

Clinic Information Sharing Agreement

with Lead Custodian and Optional Data Management Committee

This template of a Clinic Information Sharing Agreement (ISA) is for the benefit of Physicians sharing patient health information in a clinic setting. It is not a Health Information Act (HIA) requirement, but a best practice as defined by the College of Physicians and Surgeons of Alberta (CPSA). This ISA includes:

- the appointment of a Lead Clinic Custodian to represent the Physicians and the health information collected, used and disclosed in and by the Clinic, and
- the option to establish a Data Management Committee.

A new Signature and Acknowledgement page must be signed by Physicians when:

- this agreement is amended or altered
- there is a new Lead Clinic Custodian appointed

A new Physician (CPSA member) is added to the Signature and Acknowledgement page at the time of hire or placement.

Who does not have to sign this Agreement?

- Medical Students, non-Physicians, Affiliates to a Custodian.

The rationale for encouraging the use of an ISA lies with the College's Standards of Practice

Although ISAs are not mentioned in the HIA, the HIA places an obligation on Custodians of Health Information to protect the integrity, confidentiality and accuracy of that information and to only use or disclose that information under certain prescribed conditions and to designated individuals. ISAs help Custodians meet these obligations.

It's important to understand that ISAs and the designation of Lead Custodians do not remove or transfer the accountability of Physicians for health information of which they are Custodians.

This ISA addresses the Custodians' obligations by:

- Ensuring that physicians are guided to collect, use or disclose Health Information in the least intrusive method; on an aggregate basis, failing which non-identifying and finally and only if necessary individually identifying, using the minimum amount of information required for the purpose;
- Creating principles governing the gathering, use and disclosure of Health Information (Article 2);
- Describing Primary and Secondary uses and disclosures of Health Information (Articles

3.1.20 through 3.1.23);

- Clarifying the requirement to maintain confidentiality and privacy (Article 5);
- Confirming what happens with Health Information should a Physician choose to leave a clinic (Article 4.5 and Appendix A);

- 1.1 The purpose of this Information Sharing Agreement ("ISA") is to provide the terms upon which Physicians document and share patient Health Information in a Clinic setting; and enable the access to, use of, and disclosure of Health Information with one another; to define and manage the permitted uses and disclosures of that Health Information; and to identify the authority granted to a Lead Clinic Custodian to sign documentation and enter into Agreements with third parties including Information Managers (as defined by the HIA) on behalf of the Physicians in the participating Clinic.
- 1.2 The management, maintenance, security and the ultimate disposition of patient Health Information shall be governed by documentation or Agreements signed by the LCC on behalf of the Clinic.
- 1.3 The Physicians acknowledge and agree that they are entering into this Agreement as it supports CPSA requirements and custodial obligations under the HIA, and the Principles set forth in Article 2 in this agreement. The Principles are not intended to alter the plain meaning of the specific terms of this Agreement; however, to the extent the terms of this Agreement do not address a particular circumstance or are found to be unclear following a dispute resolution process contemplated in Article 12 of this Agreement, such terms are to be interpreted and construed with reference to the Principles. The provisions of the HIA and the Principles shall be considered and taken into account by the Parties in connection with all decisions, matters of interpretation and dispute resolution arising in the context of this Agreement.

ARTICLE 2 PRINCIPLES

- 2.1 The relationship between the Parties to this Agreement and the collection, use and disclosure of Health Information using processes developed pursuant to this Agreement shall be governed by the HIA, as well as the following principles:
 - a. Patient care, in the context of "sharing" Health Information about a patient regardless of how and where the information is stored (including but not limited to paper or a medical record as part of a EMR System) will guide the use and disclosure of Health Information and at all times and Health Information will be respected as the product of the trusted relationship between a Patient and a Physician.
 - b. The Patient has not only an inherent interest in the privacy, confidentiality, accuracy and integrity of Health Information relating to him or her but a Patient has the right, in addition to other rights of a Patient described under the HIA, to
 - i. seek access to Health Information about him/herself;
 - ii. request the correction of an error or omission in the record containing Health Information about the Patient, and
 - iii. request that a Physician limit the access to or disclosure of Health Information relating to that Patient.
 - c. Physicians have the responsibility to ensure that patient information for which they are custodians, not be used or disclosed except in strict accordance with the terms of this Agreement, and in accordance with the HIA.
 - d. Physicians and Patients have an enduring right to continued access to their own information as it relates to that Physician or Patient.
 - e. Health Information that is shared amongst the Physicians, or authorized by the LCC for use with an Information Manager, will be for the purpose of facilitating good Patient management practices, decisions and other related activities, and will be undertaken to enhance the care of Patients. Moreover, Health Information disclosed and used in accordance with this Agreement may be used not only for the enhancement or betterment of individual Patient health, but also for the betterment of Patient populations and public health generally where authorized under the HIA and other legislation.

