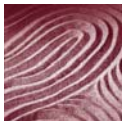
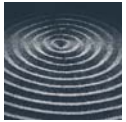
➤ The Hospital can request a police investigation but usually the person assaulted is the one who discusses this with the police

➤ The Hospital should support the staff member



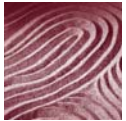
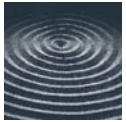
What if a Police Officer Sees a Criminal Act in the Hospital?

- If the officer sees a crime ongoing he or she has the right to perform his or her duties to stop the crime and deal with the perpetrators
- In that case, as soon as is practicable the hospital authorities should be notified



Do We Have to Report Stabbings?

- No. You are prohibited under PHIPA from reporting a stabbing unless there is an exception such as imminent harm to another person
- The statutory reporting requirement is for gunshots only
- We suggest that gunshots include BB guns and pellets

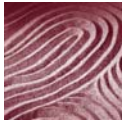
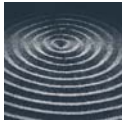


EVIDENCE

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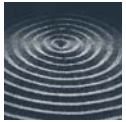
What Patient Belongings Can I Give to a Police Officer?



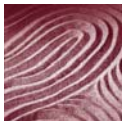
- Anything illegal that is surrendered to you – drugs, weapons.
- Do not try to take these from the patient and endanger yourself; obtain police assistance if necessary



➤ Small amounts of drugs can be destroyed by the Hospital e.g. through the pharmacist



➤ Drug paraphernalia can also be confiscated and destroyed





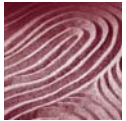
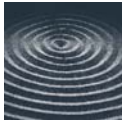
Can I Give the Patient's Belongings Such as Clothing for Evidence?

- You may give nothing without consent or with a warrant – other than the illegal items
- Do not obstruct the Officer if he/she takes something
 - Make a record of it including the officer's Police Force, name and badge number



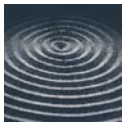
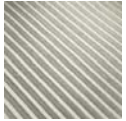
What About Bullets Or Other Objects Taken From The Patient's Body?

- The *Public Hospitals Act* requires tissue removed from a patient must be examined. A bullet carries blood and other tissue on it and is normally sent to the laboratory.
- After examination, the police may obtain it with a warrant



What About Taking Blood Or Urine Samples?

- The law is not clear on this.
 - Even with a warrant, the *Criminal Code* only says the person must comply. It does not clarify what to do if the patient refuses to consent
 - We recommend not taking the sample without consent
 - A SDM cannot provide consent for samples for police as this is not treatment



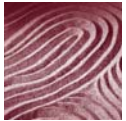
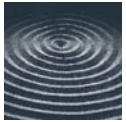
- If the patient is consenting, he/she must not be misled that the sample is for medical purposes

- If the warrant is for obtaining the blood alcohol results, these can/must be given without consent
 - This is true even if the sample was taken for medical purposes



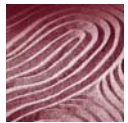
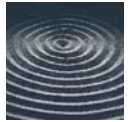
What if the Police See a Victim of a Crime Incidental to the Officer's Presence in the Hospital?

- If the person is in common, public areas, the police may approach the person as they would anywhere else
- Hospital may request that the police wait until treatment is given
- If the person is a patient and is in a triage or treatment area, the police may be allowed in only with the consent of the patient



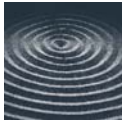
What is a Trail of Evidence?

- This is tracking something so that it cannot be said that the item presented in court is not the same item taken from the scene/patient

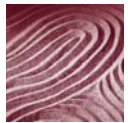
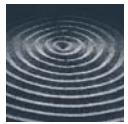


Do We Have A Role in the Trail of Evidence?

- Yes. As long as any privacy provisions for the patient or any other patient are not compromised, you should assist the police in maintaining the trail of evidence.



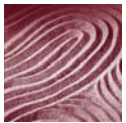
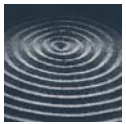
- Such compromise may occur by allowing the officer to enter a laboratory where there is information, telephone calls and other exposure to PHI



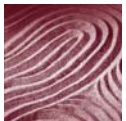
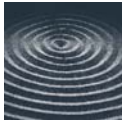
Can the Police take Photographs of the Patient?

- Not usually without consent
- They make take them as part of a CAS apprehension and related investigation; or
- a Coroner's process

Should We Collect Forensic Evidence Without The Patient's Consent – E.G. Sexual Assault?

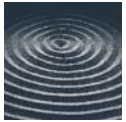
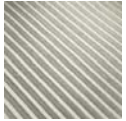


- This is a difficult question.
- The substitute decision maker cannot consent because this is not treatment however, unless the SDM is a suspected perpetrator, it is wise to consult the SDM if possible. If not, perhaps other members of the family may be available



- Technically, you cannot do this. However, you could be criticized if you do not. It is a judgment call depending on the presenting circumstances but there could be times when it would be wise to collect and preserve such evidence even without consent.

- If you collect this evidence, do not release it without consent



THANK YOU

MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade-Mark Agents