- f. The disclosure and use of Health Information will be undertaken in accordance with the HIA on a "least information necessary to achieve the purpose" principle, with the highest degree of anonymity that is practical in the circumstances and use of Health Information will be on a "need to know" basis.
- g. A physician disclosing or using Health Information will utilize technological practices and standards, such as encryption technology, that incorporate reasonable security measures, protect confidentiality and promote ease of use.
- h. The professional responsibilities of Physicians set forth in the CPSA's Standards of Practice are acknowledged by the LCC and the Physicians, and the Parties shall comply with those Standards of Practice and applicable legislation.
- i. Health Information shared pursuant to this Agreement will be managed with due diligence and attention, recognizing the potential harm that can arise from the misuse of Health Information.
- j. Each of the Physicians and the designated LCC agrees, and shall ensure, that the Health Information that it makes available for disclosure to and use by the other Parties under this Agreement will be accurate and shall not be altered, modified or enhanced except in accordance with this Agreement.

ARTICLE 3. DEFINITIONS

3.1 For the purposes of this Agreement the following capitalized terms shall have the meanings assigned to them below:

"Affiliate(s)" shall have the meaning assigned to this term in the HIA;

"Agreement" means this Information Sharing Agreement or legal document between parties;

"AH" means Her Majesty the Queen in right of Alberta, as represented by the Minister of Health;

"AHS" means Alberta Health Services, a corporation established as a regional health authority by the Minister of Health pursuant to the *Regional Health Authorities Act, RSA 2000, c. R-10*;

"CPSA" means the College of Physicians & Surgeons of Alberta, as constituted pursuant to the Health Professions Act, RSA 2000 c. h-7, or its successor legislation;

"Custodian" has the meaning assigned to this term in the HIA;

"Data Management Committee" means the body or individual appointed or elected by the Physicians to manage and oversee the ongoing compliance with the terms of this Agreement as described in this Agreement;

"Documentation" includes but is not limited to Privacy Impact Assessments, third party Agreements, or any other materials required by a Regulator, Accreditation body, Auditor, or other party for the Clinic as a whole.

"Effective Date" means the ___ day of _____, 201_;

"Information Manager" has the meaning assigned to this term in the HIA;

"Lead Clinic Custodian" means the individual granted the authority by the Physicians to act on their behalf in respect of third party arrangements for the Clinic and its Physicians;

"Medical Record" means the paper or electronic Medical Record governed by the terms of this Agreement containing Health Information contributed by the Parties;

"Electronic Medical Record System" means the software, hardware and communications facilities used by a Party for patient care in an ambulatory or outpatient environment to electronically store Medical Records, and to enable each Party to use and disclose Health Information embedded in Medical Records, and each Medical Record System shall be identified in the applicable IMA;

"HIA" means the *Health Information Act*, RSA 2000, c. H-5, and amendments thereto, as well as regulations passed thereunder;

"Health Information" shall have the meaning assigned to this term in the HIA regardless of format or media;

"Health Service" has the meaning ascribed to that term in the HIA;

"Information Management Agreement" or **"IMA"** means that agreement between the Information Manager, the LCC or Physicians, entered into pursuant to section 66 of the HIA, that governs the terms under which the Information Manager, among other responsibilities prescribed by the HIA;

"Minister" means the Minister of Health & Wellness, responsible for overseeing AH;

"Parties" means the parties to this Agreement;

"Patient" means an individual who receives, or is the subject matter of, Health Services, and "Patients" means more than one Patient;

"Physician" means a medical doctor duly licensed to practice medicine in the Province of Alberta by the CPSA

"Physician Information" means information other than Health Information which relates to the identity, demographics, training, background, billing practices or other characteristics of a Physician;

"Primary Disclosure" means the disclosure of Health Information for the purpose of providing Health Services to Patients;

"Primary Use" means the application of Health Information by a Custodian for the purpose of providing Health Services to Patients and includes the reproduction of that information, but not the disclosure of that information;

"Secondary Disclosure" means the disclosure of Health Information by a Party for any purpose not directly related to the provision of Health Services to the Patient whom is the subject of that information including, without limitation, the provision of Health Services to Patient populations or to advance Patient safety, or health system management;

"Secondary Use" means the application of Health Information by a Party for any purpose not directly related to the provision of Health Services to the Patient whom is the subject of that information including, without limitation, the provision of Health Services to Patient populations or to advance Patient safety, or health system management;

"Standards of Practice" means the standards published by the CPSA representing the minimum standards of professional behavior and good practice expected of Alberta Physicians, as amended or supplemented from time to time.

ARTICLE 4 TERM AND TERMINATION

- 4.1 This Agreement shall be in force as of the Effective Date and shall be in effect unless terminated in accordance with the terms of this Agreement.
- 4.2 The Physicians may terminate this Agreement by mutual agreement.
- 4.3 The LCC may terminate the Agreement by mutual agreement of the Parties.
- 4.4 A Physician's participation in this Agreement shall terminate on the happening of any of the following events:
 - a. the termination of the Physician or participation with the Clinic;
 - b. a material breach of this Agreement by the Physician that is not remedied within 60 days of written notice of the breach being provided by the defaulting Party to the Data Management Committee;
 - c. the bankruptcy, dissolution or winding up of the Clinic; or

- d. a fundamental change to the status of a Physician brought about by an external cause or source beyond that Physician's control, which prevents that Physician from exercising his/her rights and performing his/her obligations under this Agreement;
 - e. it being agreed that termination of this Agreement with respect to one Physician does not affect the effectiveness of this Agreement for the other Physicians.
- 4.5 A Physician who elects to terminate his/her participation in this ISA, may do so by signing and delivering to the LCC a Notice of Termination.
- a. On termination, the former Physician shall be entitled to a copy of the Health Information contributed by that former Physician (as such originally contributed Health Information has been supplemented by other Health Information contributed by other Custodians) and, shall be entitled to receive the Health Information in a format and at a cost mutually agreed upon. (See Appendix A)
 - b. Should this Agreement lapse or be terminated by the LCC or Physicians:
 - i. the LCC will ensure Information Managers continue with responsibility for the interim maintenance of applicable Health Information, including responsibility for the maintenance and security of the Health Information, until such time that a determination as to the residual use, archiving or destruction of the Health Information has been made;
 - ii. the LCC shall identify Health Information contributed by each Physician together with all other Health Information contributed subsequently that has been amended or is otherwise related to such Health Information;
 - iii. the LCC shall ensure that all Physicians who have contributed Health Information and request a copy of that Health Information, receive a copy of such Health Information, together with a copy of all other Health Information contributed subsequently that has amended such Health Information in a reasonable format as determined by the LCC;
 - iv. The LCC shall not otherwise permit the amendment or destruction of Health Information without the approval of the Physician(s) primarily responsible for the contribution of the Health Information, in any event, the Standards of Practice and those applicable to other health professional bodies shall be followed; and
 - v. This Article, and the obligations and duties contained herein, shall survive the termination of this Agreement.

ARTICLE 5 THE ELECTRONIC MEDICAL RECORD AND MEDICAL RECORD SYSTEM

- 5.1 Physicians may provide Health Information in their custody or under their control into the Medical Record or EMR System for use and disclosure in accordance with the terms of this Agreement, subject only the following exceptions:
- a. Health Information the disclosure of which, in the reasonable opinion of the Physician, may harm the Patient to whom the Health Information relates; and
 - b. Subject to the CPSA Standards of Practice, if applicable, Health Information which the Patient to whom the Health Information relates has requested be masked under the EMR System.
- 5.2 The Physicians shall appoint a Data Management Committee with a minimum membership of the LCC and two (2) Physicians to manage and oversee the Physicians' ongoing compliance with the terms of the agreement.
- 5.3 The Data Management Committee shall have the following responsibilities in alignment with the PIA in place in the clinic:

- a. set policy for monitoring the collection, use and disclosure of Health Information;
- b. resolve disputes regarding the collection, use and disclosure of Health Information that arise between two or more Physicians;
- c. resolve any actual or perceived conflicts or inconsistencies that arise between the requirements of the HIA, or the CPSA Standards of Practice;
- d. constitute sub-committees or name individuals to which (whom) its responsibilities are delegated (such as a Privacy Officer or Lead Custodian);
- e. maintain and, where required, amend the Information Sharing Agreement;
- f. with the Privacy Officer (where relevant) and in accordance with the PIA and other agreements in place in the clinic, oversee the privacy, security and stewardship issues relating to or arising from the use of Health Information; and
- g. supporting the Privacy Officer, assume responsibility for the maintenance and security of the Health Information left in the custody and control of the Lead Custodian or following termination of this ISA.

ARTICLE 6 CONFIDENTIALITY AND PRIVACY

- 6.1 The LCC and Physicians shall, in accordance with the HIA, among other requirements, implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Health Information collected, used or disclosed.
- 6.2 Before using or disclosing Health Information that is in his/her custody or under his/her control, each Physician shall make a reasonable effort to ensure that the information is accurate and complete.
- 6.3 Where appropriate, a Physician or, at his or her direction, the LCC may direct Health information be stripped, encoded or otherwise transformed to create non-identifying or de-identified Health Information.
- 6.4 A Physician shall report to the Privacy Officer, the LCC and the Data Management Committee any collection, use or disclosure of Health Information that is not in accordance with this Agreement, the PIA or the Health Information Act of Alberta.

ARTICLE 7 RECORDS MAINTENANCE REQUIREMENTS

- 7.1 The LCC and Physicians shall collect, use and disclose Health Information in accordance with this Agreement.
- 7.2 In collecting, using or disclosing Health Information, the Physicians shall comply with the HIA.
- 7.3 Notwithstanding any other provision of this Article, a Physician (or former Physician) shall retain Health Information as required by CPSA and HIA.
- 7.4 This Article, and the obligations and duties contained herein, shall survive the termination of this agreement.

ARTICLE 8 COMPLIANCE AND AUDIT

- 8.1 The Data Management Committee shall periodically assess compliance with this Agreement by the Physicians, including periodic and/or random audits of collection, use, or disclosure of Health Information, and create policies and procedures to facilitate that compliance.
- 8.2 For the purpose of facilitating transparency and accountability, the Data Management Committee shall require the LCC to ensure a log of all access to, use and disclosure of Health Information is maintained, which shall be made available for review by the Physicians if requested.

- 8.3 The LCC and Physicians are responsible for ensuring that their Affiliates are provided training on clinic privacy policies, the HIA, the PIAs related to the clinic and are aware of this agreement and the impact to their role as Affiliates.

ARTICLE 9 USE AND DISCLOSURE GENERALLY

- 9.1 A Physician shall use and disclose Health Information only in accordance with this ISA, HIA, other applicable legislation and regulations and AHS Medical Staff Bylaws and Rules (as applicable) as well as the CPSA Standards of Practice.
- 9.2 A Physician shall use or disclose Health Information on the basis of first, aggregate; second, non-identifying; and finally, on an individually identifying basis only that is essential, in each case, for the intended purpose.
- 9.3 A Physician shall use and disclose the minimum Health Information necessary for the intended purpose.
- 9.4 Use and disclosure shall be pursuant to procedures that ensure recipients of Health Information are identifiable and properly authorized to have that Health Information disclosed to them.

ARTICLE 10 PRIMARY USE AND DISCLOSURE OF HEALTH INFORMATION

- 10.1 The LCC and Physicians may use and disclose Health Information required for the purpose of providing Health Services to Patients in accordance with the terms and conditions of this Agreement.

ARTICLE 11 SECONDARY USE AND DISCLOSURE OF HEALTH INFORMATION

- 11.1 The Physicians may collect, use or disclose Health Information in accordance with the HIA, with supplementary details regarding data sharing as detailed in this Agreement, for any purpose not directly related to the provision of Health Services to the Patient whom is the subject of that information including, without limitation, addressing the needs of Patient populations or to advance Patient safety, or health system management.

ARTICLE 12 DISPUTE RESOLUTION

- 12.1 The Physicians will use all reasonable efforts to resolve any dispute arising out of, or in connection with, this agreement promptly and in a professional and amicable manner.
- 12.2 Any dispute that remains unresolved after 10 business days shall be referred to the Data Management Committee for resolution.

ARTICLE 13 NOTICES

- 13.1 Every request, notice, delivery or written communication provided for, or permitted by this Agreement shall be in writing and delivered to, mailed (postage prepaid) or faxed to the intended recipient at the addresses/fax numbers provided to the Management Committee.
- 13.2 A notice, demand or communication made or given by personal delivery or facsimile during normal business hours at the place of receipt on a business day shall be deemed to have been made or given at the time of actual delivery or transmittal. Any notice, demand or communication made or given by personal delivery or facsimile after business hours, or on a day other than a business day shall be deemed to have been made or given at the commencement of normal business hours on the first business day following actual delivery or transmittal.

ARTICLE 14 GENERAL

- 14.1 This Agreement may not be amended except with the agreement of the Physicians, as evidenced in a duly written agreement.
- 14.2 Any dispute, interpretation or application of this Agreement shall be resolved in accordance with the laws of the Province of Alberta.

- 14.3 Each provision of this Agreement shall be severable from every other provision for the purpose of determining the legal enforceability of any other provision unless severance affects the entire intent and purpose of the Agreement.
- 14.4 This Agreement sets forth the complete understanding of the Parties with respect to its subject matter, and supersedes all prior Agreements created specifically for this purpose, whether written or oral. In the event of a conflict or inconsistency between this Agreement and the provisions of other Agreements, this Agreement shall prevail.
- 14.5 This Agreement may not be assigned by any Party without the other Parties' express written consent.
- 14.6 The LCC cannot sign on behalf of any Party who has not signed this agreement.

IN WITNESS WHEREOF each Physician and the LCC has executed this Agreement.

Signatures and Acknowledgement

Lead Clinic Custodian Signature Date

Printed Name

Custodian Signature Date

Printed Name

Custodian Signature Date

Printed Name

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Signatures and Acknowledgement continued

Custodian Signature Date

Printed Name

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Appendix A

ANSWERS TO QUESTIONS MUST BE DETERMINED BEFORE FINALIZING AGREEMENT

When a former Physician leaves the clinic, they are entitled to a copy of the Health Information they contributed to the Clinic and any subsequent Information Manager.

Questions to answer/address:

1. When a former Physician leaves the clinic, they are entitled to a copy (pdf or electronic) of the Health Information they contributed to the EMR.

Questions to answer/address: Data Migration

- Information they contributed in the EMR in a format that can be migrated to another EMR. Who will pay for export of data?
- Who will pay for import of data into new EMR?

pdf

Who will pay for this and what is the expected cost?

2. Physician who chooses not to maintain custody of the records must ensure there is a new Information Sharing Agreement relating to management of the Health Information they contributed to.

As per CPSA, this new ISA will need to address:

- Which Physician(s) will maintain custody of the Health Information?
- Who is responsible for costs if copies of the Health Information are provided to the former Physician who is a party to the agreement?
 - Costs should be reasonable and consistent with applicable legislation and community standards.
 - Identify response time that the former Physician can expect for requests of copies of Health Information to which they contributed.
- If the clinic dissolves, the former Physician needs to be notified so they can determine how they will gain access to the Health Information for required CPSA Patient Records Standard 21